

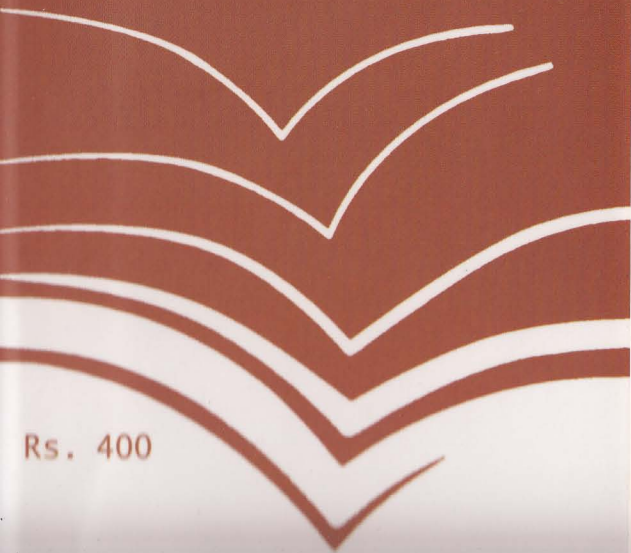


# **Constellations of Violence**

## **Feminist Interventions in South Asia**

Edited by Radhika Coomaraswamy &  
Nimanthi Perera-Rajasingham

This volume gathers together some reflections on the complex and shifting dynamic of violence and gender in South Asia. It analyses how international catalytic efforts actually function in the matrix of South Asian societies, and critiques their silences and erasures. Has the international movement, in its conceptualisation, articulation and implementation, resulted in privileging one body of experience over another and erased the reality of many women subjected to different kinds of violence? These essays raise important concerns of difference and plurality in understanding and confronting violence against women, and interrogate accepted truths on development and agency, to flesh out nuances previously ignored.



Rs. 400

Construction of Violence

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# Constellations of Violence

## *Feminist Interventions in South Asia*

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Radhika Coomaraswamy  
and

Nimanthi Perera-Rajasingham



an associate of  
kali for women

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## Introduction

RADHIKA COOMARASWAMY &  
NIMANTHI PERERA-RAJASINGHAM

Charlotte Brontë's *Jane Eyre* is a landmark feminist novel of 19th-century England, where the heroine, 'plain' Jane, attains selfhood or individuality through her outspoken rejection of patriarchal oppression. After a wretched childhood as an orphan at a charity school, Jane takes up a position as a governess and falls in love with her employer, the fiery and overtly masculine Mr. Rochester, who asks her to marry him. Disturbed by encounters with what appears to be the spectre of a mad woman, Jane discovers only on the day of her wedding that this is in fact the living wife of Rochester, who has been kept locked up for years after being diagnosed insane. Feminist critics Sandra Gilbert and Susan Gubar have proposed that this mad wife, Bertha Mason, represents Jane's 'own imprisoned "hunger, rebellion and rage," so that the novel becomes a secret dialogue of self and soul.'<sup>1</sup> The mad laughter of Bertha from the attic is according to them, 'a complex focal point', where Jane's own rationality and irrationality intersect, a form of positive energy.<sup>2</sup> Gayatri Spivak has pointed out that Gilbert and Gubar chose to understand Bertha Mason 'only in psychological terms, as Jane's dark double.'<sup>3</sup> In contrast, Spivak reads Bertha, a Caribbean woman whose eventual death after she sets the house on fire enables Jane to marry Rochester, as the 'fictive Other' who has to 'set fire to the house and kill herself, so that Jane Eyre can become the feminist individualist heroine of British fiction' in the 19th century. She reads this as 'an allegory of the general epistemic violence of imperialism, the construction of a self-immolating colonial subject for the glorification of the social mission of the coloniser.'<sup>4</sup> Jane's liberation is at the *expense* of Bertha, a third-world woman, deemed insane, locked up, and consumed by flames by the end of the novel. By setting herself and the house on fire, Bertha enables Jane to come into her own. What is liberation for Gilbert and Gubar is violence from a different perspective. The

epistemic violence embedded in the celebration of the agency of the first-world woman is telling of how complex are issues of representation.<sup>5</sup>

This volume gathers together some reflections on the complex and shifting dynamic of violence and gender in the third-world context. As these readings of *Jane Eyre* illustrate, international campaigns against violence against women, with their impetus from western countries, have led to the emergence of a body of thought that may rest upon the erasure or distortion of certain 'lived experiences' in the third world. Furthermore, individualism, that has given great energy to various feminist movements, may also be linked to the act of othering. Hence, subjecthood and violence are contested categories that come to us through complex modes of representation.

The endeavour of this volume is then to explore the conceptualisation of violence against women within South Asian feminist movements, to analyse how the international catalytic efforts actually function in the matrix of South Asian societies, and to critique their silences and erasures in the South Asian context. Has the international movement, in its conceptualisation, articulation and implementation, resulted in privileging one body of experience and erased the reality of many women subjected to different kinds of violence? The volume raises the important concerns of difference and plurality in conceptualising and confronting violence against women.

### Locating ourselves

If under colonialism the colonial male subject was portrayed as rescuing the native woman, then early nationalist projects of South Asia reacted by representing women only as the bearers of local tradition and sought to silence any discussion on violence against them in the private sphere lest this threaten nationalist projects. It can therefore be said that space for the discussion of gender and violence opened only as the women's movement started to question the liberationist potential of nationalism.

Feminist engagements with gendered violence in South Asia are only some two decades old. This is not to say that gendered violence was not part of social discourse, for, as already noted, there was a

long tradition of the colonial administration intervening in practices of gendered violence in the name of reforming the natives. What we suggest is that the emergence of gendered violence as a coherent category and a feminist concern dates back to the 1980s. The three country studies of Sri Lanka, India and Pakistan that belong to the research project of which the present volume is also part, substantiate this, while bringing out the very different contexts in which gender and violence emerged as issues in each of these countries.<sup>6</sup> In Sri Lanka, feminists commenced working on issues of gender and violence in the context of globalisation, when fears that an open economy might aggravate forms of exploitation in free trade zones and media representations opened a space for such engagements. This concurred with shifts in how nationalism was defined, from an anti-colonial and liberationist movement to a set of practices and an ideology that excluded many groups. In Pakistan, gender and violence surfaced in public discourse following the increased repression of women after General Zia-ul Haque came to power. In India, the rape of a Muslim girl by three policemen and a bootlegger's son in 1980 mobilised one of the first large-scale protests by feminists.

Into this contested terrain there entered the discourse of international feminism, which defined gendered violence specifically as a violation of human rights. In 1993, feminists gathered in Vienna to draw on the experiences of women from around the world in formulating an agenda to combat violence against women in the form of armed conflict, domestic violence, rape, sexual harassment, trafficking, and traditional practices. This agenda served to catalyse processes of change in the national arena as well. Yet it is undoubtedly founded on a complex set of negotiations and silences.

As violence emerged as a feminist rallying point, it came to be categorised in two distinct ways, as 'violence against women' and as 'gender-based violence.' The first belongs to a tradition that assumes a concrete pre-political identity for women, that is, the category 'woman' is a given, as is the self-evident character of violence. Here, violence is not only obvious but also easily understood. The goal of feminism should be to think through remedies and strategies to combat violence, and the law has been the main terrain of such engagement. This liberal position has driven the international movement on violence against women, but has aroused much

opposition, much of which comes from a perspective on gender politics provided by the writings of Judith Butler, Gayatri Spivak, Vasuki Nesiah, Ratna Kapur, and other feminists influenced by their writings.

In *Gender Trouble*, Judith Butler makes one of the most important breaks of post-structural feminism with liberal feminism, in a well-known argument bringing to crisis the categories of sex and gender.<sup>7</sup> In contrast to liberal theorists who sought to distinguish gender and sex, Butler argues that the category 'woman' is not found 'before,' 'outside' or 'beyond' culture, but is 'produced and restrained by the structures of power,' such as juridical power or, often, the ordering principle of the heterosexual matrix. This radical disruption of 'woman' as a category of analysis may be taken further, to question 'third-world woman' as a stable category. As Wendy Brown argues, 'gender can be seen as a marker of power, a maker of subjects, an axis of subordination, without thereby converting to a "centre" or "selves" understood as foundational.'<sup>8</sup>

Similarly, can violence too be unpacked, treated not as something easily understood and transparent, but as a category that needs constant scrutiny and interrogation? As Mary John and Janaki Nair point out, since the 1980s, especially in the United States:

... sharp lines have come to be drawn between positions that view heterosexuality as the very core of women's oppression, on the one hand, and more liberal lesbian criticisms that see a focus on sexual violence alone as being unduly alarmist, an obstacle to speaking about women's pleasure. This has often led feminists to take opposing stances on issues such as censorship, pornography and prostitution.<sup>9</sup>

In the present volume, the essay by Shermal Wijewardene captures the ways in which gendered violence can have multiple conflicting registers, through an analysis of responses to the Sinhala film *Thani Thatuwen Piyabanna/Flying With One Wing*. She highlights how numerous forms of gendered violence in the film have been ignored by commentaries both national and international, which have heralded the film as revolutionary for having created a space for discourse on gender, sexuality and violence. The cacophony of opinions about the lifting of constraints has closed off possibilities of asking *how* the film handles the actual issues of transgender identity politics. As Wijewardene argues, what has been obscured is that the film in no

way espouses a nuanced or progressive understanding of transgender politics; rather, it operates to contain discussions on transgendered identities. The second part of her essay attempts to locate the 'missing niche audiences' of lesbian and transgendered collectives whose perspectives on the film should have emerged but did not. The Sri Lankan feminist movement has for the most part located sexual politics vis-à-vis violence within a heterosexist critical framework, in the case of both domestic violence and ethnic violence, and its failure to take into account gendered violence against same-sex couples signals some of the problems with using 'woman' as the reference point for feminist politics. The essay reflects on the different, complex, and contradictory ways in which lesbian, gay, bisexual, transgendered, intersex and questioning (LGBTIQ) communities in Sri Lanka understand gendered violence while remaining alienated from mainstream research and policy-making on the issue.

Lubna Chaudhry's essay takes into account the changing and complex sets of structures, such as class, caste and spatial location, that fashion different kinds of violence upon women's bodies in a village in southern Punjab, Pakistan. She describes the rapes of lower caste women by landed, upper caste men, that were facilitated by the fact that the women were brought to the men by men of their own caste seeking to gain favour with these powerful landlords. The other women in the village, while they sympathised privately with the women, did not have the space or capacity to express this because of the caste barriers between them. Chaudhry also details the different ways in which women were offered protection and threatened with violation by men in the *basti*; these violations were premised upon multiple forces that converged at certain moments. Her essay attempts to locate women's agency within complex matrices to show how 'agency is dynamic, entailing an ongoing negotiation with power relations, but does not presuppose a transcendent subject outside the context of her constitution.'

### Representing violence in a war zone

Debates around the nature and definition of gendered violence also occur in the pair of essays by feminists Kanchana Ruwanpura and Nimanthi Perera-Rajasingham. Both these are set in the Eastern

Province of Sri Lanka, where multiple military groups like the Sri Lankan army, the LTTE, and the Karuna Faction operate. Categories such as development work and human security are called into crisis as these essays show how feminists need to critique accepted patterns of development and empowerment and raise questions about how violence may re-emerge in hitherto unnoticed ways.

The essay by Kanchana Ruwanpura looks at NGO operations in the Eastern Province and the gender implications of some of this work. Ruwanpura notes that while these development projects provide an important and immediate source of income-generation for women, the nature and viability of and the structures underpinning these projects need to be brought under scrutiny. She criticises the grand narrative of development aid, evolved out of the Washington Consensus, which takes a positive view of structural adjustment. According to development logic, states, especially third-world states, are not competent to reduce poverty in their countries. The insurgencies by the JVP and the LTTE are used as examples of the State's incompetence to govern successfully, and it is argued that NGOs and civil society groups should take on this responsibility.<sup>10</sup>

Ruwanpura's study of patterns of development aid in the Eastern Province suggest nuances not so evident at first glance or in the general terms used to analyse development aid. One is that the romanticised collectives called 'grass-roots organisations,' meant to embody the area of first-hand experience, became nothing more than implementing agencies; second, that micro-credit to female-headed households did not challenge notions of gendered work; third, that often these NGOs worked exclusively within certain ethnic communities rather than across them, further contributing to the polarisation of ethnic relations. Paying attention to local dynamics such as the dominant political players in the field, the radicalised and polarised relations between the Sinhala, Tamil and Muslim communities can bring to crisis global discourses on development and gender. Her description of how NGOs and civil society actors often do not expose the violence endured by women of their community for fear of losing face before other communities provides insights into the troubling aspects of civil society. This has led civil society actors inadvertently to promote everyday forms of structural

exclusion of women—which foster extraordinary forms of violence against women.

The essay by Nimanthi Perera-Rajasingham focuses on the districts of Batticaloa and Ampara. If, as Ruwanpura states, human security was one of the main reasons certain institutionalised structures were put in place, then we have to question the failure of such structures to live up to their promises, in the East and more so in Colombo. The essay looks at the forcible recruitment of children in the East by the LTTE, and calls attention to a new form of violence. The common feminist tendency is to criticise the linking of women with children, which makes women dependent on motherhood for their identities. This essay attempts strategically to re-link the two, based on women's identification of motherhood as one of their primary roles in this region.<sup>11</sup> This identification exposes women to different forms of violence during child recruitment, while enabling forms of collective resistance at other instances. Again, the categories of gender and violence become vexed. For, one can question the stretching of gender-based violence to include women's experiences of suffering and physical pain during the process of child recruitment and afterwards. Simultaneously, one can see the uses of such linkages for collective forms of resistance as described in the essay. For at a certain juncture in 2004 when the eastern wing of the LTTE split off from the northern one, groups of mothers surrounded camps in the Eastern Province, demanding the release of their children. Again, there is a strong critique of the accepted belief that civil society is the liberating space for political activism in the concluding section, where the author highlights the failure of civil society actors to move beyond conflict resolution frameworks, which consist of negotiating between two elite political parties rather than forwarding democratic agendas. Within this framework, challenging the LTTE's practices of child conscription was seen as rocking the boat and endangering the ceasefire agreement. This essay concludes by questioning the value of a peace process that shelved important issues of human security and children's rights.

