

**THE VARIED CONTOURS OF VIOLENCE AGAINST  
WOMEN  
IN SOUTH ASIA**

**By**

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### **1. INTERNATIONAL STANDARDS**

Violence against women is a universal reality but at the same time it is invisible. Reports<sup>1</sup> from all parts of the world point to the fact that violence against women is a “manifestation of the unequal power relationship”<sup>2</sup> between men and women and exists in all societies. Yet such violence is underreported if not “normalized” as acceptable social behaviour. South Asia has been classified as the worst region in terms of indicators with the highest rates of different forms of violence against women.<sup>3</sup>

Until the late 1980s and the 1990s, violence against women was a taboo subject of discussion even in international fora analyzing the question of women’s rights. There were in fact two phases with regard to the articulation of the international human rights of women. The first phase, which culminated in the drafting of the Convention on the Elimination of Discrimination Against Women, involved discussion of the issues relating to “discrimination” against women in political and civil life as well as in economic, social and cultural life. Except for the question of trafficking, issues relating to violence against women were not included in the Convention. With a focus on discrimination in the workplace, access to state services, and discrimination in family law, the Convention was a major landmark for the international articulation of the rights of women.

It was only in the 1980s that violence against women became a focal point of international mobilization. In 1991, the CEDAW Committee, responding to pressure from women’s groups formulated recommendation 19, that articulated violence against women as gender based discrimination covered by CEDAW. Women from the grassroots from all over the world came together and mounted an international campaign to make violence against women an important issue of human rights. These activities culminated at the United Nations World Conference on Human Rights that took place in 1993 in Vienna. At the conference women demanded that there be a UN Declaration on the Elimination of Violence Against Women and secondly that the United Nations Human Rights Commission create the post of UN Special Rapporteur on Violence Against Women. Within six months the United Nations General Assembly passed the United Nation Declaration of the Elimination of Violence against Women and within a year the United Nations Human Rights Commission created the post of UN Special Rapporteur. The violence against women movement is perhaps the greatest success story of international mobilization around a specific human rights issue, leading to the

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<sup>1</sup> See WHO 2002 World Report on Violence and Health

<sup>2</sup> Declaration on the Elimination of Violence Against Women, (DEVAW) preamble para 4

<sup>3</sup> UNICEF 2001a A Reference Kit on Violence Against Women and Girls in South Asia, Kathmandu: UNICEF, ROSA

articulation of international norms and standards and the formulation of international programmes and policies.<sup>4</sup>

The World Conference on Human Rights that highlighted the issue of violence against women as a human rights issue brought activists from around the world who were working on issues relating to violence against women. The first group of activists was those working with women victims of sexual violence during wartime and refugee women who were concerned with violence against women during armed conflict. The second group of women was from Asia and Europe working with women victims of trafficking and forced prostitution. The third group of women was from North and South America as well as Europe working on issues relating to domestic violence, rape, and sexual harassment. The fourth group of women from Asia and Africa were women fighting against cultural and religious practices that were violent toward women and harmful to their health. All these women united around the theme of violence against women as a human rights issue and managed to persuade nation states to accept their formulation. Thus the United Nations Declaration on the Elimination of Violence Against Women was passed unanimously and with a standing ovation by the United Nations General Assembly. After 1993, in Cairo at the International Conference on Population and Development (1994) and at Beijing at the Fourth World Conference on Women (1995) these principles were taken forward and elaborated on by state parties as well as NGOs.

The international standards set out in the international documents that were a result of the violence against women movement, call on states to act decisively on issues relating to violence against women. It calls on them to pass national legislation, to formulate national plans of action, to sensitise and train their criminal justice machinery, to collect data and to provide social services of support to women victims of violence. They also stated clearly that custom, religion and tradition should not be used to justify acts of violence against women.<sup>5</sup> The importance of government action and government sanctions must be emphasized. Researchers point out that the societies with the lowest levels of partner violence were those that had community sanctions against partner violence and where abused women had access to sanctuary and support.<sup>6</sup> The catalytic role played by international standards and programmes in generating awareness and policies at the national level, especially in the South Asian region, cannot be understated. The dynamic interaction between the international and the local have created space for imaginative intervention and a plethora of strategies to confront what is now accepted as an endemic problem of the region.

## **2. THE NATURE OF THE PROBLEM IN SOUTH ASIA**

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<sup>4</sup> Margaret E. Keck, Kathryn Sikkink, *Activists Beyond Borders:- Advocacy Networks in International Politics*, Cornell University Press, 1998

<sup>5</sup> See both DEVAW and Recommendation 19 of CEDAW

<sup>6</sup> Ruchira Tabassum Naved, A Situational Analysis of Violence Against Women, in Violence Against Women in South Asia, [http://www.unfpa.org.np/pub/vaw/VAW-REG\\_Analysis.pdf](http://www.unfpa.org.np/pub/vaw/VAW-REG_Analysis.pdf). p.15

South Asia continues to have the worst indicators with regard to violence against women in the world. In addition to the common problems of violence against women, South Asia has particular cultural and religious practices that also accentuate the problem of VAW in the region. The general low status of women in the region and the entrenched nature of discriminatory structures have led to what is seen as a lifecycle of VAW. Even before birth women suffer from sex selective abortion, at infancy they may face female infanticide, as young children they will have to put up with incest and son preference, as adolescents they may be sexually abused or trafficked, as young women they may suffer rape, sexual harassment, acid attacks as wives they may experience domestic violence, dowry related violence, marital rape or honour killings, as widows they may be required to self immolate or be deprived of property and dignity. The vulnerability to violence at every stage of the life cycle makes VAW a terrible South Asian legacy that requires concerted regional, national and local level action.

