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**CHANGING PARADIGM  
OF  
CRIMES AGAINST WOMEN IN INDIA**

**INTRODUCTION**

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# **CHAPTER 1**

## **A GLOBAL OVERVIEW**



## CHAPTER 1

### A Global Overview

In the new millennium, Women's Rights are the focus of vision worldwide. The Charter of United Nations Endorsement of the equal rights of men and women and the subsequent International Treaties and Declarations, the Vienna Declaration in 1993 and Declaration of Beijing in 1995 stands in 2002 as a sharp contrast to the reality of the life for millions of women world wide. The recent commitment of the international community to recognize violence against women as a human rights issue, to challenge de jure and de facto discrimination against women, and to end impunity for the widespread use of sexual violence in war and armed conflict, has already faced many challenges. After gaining momentum following the 1993 World Conference on Human Rights in Vienna, the 1994 World Conference on Population and Development in Cairo, and the 1995 Fourth World Conference on Women in Beijing, the significant progress made by the women's international human rights movement threatened to stall as attacks on women's human rights persist.

Despite these attacks, the presence and impact of women's human rights activists contribute substantially to strengthening standards, protecting women's rights and to ensuring that policy makers feel obliged to acknowledge and even respond to violations of women's rights. For example, the Treaty of Rome for the creation of a permanent international criminal court (ICC) defines rape, sexual slavery, enforced prostitution, forced pregnancy, and enforced sterilization as war crimes and crimes against humanity. The same treaty condemns gender-based persecution—a first.

As a direct result of the breadth and effectiveness of the women's human rights movement, countries throughout the world as well as intergovernmental organizations and international financial institutions appear to understand that women's human rights can no longer be ignored. Nonetheless, significant financial resources are not consistently allocated to the advancement of women's human rights, nor is redress for violations of rights readily available to most women. However, it is clear that some state governments and institutions are beginning to integrate the women's movements' analysis of the interrelatedness of economic development, non-

discrimination, and access to justice into both their rhetoric and policies, if not always their actions.

Most violence against women is gender-based. It is perpetrated simply because women are women. Whether it is rape, domestic violence, dowry deaths, female genital mutilation or sex-selective abortions of female foetuses, most of these don't usually happen to men. Women are beaten in their homes by intimate partners; raped and otherwise sexually assaulted and targeted for sexual violence based on their low social status. Several years of work by women's groups have produced gains in government actions to deter violence against women in a handful of countries

The United Nations Women's Development Fund (UNIFEM) estimates that domestic violence is the leading cause of death and injury among women worldwide. It is not a disease or natural calamity, but unchecked violence that is most responsible for women's deaths. Sexual violence is a fact of life for most women, even for Women in the industrialised, affluent West. <sup>1</sup>According to one estimate, one in five women in the United States is going to be raped in her lifetime. If a person is always on guard with respect to her body, can she be truly free in her mind? Women lead restricted lives, unable to realise their full potentials. Let us not be comforted into believing that the much-touted success of a few professional women is the reality of all women. <sup>1</sup>

What is frightening is the benign attitude even women take towards the every day occurrence of sexual violence. This because the media, our culture, religious practices and our legal system normalise this violence. What is perceived as the "norm" comes to be treated as normal. Popular media depicts women as mindless bimbos who really mean "Yes" even when they say "No". A woman's consent or lack of it is irrelevant, because, she has yet to convince men that she means what she says. Some of the accepted "truths" of our culture are: "good" women don't get sexually harassed. And the "bad" women who do are usually behaving in a way where they invite sexual advances from men. The division of all women into good or bad is problematic. How then, are we to categorise infant girls, or the mentally ill women who get sexually abused? Many religious texts legitimise keeping wayward women under control through the use of physical violence. Our legal system is replete with gender bias. For instance, the 19th Century laws against rape are enforced to this day. A woman's character can be used against her; sex workers can't be raped; a wife can't be raped by her husband; so marital rape as a crime doesn't exist in the Indian Penal Code.

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<sup>1</sup> A New Consciousness, The Hindu, May 11, 2003.



Now, there are international covenants to protect the interests and rights of women including the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and .....What is more the United Nations has adopted a resolution and designated November 25 as the International Day for the Elimination of Violence against Women.

## **OVERVIEW OF CAW IN DEVELOPING AND DEVELOPED SOCIETIES**

Discriminatory practices, tolerated and even encouraged by states, continue unabated around the globe. Despite commitments made under (CEDAW) and "national platforms for action" to implement the 1995 Fourth World Conference on Women Platform for Action adopted in Beijing, many states continue to enforce discriminatory laws and to tolerate discriminatory practices under customary law.

In many cultures, women are treated as property, not as human being with inherent dignity and equal rights. Women's dress, work, socializing, appearances, intimate relationships, reproduction, and sexuality are all subject to control — by family and community as well as, in some cases, by the state. Girls are subjected to female genital mutilation and early marriage, and are denied control over their sexuality. Women are forced into marriage, denied access to the public sphere, and punished if they violate rigid codes governing how women walk, dress, and speak. At worst, a girl or women may be killed in the name of restoring the family's "honor" if she rebels against (or is perceived to have rebelled against) these controls. Finally, laws that criminalize adultery and fornication are used disproportionately against women and create a risk of prosecution for women who are victims of sexual violence but whom the police or prosecutors do not believe.

Although international attention is focused largely on the repressive policies enforced by Afghanistan's Taliban, serious and systematic discrimination persist everywhere. For example, Guatemala's civil code denies women the right to administer marital property, allows husbands to prevent their wives from working outside the home, and limits women's exercise of guardianship over children. This has been challenged before the Inter American Commission on Human Rights but it is still to decide on the merits of the case.

In Pakistan, concern about escalating discrimination against women increased with the election of Muhammad Rafiq Tarar as president in January 1998. While serving as a judge, President Tarar called a rape victim a liar and openly opposed laws giving women the right to divorce and seek custody of their children. Women's rights activists feared that Tarar's election was indicative of a more conservative mood in the country, likely to have negative consequences for women's rights in Pakistan. In a move that seemed to confirm these fears, his prime minister introduced a constitutional amendment that would replace British common law with religious laws based on the Koran and Sunnat. Local activists fear that in the absence of a specific guarantee of women's equality, the amendment will be used to justify a rollback in women's rights. Women are denied their rights through acts of domestic violence, sexual violence, trafficking, lowered familial and legal status, unlawful detention and by depriving them of sexual autonomy.

In another step forward, Egypt's Supreme Administration Court upheld a governmental ban on the genital cutting of girls and women in late December 1997. The 1996 governmental ban had been challenged by conservatives who claimed that genital cutting was a legitimate religious and cultural practice with which the state should not interfere. The government began public education programs in early 1998 about the health risks of genital cutting and announced its intent to impose penalties on doctors, midwives, and barbers who violated the ban. Nevertheless, many government actions in response to violence against women are inadequate. While some governments focus legislative attention on domestic and sexual violence, such reform are undermined by structural barriers to women's meaningful access to legal redress and protection from further violence. Domestic violence victims face nearly insurmountable obstacles when attempting to report assault.

Governments are also remiss in preventing and condemning other forms of violence against women, such as violence in conflict and post-conflict situations and violence in state custody. Internal civil strife often provides the context in which women are targeted for sexual assault, as well as one of the reasons they flee their homelands for refugees camps, where they again are targets of sexual violence.

De jure discrimination, as well as customary practices, often keep women in a subordinate status in their communities. This unequal status make them targets for sexual and domestic violence. The failure of judicial systems to investigate thoroughly and condemn acts of domestic and sexual violence against women further diminish and entrench women's second-class status



through impunity. A series of investigations into the state's response to violence against women in Pakistan, Peru, Russia, and South Africa, found that women's complaints of domestic and sexual violence are often met with legal indifference and procedural and attitudinal obstacles.

More often than not, it is government agents, in the form of local police, who are the first and most persistent obstacle to justice for rape and domestic violence complaints. The police exercise undue and arbitrary authority regarding the types of complaints they accept, and actively discourage women from filing complaints. In Peru police routinely refused to process victims' complaints, conducted shoddy investigations, failed to offer victims protective orders, failed to remove violent men from the home, and blamed victims for the violence. Few steps are taken toward preventing widespread violence against women. The non-governmental Progressive Women's Association has found that Pakistani women, particularly young brides, are still being burned in "accidental fires," usually from stoves and most often set by their husbands or in-laws.

The pattern of bias against domestic violence victims extends to the judiciary in several countries. Women victims of domestic violence who are able to persuade the police to accept their cases for investigation are later hampered by judicial systems that value family unity over the safety of women victims of domestic violence. In Peru judges often refer married domestic violence victims and their batterers to counseling before charges are laid against the accused, with the alleged batterer remaining in the home.

Rape victims in the less gender sensitive countries fare just as poorly. They face many of the same obstacles as victims of domestic violence. Police act as gatekeepers and allow their own stereotypes and biases about women's behavior or dress to jeopardize the investigation of cases. Often, women's complaints are met by disbelief and disregard for their privacy and security. Police skepticism toward rape cases compromise official investigations, effectively denying women's equality under the law.

Forensic doctors are another obstacle to justice for sexual violence in countries including Peru, South Africa, and Pakistan. According to the South African Department of Justice, the country has one of the highest rates of reported rape in the world. There was a rise from 105.3 per 100,000 in 1994 to 119.5 per 100,000 in 1996. District surgeons, those responsible for performing forensic exams on sexual assault victims, were often poorly trained in the collection of evidence in rape cases, reluctant to appear in court to affirm their

findings, or unavailable for the timely examination of rape victims, and they unfairly vetted and prejudged victims, choosing to do thorough examinations only on those whom they deemed likely to be persuasive in court. In fact, a parliamentary subcommittee identified district surgeons as being among the biggest stumbling blocks to the successful prosecution and conviction of rapists. The South African government did begin to address this problem and released procedural guidelines for the treatment of sexual violence victims in 1998—guidelines aimed at health care professionals, prosecutors of rape, social welfare agencies, and others. Activists expressed hope that government officials would ensure that these far-reaching guidelines would be widely distributed and implemented.

Women's second-class status render them vulnerable to rape by intimate partners at home and by strangers on the street. In many countries, sexual violence against women carries no real probability of punishment or penalty, sending the message that these types of crimes are of no importance to the state. This acceptance of sexual violence against women is reflected and magnified elsewhere in times of national or regional unrest or civil strife, when women are targeted for rape as a continuation of the impunity for rape and sexual violence during times of peace.

Sexual violence is perpetrated against women in times of conflict as a deliberate political policy of warring factions. Whether civil unrest is directed at those groups believed to be financially better off or not a trusted part of the social fabric—as is the case of the violence directed at Indonesia's ethnic Chinese—or at those perceived as vastly inferior and challenging the social hierarchy—as is the case of violence directed at lower castes in India—the women of these distinct groups suffer the same fate: sexual assault.

In Indonesia, frustration about the economic crisis and political authoritarianism devolved into widespread civil unrest that ultimately removed President Suharto from power. Just as much of the violence and looting were directed at the ethnic Chinese population, so were ethnic Chinese women reportedly singled out for rape and sexual assault. Nongovernmental organizations working with rape victims noted that many were too ashamed to come forward, had fled the country, or were afraid of reporting the rape as police were widely believed to have been involved in the riots and the rapes themselves.

In some instances, socially determined characteristics such as caste affiliation render women more vulnerable to rape. In India, despite protective



legislation, attacks against members of the lower castes continue to go unpunished. Sexual abuse and other forms of violence by high-caste men against lower-caste women have historically been a means of maintaining socio-economic divisions in India. Upper-caste men, landlords, and the police have physically and sexually abused Dalit ("untouchable") women to suppress movements to demand payment of minimum wages, settle sharecropping disputes, or reclaim lost land. Dalit women were targeted on the basis of both their sex and their caste. They are thought to be available for sexual abuse, and their occupations in agriculture or as prostitutes put them in frequent contact with men who can rape them with impunity. While women all over India found the criminal justice system unsympathetic to sexual assault, Dalit women also confronted officials who were hostile to their low caste status.

Historically, women have been targeted for sexual violence during times of conflict—both civil and international. Soldiers raped and otherwise sexually abused women from the opposing side as a method of war; in this sense rape functioned to demoralize and punish the enemy. Another contributing factor to women's being targeted for sexual violence during times of conflict was the socialized attitudes that men held about women: women (like other objects) were spoils of war and therefore sexually available to them in times of conflict. Moreover, soldiers did not fear being punished for engaging in sexual violence toward a part of the civilian population that, even in times of peace, held an unequal or diminished status vis-à-vis men.

Unremedied domestic violence essentially denies women equality before the law and reinforces their subordinate social status. Men use domestic violence to diminish women's autonomy and sense of self-worth. States that fail to prevent and prosecute domestic violence treat women as second-class citizens and send a clear message that the violence against them is of no concern to the broader society. Countries as diverse as Pakistan, South Africa, Jordan, Russia, Uzbekistan, and Peru have one thing in common: horrendous records on addressing domestic violence. In Pakistan, officials at all levels of the criminal justice system believe domestic violence is not a matter for criminal courts. In South Africa, the police and courts treat complaints by battered women as less serious than other assault complaints, and there are persistent problems with the provision of medical expertise to courts when women have been abused. In Jordan, "honor killings" occur when families deem women's behavior improper, and, despite some legislative reforms, the perpetrators receive lenient sentencing before courts. In Russia and Uzbekistan, police scoff at reports of domestic violence, and harass women who report such violence to stop them from filing complaints. In Peru, despite improvements in its domestic violence legislation, the law still does not



protect women from marital rape and stalking. Discriminatory attitudes of law enforcement officials, prosecutors, and judges, who often consider domestic violence a "private" matter beyond the reach of the law, reinforce the batterer's attempts to demean and control his victim.

Women everywhere are sexually assaulted, and their attackers enjoy impunity. Sexual violence against women happens at an alarming rate, in times of peace and during armed conflict. Often, women are silenced by the stigma attached to sexual violence, but increasingly they are speaking out and demanding accountability for these crimes. Police and other law enforcement authorities are quick to dismiss rape and other forms of sexual violence as unimportant crimes provoked by the victims themselves. Under international law, governments have a duty to respond effectively to violence against women, including rape.

Russian government officials reject complaints from victims, refuse to investigate rape, neglect to refer victims to forensic doctors for evidence collection, and drop cases when they believe the victim is "at fault." Similarly, in Pakistan, women who attempt to file rape charges face police harassment and disbelief, and may themselves face arrest and prosecution for engaging in extramarital sex. Women in India face daunting obstacles in prosecuting rape cases, beginning with lodging reports with the local police to confronting judges' insensitivity to their plight. If an Indian woman is poor, belongs to a lower caste, or lives in a rural area, it is even more difficult for her to access the justice system.

Trafficking in persons — the illegal and highly profitable recruitment, transport, or sale of human beings into all forms of forced labor and servitude, including trafficking into forced marriage — is a tragic and complex human rights abuse. The U.S. State Department estimates that anywhere from 700,000 to four million persons are trafficked annually worldwide, and that approximately 50,000 women and children are trafficked annually for sexual exploitation into the United States. Women are particularly vulnerable to this slavery-like practice, due largely to the persistent inequalities they face in status and opportunity worldwide.

Several agencies have exposed consistent patterns in the trafficking of women. In all cases, coercive tactics, including deception, fraud, intimidation, isolation, threat and use of physical force, or debt bondage, are used to control women. In many cases, corrupt officials facilitate the trafficking, accepting bribes to falsify documents and provide protection. Without such corruption

and complicity on the part of state officials, trafficking could not thrive. Many governments treat trafficked persons as illegal aliens, criminals, or both, exposing them to further abuse. For example, Thai trafficking victims in Japan are regularly detained as illegal aliens and deported with a five-year ban on reentering the country. By targeting the victims instead of the perpetrators, states allow the abuses to continue.

Laws and practices governing women's personal status — their legal capacity and role in the family — deny women their human rights in many countries. While the type of discrimination varies from region to region, women throughout the world find that their relationship to a male relative or husband determines their rights. Personal status laws in some Middle Eastern countries curtail women's rights entering into, during, and at the dissolution of marriage. Women in Asia, Africa, Europe, and the Middle East have their citizenship rights curtailed or denied because of the race or nationality of their husbands. In many countries, children born in their mother's country are denied her nationality because women cannot transmit nationality. These citizens without citizenship are denied a broad range of civil, political, economic, social, and cultural rights. Egyptian women who are married to foreign men cannot pass their nationality to their offspring.

Prison guards and other corrections officials subject women prison inmates to degrading treatment, harassment, and torture. Male jailers sexually and physically abuse women in custody, especially those held without access to courts, counsel, or their families. The abuse, including rape, inappropriate sexual touching, beatings, excessive pat-downs and strip searches, and the use of sexualized language, is a crude example of the power imbalance between guards and prisoners, as well as between men and women. In Pakistan, women inmates report beating and slapping, suspension in mid-air by hands tied behind the victim's back, insertion of foreign objects (including police batons and chili peppers) into the vagina and rectum, and gang rape. Despite these alarming reports, police almost never face criminal penalties for such abuse. When raped by guards, women inmates are routinely denied access to medical care and forensic evidence exams that could corroborate their allegations. In the United States, prison guards threaten women prisoners with violence or denial of privileges should the women report the misconduct or seek redress. As a result, incarcerated women are intimidated into silence, and their attackers remain free to continue the abuse. This persists due to official tolerance of such behavior and impunity for the perpetrators.

When Justice Leila Seth succeeded in breaking the glass ceiling and become the first woman judge in the Delhi High Court, it was an occasion to



celebrate. But she soon found that despite reaching the top, there was no getting away from old mindsets and archaic rules, which discriminate against women.

Justice Seth discovered this when she was told that she was not entitled to the official reimbursement for her mother's medical bills although the male judges were. "The reason given was that it is the men who look after their mothers," Justice Leila Seth said here on Monday at the launch of a global study on "Time for Equality at Work", released by the International Labour Organisation (ILO). She said when she pressed for the claim, she was asked if she had no brothers who could look after her mother:

According to Justice Seth, women are discriminated against at the work place in various ways, adding that her case illustrates that even when a woman gets the same remuneration as her male colleagues, there is a difference in their entitlement of perks.

This persisting discrimination against women has been highlighted in the ILO study; which says that though there are more working women now than 50 years ago, they are still concentrated in lower-paid and lower, skilled jobs. In India, for instance, wage classification of skilled and unskilled workers has sometimes placed women in the unskilled, lower-paying wage category and men in the skilled, higher-paying wage category irrespective of the content or skill level of the job, the report added.

Pointing to the different forms of discrimination which women suffer, Rajya Sabha deputy chairperson Najma Heptulla said it is ironic that the ILO report's release comes on a day when the media is full of the Infosys sexual harassment case. "This case has been highlighted but there are innumerable others which go unreported as women are too inhibited to talk about it," she said.

The ILO report said even in countries where women are equally or more educated than men, the "glass ceiling" often blocks their rise to the top.

And everywhere, most women continue to earn less than men. Even in developed countries, women's representation in top management positions and in the boardrooms remains limited, the report says adding that differences tend to be much greater at the top of the ladder than at the bottom.<sup>2</sup>

A large number of Asian women from all over Britain came here today to protest against what they called a "sexist" and "racist" law which was putting their lives in danger and violated their basic human rights.

They picketed the Home Office to demand the abolition of the controversial "two-year immigration rule" under which women who are not British citizens face deportation back to their countries if their marriage breaks down within two years of their arrival in this country.

"Many women who have come from abroad face a stark choice between remaining in abusive relationships and being forced to return to their countries of origin, often to a situation where their lives would be in danger as their families blame them for not making the marriage work," said Amrit Wilson of the South Asia Solidarity Group, one of the sponsors of the protest.

It is estimated that at least 500 Asian women, mainly from India, Pakistan and Bangladesh, are forced to walk out of their marriages every year because of domestic violence. Many are reluctant to return to their own countries fearing the wrath of their families, especially in cases where the concept of "honour killings" is still prevalent.

"The cases that come to light are only the tip of the iceberg and the actual number is believed to be much higher," said a spokesperson of the Asian Women Unite, which represents 20 Asian women's groups that took part in the demonstration. She said that while theoretically victims of domestic violence were entitled to appeal against deportation, in practice even "solid" evidence from police was rejected by the Home Office.

Talat Jabin, an Oldham-based solicitor, representing a large number of women in this situation, said: "The Home Office claims to be concerned about violence against women but these women are being effectively penalised for leaving violent men. My clients are in a situation of hostages, if they leave their husbands they are denied any benefits or means of survival in Britain. Many of them are receiving death threats about what will happen to them if they go back to Pakistan or India."

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<sup>2</sup> Women still not getting Their Due , The Times of India, May 14, 2003.



Among the protesters were several victims of domestic violence who faced deportation. They said that the two-year rule exposed the "hypocrisy" of the Government's claim that it was committed to women's rights. The protest was supported by all major Asian women's organisations in Britain.<sup>3</sup>

#### CURRENT SCENARIO IN SOUTH ASIA AND OTHER DEVELOPING SOCIETIES WITH SIMILAR SOCIO - ECONOMIC INDICES AND GENDER CULTURAL TRADITIONS AS INDIA.

Women's economic, social and cultural rights continue to be neglected in all South Asian nations. Women face the threat of multiple forms of violence including: sexual. The traditions and the customs in Asia are so rigid that they do not allow a woman to seek justice even when she has the legal right. Reports from the South Asian countries demonstrate a phenomenon of injustice, suppression and helplessness due to traditional attitudes faced by women, in order to obtain the rights given to them by the local legislation.

There are common historical factors and include:

1. Agriculture-based economies. The tribal feudal system and patriarchal structures accord a secondary role to women.
2. Polygamy. Hinduism and Buddhism are two old religions allowing polygamy, thus lowering the status even further. Historical customs of binding the feet of Chinese women and burning alive of the wife along with the body of the dead husband in Hindu cultures (Sati) are some of the well known evidence of expected violence against women in South Asia. Although Islam also allows polygamy, it theoretically grants equal status to women in many areas. However, in actual practice, it has absorbed many of the cultural norms of Hinduism and Buddhism e.g. men are allowed four wives but the society disapproves of women's right to remarry, which is clearly allowed in Islam.
3. Industrialization: Having missed out on the industrial revolution, South Asian countries are now being pushed into post-industrial society. Therefore radically different levels of development are found in the different areas of these countries. Due to widespread unemployment, women were pushed out of the lucrative job market and forced to return to traditionally unpaid labour in agriculture and family business.

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<sup>3</sup> Asian Women in U.K. protest sexist law by Hasan Suroor, The Hindu, March 10, 2004.

The traditions and the customs in Asia are so rigid that they do not allow a woman to seek justice even when she has the legal right. Reports from the South Asian countries demonstrate a phenomenon of injustice, suppression and helplessness due to traditional attitudes faced by women, in order to obtain the rights given to them by the local legislation. The cross-cultural applicability of definitions is one of the issues that arise in the context of international studies. Anthropologists and women's health advocates have highlighted the difficulties of creating international classifications, and that concepts of what constitutes violence against women vary profoundly across cultures. Because universal classification systems cannot fully account for the variance **that exists between cultures they need to be used with caution** (WHO, 1996). All societies have forms of violence that are tolerated, or at times even encouraged by social norms and customs. Whether socially condoned or not, these acts as well as their effects on women's health and lives, need to be recorded. Addressing only culturally-unacceptable forms of violence fails to meet the spectrum of women's needs.<sup>4</sup>

Hence it is vital to give a brief account of the historical development of their personality in order to understand the dynamics of violence against them. In June 1980, Women Lawyers Association of Philippines in Manila organized a meeting, and 13 South Asian countries presented reports. They all pointed out that there were no laws which were discriminatory towards women, but, rather, it was the common culture or tradition which was responsible for such attitudes towards them.

The amalgamation of Buddhist, Confucian, Hindu, Islamic and Christian traditions have shaped the personalities of women and determined their social status. Rigid cultures and patriarchal attitudes which devalue the role of women, result in the wide spread occurrence of violence against women. The family structure, in which the man is the undisputed ruler of the household, and activities within the family are seen as private, allows violence to occur at home. Violence by family members, strangers and agents of the state; domestic abuse including spousal murder; being burned, disfigured with acid, beaten and threatened; ritual honour killings; and custodial abuse and torture. As well as traditional forms of violence such as wife-battering and sexual assault, women in these countries are also exposed to dowry crimes such as bride burning, kidnapping for the purposes of prostitution, and "honour killings". Laws permit discrimination against women and discourage reporting of violent acts. Efforts to remedy this situation must include changes

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<sup>4</sup> U. Niaz., The Psychiatric Clinic and Stress Research Centre, Karachi, Pakistan.  
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in local laws as well as assistance from the United Nations and the international community.<sup>5</sup>

Some of the worst forms of discrimination and violence against women continue to plague much of South Asia. "Violence against women in the region is as endemic as it is diverse," says a recent United Nations Development Fund for Women (UNIFEM) report on the progress of South Asian Women 2003.

Discrimination against women in South Asia begins even before birth with abortion of female foetuses a common occurrence. Every sixth death of a female infant in India, Pakistan, and Bangladesh is caused due to "neglect and discrimination", says the UNIFEM report.

India has registered an increase in crimes against women at a rate higher than overall crimes in the society. "Caste- based violence often takes on a gendered face," the report said. There has been a sharp rise in cases of sexual harassment, cruelty and domestic violence against women in the country. Cruelty and torture perpetrated by the husband and his family, according to the National Crime Records Bureau figures of 2002, constitutes 36 per cent of all reported crimes against women, followed by molestation (26 per cent) and kidnapping (14 per cent).

In Pakistan, the custom of watta satta is practiced under which a brother and a sister could be married to another set of siblings. The problems in one marriage might thereby have an impact on the other one. "The custom works more like an exchange of property," notes the UNIFEM report. Then there is the tradition of karo-kari (honour killings). Men resort to killings to avenge "family honour" when a woman violates socially and culturally determined tribal and family norms.

In Bangladesh, fatwas or religious decrees are used by communities to crack down on women perceived to have indulged in "sexually-deviant behaviour". Fatwas-driven punishment meted out to girls and women have ranged from lashes to social boycott. The country also reports the trend of acid throwing on women.

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<sup>5</sup>Khan.



In Nepal, the custom of deuki (forced temple prostitution) is prevalent, whereby young girls are "dedicated" to the temples. This custom exists in India under the tradition of Devadasi and Jogini. Witch hunting aimed against women with perceived deviant behaviours also continues in both these countries.