### The global and the local: negotiating policy

It becomes clear that while universalising discourses, large-scale policies, and conventions may be of some help in addressing gender-based violence, they cannot easily deal with questions of difference. UN declarations and CEDAW recommendations provide a framework that may or may not be useful, but the deeper debates on gender and violence within communities and among feminists reach no easy resolution. Large-scale efforts provide important energy through the networking of feminist groups, and provide much needed shifts in focus from patriarchal models to more open-ended ones respectful of difference, but these are not always sufficient. Multiple factors contribute to differing understandings of the categories, and understandings also shift with the historical, political, and economic changes in a society.

The essay on sexual harassment in Delhi University looks at issues that were initially conceptualised by the early architects of the international movement on violence against women. Sexual harassment as a concept did not exist in law books anywhere in the world until the 1980s and it was concerted action by leading feminist thinkers such as Catherine MacKinnon that brought the punitive frame of the law and internal disciplinary procedure to bear on cases of harassment. How do these concepts play out in the everyday life and politics of South Asia? The essay by Uma Chakravarti, Pratiksha Baxi, Suman Bisht, and Janaki Abraham shows how feminists creatively and selectively use international frameworks to support their own specific needs. It documents the translation of a Supreme Court judgement providing guidelines for the prevention of sexual harassment in workplaces into the space of a university campus, and argues against a singular reading of legal or international discourses as leading to identical effects of power at every site. Hence, the effects of power in Delhi University have been very different from those of sexual harassment laws in other locations and contexts. This essay suggests instead that the notion of contingency needs to be built into the thinking about sexual harassment; therefore, the authors do not provide an orderly or unified narrative of resistance but rather a dialectical account of an engagement with an issue, that sought to transform the campus into a safe and non-hostile working

environment for all its members. It draws attention to the contestations around sexual harassment in a university space, and the fracturing of legal discourses at different sites within the space of a university, which is also embedded in the space of the city. Through this the authors trace the shifts in the discourses on sexual harassment over a period of time, leading to the way in which a particular form of gendered violence came to be named.

Hence, while international movements may have the effect of a catalyst, the authors interrogate the notion that local initiatives are case studies for international theoretical frameworks originating in the west, as this perpetuates the marginalisation of feminist scholarship from non-western locations. They take the position that the law, especially constitutional law, can be used strategically to bring about changes in the environment of a campus; their position takes on board the suggestion that sexual harassment policies act as tools of repression, by arguing that the techniques of disciplining and surveillance used by the university to produce docile subjects in the university have pre-existed the introduction of sexual harassment policies. The introduction of sexual harassment policies into the university space has led to the university becoming a site for competing sexualities as university authorities, faculty members, and students have sought to translate the policy in distinct and contradictory ways, using the policy for moral policing rather than its stated aims. It is necessary to examine the politics of appropriation, and the way official discourses have altered over a period of time through the mediation of feminist movements against sexual harassment. The authors argue that it is not possible to abandon the law as a field of critical interrogation and that the politics of the women's movement and a feminist jurisprudence provide ways of engaging with the law while being mindful of how sexuality/gender politics inflects its application; in the context of the university, a critical commitment to a policy that is framed such that it is not used for the moral policing of consensual relationships has been an important foundational principle of the women's movement and of feminist jurisprudence. The authors thus argue that struggles on the ground must at all times counter the politics of (mis)appropriation.

Another area where the international acts on and constrains the local is trafficking. The essay by Radhika Coomaraswamy and Ambika

Satkunanathan debates some of the complexities involved in legislating or drawing up international standards on trafficking. The difficulty in drawing up such documents, the two authors suggest, is that multiple conflicting factors need to be considered. One significant factor is that trafficking is often complicated by issues of migration: in search of various kinds of employment, women from the South desire to migrate illegally to countries in the North. At different points in time, women's situations may become abusive/violent but this may change back to an 'acceptable' state again. Women are often prepared to enter sex-work, but not the degrading conditions in which they are forced to work. Of course, feminists are not agreed on the issue of sex-work itself, and as noted by Coomaraswamy and Satkunanathan, positions range from those of abolitionists who think sex-work a violent form of slavery, to the belief that the law can have no place in resolving issues of sex-work, to understandings of sex-work as liberating for women. While drawing many examples from South Asian and other postcolonial countries, this essay reflects the need to negotiate all these competing interests in a document that will resonate some of the complexities of the lives of women who cross borders illegally in search of a better future. The negotiation between local and global finds no easy resolution in the essay, and while the authors affirm the need for international standards and laws, they also convey a certain pessimism about relying wholly on the law. Multiple factors need to be considered before differently placed forms of trafficking can be addressed.

The corresponding essay by Yasuko Fujikura looks at trafficking from the perspective of incidents specific to the Badi community in Nepal. From 1996, the community's practice of sex-work was reconceptualised as a 'traditional' practice that should be eradicated, and they became the target of reform by committees such as the Drug and Prostitution Eradication Committee. This essay describes how campaigns to eradicate violence in fact subjected women of this community, both sex-workers and others, to increased violence—some were forced to leave the village, they were subjected to increased beatings, to stripping, and were not allowed free movement. As HIV/AIDS campaigns started, these women were further stigmatised as carriers of disease. Fujikura proceeds to look at how global campaigns on prostitution were seen both to empower and disempower

communities, and at how laws on trafficking were collapsed into issues of sex-work. While the campaigns generated new forms of violence against these women, activists from within the community began to address the rights of Badi women. This debate found different groups campaigning along different sets of rights, and the author points out how the distinction between 'choice' and 'force' that governs international and national discourses on prostitution often proved to be divorced from realities on the ground.

### Cultural relativism and a paralysis of politics

The focus on situated, historical analysis with attention to difference does not, however, suggest a move towards an alternative politics of cultural relativism, to which many feminist scholars have raised objections. Seyla Benhabib, for example, has suggested that 'the activation of differences may not amount to a democratic respect of the right of the other to be, but to a conservative plea to place the other, because of her otherness, beyond the pale of our common humanity and mutual responsibility.'<sup>12</sup> Benhabib sees Jean-François Lyotard's demand for a polytheism of ideas as leading to a demise of collective action and politics, because excessive attention to the local, to contexts, makes it difficult to think through collective emancipatory politics.<sup>13</sup> She fears that this trend of postmodernist thought does not distinguish between 'raising a validity of claims and forcing someone to believe in something, between the coordination of action among participants on the basis of conviction generated through agreement and the manipulative influencing of the behaviour of the other.'<sup>14</sup>

Benhabib's argument has resonance with some of the criticisms of postmodern culture by Frederic Jameson,<sup>15</sup> who claims that the call to pay attention to breaks, shifts and gaps is part of a discourse closely bound up with late capitalism. Jameson views political projects of this kind as auto-referential products of late capitalism rather than as emancipatory, for they refuse to account for larger structural changes and patterns of oppression, such as globalisation, structural adjustment, neoliberalism. As he argues:

One of the concerns frequently aroused by periodising hypotheses is that these tend to obliterate difference and to project an idea of the

historical period as massive homogeneity (bounded on either side by inexplicable chronological metamorphoses and punctuation marks). This is, however, precisely why it seems to me essential to grasp postmodernism not as a style but rather as a cultural dominant: a conception which allows for the presence and coexistence of a range of very different, yet subordinate, features.<sup>16</sup>

This cultural dominant of fragmentation is, according to Jameson, 'the internal and superstructural expression of a whole new wave of American military and economic domination throughout the world.'<sup>17</sup> Some of these arguments are reiterated and elaborated by Michael Hardt and Antonio Negri.<sup>18</sup> Related concerns are raised in Nancy Fraser's criticism of Michel Foucault for providing no basis for distinguishing 'forms of power that involve domination from those that do not,' so that Foucault 'appears to endorse a one-sided wholesale rejection of modernity as such ...' Fraser concludes that, 'what Foucault needs, and needs desperately, are normative criteria for distinguishing acceptable from unacceptable forms of power.'<sup>19</sup> Like Benhabib, Jameson, Hardt and Negri, Fraser warns of a paralysis of politics if there is no conceptualisation of good and bad, of collective politics over the play of difference.

Yet rather than seeing attention to the specifics, shifts in power, and the destabilisation of categories as leading to the demise of collective action and larger structures, historically situated, contextualised analysis can be seen as a means of nuancing and supplementing grand narratives. Taking note of the specific is not to deny the existence of larger structures, but to call attention to the silences that these grand narratives can create.

The essay by Kumkum Sangari is an excellent example of how one may look at larger patterns of gender and violence within the South Asian region. As she argues, in all these countries there is violence against women in the home, in the workplace, in public places, in institutions of the State such as police stations, and women are raped by familiars and strangers, individuals and gangs. Larger overlaps of gendered violence among countries are often ignored by culturalist readings which complicate feminist attempts to critique violent practices, especially since these readings tend also to spectacularise and decontextualise violent acts—as Sangari puts it, 'As "sati" is to India, so clitorodectomy is to North Africa, and

"honour" killings to so-called Islamic countries.' Hence, while locating violence within specific instances, this essay also attempts to bring out larger patterns, ideologies and structures of violence underlying these particularities and histories. It could be said to capture the dynamic of negotiating between local and global narratives.

For Sangari, the defining matrix within which many apparently different forms of violence are located is that of materiality and relations of unequal power. Hence, dalit women are subjected to various forms of violence if they demand access to material rights such as land, while middle class women are objects of violence, such as domestic violence, because of material issues of property, dowry, domestic work and control of fertility. Therefore, apparently unlike forms of violence have a shared basis in social hierarchies and material inequalities. For Sangari, family, caste, communal and state violence share common features. Her detailed discussion of how sati, read in some instances as tradition-versus-modernity, as community-versus-state, can easily be compared with forms of communal violence provides an example of the similarities across different kinds of violence rendered invisible by culturalist readings.

The essays gathered in this volume attempt to negotiate representative politics and the shifting sands of gendered violence in the region, and to pay tribute to the diverse and dynamic strategies used by feminists and women in South Asia to resist this violence.

## Notes and References

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- <sup>2</sup> *Ibid.*, p. 348.
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- <sup>6</sup> See Ritu Menon and Kalpana Kannabiran, *From Mathura to Manorama: Resisting Violence Against Women in India* (New Delhi: Women

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- <sup>7</sup> Judith Butler, *Gender Trouble: Feminism and the Subversion of Identity* (New York: Routledge, 1990).
- <sup>8</sup> See Wendy Brown, *States of Injury: Power and Freedom in Late Modernity* (New Jersey: Princeton University Press, 1995), p. 40.
- <sup>9</sup> Mary E. John and Janaki Nair (eds.), *A Question of Silence: The Sexual Economies of Modern India* (New Delhi: Kali for Women, 1998), p. 5.
- <sup>10</sup> For an in-depth analysis of donor aid, development and neoliberal politics, see Sunil Bastian, *The Politics of Foreign Aid in Sri Lanka: Promoting Markets and Supporting Peace* (Colombo: ICES, 2007).
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- <sup>15</sup> Frederic Jameson, *Postmodernism or, the Cultural Logic of Late Capitalism* (Durham: Duke University Press, 1991).
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## Gendered Violence, National Boundaries and Culture

KUMKUM SANGARI

If one were to map the forms of gendered violence in the subcontinent, national borders in South Asia would begin to look somewhat flimsy. India, Pakistan, Bangladesh, Sri Lanka and Nepal share several, though not all, forms of violence which reveal substantial overlaps and similarities. For instance, Bangladesh, Pakistan and India share dowry-related killings (named stove deaths or wife immolation in Pakistan), the public humiliation of women through parading and flogging, so-called honour-killings, violence against female domestic workers and violent acts configured around anti-westernisms. Bangladesh and India share the pre-birth elimination of the female foetus and violence directed at inter-religious marriage, while Pakistan and India have in common reprisal rape, mandated gang-rape and the increasing repression of choice (especially cross-caste/class) marriage. In each of these countries, there is violence against girls and women in the home, in the workplace, in public places, in institutions of the State such as police stations, correctional homes, prisons, compounded by a patriarchal legal and judicial apparatus; women are raped by familiars and strangers, individuals and gangs, while poor, low caste and minority women are most vulnerable to (sanctioned) sexual assault.

Analyses committed to difference, as many analyses are today, look for distinctions in religio-cultural particularities, cordon women in 'Islamic' countries into a separate space with special problems stemming from religion, encode the fatwa or 'honour' killing as 'Muslim,' and 'sati' as Hindu. In practice, this Hindu/Muslim encoding breaks down: caste council mandates work very much like community-condoned fatwas, 'honour' killings cut across religions, and widow immolation can be interpreted in other ways.

There is another, even wider, imposed culturalism that encompasses not only all South Asian but most third world countries.

Such culturalism works as a code for tradition and religion, conflates religion and patriarchies with 'culture,' and turns acts of violence into religion-driven third world pathologies or customary/sacred traditions. This complicates feminist attempts to critique violent practices, especially since culturalist accounts also tend to spectacularise and decontextualise violent acts. As 'sati' is to India, so clitorodectomy is to North Africa, and 'honour' killings to so-called Islamic countries. Culturalist accounts are unable to explain similar practices among different religious groups. Does being 'inside' a culture mean inhabiting its secular and political spaces or only its ritual or religious ones? Culturalism as an explanatory framework breaks down under examination—not only do similarities demand explanation, but so do the recurring patterns and structures of gendered violence.<sup>1</sup>

It has become even more important to move away from culturalist modes of analysis, given the increase in gendered violence in India, the expansion of Hindu communalism, the mirroring violences of different religious fundamentalisms in South Asia, the stereotypes produced by anti-Islamism, and the consolidation of transnational definitions of violence around pernicious images of Islamic culture and civilisation. Moving beyond culturalism entails looking at patterns, structures, conjunctures and constellations of gendered violence within each country in ways that are context-specific but not culturalist, as well as attempting to understand how they may resonate across national boundaries both within South Asia and more widely.

The nature and distribution of gendered violence in India challenges binary distinctions between traditional or culture-specific violence and non-cultural or everyday violence, the division between one's 'own' women and 'other' women, and even the distinctions between apparently different forms of violence. Perhaps the discernible pattern and structure of violent acts can be enlisted to unravel these dichotomies and define the specificity of this conjuncture. Further, exploring the relationships between different forms of violence, looking at the pattern and structure of violent acts, questioning the distinctions between so-called private and public violence, between modernity and tradition, between one's 'own' women and 'other' women, within the parameters of the current political economy may

help to rethink the 'national' or 'regional' boundaries of gendered violence.