### *ARMED CONFLICT*

*Rani lives in the east coast of Sri Lanka. Rani is a Sri Lankan Tam. Rani's husband was taken away by the Sri Lankan army about fifteen years ago and she has not heard from him since. Her son, who was still a child of 12, was taken by the Liberation Tigers of Sri Lanka. She has lost touch with him and does not know whether he is dead or alive. Rani and her daughter eke out a living doing handicrafts with the help of a local NGO. They barely have enough to survive. Her daughter suffers from nightmares and depression since she was attached to both the father and the brother. Rani doesn't like to speak much- speech is dangerous in the east coast with so many young men with guns. Tears well in her eyes when she speaks. For solace she goes to the nearby oracle to find out about her husband and her son. The oracle tells her that they are alive so she lives in hope.<sup>7</sup>*

Armed conflict has been an important part of the post independence legacy of South Asia. Whether on the Afghan Border with Pakistan, in Kashmir, in the Chittagong Hill Tracts, among Maoist rebels or in the north and east of Sri Lanka, armed conflict is a terrible reality that many women in South Asia have to face. Women are affected by armed conflict in different ways. First, they are often the victims of direct violence especially sexual violence by armed soldiers or militants. Rape during wartime is one of the oldest war crimes and is now clearly prohibited by the Statute of the International Criminal Court.<sup>8</sup> However none of the countries of South Asia have become parties to the ICC. There have been some prosecutions for custodial violence in South Asia. In Sri Lanka in the famous case of Krishanthi Kumaraswamy, the court handed the death penalty to the perpetrators. However, in most of the cases there is no prosecution and the perpetrators are unpunished.<sup>9</sup> Sexual violence during war time continues in all parts of South Asia and there is a sense of impunity on the part of the perpetrators.

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<sup>7</sup> Interview with author, December 2003

<sup>8</sup> Article 7,8 of the ICC

<sup>9</sup> See the communication reports of the Special Rapporteur on Violence Against Women 1994-2003

Another way in which women are affected during war time is as internally displaced persons. 80% of the IDPs are women and children. As IDPs they live in terrible circumstances. They are given meager rations, they live in large communal halls without any privacy often only separated by a sari. Women are often sexually harassed in these camps by officials and inmates and there are minimal sanitation facilities. They are also subject to restrictions on their freedom of movement. They often dream of returning home but are in these camps for a very long period of time. When the armed conflict is over, resettlement is an even longer process. They often find their lands and homes occupied or destroyed. They usually do not have the communal infrastructure to begin a new life and they are subject to a great deal of bureaucratic regulation. Women and children in these camps continue to have psycho social problems and long term adjustment problems.

Women are also affected by war in that they become war widows, often losing their husbands. In very patriarchal societies that oppress and discriminate against women, these young widows have special problems and concerns. They become among the poorest and most vulnerable communities in the country. They find survival a difficult problem and have to face constant harassment in the community. They are deprived of all social benefits as widows and live a life of isolation and restriction. Research suggests that they survive because of the future they envision for their children.<sup>10</sup>

In some wars women actually become combatants such as in Sri Lanka. Here the ambiguity of the Geneva Convention on the protection of women combatants raises a whole host of issues. Moreover, in the post conflict situation, other parts of the world such as Colombia, point to obstacles in the reintegration of female cadres into civilian life especially in patriarchal societies. Women as warriors, though exciting because of the transgressing of gender roles, raise other issues relating to the realization of women's rights within the framework of military imperatives and war.

### *TRAFFICKING*

*Chamoli was sixteen years old and living with her father and step mother. Her step mother did not like her very much and used to beat her often. One day a young man came from outside to the village. Chamoli fell in love with him and he promised to marry her. She eloped with him to India. He then took her to a big house and he saw money exchange between her new lover and the madam of the house. After that her lover disappeared and she found she was in a brothel. She was literally tortured into submission. She had to service about ten customers a day and was living in a cubicle the size of a bed. Finally Maiti Nepal a Nepalese NGO came to her brothel and "rescued her" She then spent seven months in an Indian "protection home" before she was sent back to Nepal When she got there doctors as Maiti Nepal discovered that she was*

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<sup>10</sup> see Selvy Tiruchandran, *The Other Victims of War: - Emergence of Female headed Households in Eastern Sri Lanka*, VikaS, New Delhi, 1999 and also Sasanka Pereira, *Stories of Survivors:- Socio-Political Contexts of Female Headed Household in Post-Terror Southern Sri Lanka*, Vices, New Delhi, 1999

*suffering from AIDS. Chamoli refuses to return to her family because of the shame and because of her fear of her step mother.*

Trafficking of women and girls, especially into the big cities of India, remains a serious problem in the South Asian region. Increasingly young girls between the ages of ten and fourteen are trafficked to different parts of India from within India as well as Nepal and Bangladesh. In other countries there are smaller trafficking enterprises taking place. It is estimated that about 200,000 young girls from Nepal in India of which 45,000 are in Bombay alone. Women are often trafficked by close friends and family.

Sometimes trafficking is linked to traditional contexts and practices. In Nepal, the exploitative experience of the Badi caste, who provided entertainment services to feudal elites and who now must respond to market forces has led to the trafficking of their daughters and wives who leave Nepal in search of a better future. Traditional temple dancers such as Devadasis, Jogin, Matammas and Deukis were once children pledged by their parents to the temple and who become sex workers associated with the temple. These women also become vulnerable to further trafficking once they become older.

Trafficking is also complicated by the legal regimes that are in place for the regulation of prostitution. Some countries in South Asia have “moralistic” legal regime that criminalize everything associated with prostitution- the sex worker, the client, the middlemen etc... This is true especially in Islamic countries of South Asia. Sri Lanka and India have the “Abolitionist Model” contained in the 1949 Convention, the woman is seen as a victim and is not criminalized but those who exploit her prostitution are criminalised. Though on the books, it is rarely implemented. In both these frameworks the criminal justice system is an integral part of the regime and abuse and corruption in the system often ends up victimizing the trafficked women. This has led to many people in South Asia asking for more liberal legal regimes for prostitution to allow the sex worker a certain social legitimacy and more social and economic rights. This struggle for recognition of prostitution as sex work and prostitutes as sex workers with trade union rights is especially strong in Calcutta and Bombay.