Also, there is trafficking of women and children across South Asia for a variety of purposes such as sexual exploitation, prostitution, forced or bonded labour, organ transplant, illegal adoption, forced marriage, and entertainment. Thus, despite presenting "some of the finest examples of women empowerment", notes the report, South Asia remains a disturbed region for women recording a Gender Development Index value of 0.535, which is 99 points lower than the average for developing countries.<sup>6</sup>

Issues involved are the same everywhere but there are differences imposed by the communal – cultural matrix. Estimates of the percentage of women who experience spousal abuse alone range from 70 to upwards of 90 percent. If there is anything more disturbing than the prevalence of these crimes, it is the impunity with which they are committed.

Whether it is rape or domestic violence the issues and problems faced are similar in most countries of the region. The gender bias in the criminal justice system, the role of the police, delayed and mishandled processing of complaints. Harassment and abuse of victims, inadequate and improper investigations, medicolegal examinations, importance of forensic evidence in cases of sexual assault and domestic violence, late referrals and other police delays, inaccessibility of doctors, lack of training of medico legal personnel, inadequate equipment and facilities, inadequate and abusive examinations in sexual assault cases, lack of appreciation of the purpose of medicolegal examination, inappropriate focus on virginity status, haphazard procedures, mistreatment of victims, inadequate and abusive examination leading to adultery and fornication cases, the role of the office of the chemical examiner, use of medical evidence at trial, leave a lot to be desired.

## PAKISTAN

Women in Pakistan face staggeringly high rates of rape, sexual assault, and domestic violence while their attackers largely go unpunished owing to

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<sup>6</sup> The Statesman, August 4, 2003.

rampant incompetence, corruption, and biases against women throughout the criminal justice system. Women who report rape or sexual assault encounter a series of obstacles. These include not only the police, who resist filing their claims and misrecord their statements, but also medicolegal doctors, who focus on their virginity status and lack the training and supplies to conduct adequate examinations. As for the trial in rape cases, typically, in the words of a Lahore district attorney, "The past sexual history of the victim is thrown around and touted in court to the maximum." Furthermore, women who file rape charges open themselves up to the possibility of being prosecuted for illicit sex if they fail to "prove" rape under the 1979 Hudood Ordinances, which criminalize adultery and fornication. As a result, when women victims of violence resort to the judicial system for redress, they are more likely to find further abuse and victimization.

Women victims of domestic violence encounter even higher levels of unresponsiveness and hostility, as actors at all levels of the criminal justice system typically view domestic violence as a private matter that does not belong in the courts. Police respond to domestic violence charges by trying to reconcile the concerned parties rather than filing a report and arresting the perpetrator, and the few women who are referred to medicolegal doctors for examination are evaluated by skeptical physicians who lack any training in the collection of forensic evidence. When asked about the domestic violence victims who have been examined at his office, the head medicolegal doctor for Karachi explained that "25 percent of such women come with self-inflicted wounds."

Despite the severity of the pervasive problem, the government's response has been indifferent at best. At worst it has served to exacerbate the suffering of women victims of violence and to obstruct the course of justice. Our findings highlight that a grossly inadequate and discriminatory legal framework is only one of a whole series of hurdles for victims seeking redress. Victims also have to contend with biased officials and outright harassment at every step of the law enforcement process, from the initial registering of a complaint to the trial. Only the most persistent and resourceful complainants succeed in maneuvering such hostile terrain, and even those who do seldom see their attackers punished. In the course of our investigation, we interviewed human rights lawyers and activists, police officials, medicolegal doctors, the personnel of government forensic laboratories, prosecutors, judges, and women victims of violence who had attempted to navigate the criminal justice system in order to obtain redress. Our findings are based on these interviews and on-site visits to government hospitals, medicolegal centers, and analytical laboratories.



Human Rights Watch examined the state response to sexual violence outside the home as well as to sexual and other violence by intimate partners. However, this report deals primarily with the former because we were unable to identify even one domestic violence victim whose criminal complaint had been registered by the police. We found that, with the exception of the rare high-profile incident, domestic violence cases were virtually never investigated or prosecuted. In fact, Pakistani law fails to criminalize a common and serious form of domestic violence: marital rape. Even complaints regarding acts of domestic violence that fall within the ambit of the criminal law, such as assault or attempted murder, are routinely ignored or downplayed by the police as a result of biased attitudes and ignorance and lack of training with respect to the scope of the law. Such resistance on the part of the police to recognize domestic violence as a crime allows the battering of women to continue with impunity and contributes to a climate that deters women from reaching out for safety and justice.

Although the most determined and resilient complainants in cases of non-familial sexual violence fare marginally better in terms of getting access to the judicial system, they face an extremely adverse legal regime. A stark example of the serious flaws in the applicable legislation is the fact that the very filing of rape charges can make the victim vulnerable to prosecution for extramarital sex. In some instances victims of rape and sexual abuse have actually been detained for months or even years, prior to trial, on charges of illicit sexual intercourse. Since statutory rape is not a crime in Pakistan, even barely pubescent girls alleging rape risk being charged with fornication or consensual sex outside of marriage. The possibility of prosecution, especially in a context where women victims of sexual violence are routinely disrespected and disbelieved by state officials, serves strongly to inhibit victims from pressing charges.

Sexual violence victims' first contact with the law enforcement system generally occurs at the police station. Here, right from the start, they typically encounter rejection of their complaints and harassment. The station chief of a busy Lahore police station told Human Rights Watch that rape did not exist in Pakistani society. He stated his belief that in practically all cases of alleged rape, women had consented to the act of intercourse and then lied to incriminate their male partners. These sentiments were echoed by several other police officers interviewed by Human Rights Watch. Given the prevalence of such biased attitudes among officials, it is not surprising that women complainants are consistently turned away from police stations and, at times, are even intimidated or warned against attempting to file charges. The police also intervene, often at the behest of the accused, to try to force the

concerned parties to reach a settlement without officially registering a complaint. When a complaint is registered, usually through herculean efforts on behalf of the victim, any follow-up by the police is generally minimal and rudimentary, a mockery of professional investigative methodology. Furthermore, even such limited action by the police usually requires persistent inquiries and pressure from the complainant.

Serious failings also exist in the government's collection and analysis of medicolegal evidence, which is a practical prerequisite for securing convictions in cases of sexual assault. In many cases, police unnecessarily delay informing women of the necessity of a medicolegal examination and giving them the official referrals required for this purpose. This consistent lapse on the part of the police is especially egregious in view of the transient nature of forensic medical evidence and its critical importance in cases of sexual assault. Nor do the police ensure, where legitimate and possible, that the accused undergoes a prompt medicolegal evaluation. A timely examination of the accused can yield significant evidence of signs of struggle in cases where the victim resisted the attack, evidence that can be crucial for exonerating the victim from charges of consensual illicit sex.

When medicolegal examinations are performed, they are frequently conducted in a haphazard manner and fail to secure meaningful evidence. Doctors focus on determining whether and when the hymen was broken rather than on collecting evidence to demonstrate the extent and severity of women's injuries and to identify offenders. In some cases, unmarried women who, in the examining doctors' opinion, were not virgins prior to being attacked tend to be harassed and their rape allegations disbelieved by the doctors. The examination findings also render them vulnerable to attacks on their character by defense counsel and, potentially, to prosecution for prior illicit sex. The focus on the hymen also militates against effective examinations of sexually active married women because their injuries are not usually related to hymenal tearing. In addition to shoddy examinations, chemical analysis of forensic samples collected from the examinees is commonly mishandled and produces unreliable results.

The court system presents its own set of hurdles for women seeking redress. Magistrates and judges often have discriminatory and sexist assumptions about women that prejudice the few cases that do reach the courts. State prosecutors have little or no training in handling cases of sexual and other violence against women and are largely ignorant as to the significance and interpretation of forensic medical evidence in such cases. Judges allow defense counsel free rein to introduce inflammatory evidence



and to attack the victim's character and prior sexual history even when this is patently irrelevant. Furthermore, in many instances, cases drag on for years. For a woman seeking redress, her experience with the judicial system is often more likely to compound the trauma of the original assault than to provide the satisfaction of seeing justice done.

Pakistan is obliged by its ratification of international treaties to ensure respect for women's human rights and fundamental freedoms. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), to which Pakistan acceded in 1996, requires the government to take action to eliminate violence against women as a form of discrimination that inhibits women's ability to enjoy rights and freedoms on a basis of equality with men. Pakistan's CEDAW obligations extend to the provision of an effective remedy to women victims of violence. Furthermore, the International Covenant on Civil and Political Rights (ICCPR), which Pakistan has not signed but which is a cornerstone of international human rights law, requires governments to ensure the rights to life and security of the person of all individuals in their jurisdiction, without distinction of any kind, including sex. In line with the ICCPR, Pakistan should not only refrain from, but should also prevent private actors from committing, acts of violence against women. Human Rights Watch found that rather than responding actively to violations of women's rights to life, to security of the person, and to be free of discrimination, the government has acted, through its police, medicolegal, prosecutorial, and judicial systems, to block access to redress and justice for women victims of violence.

Despite the alarmingly high incidence of rape and domestic violence in Pakistan, the government appears to be uninterested in limiting impunity for these acts. According to the Human Rights Commission of Pakistan at least eight women are raped every twenty-four hours nationwide. Estimates of the number of women who experience domestic violence range from 70 to 95 percent-the government's own Commission of Inquiry for Women reported that it "has been described as the most pervasive violation of human rights" in Pakistan. The statistical evidence notwithstanding, the state officials Human Rights Watch spoke to invariably denied the severity, indeed the existence, of the problem of violence against women. Moreover, on August 2, 1999, the upper house of parliament refused even to consider a resolution condemning the ritual practice of so-called honor killing that claims the lives of hundreds of women every year.

The dismissive official attitudes toward violence against women reflect institutionalized gender bias that pervades the state machinery, including the

law enforcement apparatus. Partly as a result of deep-seated and widespread biases against women, the criminal justice system does not operate as an avenue for redress and justice for women victims of violence. Victims who turn to the system confront a discriminatory legal regime, venal and abusive police, untrained medicolegal doctors, incompetent prosecutors, and skeptical judges. The deplorable level of medicolegal services in the country is itself a sign of the government's lack of will to tackle the problem of violence against women. Medical evidence plays a unique and critical role in prosecutions of sex crimes, the majority of victims of which are women. Particularly in light of the requirements of Pakistani rape law, a well-functioning medicolegal system is a practical prerequisite for the successful prosecution of rape and sexual assault.

A comprehensive program of concrete measures and a deliberate reversal of existing government attitudes and policies is required to afford women victims of violence an effective remedy and equal protection of law. At a minimum, the government must enact legislation that explicitly establishes domestic and other familial violence as crimes. The discriminatory Zina Ordinance should be repealed, and Pakistan's previous rape laws should be re-enacted with an amendment to make marital rape a criminal offense. Police, medicolegal doctors, and prosecutors should be trained in the proper procedures for handling rape, sexual assault and domestic violence cases in their respective professional capacities. The government should fund nongovernmental organizations to provide shelters, legal aid, counseling, and medical care for women victims of violence. The government of Pakistan is obligated, under its own constitution and international law, to take requisite steps to eliminate gender discrimination in the criminal justice system and to put an end to impunity for violence against women, itself a form of such discrimination.<sup>7</sup>

Pakistan Government has declared 2003 to be the year of Madare-e-Millat. The rights of women enshrined in the Quran and the Constitution of Pakistan also cover gender equality. Article 25(1) states that all citizens are equal before the law and are entitled to equal protection and there will be no discrimination on the basis of sex alone. Successive governments in Pakistan have claimed to have undertaken various social and economic measures to improve the condition of women there, but of no avail. Women in Pakistan continue to suffer. They are treated as second class citizens.

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<sup>7</sup> Crime Or Custom? Violence Against Women In Pakistan August 1999 By Human Rights Watch. Printed In The United States Of America.



Presenting the desperate plight of poor women in Pakistan at a seminar held on the Human Rights Day in South Africa recently. Ms Fereyal Gauhar, the UN Goodwill Ambassador disclosed that during the first quarter of 2003, 212 Karo-Kari deaths were reported. All these crimes were committed by the male members of the family. The figures for 2002 are equally shocking. In 346 of the 823 cases reported the perpetrators were husbands of the victims in 92 cases it was the in-laws, in 83 cases brothers, in 46 cases fathers and in 32 cases the sons of the victims, Twenty victims were minors. Seventy to 80 per cent of women in Pakistan suffer domestic violence. Almost all women are victims of abuse. They are neglected as a child, denied proper nutrition, education, and the choice of a marriage partner.

According to Professor Wilfred Cantwell Smith; Director, Institute of Islamic Studies, McGill University, Canada, the Pakistani society has not only degenerated and fragmented, it has also factually remained, so far, without a national directive which could be in harmony with the aspiration of its masses. Over the past few years, suicide has become an emerging phenomenon there. In 2002, 3,475 cases of suicides were reported by the media out of which 2,590 people lost their lives while 885 attempted cases were unsuccessful. Attempted suicides are 10 times more frequent than successful suicides. Ten per cent of the total number who attempt suicide complete the act at a later time. This means many attempted suicides cases go unreported. Out of the 3,475 reported cases of suicide, there were 2,036 cases of male suicide, 1,113 cases of women self murder, 192 cases male child suicide and 134 cases of female child Karo-Kari were recorded.

According to a study published in Lahore's Daily Times, unemployment, poverty, skyrocketing of prices of food items, fast deeming sense of insecurity, police, handedness, failure in love, failure in examinations, divorce, domestic violence, financial problems, childlessness, marriage disputes and mental illness seem to be the main reasons behind the sudden rise in the cases of self murder in the country.

Painting a grim human rights scenario in Pakistan in 2002, the Human Rights Commission of Pakistan (HRCP) criticised the international powers for ignoring the human rights abuses in Pakistan for ensuring the country's support. A report noted the heightened assault on institutions that support civil society, pointing out the decline of judicial independence and the increasing tendency of a military driven state apparatus to formulate self-serving laws. It said that such legislative and executive measures curtailed the personal liberties of the citizens' rights. There is no doubt that 2002 brought revival of



democracy but the report pointed out that the will of the people was not reflected in the election results. It said the people's disenchantment with the judiciary was also contributing to law and order situation in the country and they were going back to primitive methods for settling disputes.

The year, the report said, was different for women and children, as a number of women became victims to Jirga decisions, acid burning, kidnapping and honour killing. Commenting on the large scale violation of women's human rights, the Dawn said every- one knows what is going on in the rural areas from where only a fraction of actual killing is reported.<sup>8</sup>

Pakistan may be heading for a major gender imbalance -in favour of males -thanks to the unchecked business of offering sex-selection services before birth.

Several clinics, even in the posh localities of Lahore, advertise "low-cost" and "guaranteed" services in the local press. They also target couples from low-income groups to have a "child of their desired gender", a euphemism for a son. Service providers charge Rs. 25,000 and give a money back guarantee if the method fails.

Sex selection services were first offered in Pakistan at the end of the 1990s by a clinic in the northern city of Rawalpindi, which also had a branch in Karachi. Now, half a dozen such clinics have sprung up in Lahore and Rawalpindi.

Public health and human rights activists accuse such clinics of engaging in an unethical business.

"Services that exploit social biases are unethical," insists Wajid Ali of Small Hands, a social organisation working for children's rights. In Pakistan, there are only 48.1 females to 51.4 males. But this ratio doesn't reveal the bigger picture.

More male children are immunised and so girl children have a higher mortality rate -deaths from measles, diarrhea and respiratory infection are very common. Earning men and boys eat better than -and before - the women and girls in a family making them malnourished. Only 55 per cent of girls are

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<sup>8</sup> The Pioneer, May 1, 2003.

admitted to primary schools, On average, a ten-year old girl works seven hours a day on domestic chores.<sup>9</sup>

In a move that could have far-reaching consequences if it succeeds, nine women members of the National Assembly, led by People's Party member Sherry Rehman, moved a Private Member's Bill titled Protection and Empowerment of Women Bill.

The Bill asks the Government to take a series of measures. The most important of these is repeal of the draconian Hudood Ordinance brought in during the reign of President Zia-ul-Haq. The Bill also asks for compulsory primary education for children under 10, equal participation of women in all walks of life, equal pay for equal work, prohibition of violence against women and honour killings, freedom for every woman to marry a person of her choice, separate women's wards in jails and at least one-third seats for women on the council of Islamic Ideology, the Planning Commission, the Board of Directors of the Pakistan International Airlines, the University Grants Commission and autonomous bodies.

The conservative Right and the Government have attacked the Bill. The latter, however, is making politically correct noises even as it seeks to postpone any action on the proposed law. But the very fact that Ms Rehman and her colleagues have had to move such a law reminds us of the reality that women in that country have to fight.

HUMAN rights groups, women's groups and several other non-governmental organisations (NGOs) have been clamouring for a repeal of the Hudood ordinances, under which a very high number of Pakistani women have been trapped or jailed following accusations of Zina or adultery.

The Zina ordinance is part of the Hudood ordinances, enforced in 1979 during the regime of General Zia ul Huq. Rights activists started their battle against this law, soon after. And their demand is based on several grounds. The number of women put behind bars rose significantly -from the most vulnerable sections of Pakistani society after the ordinance came into effect. Today, "46 to 48 per cent of women in jails are accused of Zina. Their number runs into hundreds," says Asma Jahangir, former chairperson Human rights commission of Pakistan (HRCP). Although a countrywide survey of prisons

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<sup>9</sup> Deccan Chronicle June 12, 2003.



has not been done, a survey of Punjab's 17 jails indicated that of 885 women in detention, 40 per cent were there under the Zina ordinance.<sup>10</sup>

Allegations of Zina (adultery or fornication) are often false or based on suspicion. Besides, the ordinance provides estranged families with a handy tool to punish girls who want to marry a man of their choice -even though this is a religious right. If a girl leaves home secretly to marry the man she loves, the police, upon tracing the couple, will lodge a case of abduction and enticement against the man in question.

The police would do this at the behest of the family. And the girl would be forced by her family to be a prosecution witness against the man. Upon refusal, she may well become co-accused in a Zina (fornication) case.

Victims of rape in Pakistan have no hope whatsoever in the direction of justice, because of the Zina ordinance. Hoping for justice aside, a woman raped is doomed anyhow. If she reports rape, she faces the risk of being accused of Zina; if she does not, a possible pregnancy could bring the charge against her anyway. This is one reason for under-reporting of rape, estimated at 70 per cent by War against rape (WAR), an NGO. The decidedly tragic impact of the ordinance was brought forth in a recent case. In April, 2002, a sessions court pronounced a sentence of stoning to death for Zafran Bibi. She was sentenced for adultery even though she had complained of rape.

Zafran Bibi was pregnant at the time her husband was put behind bars. And she complained against rape when he was in prison. However, the court took the view that Zafran Bibi's pregnancy was 'proof' of her adultery. The extreme punishment was ordered under the Zina ordinance.

Zafran Bibi's case unleashed a storm of protest by human rights activists and women's groups in the major cities of Pakistan. Although the Federal Shariat Court -which must confirm all such sentences -acquitted Zafran Bibi on June 6 in the light of fresh evidence, the plight of hundreds of victimised women is poor indeed.

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<sup>10</sup> HRCP report, 1999.

"No debate took place, no discussion or deliberations were held, and no analyses of the pros and cons were made," before the Hudood ordinances were enforced in 1979. Such is the contention of Faqir Hussain, legal scholar and secretary of the Pakistan law commission. By way of provision, women can resort to Qazf, the law meant to punish those who make false accusations.

In actual fact however, "less than one per cent of the wronged women do so," says Justice (retired) Shiaq Usmani. "Qazf requires the wronged party to lodge a complaint against the accused at the police station. Which woman of the interior -most often a victim of the Zina law would dare do that, even if she knew about the law?" The commission for the enquiry on women also demanded a repeal of the law in 1997; it consisted of human rights lawyers, Islamic scholars and legislators and was headed by a Supreme Court judge. And following Zafran Bibi's case, the joint action committee -an alliance of various non-governmental organisations made fresh calls for repeal. In response to the outcry against the Zina ordinance, the government directed an advisory body, the Commission on the status of women, to review the ordinance. This step however, has been termed "delaying tactics" by the women's groups who want nothing short of repeal.

The government's move is dictated by extreme caution. Sensitivity about the Hudood ordinances runs high. None of the governments after Zia ul Huq dared to amend, let alone repeal the ordinance, for fear of a backlash from religious groups. Despite limited popular support, these groups are well organised and militant, fully capable of exploiting the situation to create a law and order problem. If anything, the situation is even more charged, post-September 11, 2001 developments in the region. The commission's best hope lies in demonstrating that the Zina ordinance is a distortion of Islamic law.

There is ample basis for this. A noted scholar in Islamic law -Khalid Ishaq has been quoted in the media to say that stoning to death is "un-Islamic" because it is not mentioned anywhere in the Quran.

Faqir Hussain has also said that the Zina ordinance "in its present form discriminates on the basis of gender age, faith and violates the fundamental rights and norms of international human rights."

If the committee proceeds on these lines, it is likely to make a dent. With elections round the corner in October however, the government is unlikely to make any major move with regard to the Zina ordinance.



The struggle for a repeal of the law has been a long and hard battle for rights activists in the country, and the hope for achievement doesn't seem possible in the near future.<sup>11</sup>

## NEPAL

In most nations of the world it is not a crime for a husband to rape his wife – less than 15 per cent of UN member-countries have laws against marital rape – but Nepal is among the latest to join the ranks of the enlightened. The Supreme Court of Nepal has declared that marital sex without a wife's consent should be considered rape – and punishable by law. India does not have such a law.

The landmark decision of 2003 followed a petition filed in July 2001 by the Forum for women, law and development (FWLD), a women's rights organization. "This is a big victory....for women in our country who go through such trauma every day in their homes," FWLD president Sapana Pradhan-Malla declared after the court ruling.

But it may be many months before women who are raped by their husbands get protection and justice. Although the court has ordered the Parliament to amend the current rape law to reflect the ruling, it has not given a deadline for the change, which must also receive royal approval. But the king sacked the government in October. Until then, a charge of rape can only be filed against a man – but not a husband – who has had sexual intercourse with a woman under 16, with or without her consent, or who has had forced sex with a woman over the age of 16. At present, men found guilty of rape face prison sentences of 6-10 years for rape of girls below 14 years of age, and 305 years for girls and women over 14 years old. The court also directed that men who rape sex workers be given the same punishment as other rapists. Currently, men who rape sex workers – should they be brought to court – pay a paltry fine of 500 rupees (Rs.300 Indian rupees) or serve a year in jail. The ruling also ends the conflict between the Muluki Ain civil code – which is based on Hindu religious principles and beliefs – and the 1990 constitution, which pledges to end all forms of gender discrimination in the line with international rights conventions.

Nepalese women are socially conditioned to accept and bear such violence. A 1997 survey by Saathi, a NGO working on gender issues, found

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<sup>11</sup> Newstime, August 10, 2003.

that 95 per cent of 1,250 married women interviewed experienced some form of domestic violence, and that rape – after beatings – was the second most common form of physical violence. While many Nepalese welcome the ruling, some are skeptical about its practicality. Fear of retaliation and social disapproval are likely to hold back women planning to go to court in cases of marital rape.

Until comprehensive legal provisions clearly set out the kinds of evidence and circumstances needed to prove marital rape, it will be very difficult to prosecute. Economically dependent women, especially very young wives and women with children, may have few options – despite new laws. Attorney Basundhra Thapa offers free legal aid to women at the Kathmandu legal aid consultancy Centre and its Women's rights helpline project. Since the Helpline Project was established in 1999, nearly 6,000 women have sought help, many seeking separation and divorce against husbands with whom life has become a living hell. Until Parliament passes new legislation, Thapa and other legal aid workers are handicapped, having to resort to existing laws in the Civil Code (on bigamy or battering, for instance), which are ineffective in proving marital rape.

Nepali women are not alone in facing this problem. Even in the US, where all 50 states have legislated against marital rape, the crime remains hard to prove. Although data from the 1990s shows that marital rape accounted for approximately 25 per cent of all rapes committed in the US, survivors of marital rape are less likely than survivors of non-sexual violence to report their assaults to police, health workers, rape crisis counselors or religious advisors.

Family loyalty, fear of a husband's retribution or ignorance about law are some reasons few women report marital rape, US researchers found. In 2002, many US women still believe sex within marriage is an obligation – and define forced sex by their spouse as a "wifely duty" – and that "real" rape only occurs when the attacker is a stranger. The reality is that marital victims are likely to experience multiple sexual assaults, and often suffer severe long-term physical damage. Gynecological consequences include unplanned pregnancies, miscarriages, stillbirths, infertility and the possibility of sexually transmitted diseases such as HIV infection.

Studies in the US and Britain also show that police response to marital rape is often inadequate and dismissive. A 1996 US study – Wife Rape: understanding the response of survivors and service providers found that police – when they learn that the assailant is the woman's husband – may fail



to respond to an emergency call, refuse the woman to file a complaint, and even refuse to accompany her to the hospital to collect medical evidence.

"Having a law is a start, but it's not enough," says Rana. "We need to create mechanisms, shelters where the women can stay while they decide what to do and when they have nowhere else to go." Pradhan-Malla remains hopeful. "Recognising rape within marriage as a crime is the first step. The second step is to amend the law and to get it passed in parliament. Third, enforcement and awareness measures have to be put in place to create an environment for victims to come forward."<sup>12</sup>

Nepal has the extraordinary practice of having a child-goddess. Girls barely four or five are taken from her home and enthroned as the 'Kumari', or virgin goddess, in an ancient three-storeyed palace with ornately carved balconies and window screens in Kathmandu's historic Durbar Square. For several years, until she reaches puberty, she is revered by Hindus and Buddhists as the protector of the 23 million Nepalis and the King in a tradition dating back to the 18th century. Once she starts menstruating, she loses her divine status and is returned to her family usually poor missing out on childhood. She starts rebuilding her life from scratch.

The tradition of worshipping an ordinary girl as the source of supreme power has endured in the world's only Hindu kingdom, despite criticism from human rights activists. Critics argue it is cruel to take a child from her parents, deny her a childhood and then toss her back unprepared to handle the realities of life. As a goddess, the child lives a life of extreme privilege in an ornate cloister, but also a life of isolation. She could leave her palace only a few times a year to be wheeled through the capital on a chariot pulled by devotees. And she could never visit her home and family.

A child rights activist said conditions for the 'Kumaris', past and present, had improved after criticism. "Human rights became an issue about 12 years ago," said Gauri Pradhan, head of the Child Workers group in Nepal. "Most of the concerns have been met, they are getting an education, friends and families can now meet them," she said.<sup>13</sup>

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<sup>12</sup> Newstime, July 19, 2003.

<sup>13</sup> Newstime, August 29, 2003.



For the first time in the history of Nepal, all unmarried women have been granted rights to their parental property, and similarly, all married women, to their husband's property. Following seven years of intensive debate and struggle by women's activists, King Gyanendra Bir Bikram Shah gave his royal assent to the crucial bill (The country code on the 11<sup>th</sup> Amendment bill on property rights and abortion rights) in the last week of September.