Violence is a foundational and systemic feature of all contemporary patriarchies. Women's consent to patriarchies is often an effect of the anticipation of violence, or the guarantee of violence in the last instance—to ensure obedience, inculcate submission, punish transgression. Patriarchies rest equally on consent by women, violence against women, and on legitimating ideologies. The fact that there is no full male monopoly of institutional and interpersonal violence, that women can be active agents in inciting and inflicting violence, suggests the obvious: that patriarchies are not the rule of men over women but systemic structures. A simplified conflation of (a singular) patriarchy with male domination unfortunately still underwrites most analyses of violence against women.<sup>2</sup> Indeed, patriarchies work to undermine solidarities by dividing women within the same family, neighbourhood, caste or class, as well as across classes, castes and religions.

Further, gendered violence works along the grain of social divisions, encashes and reinforces existing divisions, and is a crucial part of the emergence of new social tensions and competing inequalities in contemporary India. If patriarchal systems are seen as structurally related to other axes of social division, rather than as autonomous or self-sustaining or epiphenomenal, then violence can be understood, at one level, as a connective tissue between patriarchal systems and other social structures: as a volatile node of containment, socialisation or status quoism. All the dominant agencies of violence, at work in isolation and intersection—class, caste, family, so-called religious community, the State—are caught in these logics.

Gendered violence is inescapably related to material considerations: to control of the reproductive body and control of fertility, to uneven distribution of labour and resources, to exploitative production relations, to the articulation of caste with class, and to the logics of an uneven spread of capitalism. The unevenness of capitalism and the transnational reformulation of patriarchies produced colonial patriarchal intersections from at least the nineteenth century. Older forms of violence acquired new shapes and new forms of violence appeared—a process that continues today with the new

inequalities produced by the accommodation of the national economy to global imperatives.

Some startling correspondences emerge even from a sketchy analysis of prevailing forms of gendered violence in India. I will analyse these correspondences after some discussion of each kind of violence.

Sexual violence in the form of harassment, molestation and rape is both lateral, that is, directed at girl children and women of (apparently) the same class, and vertical, that is, directed at women 'below.' Both forms of violence are often committed by proximate or familiar persons, and can involve more than one aggressor and varying degrees of premeditation. Pockets of public indifference or acceptance are created by putting the onus on women's provocation. Even the judiciary has held women as partly responsible for the violence they experience: a woman's dress, behaviour and bold or 'provocative' nature has been said to trigger violence in men.<sup>3</sup> The significant thing to note is how often women of the *same* class are singled out as 'other' women by virtue of their dress, behaviour, nature, and 'westernisation'.

Vertical violence, as in sexual assaults on tribal or dalit women, is directed at women 'below.' It is based on blatant class and caste inequality and involves material issues of property and labour. This often takes the form of gang rapes by higher class/caste men. Poor, lower caste women have been punished in their own right—for being too assertive, for demanding higher wages, for claiming their right to land or claiming the piece of land that legally belongs to them, for defending their piece of land or refusing to sell it, and for becoming agents of social transformation.<sup>4</sup> They have also been treated as metonyms for their caste group. Lower caste women have been publicly shamed, stripped and paraded, or raped by upper or intermediary caste landowners to punish dalit men as a group. Women are identified with the caste group and the 'manhood' of a caste is defined by the degree of control men exercise over women and the passivity of their women.<sup>5</sup> Gang rape is a group crime, and the stripping and parading of women are collective, public, and publicly witnessed acts in which higher caste women have at times been actively complicit. The testimony of assaulted dalit women is

also discredited; they are represented as unreliable witnesses, liars, innately immoral and sexually promiscuous.

Domestic violence is the most daily and most normalised; it is directed laterally at women apparently within the same class. I say apparently, not only because there are *de facto* differences,<sup>6</sup> but because the techniques of domestic violence—in the denial of access to services, resources, food, medical aid and property as well as in the extraction of labour—are often intended to or have the effect of 'lowering' a woman's class and so of 'othering' her. Domestic violence is sanctioned by wider familial networks, it is both spousal and non-spousal, and women can be involved in aggression. The involvement of women in violence against girls or other women in the family can be interpreted as a form of patriarchal delegation. Though often accompanied by allegations of unchastity, much of family violence is directly connected to material issues of property, inheritance, dowry, domestic work, survival labour, and control of fertility. However, it cuts across class, caste and religion, and prevails in affluent families as well. It is not the widow (a figure that has come to bear the burden of culture) alone who is vulnerable. Taken as a totality, family violence seems to somewhat level the field among daughters, daughters-in-law, older wives and widows. Older women, or those married for longer are abused more, that is, physical punishment can increase with the duration of the marriage.<sup>7</sup> In other words, the longevity of marriage does not guarantee 'belonging'; the possibility of 'estrangement' is always present, even within the most normative marriage. Most cases of dowry-related violence also occur within the frame of 'arranged' and so normative marriages, a very small percentage occur in love or inter-caste and so 'transgressive' marriages. Even so, extramarital relations or the unchastity of the daughter-in-law are often alleged.<sup>8</sup>

In the majority of instances, natal families do not or are unable to provide much support for their married daughters; sanctuary-seeking daughters are usually seen as financial and moral burdens, and sent back to their marital homes.<sup>9</sup> The natal family becomes the primary agent of violence when the violence is related to the regulation of sexuality, the enforcement of heteronormativity, the arrangement

and control of marriage (particularly marriages of choice), and the denial of a single woman's right to property.<sup>10</sup>

The sex-selective abortion of the female foetus is based on calculating the 'cost' of prospective daughters. Women can undertake sex-selective abortion under visible family pressure as well as appear to take the decision 'themselves'. The involvement of women in sex-selection hinges as much on the issue of patriarchal delegation of violence as on family or caste group control—that is, social control—of the foetus. Such control of fertility should not, however, be confused with women's choice: women are also frequently denied choice regarding birth control and abortion.

For middle class women, family violence may perhaps be 'private,' but it is public for poor women. For instance, in urban slums the whole neighbourhood is able to witness violence.<sup>11</sup> The agony of a burning daughter-in-law can be 'heard' and seen. A complicit marital family is unlikely to help her, and it is often neighbours who have intervened and assisted the woman.<sup>12</sup> The distinction between public and private becomes thinner as many types of family violence fall within the ambit of group crimes—when they entail more than one individual and some degree of planning and co-ordination, and when they involve public institutions as in sex-selection.

Sex-selection shares common features with group and family violence: it is conducted by familiars, involves more than one person, is premeditated, and the legal onus (at least prior to amendments in the PNDA Act) has often been put on the woman.<sup>13</sup> It is as collective an act as gang-rape and cannot happen without the collusion of doctors and the techno-medical industry. It occurs largely in situations of relative prosperity, has moved from urban to rural areas, and is related to dowry and the control of property by natal families. As a multi-factor phenomenon, it is tied to the political economy as a whole, the Indian state's family planning policies, the fact that population control has been a major condition for development aid; it is linked to the expanding role of the market, the enlargement of health care by the private sector in an entrepreneurial mode and the regional trajectory of imported technologies.

Violence related to inter-caste marriages has been conducted directly by male and female family members either alone or in tandem with

caste or tribal panchayats and village elites, or on the mandate of both higher and lower caste panchayats, tribal panchayats and higher caste village elites. It is both lateral—directed against women of the same family and caste, and vertical—directed against lower caste women and men. This kind of violence targets both inter-caste unions, especially those between lower caste men and relatively higher caste girls, as well as intra-caste marriages which infringe prohibitory taboos on village and gotra endogamy. Caste endogamy is related to the maintenance of the caste order and structures both upper and lower caste patriarchies. Women's choice of partner is at issue and women who do choose are maligned as immoral or licentious. Further, punishments for infringing the code of village exogamy or distance marriage protect a useful patriarchal convention that displaces women and inhibits the formation of long-term support networks for and among them. However, friendships and supportive relationships between women have also been subjected to direct attack, as is evident in the punishing, even the burning of so-called helpers of transgressive marriages. Such attacks are not confined to exogamic north India.<sup>14</sup> Many kinds of 'community' 'justice' seem to demand the breaking down of ties between women.

In instances of violence related to inter-caste marriage, at the very least erring couples have been socially boycotted or forced to break the marriage and remarried to old men; at worst, they have been killed—hacked, beheaded, burnt, hanged. This kind of violence is collective, collaborative, and usually public. There is a marked continuum, as well as frequent collaboration, between family killings and caste council killings, and a significant sanction is bestowed by public witness and the participation of villagers.

What is at stake is more than the anthropological markers of 'culture': kinship bonds, the hierarchised purity of caste, marriage codes and the 'honour' of the community. It is also the maintenance of material inequalities, social status, and the power of caste panchayats; in these existing local tensions and power dynamics between caste groups play a role.<sup>15</sup> For higher castes, the protection of such hierarchies entails not only the violation of 'other' women, but also the violation or killing of women of the same caste. The situation of lower castes and dalits is similar. When upwardly mobile lower castes adopt higher caste practices to claim a hitherto 'denied'

masculinity and 'protect' their own women from upper caste men (since their de-masculinisation by upper caste men has taken the form of exploiting lower caste and dalit women), then this can involve targeting their own women.

The representation of panchayat-orchestrated killings as 'honour' killings needs to be rejected for a number of reasons. The analysis of 'honour' coincides too neatly with the self-serving representation of such violence by its perpetrators who use the language of honour and pride, and runs the danger of taking their self-definition at face value. Panchayat mandates for violent acts are emerging in new villages and regions which have no earlier history of them, as well as among backward castes, and are often related to emerging tensions between dalits and OBCs. Though these panchayats are perceived and represented as protecting local norms, customs and traditions, their traditions are often recently 'adopted.' The 'custodial' aura is not only useful in retaining existing power but also a means of wresting new authority for caste panchayats. Caste councils are male dominated, and more significantly, as a site of inter- and intra-village alliances, they function as wider regional sites of patriarchal power and male bonding. They may be a lucrative source of regular incomes in some areas.<sup>16</sup> There are many recorded instances of caste panchayats presiding over complex monetary transactions, receiving payments or a cut. Indeed, fines establish long-term panchayat control over families. Finally, though caste panchayats (largely of middle and lower castes) now comprise the bulk of non-formal jurisdiction, some co-operative interfaces are beginning to develop between caste panchayats and elected gram panchayats, and some gram panchayats are reproducing the pattern of caste council violence.

Sexuality is *in* the public gaze (not in a private space) in this domain of 'customary' practice, and much of the violence is preceded by minute surveillance, tracking a woman's actions, movements, labour and reproduction. The responsibility of the family or caste group for the sexual surveillance of women interlocks with 'customary' arbitration, and this 'responsibility' can, paradoxically, provide a social acceptance of group crimes and allow them to parade as 'local' justice.

The prevention and policing of inter-religious marriage has become an established communal practice of Hindu right-wing organisations

like the Vishwa Hindu Parishad, Durga Vahini and Bajrang Dal. The line between communal violence and caste group violence is thin: in both we see a similar arrogation of adjudicatory power. Communal organisations like the Bajrang Dal seem to be combining the patriarchal role of families and caste panchayats in their surveillance of female sexuality, and practise the same denial of freedom and volition to women. In their attempt to annex and reconstitute the non-juridical sphere of customary arbitration, Hindu communal organisations have begun to function as a non-statutory court-cum-police committed to the forcible 'rescue' and 'restoration' of women in inter-religious marriages, to the de facto termination or dissolution of these marriages, and to 'retaliatory' action. This assumes 'community' ownership of women, and makes marriage secondary to religious primordiality.

Rape and sexual violence are now routinised communal weapons and seek social sanction in-the-name-of a religious community and a Hindu nation. Sexual assault has been directed against 'other' women from minority religions in many contemporary episodes of Hindu communal violence which are collective, orchestrated, and fuelled by organised incitement. The genocidal violence in Gujarat in 2002 (that found added sanction in the new anti-Islamic imperialism) was characterised by vicious assaults on the female reproductive body. Foeticide and infanticide were a recurring feature which connected and remapped the political and familial space. Though these triumphal enactments of collective control of the female reproductive body and the fetus targeted minority women, they can also be seen as a public extension and a rechannelling of patriarchal control—routinely exercised by the family or caste group over its own women—'outwards' to 'other' women.

The Hindu Right's violence is of course not confined to 'other' women: as a norm-producing violence it must threaten and attack women from the majority community. 'Religious' animosity against Muslim and Christian minorities functions as the hub around which a new form of social policing of women has been organised. This re-authorisation of patriarchal norms through a discourse of anti-westernism is expected to compensate for the sycophantic capitulation to global capitalism. In Uttar Pradesh, Maharashtra, Madhya Pradesh and Gujarat, group attacks in the name of anti-westernism have been

levelled in both urban and rural areas. In these the ABVP and other 'student' groups of the Hindu Right have been empowered to attack convent schools, draw up a code of conduct, monitor the behaviour of girls, enforce dress codes, ban jeans, Valentine's Day and mixed parties.

The last and best documented player is the State. There has been a general collusion of the state machinery, a specific involvement of the army in collective acts of violence (especially in Kashmir and the north-eastern states) and of the police in custodial gang rape, while the patriarchal norms at work in trials and judgements have shamed women in court or put the onus of violence on them. The dossier of state violence shows that the modalities of the police and army are very similar to those of higher caste landlords, caste councils and communal organisations: gang rape,<sup>17</sup> stripping and parading, and attacking pregnant women as in Baroda in 2002.<sup>18</sup>

Such direct violence is not unconnected to the other ways in which the state machinery has been conducive to violence against women. If there is a general dilution of rights in the weak implementation of laws, then violence itself is one of the strategies of dilution and/or contravention that is employed by the state apparatus. As a consequence, in civil society violent acts are often structured around loopholes in the law and rely on the routine dilution practised by the State to get away unpunished.

Rape trials that shame, resexualise, and verbally 'denude' women are the ideological counterpart of physical violence, while the law has also been a *direct* site of patriarchal reinforcement as in recent judgements on dowry or on the widow immolation in Deorala. The State in its family planning and population control policies has routinely viewed women as reproductive vessels, and the State's patriarchalism interlocks with that of the family. In the period of the BJP-led government, the State, in its coincidence with majoritarian Hindu communalism, itself presided over an anti-westernism (that produced 'other' women among 'Hindus') and the 'othering' of Christian and Muslim women.