However, trafficking is perhaps most complicated by its link to migration. Research clearly shows that most of the women who are trafficked have a strong desire to migrate and are thereby abused in the process. In the past women may have been kidnapped or abducted but today trafficking is really abuse of the desire to migrate. Women desire to migrate often because there is abuse in the home, in the community or because of dire poverty. To counter trafficking by preventing women’s migration is to lock them into domestic systems of oppression. Measures taken to prevent women from migrating such as requiring permission of male members of the family or government sanction may actually compound the problem. What is needed is an effective system that prevents women from being abused during the process of migration and this can only take place if the approach to trafficking is designed within a human rights framework.

The human rights framework would also require a different approach to the woman survivor once she leaves sex work. Instead of the metaphor of “rescue”, “rehabilitation” and “repatriation” which has conditioned the mainstream approach to trafficking, there is

now an emphasis on consulting the women on what she really wants to do. Does she want to remain in sex work? Does she wish to return home? Does she wish to stay in her host country? Does she wish to go back to her parents? These approaches then require a partnership between the police, immigration officials and women's support groups who can counsel the women survivor. These approaches are not present in South Asia where the approach to trafficking is very much rescue, rehabilitation (or protection) and repatriation.

### *DOMESTIC VIOLENCE*

*Asha Rani was a young bride. Her poor family gave her a small dowry but after marriage her in laws wanted another Rs.5,000 or an auto rickshaw. Her father who had seven daughters could not provide the amount. When he refused, the in laws beat his daughter in front of his eyes. A few weeks later Asha Rani was dead "burnt while making tea". According to her in laws, her synthetic sari caught fire on the stove. But the post mortem revealed otherwise. The Supreme Court finally ruled that she did not die of accident nor did she commit suicide. She was murdered.*<sup>11</sup>

Pages of the newspapers in South Asia are full of tales of domestic violence. In 2002, 450 honour killings were reported in Pakistan, 15,000 young brides are burnt to death every year in India, ten women a week are subject to acid attacks in Bangladesh.<sup>12</sup> Violence by intimate family members is one of South Asia's darkest legacies. 40% of all sexual abuse cases in India are about incest. In a survey on violence against women in India, 94% of the cases involved an offender who was a member of the family.<sup>13</sup>

The violence against women in South Asia often begins before birth. It is estimated the 50 million women are missing in India either through sex selective abortions, female infanticide or female neglect. So much so that the sex ratio in certain states of India is very disturbing. There are 79.3 girls for every 100 males in the Punjab and 87.8 girls for every 100 males in Gujarat.<sup>14</sup>

Domestic violence rates in South Asia do vary from community to community and depends on the questions asked. A survey of 1842 women in Uttar Pradesh and Tamil Nadu in India presented a rate of 40% of women interviewed stating they were victims of wife beating. In Pakistan a survey of 1000 indicated that 55% in the urban areas and 35% in the rural areas stated that they were<sup>15</sup>victims of domestic violence, In Sri Lanka, one survey put the figure at 60%, another at 32%.

Research on indicators for domestic violence in the region highlight issues such as the fact that children who, themselves are abused or who have witnessed violence in the family are far more likely to beat their wives than other children, In South Asia there is

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<sup>11</sup> Mohammed Umar. P.119

<sup>12</sup> OXFAM study

<sup>13</sup> UNIFEM p. 10

<sup>14</sup> OXFAM

<sup>15</sup> UNIFEM p.11

alcohol and drug use that also accentuate domestic violence. Patriarchal societies where men control all decisions result in greater violence when women seem to question or go outside the framework of such decisions. If a society resolves conflict through the use of violence then violence in the home is also on the increase. The lack of economic independence on the part of women and their inability to move out of a violent situation and state inaction against perpetrators of violence perpetuate an ideological belief that violence may even be justified and if it is not, it is not a terrible matter that requires concerted action.<sup>16</sup>

The insensitivity of the criminal justice system has also been highlighted in many studies. Police stations rarely respond though with the new police women desks this situation is marginally better. A survey of judges in the region pointed to the fact that 48% of judges agreed that it was justifiable for men to beat their wives. 74% endorsed the view that even in cases of violence the preservation of the family should be the primary concern

Response to domestic violence requires a concerted national effort. According to the UN standards it requires domestic violence legislation that combines civil and criminal remedies. This requires ensuring certain civil rights of the woman such as the right to live in the matrimonial home, the right to be protected from an abusive husband and live separately from him and the right to compensation and maintenance. In addition the law should provide for prosecution of punishment for cruelty, grievous hurt and wrongful confinement. In addition the legislation should provide for social support for women survivors while they negotiate their future. India's recent legislation on domestic violence, written in consultation with NGOs has many of these necessary provisions as does the Sri Lankan draft domestic violence Act.

The international standard also call on states to draft national plans of action, ensure a trained and sensitive criminal justice system, support systems for victims, sensitive health professionals and it requires data collection and analysis about the incidents of domestic violence. Some countries in South Asia have begun to respond to these standards in a progressive manner.

#### *RAPE AND SEXUAL HARASSMENT*

*Mathura was a young girl from the Dalit community. She ran away from home and married her boyfriend. Her family threatened her and her husband. When she went to the police station to make a complaint, she was gang raped by the policemen. Her case so scandalized India, that Parliament passed an amendment to the Penal Code making special provisions to protect the rights of victims who are subject to rape in state custodial institutions.*

Rape and sexual harassment continue to be important issues in the South Asian context. In 1998 the Human Rights Commission of Pakistan reported that one person is raped every 354 minutes in Pakistan. In India for the same period there were over 15,000 reported cases while so many go unreported. Such cases are often compounded in the rural areas of gang rape of Dalit women by upper caste men as an act of political

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<sup>16</sup> OXFAM



violence. A CNN survey in New Delhi pointed to the fact that 50% of all working women claimed that they were sexually harassed in the workplace. In Pakistan, the Alliance Against Sexual Harassment in the Workplace claimed that 93% of women working in the public and private sector had experienced some form of harassment in the workplace. Marital rape and sexual violence as a means of initiation are also reported in some of these surveys, a factor that will influence the marriage relationship for years to come.<sup>17</sup> This is the case even though marital rape is not a crime in all the countries of South Asia.