Earlier in March this year, the country's parliament passed the bill that, among other things, guarantees Nepali women equal rights to parental property and conditional abortions. The bill will now be ready for implementation after it is listed in the legal gazette.

With royal assent, the bill becomes an Act, and under the Act, the fate of married women changes too. Married women will now own one share of the husband's property. The same pertains to divorced women, while widows will now have full ownership of their husband's property.

Whereas earlier, conditions had been put forth that property rights should only be given to those women who are above 35 years of age and if they remain unmarried, the Act now makes a daughter of any age an heir to her parental property.

Advocate and women's rights activist Sapana Pradhan Malla is ecstatic over the historical achievement. However, she points out, there is one flaw in the property rights bill, the problem is that though a daughter has been given rights to parental property, she has to return the property if she gets married.

"The parliamentarians who opposed the bill justified this aspect by saying that if the parental property is not taken back, the girl will be holding the property right of her parents as well as her husband," explains Malla. Another aspect of the bill is that conditional abortion has been legalised.

The bill grants women the right to an abortion up to 12 weeks pregnancy and up to 18 weeks in cases of rape and incest. Additionally, a woman can opt for an abortion at any time during her pregnancy if there is risk to her own health or if the baby is likely to be born with a serious disorder of deformity.

The latter would of course, require an appropriate certificate from a doctor. Significantly, the bill does not require the husband's consent in any case.

In Malla's view and that of many experts, the bill is only a beginning for the hard work ahead. "Our challenge is now the implementation of these rights. The most important thing is to reach the grassroots level".

Malla and her aides will soon be busy. According to her, there are piles of legal cases that they now have to start working on. However, the new law does not address the fate of women currently serving prison sentences, allegedly for having had abortions while the ban was still in place. A large number of women have already been imprisoned for illegal abortions and infanticide.

Critics of the bill however, have a different point of view. They say that while earlier urban women got away with clandestine abortions, the act will only make things easier for better-off women in the cities. According to the critics, the law doesn't discuss the fate of hundreds of women who are jailed all over the country for abortion-related crimes.

In this context, Secretary for justice law and parliamentary affairs Uday Nepali Shreshtha says, "We can only release the women with the decision of the cabinet as most of them are imprisoned due to illiteracy or lack of resources".<sup>14</sup>

Domestic violence is a pervasive and 'hidden' crime in Sri Lanka. Now, a separate piece of legislation on domestic violence has been prepared. Framing a law against domestic violence is a welcome development. But clearly, more will have to be done in terms of bringing about a change in attitude – of both men and women – to put an end to this crime, writes Vijita Fernando.

Domestic violence is a pervasive and 'hidden' crime in Sri Lanka. Culture and tradition help cloak these atrocities and women themselves condone the acts of husbands and other males in the family in their desperate

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<sup>14</sup> Boost to cause of women, Newstime, October 28, 2002.



effort to protect their children and the 'good name' of the family. Popular misconceptions, even among the enlightened, perpetuate these beliefs. "Even educated people believe that a woman is a victim of violence in the family because she has done something to deserve it," says Dr Subhangi Herath, senior lecturer in Sociology at the university of Colombo. "There seems to be an unwritten law that a man can physically assault his wife. It is strange to see such patriarchal values existing to legitimate (wife) assault and battery even in the 21<sup>st</sup> century". Now, a separate legislation on domestic violence has been prepared that is to be presented to the Parliament shortly. Under Sri Lankan law, domestic violence is not treated as a separate which means that it is treated as a case of man assaulting another man. Delicate issues such as intimacy within marriage considered. The law is outdated and goes back to the 17<sup>th</sup> century British legal system.

It is against this background that an Act – to provide for the framing of Protective Orders to prevent any acts of domestic violence and matters connected and incidental to it – has been formulated. This is expected to give relief to a woman aggrieved by an act of domestic violence by allowing her to apply to the courts for a protection order aimed at restraining the perpetrator. It also protects the victim from harm within the home environment whether the violence is physical or emotional.

Any person against whom an act of domestic violence has been committed may make an application. There are also others who can make an application on behalf of the victim, such as police officers or in the case of a child, a person nominated by the Child Protection Authority.

It was the Women and media collective, an NGO actively engaged in protecting women's rights, which initiated the Act. Urged by a number of women's groups, the Collective prepared the first draft. The NGO was concerned with three main facts: a clear definition of domestic violence, who is eligible to represent the victim; and what constitutes the domestic situation.

The final draft was prepared after consultations with NGOs and has been submitted to the Cabinet sub-committee by the ministry of women's affairs," says Lalitha Dissanayake, Secretary of the ministry of women's affairs.

"We agree positive about this Act. However, we shall watch carefully to see that the provisions are enforced to the letter," says Manel Abeysekera, chairperson of the Sri Lanka women's conference, a consortium of well over

100 women's NGOs in the country. Radhika Coomaraswamy, UN special rapporteur on violence against women, notes that it is only in the past few years that violence against women has gained national and international focus.

"Violence (against women) was a taboo subject not meant for the august halls of the United Nations till 1993, when women from around the globe gathered at Vienna to insist that the international community take effective action. Six months later, the UN general assembly passed the declaration on the Elimination of violence against women and the UN commission on human rights created the post of UN special rapporteur on violence against women. At the 1995 Beijing conference, violence was made the single most important issue that required concerted international action," says Coomaraswamy. Many developments in Sri Lanka paralleled these changes. Today, action against domestic violence has become a primary area of concern – action at both government and non-governmental levels. The 1995 Penal Code amendments strengthened the government's attempts to deal with rape and sexual harassment.

Though there has been no systematic research, statistics or a national survey to provide a cohesive substantial information base on domestic violence in Sri Lanka, individual cases are dealt with by grassroots women's organizations and by the state. The counseling centre of the ministry of women's affairs deals with at least 12 cases of domestic violence every month.

"These cases are only from urban areas as most of our communication strategies still do not reach the remote rural areas. But gradually, we see more women coming for help from suburban and distant areas," says N.Pathirana, director of the centre.

"Police Desks" specially set up to handle complaints from women and children at police stations – island wide – have had a time dealing with domestic violence. According to Premila Divakara, assistant superintendent in charge of these desks, in almost every case the woman withdraws the charge to prevent her man being arrested. If the woman goes to hospital with a serious injury and the hospital police-post initiates action, the woman goes home and withdraws it.



"All we can do then is to advise the man and woman or refer them to Mediation Boards; but this does not solve the problem permanently," says Divakara.

Injuries caused by domestic violence can also lead to permanent physical and mental disabilities and reproductive tract infections that can have long lasting effects. "One – third of maternal deaths are violence related," adds Dr Herath. "The tragedy is th women's unwillingness to speak out. A victim often covers up by claiming that, it was a minor accident in the home that caused her injuries. The degree of violence is always critical and this is what the victims hide. They often say it was 'just pushing', a mere slap, or a plate thrown at her in a fit of anger, says Dr Herath.

Framing a law against domestic violence is a welcome development. But clearly, more will have to be done in terms of bringing about a change in attitude – of both men and women – to put an end to this crime. 15

## CHINA

When reforms were initiated in China in 1978, Chinese leaders proclaimed an end to the turmoil that had characterized the period of Cultural Revolution, and a renewed emphasis on the rule of law. Along with the promulgation of the Criminal law in 1980, the government devoted effort to fighting violent crimes. Some forms of violence against women began to receive serious attention. For example, rape was named in 1983 as one of the most serious criminal offenses, along with murder, arson, and robbery. Nevertheless, rather than stressing the gender dimension of violence, rape, like other violent crimes, was decried as a form of lawlessness and explained either as a remnant from the chaos of the Cultural revolution chaos or, alternatively, as a product of the influx of Western ideas into China in the 1980s

With a traditional culture which gives emphasis to the "three obediences of women", that is, obedience to father when in the "maiden home," obedience to husband when married, and obedience to son when widowed, Chinese women have long been ascribed an inferior status in society. The rules of the family (jia-fa) further justify the use of violence as a legitimate means to discipline women when they are perceived as failing to meet the standard.

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<sup>15</sup> Violence in the Family, Newstime, 2003

Processes of modernization and industrialization have led to changing values and institutions that stress human rights and equality. However, as patriarchal thought and practices are deeply rooted in society, violence against women is not only an issue of continuing relevance for Chinese people, but, worst of all, a problem which may largely be condoned.

In Hong Kong and China, a rising incidence of rape has been of mounting concern to governments and the general public. Nevertheless, there is a tendency to treat it as simply an indicator of the increasing use of violence in society.

## **JAPAN**

The developments in communication technologies have increased abusers' scope to groom, monitor and stalk women and children. SMS (short message services) and mobile phones have played a major part in the Japanese problem of enjo kosai, so-called "compensated dating," where young girls are lured into commercial sexual exploitation and abuse by adults rather than pushed into it by poverty.<sup>16</sup> Enjo kosai involves men subscribing to a telephone chat club and paying to get a private phone call with a woman or a girl. The man then asks to meet the woman or girl for a date and agrees a price that can include a payment for sexual services. The Japanese press has reported cases of enjo kosai inappropriately, castigating schoolgirls for "choosing" to sell sex for cash to buy designer fashion wear.

Far less attention has been given to the men who think it is OK to buy sexual services from children. In 1999 a new law was introduced to help reduce the problem of prostitution and the commercial sexual exploitation of children in Japan.

## **OTHER DEVELOPING SOCIETIES**

### **ZIMBABWE**

Young girls in Zimbabwe, often still in school and in their teens, who want a better life often take on much-older sexual partners and call them 'Sugar Daddies'. Intergenerational sex -consensual or forced sexual relations between vulnerable girls and older men -is driving much of the Aids epidemic in southern Africa because many of the men are Hiv-infected. Experts warn that it is young women are most at risk in sub-Saharan Africa -they are up to six times more likely than young men to be Hiv positive. It is a culture of

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<sup>16</sup> Moriyama, 2001.



consumerism that encourages school girls to choose wealthy men who can satisfy their desire for what are called the 'three Cs': a luxury car, a cell phone and cash to splash around. "It is women and girls who are overwhelmingly the casualties of this scourge, and it's getting worse," Stephen Lewis, the UN secretary-general's special envoy on Aids in Africa. "It is a nightmare."

Researchers have long suspected that intergenerational sex leads to high rates of infection among African girls, who are also biologically more susceptible to the virus than young men. Now several Zimbabwe-based studies have proved it. A study sponsored jointly by the Universities of Zimbabwe and California found that many teenage girls depend on Sugar Daddies for food, school fees or to satisfy their desire for high-status consumer goods. The study of seventy- one 16 to 19-year-old adolescents of both Sexes found that 30-40 per cent of girls have dangerously unequal relationships with older partners. The girls said that the men were often violent if they suggested condom use, or if they refused sex. "Sugar Daddies buy you clothes, send you to high school. If you refused you stay poor. If you take his money and refuse sex, he will rape you," a 15-year-old girl said.

Lead researcher Nancy Padian believes that the underlying cause of intergenerational sex is 'largely economic', which means that an intervention to support schoolgirls' economic self-sufficiency is an essential element in any plan to stop the spread of Hiv." In Zimbabwe up to 26 per cent of 15 to 24-year old women are estimated to be Hiv positive. But young Zimbabweans wishing to protect themselves from Hiv, as well as unplanned pregnancy, are blocked by a confusing and contradictory hodgepodge of laws, policies and customs that prevent them from accessing reproductive services.

Health workers routinely turn away unmarried youth seeking dual protection (condoms and hormonal contraceptives), information and services unless parents are notified first. Such parental consent requirements present almost insurmountable obstacles' for teens, according to a report, State of Denial: Adolescent Reproductive rights in Zimbabwe jointly produced by the US centre for reproductive law and policy and the Harare-based child and Law foundation (CLF). "Adolescents claimed that it is easier to get an illegal abortion than to get contraceptive pills," says CLF director and co-author of the report Naira Khan. The report blames Zimbabwe's youth-unfriendly laws as partly responsible for high rates of pregnancy, unsafe abortion and Hiv infection among young people. An estimated 34 per cent of adults are infected with the Aids virus, according to Unaid. But for many poor girls - especially those orphaned by Aids -sex may be their only desperate bargaining chip.

More than 780,000 children in Zimbabwe have lost one or both parents, resulting in an increase in youth prostitution as adolescent girls try to fend for their younger siblings.

"What choice did I have, both my parents died of Aids, how was I going to feed the other children?" a young sex worker told State of Denial researchers. Low-income adolescent sex workers are particularly at risk of HIV infection. "Rarely do men put on condoms; others offer an attractive amount of money to do without. If the amount is good, you just take the risk," another teen sex worker said. Sexually active young people in Zimbabwe are also sexually ignorant, due in large part to the government's reliance on promotion of abstinence until marriage rather than safer sex education by school and health care professionals.

"We teach students how to abstain, how to put off sex until marriage. We never talk of condoms," a representative of the ministry of education told researchers. As a result, teens are pitifully misinformed about their own bodies, and do not know how to prevent pregnancy or sexually transmitted infections. Sixty per cent of over 700 teens interviewed wrongly believed that female contraceptives can cause infertility and condoms can 'weaken' sperm. Although young people interviewed had some awareness of Aids, they did not know how to protect themselves. Some held cavalier misconceptions that certain post-sex rituals would protect them. Others expressed fatalism, saying HIV infection is inevitable. Worldwide teenage sexuality is a controversial often taboo issue for parents communities, churches and politicians.

However, exclusive reliance on 'Just Say No' strategies in Zimbabwe have clearly failed to prevent teens from engaging in sex: 30 per cent of 15-19 year-old girls interviewed reported sexual intercourse at least once and close to 40 per cent of girls in Zimbabwe are mothers by the age of 19.

Many resort to dangerous illegal abortions: approximately 70,000 unsafe abortions are performed each year. Although the government has not directly commented on the state of denial report, the ministry of education has approved it, while blaming parents and religious leaders for resisting sexuality education and services for young people.<sup>17</sup>

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<sup>17</sup> Newstime, June 5, 2003.



## AFGHANISTAN

For its women, getting farther from the global media's attention, it is not yet time to claim the future. As Zohra Yusuf Daoud, crowned the first ever Miss Afghanistan in 1972, points out "It, is imprudent to believe that after years of conditioning by the Taliban, Afghan men would allow women these liberties in the first place. For some women perhaps, these choices have become cultural. They will continue to wear the burqa, continue to stay at home. Others will do so out of fear. Years of beatings and beratings, not only from the Taliban but also from their own family members, have convinced many women that their proper place is not in society.

Lack of security is the most serious challenge facing Afghan women, the overwhelming majority of victims of the past 23 years of war. Despite its efforts to provide a secure environment, the transitional administration hasn't been able to exercise its authority nationwide. Factional fights, tribal clashes, rapes, kidnappings, forced marriages and murder still are the major concerns of the Afghans, particularly women. And this serious lack of security is still the greatest hurdle women have to cross to enter the country's political, economic and public life.

As part of -the International Women's Day celebrations on 8 March, 2003 members of the Afghan Women's Union had unveiled a statue symbolising women's freedom and power. Hundreds attended. A day later the statue was stolen. CEO of Refugee Women in Development Sima Wali says "Women are uncertain about securing a rightful place in the post-Taliban government. Although some gains have been achieved in removing a repressive regime from Afghanistan, the absence of security, a rule of law, a Constitution safeguarding women's rightful status in society and a gender-balanced society have led Afghan women to be at the receiving end after a 23-year war...Women are (still) abducted, even jailed, for refusing to accept forced marriages; honour killings are rampant, and sexual and physical violence have not been adequately addressed especially in the provinces where warlords rule. Safeguarding women's rights,.. under equal protection... remains imperilled if the world community is assured simply in rhetorical terms of the status of Afghan women."

Women in Afghanistan, Wali says, are primarily concerned about the lack of economic and educational opportunities and limited human rights awareness. Wali writes in the foreword to *Women For Afghan Women: Shattering Myths and Claiming the Future*: "I still grieve for the Afghanistan that is lost. But what disturbs me even more is the new Afghanistan... emerging to replace it. " A recent Unicef study in Afghanistan's four provinces

found 16 out every 1,000 women die during childbirth -one of the highest in the world), And almost 75 per cent of such babies die within a year. <sup>18</sup>

Women in Afghanistan have suffered a catastrophic assault on their human rights during more than twenty years of war and under the repressive rule of the Taliban. Now, as women face further peril with the intensification of conflict following the September 11 attacks on the United States, the international community must make a firm commitment to uphold women's human rights in any post-conflict settlement. The impunity that has characterized Afghanistan's civil war must not also come to characterize Afghanistan's post-conflict reconstruction and development.

Throughout Afghanistan's civil war, the major armed factions - primarily the Taliban and the United National Islamic Front for the Salvation of Afghanistan (commonly known as the "United Front" or by its previous name, the Northern Alliance), a coalition of mainly Tajik, Uzbek, and ethnic Hazara parties - have repeatedly committed serious abuses of international human rights and humanitarian law. Women have borne the brunt of this violence and discrimination. In the civil war, women have suffered massive, systematic, and unrelenting human rights abuses that have permeated every aspect of their lives. Both Taliban forces and forces now grouped in the United Front have sexually assaulted, abducted, and forcibly married women during the armed conflict, targeting them on the basis of both gender and ethnicity. Thousands of women have been physically assaulted and have had severe restrictions placed on their liberty and fundamental freedoms. Moreover, the Taliban have sought to erase women from public life. They have banned women from employment in most sectors; banned education of girls beyond primary school; forbidden women from going out in public without the accompaniment of a close male relative (mahram); and banned women from appearing in public without wearing an all-enveloping chadari (a head-to-toe garment). These restrictions assault women's human dignity and threaten their very right to life.

The Ministry for the Promotion of Virtue and the Prevention of Vice (al-Amr bi al-Ma'ruf wa al-Nahi 'an al-Munkir, hereafter, "Religious Police"), modeled after a similarly named ministry in Saudi Arabia, has ruthlessly enforced Taliban restrictions against women through arbitrary and humiliating public beatings and the threat of public beatings. The Religious Police not only beat women publicly for, among other things, wearing socks that are not opaque enough; showing their wrists, hands, or ankles; and not being

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<sup>18</sup> The Statesman, July 2, 2003



accompanied by a close male relative; but also for educating girls in home-based schools, working, and begging.

Having suffered violence and discrimination during Afghanistan's civil war, the U.S.-led intervention in Afghanistan will impact especially severely on women. Many women who have no close male relative to accompany them will face difficulty fleeing the country; escaping in a chadari is cumbersome and slow. Women remaining behind may be vulnerable to reprisals and abuses, including sexual assault by the factions participating in the war. Nongovernmental organizations (NGOs) estimate that in Kabul alone there are 40,000 widows.

Having very limited opportunities for employment and having their sons or other close male relatives vulnerable to conscription by the Taliban, these women are perhaps in the most precarious position and are among the least likely to be able to escape the conflict.

Throughout the Afghan civil war, all sides in the conflict have committed egregious and flagrant violations of humanitarian and human rights law, including violations of women's rights, with impunity. There is a danger now that the international community will advocate for a political solution that, while serving their immediate political and security needs, bargains away accountability for the long history of human rights abuses suffered by the citizens of Afghanistan generally, and by Afghan women specifically. Discussion of protection of women's rights during the U.S.-led attack on Afghanistan has been largely absent, even though Human Rights Watch and other human rights organizations have documented previous occasions in which both the Taliban and United Front forces have retaliated against civilians in recaptured areas. Historically, when the Taliban have felt threatened, they have redoubled their persecution of women and groups they perceive as opposed to their rule.

For Afghan women, freedom's costlier than the \$68mn spent on the constitution. No one denies that so much more needs to be done in Afghanistan. But people in conflict zones see life and reality through an entirely different prism. And this is precisely why international aid often fails to help. Aid workers come colored by their perspectives and perception of reality engendered by their world of peace, stability, progress and economic development. They assume what they want is what the women of Afghanistan, Iraq, Kurdistan or Kosovo want. For a western woman, to be unable to drive a car means a life of dependency, immobility and claustrophobia. So they

campaign for women's right to drive a car. They succeed in Kabul. And laud themselves on the symbolic value of this expression of women's freedom. But how many Afghan families own a car in Kabul, let alone in the countryside? It benefits a few, but alienates not only the poor have a different set of urgent needs, but also the powerful mullahs and patriarchs who see this as nothing but the propagation of elite western values. So they start blocking, rejecting, opposing everything that is western.

The 'values' that need to be propagated to benefit Afghan women- indeed to benefit all poor women of the world-are education, justice and healthcare. All that the global community should do is to gently create an enabling environment for women to fight their own battles. We have to help them help themselves. So far, \$68 million has been spent on formulating the Afghan constitution. But if societies don't change, the constitution will remain on paper. Who'll enforce it? How will women reach a level where they can insist on rights guaranteed by this new constitution? It would have been far better if money was spent on long-term projects like education, healthcare, the justice system.

With better education and health, women will slowly change their world from within. Change will come, but slowly. It has taken decades for women's empowerment to strike roots in the western world. Many countries are still battling for quotas for women in parliament, corporate boardrooms and educational institutions to ensure gender parity. So then why are we so impatient when it comes to expecting change and progress in poorer or repressed countries?

Change can be accelerated, but this too must come within. No Afghan will be impressed or inspired by a westernized Afghan woman who speaks English with an American accent, works openly or walks around without a burqa. But a local woman, respected and known, can take the lead. For instance, in Kurdistan, it was Hapsa Khan, the popular wife of a local leader, who took the first big, brave step for women's emancipation in the 1920s. She walked to the main public square along with a group of women, then they took off their veils. Men and mullahs were shocked. But she was respected, learned and courageous. Her husband supported her and together they changed the world of Kurd women. It is not that Afghanistan lacks such women. It's just that some of them prefer to conform and take the line of least resistance. Afghan President Hamid Karzai's wife is a gynecologist. Yet she chooses not to work, citing security concerns. No one is asking her to dispense with her bodyguards. Even hospital security can be strengthened if necessary. Afghan



women desperately need medical services and show would relay an important message to Afghan men and women if she worked.

One of the priorities of international aid workers and indeed even the UN is to set up a ministry for women's affairs in conflict zones. As Mahila points out, it doesn't help. It just becomes a dumping ground for unimportant issues. The ministry invariably lacks teeth. A woman is put in charge, but both the minister and ministry are purely symbolic. It achieves nothing in terms of women's empowerment. Women activist Igballe Rogova from Kosovo points out that during the rebuilding of her country, local women rejected a ministry for women's affairs: because women's rights have to be part of every ministry. The women's ministry thus did not materialize but women were empowered by their integration into every rebuilding programme. Iraqi women are now doing the same. Change, progress, rebuilding of a society can take place not by separating women from the mainstream, but by including them in every facet.<sup>19</sup>

## SWAZILAND

SWAZILAND'S King Mswati III has chosen a 17-year-old girl to become his 11th wife, alarming health workers who say he is setting a bad example for a kingdom with one of the highest HIV infection rates in the world.

The Royal Palace announced that Mswati, sub-Saharan Africa's last absolute monarch, planned to marry Noliqhwa Ntentensa at a ceremony in 2004 when she will be 18. He will be 36. Ntentensa was chosen by Mswati last year after he reviewed videotapes of semi-naked maidens taking part in the traditional Reed Dance ceremony, an annual homage to the queen mother.

Mswati's Reed Dance selections last year caused a stir when the mother of one of the three girls chosen to be Mswati's new brides went to court charging that her 18-year-old daughter had been kidnapped by the royal household. The case sparked a showdown between the palace and Swaziland's judiciary, which Mswati's government eventually won by refusing to accept court jurisdiction over the king in a move critics say exposes Mswati's increasingly authoritarian streak. The mother later dropped the kidnapping charges, saying her daughter was resigned to her fate.

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<sup>19</sup> The Shadows of Burqas, Anita Pratap, Outlook, December 08, 2003.

Women's rights activists and AIDS campaigners have criticised Mswati's latest choice of a new bride, which comes despite his own order two years ago that teenage girls should remain virgins to help stem the AIDS crisis in Swaziland, where the adult HIV infection rate is approaching 40 per cent. Girls were told to wear tassels called "umcwasho" to symbolise their purity.

Mswati has paid a fine of five cows for breaking the chastity rule. But health workers say the damage is done.

"Nobody is obeying the chastity rules because the king isn't. If the king had been faithful to his rules, every girl in Swaziland would be wearing the tassels. Every school head-master would insist they do, because the king was showing the way," said Nomsa Ndumiso, a nurse in an Mbabane suburb.<sup>20</sup>

## SIERRA LEONE

The U.N. Commission on Human Rights has condemned the human rights situation in Sierra Leone on numerous occasions.<sup>297</sup> In August 2001, Radhika Coomaraswamy, the commission's special rapporteur on violence against women, visited Sierra Leone to highlight the gender-specific abuses that thousands of women and girls have been subjected to. She highlighted that "systematic and widespread rape and other sexual violence has been a hallmark of the conflict in Sierra Leone" and noted that "the failure to investigate, prosecute and punish those responsible for rape and other forms of sexual and gender-based violence has contributed to an environment of impunity that perpetuates violence against women in Sierra Leone, including rape and domestic violence."<sup>298</sup> She therefore stressed the need for accountability for these abuses.

The World Bank established a multi-donor trust fund for the DDR program, which is now focused on the reintegration of ex-combatants. As discussed above, the protection needs of abducted women and girls were ignored by the DDR program even though World Bank consultants had raised this issue in their confidential reports. In 2002, the World Bank agreed in principle to allocate U.S. \$140 million to support reconstruction and development efforts in Sierra Leone and U.S. \$15 million to go towards HIV/AIDS prevention projects there.

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<sup>20</sup> The Hindu, August 27, 2003



The decade-long war in Sierra Leone has been characterized by egregious human rights abuses committed primarily by the rebel forces against the civilian population. Throughout the conflict, thousands of women and girls were raped and subjected to other forms of sexual violence of unimaginable brutality, including sexual slavery. The low status of women and girls in Sierra Leone by law, custom and practice remains a contributing factor to their vulnerability and may have contributed to the widespread and systematic sexual violence. In addition to the combatants' motivation to achieve their strategic military objectives through terrorizing the civilian population, the fact that sexual violence during the Sierra Leone conflict predominantly involved men raping women reveals that conflict-related rape, like most rape, reflects this dynamic of gender inequality and subordination. This assertion by men of their power over women is deeply imbedded in societal attitudes in Sierra Leone. The international community and the government therefore need to think of creative ways to change these deeply embedded attitudes.