The common features in the violent acts discussed so far are fairly obvious. Violence, even when it is local, is meant to be pedagogic

and symbolic, that is, to teach a lesson to all women, and through such normativity produces 'other' women. The violent act, the special onus placed on women, the discrediting of their testimony, estranges women and turns one's 'own' women into 'others'. Much of this violence has a premeditated, collaborative, and public character even when it takes place 'inside' the family, and is often publicly witnessed. It is often predicated on retaliation against dalits, feminists, assertive women and 'helpers'. And there is a recurrent adoption of 'traditions' in new regions or among new groups, as in the spread of dowry and caste council mandates.

How are the correspondences between forms of violence to be read without flattening them into the same? Is it that patriarchies produce a regularity of dispositions, even though there is a variety of contexts for acts of violence?

One conclusion that seems inescapable is that patriarchies work through a founding inconsistency. They extract consent from women in part through the offer of protection, an offer they repeatedly violate in order to secure, reproduce and perpetuate themselves. The State violates its own citizens, the caste group violates its own members, family violence is wreaked against its own women. The promise of protection seems to give the right to injury!

The correspondences between different forms of violence also suggest that 'othering' is a very significant feature, but that it may be overprivileged given that the same can be meted out to one's own women. The fact that similar forms of violence take place inside and outside the family, that the family both absorbs and radiates violence, indicates that the public and the domestic are jointly formed, and that they are not amenable to a tradition-versus-modernity reading. It also suggests that the slippage from the domestic space of the family to public space allows for, or actively assists in the circulation of the modalities of violence.

Rather than containing the patriarchal family within the binary of sustenance and oppression, violence forces us to think that the point of the breakdown of love, protection, and familial bonds in violent acts is the point at which patriarchal power is reassembled, and family, community and the State are reinscribed as patriarchal institutions. Therefore violence is not only one of the points of

reproduction but, ironically, also the point at which the faultlines of a patriarchal system are policed.

Even as each type of violence carries, to varying extents, its own legitimating devices, it is obviously intertwined with the others. Family, caste, communal and state violence compose a circuit and cannot be compartmentalised. Nor can so-called modern and traditional violence be easily compartmentalised. Violent acts in-the-name-of religion, community or nation are often mutually reinforcing and produce complex symbolologies that need to be unpacked for precise ideological effects, yet their repertoire of aggression as well as their location in systemic patriarchal structures and material factors is very similar to other forms of violence.

Widow immolation, which is enacted in-the-name-of religion, is less frequent compared to most other forms of gendered violence. It is also different in so far as it is an act that is studded with miracles, the woman is glorified and idealised after immolation, and helpers are exonerated as believers. However, as a contemporary practice it has the same characteristics and belongs to the same continuum as other forms of violence against women. Widow immolation too is planned and premeditated lateral violence by familiar persons; it qualifies both as family violence involving women, and as a group crime involving villagers, village elites and local power structures, and often relies on adopted or invented traditions. It constellates police and state complicity with local motives, communal interests, caste rivalries, religious institutions, and material considerations which centre around the construction of lucrative temples. Women are as much a conduit to profit for the family and village in a widow immolation as they are in a dowry killing.

If widow immolation corresponds in many respects to family and group violence, it also corresponds to communal violence. At first sight widow immolation and communal violence seem to be quite distinct but on closer examination, their ideology and techniques are remarkably similar. Like communal violence, 'sati' was historically constructed in defence of 'endangered' Hindu women. Both still produce masculinity through the identification of women with community: a masculinity that depends on a spectacular and collective exercise of violence. Both are conducted in-the-name-of religion and

invoke 'culture' and 'tradition' as a right at points when these have become an exercise of political-patriarchal power or are implicated in forms of inequality. Hindu communal violence creates a demographic paranoia to justify destruction of the 'other' female reproductive body, whereas widow immolation conjures a fear of the widow's unregulated sexuality and reproductive capacities. Both stem from the same generalised assumption of control over the female reproductive body.

If communal violence is meant to polarise Hindus and others, send a message to minorities,<sup>19</sup> and to all women who step out of bounds, then widow immolation is set up as a sifting mechanism to sort good women from 'other' women. 'Sati' is central to the production of 'other' women, that is, those who belong to other religions, do not believe in the ideology of sati, are non-Hinduised dalits, lesbians, westernised or feminists. The symbolic effect of the violence is directed at all such 'other' women. It produces the *norms* that govern other forms of patriarchal violence: norms of correct behaviour.<sup>20</sup> If the spectre of the good-woman-who-she-cannot-hope-to-be hangs behind the stripped-shamed-raped 'other' woman—be she dalit, Muslim, Christian or 'deviant'—then this 'other' woman is not merely a product of normative social and religious discourses but also of widow immolation supported by the ideology of sati. It is hardly surprising, then, that the Hindu Right supports widow-immolation on the ground.<sup>21</sup>

The pedagogic impulse of widow immolation and communal violence is elaborated in supportive, often triumphalist, prachar and printed literature that can instigate, propagate, exculpate, tutor, and lay the ground for future events. If pamphlets that taught how to make an organised riot look like a 'spontaneous' public reaction or how to attack without being caught and punished were circulated in Gujarat 2002,<sup>22</sup> 'sati' pamphlets have laid out a *modus operandi* structured around legal loopholes for decades. Both share the signal distinction of having perfected techniques of memorialisation that are simultaneously modes of legitimation and further incitement. Both use symbols around which violence can be mobilised, and situate themselves in 'Hindu' militant lineages (such as Shivaji and Maharana Pratap). The remains of the dead are instrumental for both: the corpses and ashes of karsevaks for the VHP, the ashes of the

immolated widow for sati supporters. Both invent 'victory' rituals, traditions and genealogies around acts of vandalism and murder; both extract temples from bloodshed. Both 'sati' and communal violence position themselves 'above' the State or even in overt defiance of it. The disputed puja, disputes over construction of temples, and the jubilant defiance of bans feature as much at widow immolation sites as in the VHP's Ramjanambhoomi campaign. Both vacillate between historicity and popular belief in their own justification.

There is another remarkable bond between widow-immolation and communal violence—both are ideological adepts at shifting the onus on the victim to escape shame, guilt and punishment. In the discourses that surround widow immolation, the onus rests on the woman, she is represented as desiring, dictating, orchestrating, stage-managing her 'self-immolation': people merely obey her commands. The same abdication of Hindu male initiative occurs in the discourses that justify communal violence. It seems if the first initiative is not that of Hindu men then all their subsequent actions can be justified as retaliation.

There are also many similarities in the techniques of widow immolation and communal violence. Both have moved towards a formulaic, repeatable pattern that has evolved over the years into a blueprint which can be repeated and replicated in new places. Both are public, planned, collective, witnessed and lucrative crimes that involve village elites and local power structures including caste councils, priests and temples. Both employ rumour as an organisational device and involve purposeful crowds. The active, even coercive, pressure and participation of the witnessing crowd shapes widow-immolation. In 2002, in Patna Tamoli, Madhya Pradesh, the crowd in its greed to 'watch' the spectacle, not only gathered at a pre-designated time but reportedly attacked and stoned the policemen who arrived on the scene, and cheered as Kuttubai burnt. It was also canny enough to vacate the village en masse after the event.

The lenient attitude towards these crowds stems from the ideological definition of 'sati' as an 'individual' decision, when in fact families, village elites, religious institutions, and ordinary villagers are actively involved at every stage. The over-individualisation and idealisation of sati disguises the collective will at work. The crowd

does not merely become an accessory after the woman has made up 'her' mind. Rather, the event could not take place in the same way without a purposeful crowd. Once widow immolation is characterised as a group event then the participants begin to resemble the exultant crowds in the Gujarat carnage who looted, burned, hemmed in the victims, did not allow ambulances to reach the dying or fire engines to douse the flames, and sealed routes of escape.

As legally punishable offenses, widow immolation and communal violence are often misread as assertions of power 'against' the modern State by crowds of believers; in practice, however, they work 'with' the State because they rely on the (de facto, ideological or tacit) complicity of the State. The temptation to read these crowds as tradition against modernity-bureaucracy-rationality or as an assertion of civil society against a corrupt-delegitimised State is equally misplaced because there has been a growing articulation between the two, which in fact reached its apogee in the Gujarat carnage.

What are the implications of the public exercise of patriarchal power? Collective crimes are symbolically much more effective because they are public and appear to be consensual; they seem to work better as 'backlash' and 'retaliation', and provide a modality that can be adapted by policemen and villagers alike. Legal loopholes, state collusion or open support, and lack of implementation have together granted an immunity to collective crime, an immunity that has increased the power and reach of groups. Groups can cross new thresholds into an excessive, gratuitous violence that is not so readily available to individuals. There has also been a corroborative legal tendency to see crowd violence as mob frenzy, as spontaneous and unpremeditated, and therefore as less culpable than acts of individual violence. More ominously, collective violence provides a readier *passage* from communal and patriarchal ideologies to physical acts of violence, and organised groups are crucial to this passage.

If widow immolation is virtually a condensation and intensification of aspects of so many forms of violence against women, then why has 'sati' become the paradigmatic cultural/religious form? Why has sacralised violence been conflated with religious faith when it is locked into the same patriarchal structures as other forms of domestic and public violence? Contemporary widow immolation is not after

all a precolonial or colonial residue. Though the ideological ground was re-prepared in the colonial period, the present practice is located in an economy of commodification, the political transformation of caste groups in the past century, the anti-feminist resistance to democratisation of caste and gender, and the local assertion of village elites.

The culturalisation and sacralisation of 'sati' thus reduces a multi-factored act of violence to religious faith alone. The point is not that there are no religious explanations for widow immolation. There are, but they do not by themselves produce a practice. What is needed for the practice are points of vulnerability for women, a political and social conjuncture, a broad grammar of violence and techniques of organisation of violence against women, that is, those features that widow immolation shares with other forms of violence. If all these are taken away, what remains is ritual and religion, and these two can equally be said to have political and patriarchal histories.

Ritual and religion did not develop or reproduce outside the contexts of economic, political and patriarchal power. Indeed here religion can be read as a heterogeneous field upon which new models of tradition are erected, through which emerging or mobile classes and castes are defined or consolidated. Religion has to be grasped as part of a social ensemble and as a changing phenomenon. In other words, the positioning of religious factors in a political economy is subject to change, and culturalising/sacralising 'sati' works to deny changes in the practice and to delink it from other forms of violence against women.

In this somewhat summary account of India, I would like to offer a proposition: in the present neoliberal conjuncture, the *place* of tradition, culture and gender has changed. The invocation of tradition/culture as explanatory frameworks for gendered violence tends to obscure these changes.

The changing nature of the State as it responds to the demands of a global neoliberal economy has become apparent, as too the ways in which this was overdetermined by the Hindu-right government. The State as an agent of mandated de-regulation creates the conditions that enable global capital to survive and expand, recedes from

responsibility and is becoming an anti-people state. Even a right-wing, sectarian, hypernationalist government such as the Hindu Right catalysed and occupied a broker state that melted the borders of economic autonomy and hardened the borders of internal surveillance and repression.

Among the ominous features of the past decade were a domestic tightening in the social field of gender and religion to counterbalance the transnational dilutions of a neoliberalising economy, the need for a continuous social volatility not only to manipulate the failed promise of neoliberalism but also to move towards a more authoritarian regime, and the notable centrality of gender to the production of this social volatility. The replay of tradition-modernity as a binary was part and parcel of the production of such social volatility. Alongside the turbulence and violence generated by the Hindu-right regime, there seems to have been a functionalisation of tradition and modernity by the market as symbiotic and mutually dependant terms. In a recent television advertisement, a dark young Rajasthani woman in 'traditional' dress slides bangles onto a fair, depilated arm, slowly, admiringly, caressingly: tradition and modernity are clearly seen to need each other.

Further, a neoliberal economic order depends on *both* active consumers and a docile labour force, that is, consumption generated by 'individual' needs and labour governed by patriarchal etiquettes. Unsurprisingly, gendered forms of commodification and violence are the underside of the rights-bearing individual consumer and the indispensability of women's labour. Within the current transition to a neoliberal economy, domestic, household, subsistence labour are part of the dependable social relations in which the market is and will continue to be embedded. Domestic labour picks up the slack of development, lack of social services, education, security and employment. Women's rights become more contingent even as women's cheaper and more flexible labour is favoured by the emerging labour regimes. This may be one factor contributing to the present increase in gendered violence, since violence speaks a symbolic message telling women to stay in their place, pins women to marriage, restricts their mobility, access to jobs, wages and resources.

As the capitalisation of agriculture makes small plots unviable, it also exacerbates the denial of inheritance to daughters, and this in

turn props up exogamy, dowry, the control of marriage, and all related forms of violence including sex selection. The new forms of consumption and insecurity inaugurated by neoliberal policies fuel dowry demands and dowry-related violence. The rollback of (already scanty) state welfarism leads back into control of women and marriage as a 'private' resource for service, care and domestic labour. The neoliberal proclivities of the Hindu Right sharpened (its own) anti-westernism and instituted forms of group violence against 'westernised' women and couples in order to reauthorise patriarchal norms. The Hindu Right also redefined the sharing of the country's resources on 'religious' lines, and so sharpened demographic anxieties and legitimated communal violence against 'other' women.

Today, to attempt a comparative analysis of gendered violence is already to enter pre-fabricated discourses marked by a global universalism in which all women are subject to violence (this runs the risk of biological reduction), a regional particularism that draws a country's cultural or religious 'profile' (this can deteriorate into culturalism), and national comparison that makes a merit/demerit list of countries (this can renew colonial classification). For instance, India is said to be 'ahead' in the South Asian race to gender justice because it ratified CEDAW in 1993 and introduced a civil law on domestic violence. Comparative analysis must seek other paradigms.