The issue of rape was what first galvanised the women's movement in India and to come extent in the other South Asian countries. The rape of the Dalit girl Mathura in a custodial setting led to a national campaign for the reform of the Rape laws. The Law commission set up to look into this matter decided in cases of custodial rape the onus of proving consent would shift to the accused. In Sri Lanka penal reforms of 1995 gave more serious punishment for custodial violence but like its Indian counterpart called for mandatory enhanced punishments.

Feminists have been challenging the rape laws of their countries for over a generation now. The need to take away language like "against her will" that requires physical bruises, the need to define rape broadly as sexual assault and not only as penis penetration, the need to make sure that a woman's past history is not introduced into the evidence and the need to get rid of evidentiary procedure that requires corroboration. The National Commission for Women in India presented a draft amendment to the Penal Code on the issues relating to rape is very much along these lines.

In the context of these crimes again there is need for effective legislation, a sensitive and trained criminal justice system, support services to the victims and trained health professionals. There is also the need for public campaigns and awareness rising. The countries of South Asia have responded in amending their legislation and in attempting to train their police and judges. However, the problem still persists and statistics do not indicate that the crimes are getting less or that there is a significant increase in the prosecution of offenders.

In this context, given the terrible nature of the crimes against women many young legal scholars are questioning whether the legal system can be effective in dealing with crimes against women and whether other alternatives to prosecution and punishment should be explored. Statistics for a given period in Bombay show that of the 504 cases that were registered, only 469 were charge sheeted, of which there were 13 convictions, and 10 acquittals, the vast majority were pending trial or never getting to trial.<sup>18</sup> Furthermore, feminists fear that the rape trial often becomes a "pornographic spectacle"<sup>19</sup> Even when judgments convict, the rape survivor emerges brutalized and sometimes scandalized in a very patriarchal society. For this reason most women continue to be silent when they are victims of sexual violence.

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<sup>17</sup> UNIFEM

<sup>18</sup> Flavia Agnes, **Journey to Justice**, Bombay, Majlis, 1990 p.48

<sup>19</sup> Nivedita Menon "Embodying the Self:- Feminism Sexual Violence and the Law" Permanent Black, New Delhi, 2000 p.91

The inability of the legal systems to deliver justice in the case of women and the reliance on the prosecution arm of the state has created unease among some women's rights activists. They argue that reliance on the legal strategy alone is not enough and that a more broad based approach aimed at transforming attitudes and social structures is necessary.<sup>20</sup>

It must also be noted that none of the countries of South Asia criminalise marital rape. In Sri Lanka, marital rape is recognized only if the couples are judicially separated. The notion that the home is a private sphere and that the criminal law of the state should not interfere to prevent men from exercising their traditional rights is very strong in South Asia. In Sri Lanka during recent parliamentary debates on the Domestic Violence Bill, parliamentarian after parliamentarian argued that the law must be carefully crafted to prevent families from breaking up. The notion that the sanctity of the family must be upheld even if there is violence between husband and wife is still remains a strong perception in many South Asian countries,

#### *CUSTOMARY PRACTICES*

*Samia was married to an abusive husband. One day she ran away from home stating that she wanted a divorce. There were rumours that she had found someone else. Finally her family said they were granting her wish. Her mother, her uncle and a stranger came to the lawyers chambers to discuss the case. Suddenly the stranger pulled a gun out and shot Samia and aimed over the head of the lawyer. The security in the office shot the stranger but the mother and the uncle escaped taking one of the members of the law firm as hostage. She was finally released. The police have not prosecuted the case since they felt it was an "honour" killing.*

The failure of the law is particularly relevant when it comes to customary practices in the region that are violent toward women. South Asia is perhaps the region with the largest number of customary practices that are violent toward women. In response to the international critique of our practices, we have had mixed local responses. One is to say that this is an internal issue and not a concern to the rest of the world; that some of the practices can be justified by the internal logic of our cultural systems and that any attempt to critique and eradicate such customs is part of the arrogant legacy of colonialism and westernization. However, women's groups within these societies have also taken up these issues and highlighted them as evidence of the low status of women in South Asian societies. These customary practices are in conflict with the international obligations that South Asian states have voluntarily taken upon themselves. The charge of westernization is also disingenuous since many of these societies are rapidly globalizing and the question of culture seems primarily relevant only to the subordinate position of women. The duality between public and private has a special meaning in South Asia where scholars have claimed that the private is also seen as "eastern", "spiritual" and the domain of the women. To change customary practices would be a necessary transformation of the private and therefore threaten the "eastern" and "spiritual" nature of

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<sup>20</sup> See Ratna Kapur, Brenda Cossman, *Subversive sites: -Feminist Engagement with the Law in India*, Sage, New Delhi 1996

South Asian societies.<sup>21</sup> As a result, attempts to eradicate customary practices that are violent toward women meet with local level resistance and require both a political as well as a legal approach.

The South Asian customary practice that has received the most amount of international attention has been the practice of honor killings. The case of Samia Sarwar from Peshawar who was allegedly shot to death in her lawyer's office by a hired gunman with her father and mother's complicity for leaving her husband made international headlines. The refusal of the police and other authorities to pursue the case in its initial stages and the reluctance of the Pakistani parliament to pass legislation caused an international furor. In honor killings that take place in many parts of Asia, women are killed by their family members if they commit adultery, if they are the victims of rape, if they fall in love with the wrong person, in short if their sexual and emotional behaviour disturbs the male power hierarchy in the family. This acceptance of the male patriarch's right to kill the women in his family to protect the family honour is a deep rooted tradition which according to reports even has the full endorsement of women in the family. As a result it is a practice that still remains strong and police prosecution in these cases is weak.