The lack of attention paid until recently, both nationally and internationally, to the widespread and systematic acts of sexual violence, sexual slavery and their consequences means that there are few assistance programs for survivors. The international community and the government of Sierra Leone should drastically increase funding to ensure that desperately needed health care, education, adult literacy, skills training, trauma counseling, and income-generating schemes are provided. Nor have there been any prosecutions. Rape therefore continues with impunity and it is little wonder that women and girls in post-conflict Sierra Leone remain vulnerable to non-conflict related violence, and are reluctant to seek legal redress in the domestic courts or even report the incident given the country's inefficient and corrupt criminal justice system. Although, the establishment of the Special Court for Sierra Leone and the Truth and Reconciliation Commission should help to address this climate of impunity, the domestic legal system must urgently be revised to ensure that crimes of sexual violence are prosecuted in a sensitive manner. The international community therefore needs to fund legal reform and training programs for the criminal justice system as a whole, which has a key role in promoting and protecting the rights of Sierra Leonean women and girls.

## **CURRENT SCENARIO IN THE U.S. AND EUROPE**

On the evening of March 24, 1999, the North Atlantic Treaty Organization (NATO) began bombing the Federal Republic of Yugoslavia. As Serbian police and Yugoslav Army forces continued brutal attacks on civilians, more than 800,000 ethnic Albanian refugees poured out of Kosovo, mostly into Albania and Macedonia. Exhausted and traumatized, they carried

what few belongings they could grab before fleeing or being expelled. They also brought eyewitness accounts of atrocities committed against ethnic Albanian civilians inside Kosovo by Yugoslav soldiers, Serbian police, and paramilitaries.

Witnesses and victims told of summary executions, mass murders, destruction of civilian property, and other war crimes. In more hushed tones, refugees also spoke of rapes of ethnic Albanian women. These instances of sexual violence are the focus of this report.

Human Rights Watch began investigating the use of rape and other forms of sexual violence by all sides in the conflict in 1998 and continued to document rape accounts throughout the refugee crisis in 1999. After NATO troops entered Kosovo in June 1999, Human Rights Watch returned to Kosovo to continue researching war crimes, including the use of sexual violence before, during, and after the NATO conflict. In total, Human Rights Watch researchers conducted approximately seven hundred interviews between March and September 1999 on various violations of international humanitarian law.

The research found that rape and other forms of sexual violence were used in Kosovo in 1999 as weapons of war and instruments of systematic "ethnic cleansing." Rapes were not rare and isolated acts committed by individual Serbian or Yugoslav forces, but rather were used deliberately as an instrument to terrorize the civilian population, extort money from families, and push people to flee their homes. Rape furthered the goal of forcing ethnic Albanians from Kosovo.

In total, Human Rights Watch found credible accounts of ninety-six cases of sexual assault by Yugoslav soldiers, Serbian police, or paramilitaries during the period of NATO bombing, and the actual number is probably much higher. In six of these cases, Human Rights Watch was able to interview the victims in depth, and their testimonies are contained in this report. Human Rights Watch met two other women who acknowledged that they had been raped but refused to give testimony. And, Human Rights Watch documented six cases of women who were raped and subsequently killed.

The ninety-six cases also include rape reports deemed reliable by Human Rights Watch that were compiled by other nongovernmental organizations. The Center for the Protection of Women and Children, based in



Pristina (Prishtina), interviewed and provided assistance to twenty-nine rape and sexual violence victims after June 1999. The Albanian Counseling Center for Women and Girls, an NGO in Albania, documented an additional twenty-eight rape cases through direct interviews with victims. The Yugoslavia-based Humanitarian Law Center provided testimony to Human Rights Watch about four cases. And the Council for the Defense of Human Rights and Freedoms, Kosovo's largest human rights group, provided information on an additional four cases. To the extent possible, Human Rights Watch corroborated these accounts through interviews with dozens of nurses, doctors, eyewitnesses, and local human rights and women's rights activists.

Médécins Sans Frontières (MSF), with offices in Kosovo before and after the war, reported four cases of rape, and other medical personnel working in Kosovo and Albania confirmed an additional eight cases. Physicians for Human Rights, a U.S.-based human rights group, interviewed four victims of sexual violence, and Amnesty International documented another three cases of rape, although two of these three cases were also counted by Human Rights Watch.

It is important to note that some of these cases may have been double-counted by local and international organizations. Despite this, Human Rights Watch believes that the actual number of women raped in Kosovo between March and June 1999 was much higher than ninety-six. Kosovar Albanian victims of rape are generally reluctant to speak about their experiences, and those who remained in Kosovo throughout the conflict may not have had an opportunity to report abuses. At the same time, it should be noted that Human Rights Watch was not able to confirm the allegations of rape camps in Kosovo that were presented during the war by the U.S. and British governments, as well as by NATO.

In general, rapes in Kosovo can be grouped into three categories: rapes in women's homes, rapes during flight, and rapes in detention. In the first category, security forces entered private homes and raped women either in the yard, in front of family members, or in an adjoining room. In the second category, internally displaced people wandering on foot and riding on tractors were repeatedly stopped, robbed, and threatened by the Yugoslav Army, Serbian police, or paramilitaries. If families could not produce cash, security forces told them that their daughters would be taken away and raped; in some cases, even when families did provide money, their daughters were taken away. The third category of rapes took place in temporary detention centers, such as abandoned homes or barns.

With few exceptions, the rapes here documented by Human Rights Watch were gang rapes involving at least two perpetrators. In several cases, victims and witnesses identified the perpetrators as Serbian special police, in blue or blue-camouflage uniforms, or Yugoslav Army soldiers, in green military uniforms. The majority of rape cases, however, were evidently committed by Serbian paramilitaries, who wore various uniforms and often had bandanas, long knives, long hair, and beards. These paramilitary formations worked closely with official government forces, either the Serbian Ministry of Interior or the Yugoslav Army, throughout Kosovo.

The Serbian and Yugoslav authorities knew that their paramilitaries had used rape and other forms of sexual violence in Bosnia and Herzegovina. Yet, the paramilitaries were deployed to or allowed to operate in Kosovo by the Serbian and Yugoslav authorities apparently without any precautions being taken to prevent their committing further such war crimes.

The participation of Serbian and Yugoslav forces in gang rapes renders it unlikely that senior officers were unaware of the assaults. Rapes occurred frequently in the presence, and with the acquiescence, of military officers. Several rape victims actually reported the crimes to Yugoslav military officers. Yet there is no evidence that the Yugoslav Army or the Serbian Ministry of Interior made any attempt to apprehend or punish those responsible for the attacks. Despite this seeming dereliction of duty, many leading police and military officers from the Kosovo campaign have been honored or promoted within the Serbian and Yugoslav forces since the end of the conflict.

There is also no evidence that the Yugoslav Army or Serbian Ministry of Interior took any measures to prevent rape and other forms of sexual violence, such as issuing orders or warning troops that they would be punished for these crimes. Moreover, soldiers, police, and paramilitaries often raped in front of many witnesses. In addition to actual rapes that took place in front of others, the process of pulling women out of refugee convoys often occurred in full view of other internally displaced persons (IDPs).

Although the terror of imminent and actual violence is behind Kosovar Albanian women, many now face its devastating consequences and a struggle for justice. Kosovar women sexually assaulted or raped by Yugoslav soldiers, Serbian paramilitaries, and police have suffered war crimes, torture, and some



abuses that may have constituted crimes against humanity. The international community must now respond by seeking to identify and by indicting those responsible for these violations of humanitarian law. Without serious investigations of rape and sexual violence, and indictments and arrests of those with command responsibility and individual responsibility for these crimes, rape in the region will continue with impunity. Kosovar Albanian women are waiting for justice.

The International Criminal Tribunal for the Former Yugoslavia (ICTY) has jurisdiction over the crimes committed in Kosovo. ICTY Prosecutor Carla Del Ponte has outlined a prosecution strategy that "focuses on leadership investigative targets, as well as perpetrators of particularly serious crimes or sexual violence in relation to the armed conflict." <sup>1</sup> The Office of the Prosecutor issued indictments against Serbian leader Slobodan Milosevic and three other top Serbian leaders and a general in the Yugoslav Army on May 24, 1999, for crimes against humanity. Not one of the indictments lists charges relating to the use of rape and other forms of sexual violence by their forces, although the investigations are ongoing.

Since the entry of the NATO-led Kosovo Force (KFOR), rapes of Serbian, Albanian, and Roma women by ethnic Albanians, sometimes by members of the Kosovo Liberation Army (KLA), have also been documented. <sup>2</sup> Human Rights Watch condemns these human rights violations and continues to document post-conflict abuses for a future report. <sup>3</sup> However, rapes and other crimes of sexual violence committed since the entry of KFOR are beyond the scope of this report.

Specifically to investigate rape, Human Rights Watch visited the cities of Pec (Peje), Djakovica (Gjakove), Podujevo (Podujeve), Mitrovica (Mitrovice), Decani (Decane), Vucitrn (Vushtrri), and Pristina, as well as many other villages throughout Kosovo. <sup>4</sup> Human Rights Watch interviewed rape and sexual assault victims, witnesses to sexual violence, medical personnel, representatives of nongovernmental organizations, United Nations officials, Organization for Security and Cooperation in Europe (OSCE) experts, and human rights activists in Kosovo and Albania. Human Rights Watch drew its findings on rape and sexual violence from interviews with victims and eyewitnesses and the credible reports of human rights and other service organizations. Whenever possible, Human Rights Watch collected several accounts of the same event for purposes of corroboration.<sup>21</sup>

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<sup>21</sup> East Europe – The Case of Kosovo and the Uzbek Federal Republic of Yugoslavia - Rape as a Weapon of Ethnic Cleansing, Human Rights Watch World Report, 2000.

Uzbekistan's post-Soviet development, like that in most of the former Soviet Union, has entailed enormous and disproportionate obstacles to women's realization of their human rights. During the past ten years, Uzbekistan's government has attempted to institute some safeguards for women's rights, mainly in the area of social welfare support. Nevertheless, domestic violence remains a serious problem, against which the government has failed to take effective measures. On the contrary, state policies intended to keep families together and foster community assistance to those families experiencing conflict have compounded the situation of women facing abuse in the home, and often prevent them from obtaining either relief or redress.

Contrary to the government's assertions that women in Uzbekistan enjoy broad and effective human rights protections, Human Rights Watch found that women victims of domestic violence suffer doubly, both at the hands of husbands who physically and otherwise abuse them, and at the hands of the state. Local officials routinely refuse to take violence against women seriously, blaming the victims and blocking women's attempts to escape brutality and violence in their marriages. Those who commit physical abuse rarely face criminal prosecution. Instead, local authorities, under orders from central government officials, attempt to reconcile married couples, often sacrificing the women's safety for low divorce statistics. The main aim of these government-directed interventions is to "save the family." State officials accomplish this goal through coercing women victims to remain in abusive situations, ignoring violence against women, and perpetuating impunity for violent husbands.

This report focuses on the problem of domestic violence in Uzbekistan, with an emphasis on violence in rural communities, where over 60 percent of the population resides. It is based on detailed interviews with twenty victims of domestic abuse in four rural districts of two provinces, and one urban area. To obtain relief from family violence, each of the women had contacted their local community government organizations, or mahallas. The mahallas are traditional institutions charged by law with regulating communal life, and carrying out many state functions, such as community policing, political surveillance, and distributing social welfare payments. Human Rights Watch conducted these interviews in May and June 2000, and also interviewed dozens of women's rights activists, lawyers, judges, police, doctors, and government officials at the national, province, district, village, and mahalla level. All of these sources agreed to tell their stories only under conditions of complete anonymity, in the case of the victims, for fear of being singled out



within their communities, and in the case of officials, for fear of political repercussions.

Therefore, all information on the location of the interview, including even the province where the interview took place, is withheld, and all of the names of the witnesses in this report are given as pseudonyms.

Based on these findings, Human Rights Watch is making a series of recommendations to the Uzbek government, to Western governments and multi-lateral donor agencies. These are set out at the end of this report. In particular, Human Rights Watch is urging the government of Uzbekistan to take measures to ensure that domestic violence is prosecuted to the fullest extent of the law, and to pass legislation without delay to criminalize stalking and marital rape. The authorities should also take special care to ensure that women subject to or at risk of domestic violence have full access to community social services and material support, and to civil remedies, such as divorce.

Several local experts expressed doubt that current programs could provide much actual relief to victims of domestic violence. They questioned whether the Western crisis center model, with on the spot counseling and a telephone hotline, is the best approach to the problem in Uzbekistan, particularly in much of the country where phones are rarely reliable and where many women are discouraged from leaving the home unaccompanied, save to go to work or school.

Some NGOs and women's committees alike are devising alternative models for a center where victims can seek help, based on institutions seen as relatively unthreatening, such as medical clinics or employment training centers, but these have been slow to be established. Women interviewed in rural and urban settings identified access to legal advice and assistance in defending their rights in the courts and in their communities as their key need in escaping situations of domestic violence. None of the rural women had ever heard of crisis centers. The nascent crisis centers as yet provide only sporadic legal assistance to women, especially to those outside of the cities where they are located.

Certainly, the international focus on women's rights generally and domestic violence specifically has the potential to aid Uzbekistan's citizens in their efforts to provide solutions for women victims. Internationally-sponsored

programs that take pains to develop programmatic activities in close consultation with localexperts, NGO and government activists may have a greater impact.

The record of government actors described above constitutes a systematic failure on the part of the Uzbek state to protect women from domestic violence. As such, it contradicts Uzbekistan's own domestic statutory obligation to protect the right to life and security of all persons, regardless of their sex. Uzbekistan is also clearly in violation of its international obligations under the ICCPR and CEDAW.

Certain aspects of state policy, such as the encouragement of community involvement in cases of family abuse, are positive in that they remove the question of domestic violence from the private sphere of the family and implicitly recognize the social harm caused by this crime. However, the fact that mahalla officials, effectively representatives of the executive branch, consistently block women's access to legal remedies, to divorce, or to criminal justice, means that the state permits the existence of discriminatory barriers to women's equal protection under the law. Further, government policy ostensibly aimed at preserving the family provides a clear disincentive for mahalla officials and others to pursue or allow the criminal prosecution of abusers, or divorce. Such officials clearly fear that this would reflect badly on their community or bring upon them the censure of their superiors because of their failure to effect "reconciliation." Similarly, the failure of the police to respond effectively to women's complaints also indicates a clear breach by the state of its obligation to ensure legal equality to women. And judicial indifference to evidence of domestic violence provided by women seeking divorces also effectively blockswomen's access to civil remedy, and displays a striking disregard for their rights.

The situation for women victims of domestic violence is undeniably bleak. It requires urgently to be addressed. While public education carried out by the women's committee, insofar as it addresses the impermissibility of domestic violence in all cases, is positive, it is clearly an insufficient response to the problem. In particular, the Uzbek government has an obligation to revise fundamentally its approach to battering and other forms of domestic abuse, and to ensure that at all levels of government and the criminal justice system it is recognized that domestic violence is inadmissible and will be punished with the full rigor of the law. This, however, will require leadership from the highest level and intensive action to ensure that mahalla and other officials, as well as police and others in the criminal justice system, are clearly charged with upholding the law and with protecting the rights of women.



Intimate Partner Violence Research is a holistic area of study with various facets explored and examined by specialist researchers. Participant recruitment is an essential task in any empirical research study involving humans. Indeed, the effectiveness of recruitment has important implications for the validity of results, as well as for the management of ethical and human subjects concerns. Attending to the potential vulnerabilities of the population from which study participants are sampled is critical as a human subjects issue. Yet, including special populations in research and also protecting their vulnerabilities is a skillful balancing act (Meaux & Bell, 2001). Finally, recruitment procedures that fail to sample adequately the population of interest can potentially skew study results or reduce their generalizability.

There has been little research examining recruitment and retention issues in intimate partner violence research. Both recruitment and retention issues are relevant to research involving victims and offenders, women, men, and children. Successful recruitment is important in research, since it is necessary to obtain adequate sampling of the population under study. Further, recruitment methods vary in their cost. Unsuccessful recruitment strategies unnecessarily expend time and resources. Recruitment is an important issue for another reason. Inadequate methods may increase the risk of unintended disclosure of information by participants; of safety concerns, such as retaliation using threats, violence, or other acts of abuse against intimate partner violence victims by the offenders or other family members; and of feeling stigmatized or experiencing emotional discomfort.

The advantages of sampling, recruitment and retention of abused women from health care and justice settings is client safety and the opportunity to sample from an ethnically, racially, and socioeconomic diverse population of service-seeking women. The most common services sought by abused women are justice services, both civil justice services, such as protection orders, as well as criminal justice services, such as perpetrator arrest and assault charge filing.

Similarly, most abused women seek health care, either for routine well-woman or pregnancy care, or for trauma and associated health problems related to the abuse. Both health and justice agencies provide a safe and confidential setting for subject sampling, recruitment and retention. Additionally, to test interventions for abused women, a representative sample of abused women is essential. Both justice and health agencies provide representative samples of abused women seeking services. This paper has



described strategies for successful sampling, recruitment and retention of abused women from health and justice service agencies.

To summarize, the process begins with the establishment of a working partnership with the service agency that includes an active presence and consistent nurturing of agency staff by the investigators. Successful recruitment of research subjects begins with careful selection and adequate preparation of the research team followed by attention to the research invitation and a clear explanation of the study. Subject retention is best maintained with a detailed and frequently updated safe contact list, safe telephone and fieldwork protocol, and incremental monetary incentives.

Project AWARE (Asian Women Advocating Respect and Empowerment) is a detailed women's health needs assessment of abused Asian women in Washington, DC.

The objectives of Project AWARE are to examine the needs of Asian women who have been abused in the past year, determine the barriers abused Asian women face in accessing services, and make recommendations about what system wide changes could be made to better serve abused Asian women in Washington, DC.

The specific aims of the project are to:

- Examine the needs of Asian women who have been abused in the past year Determine the barriers abused Asian women face in accessing services
- Make recommendations about what system-wide changes could be made to better serve abused Asian women in Washington, DC

This assessment was conducted over a period of months from June 2000 to September 2001 by the A/PI Domestic Violence Resource Project (DVRP), located in Washington, DC. Funding for Project AWARE to complete this 'Needs Assessment for Underserved Populations' was received through the Washington, District of Columbia Office of the Deputy Mayor for Public Safety and Justice, Justice Grants Administration, Subgrant number 98-GTEAP-04. DVRP received this subgrant from AYUDA, Inc. to complete Project AWARE.



Project AWARE is a two-phase study, which focused on seeking information from Asian women about IPV, and on gathering information from Washington, DC service providers. The first phase of Project AWARE consisted of an anonymous, cross-sectional survey investigating the experiences, barriers, and needs of abused Asian women over the age of 18 in Washington, DC. The second phase of Project AWARE consisted of conducting focus groups with Washington, DC service providers in order to identify the capacity of existing services for underserved Asian abused women.

Domestic violence advocates face new challenges in the field of health care, with growing demands to provide health care-based training, interventions, and policy initiatives. The goal of this paper is to help battered women's advocates by setting out:

- the opportunities presented by working with the health care community to strengthen advocacy and intervention on behalf of battered women;
- the possible and desirable health care responses to domestic violence; and
- practice and policy starting points and agendas for advocates within a variety of health care settings. Health systems reform work presents opportunities for battered women's advocates

Advocates for battered women have influenced social and political institutions to bring about change in many areas in the justice system's response to domestic violence; in media recognition of the prevalence, lethality and brutality of domestic violence; in improved public policies at the local, state and federal levels; in increased funding for services; and in stronger legal protections for victims.

In the United States, domestic violence is one of the most serious threats to women's health, and the domestic violence community once again has the opportunity to influence systemic change that can greatly assist battered women -and even prevent domestic violence.

There is a growing awareness that domestic violence is a criminal justice issue and a public health issue. For advocates, one of the most significant social change opportunities of the decade is to articulate the concerns of battered women within the health system changes that are taking place.

Concern for women's health is growing, and the need to respond to domestic violence as a major women's health issue is being raised by mainstream policymakers and health organizations alike. As advocates working for change within the health care arena, our role is similar to other systems reform work -to expand and enhance the support and range of options available to battered women. In order to ensure meaningful long-term social and institutional change for battered women, advocates must seek out the help of the health care community as partners in this endeavor. Domestic violence advocates face new challenges in the field of health care, with growing demands to provide health care-based training, interventions, and policy initiatives. The goal of this paper is to help battered women's advocates by setting out:

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**Building Comprehensive Solutions to Domestic Violence** is a multi-year initiative to help domestic violence organizations collaborate more effectively in their communities and build visions, policies, and practices that respond to the current realities facing battered women and their families, especially those living in poverty. Beginning in the fall of 1998, the project, funded by The Ford Foundation, will produce a series of materials and launch several new initiatives. These include:

**National Training Initiative to Enhance Collaboration:** This initiative, designed for domestic violence advocates, will include the dissemination of training curricula on public policy skills, strategic thinking, negotiation, facilitation, and outreach to underserved communities. Materials will be distributed to statewide and local domestic violence programs in 1999.

**Policy and Practice Paper Series:** These new papers are designed to provide domestic violence advocates with basic, useful information about the ways that systems, such as child protection and health care, operate and offer suggestions for effective ways to initiate systemic collaborations and improve public policy.

**Vision Paper Series:** These new papers are created to spark dialogue in the battered Women's movement about future collaborative directions for our work. The first papers in the series will explore the links among domestic violence, poverty, and economic justice, and reexamine the role of men in the work to end domestic violence.

**Meeting Battered Women's Basic Human Needs:** In 1999, the project will publish descriptions of innovative transitional and permanent housing programs developed and managed by domestic violence organizations around the country. A project goal is to design strategies that increase housing and economic opportunities for battered women. The project will also continue to develop papers on welfare and child support and describe emerging issues and approaches in response to welfare law changes.

**The New England Network on Domestic Violence and Poverty:**

This project will explore a variety of approaches to multi-disciplinary policy development and advocacy for battered women and their families, especially those who are living in poverty. Coordinated by Greater Hartford Legal Assistance (CT), our collaborative partner, the Network will be a catalyst to develop comprehensive policy strategies to address domestic violence and poverty. Materials and lessons learned from the Network will be shared with domestic violence coalitions and anti-poverty advocates around the country.

In response to public concern about violence against women in the United States, Congress passed the Violence Against Women Act of 1994 (VAWA-I), which provided \$1.6 billion for programs over 5 years. The purpose of this research is to estimate the net benefit, using a societal perspective, of VAWA-I in reducing violent criminal victimization of women. Costs included direct property losses, medical and mental health care, police response, victim services, lost productivity, reduced quality of life, and death. Benefits were calculated as averted costs. This analysis found that VAWA-I saved \$14.8 billion in net averted social costs, suggesting that VAWA-I is an affordable and beneficial social program.

**The high rate of violence against women** is cause for concern in the United States. According to the Department of Justice National Crime Victimization Survey, approximately 4.6 million American women ages 12 years and older were raped, robbed, or assaulted, or were the victim of a threatened or attempted violent crime annually in 1992 and 1993 (U.S. Department of Justice, Bureau of Justice Statistics, 1996).<sup>1</sup> Almost three quarters of these attacks were committed by someone the victim knew. In addition, women are increasingly likely to be victims of violence when compared to men. Women were about two thirds as likely as men to be victims of violence in the early 1990s, whereas they were half as likely as men to be victims of violence 20 years ago (Bachman & Saltzman, 1995). Similar patterns emerge when considering fatal violent assaults. In 1994, women represented 23% of all known homicides (U.S. Department of Justice, Bureau of Justice Statistics, 1997).

Furthermore, 90% of female victims were murdered by males. Data such as these motivated the Clinton administration and Congress to develop bipartisan legislation aimed at protecting the rights and lives of American women. The Violence Against Women Act of 1994 (VAWA-I) was designed to create a safe environment for women—in their homes, on the



streets, and within the court system. It provided \$1.6 billion over 5 years to increase penalties for perpetrators and improve resources for police, prosecutors, and victim service providers. In addition, this legislation aims to implement national stalker and domestic violence reduction programs and to improve legal protections for battered immigrant women and children (Campbell, 1996). Since 1994, a number of specific actions to combat violence against women have been taken as a result of VAWA-I, including legislative protection of battered women who move across state lines, a ban on firearm possession for domestic abusers, establishment of a federal cause of action for gender-motivated violence, and strengthened restitution orders and extension of the rape shield law (Violence Against Women Office, 1996).

The primary hypothesis of this study is that VAWA-I has reduced the societal costs associated with violent criminal victimization of women. As such, this cost-benefit analysis focuses on the following question: What is the net social benefit of the Violence Against Women Act of 1994.<sup>22</sup>

## FINLAND

Finland may be best known for its cutting edge technology lavish welfare system and strong gender equality record, but research also shows that the Nordic country tops EU statistics for violence against women.

"We had a beautiful home from the outside, a church wedding and two children," said Tuuli, 39, who lived happily with her husband for more than seven years. But when he buckled under the pressure of lay-off rumours at his workplace in 2000, the happy home fell apart.

"He was starting to fear that he would lose his job and released his pressure through increased drinking and violence against me," Tuuli said, asking that her real name not be disclosed. Her experience is depressingly common in Finland.

Some 22% of all married or cohabiting women in the country have according to surveys been abused, including sexually, by their partners, 9% have been subjected to violence in the past 12 months alone.

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<sup>22</sup> A Cost Benefit Analysis of the Violence Against Women Act of 1994, Kathryn Andersen Clark, Andrea Biddle and Sandra L. Martin, University of North Carolina at Chapel Hill.

Even before entering adult relationship, Finnish women run a high risk of becoming victims of violence. A third of all women in the country will have been abused or experienced violence or sexually threatening behaviour before reaching their 15<sup>th</sup> birthday, said Ms Leena Ruusuvuori, who recently led a national research project on the issue.

"Finland is a violent country, among the most violent in Europe, and a lot of this violence is directed against women," she said.

The country's many wars, its relatively late industrialization, the rapid emancipation of Finnish women as well as Finns' brooding and taciturn nature have all been cited to explain the disposition to violence.

High long-term unemployment also plays role, as does an alcohol culture where the main aim of drinking is rapid intoxication. This, added to Finnish men's machismo and jealousy, results in an explosive combination, Ms Ruusuvuori said.<sup>23</sup>

## FRANCE

In France a champion of feminism herself became a victim of domestic violence. The death of actress Mane Trintignant after a heated row with her rock star lover has unleashed an outcry over domestic violence in France - where one in 10 women is beaten at home. As an autopsy revealed that Trintignant, a classic beauty who had graced French movies since childhood, died from blows to the face, a study resurfaced showing that her death is not that extraordinary. Every five days a woman is beaten to death by her partner, and wife-battering in France is just as prevalent among the well-heeled as among the underprivileged, according to the Government -commissioned study which was published originally in June 2002. "Trintignant's death has shaken public opinion and smashed stereotypes about domestic violence.