At one level, there are numerous similarities in the ideological rationales and modalities of gendered violence in India, Pakistan, Bangladesh, Nepal and Sri Lanka. Gendered violence is almost uniformly proscriptive and prescriptive. The spectre of (westernised) feminists seems to haunt South Asia. Both legal and other discursive constructions put the onus for rape and sexual assault on women; most sexual assaults go unreported and most rapists unpunished; and the circulating stereotypes of shameless women whose own behaviour provokes or invites domestic and/or sexual violence defy national borders.<sup>23</sup> Women's testimony is undermined, discounted or disregarded. If the construction of women as sources of provocation leading to disorder is made through the discourse of fitna in Pakistan,<sup>24</sup> in India interlocking ideologies of law and civil society work to the same effect *across* religious distinctions. The state-led patriarchalism in the infamous Hudood Ordinance in Pakistan required women to

produce four adult Muslim men to testify as eyewitnesses to rape: this is, at one level, only an extreme and programmatic manifestation of the common assumption in India—whether in rape trials, in claims to innocence by 'helpers' of transgressive marriages or in deathbed testimonies—that a woman's word does not equal truth.

Domestic violence by natal/marital families and spouses cuts across class throughout the subcontinent and is construed as a 'private' issue; natal families are not always supportive; deprivation is a standard class-lowering modality of familial aggression; the characteristic response of the police and other state apparatus to domestic violence (including dowry killing) is to preserve heteronormative marriage and the family, broker 'reconciliations' or compromises and advocate quietism for women.<sup>25</sup> Families and local non-statutory bodies collude in punishing choice marriages across caste and class as well as alleged 'helpers' who seem to symbolise a unity among women that transcends class and caste divisions.<sup>26</sup> Notions of local justice sustained through the adoption of 'tradition' are rampant, involve village elites, headmen, local clerisy, customary bodies and elected representatives; and these are intensifying the surveillance of women. Local configurations of class and caste power vary but their modalities (denial and/or confiscation of resources) are similar.<sup>27</sup> The shared propensity for violence in-the-name-of religion has intensified with the rise of right-wing groups that also propound moralised codes of dress and behaviour. Whether it is the State or religious right-wing groups that preside over antiminority-ism, women from minority communities are trapped between their own and majoritarian patriarchal practices.<sup>28</sup> The patriarchal state apparatus—police that frequently refuse to file FIRs in cases of gendered violence (especially rape), a biased judiciary, humiliating rape trials, delays in litigation,<sup>29</sup> abetment by state functionaries,<sup>30</sup> blatant custodial violence<sup>31</sup>—is accompanied by state involvement in population control (especially in India and Bangladesh)<sup>32</sup> as well as in a generalised truncation of women's rights that supports patrilineage and son preference. India, Pakistan and Bangladesh bond across regional and religious differences in their non-implementation of women's rights whether under personal law, Islamic law, or common civil laws.<sup>33</sup> Ironically, each of these nation-states itself supports or makes patriarchal culture- and religion-claims.<sup>34</sup>

At another level, the interlocks between family, community and State vary in both their contexts and implications. If the surveillance of women in public spaces has intensified in India under the aegis of non-state actors especially Hindu right-wing and local caste groups, it has often taken place under state-led Islamicization in Pakistan. In Pakistan, the Zina laws governing rape, abduction and adultery (part of the Hudood Ordinance), that outlawed illicit sex, were not an expression of tradition but a product of the rise of the religious right. Through 'the Zina laws the state lays the groundwork for new forms of "traditions" that can be used to control future generations of women both at home and at work'.<sup>35</sup> These laws allow a re-reading of marriages of choice as zina or sex outside marriage (that also includes adultery and fornication); they have been used by families against young women wishing to make a choice marriage or to seek a divorce; they allow the family to draw on the power of the State, and are related to the control and commodification of marriage. Many women imprisoned under this law are accused of aiding and abetting abductions (i.e. of being 'helpers') or for being uncompliant wives or daughters.<sup>36</sup>

In India the prevention of choice marriage is allied to different local and legal configurations, yet the Zina laws are adjacent to very familiar forms of family/caste panchayat control and violence as well as the power of police and judiciary to *define* and punish. Under the Hudood Ordinance, the charge of rape can be converted into one of zina against women themselves. The police usually works on the assumption that a woman reporting rape must herself be 'bad' because no decent woman would make matters public and shame herself or her family; they also presume that she was party to the act or 'asked' for it and thus focus more on the character and past record of the woman; and if they feel she did not 'resist' rape, they can file a challan (statement for the purpose of trial and indictment) accusing her of zina. Not only are the police allowed to change the charge of rape to adultery during investigation, courts can also convert the charge if they decide the woman was a consenting party or of loose moral character, did not resist sufficiently or did not have enough marks of violence and injuries to prove that she was subjected to forcible intercourse.<sup>37</sup>

Though I cannot do justice to the distinctive complexity or variation of karo kari in Pakistan, yet there are some evident axes of comparison. Karo kari or killing for 'honour' has become a lucrative 'community' transaction and an alibi for many kinds of murders related to land and property disputes. It is used to get rid of unwanted women and settle family and tribal scores as well as to make money since the accused man has to 'buy' his 'life' from the murdered woman's family. In property disputes between men, women can often be sold, exchanged for property, imprisoned, dismembered, killed. Karo kari can be used to kill a wife, to pay for the expenses of a second marriage, to pay a debt, for personal enrichment or to turn a murder into a retributive killing. Even though represented and seen as an act of retribution, it is a family crime, whether a woman is killed by her husband or by a group of men. If a single man is responsible, he is justified by both the family and the community. The village headman and elected representatives play a role and the latter are said to use feudal rather than democratic norms to settle disputes. In most cases, police and local administration do the same.<sup>38</sup>

Though karo kari is singled out as archaic, medieval or 'Islamic,' it is in fact a familiar form of family violence, replete with allegations of unchastity and embedded in material factors. Its transactional character makes it analogous to dowry extraction in India (yet it differs in that women are seldom involved). In its management of perception, self-designation as local justice, articulation of family and community, karo kari is also comparable to the killing of couples in inter-caste marriages that involves both families and caste panchayats in northern India. Further, its interlocks with patriarchal ideologies, local power structures and the State make it adjacent to several forms of punitive group violence and public spectacle. The claim to 'spontaneity' and retribution make it an ideological cousin of Hindu communal violence; and like widow immolation it can get rid of unwanted women with customary or traditional sanction. Like widow immolation in India then, karo kari seems to condense and intensify many different forms of patriarchal power and violence that run through family, clan, tribe, village, local organisations and the state apparatus in Pakistan; while its regularity and connection to

other forms of gendered violence similarly attest to the systemic character of patriarchies.

Most feminists have noted an increase in gendered violence in South Asia—domestic violence, rape and gang-rape mandated by tribal councils/panchayats in Pakistan, sexual harassment and domestic violence in Bangladesh.<sup>39</sup> However, a more significant axis of South Asian 'unity' is the emergence of new forms of violence—such as wife immolation (for dowry, infertility or insubordination), public humiliation in the form of stripping and parading women or political rapes in Pakistan<sup>40</sup>—and the *adoption, expansion and spread* of what are perceived as age-old, medieval or feudal customs and traditions. For instance, karo kari was originally a Baloch custom that spread to Sindh and parts of southern Punjab.<sup>41</sup> There is not only a proliferation of karo kari but also an expansion in the list of factors that can inflame honour, including women seeking a lawful divorce.<sup>42</sup> Thus the practice of (so-called) honour killings, that was embedded in tribal customs in certain parts of Pakistan, today extends to all provinces with some variations in the manner of killing, and far more women than men are killed.<sup>43</sup> This is comparable with the spread of dowry and related violence, so-called honour-killing and widow immolation—that is, forms of domestic as well as public and spectacular violence—in new regions and among new groups in India. Similarly in Bangladesh there is a proliferation of shalish (informal village tribunal) rulings and fatwas (religious edicts) in support of the public disciplining of supposedly immoral women in a context of shifting rural power structures and more institutionalised forms of Islamicisation.<sup>44</sup>

Are custom or tradition generationally transmitted or can they be freely adopted? Does a tradition that proliferates to new groups, classes and regions remain a 'tradition'? Can the persistence of custom, tradition or culture provide an explanatory framework for such adoption or the proliferation of tradition-claims? A different set of questions may emerge if gendered violence in South Asian countries is approached firstly through its heterogeneous class-divided locations and multiple patriarchies, and secondly through the uneven subsumption into capitalism that may now be compounded in some

regions by the new unevenness generated in the current transition to neoliberal capitalism.

These may help to understand the multiple obdurances of the state(s), which seems at once to act on behalf of familial patriarchalisms and abet a belligerent market economy. This is patently not a battle between tradition and modernity; rather, as I pointed out earlier, in India it speaks of a market-led state that needs governed labour and individuated consumption. The shift in the character of the Indian state is accompanied by widening disparities, pressures on the agrarian sector, deepening national, regional and caste identities: these can be seen as part of a larger process that is generating *competing inequalities* at every level (local, regional, national, international and transnational), both within and between South Asian countries, and *differential citizenships* with graded entitlements in the new economy. There seems to be a paradoxical partnership between an increasingly anti-people state, the loss of national economic and/or political sovereignty and the rise of jingoistic patriotisms and nationalisms. 'Others' are thus engendered on every axis: class, caste, gender, religion, language, region and nation (in terms of both residence and migration). Inter-country and intra-country lines of political and communal tension within South Asia are not sharply divided and can at times inflect each other.

South Asian countries have discrete histories of class formation as well as differences in levels of subsumption by capitalism. Yet this argument may have a resonance: after all the State in each country is adversarial and seems to enhance the vulnerability of its citizens.<sup>45</sup> Each country would of course have to be read according to the nature and contradictions in the pressures on the State (class, left-wing, reformist, right-wing, fundamentalist, sub-nationalist) from within; its leverage in international hierarchies and geographical vulnerability (Pakistan, as a frontline state, takes different risks in terms of forcibly opened borders and refugees). The international imposition of similar conditionalities and legal instruments runs alongside the discrete histories of the development of capitalism, and patent differences in the nature and degree of deregulation, privatisation, import-penetration and export-dependence. There are different local contexts for identity claims and identities have contrary dynamics: they can be generated by state and communal violence;

they can be construed as rebellions against consumerism, capitalism or imperialism, *and* they can be sucked into the paraphernalia of a neoliberal economy (as in the production of typified cheap migrant labour) as well as into militarised capitalism and national security agendas. There are also differences in the way communalism or fundamentalism are being 'internationalised'. The scripts of religious/cultural nationalisms are not necessarily determined 'within' the nation but can be transnational productions. For instance, communalism is no longer solely a localised Indian issue.<sup>46</sup>

As fields of force that structure inequalities between women, caste and patriarchies are similar in many respects but not identical. The lines, intensity and frontality of political divisions between women vary, while the nature of and extent of the delegation of patriarchal power to women also differentiates gendered violence on the subcontinent. Gendered violence is agential. Its increase is loosely related to growing disparities: violence helps to maintain patriarchies as regulatory mechanisms and guarantors of cheap labour as well as supportive ideologies. Women's bodies are becoming an emblematic space and a material resource in South Asia: as markers or embodiments of identity and as favoured labour—docile, cheap, exportable. In all South Asian countries women may work for wages but domestic labour is by and large non-negotiable, and this also accounts for some of the similarities in the gendering of local and global labour markets across South Asia. It is within this conjuncture of a mutating state, domestic and international pressure, labour relations, class-caste-patriarchal configurations, organised religious right-wing groups—in their specificity as well as contradictions—that a comparative frame for gendered violence could be sought.

This conjuncture is further complicated by the difficulty of disentangling the national from the transnational in the context of the refurbishing of national security states across the world and the broader redescription of violence in the new imperium. What is more, many forms of gendered aggression, especially by family and state, are not peculiar to India or South Asia. Even collective violence, which seems to carry the burden of cultural particularity, seems less 'regional' when compared with the patriarchal consensualities that lie behind white racism, state racism centred on labour migration,

wars against 'others' in Afghanistan and Iraq, and mediated spectacles of torture and violence in the past decade. What is striking about these forms of violence is that, like group violence in South Asian countries, they too are partly structural and partly conjunctural, quite public in their nature and address, and their collective and spectacular character are both related to giving violence a symbolic and pedagogic cast.

The place of gendered violence is not confined to national parameters but also located within transnational economic and political configurations. The new imperialism has a stake in divide-and-rule and has mutated into continuous war both 'externally' and 'internally' (for instance, state racism is centred on labour migration inside Europe and in the prison-industrial complex in America). An analogy could be made between the relocation of gender, of 'preemptive' violence as the first resort replacing violence as the last resort (as in Hindu communal violence or sex-selection), and the broader re-description of violence in the new imperium. We inhabit a world in which there is an ever-widening circulation and replication of similar strategies of violence, and in which the power of the nation-state as an agent of internal or external violence may exist in dialectical relation to the patriarchal and inegalitarian contours of civil society as well as to ideological ensembles taking shape on the transnational field.

Perhaps it is not India or South Asia that has a particularly premodern state or civil society but that alibis for violence shuttle between tradition and modernity in ways that can obscure the range of interconnections. For instance, does violence in-the-name-of tradition occupy an altogether different 'cultural' plane from unjust wars waged in-the-name-of democracy or the rescue-of-women from uncivilized patriarchies? I do not mean to level the distinctions between all forms of violence or between all countries. Rather I want to suggest that 'culture' may well offer only variations on common themes rather than act as the sole or primary determinant of patriarchal violence. In this sense 'culture', whether used as a weapon against 'others' or as an apologia for gendered violence, needs to be questioned more rigorously. The culture-claim has after all been made abroad as well as by indigenists, right-wing organisations and the State at

home: the imposition and the alibi can become mutually corroborating discourses.

If instead of culturalism and compartmentalisation, the conjunctural specificity and correspondences between forms of violence were to be read, then their patterns may become evident. Further, it may be productive to look at the *constellations* of gendered violence *within* a particular political economy in each South Asian country. The specific constellation of forms of violence in each region (in fact there are distinct regional constellations even within India) can lead into an understanding of multiple and overlapping patriarchies.

These constellations would depend on the nature of the State, the interests that dominate it, the tensions and imbalances between its old reformist and new market agendas, its alliance with religious fundamentalists, endorsement of forms of violent masculinity and levels of militarisation. Militarisation changes both state and civil society; different conjunctures of social or border violence and civil war may even be relocating son preference, and thus subjecting women to more violence to produce sons. Distinctions would need to be made about the precise distribution of statutory and non-statutory power, shifts in the nature of informal or non-statutory adjudicatory and juridical bodies (communal organisations, caste council, village panchayat, jirga, faislo, shalish), their control over subsistence resources and power to mandate violent acts as well as their relation, articulation or legitimation by the State and its apparatus. Constellations of violence also depend on specific ideological configurations of the nation, the nature of the perceived threat to the nation-state and how patriarchies are seized by enforced nationalisms, the relation of state and family patriarchal practices and how they extend each other's power. Distinct constellations would emerge when patriarchies are locked into maintaining old/feudal ruling elites and when they are part of the claim to power by new elites, when they are locations for upward mobility and when they compose the terrain of competing inequalities. There are also conjunctural differences in the way in which right-wing groups play out antiwesternism and set up untenable binaries of east and west, use and inflect stereotypes and separate the public from the private domain.