Another customary practice that is associated with South Asia is the practice of bride burining. Bride burning reached its height in the early 1990s. Dowry related deaths increased from 437 deaths in 1983 to 4,856 in 1991 and to 5,582 in 1993. These are the reported cases.<sup>22</sup> In Delhi, in the early 1980s, the frequency of unnatural deaths of housewives was one every twelve hours.<sup>23</sup> While dowry in certain communities was linked to land and immovable property, giving women some sense of security, it has in the modern world become a morbid symptom of a customary practice. Today a dowry consists of first, gifts to the bride in terms of clothes, jewelry and household gifts. Second dowry consists of luxury items for the husband clothes wristwatch, gold chain, thirdly it may include immovable property written in the husband's name and finally modern electronic items such as televisions, fridges, video cassette players etc...<sup>24</sup> Material gifts and cash are paid to the bridegroom, who if widowed and marries again gets the dowry a second time.

Women are burned as brides either because of dowry, incompatibility between husband and wife, the rigidity of the divorce laws, or a desire to have a son.. In recent times the Indian penal code was amended to deal specifically with dowry deaths. Since 1986 the law has provided for punishment not less than seven years and up to life imprisonment for a husband or family member if a woman's death occurs due to burns, injuries or other unnatural circumstances and she was subjected to cruelty or harassment in connection with dowry.<sup>25</sup> The number of dowry deaths has decreased in recent years due to the penal sanction but they do still occur in many parts of South Asia.

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<sup>21</sup> Partha Chatterjee, "The Nationalist Resolution of the Women's Question" in Kumkum Sangari et al ed. *Recasting Women*, New Delhi, Kali, 1989

<sup>22</sup> Mohd. Umar, *Bride Burning in India*, New Delhi, Nangi, 1998 p1-2

<sup>23</sup> *ibid.*,2

<sup>24</sup> *ibid.*, p.67

<sup>25</sup> Section 304B Indian Penal Code. See Lawyers Collective *Domestic Violence*, Kali, 1992

In some parts of South Asia, women are victims of acid attacks. This was prevalent in Bangladesh in the late 1990s and still occurs today. In 1998, there were over 200 cases of acid attacks.<sup>26</sup> Acid attacks are often directed at women who reject the advances of men or by family members in the protection of honour. These attacks have received recent attention in Bangladesh but still continue in certain parts. Linked to the concept of honour it is difficult to eradicate as long as women's emotional and sexual behaviour are seen as reflecting on the honor of the men who are intimately connected to them.

Another South Asian practice that has received international attention is the practice of Sati or widow burning in certain parts of India. The case of Roop Kanwar, who in the late eighties committed Sati on her husband's pyre in a public spectacle created major national and international furor. Some scholars argue that Sati is an act of sacrifice of a wife for her husband and should not be decried since it is a form of heroic death. But scholars such as Kum Kum Sangari and others have argued that given the fact that women's lives are undervalued and restrained, Sati is often always committed under coercive circumstances and a tolerance of Sati will make many families urge their young widows to commit Sati to prevent having to take care of them. For this reason women's groups have not only argued against Sati as a practice but also the ideology of Sati. Luckily the Indian state responded firmly. Parliament enacted comprehensive anti-sati legislation outlawing Sati and its glorification. Since the law was passed, there have been few reported cases of Sati which points to the importance of criminal sanctions. However, Roop Kanwar's family was acquitted by the jury of their peers pointing to the fact that communities will rarely punish individuals for customary forms of violence against women.<sup>27</sup>

The practice of Sati reminds us that violence and discrimination against widows is a common cultural practice in South Asia. Besides Sati, this often manifests itself in witch killings. In Bihar an average of 200 women are killed every year as witches. In many of these cases there is some dispute over land with her husband's family. The lack of economic independence and security for a widow makes her particularly vulnerable. Supposed to be inauspicious, she is socially secluded and discriminated against. If her presence drains the family of its resources, in some cases there is a cultural form of killing or exclusion that allows families to deal with unwanted widows. Against the criminal justice system rarely prosecutes families for killing their widows.

Another type of violation that takes place in South Asia is around customary practices of marriage. In some South Asian communities, it is expected that a man pursue a young girl, rape her and then marry her. The Veddas community in Sri Lanka and some tribal groups such as the Bhils in India claim that this is their traditional practice. The Attorney General of Sri Lanka made a statement that he would not be prosecuting a young Veddas for rape even though the young girl had complained. The marriage via rape creates an ideology that one who sexually initiates a woman has the duty to marry her. This is

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<sup>26</sup> UNIFEM

<sup>27</sup> For general discussion on this issue see J.S. Hawley ed. *Sati:- the Blessing and the Curse*, Oxford, Oxford University Press, 1994

present in mainstream society in situations of rape where pressure is brought on the boy and the girl to marry. International standards and national constitutions require that such customary practices that go to the heart of a woman's dignity and rights have to be reigned in and that the normal criminal process take its course. The criminal sanction in cases such as these does work in certain contexts and may act as a catalyst to transform behaviour.

Another customary practice of marriage in South Asia that is violence toward women is the practice of child marriage. In Nepal 40% of marriages involve girls under the age of fifteen.<sup>28</sup> In Pakistan the Watta Satta marriage is another form of marriage that violates the rights of women. Women become part of barter between men. A woman is given in marriage to a man in return for another woman. The case of 12 year old Reshma who was given in a watta satta marriage but the marriage took place after a terrible dispute between the two families. On her wedding night her husband shot her dead claiming she had committed adultery.<sup>29</sup> These traditional forms of marriage held together by the concept of honour and community deeply oppress women but are so firmly embedded in South Asia that unless there is concerted action with the State taking the lead, such practices will never change.