"Even independent, assertive women can be victims," said Mane-Dominique de Suremain, head of the National Federation for Women's Solidarity. "There are 1.5 million women in France who are abused - physically, sexually or psychologically - by husbands or partners. That implies there are 1.5 million men out there behind this violence, and you wouldn't

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<sup>23</sup> Finland tops EU statistics, The Economic Times, March 8, 2004.



know to look at them. " The federation, which groups 54 associations, struggles to cope with some 15,000 calls each year from battered Women.

According to the European Lobby for Women, France is sandwiched between the Netherlands, where 13 per cent of women report violence at home, and Switzerland, where six per cent do. Sociologists say some men feel threatened by living with successful career-women who earn big bucks, making them financially independent, and enjoy busy social lives. "Some men have this archaic view that it is normal for women to be disadvantaged. If they see their wives becoming ambitious and independent, they feel inadequate, they resist and sometimes they refuse to accept it," said de Suremain. "We hear terrible things. A lot of women are hit in the face or eye. Some have their backs broken and are left handicapped for life. Some are even dangled out of windows by their feet. The more this comes out into the open, the better."<sup>24</sup> "Lying in a pool of blood, with 15 stab wounds in my body, my only thought was to keep my eyes open. I was fighting to stay awake for my children. I knew if I shut my eyes, I would die," explains Isabel Llinas, who directs the Institute for Women's Affairs in Majorca, Spain. Stabbed by her estranged husband who later hanged himself in his prison cell, she flung herself into the women's movement in Spain. "I did so because there are thousands of women like me in Spain. I was lucky, I had education and economic independence — I ran a hotel — but there are many who are totally dependent on extremely brutal partners and it is those women I try to help," she said.

Spain has one of the worst records in Europe for domestic violence with over 100 women battered to death every year by their spouses and over 30,000 complaints of domestic violence. For a long time the problem was swept under the carpet. Until the mid-seventies, under the Franco dictatorship, women did not enjoy equal rights and were considered to 'belong' to their fathers and husbands. A woman could not open a bank account without her husband's explicit consent. Although they now enjoy equality on paper, the reality is still quite different, especially when it comes to family relationships, considered a private matter.

The question of domestic violence was thrust into the headlines by a particularly brutal murder in 1997. Ana Orantes, a 60-year-old woman, who had been beaten by her husband throughout their long married life, went on television to publicly denounce her husband's habitual violence. Repeated requests to the police for a restraining order had been ignored and public denunciation was her last resort. Literally. Several days after her television

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<sup>24</sup> The Hindu, August 14, 2003.

appearance, her husband beat her black and blue. He then tied her to a chair, sprinkled petrol over her and set her alight.

A generally held assumption is that battered women themselves provoke their abuse. Evidence of this mindset is still visible in Spain where forensic medical doctors have been known to downgrade their report on the severity of a woman's injuries if the doctor believes that the woman provoked the assault.

Ironically, women living with abusers often find that becoming more submissive or compliant has the opposite effect. The violence towards them actually escalates. Basically, no matter what the victim does, the abuse continues and usually escalates over time.

"Now I want to help other women recover their self-esteem and confidence. Many women continue to accept their lot because their husbands come back saying they are sorry and begging for forgiveness. They must be helped to realise that such situations never really change. They must be taught to break this psychological dependence, get out of the love-hate bind. That is what I try to do," says Ms Llinas. The Spanish Government was forced to act in the wake of several highly publicised cases of murder where the guilty husband's calculated brutality, callousness and misplaced machismo shocked the nation. A woman can now obtain a restraining order within 72 hours of filing a complaint. In Madrid alone, over 25 women apply for such an order each day. But many women feel these measures do not go far enough.

Feminists point out that it is in the enforcement of existing laws that Governments, show their inefficiency if not their reluctance to act. As elsewhere, domestic violence in Europe also affects future generations. Children who are witnesses to abuse, even though not abused themselves, are more likely to be future abusers or victims. They are also six times more likely to commit suicide, 24 times more likely to commit a sexual assault, 50 per cent more likely to abuse drugs and alcohol, and 74 per cent more likely to commit crimes against others, according to a finding.

Concepcion Freire San Jose, a lawyer and women's rights activist with Themis, an association of women lawyers, jurists and magistrates in Madrid, said: "Ours has remained an intensely feudal society and it will take time to change attitudes. That requires political will and this Government lacks the



will. The laws on paper look good. But the Government has done very little by way of application.

Its zero budget increase policy means that there is a permanent shortage of shelters and legal advice for battered women. Talk is cheap. Action costs money and we have seen very little of that indeed."<sup>25</sup>

Tiny Switzerland is home to a mere 7.2 million people. It is extremely rich, modern, industrialised and democratic with excellent health care and a 100 per cent literacy rate. So why has this proud nation with its fiercely democratic traditions failed to curb violence against women?

"It is not a question of democracy, education, freedom or civic sense. Which is why the statistics for wife beating are about the same in the developed and the developing world. It is fallacious to think that there is a link between democracy, prosperity, education levels and domestic violence," counters Elizabeth Rod-Grangé, a Swiss sociologist and activist with Solidarité Femme, a women's rights group that runs shelters for battered women in Geneva.

"Domestic violence is a problem where one individual exercises power over another. The need to dominate and to beat the other into submission is born out of an individual's personal history and experiences and has nothing whatsoever to do with his public façade. I know of high-level bank executives, professors, lawyers even judges who abuse and ill-treat their wives and it is not as if these highly educated members of the ruling elite do not understand human rights and the democratic process.

In the West because of legislation and democracy, the woman now stands a better chance of redress or has more options and solutions available," she explains.

Julia Rios is living proof of the fact that domestic violence cuts across all social barriers and that judges, policemen and lawmakers have often displayed a bias against women.

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<sup>25</sup> Spanish women break the silence, The Hindu, March 10, 2004.

A microbiologist of Brazilian origin, she was married to a Swiss architect. The publication in 2000 of her book *Le Piège* (The Trap) in which she describes savage beatings, repeated marital rape, sequestration and financial deprivation, revealing the double standards that underlie Swiss society, created shock and consternation in Switzerland. "I decided to write the book after a judge ruled in favour of my husband saying my injuries were self-inflicted. I wanted to tell other women that as a victim of violence, one need not feel guilty or ashamed. Women are not the cause of what they endure. Also we must not put up with inhumane treatment. What violent partners reserve for us is not love, it is a hunger for power disguised as love, jealousy," she said in an exclusive interview at a Geneva hotel.

It is only now in retrospect, Julia Rios says, that she realises the violence started long before her husband Bradley began hitting and abusing her. "He was extremely possessive and with time his jealousy became worse. He would spy on me, follow me to work, he would intimidate my friends. I became a virtual prisoner. He would confiscate my money, dole out a pittance. He listened to my phone calls, opened my letters. Why did I put up with it? Why did I lie to my parents, pretend everything was all right? Because I was brought up with the idea that one married for good and that a woman's place was next to her man. I was three months pregnant when I left him. I was frightened his beatings would damage my child. The daughter I was carrying gave me strength."

Swiss social sociologist Lucienne Gillioz, author of a study entitled "Masculine Domination and Violence towards Women in the Swiss Family" told *The Hindu* in a lengthy interview in Geneva: "Our study showed that every shade and class of woman is affected by domestic violence. On the basis of an extensive qualitative and quantitative study we were able to establish that: more than one in five women is affected by physical and or sexual violence in her lifetime.

More precisely, 12.6 per cent of Swiss women or more than one in eight suffer physical violence, while one in nine or 11.6 per cent had suffered sexual violence. As far as psychological violence is concerned, over 40.3 per cent of those questioned were affected."

One of several false assumptions made about domestic violence is that violence between spouses or other intimate partners is a private family affair that brooks no interference from the outside world. Policemen, judges, neighbours or office colleagues are often reluctant to take action whether it be registering complaints, handing down sentences or calling the police.



"Even if people know, even when they can hear the battered wife's terrified and often terrifying screams next door, neighbours do not call the police. What happens between the four walls of a home is considered private, sacrosanct. People feel guilty denouncing their neighbours.

Despite its apparent modernity ours is a very conservative society. Women won the vote very late. We are a discreet, non-demonstrative people and a public washing of linen is frowned upon. It is this attitude we have to change. Violence must no longer be tolerated. Period," explains Elisabeth Rod-Grangé.

It was only in 1997, when a scientifically conducted study showed that 20 per cent of Swiss women suffered from domestic violence that the taboo was broken.

After that it has been an uphill task persuading legislators to make laws protecting women. Since so many women love their violent partners, they feel guilty accusing them.

A large percentage of victims — as many as 75 per cent — withdraw their complaints once the husband has apologised. The new Swiss law makes it mandatory for the state to pursue the offender, even if the victim has withdrawn her complaint.

In Geneva alone, last year over 1,000 complaints were registered. Leaving a violent man is often a long drawn out and traumatic process. Many women feel that with love they will be able to pacify their husbands' violent urges. The reverse is usually the case. 26

## **GLOBALISATION AND ITS IMPACT ON CRIME AGAINST WOMEN**

Globalisation and V A W -New Forms

In the absence of any safety net provided by the multinational and transnational corporations (MNCs, TNCs) or the governments, globalisation

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<sup>26</sup> Statistics show up the Swiss, The Hindu, March 11, 2004.

has enhanced control over sexuality, fertility and labour of women migrants in the region. Innocent rural girls as well as high-school educated adolescent girls are inducted into the workforce. Cross-country migration of girls and women for domestic work, industrial and professional work and services like nursing, secretarial practice, tele-working, etc. has increased.

Mail-order brides from Asian countries are in demand in Europe so that aging patriarchs can be looked after by 'docile' Asian women. The organ trade, targeting destitute women, children and fetuses from the poor Asian communities, has gained demonic proportion. Soft porn as well as hard-core pornography and cyber-sexual violence are used for terrorisation, humiliation and intimidation of women and girls.<sup>27</sup> Cyber-stalking in the computer labs of offices, colleges, universities and commercially run cyber-cafes has invited attention of the decision-makers who are divided in their opinions.<sup>28</sup> Some find it reduces the actual violence against women as people derive psychological satisfaction through voyeurism. Others see it as an extension of verbal and physical violence. Policy interventions are needed to deal with online sexual violence.<sup>29</sup> The use of SMS to send scary messages to girls is another important area that demands urgent attention.<sup>30</sup> Only the East Asian countries have addressed cyber-violence with a gendered perspective.<sup>31</sup>

Smut parties for executives of TNCs, MNCs and indigenous corporate barons have become routine affairs, so much so that the states in the region do not take any action in spite of prima-facie evidence provided by newspaper coverage.<sup>32</sup> Jingoism, Militarisation and V A W

The implications of jingoism -psychology of war-mongering -are dire on Asian women. The politics of rape used against women in the Kashmir conflict, the tragedy of Tamil women in Sri Lankan conflict, insurgency in Nepal, refugee camps, conflicts in Indochina all have evoked extreme indignation from human rights organisations all over the world.<sup>33</sup> In Myanmar, the military rulers use rape as a means of social control and use torture for women deemed dangerous to the regime. Jingoism in South Asia has heightened the insecurity for women in the border regions of the sub-

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<sup>27</sup> Shim, 2002.

<sup>28</sup> Hitchcock, 2002.

<sup>29</sup> Chang, 2002.

<sup>30</sup> Herring, 2002.

<sup>31</sup> Lee, 2002.

<sup>32</sup> Shyam, 2002.

<sup>33</sup> Manchanda, 2001.



continent. Women's groups of SAARC countries have demanded peace and have launched several programmes for public awareness.

"Comfort women" of military-men from World War II to the Vietnam War have approached the UN system for justice. Drugs, sex-shops and crimes connected with militarisation in Indo-China are throwbacks to medieval barbarism. Women as carriers for smuggling, women in the border regions and women in the refugee camps of conflict-ridden areas all need civilian interventions for safety and security. In the region constituting the "Killing fields" in Kampuchea, women constitute 2/3rds of the population. Development programmes supported by the UN are inadequate. International NGOs need to take the lead in this direction. The mass rape of women in East Timor by Indonesian soldiers who are also owners of brothels needs to be condemned by the international community. The institutionalisation of sex-slavery in the region demands the collective efforts of women's networks if a change is to be seen.

### **Domestic Violence**

Mapping of domestic violence in the region reveals the universality of its occurrence even today. "Health data collected routinely by governments and WHO does not yet report on the incidence of violence against women. For the Asia and Pacific region, country prevalence studies show that the prevalence of violence by an intimate partner ranges between 16 and 40 percent".<sup>34</sup> Domestic abuse is everywhere in Vietnam; yet, there is no shelter-home for battered women. In most Asian countries, there is no legal or state provision against marital rape.<sup>35</sup>

A team of Bombay Municipal Corporation (BMC) doctors, women activists and researchers visited Crisis Centres in hospitals in the Philippines and Malaysia in 1999. Inspired by this study tour, they facilitated the process of replicating these hospital-based crisis intervention centres and invited Centre for Enquiry Into Health and Allied Themes (CEHAT) to set up a one-stop crisis centre for women, called Dilaasa, in collaboration with the BMC-run Bhabha Hospital, Bandra, Mumbai.<sup>36</sup>

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<sup>34</sup> Abdul Iah, 2002.

<sup>35</sup> Poonanchit-Korsieporn, 2000.

<sup>36</sup> Jesani, 2002.

### **How to Prevent Child Sexual Abuse?**

Increasing incidences of child sexual abuse are reported in the region, mostly featuring street children and child labourers. Hence counselling of children in schools is not sufficient. There is an urgent need for a community and neighbourhood-centred approach. We also need public discussion, TV coverage, radio-talks, to legitimise the experiences of the victims and empower them. A code of conduct concerning adult-child relationships, dos and don'ts, and unsafe touch/intimacy should be discussed openly, not in a hush-hush tone. We should teach our children that "It is O.K. to say 'No'", instead of training them to unconditional obedience. We should organise assertiveness training sessions and create a non-threatening atmosphere for children, to emphasize the message, "Speak out, don't suffer in silence." Docudramas and role-plays for class-room teaching should highlight all the potential situations of child sexual abuse. Custodial situations -hostels, jails, mental hospitals, orphanages, shelter homes and, even, the family - need special mention. Accountability, transparency, responsible media coverage are imperative on the part of the criminal justice system. Visually effective posters showing safe alternatives to abusive conditions should be addressed to school-going and non-school going children. A complete ban on the use of children for child pornography should be made effective in the region.

### **Prostitution**

Sex tourism in South and South East Asia perpetuates and promotes child- prostitution. In Burma, every year, 10,000 women and girls are trafficked into sex-slavery in the Thai brothels. The same profile is visible with rural girls in India, Nepal, Bangladesh, Sri Lanka in South Asia; Thailand, Philippines, Indonesia and Malaysia; and in Indo-China. Both the worsening economic situation and ancient cultural practices condoning multiple sex- partners are responsible for the proliferation of prostitution. The HIV/AIDS scare has had no effect in curbing the sex-trade in the absence of economically viable alternatives for sex-workers.

An Act concerning the prevention and suppression of trafficking in women and children should ensure the de-criminalisation of victims of prostitution, and target the 4 Ps -procurers, pimps, police, and politicians. Dealing with blackmailers needs the support of community groups and civil society initiatives. State funding for the rehabilitation of prostitutes and the salary of frontline workers should be increased so that custodial care and the developmental needs of ex-prostitutes (in terms of education, skills, employment, healthy recreational activities) can be provided. Close



collaboration between GOs and NGOs can be most effective.<sup>37</sup> They should encourage analytical rather than sensational writings and media-coverage on prostitution.

### **HIV/AIDS as a Primary Form of VAW**

This is a very important issue facing all of us in the 21<sup>st</sup> century. Both sex- workers with multiple sex-partners and housewives with a single sex-partner (i.e. her husband) are at risk of getting HIV/AIDS. Counselling for dealing with the social stigma and creating an alternate support network are the most important aspects of providing emotional support to the HIV /AIDS patients. The Lawyers Collective HIV/AIDS Unit holds monthly drop-in meetings, with the objective of sharing information, experiences and resolving mind- boggling issues affecting the lives of HIV/AIDS patients. It also provides legal aid and allied services to the needy. "The main objective of the Unit is to protect and promote the fundamental rights of persons living with HIV/AIDS who have been denied their rights in areas such as healthcare, employment, terminal dues like gratuity, pension, marital rights relating to maintenance, custody of children and housing".<sup>38</sup>

### **Culture-specific V A W -Role of Manu, Mulla and Confucian Ideologies**

Culture-specific violence against women in different Asian and Pacific countries should be approached sensitively, without making any racist or chauvinist remarks against the concerned community. We need universal applicability of human rights and a recognition of the fact that women's rights are human rights. This approach should be kept in mind while dealing with dowry harassment and bride-burning among Hindu, Muslim and Christian women of Indian origin, widow-burning (Sati) in India, throwing of acid-bulbs against women in Bangladesh, the Hadood Ordinance about women as witnesses in cases of rape, battering, assault, molestation, and the Islamic punishment for " Adulteress", as well as son preference and neglect of the girl child in Asia.

Areas of ethnic tension and caste/communal riots need special intervention in terms of workshops to unlearn chauvinistic values through role-play, role reversal, psychotherapy and group counselling. Refugee camps of the victims of riots should provide security and development inputs for women and children.

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<sup>37</sup> Fernandes and Ray, 2002.

<sup>38</sup> Lawyers' Collective, 2000.

## **The United Nations and V A W**

As per the Convention on Elimination of Discrimination Against Women (CEDAW), "All States are obliged to prevent and eliminate all forms of violence against women and girls." (Beijing Declaration, Platform for Action) The UN World Conference on Women, China, 1995, gave a mandate to all member countries of the UN to devise an action plan against V A W. Most of the countries in the region have ratified CEDAW. Some have refused. Indonesia has even refused to ratify the declarations of three major UN Conferences that discussed V A W -The Vienna Declaration (1993), the Declaration of Elimination of V A W (1994) and the CEDAW (1995).

## **LESSONS FOR INDIA**

There is the imperative need to build a national resource centre for domestic violence.

### **KOLKATA-BORN ACTIVIST BAGS COVETED US AWARD**

30 September, Tribune by IANS

New York: The Indian American founder of a pioneering group of battered South Asian women will receive the coveted Phoenix Award in recognition of her activism.

Kolkata-born Mallika Dutt, 40, who founded Sakhi, will be honoured by the New York Asian Women's Centre for her work in raising the profile of South Asian women and making an impact on violence against them.

Dutt will be honoured at the centre's 20<sup>th</sup> anniversary event, "Rising from the Ashes – Celebrating 20 years of Courage and Strength", on October 8.

"It is deeply humbling and empowering at the same time (to receive the award)," Dutt said. She is the director of Breakthrough, a social awareness initiative that uses popular culture and media.

"The New York Asian Women's Centre helped us a great deal when we started Sakhi for South Asian women 13 years ago. The group was very supportive, answered our calls day and night and readily helped us get grounded in the laws, services and other resources for battered women."



The New York Asian Women's Centre is the only licensed Asian women's shelter programme in New York. In its 20 years of existence, it has developed an infrastructure of services, including emergency shelter, 24-hour toll free hotline, counseling and advocacy, children's programmes and other resources, with the culpability of accommodating 19 languages.

It also helps women become independent using the centre's legal, medical, education and job training resources programmes.

Dutt said while the Indian and South Asian community at large have become much more supportive about a public discussion on violence against women, and more people from all walks of life are willing to take a stand against, discrimination and abuse, the problem was very much there.

"When we began Sakhi, we would get a lot of negative mail: people on the streets would yell at us at the various parades or community events when we would hand out flyers and materials. That has changed considerably although our right to march in the India Day Parade is always being questioned by organizers.

"In terms of actual violence against women, the numbers are still very bad. There are at least 20 South Asian groups across the US addressing the issue now. We need to move to a stage where groups like Sakhi don't need to exist anymore because men and women can have loving, respectful relationships free of abuse and violence," she emphasized.

Dutt moved to the US in 1980 and has a law degree from NYU Law School.

Under directorship, Breakthrough's first effort was Mann Ke Manjeere, an album of women's dreams that was at the top 10 in India for many months, she said.

The music video from that album addressed violence against women and won th Screen awards. Her organization is working with schools on women's rights in India and the US.

“Given the state of affairs in South Asia, the US and in the world, I think it is crucial for all of us to get involved in solving our common problems. And that is Breakthrough’s mission: to build a culture of human rights which respects all people.”

She has received several awards including the National Citizen’s Award 2001, and has authored several monographs and articles?

In an effort to end the centuries-old practice of gender discrimination and female infanticide, the Union government announced on Friday a higher monetary aid for poor mothers giving birth to girl child.

Announcing the Jhoni Suraksha Yojana (safe motherhood scheme) to safeguard the health of mothers and newborns across the country, Union Health Minister Sushma Swaraj also said the cash assistance would be awarded only up to two “live births”.

“Up to two live births, assistance of Rs 1,000 will be given for the birth of a female child and Rs 500 for a male child.” Swaraj said after launching the programme marking the first Safe Motherhood Day to be observed every year on the birth anniversary of Mahatma Gandhi’s wife Kasurba.

Earlier, mothers used to get the same amount – Rs 500 – whether they gave birth to a boy or girl. And no time was fixed for its disbursal, so that when the cash was awarded any time after birth, male relatives took it away.

The Centrally sponsored scheme would be implemented in all States and Union Territories and would be extended to women in rural as well as urban areas, but only for those considered really poor.

The Minister said the scheme had a multi-fold aim. “It will inspire women to come to hospitals to deliver their children as the cash assistance would be landed immediately after birth. It will discourage more than two children and it will do away with the practice of female infanticide.”



Prime Minister Atal Bihari Vajpayee recently expressed concern over reports of as many as 1:4 million missing girls to the last 10 years because of the widespread practice of killing female babies before or after birth.

Sushma Swaraj regretted that the lack of access to adequate health facilities resulted in the deaths of 407 women for every 100,000 births and 67 new-borns out of every 1,000.

"The only way to bring this down is to ensure that the mother is safe and healthy", she asserted. The safe motherhood scheme seeks to encourage pregnant women to come for at least three medical checkups in a primary health center or government hospital before child birth. They would be given Rs 150 for transport (IANS)<sup>39</sup>

The US Senate approved a controversial Bill that would recognize a foetus as a victim separate from its mother during a violent crime, drawing fire from opponents who believe it could erode proabortion legislation.

Lawmakers voted on Thursday 61-38 to approve a measure called the Unborn victims of Violence Act, which was passed in the House of Representatives last month. The two chambers now must iron out their differences and then send the measure to President George W. Bush, who has promised to sign it into law.

Under US law, an individual who commits a crime of violence against a pregnant woman receives no additional punishment for killing or injuring the unborn child.

Twenty-nine states already have laws to that effect on the books, but no such federal statute exists.

Senate Majority Leader Bill Frist lauded the vote. "This bill recognises that when a criminal attacks a pregnant woman and kills her unborn child, he has claimed not just one, but two precious human lives. It ensures that those who prey upon a pregnant woman and her child will pay a heavy price," he said.

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<sup>39</sup> Daughter to fetch more money for poor mothers, Deccan Chronicle, April 11, 2003.

But opponents have criticized the bill as a backdoor effort by conservatives to confer greater rights on the unborn child, thereby opening the door to an eventual ban on abortion.

"If you can establish a beachhead right in federal criminal law here.... You give the Supreme Court the ability to say, it is in law that embryos have certain rights", Feinstein said on the Senate floor.

"It's got nothing to do with abortion," Pennsylvania republican Rick Santorum countered. "The issue is... do we recognise the humanity of the child," he said.

The Republican -led house last month passed its version of the bill 254-163. Also called Laci and Conner's Law," the Bill stems from the case of Laci Peterson and her unborn child, whose body was found a year ago in California.<sup>40</sup>

Rachna Chhachhi: What prompted you to implement gender policies in the India GE office?

Scott Bayman: GB is an equal opportunity employer. At GE, we believe in meritocracy. It's not important whether you are older than others, or which school you went to. It's performance that counts.

We have a special aspiration to be the world's most competitive company with an inclusive culture that values, respects and leverages differences, and fully utilizes the talents and contributions of all individuals.

GE recognizes that women represent a pool of talent that is underutilized in India. It wants more than its fair share and is taking steps to make GE India an employer of choice for women.

This is why GE formed the GE Women's Network (GEWN), a voluntary organization, to support the professional development of women at

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<sup>40</sup> U.S. Senate gives foetus an identity, Deccan Chronicle, March 27, 2004.



GE. Today, GEWN is a 10,000 strong group of women employees around the world.

R.C: What are the various things under these policies?

S.B.: At GE, we've identified the formula of women professionals leading the gender friendly initiatives vi the GE Women's Network (GEWN). GEWN creates new opportunities for us to attract and retain high-potential successful women throughout GE. It provides women with a unique forum to connect with and learn from other women with experience in various business assignments throughout GE. Development is focused on leadership, advancement and career-broadening opportunities through a variety of tools, including information, education and networking with other women to share and learn best practices. The Women's Network is special to GE because it builds a pipeline of high potential women for senior leadership roles; it's in line with GE's philosophy of nurturing the best talent so that the best ideas can be sought and applied irrespective of where they come from; it rests purely on Meritocracy Performance counts... and Merit wins. The equation is simple: for GE women, the GEWN offers professional development and career growth; for GE, the Network promises to qualify more women for key leadership roles.

Secondly, flexi-time is big. Some of our businesses have launched a flexible work arrangement program, which is an alteration to the traditional workweek schedule. Ultimately, the game is personal productivity. We recognize the need for flexibility and this initiative allows employees to meet their business responsibilities as well as their personal objectives and needs.

R.C: What has been the reaction of all 23 business heads?

S.D.: Very supportive. We all recognize that it is initiatives like the GE Women's Network that will transform GE into a 21st century company spearheading leading-edge initiatives with a diverse workforce.

R.C: How many businesses have you been able to implement it in?

S.D.: Flextime options are working very well in GE Capital. We are working towards expanding this to other businesses where job requirements permit.

R.C: Have some people implemented these because it's come "from the top" and not because they believed in it?

S.D.: GE is a meritocracy where the best people can build their dreams and make a difference. Teamwork and a strong collaborative spirit define the

success of our initiatives. We all recognize that it is initiatives like the GE Women's Network that will transform GE into a 21st century Company spearheading leading-edge initiatives with a diverse workforce. We have a strong leadership pipeline and our goal is to be able to qualify more and more women to take up key leadership roles in the company.

R.C: It took 9 years for Deloitte and Touche to make their organization completely women friendly. How long will it take yours?

S.D.: GE has always had immense faith in the capability of its women employees in India and values their contribution to GE. We are placing big bets on the several bright and capable women in GE who are eager to learn, achieve and contribute to the success of GE globally.

R.C: What is your response to Day Care Centres for all your employees?

S.D.: Personal productivity is what is most critical to each individual's performance. We are in the process of getting feedback on whether day care centres are a key requirement.

R.C: Are there Champions leading some causes? How many are they and what is the criterion for choosing/electing/appointing them?