The way out of tradition, regional, cultural or religious particularism as explanations for gendered violence may lie in thinking materially and substantively of economies, politics, patriarchies, of local as well as transnational ideologies and social relations. 'Patriarchy' has been used as a shorthand for culture and tradition too often. In this conjuncture, the cross-border overlaps and differences between constellations of gendered violence in South Asia, if taken together, make the mutuality between patriarchies and other forms of inequality more vivid, and seem to demand no less than thoroughgoing change.

### Notes and References

- <sup>1</sup> Culture claims by identitarian feminisms also complicate the picture; that, however, is too large an issue to address within an essay restricted to questions of violence.
- <sup>2</sup> For American radical feminists (like Shulamith Firestone and Kate Millett) in the 1970s, women were primarily oppressed by male dominance and only secondarily by class or race. This ahistorical understanding still persists in analyses of gendered violence.
- <sup>3</sup> Vikas Adhyayan Kendra, "Patriarchal Fears and Misogynic Assaults 1," *Facts against Myths* 5 (11), 1999, p. 2.
- <sup>4</sup> They have even been punished for dressing well or above their station. In one instance in Orissa, dalits were attacked because a dalit woman dressed up as 'well' as upper caste women when she went to receive her wages. See Vasanth Kannabiran and Kalpana Kannabiran, "Caste and Gender: Understanding Dynamics of Power and Violence," *Economic and Political Weekly*, 14 September 1991, p. 2131.
- <sup>5</sup> *Ibid.*, pp. 2131-32.
- <sup>6</sup> For an extended discussion of disparate class locations within the family see Kumkum Sangari, *Politics of the Possible* (New Delhi: Tulika, 1999), pp. 292-94; 375-78.
- <sup>7</sup> See Leela Visaria, "Violence against Women: A Field Study," *Economic and Political Weekly*, 13 May 2000, pp. 1745, 1749.
- <sup>8</sup> See Malavika Karlekar, "Domestic Violence," *Economic and Political Weekly*, 4 July 1998, p. 1747.
- <sup>9</sup> See Leela Visaria, *supra* note 7, p. 1749.
- <sup>10</sup> For some instances see Women's Centre, "Annual Report" (Mumbai, 1997), pp. 10-11.
- <sup>11</sup> See Malavika Karlekar, "Domestic Violence," *supra* note 8, p. 1747.

- <sup>12</sup> For cases see Kirti Singh, *Law, Violence and Women in India* (New Delhi: UNIFEM, no date), pp. 43, 47.
- <sup>13</sup> If a woman went for the medical test herself and willingly, then she was considered responsible and punishable for the decision (Dolly Arora, "The Victimising Discourse: Sex Determination Technologies and Policy," *Economic and Political Weekly*, 17 February 1996, p. 423).
- <sup>14</sup> In one instance in village Vanenur, Bellary Taluk, Karnataka, in August 2001, Yerramma, a forty-year-old dalit woman was accosted by four men and three women, all valmikis, assaulted, stripped and paraded because she was 'responsible' for the elopement of a scheduled caste boy and a valmiki girl from the village, a charge she denied. Her daughter who tried to intervene was molested, and her husband who tried to rescue her was also beaten (*The Hindu*, 28 August 2001).
- <sup>15</sup> For instance, in Dewa village, near Jamshedpur in what was then Bihar, in 1991, a munda tribal, Turi Barjo, and his paramour, Daki Champia, were beaten to death and then hanged by the village mukhiya and his henchmen because Turi Barjo had complained about the mukhiya's corruption, and also because his family was unable to meet the brideprice for Daki fixed by the mukhiya (*The Indian Express*, 22 February 1991).
- <sup>16</sup> From a study of two villages in Gujarat, it seems that lower caste councils too are usually all-male and vehemently oppose the entry of women. The caste council decides on rules of marriage, divorce, arbitrates disputes—and at every engagement, wedding, divorce and dispute, the elders get money. Marriages and divorces require their sanction and presence, and they order boycotts and outcasting of non-compliant families. Caste councils of different villages support each other. See *The Silken Swing: The Cultural Universe of Dalit Women*, ed. by F. Franco, J. Macwan and Suguna Ramanathan (Kolkata: Stree, 2000), pp. 106, 111, 39–40.
- <sup>17</sup> In Pasaria village, Bihar, there was a mass rape of dalit women by 14 policemen in 1988. The policemen were acquitted on the grounds that false testimony on the part of such women could not be ruled out: the women were said to be of 'questionable character' because they were engaged in 'menial work' and could not be equated with 'such ladies who hail from decent and respectable society.' See Vikas Adhyayan Kendra, "Patriarchal Fears and Misogynic Assaults I," supra note 3; Vikas Adhyayan Kendra, "Patriarchal Fears and Misogynic Assaults II," *Facts Against Myths* 5 (12), (1999), p. 2.
- <sup>18</sup> In the 2002 Gujarat carnage, dozens of pregnant women were beaten on the stomach by the police in the 'combing operations' in Baroda. See PUCL Vadodara and Vadodara Shanti Abhiyan, *Violence in Vadodara: A Report* (Vadodara: May 2002).

- <sup>19</sup> The VHP's stated intent was to make the Gujarat carnage 'a model for reprisals' and 'to teach a lesson that could be emulated' (*The Telegraph*, 10 March 2002).
- <sup>20</sup> On the anti-westernism and anti-feminism of the ideologies of sati and Hindu communalism, see Kumkum Sangari, "Violent Routes: The Traffic between Patriarchies and Communalism" in *Communalism, Civil Society and the State*, ed. by K.N. Panikkar and Sukumar Muralidharan (Delhi: SAHMAT, 2002), pp. 95–100.
- <sup>21</sup> In 1987, Vijaya Raje Scindia, the president of the BJP Mahila Morcha, led a protest march against the anti-sati legislation, while in Madhya Pradesh in 2002, the local BJP MP condemned the administration's failure to prevent the immolation, but also demanded withdrawal of all cases and the immediate release of the 15 persons arrested in connection with the incident! (See *The Hindu*, 10 August 2002.) For earlier complicities and convergences between widow immolation and the Hindu Right, see Kumkum Sangari and Sudesh Vaid, "Institutions, Ideologies, Beliefs: Widow Immolation in Contemporary Rajasthan" in *Embodied Violence: Communalising Women's Sexuality in South Asia*, ed. by Kumari Jayawardena and Malathi de Alwis (New Delhi: Kali for Women, 1996).
- <sup>22</sup> Some of these pamphlets are cited in *The Hindustan Times*, 26 March 2002.
- <sup>23</sup> On the construction of feminism as foreign, the denial of its bases in local conditions, and accusations of 'westernisation' against women who protest patriarchal laws, see Shahnaz Rouse, *Shifting Body Politics: Gender, Nation, State in Pakistan* (New Delhi: Women Unlimited, 2004), p. 40; Shahnaz Khan, "Imprisoned for Zina: Geopolitics and Women's Narratives in Pakistan" in *Global Lockdown: Race, Gender and the Prison-industrial Complex*, ed. by Julia Sudbury (Routledge, 2005), p. 99. As Neelam Hussain points out, the circulation of stereotypes of 'bad' women in Pakistan (westernised, shameless, degenerate) are now partly a product of 'the power strategies of the socially ascendant fundamentalist classes engaged in forging alliances with the older elite as well as seeking to displace them.' See Neelam Hussain, "The narrative appropriation of Saima: Coercion and consent in Muslim Pakistan" in *Engendering the Nation-state*, vol. 1, ed. by Neelam Hussain, Samiya Mumtaz, Rubina Saigol (Lahore: Simorgh Women's Resource and Publication Centre, 1997), pp. 202–03. In Pakistan too women who undergo sexual violence are seen as responsible for provoking the perpetrators and as responsible for the sexual crimes committed against them; see Hina Jilani and Eman M. Ahmed, "Violence against women: The legal system and institutional responses in Pakistan," in *Violence*,

*Law and Women's Rights in South Asia*, ed. by Savitri Goonesekere (Delhi: Sage, 2004), p. 164. Similarly, in Sri Lanka, women's 'immodest' dressing is believed to be a factor in rape by the police; the responsibility for not being molested, raped, harassed or abused rests squarely on the shoulders of the women; see Aameena Hussein, *Sometimes there is no Blood: Domestic Violence and Rape in Rural Sri Lanka* (Colombo: ICES, 2000), pp. 39–40.

<sup>24</sup> See Afiya Shehrbano Zia, *Sex Crime in the Islamic Context: Rape, Class and Gender in Pakistan* (Lahore: ASR Publications, 1994), pp. 16–17.

<sup>25</sup> On Sri Lanka, see Aameena Hussein, *Sometimes there is no Blood*, supra note 23, pp. 28–47; Sepali Kottegoda, "Reproductive health concerns and violence against women in conflict affected areas: Documenting women's experience in Sri Lanka," *Options* 35 (3), 2005, pp. 6–7. On Pakistan, see Rubina Saigol, "Introduction" in *Engendering the Nation-state*, supra note 23, p. 22; Jilani and Ahmed, "Violence against women," supra note 23, p. 183; Tahir Mehdi, *Women on Trial: Gender Violence in Pakistan* (Islamabad: Network Publications, 2005), pp. 6–8. On Bangladesh, see Aasha Mehreen Amin, "Is the law fair towards women?" *Bayan*, vol. II, July 2004, p. 100; Ayesha Khanum, "Constructions of nation/nationalism and violence against women in Bangladesh," paper presented at the conference, "Confronting violence: Recounting resistance, envisioning justice," New Delhi, March 2004; Dalem Ch. Barman, "Women and structural violence in Bangladesh: A study of norms and regulations," paper presented at the conference, "Asian Women's/gender studies in the New Millenium," Dalian University, China, September 2004.

<sup>26</sup> Neelam Hussain points out that there is a special anger at breaching of divisions between 'traditional' and 'modern' women, as in the infamous Saima case in which Asma Jehangir was accused of luring Saima. As in India, in elopement cases in Pakistan, the word abduction is substituted for marriage in FIRs and women who challenge parental authority are demonised as whores among other things (see Hussain, "The narrative appropriation of Saima," supra note 23, pp. 218, 231, 237).

<sup>27</sup> For instance, in Bangladesh, local clergy, rural elites, village headmen and rural propertied males often collude in violating the poor, especially women. Rape, the torching of houses, denial of access to water for irrigation, repossession of animals et cetera are regularly used against poor villagers as a form of punishment for refusing to accept the mandate of rich landlords. Village headmen and rural elites often use the local mullah to pass supposedly Islamic judgements that benefit their interests, whether it be the acquisition of land or women, or disciplining more radical elements. See Lamia Karim, "Democratising

Bangladesh: State, NGOs and Militant Islam," *Cultural Dynamics* 16 (2/3), October 2004, pp. 292–93.

<sup>28</sup> See Rubina Saigol, supra note 23, p. 27. Beulah Shakir has discussed anti-minority laws and official sanctions for violence against minority women in Pakistan ("The state and the minorities of Pakistan" in *Engendering the Nation-state*, supra note 23). In Bangladesh, sexual violence against minority women as well as against inter-religious marriage are also a part of the 'reprisal against Hindus' when Muslims are attacked in India, as in 1992 (Meghna Guhathakurta, "Minorities, women and peace: A South Asian perspective," *Nivedini: Journal of Gender Studies* 10, May–June 2003, pp. 25–39).

<sup>29</sup> The legal issues seem very similar too. In Pakistan, court language, justifications for conviction as well as the linguistic currency regarding sexual violence are also loose woman, easy virtue, unchaste character (Shahnaz Rouse, *Shifting Body Politics*, supra note 23, p. 109). Further, there is ineffective law enforcement, biased judicial pronouncements, criminalising of a rape victim as one who has committed consensual extra-marital sex, and long delays in litigation. Courts often let men off or mitigate sentences in 'honour killings'. At least half of the increasing stove deaths are murders of recently married women. Since the majority of burn victims die before they reach the hospital, the police cannot record their statements. Women who survive are hesitant to report the incident, and if they do attempt to do so, the police refuse to file an FIR and dismiss it as a domestic dispute. If the police register a complaint at all, they accept bribes and manipulate evidence so that it will get lower penalties, and usually accept the husband's version that it was accidental. Courts usually side with offenders, witnesses rarely come forward, victims who think they may recover do not wish to charge family members they have to return to or who may make life difficult for their children. Deathbed declarations have been challenged when slight discrepancies are found which may be due to the dying woman's pain and distress (Jilani and Ahmed, "Violence against women," supra note 23, pp. 150–63). Dying testimonies are often not taken or women forced not to testify (Tahir Mehdi, "Women on Trial," supra note 25, pp. 7–8). In Sri Lanka, women have been shamed in rape trials. Rape trials can be harrowing and the opposing counsel intimidating. There are long delays and proceedings can take years. Trials can be humiliating because criminal trials adopt an adversarial procedure; their objective is to attack the woman's testimony and show that there was consent, or that the offender was wrongly identified. The police are essentially patriarchal and one of the biggest impediments to the implementation of the criminal law (Hussein, *Sometimes there is no Blood*, supra note 23,

- p. 39; Shyamala Gomez and Mario Gomez, "Sri Lanka: The law's response to women victims of violence," in *Violence, Law and Women's Rights in South Asia*, supra note 23, pp. 229, 243–44). See also Usha Rai, "Crime without Punishment," *The Hindustan Times*, 19 January 2002.
- <sup>30</sup> In Bangladesh, in the face of threats from the clergy, the State retreats from the protection of women's constitutional rights, and often becomes a silent abettor of atrocities committed in the name of religion (Karim, "Democratising Bangladesh," supra note 27, p. 293).
- <sup>31</sup> On custodial violence in police stations and prisons that has involved sexual assault, rape, and stripping and public exposure in Pakistan, Bangladesh and Sri Lanka, see Jilani and Ahmed, "Violence against women," supra note 23, pp. 186–87; Khanum, "Constructions of nation/nationalism and violence against women in Bangladesh," supra note 25; Gomez and Gomez, "Sri Lanka: The law's response to women victims of violence," supra note 29, p. 221.
- <sup>32</sup> On Bangladesh, see Abantee Harun, "Political economy of violence against women and girls: Bangladesh context" in *Report of a South Asian Workshop* (Delhi: SANGAT, 2005), p. 99.
- <sup>33</sup> For instance on Bangladesh, where women's rights were covertly truncated by the state in 2005, see Dalem Barman, "Women and structural violence in Bangladesh," supra note 25, p. 5; Dina H. Siddiqi, "In the Name of Islam? Gender, Politics and Women's Rights in Bangladesh," *Harvard Asia Quarterly* 10 (1), 2006, pp. 5–6.
- <sup>34</sup> CEDAW has been ratified without reservations by Nepal and Sri Lanka. Bangladesh has ratified CEDAW with reservation to Article 2 by claiming that it goes against sharia laws, and would hurt the religious sentiments of the people. Pakistan and Maldives have also entered reservations to preserve Islamic law, while India has made a declaration that its commitments under CEDAW will be fulfilled subject to India's obligation to respect the customs and religious beliefs of its multi-ethnic and multi-religious population. Thus local customs, traditions and religious norms can be allowed to prevail (see Karim, "Democratising Bangladesh," supra note 27, p. 302; Savitri Goonesekere, "Overview: Reflections on violence against women and the legal systems of some South Asian countries" in *Violence, Law and Women's Rights in South Asia*, supra note 23, pp. 34–35).
- <sup>35</sup> See Shahnaz Khan, "Imprisoned for Zina," supra note 23, p. 100.
- <sup>36</sup> Ibid., pp. 87–89, 95.
- <sup>37</sup> See Jilani and Ahmed, "Violence against women," supra note 23, pp. 167–68.