At the root of much of the violence against women in customary practices relate to son preference in South Asian societies. Amartya Sen has chronicled how with regard to food, hospitals and schooling there is terrible discrimination against the girl child. Young girls are taken to hospital if they are very ill, young girls are more malnourished than young boys and in schooling- only 15% of girls in rural primary schools go beyond the fifth grade. The gender gap in school enrolment is 14% in India, 19% in Nepal and 24% in Pakistan<sup>30</sup>This son preference and the discrimination against the girl child lasts a lifetime leading to a lifecycle of violence and discrimination.

Customary practices such as those outlined above require the state to create a normative framework that frowns on such practices and criminalises those who engage in such practices. However, for the most part, because of the political unpopularity, states shy away from insisting on international standards on the protection of women from violence. As a result, there is a sense that the violence is "normal", or "usual" and that severe action should not be taken against the perpetrators. This normalization of violence shows the interlinkage between ideology and violence against women, In Bangladesh in a recent survey the majority of men argued that violence against their wives was alright in certain circumstances as corrective punishment.<sup>31</sup> The normalization of violence against women is one of the darker elements in South Asian societies. This normalization prevents men from seeing the violence as wrong, prevents women from asserting that the violence is wrong and paralyses the criminal justice system in trying to attain justice.

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<sup>28</sup> UNIFEM

<sup>29</sup> OXFAM p.8

<sup>30</sup> UNIFEM

<sup>31</sup> UNIFEM

Another linkage that is often made is that women's lack of economic independence and empowerment has a great deal to do with the levels of violence in South Asian societies. Women's lack of economic security forces them to put up with extreme acts of violence for the sake of survival. Inheritance laws and practices, the lack of access to land, the lack of education and the denial of mobility contribute to keeping women locked into situations from which there is no escape. David Levinson in an eighty country study found that the lack of economic independence is one of the main reasons for violence against women.

Models of masculinity in the South Asian region also contribute to violence against women. In certain communities, violence is closely linked to honour and the assertion of masculine status. Women who act in a manner that challenges patriarchal rules and expectations are therefore subject to violence. If violence is closely linked to "being a man", then violence against women is also normalized and seen as part of the customs and practices of the society. If being a man means controlling and domesticating your wife, then behaviour patterns emerge accordingly. Given the deeply held values and time honored "masculine" traditions, changing these models and expectations may only take place over generations. For this, there have to be other masculine non-violent traditions that capture the imagination of young men. In modern times, some of these traditions are merging in South Asia but they are in a nascent phase.<sup>32</sup>

Linked to notions of masculinity is also a belief in the proper emotional and sexual behaviour of women. A great part of violence against women has to deal with female sexuality. Rape is about sexual violence, trafficking is often about sex work, sexual harassment is about discrimination in the workplace, domestic violence is often about a woman's refusal to have sex with her husband and many so called customary practices such as honor killings or female genital mutilation are linked to the control of female sexuality. For this reason many believe that the protection of women from violence must be accompanied by the recognition of the reproductive rights and freedoms of women. This linkage is extremely important if we are to create conditions for women to be free from the fear of violence.

Violence against women is also an aspect of the global phenomenon of HIV AIDS. South Asia accounts for 4.2 million of the total number of people living with HIV worldwide. India has the second largest population of those who are infected by HIV.<sup>33</sup> According to the statistics prepared by UNAIDS there are 3.86 million people living with HIV Aids infection in India, 74,000 in Pakistan, 7500 in Sri Lanka, 34,000 in Nepal, 13,000 in Bangladesh.

Women are vulnerable to AIDS infection in the Asian region for a variety of reasons. Widespread poverty forces young women and even boys into sex work as there are large sex markets in the cities and many clients refuse to use condoms. Because of poverty millions of girls are forced into child labour and are often subject to sexual abuse and

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<sup>32</sup> See Radhika Chopra et. al, *South Asian Masculinities*, New Delhi, Women Unlimited, 2004

<sup>33</sup> Center for Reproductive Rights, *Women of the World, Laws and Policies Affecting Their Reproductive Lives*, 2004p.21

exploitation. Lack of development forces many young men to migrate to the cities and live in urban slums without their families. This loneliness drives them into seeking comfort in unsafe sex. Lack of clean sanitary facilities allows for the easy transmission of diseases including STD and HIV. Because of the lack of access to health care, people are unable to detect and treat STDs as they cannot get the proper tests and treatment. Large numbers of people are unaware of the disease and do not have access to information on STD and HIV aids. Wives and partners of men with HIV Aids do not have the power to refuse unsafe sex and are often victimized as a result. Without sex education and a frank environment for the discussion of sexuality and sex related diseases, unsafe sex continues as a way of life for many young people. In urban areas with high drug use, HIV is spread through the use of contaminated needles.<sup>34</sup>

Women are also subject to discrimination and violence once they are diagnosed as HIV positive. Discrimination occurs because of ignorance about HIV/AIDS. Individuals are subject to extreme quarantine procedures and are discriminated against in their workplace and other public places. There is also very limited understanding of the rights of HIV positive women and the problem of mother child transmissions.<sup>35</sup> Though there is little legislation covering people with HIV in the South Asian region, the Indian Supreme Court has made a few decisions protecting the rights of the HIV infected people from discrimination. Some of the governments have also developed national level policies to deal with AIDS such as the Indian government's National AIDS Prevention and Control Policy. However, except for India which has a large HIV infected population, the other countries of South Asia have not really developed national legislation or comprehensive programmes.

The WHO in a recent study outlined the enormous costs of violence against women to a society. These include hospital and other costs related to the treatment of injury and the rehabilitation of the victim. It also includes long term costs such as the effect on children for research shows that children who witness violence in the home are more likely to be perpetrators than those who come from a homes where there is no violence. Perhaps the most important cost for women is "fear". Women are relegated to the home because of the fear of violence and as a result they cannot fully participate in the development goals of the society or in public life. This chilling aspect of violence at the psychological level is one of the factors that have led to women being treated as second class citizens in need of protection and without empowerment.