S.D.: I am (Scott Bayman is) championing GEWN in India. The GE Women's Network in India has developed three primary hubs in New Delhi, Hyderabad and Bangalore. We have hub leaders for each hub and an All India Co-ordinator. We also have a US-based "buddy" assigned to each hub for global support. 41

Changes in the substantive law should be coupled with corresponding changes in the procedural aspect of the law such as complementary changes in the Evidence Ordinance and the Code of Criminal Procedure.

Law reform should encompass holistic and comprehensive controls rather than be limited to ad hoc and piecemeal measures.

There is a need to develop systematic and comprehensive awareness – raising among women themselves on their rights and the remedies available to them.

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<sup>41</sup> Scott's honour, Woman, November 4, 2002.



The lack of comprehensive data and a system of gathering data on an ongoing and regular basis are some of the major problems that have to be dealt with if the issue of violence against women is to be taken seriously by the State. Mechanisms have to be established in conjunction with the police, the Attorney General's Department, Judicial Medical Officers, Medical Professionals, women's organisations, human rights organisations, the Child Protection Authority and the Human Rights Commission for the effective collection of data.

Such data must be publicly available and must be analysed and used for policy and legal reform as well as for the better implementation of the law so that women can be better protected from violence.

The fundamental rights chapter of the Constitution can be further expanded to recognize that violence against women constitutes a human rights violation, so that important changes in international human rights law can be incorporated in the new Constitution.

The current legal position as reflected in the Penal Code amendments of 1995 in relation to consent and collaboration in respect of sexual offences need to be clarified in Statute Law and clearly understood by lawyers and judges.

- There has to be an uniform policy on sentencing sexual offences.
- There should be an uniform minimum age of marriage.
- Constitutional standards on equality and torture that now permit public officials to be made liable for acts of abuse of power, and sexual harassment should be developed further, using current jurisprudential trends in the Supreme Court of Sri Lanka, so that a link is made between rape and gender discrimination and rape and torture.
- Marital rape should be recognised as a crime with no limiting circumstances.
- Cases of incest need to be handled very sensitively from the beginning of the investigation till a case is concluded and the medical exam and court environment should be victim friendly and as private as possible. This should be applicable not only in cases of incest, but in cases involving sexual abuse of women and specially of children. It is also essential that family counseling and therapy be made compulsory requirements in cases of incest.

Guidelines put forward by the UN Special Rapporteur for Violence Against Women should be studied carefully and legislation put in place to deal with domestic violence. This can be done either as an amendment to penal Code or as a combination of such an amendment and separate legislation that deals with both criminal and civil remedies which is a more holistic approach.

The State should ensure that police officers are gender sensitized and will take the crime domestic violence seriously by responding to calls of domestic violence both when the offence is imminent as well as when it is in progress.

The police should be educated with regard to proper procedures to be followed in intervening and handling the complaint.

The Attorney General should develop and adopt guidelines for officials prosecuting domestic violence cases.

The State should ensure the provision of emergency services which should include crisis intervention centres, safe and secure shelters; immediate medical attention and emergency legal counseling for offences of domestic violence and rape.

The State should introduce compulsory long term rehabilitation of victims and abusers.

To be effective legal remedies dealing with sexual harassment, especially sexual harassment in the workplace should be coupled with employers being compulsorily required to put in place internal mechanisms and guidelines that complement and enhance the implementation of the law.

Samatha Mandalayas (Mediation Boards) should constitute of persons who are gender sensitive and conversant with the law. They should also comprise of at least 40% women. Their work should be monitored and evaluated on a regular basis.



It must be ensured that the services of the Samatha Mandalayas are not used in the investigation or settlement of criminal offences such as rape or incest and that the Mandalayas are not used to bring pressure on women to marry their rapists.

Non – summery inquiry in cases of rape should be abolished. Legal practitioners, human rights and women's rights activists, policy makers, etc., should have access to a comprehensive set of statistics from the Attorney General's Department so that an analysis can be made of the number of rape indictments that result in convictions, those that don't and the time taken to conclude a case.

Trials dealing with sexual offences and offences against children should be given priority.

In the interest of expediting the hearing and conclusion of cases dealing with violence against women, special courts could be set up with retired judges to try these cases and address the problem of delays in the law.

A concerted programme should be got underway to ensure that a sufficient cadre of Judicial Medical Officers (JMO) are trained and put in place in all districts.

DNA profiling and toxicological tests could be used more frequently in cases of sexual violence. Such tests have been used in a murder trial currently heard before the High Court.

There is need to train medical officers who are called upon to examine rape victims, since doctors are often not aware that the statements made to them could have very important legal significance, especially if the victim identifies the alleged rapist to the doctor. Medical officers require adequate and relevant training to perform this task. They should also be trained to identify victims of domestic violence and be trained to deal with the specific needs of such women.

More trials, dealing with sexual offences should be held in camera and victim's testimony could be video recorded as is currently done in some cases of child abuse.

There should also be the possibility for the submission of written testimony in the form of affidavits.

The government needs to look at the possibility of establishing multi disciplinary crisis centres at all leading base hospitals where specially trained doctors can examine a victim of violence and the police can be called in to record statements with a volunteer counselor present to assist the woman. It is also absolutely necessary that the State set up shelters that can offer refuge to women seeking to escape violence.

Women and Children's desks at police stations should be expanded to cover all major towns and officers stationed at them should be trained in recording and handling complaints of violence against women so that the records can be effectively used in Court cases.

The desks should be kept open and accessible in a climate of security and safety 24 hours a day.

Both male and female officers, serving at all police stations and at all levels of service should be more effectively trained and sensitized to handle complaints of violence by women. This should be a permanent composition of initial training as well as supplementary training and not ad hoc and sporadic in nature.

Special women and children's desks should be set up at police stations in conflict areas constituting of personnel who speak the language of the area, are conversant with the problems of the area and are gender sensitive. These desks should work in collaboration with recognised women's groups and citizen's committees so that women and children feel secure to make use of their facilities.

The guideline that female service personnel should be present to carry out body searches of women, particularly at checkpoints, is often flouted. These should be strictly adhered to.

It is necessary that swift action is taken both to stop rape and sexual offences committed by armed forces personnel and deserters from the armed forces and perpetrators are brought to justice.



There is an urgent need to engage in study and research so that data and information is available to combat trafficking.

All necessary measures should be taken to protect the victim and witnesses and any security officer found to be responsible for rape, sexual abuse or other torture, or for encouraging or condoning them, should be brought to justice.

Parents in Britain are to be banned from choosing the sex of their baby except for strictly medical reason such as preventing gender-linked disorders.

The move follows a report by the Human Fertilisation and Embryology Authority (HEFA) which regulates fertility treatment, that people should not be allowed to use medical techniques for "Family balancing".

Often, families with more than one child of the same sex tend to 'balance' it by using IVF to create a baby of the opposite gender, but HEFA said 80 per cent of the people were opposed to sex selection for social reasons.

Currently, gender selection facilities are not widely available in Britain and people go abroad, mostly to America, where "sperm sorting" to pre-determine the sex of a baby widely practiced. Some commentators voiced concern that a ban would simply drive the practice 'underground' with more people traveling abroad for sex-selection procedures.

Suzi Leather, chairperson of HEFA, admitted that it was a "difficult issue" but cited "substantial public consensus" in support of a ban. "It has taken us over a year to reach conclusions because of their far-reaching nature. But it is clear that most people are against sex-selection for social reasons.

The HEFA has to balance the potential benefit of any technique against the potential harm. We are not persuaded that the likely benefits of permitting sex selection for social reasons are strong enough to outweigh the possible harm done," she said.

The report was widely welcomed by medical experts and groups who oppose sex selection on religious and ethical grounds. The Health Secretary, John Reid, was quick to throw the Government's support behind HEFA's recommendations declaring that "as long as I am Secretary of State for Health, sex selection will only be permitted on compelling medical grounds," "I fully support the view that people should not be allowed to select the sex of their children on social grounds. We will consider carefully whether the law needs to be changed to ensure this ban can be maintained effectively," he said.<sup>42</sup>

### **The Haven**

If you have been sexually assaulted – please tell the Haven. At the Haven, we are here to help you if you have been sexually assaulted.

You may wish you could keep what happened a secret. You may not be sure yet if you want to tell the police about the crime. Come and talk to us at the Haven and we will support you whatever you choose to do. If you want, you can also talk to a specially trained police officer who will explain what will happen if you decide to report the crime and you want the police to investigate it.

If you do decide that you want the police to investigate the crime, it does not have to happen right away. But you should let a doctor examine you as soon as possible. We can start to give you any help you might need for injuries or shock, and it helps the police if you can talk about the assault when the facts are still very clear in your mind.

If you report the crime to the police it does not mean that you will have to go to court or see your attacker again. It may mean that the police can prevent them ever doing what they did to you, to anyone else.

### **What choices do I have if I come to the Haven?**

#### **You can either:**

Decide that you want the police to investigate the crime immediately. Let a doctor examine you and talk to a specially trained police officer (in private), telling them as much as you can about what happened.

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<sup>42</sup> U.K. to ban gender selection of babies, November 14, 2003.



Let a doctor examine you, but let us know you do not want to talk to the police yet. The forensic evidence (such as samples of the attacker's clothing or blood) that the doctor finds will be sent to the police, with your agreement, and may be enough for them to find who the criminal is and if they have committed any other crimes. You do not have to talk to the Haven or the police again if you do not want to.

Let a doctor examine you and send any forensic evidence to the police with only the information you choose to give – you don't have to tell them who you are. You do not have to talk to the Haven or the police later, if you choose not to.

Let a doctor examine you but let us know you do not want any information to go to the police. After two months, we will ask you if you have changed your mind about sending the police the evidence gathered.

Fill in a form with details of the crime that we will pass on to the police. We will help you fill in the form. You do not have to see a doctor. You can choose not to come back to the Haven or speak to the police, unless you want to.

Come to the Haven for medical treatment, counselling or general help only. You do not have to have a doctor's examination or give any information to the police.

Whatever you want the Haven to do for you, you can also choose how much you want the police to know about you. For example you may not want to give your name or address but may be willing to let the police know whether you are a man or a woman, how old you are, and where you were when you were assaulted. You do not have to give any details at all, but the more information the police have, the better chance there is of solving the crime. You are also free to change your mind at any time and talk to someone at the Haven or a specially trained police officer about what happened. The most important thing is that whatever you choose, we will respect your wishes.

A party organizer for young sports stars was arrested yesterday by police investigating claims that a teenage schoolgirl was gang-raped by a group of Premiership footballers.

The man was questioned about the alleged attack at a five-star hotel in Park Lane, central London on 27 September, and police say that more arrests are expected to follow.

Nicholas Meikle was arrested by detectives from Operation Sapphire, Scotland Yard's sexual offences task force. A spokesman said: "A 29-year-old man attended a central London police station by appointment today where he was arrested in connection with allegations of rape and sexual assault from a 17-year-old girl."

Mr Meikle, who works for a public relations company, was released without charge last night on police bail until later this month. Although more arrests are expected over coming days, a lawyer representing a number of the footballers said none had yet been contacted by police. Mr Meikle admitted in a newspaper interview at the weekend that he had taken the girl to room 316 at the Grosvenor House Hotel, which had been booked by a friend who is a Premiership footballer.

He then went on to tell the News of the World that three other men including two footballers, had entered the room and engaged in group sex with the girl.

Mr Meikle, from Catford south-east London, denied that she had been raped, however. He told the newspaper: "No one got heavy with her, this was normal. We all feel asleep in the same bed and shared breakfast". The girl, who is a sixth form pupil at a Roman Catholic school in London, has denied this version of events, insisting she was raped by seven men after consensual sex with Mr Meikle.

She has told police that three of the seven were Premiership footballers. These men have been named on a number of websites, but their identities have not been disclosed in the media, and the clubs for which they play cannot be named for fear of legal action by their teammates.

The girl received the results of an HIV test yesterday, which were negative.



Mr Max Clifford, the public relations consultant, who is advising the girl and her family, said: "She is very relieved about that."

Operation Tougo, the codename for the investigation, is being headed by Commander John Yates and could take some time before a report is sent to the Crown Prosecution Service on possible charges.<sup>43</sup>

Professor Cynthia Grant Bowman in one of his articles states that, one of eight American women have been raped in offices, public places or their homes. So also Diana Russel's study reflects that there is a rape testing by which miscreants test vulnerability of victims and their resistance. It is the matter of common observation that the moment a woman gets to a public place she is treated as open person and subjected to harassment. She is assaulted verbally as well as non-verbally. She has to encounter such hazards while on the way to workplace and also on the place of work. Appellations like honey, hot chocolate and mall greet her. Often references are made to woman by referring to a part of her body in vulgar and shabby words. This sort of treatment by the males at the workplace and public places to the women creates in them a feeling of inferiority and make them defenceless and vulnerable.

The provisions of law have been extremely incompetent to take care of such events that affect woman so closely and leave them in Hobsonian wilderness. 'Women suffer unpunished uncompensated sexual assaults, said Robinwest. Diana Russel tells us a case where some young men were trying to tease a girl. She told them that they were nice person and that they should not treat her unkindly. One of them retorted and said, 'Bitch, you are only a piece of meat to me. Instances have been noticed where a superior displeased with a female calls her a stupid whore. With that attitude it is not surprising if a woman considers herself a vulnerable defenceless degraded non-person, says Justice CS Nair.

### **Voilence at the Workplace**

The sexist speech most generally haunts the women at their workplaces. They are in fact made the victims of abusive language that includes sexual comments and lewd jokes. Showing pornographic depictions is also a common form of harassment of women while at work, says Prof. Strauss. According to US Merit System Promotion Board 42 per cent of

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<sup>43</sup> First arrest in Premiership rape case, The Times of India, October 10, 2003.

women employees are subjected to sexual harassment Working Women Institute studies reflect that 20 to 60 per cent face verbal harassment 50 to 60% complain of unwanted flirtation and invitation of dates, pinching and so on. Also superior officers are found to ask woman employees to discuss promotions and increments over dinner. There have also been instances where the superiors tried to fondle them in public places. The European Commission Recommendations on the Protection of the Dignity of Man and Women at Work provides... conduct of sexual nature, or other conduct based on sex affecting the dignity of women and men at work is unacceptable if (a) such conduct is unwanted, unreasonable and offensive to the recipient, (b) is used... as a basis for an (employment) decision; and/ or (c) such conduct creates an intimidating, hostile or humiliating work environment for the recipient It is notable that these recommendations are supported by the European Commission Code of Practice where sexual harassment is defined as 'unwanted conduct of sexual nature, or other conduct based on sex affecting dignity of women and men at work. This includes unwelcome physical, verbal or non-verbal conduct.

### **Judicial Perception**

In India realising the constitutional obligation put on it the Supreme Court in Nilabati/State of Orissa observed that a claim in public law for compensation for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution is an acknowledged remedy for enforcement and protection of such rights... The Supreme Court is not helpless and the wide powers given to it by Art. 32 which itself is a fundamental right, imposes a constitutional obligation on it to forge new tools which may be necessary for doing complete justice and enforcing the fundamental right guaranteed under the Constitution.

In the case of Rupan Deol Bajaj vs Kanwar Pal Singh Gill the plaintiff, a senior IAS filed a complaint with IG police Chandigarh alleging sexual harassment and molestation by a senior police officer in Punjab but the FIR and another private complaint in the CJM Chandigarh Court were quashed by the High Court When the matter came up to the Supreme Court, the order of High Court quashing the complaint and FIR was set aside and it was observed that the sequence of events culminating in slapping on the posterior of a woman-in a public function disclosed in the FIR amounted to prima facie offence under Sec.354 IPC. The case was remanded to the trial court for adjudication on merits.



Similarly in the case of State of AP vs Boden Sundara Rao the High Court of Andhra Pradesh had awarded grossly inadequate sentence. When the case reached to the apex court it came down heavily as follows: Crimes against women are on the rise. Imposition of grossly inadequate sentence and particularly against the mandate of the Legislature not only is an injustice to the victim of the crime in particular and the society as a whole in general but also at times encourages a criminal. The courts must not only keep in view the rights of the criminal but also the rights of the victim of crime and the society at large while considering imposition of the appropriate punishment. The judgments given by the Supreme Court in the aforesaid cases reflect very clearly the attitude of the court towards the concept and treatment of the problem of molestation and sexual harassment. Of course the court was eager enough to develop the law on this point, waiting anxiously for an occasion so much so that in case of Vishakha vs State of Rajasthan which was not a case of sexual harassment at workplace but a case of gang rape of a social worker in a village of Rajasthan, yet depicting its extraordinary activists attitude it proceeded a step further and developed the law by prescribing certain guidelines for effective enforcement of the basic human rights of gender equality and guarantee against sexual harassment at workplaces. According to this court sexual harassment includes such unwelcome behaviour (whether directly or by implication) as (i) physical contact or advances, (ii) a demand or request for sexual favours, (iii) sexually coloured remarks, (iv) showing pornography, (v) any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

The Supreme Court by a rather innovative judicial law making process has prescribed certain guidelines to prevent or deter the commission of acts of sexual harassment. Accordingly, it shall be the duty of the employer or other responsible persons in the workplaces or other institutions to prevent or deter the commission of acts of sexual harassment and to provide procedures for the resolution, settlement or prosecution of acts of sexual harassment by taking all necessary steps. To prevent sexual harassment, every employer or person in person incharge of the workplace, whether in public or private sector, must take the following steps: (i) Express prohibition of sexual harassment as defined above at the workplace should be notified, published and circulated in appropriate ways, (ii) The rules/regulations of government and public sector bodies relating to conduct and discipline should include rules/regulations prohibiting sexual harassment and provide for appropriate penalties in such rules against the offender, (iii) As regards private employers, step should be taken to include the aforesaid prohibitions in the standing orders under the Industrial Employment (Standing Orders) Act, 1946, (iv) Appropriate work conditions should be provided in respect of work, leisure, health and hygiene to further ensure that there is no hostile environment towards women at

workplaces and no woman employee should have reasonable grounds to believe that she is at a disadvantage in connection with her employment.

The guidelines include inter alia that the victims of sexual harassment should have the option to seek their own transfer or that of the perpetrator. Moreover, the employer or the disciplinary authority must invoke criminal remedy against the delinquent employees if the conduct amounts to an offence under IPC or any other penal law. Similarly the employer or the disciplinary authority must take appropriate departmental action against the delinquent if the conduct amounts to misconduct as per relevant conduct rules. Whether or not such conduct constitutes an offence under law or a breach of service rules, an appropriate complaint mechanism should be created in the employer's organisation for redressal of the complaint made by the victim. Such complaint mechanism should ensure time bound treatment of the complaints. It should be adequate to provide, where necessary, a complaint committee, a special counsellor or other good service, including the maintenance of confidentiality. The committee should be headed by a woman and not less than half of its members should be women. The competent NGO should be included in such committee. The complaints committee must make an annual report to the government and also the action taken by it.

The guidelines are based on the international rules and covenants like the Convention on Elimination of all Forms of Discrimination Against Women. Since such harassment would violate women rights under Arts. 14, 15, 19(I)(g) and 21 of the Constitution. The court by prescribing these guidelines has enforced fundamental right of women in the absence of appropriate legislation in that sphere. Justice JS Verma observed that international convention and norms, interpreting them in the larger context promote the objects of the Constitution. In the absence of domestic law on the particular aspect, these conventions and norms as ratified by India can be relied up on by the Court to formulate guidelines for the enforcement of fundamental rights. The judgment in Minister of Immigration and Ethnic Affairs vs TEH was also referred to by the apex court. Besides, there are several cases decided by Supreme Court of India wherein it has been observed that the Indian Court can enforce international treaties and conventions which are not ultra vires to the Constitution of India. As long as there is no specific law on the subject of sexual harassment of women at the workplaces the guidelines prescribed by the Supreme Court is good law according to the provisions of Art. 141 of the Constitution. It is to be noted that these guidelines have been successfully applied as law on the point by Bombay High Court in Shahnaz Hussain case.



Another important question, which was answered by the Supreme Court in *Apparel Export Promotion Council vs AK Chopra*, was if actual molestation is required to prove the offence of sexual harassment at the workplace. The Court explained that in a case involving charge of sexual harassment or attempt to sexually molest, the Courts are required to examine the broader probabilities of a case and not get swayed by insignificant discrepancies or narrow technicalities or directory meaning of the expression 'molestation'. When an episode reveals that delinquent superior officer had harassed, pestered and subjected his lady subordinate by a conduct which is against moral sanctions and which did not withstand to the test of decency, modesty and projected unwelcome sexual advances, it would be wholly inappropriate to say that the behaviour of delinquent officer ceased to be outrageous for want of an actual assault or touch. The misconduct amounted to sexual harassment.

### **In United States and United Kingdom**

In USA the law is not very much concerned with the protection of women from sexual harassment at workplace. As the First Amendment blocks the way of many regulations and restrictions. It is to be noted that the clear and present danger test may not apply to the areas of personal conversations. US Supreme Court has once gone to the extent of saying that the idea of protecting women from such situations is based on puritanical notions or on the belief that women like children needed protection. Unreasonable extremes have been touched by some US Courts while finding justification for lewd acts. However, in *Rankin vs MC Pherson* the court upheld interest of State as employer to improve efficiency by eliminating adverse conditions in place of work. According to First Amendment a captive audience has right to be protected. In *Merritor Savings Bank vs Vinson (Michell)* the Court observed that the sexual harassment creating hostile or abusive work environment without economic loss violates Title VII of Civil Rights Act of 1964. It is notable that this Title forbids sex discrimination in employment in hiring, firing, promotion and working conditions. It was amended in 1972 so as to cover public employers and small private employers to enlarge the powers of the Equal Employment Opportunity Commission. Besides, there are certain provisions under State laws which prohibit sexual harassment which is a sort of exploitation of women and the law tries to stop it. In *Poroline vs UNISYS Corp.* the US Court observed that in order to establish sexual harassment in a case it should be proved that (i) the conduct in question was unwelcome, (ii) the harassment was based on sex, (iii) the harassment was sufficiently pervasive or severe so as to 'create an abusive working environment and (iv) that some basis existed for imputing liability to employer. In another case of *Joseph Oncale vs Sundowner Offshore Services* the US Supreme Court accepted the argument of the American Civil Liberties Union, the appellant,

that same-sex sexual harassment is equally covered under Title VII of the Civil Rights Act of 1964 and that motive of harassment is of no relevance.

In UK, Sex Discrimination Act, 1975 prohibits discrimination on the ground of sex. A landmark case in British Law on sexual harassment is *Strachlyde Regional Council vs Porcelli* in which a campaign to drive Mrs Porcelli to leave the school was started but no sexual favour was sought. It was held that the campaign was based on the sex of the victim which could not have been used against an equally disliked man. It is to be noted that it would be a case of sexual harassment if the victim is harassed and sex of the victim is a factor in it, it is not necessary that the harassment itself is sexual in nature.

Pertaining to gender equality and protection of women at workplace we find that the international community has so far exhibited sufficient concern. The Convention on Elimination of All Forms of Discrimination Against Women, 1979 provides that States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular (a) the right to work as an inalienable right of all human beings ... (f) the right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction. In another provision States Parties undertake to adopt all necessary measures at national level aimed at achieving the full realisation of the rights recognised in the present Convention.

Regarding sexual harassment of women at workplace in respect of above mentioned provisions of Art.11 the Convention has following as general recommendations in para 22, 23 and 24.

22. Equality in employment can be seriously impaired when women are subjected to gender specific violence such as sexual harassment in the workplace.
23. Sexual harassment includes such unwelcome sexually determined behaviour as physical contacts and advances, sexually coloured remarks, showing pornography and sexual demands, whether by words or actions. Such conduct can be humiliating and may constitute a health and safety problem; it is discriminatory when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment, including recruitment or promotion or when it creates a hostile working environment. Effective



complaints, procedures and remedies, including compensation should be provided.

24. States should include in their reports information about sexual harassment and on measures to protect women from sexual harassment and other form of violence or coercion in the workplace.

Then the issue of sexual harassment of women at workplace was also discussed in the Fourth World Conference on Women in Beijing and it was recommended inter alia-to formulate and operationalise a national policy on women, to set up a commission for womens' right and to institutionalise a national level mechanism to monitor the implementation thereof.

Further the sexual harassment of women at workplace was recognised at an ILO Seminar held in 1993 at Manila as a form of " gender discrimination against women". Besides, the provision contained in Art. 7 of the International Covenant of Economic, Social and Cultural Rights recognises the right of women to fair condition of work and states that the women shall not be subjected to sexual harassment at the place of work.

The Convention on the Elimination of Discrimination Against Women is, indeed, a very significant international document focusing on the sexual harassment of women at workplaces as its Recommendation number 19 states that the acts of inflicting physical, mental and sexual harm or suffering or threats of such acts, coercion and other deprivation of liberty are violative of fundamental human rights of women. All policy making, enforcement and adjudicatory agencies must take notice of this fact.

The Supreme Court has upheld the dignity and honour of working women by prescribing the guidelines which presently are the provisions of law. Now it is for the Parliament to enact suitable law incorporating these guidelines so that they may be easily implemented. Till then all women employees and workers should be provided a copy of these guidelines free of cost.

The State must take effective legal measures including penal sanctions, civil liberties and compensatory provisions. Besides, certain preventive measures would also have to be taken which may include public awareness and educational programmes, gender sensitive training of judges / magistrates

and other enforcement agencies so as to shed the myth of feminism and masculinism and respect humanism. A sort of attitudinal conversion is needed. Then some protective measures are also necessary like counselling to and rehabilitation of victims of sexual harassment at workplaces.

The cases of sexual harassment at workplace and that sexual discrimination on the basis of sex need to be distinguished very carefully.

The personnel engaged in the administration of criminal justice be trained and educated about the nature of violence against the women, violation of their human rights at workplace and the gender equality.

A grievance redressal cell for women employees should be established in all establishments which may hear and try all cases of sexual harassment of women at workplace" like a criminal court. They must be autonomous in nature.

The women employees must be educated about the legal provisions and procedure relating to the offence of sexual harassment at workplace, and they be provided a copy of such rules and regulations. <sup>44</sup>

Recognizing domestic violence as a "real crime" has become an increasingly important part of government policy on crime control in both Japan and the UK. This study reviews trends in violence against women in the UK and in Japan and relate these to broader changes associated with globalization. We consider how the growing visibility of violence against women has effected risk taking and risk management. We argue globalization has created different and more opportunities for violence from men to women. Men in rich areas of the world have responded to the growing riskiness of violence against women at home by "exporting" some of the costs of these crimes on to those who are especially vulnerable to entrapment, abuse and enslavement—poor, "third world" and migrant women and children. We look briefly at recent feminist responses to violence against women and argue that risk management poses dilemmas for globalized feminist activism within the current contexts of family policy and crime control.