- <sup>38</sup> See Nafisa Shah, "Role of community in honour killings in Sindh" in *Engendering the Nation-state*, supra note 23, pp. 242–48, 256–57.
- <sup>39</sup> Rouse, "Shifting Body Politics," supra note 23, pp. 104–05; Jilani and Ahmed, "Violence against women," supra note 23, p. 165; Najam Sethi, "The rape of local democracy," *Indian Express*, 5 August 2002.
- <sup>40</sup> Rouse, "Shifting Body Politics," supra note 23, p. 109; Mehdi, "Women on Trial," supra note 25, pp. 1, 6–7.
- <sup>41</sup> Shah, "Role of community in honour killings in Sindh," supra note 38, p. 246.
- <sup>42</sup> See Mehdi, *Women on Trial*, supra note 25, p. 15.
- <sup>43</sup> Jilani and Ahmed, "Violence against women," supra note 23, p. 153.
- <sup>44</sup> See Siddiqi, "In the Name of Islam?" supra note 33, pp. 4–6.
- <sup>45</sup> As Jayati Ghosh puts it:

It could be argued that the centralised, centralising and increasingly authoritarian state is in fact a necessary requirement for this type of liberalisation which is based more on external legitimisation (from foreign financiers and the perceived discipline of international markets) than on internal legitimacy derived from the support of the majority of its citizens. Such a change in the nature of the state may therefore be a fallout of the substantially increased income inequalities associated with liberalisation and the social and political processes that they unleash. These inequalities have accentuated certain longer-term structural features of South Asian societies, whereby more privileged groups have sought to perpetuate and increase their control over limited resources and channels of income generation in the economy. This in turn has involved the effective economic disenfranchisement of large numbers of people, including those who occupied particular physical spaces in rural areas, or were urban slum dwellers who constituted both the reserve army of labour for industrialisation and the most fertile source of labour supply for extra-legal activities. ... The broad international context for all these is the greater tendency on the part of rulers to ignore the interests of the majority and push for policies that will only benefit a small minority. (Jayati Ghosh, "Global imperialism and the world's people," *HIMAL Southasia*, January 2003, p. 44, rpt. in *Selected Readings for International Conference on Peace and Justice in South Asia* (Mumbai: Peace Mumbai, 2006).

- <sup>46</sup> The histories of communalism and colonialism were always imbricated and now there are further transmutations. There is major funding for the Hindu Right by sections of the Indian diaspora as well as a mirroring communal-versus-secular division among Indians abroad.

## Trafficking: Crossing Borders in an Era of Globalisation

RADHIKA COOMARASWAMY & AMBIKA SATKUNANATHAN

### Trafficking in a globalised world

The United Nations estimates that millions of people are trafficked across the world every year, with criminal groups making profits amounting to \$ 7 billion from it.<sup>1</sup> As the numbers increase each year, trafficking has occupied centre stage on the human rights agenda, with states as well as non-governmental organisations formulating numerous measures to deal with the problem. To fully comprehend its scale, it is important to recognize the nexus between migration, asylum and trafficking. States' attempts to exploit the issue in order to introduce policies to curb migration and asylum have further blurred the boundaries between all three. Various factors such as globalisation, immigration policies of the global North and a post-September 11 fear of the 'other' have also impacted this phenomenon.

Modern-day trafficking is more nuanced and complicated than the classical form, on account of the fact that it is closely linked to the question of migration. Saskia Sassen points to the growing presence of women on the fringes of the international global market, arguing that:

the employment and/or use of foreign-born women covers an increasingly broad range of economic sectors, some illegal and illicit and some in highly regulated industries. The key actors giving shape to these processes are the women themselves in search of work, but also, and increasingly so, illegal traffickers and contractors as well as governments of home countries.<sup>2</sup>

Before the 1950s women were less than five per cent of migrant workers, now they make up almost 50 per cent of those who migrate to work. In the past women migrated as spouses or daughters, i.e., as dependents; presently women migrate from the countryside to cities, and to other countries, in search of a better future as independent

individuals. Although official data show that men outnumber women as migrants, regularisation programmes tell a different story, as women far outnumber men in them.<sup>3</sup> This is evidence that more women than men are resorting to illegal migration, and are placing themselves in vulnerable positions. Also, as most women work in the unregulated or private sphere they are subject to greater exploitation. To understand why they place themselves in such situations it is important to:

uncover the systemic connections between, on the one hand, what are considered as poor, low-earning and in that regard low value-adding individuals, often represented as a burden rather than a resource, and on the other hand, what are emerging as significant sources for profit-making, especially in the shadow economy and for government revenue enhancement.<sup>4</sup>

This essay will begin by sketching the realities of the migration process and the various factors that lead women to choose migration/human smuggling as an option. In order to provide a clear understanding of the phenomenon of trafficking, its end products, and the way in which women's survival strategies operate—sometimes within extremely oppressive circumstances—are also discussed with the aim of illustrating the complexity of the issue and the danger of devising strategies which do not acknowledge the paradoxical position of women. Since a majority of them are trafficked for the purpose of sexual exploitation, laws relating to sex-work/prostitution also impact upon the remedies/exit strategies available to them. Hence, we analyse the different approaches to sex-work and their relative success in curbing trafficking. Our paper also traces the evolution of 'sexuality' since, often, attitudes to sexuality impact upon and shape approaches to sex-work. In the final section we focus upon and assess the various strategies used by states to deal with trafficking and provide assistance to victims. We deal mainly with examples from Africa and the Caribbean because of the dearth of South Asian empirical material that deals with the nexus between sex-work, trafficking and migration. Examples from other post-colonial developing countries have been used to illustrate the complexity of the issue as many of them will also be relevant to a South Asian context.

### The feminisation of migration

Traditionally, women have always provided certain types of services in the family and in the community. In the home, ties of intimacy means they provide these services free, whether they be sexual services for their spouses, domestic service for the household or unskilled labour in family farms or family-owned enterprises. At the same time they also provide the same services to the larger community as low-paid, poorly skilled workers. They provide sexual services in the form of prostitution which is probably the most marginalised profession in the world; they provide domestic labour as badly paid domestic workers or housemaids; they also work in agricultural communities as under-paid unskilled workers in fields owned by rich landlords, or in urban areas or free trade zones where foreign investment is welcome.

The provision of these traditionally female services is not a new phenomenon. What is new is that in the modern world there is an international market for what used to be provided for the family, the local community or the nation-state. There is now an international market for prostitution where the service providers are of all nationalities and communities. There is a similar international market for housemaids and low-paid unskilled workers. In this international demand for female services, supply follows close behind and women often migrate to service an international clientele. They cross borders in the transnational flow of labour. Many in the erstwhile third world have argued that the push for the transnational flow of capital from richer to poorer countries should be accompanied by a more lenient attitude to the transnational flow of labour in reverse. Women leave their countries for many reasons. They may want to escape poverty or discrimination at home; many leave because they are in a desperate situation. In countries where there is polygamy, women often leave when their husbands take another wife. Often, women who migrate come from communities and castes that suffer disabilities in their home country. Hence, they migrate to escape discrimination and oppression at home. In addition women seek to migrate from countries where there is armed conflict, or where their physical safety and the safety of their children are not ensured. For a wide variety of reasons, women today are ready to migrate, ready to cross borders in an attempt to survive.<sup>5</sup> Women are caught up in these currents of

migration while the problem of trafficking is complicated by the transnational movement of capital, labour and goods.

Globalisation and its ensuing effects, coupled with neoliberal economic policies, have contributed to economic and social dislocations in many countries of the global South.<sup>6</sup> The results are unemployment, poverty, lack of opportunities, lack of access to resources, spending cuts in education and health, and so on. Women, as primary care-givers and in many instances one of the marginalised groups in society, are amongst those most affected.<sup>7</sup> The advent of globalisation has also meant the shrinking of agriculture and cottage industries, with the ensuing disappearance of jobs for women who constitute the majority of those employed in these sectors.<sup>8</sup> The poor value placed on female labour has meant that most women who lose their jobs remain unemployed. Development processes intended to contribute to the empowerment of women have had an ambivalent impact on their situation, as they often remove the traditional rights available to women in the name of reform, while further disadvantaging them by implementing gender-blind, gender-neutral policies and processes.<sup>9</sup> For example, in India women have lost their livelihood on subsistence plots due to cash crop expansion; instead they find seasonal work in low-paying jobs which require intensive manual labour in the agricultural export sector.<sup>10</sup> This results in loss of independence and financial security. The feminisation of poverty and the closure of regular economic opportunities for women therefore are direct consequences of the impact of these processes on women.

The feminisation of poverty, i.e., the 'push' factor, leads women to seek alternate means of livelihood outside their countries. The result is the feminisation of migration, which in turn has led to the 'feminisation of survival,'<sup>11</sup> i.e., the dependency of families, and sometimes communities, on the earnings of women migrant workers. This is the case of Sri Lanka.<sup>12</sup> The 'pull' factor is the increased demand for low-wage workers in many sectors, one of which is domestic work. According to Sassen, as the demand for highly skilled professionals has risen, more women in the West are entering the workforce and dedicating more time to their careers. At the same time the wish to have it all, 'including dogs and children, whether or not they have the time to care for them'<sup>13</sup> has meant that in two-career households, domestic work is 'relocated to the market.'<sup>14</sup>

Rather than sharing domestic labour between spouses, buying labour has led to the emergence of a new serving class in the West comprising mostly women from the global South.<sup>15</sup> In addition, many industries in the West are informalising, which means there are fewer controls, regulations, privileges or safeguards. Hence, these industries are in a position to offer employment to (illegal) migrant women from developing countries. Although this provides women with a livelihood, they are vulnerable to exploitation and abuse and, in the case of trafficked women in debt bondage their illegal status prevents them from seeking help.<sup>16</sup>

Another factor that attracts women migrants is the growth of the tourism industry in developing countries, which in many cases has facilitated a growth in the global sex industry. In some countries like Thailand '... the sex trade itself has become a development strategy in some areas where unemployment and poverty are widespread, and where governments are desperate for revenue and hard currency.'<sup>17</sup> Women are seen as the link between the expansion of the tourism industry through the development of the entertainment/sex industry.<sup>18</sup>

Migration, therefore, is often an ambiguous reality. Some women, especially those who are trafficked, deceived and beaten, are subject to enormous suffering. However, for most of them migration is an opportunity to earn an income, send it home to their families and attempt a better life, economically, than what they would have had to experience at home. It is their strategy for survival in an unfair world, a choice that requires recognition and acknowledgement.

The essentially novel feature of modern forms of trafficking is that women desire to migrate for many reasons and thus become increasingly vulnerable to traffickers. This desire to migrate is often ignored in traditional analyses of trafficking. The struggle for survival, paradoxically, often empowers some women. Households and communities become dependent on their earnings and even governments begin to rely on their foreign remittances. Women's desire to migrate, to make a better world for themselves and their families, cannot be ignored in our campaigns to fight trafficking and traffickers. Unless we radically reform international markets and home country development strategies, denying women the option of migration would be to strike at the heart of their survival strategies. If we ignore these, we may well force them into an even more

exploitative reality, lock them into circumstances that may be more abusive and violent than what migration offers. Conceptual clarity is thus essential before discussing legislation and procedures to prevent trafficking, which must be seen in the context of migration and migration patterns. As one leader of an NGO said, 'Traffickers fish in the sea of migration.'<sup>19</sup> In this context any effort to combat trafficking must stop short of violating women's freedom of movement. The first step in an anti-trafficking policy must therefore aim to better conditions for poor and exploited women in the home country and to raise awareness among them about the pitfalls in migration. Though sending countries are often self-righteous about the damage done to their women in receiving countries, they too must take part of the blame.

While women muster up courage to venture forth into the world despite their upbringing in culturally conservative societies, there is no doubt that they often end up in situations of violence and abuse. What is needed is a principled and pragmatic manner in which we can separate legitimate forms of migration from those that are violent or abusive. Trafficking is the concept that has been entrusted with this formidable task. Though it is easy to construct theoretically, in practice and in the real world, it poses enormous problems.

### The nature of the migration process

Although in theory globalisation is expected to create a market for a global labour force, increasingly restrictive immigration policies by states close off legal avenues of migration to those women who seek a better life in the domestic and sex-work industries. For example, the attempt to create 'Fortress Europe' through the introduction of policies that restrict and/or closely monitor the movement of non-citizens within Europe, means that legal migration is open only to highly skilled professionals.<sup>20</sup> Many states also use trafficking as an excuse to introduce legislation to curb migration. This creates space for traffickers and smugglers who cater to desperate people seeking a way out of poverty.