### **3. 1995-2005-THE RESPONSE OF GOVERNMENTS**

All the governments of the SAARC region have responded positively to the challenges posed by violence against women in their region. In the last decades, there has been a great deal of advances, especially in the area of standard setting and the enactment of policies and programmes. Though a great deal may not have changed at the local level, the policy framework has been developed in most of the countries of the region

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<sup>34</sup> Kamla Bhasin, Bindia Thapar, *Turning Dangers into Opportunities:- Young People and HIV AIDS in South Asia*, Jagori, New Delhi, 2003

<sup>35</sup> *ibid.*, p.21-22

Bangladesh has responded to the challenges posed by violence against women in the region by declaring openly in its National strategy for Economic Growth, Poverty Reduction and Social Development that it plans to substantially reduce or eliminate violence against women and children by 2015. In 2000, Bangladesh adopted the Prevention of Oppression Against Women and Children Act which deals comprehensively with crimes of violence against women. In the cases of rape for example, though it did not change the archaic definition of rape, The POAWC Act prescribes severe punishment for perpetrators. Though the standard case of rape carries life imprisonment and a fine, in some aggravated cases, it carries the death penalty. Attempted rape also carries a punishment of 5-10 years imprisonment. Those arrested for crimes under the Act are not eligible for bail during an initial investigation period of 90 days. The Act also provides for compensation for the victim.

Bangladesh does not have specific legislation on domestic violence. However under the POAWC Act a husband or any relative or person acting on behalf of the husband who causes or attempts to cause his wife's death in connection with a demand for dowry is subject to life imprisonment and a fine. The POAWC Act also prescribes punishments for the "sexual oppression of women", defined as touching the sexual organs of a woman without consent or the sexual organs of a child or indecent gestures. Such acts carry a punishment of two years imprisonment as a minimum and ten years imprisonment as a maximum.

Bangladesh continues to have the abolitionist approach to the regulation of sex work. In 2000, over a hundred sex workers brought an action against the police for closing down the brothels. The High Court ruled that sex work is not illegal provided that sex workers obtain a license. One condition for obtaining such a license is that they prove that they have no other means of earning a livelihood.<sup>36</sup> However, POAWC contains a strong prohibition against trafficking. The punishment for trafficking is ten years minimum imprisonment and the maximum punishment is the death penalty.

Bangladesh has also taken action against the customary practice of Acid throwing. POAWC prescribes capital punishment or life imprisonment for causing or attempting to cause death to a woman or child by means of a corrosive or similar substance. Though these strong laws have been enacted, the number of cases prosecuted under the Act remains small and conviction rates even lower. However, Bangladesh does have a large number of NGOs working in this field providing awareness raising programmes, legal aid, safe shelters, counseling and health care services and special programmes for women victims to develop skills and to reintegrate with the rest of society.

Bangladesh has also set up a National Advisory Council for the Prevention of Violence Against Women with committees to prevent VAW in every district. There are also four investigative cells in police station and a multisectoral programme which was adopted in 2000 that tries to combine the efforts of the health services, the police, access to justice and public awareness.

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<sup>36</sup> BBC News March 14<sup>th</sup> 2000



India too has taken positive measures with regard to violence against women. With regard to sex selective abortions, in 1994, India adopted the Pre-Conception and Pre-Natal Diagnostic Techniques Act and this has been amended twice as recently as 2003. The Act prohibits the use of prenatal diagnostic tests for the purpose of sex selection. Certain conditions have been placed for taking of such tests. In addition, the Act prohibits disclosing the sex of a fetus to a pregnant mother or her relatives. The Act also prohibits advertisement for sex selection testing. Violating the Act can result in imprisonment and a fine. In 2003, the Supreme Court of India also called on the national and state governments to enforce the ban as part of the protection of the girl child from discrimination.<sup>37</sup>

India is still in the process of finalizing domestic violence legislation that is quite comprehensive. The law was drafted in partnership with women's NGOs especially the Lawyers Collective. It contains many provisions combining civil and criminal remedies and providing support for women survivors of violence. The law defines domestic violence comprehensively, provides for protection orders and special provisions for the economic security of the woman concerned. It was scheduled to be debated just before the last parliament was dissolved. It is now again being introduced for debate in the next parliament.

India is also in the process of adopting other legislation with relevance for fighting violence against women. Though the 1983 amendments to the Penal Code brought in important provisions with regard to the prosecution of rape, in 2003, the Ministry of Law and Justice put forward Sexual Offenses (Special Courts) Bill which aims at the speedy disposal of cases relating to rape and sexual offenses. This Bill was challenged by human rights activists as a dangerous precedent. The law seeks to establish special courts throughout the country to try these offenses and the evidence ordinance and the Code of Criminal Procedure was also to be amended before these courts.

In 2004, another bill Sexual Harassment of Women in the Workplace (Prevention) Bill was also put forward by the government. The Bill is an attempt to give parliamentary sanction to the decision by the Indian Supreme Court in *Visakha vs. State of Rajasthan*,<sup>38</sup> that the lack of sexual harassment legislation violates the equality provisions of the Constitution. Quoting CEDAW extensively, the Court defined sexual harassment and stated that both public and private employers have a duty to include the prohibition against sexual harassment in their service rules and that a permanent committee should be set up to deal with these complaints and that the committee must have a majority of women.

The government is also considering the possibility of introducing legislation on trafficking. At the moment the main legislation to tackle the problem of trafficking is Immoral Traffic (Prevention) Act. Though the Act does not criminalize sex work, it criminalizes related activities including soliciting, procuring, maintaining a brothel, etc..