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<sup>44</sup> Social Defence, July, 2001, A quarterly journal to review the policies and practices in the field of Social Defence National Institute of social Defence – Ministry of Social Justice & Empowerment, GOI, New Delhi.



This study reviews trends in violence against women in the UK and in Japan and relate these to broader changes associated with globalization. Violence is readily reported in the press and crimes, such as rape, incest or domestic violence, have become favored topics in talk shows and soaps. Crime statistics on domestic violence are alarming. One in four women in the UK report having experienced domestic violence from a male partner at some time in their adult lives<sup>45</sup> and research by Stanko et al.<sup>46</sup> indicates that as many as 1 in 10 will have experienced it in the past 12 months.<sup>47</sup> In Japan, a recent government survey found one in three women had sustained some physical injuries from male partners and 1 in 20 women had experienced violence they described as being life threatening.<sup>48</sup> Contrary to commonly held beliefs about the lower incidence of violence in Japanese society, for years Japanese women have cited domestic violence as the main reason for seeking a divorce.<sup>49</sup> Recognizing domestic violence as a "real crime" has become an increasingly important part of government policy on crime control in both Japan and the UK. In this paper we discuss whether violence against women is increasing in wealthy industrial societies or whether we are just noticing it more, whether the world has become a more dangerous place for women or whether we just perceive it to be so. Risk, crime and social exclusion is one theme that we explore here in relation to violence against women. We consider how the growing visibility of violence against women has effected risk taking and risk management. We argue globalization has created different and more opportunities for violence from men to women. Men in rich areas of the world have responded to the growing riskiness of violence against women at home by "exporting" some of the costs of these crimes on to those who are especially vulnerable to entrapment, abuse and enslavement—poor, "third world" and migrant women and children. We apply and adapt Funabashi's (1992) ideas about environmental risk to violence against women to review the shifting terrain of blame and responsibility for these crimes.

Feminist politics and government policies for the elimination of violence against women make up the second theme we consider in this paper. Feminist activism in the UK and in Japan has brought violence against women to the foreground of debates about crime and human rights, helping to situate it in policies on gender equality in the family and crime control. Risk and responsibility have been central to "third way" thinking on crime, welfare

<sup>45</sup> Mirlees-Black, 1999, p. 18.

<sup>46</sup> 1998, p. 20.

<sup>47</sup> Stanko et al., 1998, p. 20.

<sup>48</sup> Cabinet Office, 2002, p. 24.

<sup>49</sup> Hada, 1995.

and the modernization of government.<sup>50</sup> Here we consider the dilemmas posed by this emphasis on actuarial justice and shared care for challenging the "gender fundamentalism" of violence.

Increased opportunities for targeting women Globalization has influenced the scope and the nature of violence against women. Globalization has brought different and more opportunities for violence from men to women in the UK and Japan, making poor women and girls especially vulnerable to entrapment, exploitation, abuse and enslavement. Violence against women has never been limited to the poor or underprivileged. Well-publicized media coverage of celebrity violence to partners highlights what the feminist anti violence movement has known for some time, that rich, famous or powerful men can be just as abusive and prone to violence as men who are poor. Women from all socio-economic groups, religions and cultures suffer sexual and domestic violence although the experience of abuse is often prolonged if a woman is isolated or lacks the resources needed to get away.<sup>51</sup> Cuts in welfare services in rich and poor nations have aggravated the feminization of poverty leaving women more vulnerable to abuser entrapment and with fewer options to support themselves outside an abusive relationship.

Economic globalization has brought an unequal distribution of resources, concentrating them in rich regions so that the world has been divided into rich "core" areas of wealth and capital and the poor "periphery." These divisions can be found within nations and between nations across the globe. The Japanese sociologist Harutoshi Funabashi (1992) used the concepts of "benefit zones" and "victimization zones" to refer to the uneven distribution of resources and environmental risks between Japan and poor regions such as the Philippines and Thailand. Funabashi argues up to about 1992, when the "bubble economy" burst, Japan's economic success was built upon the development of a "separate-dependent ecosystem," where benefits and resources flowed into Japan from poor nations and associated risks were transported out. As a "one way consumption society"

Japan occupied a "benefit zone" that drew resources from the world's poorer peripheral regions, or "victimization zones," that carried the social and environmental costs of consumption.

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<sup>50</sup> Giddens, 1994.

<sup>51</sup> Dominy & Radford, 1996; Mooney, 2000.



We argue that some of these ideas developed within risk theory can be applied to the globalization of violence against women and the unequal distribution of risk, responsibility and blame making. Men in Japan and in the UK have exported the risks associated with violence against women by increasingly targeting women and children who occupy the poor "peripheral" regions. In peripheral regions women are "outsiders" as they lack rights to protection and often carry both the responsibility and the blame for men's violence. Peripheral regions are geographical areas of poverty ("developing" societies or poor socially excluded areas in rich societies) but they also include intimate relationships where women and children lack citizenship and human rights and have as a result lower capacity to protect themselves from the risks of violence. Children, migrant, trafficked, socially isolated and poor women are more likely to find themselves in the periphery and vulnerable targets for male violence and abuse. Globalization has brought a decline in the regional overlap between "victimization zones" and the "benefit zones" for violence against women. Victimization zones for the sex trade correspond with areas of poverty where options for women's employment or self sufficiency are limited.

Wealthy countries such as Japan and the UK offer poor and migrant women the chance to earn a living.

Historically, victimization zones have also corresponded with areas of military activity where employment options for local people typically slump. South East Asian prostitution for example expanded with the military activity in the 1960s and 1970s when USA servicemen, posted to Vietnam and Korea, traveled to Thailand and the Philippines for leave. Sex tourism in those areas developed when the military pulled out and profiteers from the sex trade turned their attentions towards attracting "ordinary" tourists.<sup>52</sup>

Sex tourism has grown as transport and communication links have developed. Japan has the largest population of sex tourists in the world, men traveling to the Philippines, to Thailand, South Korea, Sri Lanka, Hong Kong and Australia to buy sex.<sup>53</sup> Sex tourism enables men to cut the risks of incurring responsibilities from sex. Women and girls carry the financial, social and health care costs of sexual disease, HIV, having abortions or raising children. Few are likely to have funds to raise paternity suits or to ask for child support or damages. This leaves them at particular risk from men demanding

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<sup>52</sup> Brown, 2000.

<sup>53</sup> ECPAT, 2003.

unprotected and violent sex. Poverty is not the only factor though affecting this expansion in sex tourism.

In the 1980s and 1990s the sex industry carried on growing in areas such as Thailand and the Philippines which had improved standards of living. The size of the sex trade in these areas means that prostitution can be an economically profitable area of work for some women and girls.

With globalization the boundaries between entrapment and slavery have become more blurred. The sale of women into sexual slavery or for marriage has been made easier by information technology and the shrinking of space and time associated with globalization. Human trafficking into prostitution and sexual slavery is big business, bringing profits in the region of \$7 billion per year in 1998, and it is growing worldwide.<sup>54</sup>

It is also less risky than trafficking drugs as the penalties in most countries are lower. Kelly and Regan (2000) have used the concept of a "continuum of control" to refer to the degrees of force, coercion and trickery used to get women into the sex trade. The continuum of control ranges from imprisonment to abduction to slavery through to debt bondage, deception and threats,<sup>55</sup> but women are also procured through friendship and strategies that use love.

There is no doubt that domestic violence contributes to the trafficking of women into the sex trade.

Trafficked women are not always unaware of the risks they may face. Hope of a better life may outweigh the risks. This fudging of the boundaries between coercion, love and no options makes it easier to blame women for "trapping themselves" in sexual slavery.

Even though prostitution is against the law there, Japan has had a notoriously tolerant approach to sex tourism, prostitution and to trafficking women.

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<sup>54</sup> Kelly & Regan, 2000, p. 16.

<sup>55</sup> Brown, 2000.



Around 1980 in a period of economic growth women from South Korea, Taiwan, China and the Philippines entered the country and started to work as "entertainers" in bars and nightclubs. The trafficking of women from Thailand also increased at this time. The number of Asian women who legally or illegally came to Japan, to work in the sex industry in the eighties and nineties is estimated to be more than one million. Women were lured to Japan, expecting to work in factories, hotels or restaurants, only to be sold by organized crime to local cabarets or bars at Narita Airport. Most entertainers were women from the Philippines. In 1991 alone, nearly 60,000 immigrants from the Philippines were permitted to enter Japan to work as entertainers. This exceeded the number who entered with short stay visas.<sup>56</sup> After the bubble economy broke in the middle of the nineties, the number of entertainers coming to Japan decreased but entrants are rising again. Trafficked women were burdened with debts ranging from 30,000 to 40,000 American dollars.<sup>57</sup> They were forced to work as prostitutes to payoff their debt. Most had only short-stay visas, leaving no choice but illegal work. Their situations were so pitiless that some of them committed suicide, or died in fires where they had been forcibly confined with no emergency escape. Others were abandoned after they became drug addicts. Still others ran away and some are still missing. Their status as illegal immigrants made it almost impossible for them to seek help. As far as we know, dozens of them have been killed in Japan. Some tried to escape from confinement by killing the bar managers who enslaved them and now face trials for murder. Three thousand women each year escape from brothels in Japan and flee to the Thai embassy in Tokyo.<sup>58</sup> Half a million women are estimated to have been trafficked into the EU area in 1995<sup>59</sup> but we do not know how many women and children are trafficked into the UK each year. A recent study for the Home Office found 71 cases of woman trafficking known to the police in 1998 but estimated the number trafficked that year could have been as high as 1420.<sup>60</sup> The main "supply" areas for trafficked women are regions of relative and absolute poverty—Thailand, Eastern and Central Europe. The UK is also a "transit" zone for trafficked women and children who enter the country and are then moved on to other parts of Europe. There has been particular concern about the transit of children and young people aged under 18, coming from West Africa (mostly Nigeria) into the UK and then on to brothels in North Italy. Fifty to sixty West African girls are known to have been trafficked this way in 1998.<sup>61</sup> The murder of Victoria Climbié has shown how vulnerable migrant children are and how easily they can be slipped through the net of child

<sup>56</sup> Jo & Tsutsumi, 1999, p.18.

<sup>57</sup> Tsutsumi, 1999, p. 29.

<sup>58</sup> Brown, 2000, p. 195.

<sup>59</sup> Kelly & Regan, 2000, p. 16

<sup>60</sup> Kelly & Regan, 2000, p. 22.

<sup>61</sup> Kelly & Regan, 2000, p. 19.

protection. Matchmaking via the web likewise offers women from poor nations marriage and the promise of a better life. There is as yet no research to indicate how trickery, enticement, entrapment, force and choice operate when women participate in matchmaking. Both the UK and Japan have seen an increase in the migration of women from overseas to marry resident men. Migration into the UK is still growing but to Japan it reached a peak in 1991, most migrant workers coming from SE and E. Asian countries such as South Korea, China, the Philippines and Thailand.

New technology has made it easier for men to entrap or to trick women and children into abusive relationships. Even though the internet is still an "elite club" (extending to less than 7% of the world's population with almost 90% of its users living in rich industrialized nations; Carr, 2001, p. 22) the free flow of information and images over the internet has vastly expanded the opportunities for woman abuse. The anonymity of the internet creates a smokescreen for abusers, reducing their risks of being caught and allowing them to target and groom vulnerable women and children or to access or offload pornography using video equipment and digital cameras without ever having to visit a sex shop. Internet pornography is big business giving opportunities for organized crime and for home abusers to financially profit from their crimes. Because much of it is illegal it is impossible to accurately estimate the extent of pornographic violence worldwide. There are few statistics and those that exist concentrate on areas where the problem has been acknowledged. Research and police reports however suggest a rapid expansion of pornographic materials on the internet in the past 7-8 years. Carr (2001) pooled some of this material to present to the 2nd World Congress Against the Commercial Sexual Exploitation of Children held in Japan in 2001. In 1996 a survey by an American market research company estimated the sales of adult pornography on the internet as being US\$52 million per year.<sup>62</sup> This was then the equivalent of one-tenth of all e-business done. A google search for child pornography in 2001 brought up 425,000 hits.<sup>63</sup> None of the 12 seizures of child pornographic images made by the police Obscene Publications Squad in the UK in 1996 involved seizures of images on computers while there were 41,000 images seized from computers in 1999.<sup>64</sup> Sales of printed pornographic images in high street magazines such as Playboy and Penthouse are declining as "customers" shift their attention towards the net. Playboy sales in 2000 dropped by 12%, while Penthouse sales fell from 3.5 million in 1980 to 850,000 in 2001.<sup>65</sup> Japan has a concentration of pornography, especially child pornography.

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<sup>62</sup> ECPAT, 2001.

<sup>63</sup> ECPAT, 2001.

<sup>64</sup> Carr, 2001, p. 17.

<sup>65</sup> Carr, 2001.



Over 3000 pornography websites have been found in Japan and 73% of the world's child pornography is said to have been produced there.<sup>66</sup> The net now offers the possibility for "virtual violence" using body "morphing" and computerized graphics portraying violent and sexualized abuse. Morphing techniques are so advanced it can be difficult to distinguish real from virtual violence.

The developments in communication technologies have increased abusers' scope to groom, monitor and stalk women and children. SMS (short message services) and mobile phones have played a major part in the Japanese problem of enjo kosai, so-called "compensated dating," where young girls are lured into commercial sexual exploitation and abuse by adults rather than pushed into it by poverty.<sup>67</sup> Enjo kosai involves men subscribing to a telephone chat club and paying to get a private phone call with a woman or a girl. The man then asks to meet the woman or girl for a date and agrees a price that can include a payment for sexual services. The Japanese press has reported cases of enjo kosai inappropriately, castigating schoolgirls for "choosing" to sell sex for cash to buy designer fashion wear.

Far less attention has been given to the men who think it is OK to buy sexual services from children. In 1999 a new law was introduced to help reduce the problem of prostitution and the commercial sexual exploitation of children in Japan.

The 666 cases of child prostitution via dating services filed for prosecution from January to November 2002 are probably the tip of an iceberg of sexual crime.<sup>68</sup>

Globalization has indeed made the world a "smaller place" as it has allowed the rapid transport of human beings, resources and information. It has opened up the sex trade and increased the scope for violent men to evade risks associated with crime control policies on violence against women at home by enabling them to entice, entrap or force women in the "periphery" into abuse and exploitation. Poor areas are the supply areas for trafficked and match made women and for women who go into the sex trade. Blame and

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<sup>66</sup> Carr, 2001, p. 23.

<sup>67</sup> Moriyama, 2001.

<sup>68</sup> ECPAT, 2003.

responsibility for managing the risks of victimization are unevenly spread and disproportionately borne by women and girls in the peripheral areas of victimization zones, where they lack rights to protection from violence. Even in Japan however where the scope to export risk is greatest, the majority of men who abuse women and girls, abuse those they know and live with.<sup>69</sup>

Violence against women is still very much a “home grown” crime. The growing awareness of risk The world has become a more dangerous place for women but we are also now more aware of violence and, arguably, less likely to accept it. In this section we look at fear of crime and domestic violence and continue with the argument that managing the risk of violent crime is a responsibility disproportionately carried by women.

Feminist activism has done much to uncover violence against women. Recent feminist activity on violence against women emerged in the UK in the 1970s when refuges first opened their doors to women experiencing domestic violence. These quickly filled to overcrowding. By the mid-1970s, a network of refuges had been established in the UK and the Women’s Aid movement was born. Feminist activists early on campaigned for policies that would enable women to separate from violent men—law reform, women’s welfare benefits, housing provision and emergency protection. Efforts have lately shifted on to the recognition of domestic violence as a crime like any other.

In Japan violence against women similarly came to the fore when counseling centers and shelters opened in the 1980s and 1990s to give help to sex workers and trafficked women. Japanese women started to come to these centers to get advice about domestic violence. The numbers of Japanese women who asked for advice about domestic violence at the Asian Women’s Center (which one of the authors and her feminist friends founded in 1997) were 49 in 1988, 88 in 1999, 202 in 2000, 341 in 2001 and 748 in 2002.

The globalization of human rights discourses also helped to highlight the problem of violence against women. After the United Nations Fourth World Conference on Women in Beijing in 1995, Japanese women exposed to international movements against violence against women, started to speak out and share experiences. In 2000 violence against women became part of the government’s gender equality strategy. A new law on domestic violence was introduced which became active in 2001. Recorded crimes of domestic

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<sup>69</sup> Prime Minister’s Office, 1999.



violence against women have since then sky-rocketed. Two hundred and thirty-three protection orders were granted in the four months between October 2001 to February 2002.<sup>70</sup> Reports of indecent assaults have also grown dramatically from 1875 in 1989 to 3649 in 1997, although rape reports have stayed nearly the same.<sup>71</sup> There is a huge undercounting of these crimes. It is estimated that less than 1% of Japanese women who experience domestic violence contact the police.<sup>72</sup>

Since the early 1980s, similar trends have existed in crimes of violence against women reported to the police in the UK, although the victim accounts in the British Crime Survey have been showing a decline now since 1996.<sup>73</sup> It does appear that women are less likely to tolerate domestic violence from their partners and more are coming forward to report these crimes, but nonetheless it remains a huge problem.

The media has helped to inform women of help that is available. There has been increased coverage of violence against women in newspapers and by television stations in the UK and Japan. In the UK in 2003 the BBC ran a week long series on violence against women that was designed to raise awareness and challenge attitudes. Despite the widespread coverage of domestic violence, research on fear of crime shows women's growing fears about "stranger danger" rather than violence from known men.<sup>74</sup> Dangerous men tend to be strangers, opportunistic rapists, paedophiles and child molesters, only rarely are they portrayed in the media as the "family man" or "father." This affects the actions women take to ensure their personal safety. Advice for women on safety has proliferated in the UK since the 1980s ranging from advice on how to drive safely to where to walk when venturing out alone. Women's perceptions of victimization zones are more likely to be geographically situated outside the home-unsafe places to walk, especially at night. It is only very recently that we have seen a limited amount of guidance for women on how to be safe from domestic violence and still the emphasis is on what to do when women are abused, rather than on how you could prevent it. Domestic violence is apparently inevitable. There has been a proliferation of advice for parents and children, similarly focusing on stranger-danger and the risks for children outside of the home. There is hardly any safety advice for men, even though young men are the group most likely to experience a violent

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<sup>70</sup> Cabinet Office, 2002, p. 27.

<sup>71</sup> Prime Minister's Office, 1999, Chap. 3.

<sup>72</sup> Cabinet Office, 2002, p. 25.

<sup>73</sup> Simmons & Dodd, 2003.

<sup>74</sup> Simmons & Dodd, 2003.

crime.<sup>75</sup> Responsibility for crime control falls disproportionately upon women, as it is women who carry responsibility for their safety.

Blame is diverted from the abusive man at home on to dangerous strangers and back on to women who "fail" to protect themselves and their children.

In Japan, media facilitated moral panics about rising crime have centered on the de-traditionalization of the family and the lack of discipline of youth.

Bullying, abuse to parents, refusal to go to school and child abuse are examples of recent moral panics covered by the Japanese press.<sup>76</sup> The family, once viewed as the support strut for Japan's economic strength, is now viewed as being at the root of all its social ills. Women and children disproportionately carry the blame for this moral decline.

Prominent members of the Japanese government have excused male violence on the grounds that women's reluctance to marry and reproduce has left Japanese men frustrated by their "overwhelming" sexual urges.

Gang rapists have been almost congratulated for acting "normally" and being "virile".<sup>77</sup> The Chief Cabinet Secretary Yasuro Fukuda was reported to have similarly "justified" a gang rape by university students on the grounds that the victim's dress provoked the attack; It is wrong for women to dress mostly naked. Men are black panthers, so leniency can be thinkable for the rapists.<sup>78</sup>

The anti-feminist backlash in the UK and in Japan has exerted a powerful countervailing influence on attitudes about the causes and acceptability of violence, especially in times of economic uncertainty. In the next section we argue that in the UK the anti feminist backlash has sustained opportunities for men's violence by hijacking the rhetorical plea for "equality" in the family. Attitudes about "equality" have raced ahead of

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<sup>75</sup> Simmons & Dodd, 2003.

<sup>76</sup> Goodman, 2002.

<sup>77</sup> Seichi Ota, 2003.

<sup>78</sup> Yasuro Fukuda, Japan Today, Wednesday July 9 2003



many people's experiences, especially women's. More women are reporting domestic violence to the police but research in the UK shows beliefs in the acceptability of violence against women persist. Recent research on young people and domestic violence found a third of all the boys questioned and one in five girls expressed views that suggested their acceptance of domestic violence.<sup>79</sup>

Risk and crime in the family In this section we look at the recent history of crime control, risk management and gender equality strategies in relation to violence against women in the UK, with reference to trends in Japan. Feminist activism has been affected by globalization, enabling a sharing of ideas and strategies for the prevention of violence against women. In the UK and in Japan, feminist activism against violence has taken place within a policy context of crime control, where risk assessment and risk management have become increasingly important. We look at the dilemmas posed by the risk discourse for feminist activism and how the risk discourse has also contributed to the blame shifting and renewed minimization of domestic violence.

We argue that the UK has become both safer and riskier for women as government policies on crime reduction have been contradicted by family policy.

Criminologists have argued that actuarialism is now a key plank of social control in late modern societies.<sup>80</sup> Individuals, especially women, are put in positions where they control themselves through the everyday performance of vigilance over personal and family safety. On the "left" of the political spectrum, concerns about crime, equality and justice have, depressingly, given way to a new preoccupation with the calculation of risk and harm minimization. The goals have been shifted away from a vision of a world free of crime to one where risk is contained with the help of techniques of risk assessment and risk management. Government crime control policies in the UK have encouraged an individualization of responsibility to deal with crime so that individuals are expected to monitor their own risks and vulnerabilities and take steps to protect themselves from violent crime. Increasingly agencies such as the police and probation service manage their workloads and meet targets by focusing resources upon the most dangerous individuals. Risk assessment is becoming a routine part of the management of "dangerousness" and of violent and sexual crimes.

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<sup>79</sup> Mullender et al., 2002, p. 70.

<sup>80</sup> Young, 2002.

Criminal justice responses to domestic violence are clear examples of this dominant concern about risk and life threatening abuse. In this sense we can see a convergence between policies in the UK and in Japan, where the new domestic violence law protects women only from life or health threatening violence from partners.

Feminist global activism has brought a sharing of the techniques of crime control across the globe, most flowing from the USA into the UK and elsewhere. Information on homicide reduction, curricula for perpetrator re-education and risk assessment and management techniques have been widely disseminated and franchised. There is no doubt that this global activism and the sharing of ideas and strategies have brought some significant advances in policy and practice.<sup>81</sup> One example of this shared experience is the SARA, the Spousal Assault Risk Assessment guide which is used in interviews with victims of domestic violence by agencies such as the police. The SARA assesses risk to a victim with reference to "risk indicators" drawn from research on domestic fatalities. The SARA, developed in the USA, is fast becoming the major tool in risk management for domestic violence for the police and probation service in the UK.

While risk management has been viewed suspiciously by criminologists as being strongly associated with the rationing of resources,<sup>82</sup> feminist collaborative activities on risk and violence against women have been motivated more by the much broader strategic aims of "uncovering" violence and getting it "taken seriously" by agencies like the police and courts. A whole area of work has developed in relation to "screening" for domestic violence in health care settings and in screening and risk assessment for cases in the family courts.<sup>83</sup> Risk assessment in feminist activism is about getting better resources for victims of crime and a greater sharing of responsibility to prevent men's violence. This offers both promises and pitfalls. On the one hand risk management offers an opportunity for feminist activists to open up a dialogue with key agencies such as the police and probation about basic standards of service response, albeit limited to the women most at risk of being killed. The allocation of resources to meet this responsibility might however invoke rationing strategies and deny protection for the majority. With reference to the SARA for example, an overemphasis upon severe and repeat

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<sup>81</sup> see, e.g., Hanmer & Itzin, 2000.

<sup>82</sup> Young, 2002.

<sup>83</sup> Hester, Pearson, & Radford, 1997.



victimization might result in a poorer first response for women who are assessed not to be at risk of lethal violence or repeat assaults.

Engagement with this limited discourse on risk management could divert energies away from the broader matter of gendered violence and meeting women's human rights.

There is another way in which the risk discourse is of ambiguous benefit. We have already argued that the risk discourse allows blame shifting. Within crime control policies violent men are criminals and in this sense "dangerous men." Although it is still the case that the degree of dangerousness declines as the closeness of relationship with the victim increases<sup>84</sup> crime control policies have brought limited recognition of domestic violence as a "crime" and there have been sanctions on some men.<sup>85</sup> Masculinities have been transformed so that violence, men's "roles" in the family and responsibilities as fathers have been re-thought. The "breadwinner father" has given way to the "caring father" and the "violent man" has become separated from the family and isolated into the position of the "dangerous stranger".<sup>86</sup> With the re-thinking of masculinities we have seen a re-thinking of responsibilities, risks and blame in the UK and in Japan (although differently).

Sociologists and policy makers in the UK have optimistically viewed the de-traditionalization of the family and the increased involvement of women in paid work as a potential liberation for women. It is assumed this will bring a change in attitudes and behavior as men take on more care work and responsibilities are equalized.<sup>87</sup> In the UK the equality goal has brought an enhancement of fathers' rights and (notionally also) their responsibilities on separation and divorce. In the late 1990s in the UK father deprivation became the root of many ills in society. The victimized modern man was caricatured as deprived of his children, emasculated and downtrodden by the woman who financially drained him for alimony. Men lost their breadwinner function and children became highly prized emotional capital that both men and women could fight for in the courts.<sup>88</sup> Legal concepts such as "parental responsibility" now tie separated women to an ongoing relationship with the biological fathers of their children.

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<sup>84</sup> see Lees, 1997 for an excellent discussion.

<sup>85</sup> Hoyle, 1998.

<sup>86</sup> Collier, 1995.

<sup>87</sup> Giddens, 1994.

<sup>88</sup> Smart, Neale, & Wade, 2001.

In practice this means men have gained control over women's parenting after separation without seriously being required to make much commitment to the financial or practical care and support of children. Men's involvement with children is optional, on a take-it-or-leave-it basis. For women motherhood, once embarked upon, becomes a duty, nature's intent, a life plan to which we are expected to aspire. As Carol Smart once put it, fathers "care about" children while mothers "care for" them.<sup>89</sup>

The building of fathers' rights and responsibilities has given violent men a free rein to abuse women and children after separation. As domestic violence has been gaining recognition as a crime, men denied access to ex-partners by domestic violence law have sought it instead through their children. The state's failure to challenge violent fathers has forced mothers to take risks with their own and with their children's safety. Resistance by mothers or children to the father's attentions is not taken by the courts as evidence of reasonable fears but as the woman's churlish failure to sign up to the equality compact.