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<sup>37</sup> Center for Reproductive Rights, p.81

<sup>38</sup> 1997 SOL Case No 177

The National Commission for Women has been entrusted with the task of formulating legal reform in this area. The Government has introduced a range of policies to combat trafficking. A Plan of Action to Combat Trafficking and Commercial Sexual Exploitation of Women and Children has been formulated

In Nepal in the last decade, a great deal has been done in the area of trafficking, The Ministry of Women, Children and Social Welfare has proposed a new bill to replace the Traffic in Human Beings (Control) Act. The bill broadens the definition of trafficking and has strong provisions with regard to punishment and evidentiary procedure. In the late nineties, the Ministry also adopted a national anti-trafficking policy, and a rehabilitation home for victims of trafficking. The Human Rights Commission of Nepal also created a National Rapporteur on Trafficking. There is also a TaskForce for anti trafficking activities with task forces at the district and village levels. There is also a special cell in the police to work on issues of women and child trafficking. As in other countries NGOs have worked closely with government on issues relating to trafficking.

In Pakistan, though many crimes of violence against women are dealt with under the Offence of Zina (Enforcement of Hudood) Ordinance, which has difficult evidentiary provisions with regard to the women victim, The National commission on the Status of Women has been requested to review all laws, rules and regulations affecting the status of women. The Commission also set up a Committee of Experts to review the Hudood and Zina Ordinances. In 2004, the Parliament adopted legislation criminalizing honour killings with strong punishments for the perpetrators. The law treats honor killings as an aggravated form of murder. The Pakistan Supreme Court has also stated that honor killings are murder and violate a woman's fundamental right. Crisis centres have been established for women in distress in Islamabad, Vehari, Lahore and Sahiwal.

In Sri Lanka, the decade witnessed the drafting of the Penal Code Amendments in 1995 which was a major step forward with regard to meeting the challenge of violence against women. Rape is defined without the limiting words "against her will" and special provisions exist for judicially separated couples and statutory rape. There is enhanced punishment for custodial rape, rape of a pregnant woman, rape of someone under 18, rape of a mentally disabled person and gang rape. There are also provisions for mandatory sentencing. In Sri Lanka a draft law on domestic violence is also pending. The draft law defines domestic violence broadly and provides for a broad range of remedies including interim and permanent protection orders, emergency monetary relief and compensation. The law was recently debated with conservative MPs voicing opposition to the bill stating that it calls into question the sanctity of the family. The debate is due to continue in a few weeks time. After Beijing, Sri Lanka did adopt a national plan of action but there was no follow up on its implementation.

The countries of South Asia have all ratified CEDAW though some of them have done so with reservations. The countries of South Asia have also signed the SAARC Convention on Preventing and Combating the Trafficking in Women and Children for prostitution. The Trafficking Convention defines trafficking narrowly and it is not in conformity with the international definition. It provides for co-operation among member states,

repatriation and rehabilitation of women survivors, and has certain measures to ensure prevention<sup>39</sup>

The CEDAW indicators for the region point to the fact that all the countries of South Asia recognize gender equality in their constitutions, though the Indian supreme court has been particularly active in protecting the rights of women under the constitution. With regard to law reform and violence against women, many of the countries of South Asia have taken anti-trafficking initiatives and have begun to reform their rape laws to ensure stricter punishment. The countries have yet to adopt domestic violence legislation with some countries showing resistance to change. The countries have national policies, projects and programmes on violence against women such as training of the police forces and the setting up of support services for victims. However, the real initiatives in the area of violence against women still comes from non-state groupings who continue to be active in promoting measures to prevent violence against women. However, there is a fear that much of the activity on violence against women is donor driven and that much of the society has been unaffected by the need for change and reform.

#### **4.CONCLUSION**

The above survey points to the fact that all the states in the South Asian region have responded to some of the challenges posed by violence against women in the region. Many have passed laws or are entertaining draft laws to deal with some of the important questions. Ten years after Beijing, it is still a concern that except for India none of the countries of the region have adopted domestic violence legislation or made the necessary changes to anti –trafficking legislation. However programmes and policies are in place and a great deal of activity has been conducted by women’s ministries, national commissions and individual government departments. There have been many training programmes also for senior level policy officers and other members of the criminal justice system.

The changes in South Asia have also made possible by the activism of civil society and the foresight of many women’s NGOs. They have conducted research, suggested legal reform and put in place constructive programmes that actually assist women victims of violence. They have trained police men, they have lobbied politicians and judges and they have put together shelters and crisis centres. They have taken cases to court, demonstrated for women’s rights and in some countries mobilized people at the risk to their own lives. They have counseled and cared for many victims of violence breaking their silence and allowing them to regain their dignity.

Research from around the world point to the fact that violence against women can only be combated if there is a healthy partnership between women’s groups and the state apparatus. While women’s groups must protect their independence, on certain issues they

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<sup>39</sup> The reference material for the section on “The Response of States” was taken from the Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences, International, Regional, and National developments in the Area of Violence Against Women 1994-2003 Addendum 1, E/CN.4/2003/75/Add.1

have to work effectively with the criminal justice system, joining forces to protect the rights of women victims. However, this also poses a major dilemma. The decade ends with the triumph of a certain “law and order feminism” which aims at punishing the perpetrator, using draconian provisions in the law. Whether in trafficking, rape or sexual harassment, there is a punishment rhetoric that belies a complex reality. South Asia is particularly receptive to this excess of law enforcement. Provisions in trafficking legislation, in sexual offenses legislation, in preventing women from migrating procedures, are so draconian that they raise questions about the human rights of the perpetrators and an over reliance on the criminal justice system to solve complex social questions. Though they provide an immediate sense of something being done, in the long run they pose serious dilemmas. In the end judges and juries just do not convict if they feel that the law is too harsh or unreasonable. Fighting violence against women will only succeed if it is done through the lens of human rights, protecting the rights and dignity of the woman survivor while ensuring a fair trial for the perpetrator. Any other course of action will not stand the test of time and important legislation will fall into disuse. Fairness must be a central concern for women even when they are dealing with abusers. Moreover, law is an important tool but it is one of the many strategies available to us. While fighting for justice through the legal system, we should also try and put in place education policies, health strategies and community level programmes that promote equality between men and women and teach non violent methods of resolving conflict. A multipronged approach to violence against women will result in far reaching changes, transforming attitudes and practices so that men and women can live in equality and dignity.