Maternal resistance to a violent father's contact with children is viewed by courts as maternal hostility, parental alienation or, worse still, as her mental illness.<sup>90</sup> In the UK the government is presently investing in further support for "equal parenting" by funding child visitation/contact services. We do not want in any way to suggest that child contact services are not a worthwhile investment for children's wellbeing. We accept the view that children have a right to know their parents. It could also be argued though that the right needs to be thought through carefully so that the child's right to safety is not compromised. A recent survey in England by Women's Aid found a worrying trend for courts to ignore the safety of women and children. Eighteen children were found to have been ordered by courts to have contact visits with parents who had been convicted (under S1 of the Protection of Children Act 1999) of an offence of violence against children.<sup>91</sup> Women's services,<sup>92</sup> children's services<sup>93</sup> and eminent child psychiatrists<sup>94</sup> have all said that contact centers do not always benefit all children. It may sometimes be in the interests of a

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<sup>89</sup> Smart, 1989.

<sup>90</sup> Radford, Sayer, & AMICA, 1999.

<sup>91</sup> Saunders & Barron, 2003, p. 46.

<sup>92</sup> Saunders, 2002,

<sup>93</sup> Children Act Sub-Committee, 1999.

<sup>94</sup> Sturge & Glaser, 2000.



child to have time to recover and not to have an ongoing visiting relationship with an abusive father.

In the UK the re-thinking of fatherhood has pushed responsibility for managing violence and protecting children on to victimized women. Blame shifting has taken a different path in Japan. In Japan, the male breadwinner/dependant wife model of welfare began to change later than in the UK, when women entered paid employment in the 1980s. Japanese women now stay single for longer, marry later and have fewer children than women in other industrialized countries (apart from Italy). Divorce rates are also rising so women are more likely to exit unhappy relationships than ever before. A growing number of men are having a hard time finding partners. One in five men aged 35–39 in Japan are unmarried.<sup>95</sup> We showed earlier that this trend for women to avoid marriage has been linked by the media and politicians to the frustration of Japanese men's "natural" overwhelming sexual "urges" and their "need" to export abuse via sex tourism, woman trafficking, bride sales and match making.

The assumption that Japanese society was previously non-violent but has recently degenerated (mostly because of women's flight from marriage) needs to be challenged. The rapid exit of older Japanese women into places of safety and refuges indicates that domestic violence has long existed in Japanese families but, up to now, it has been a "hidden" crime and part of "normal" family life. The sex trade grew in Japan in the context of this traditional patriarchal family and ballooning economic growth. Japanese men were able to express their success through violent sexuality and the commodification of women's bodies.

Economic recession has left men less able to express their "success" by commodifying women. Economic slowdown has brought increased victim blaming and calls for a return to "old family values."

Moral panics over the family in Japan have situated most blame ultimately on women and mothers<sup>96</sup> and have done little to challenge this Japanese version of hegemonic masculinity,<sup>97</sup> where "successful men" have a high capacity for sexual violence.

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<sup>95</sup> Kokuritsu Shakai Hosho Kenkyusho [National Institute of Population and Social Security, 2003.

<sup>96</sup> Goodman, 2002.

<sup>97</sup> Connell, 1995.

In this section we have argued that government policies on domestic violence crime control and on gender equality in the family have had contradictory results. Feminist activists in the UK have supported crime control and risk management as part of the strategy to have domestic violence recognized as a crime. But gender equality measures aimed at involving fathers more in care have failed most women and put abused women at greater risk of post-separation violence. Japanese feminists might treat warily the government slogan that "real men care for children."

Risk, justice and women's rights Much of this paper has been about blame shifting and responsibility for managing violence and risk. Risks and capacities for risk management are distributed unequally and socially excluded women and children continue to bear the brunt of men's violence.

Blame shifting has inevitably taken different routes in the UK and Japan because the social, political and cultural contexts in which this repositioning of blame occurs differs. In UK law, social policy and the media, representations of fatherhood have undergone radical reconstruction in recent years.<sup>98</sup> One challenge for feminist activism in the UK is the marrying up of "dangerous men" with "fathers" so that men who are fathers take on responsibilities to provide care for children in the context of relationships with women that are truly equal and not abusive. In Japan, feminists face the challenge of turning around a victim blaming culture by pushing on to men some of the responsibility for violence and the commodification of women's bodies. This will not happen without men and women working together to challenge men's behavior and to deconstruct and expose the violence in the hegemonic masculinity of "successful men."

Privileges are not lightly abandoned. Sociologists of risk and modernity have argued that a "boomerang effect" can limit the extent to which the rich can offload risks on to the poor.<sup>99</sup> Transported risks such as environmental pollution caused by waste products ultimately boomerang back to effect the health of the rich. The boomerang effect does not really exist in relation to the transportation of the risks associated with acts of violence against women because third world women are the most "disposable" people.<sup>100</sup> Disposability allows "first world" men to enjoy the benefits of violence, enforcing their expectations on women to perform sexuality,

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<sup>98</sup> Collier, 1995.

<sup>99</sup> Beck, 1992.

<sup>100</sup> Bales, 2000.



femininity and motherhood without worrying about the costs of violence—arrest, stigmatization, owing responsibility through partnership or fatherhood. The creation of a boomerang effect for some of these crimes would be a major advance in women's human rights as it would make "third world" women less vulnerable because their abuse would carry costs. We have seen some progress made to date through the international police collaboration to establish baseline data on trafficking and prostitution and the creation of legal sanctions to internationally target perpetrators who travel overseas for child abuse and sex tourism.

A boomerang effect could be enhanced by deconstructing victim blaming, improving access to justice for migrant, minority, poor and young women and targeting responsibility on to perpetrators. This could help to control and limit men's violence. The emphasis on risk and responsibility holds a limited promise for feminist anti-violence activism because the overriding emphasis is on containment rather than the elimination of the injustice of violence and abuse.

We need to be aware of these limitations and keep sight of the broader project for global justice and women's rights.<sup>101</sup>

As public recognition of domestic violence (DV) and sexual assault (SA) has reached increasing heights, there has been an outcry for more effective prevention programs. This outcry is based on an understanding of the widespread nature of this problem and the incredible costs to victims and society as a whole. This document summarizes the development of prevention initiatives in these two related areas. However, we caution that DV and SA prevention initiatives and evaluation research on them are in their infancy. Therefore, this review points out trends and promising developments rather than definitive directions in the field. Although the research has many shortcomings it leads to important suggestions for prevention strategies.

Research in this burgeoning field needs to inform prevention. Many of the contributing risk factors for sexual and physical assault perpetration have been identified in childhood and adolescence, and these need to be

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<sup>101</sup> Globalization and violence against women – inequalities in risks, responsibilities and blame in the U.K. and Japan, Lorraine Radford, Kaname Tsutsumi, School of Business, University of Roehampton, U.K. and Kyushu International University, Fukuoka, Japan.

incorporated into prevention goals. For example, peer attitudes,<sup>102</sup> past experiences of child maltreatment,<sup>103</sup> and substance abuse in adolescence<sup>104</sup> have all been linked to greater risk of dating violence, domestic violence, and sexual assault. Changing the norms and climate about relationships and providing students and teachers with the skills needed to foster healthy relationships is the only viable way to shift from a crisis orientation to one of prevention in response to these related forms of violence.

In preparing this document we took the perspective that DV and SA are gender-linked crimes based in cultural and societal values affecting gender inequality and abuse of power and control.

In conjunction with this perspective, DV and SA researchers and practitioners have drawn from a variety of related theoretical perspectives in their prevention efforts, ranging from feminist and sociological views of broad societal influences to individually-focused cognitive and behavioral skill deficits, which are reflected herein.

### **Prevention Strategies**

Prevention efforts are generally considered in terms of primary, secondary, and tertiary. Primary prevention involves efforts to reduce the incidence of a problem among a population before it occurs. The goal of secondary prevention is to target services to select (at-risk) individuals, in an effort to decrease the incidence of a problem by reducing known or suspected risk factors.

Tertiary prevention involves attempts to minimize the course of a problem once it is already clearly evident and causing harm, which in the current instance involves the identification of domestic violence and sexual assault perpetrators and victims, control of the behavior and its effect, punishment and/or treatment for the perpetrators, and support for the victims. Because tertiary efforts are intended more as intervention aimed at current needs as well as prevention of future harm, this document reviews only primary and secondary prevention strategies and their current research status.

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<sup>102</sup> Reitzel-Jaffe & Wolfe, 2001 .

<sup>103</sup> Wolfe et al., 2001 .

<sup>104</sup> Wekerle & Wall, 2002



In terms of DV and SA, primary prevention strategies introduce new values, thinking processes, and relationship skills to particular population groups that are incompatible with violence and that promote healthy, non-violent relationships. For example, resources can be used to focus on respect, trust, and supportive growth in relationships. A clear advantage is that these efforts can be targeted universally, at broad population groups, such as school-age children or members of a particular community. Secondary prevention efforts are directed toward identified individuals who have exhibited particular behaviors (e.g., dating violence) or possess certain risk factors (e.g., male; prior exposure to violence) that are associated with domestic violence and sexual assault. As described below, examples of sexual assault secondary prevention include programs for first year college students who have a history of victimization or problems with substance abuse, which are associated with dating violence and sexual assault.<sup>105</sup>

### **Primary and Secondary Prevention of Domestic Violence and Sexual Assault Developmental and Gender Considerations**

A starting point for prevention programs is deciding on the target age and the best venue for delivering the program. For example, most adolescent programs are designed for a high school (classroom) venue, whereas adult prevention efforts utilize the mass media and workplace to challenge attitudes and behaviors that support violence towards women. There are also considerations regarding variation in program delivery according to the gender of the target audience. Programs on dating violence, for example may create backlash among boys if they identify the program as an attack on males in general,<sup>106</sup> and unique strategies may be needed for different ages and both sexes. In our experience girls are often more interested in discussing these sensitive issues and willing to role-play social situations relevant to prevention of DV and SA, whereas boys are more resistance and reluctant to do so. Unique strategies for male participation may include involvement of popular male peer and teacher role models, and more graduated approaches to introducing the underlying social issues and factors contributing to DV and SA.

A further consideration in the development of prevention programs in both areas is the identification of the crucial prevention targets. With adolescents and adults, one can explicitly name the problem of domestic violence and sexual assault. However, with younger children prevention

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<sup>105</sup> e.g., Lonsway & Kothari, 2000.

<sup>106</sup> e.g., Hilton, Harris, Rice, Krans, & Lavigne, 1998.

efforts are more often tied to the early factors associated with domestic violence and/or sexual assault later in life.<sup>107</sup>

In general, prevention programs are intended to clarify inappropriate attitudes and behaviors and offer positive alternatives. In essence, most prevention efforts are psychoeducational strategies, rather than treatment services, aimed at a broad sector of the population. Several illustrative programs are described below that reflect the current state of prevention research in domestic violence and sexual assault, followed by a critical analysis and implications of the literature.

### **Programs for Elementary-Aged Children**

Schools are an ideal place in which to introduce primary prevention programs to a wide range of children. Much of children's social learning takes place in schools, and influences the development of behaviors and attitudes supportive of interpersonal violence in its many forms.

Prevention programs capitalize on these factors by introducing discussion of personal safety and injury prevention in the classroom, and by integrating such discussion within the context of trusting relationships. The material is introduced at a general level of understanding for younger age groups;<sup>108</sup> sexual and physical violence, personal responsibility, and alternatives to violence are more directly approached in high school and college programs.

Community programs have sometimes collaborated with schools in an effort to raise awareness and prevent future violence.<sup>109</sup> One of the key values inherent in these primary prevention programs is the belief that every student needs to be aware of DV and SA. Even if students never become victims or perpetrators, they may have opportunities in the future, as community members, to help others in preventing or stopping these assaults. These model programs sometimes include involvement of parents and other members of the broader community, in an effort to affect broader change.

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<sup>107</sup> e.g., being exposed to domestic violence while growing up; Graham-Bermann & Edleson, 2001.

<sup>108</sup> Jaffe, Wolfe, Crooks, Hughes, & Baker, in press.

<sup>109</sup> National Council of Juvenile and Family Court Judges, 1998.



One of the first programs to document efforts to prevent domestic violence by working with children in the schools was implemented by the Minnesota Coalition for Battered Women,<sup>110</sup> and recently updated around the themes that "hands are not for hitting" and students' "choice" for alternatives to violence.<sup>111</sup> This excellent program is one of the few that explicitly addresses the root causes of violence, such as racism, classism, sexism, ableism, heterosexism, etc. Preliminary evaluations of this and related programs are promising and indicate that key elements of successful school-based programs include: identifying relationship violence as a form of societal violence; acknowledging that DV and SA are abuse of power and control; creating a high enough level of trust that children can disclose exposure to domestic violence and teachers can make appropriate referrals; teaching safety skills about what to do when domestic violence occurs; and encouraging social skills development like conflict resolution as alternatives to violence.<sup>112</sup>

### Adolescents and Young Adults

Early- and mid-adolescence offers a unique window of opportunity for prevention efforts to make teens more aware of how violence in relationships can occur and to teach healthy ways of forming intimate relationships. Late adolescence and the early adult years are also critical periods of transition. In fact, college students are seen as so high-risk for partner violence and sexual assault that some researchers argue institutions should provide universal programs to address the magnitude of these issues.<sup>113</sup> When offered opportunities to explore the richness and rewards of relationships, teens and young adults often show a greater interest in learning about choices and responsibilities. Clear messages about personal responsibility and boundaries, delivered in a blame-free manner, are generally acceptable to this age group, whereas lectures and warnings are less helpful.<sup>114</sup>

DV and SA prevention among this critical age group has focused on dating violence that often includes, by definition, psychological, physical, and sexual abuse. Although the literature approaches dating violence and sexual assault prevention as separate topics, they overlap considerably, especially from a prevention standpoint. Programs on rape prevention focus on violence committed by strangers, acquaintances, work colleagues, and intimate partners, which overlap with dating violence initiatives in terms of lessons

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<sup>110</sup> Gamache & Snapp, 1995.

<sup>111</sup> Minnesota Coalition for Battered Women, 2000.

<sup>112</sup> e.g., Sudermann, Jaffe, & Schieck, 1996.

<sup>113</sup> Koss & Harvey, 1991.

<sup>114</sup> Dryfoos, 1991.

about inappropriate attitudes and behaviors. More recently programs have incorporated content on the influence of drugs and alcohol and, in particular, "date-rape" drugs that allow perpetrators to incapacitate potential victims. Recognizing the overlap between DV and SA is important, without allowing drugs and alcohol to become an excuse for the perpetrator or an opportunity to blame the victim.

Primary prevention programs delivered universally through high schools often involve activities aimed at increasing awareness and dispelling myths about relationship violence and sexual assault. Such activities include school auditorium presentations involving videotapes, plays, professional theatre groups, or a speech from a DV or SA survivor; classroom discussions facilitated by teachers or service providers; programs and curricula that encourage students to examine attitudes and behaviors that promote or tolerate violence; or peer support groups.

Some school-based programs have resulted in youth-initiated prevention activities such as theatrical presentations to younger children and marches and other social protests against violence.<sup>115</sup>

A recent controlled evaluation of universal sexual assault prevention involved a coeducational program for teens on preventing sexual coercion in dating situations.<sup>116</sup> The program involved challenging existing attitudes about coercive sexual behavior, and learning ways to deal with unwanted sexual advances through clear communication. The program was innovative in its use of video and an interactive "virtual date."

Results indicate that students with more negative attitudes about sexual assault benefited the most from the program, which supports the use of educational strategies to reduce risk factors among this age group. Similar initiatives have been undertaken with college-aged populations.<sup>117</sup>

Although DV and SA cross all races and social classes, some sexual assault prevention programs are aimed at high-risk groups, such as males from abusive family backgrounds, in an attempt to reduce sexual assault by

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<sup>115</sup> Sudermann et al., 1996.

<sup>116</sup> acifici, Stoolmiller, & Nelson, 2001.

<sup>117</sup> (Foubert, 2000 ; Gidycz et al., 2001 ; Lonsway & Kothari, 2000).



targeting rape myths and coercive behaviors. For example, Schewe and O'Donohue (1996) evaluated cognitive-behavioral approaches that address beliefs that promote or condone coercive sexual behavior, as well as increasing empathy for the plight of sexual assault victims. A strength of this study was its involvement of participants from diverse cultural backgrounds, which were randomly assigned to treatment or control conditions. Using self-report, this investigation determined that cognitive-behavioral intervention was effective primarily at changing rape-supporting attitudes and beliefs in a high-risk sample. Other researchers have approached high-risk groups, such as fraternities, which may support inappropriate male attitudes that condone sexual assault. A promising approach in this regard involves young men's groups that engender empathy for sexual assault survivors, which found a significant reduction in rape myth acceptance over a seven-month period.<sup>118</sup>

Recent school-based dating violence prevention programs have also shown favorable outcomes in terms of reducing reports of physical, sexual, and emotional abuse towards and by dating partners.<sup>119</sup> Primary prevention programs have approached this topic through school-based curricula that address specific skills and knowledge opposing abusive behavior toward romantic partners. These curricula have primarily used didactic approaches to orient students to the different ways in which abuse and violence may be expressed, and examining their own attitudes and gender role stereotypes.<sup>120</sup> Foshee et al. (1996 ; 2000 ), for example, examined the effects of a dating violence prevention program ("Safe Dates") on psychological, physical, and sexual abuse in young adolescents. Over 1500 grade 8 and 9 students participated in 10 classroom sessions and related activities, such as a poster contest. This is one of the few studies that included a follow-up to explore long-term prevention effects. Although some of the positive behavioral changes had disappeared at a one-year follow-up, some of the critical changes in variables that mediate dating violence (e.g., dating violence norms, conflict management skills, and awareness of community services for dating violence) were maintained.

In addition to school-based programs for adolescents, community-based programs with secondary prevention goals have been developed to target youth at-risk of dating violence. The Youth Relationships Project was developed to assist adults in empowering youth to end violence in

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<sup>118</sup> Foubert, 2000.

<sup>119</sup> Wekerle & Wolfe, 1999.

<sup>120</sup> Avery-Leaf et al., 1997 ; Lavoie, Vezina, Piche, & Boivin, 1995.

relationships (their own and that of their peers) through education, skill development, and social competence.<sup>121</sup> The program material takes teens from high-risk (i.e., abusive) backgrounds through a process of learning about the issue, about themselves, and then expands their efforts to affect change within their peer groups, the teen culture and the broader community. It reflects an incremental strategy aimed at self-awareness and social change (i.e., examining oneself first, and moving on to one's peers, school environment, social institutions, and cultural influences), which is delivered through an 18-session program in community settings. Two-year follow-up results involving random assignment to the intervention or control condition support this approach in reducing threatening behavior toward dating partners, as well as physical and emotional abuse perpetration.

### **Adults**

Public awareness campaigns such as public service announcements and advertisements are common approaches to primary prevention of DV and SA with adults. These campaigns typically provide information regarding the warning signs of violence and community resources for victims and perpetrators. Over the past quarter century sexual assault centers and shelters for abused women have played a leadership role in these public awareness strategies. A comprehensive public education campaign developed by the Family Violence Prevention Fund (FVPF) in collaboration with the Advertising Council included television advertisements delivering the message that there is no excuse for domestic violence and making referrals to local domestic violence services.<sup>122</sup> Telephone surveys conducted over two years showed decreases in the number of people who said they did not know what to do about domestic violence, did not believe it was necessary to report it, felt it was no one else's business, and believed that the problem of domestic violence was exaggerated by the media.

However, the results also showed that men were more likely than women to believe women provoke men into physically abusing them, and to feel that the media exaggerated the prevalence and harms of domestic violence.

### **Design and Measurement**

Prevention efforts in both domestic violence and sexual assault have been criticized for a lack of clear evidence of prevention of the target

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<sup>121</sup> Wolfe et al., in press.

<sup>122</sup> Klein, Campbell, Soler, & Chez, 1997.



behaviors. Most programs have used proxy measures, such as changes in attitudes and knowledge, to conclude that risk has been decreased. Behavioral indices, although more valid, are plagued by ethical, practical, and even definitional concerns.<sup>123</sup> Unfortunately, there are often few reasonable alternatives for obtaining information about private relationships other than self-report, which usually involves some estimation of victimization and perpetration. For example, boys may interpret "hit" as involving a closed-fisted punch, whereas girls may see this more broadly (i.e., an open-handed slap). Similarly, boys tend to describe force as psychological pressure, whereas girls describe it as physical force.<sup>124</sup> Finally, very few prevention programs target couples, which may be more appropriate both for intervention and evaluation.

Researchers urge caution, therefore, on overextending these results subject to further evaluation.

Sexual assault prevention programs (for example) have shown mostly short-term reductions in rape-supportive attitudes, with insufficient evidence to conclude that such programs are effective in reducing the incidence of sexual assault.<sup>125</sup> Furthermore, most of the impact (especially in brief, knowledge-based programs) disappears or diminishes over time.

### **Program Delivery**

The proper "timing" of prevention efforts remains unknown, and may have considerable importance in terms of "readiness to learn." For example, risk of abusive behavior and opportunities for change in early adolescence (when mixed sex groupings are more typical) may differ from those of mid- to late adolescence, when dyads are more common. These studies often reveal that teens were already reporting considerable amounts of abusive behavior at the initiation of the prevention effort. Similarly, debate continues regarding the optimal locale for dating violence prevention efforts. Community-based, rather than school-based, programming permits youth with common needs and strengths to become involved in their own communities, and to feel safer in participating in unfamiliar activities without fear of peer interference. However, school-based programs have the advantage of greater access to youth, space, time, and personnel. Even more fundamental is the elimination of any targeting or labelling of persons receiving the program by offering the program universally. School-based prevention concerning dating violence and

<sup>123</sup> see, for example, Yeater & O' Donohue, 1999; Wekerle & Wolfe, 1999.

<sup>124</sup> Muehlenhard & Cook, 1988; Watson, Cascardi, Avery-Leaf, & O'Leary, 2001.

<sup>125</sup> Breitenbecher, 2000 ; Foubert, 2000.

sexual assault, however, must be equally sensitive to special needs (e.g., disclosures of past or current abuse in the classroom), and the importance of providing a safe place to discuss personal beliefs and attitudes.

Other programmatic considerations that merit brief mention include avoiding a "one size fits all" approach that ignores culturally relevant information and differences;<sup>126</sup> determining the best "dosage" of information and training (i.e., some programs are one shot, while others are extended over 10-20 lesson plans over several months); the possible role of "booster sessions," familiar to most other forms of prevention (e.g., delivering the curriculum over multiple sessions, with follow-up and new age-appropriate information); and the possible interference of "backlash," which has been noted following education in sexual and physical assault prevention (i.e., boys sometimes get worse in their attitudes after learning more about these issues; Hilton et al., 1998). Backlash has also occurred due to some programs' failure to recognize "mutual violence" common among younger adolescent dating couples (i.e., while domestic violence is more often unilateral between adults, in mid-adolescence both girls and boys may engage in these behaviors; Chase, Treboux, & O'Leary, 2002), suggesting that violence and abuse have not as yet become an adult-like pattern. Program lessons that do not reflect this "reality," or fail to tailor the materials to the level and motivation of the intended audience, may fail to meet their expectations.<sup>127</sup>

### **Practical Implications**

We are currently at a crossroads regarding the role of school- and community-based programming in preventing domestic violence and sexual assault. There has never been greater awareness of the issue of violence, but at the same time society has never been more polarized in deciding how to respond: reactively or proactively. There is a clear need for these two fields to become more integrated in their approach to prevention. Historically, there have been separate movements to address sexual assault and domestic violence, which have led to different services such as rape crisis centers and shelters for battered women. Underlying these social problems are similar risk

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<sup>126</sup> Heppner, Neville, Smith, Kivlighan, & Gershuny, 1999.

<sup>127</sup> Jaffe et al., in press.



factors at the individual, family, community, and societal levels. Recognizing these similarities should lead to a common purpose in prevention efforts and greater collaboration among local, state, and federal government initiatives, social agencies, and community mobilization efforts. It is now necessary to move beyond small local programs scattered across various communities to comprehensive evaluations and research that will support broader prevention efforts.<sup>128</sup>

As the field of DV and SA prevention develops, there will be a remaining challenge to ensure programs are implemented on a comprehensive and consistent basis. The best program in the world is futile if it gathers dust on a resistant principal's bookshelf, surrounded by the silence of other educators, parents, and students. An open, collaborative process based on respect, trust, flexibility, and communication is needed to advance evaluation efforts with community- and school-based programs.<sup>129</sup> Despite significant challenges, prevention efforts remain a very promising approach to reducing domestic violence and sexual assault.

As public recognition of domestic violence (DV) and sexual assault (SA) has reached increasing heights, there has been an outcry for effective prevention programs. This outcry is based on an understanding of the widespread nature of this problem and the incredible costs to victims and society as a whole. This document summarizes the development of prevention initiatives in these two related areas. Because DV and SA prevention initiatives have not been fully evaluated, this review identifies trends and promising developments rather than definitive directions in the field.

Schools are an ideal place in which to introduce primary prevention programs to a wide range of children. Much of children's social learning takes place in schools, and influences the development of behaviours and attitudes supportive of interpersonal violence in its many forms.

Prevention programs capitalize on these factors by introducing discussion of personal safety and injury prevention in the classroom, and by integrating such discussion within the context of trusting relationships. Early- and mid-adolescence offers a unique window of opportunity for prevention efforts to make teens more aware of how violence in relationships can occur

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<sup>128</sup> Wolfe & Jaffe, 1999.

<sup>129</sup> Shapiro & Rinaldi, 2001.

and to teach healthy ways of forming intimate relationships. Late adolescence and the early adult years are also critical periods of transition. In fact, college students are seen as so high-risk for partner violence and sexual assault that some researchers argue institutions should provide universal programs to address the magnitude of these issues.

Public awareness campaigns such as public service announcements and advertisements are common approaches to primary prevention of DV and SA with adults. These campaigns typically provide information regarding the warnings signs of violence and community resources for victims and perpetrators.

We are currently at a crossroads regarding the role of school- and community-based programming in preventing domestic violence and sexual assault. There has never been greater awareness of the issue of violence, but at the same time society has never been more polarized in deciding how to respond: reactively or proactively. There is a clear need for these two fields to become more integrated in their approach to prevention. As the field of DV and SA prevention develops, there will be a remaining challenge to ensure programs are implemented on a comprehensive basis and are founded on good outcome research that documents what programs are most effective for their target populations. Despite significant challenges, prevention efforts remain a very promising approach to reducing domestic violence and sexual assault.<sup>130</sup>

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<sup>130</sup> Prevention of Domestic Violence and Sexual Assault, David A. Wolfe, Peter G. Jaffe, Centre for Children and Families in the Justice System, London, Ontario, Canada.( <http://www.lfcc.on.ca> ) January 2003