In many cases women may turn to smugglers in order to migrate for employment, but at some point the relationship can turn violent: the woman may be coerced to engage in work against her will, or be

forced into debt bondage. In the case of women who agree to sex-work, they may be unaware of the harsh and exploitative working conditions that await them.<sup>21</sup> At the point where the nature of the relationship changes, i.e., when the woman's freedom of choice is taken from her and she is forced to act against her will, the case becomes one of trafficking. (Hence, 'Trafficking is the harm that may occur in the process of migration').<sup>22</sup> However, due to her illegal immigration status she will not be able to seek help, as she will be treated as a violator of the law rather than as a victim of trafficking.<sup>23</sup> Even if the woman were to seek help, her fate is dependent on whether she fits the profile of 'the victim' as understood by the State.

States have constructed a particular profile of the victim as a helpless, innocent, or passive woman, trafficked against her will. She should have entered the trade by force, fraud or other means, i.e., not of her own will.<sup>24</sup> This is the type of victim who deserves the protection of the State. On the other hand, women who enter willingly but are duped about the conditions of work, or the smuggled migrant who was forced into an exploitative relationship at some point in the process, do not benefit from the State's protection or assistance. The woman is treated as someone who has engaged in illegal activity and is therefore unworthy of protection.<sup>25</sup>

Some states give temporary permits to victims of trafficking if they co-operate with the authorities and provide information about traffickers;<sup>26</sup> in such cases the State often continues the exploitation initiated by the traffickers. In such cases violence should be understood in a broader sense as structural/institutional violence inflicted upon women by states and bureaucracies both in the woman's home country and the receiving country. The oppressive implementation of immigration laws, which place a value on her immigrant status rather than on the violence and abuse she has endured, contribute to the cycle of violence and exploitation experienced. As Nicola Piper says, 'Violence against women becomes part of the employment itself, as in trafficking and sex-work, but also enabled by a state sanctioned, or constructed, context that allows, and probably even furthers, the violence.'<sup>27</sup>

Ever-shrinking refugee regimes in the developed countries are another reason persons suffering from persecution (i.e., those seeking asylum) turn to smugglers to cross national borders. Stricter border

control, safe country policies, carrier liability legislation, etc., mean that more and more people are seeking the assistance of smugglers. As in the case of women who consent to be smuggled for employment and then find themselves in exploitative and violent situations, with asylum seekers, too, the relationship can become coercive and violent. Although, in international law, states have a duty to receive requests for asylum, the right to asylum has not been clearly defined as an individual human right.<sup>28</sup> Regional human rights conventions, such as the European Convention on Human Rights, too have followed this lead and place the onus of non-refoulement upon the states. However, although these countries appear to be committed to the 1951 Refugee Convention and the rights of persons seeking asylum, in practice restrictive immigration laws make illegal entry the only option for many refugees.<sup>29</sup> An analysis of European Council documents relating to the issue, such as the Tampere Conclusions, clearly shows there is:

no reference to access to European territory in their suggested solutions for tackling the refugee and migration problems ... rather the focus is on the indisputable need to tackle root causes that create refugees in the first place, and then to find regional solutions for those refugees ...<sup>30</sup>

The focus on regional containment indicates that European asylum policies are becoming more stringent, placing greater burdens on refugees who now have to use alternate means, such as tourist visas, to gain entry to another country. If at any point during the journey the person is suspected to be an asylum-seeker she will be deported immediately. In some cases women have been trafficked from refugee camps and taken across national borders for prostitution. This is said to have taken place in Albanian refugee camps where women were abducted by organised crime syndicates and trafficked to Western Europe for sex-work.<sup>31</sup> In the name of regional containment states violate the rights of refugees, in some cases resulting in death. For example, Australia used its elite SAS squad to 'kidnap' boat people and ship them to Nauru and Papua New Guinea, as part of its Pacific Solution. The incentive provided to these countries was increased Australian aid.<sup>32</sup> In another instance the Australian Navy failed to rescue 353 boat people when their vessel sank.<sup>33</sup> Such policies and acts create the space for organised

crime smugglers and traffickers to move in and tap the ever-growing market, rather than reducing human smuggling and trafficking.

Immigration policies of sending countries also tend to trap women, either to remain in an exploitative reality or to enter the shadow economy or the world of criminality. In some sending countries, such as Pakistan, immigration authorities desperate to stem the tide of women who are taken abroad into slavery-like conditions are responding to the crisis of trafficking by insisting that they obtain the permission of their husbands or fathers before they get passports or leave the country. This is a very dangerous trend precisely because many women who were interviewed by Radhika Coomaraswamy, UN Special Rapporteur on Violence Against Women (1994–2002) stated they left their countries precisely because they wanted to escape from an abusive husband or father or seek refuge from family violence. These well-intentioned immigration policies actually entrap these women in situations of domestic violence and abuse. Therefore, any attempt to deal with trafficking must not result in the denial of other basic rights.<sup>34</sup>

Ironically, however, despite all this abuse and violence, the situation is very complex when you actually interview the women. A government survey in India found that the majority of the women and girls did not want to be rescued; only 43 per cent wanted to leave their brothels.<sup>35</sup> The majority wanted to stay back but wanted conditions of work to improve. In addition, they felt they had nowhere to go since most of them did not want to return home or face their families. For anyone concerned with immigration and refugee law, the truth is that many trafficked women are escaping conditions that are even worse than the reality they face as sex-workers in a brothel. The nature of persecution and suffering they underwent before voluntarily leaving a country is often ignored in the literature on trafficking.

### **The end-products of trafficking and women's survival strategies**

#### **Sex-work**

From the personal narratives told to the Special Rapporteur for Violence against Women, the largest category of women who are

victims of trafficking are those who agree to migrate with the intention of doing domestic service or working in an entertainment industry, but are then deceived into becoming sex-workers. Though some women may be drugged and abducted across borders, the vast majority of women are deceived into leaving. They may wish to migrate to better their lives and are promised lucrative jobs which they accept and cross the border willingly, but find out too late that they have been sold into prostitution. Those who know they are going into sex-work, may find themselves in brothels, living the life of sexual slaves, being subjected to terrible violence and abuse. Perhaps the worst such case was the one in Thailand, where dozens of sex-workers were killed when a building housing a brothel was burnt down. Chained to the bed they had no chance of escape.<sup>36</sup>

However some women do cross borders in the hope of engaging in sex-work. Rumours about a glamorous call-girl life and the potential to make money by being escorts to a rich clientele sometimes entice women to cross borders. The story of the Polish doctor is a case in point. She qualified in Poland as a doctor during the state socialist era, but earned a paltry sum of money. When Eastern Europe opened up, some of her clients became sex-workers in Germany, painted a rosy picture of their life there and claimed to have made enormous amounts of money as call girls. The doctor, who had to take care of a large family, made inquiries and then decided to follow suit. She was smuggled across the border by a group of traffickers, many of whom belonged to the same community as the doctor. Her experience in the brothel turned out to be a nightmare. Constant beatings, not enough food, documents confiscated—she was not allowed to leave the house and had to service an inordinate number of clients. When she complained, she was assaulted mercilessly. She was terrified to go to the police. Finally, she managed to escape and went to the Polish Consulate where she was initially refused any special treatment until she begged and pleaded, then was able to get in touch with a friend who sent her money for her ticket back to Poland.<sup>37</sup>

#### **Domestic work**

Another large category is that of women who cross borders in pursuit of domestic service. With the growing demand for domestic labour

in Europe, the Middle East and North America the number of women who migrate illegally or are trafficked across borders is growing.<sup>38</sup> Some women may have been promised other work but are pushed into domestic work once they reach their destination.<sup>39</sup> Many women work long hours with very little or no pay, suffer isolation, lack of freedom and privacy and sometimes, sexual abuse. Research has shown that notions of racial hierarchy and stereotypes also play a role in both the selection and abuse of domestic workers<sup>40</sup> with hiring agencies expressing a preference for 'specific nationalities of domestic workers; these preferences often reflect racial hierarchies that rank women by precise shades of skin color'.<sup>41</sup>

Marie Jose Perez travelled to America to work as a live-in maid but as soon as she landed, her employer, a human rights lawyer for the Organisation of American States, 'confiscated her passport and forced her to work more than twelve hours a day, for less than one dollar per day'.<sup>42</sup> When she was raped by her employer's friend, the employer refused to take her to the hospital. The vulnerability of unregulated domestic service therefore allows for a great deal of exploitation. Though not traditionally regarded as an issue of trafficking, the slavery-like conditions experienced by some women migrants are increasingly being recognised as one of its aspects.

#### *Sold into marriage/mail-order brides*

In many parts of the world, women migrate to become mail-order brides and are expected to provide domestic and sexual services.<sup>43</sup> In some countries mail-order brides do not have full legal status or are subject to legal impediments which restrict their rights or ability to seek redress. For example, in Kenya and Uganda a woman cannot file for divorce in the first three years after marriage unless she can prove adultery on the part of the husband—an impossible task for trafficked women kept in seclusion. As the woman's residency status is dependent on her remaining married, she might have no option but to accept the conditions of the marriage.<sup>44</sup>

In China, there is an increasing demand for brides in remote rural areas. Though some women enter such marriages as a way of escaping poverty, there have been cases of women being kidnapped, as well as of trafficking within national borders. In other cases

women are lured by traffickers with promises of jobs in the city as nannies, domestic help, etc., but are later sold as brides.<sup>45</sup>

#### *Forced labour*

Women also cross borders to work in urban factories and free trade zones; they may apply for such work but find themselves in sweatshops working inordinate hours without pay, and in unhealthy and unsafe conditions outside the framework of protective labour laws. They may also be subject to sexual harassment and abuse.

#### **Legal frameworks and definitions**

Given the close link between migration and trafficking and the variety of end products of unsafe migration, a legal framework to combat trafficking becomes a major challenge for the international community. Initially concerned with trafficking as it related to sexual exploitation, in recent times the international community has attempted to broaden its definition and ensure greater protection for migrants.

#### *The 'white slave' model*

A few decades ago the term trafficking had a very different connotation. As reflected in the term 'white slavery,' it was linked closely to the kidnapping and abduction of women and their sale to men for sexual slavery. The image conjured was one of women in shackles, herded together against their will, to provide sexual services to men in countries other than their own; thus, initial treaties focused on 'forced recruitment and transport of women'. In 1895, the first international conference on trafficking of women was held in Paris. This was followed in 1904 with a meeting of 16 states in Paris, where the first international agreement on 'white slavery', the International Agreement for the Suppression of the White Slave Trade' was formulated. Its aim was to combat 'the procuring of women or girls for immoral purposes abroad'.<sup>46</sup> The agreement was limited to 'compulsive forms of procurement' and did not deal with situations where there was no obvious force or compulsion. Six years

later a new convention was drafted which broadened the scope by including 'traffic in women within national boundaries' within its purview.<sup>47</sup> This Convention bound states to punish 'any person who, to gratify the passions of others, has by fraud or by the use of violence, threats, abuse of authority, or any other means of constraint, hired, abducted or enticed a woman of full age for immoral purposes'.

Both the 1904 and 1910 Conventions deal only with recruitment, the process through which the women were brought to the brothels/forced into prostitution; they do not address conditions in the brothels themselves. The closing statement of the 1910 Convention states the 'case of retention against her will, of a woman or girl in a house of prostitution could not, in spite of its gravity, be included in the present Convention, because it is exclusively a question of national legislation'.<sup>48</sup> In 1933 a new agreement was formulated with regard to international trafficking in women, but trafficking in women still continued to be within the purview of national legislation.

*Convention on the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 1949*

Article 1 of the Convention requires parties to punish any person who, to gratify the passions of another:

- (1) procures, entices or leads away, for purposes of prostitution, another person, even with the consent of that person;
- (2) exploits prostitution of another person, even with the consent of that person.

This is the first trafficking convention that uses gender-neutral language, but it has been criticised for its narrow definition of trafficking and its lack of enforcement mechanisms. The Convention continues the tradition of the 'white slave' model, conflating trafficking with the exploitation of prostitution. The consent of the woman in moving across the border is deemed to be irrelevant. Punishment is also extended to keeping, managing or financing a brothel [Article 2 (1)] and knowingly letting or renting a building or other place for the purpose of prostitution of others [Article 2 (2)]. The Convention was ratified by only 66 states, but most countries in South Asia have accepted this definition.

*Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organised Crime, 2001*

States around the world have begun to respond to the crisis posed by the increase in trafficking, but their efforts raise disturbing dilemmas for law-making and law enforcement both at the international level and within national borders. During the last few months of 2001, the United Nations Convention against Transnational Organised Crime added the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children to the document. This is a consensus document which came into being after many hours of deliberation. The Protocol defines trafficking as:

... the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

Though the definition is cumbersome, it is a major development in the law of trafficking compared to the 1949 Convention on the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, which defines trafficking very narrowly. One significant change is that this Protocol distinguishes between women and children: for women there must be transfer or transportation across borders, but this must involve some form of coercion or abuse of vulnerability; with regard to children, fraud, deception, coercion or abuse is not necessary—mere recruitment, transportation or transfer is enough to incur criminal liability.<sup>49</sup> A second important change is that the Protocol appears to imply that the transport and transfer, with the free and full consent of an adult victim for purposes such as prostitution, is not trafficking. Transportation and transfer without violence or abuse does not fall within the purview of the Protocol. The burden of proving lack of consent will not be on the victim since the Convention states that if abusive means are used, the consent of

the person is irrelevant.<sup>50</sup> The Protocol has a complex approach to the definition of trafficking being linked to prostitution—the interpretive notes make it clear that the term ‘sexual exploitation’ may be interpreted by each country according to its own experiences, thus allowing for differences in approach to prostitution and sexual services.

In addition, the Convention links trafficking to a wide variety of purposes, including end purposes such as forced labour, the removal of organs or other slavery-like practices. The language of the Protocol itself is a compromise, reflecting the various positions of diverse groups and interests. It was also not without its critics; the traditionalists felt that it allowed loopholes for trafficking that result in sex-work, while others were of the view that the definition was so comprehensive that it vitiated any agency or consent on the part of women.

### Prostitution or sex-work: the subtext of trafficking

Despite attempts to broaden the definition of trafficking to include diverse end products, the debates and discussions on trafficking continue to centre around prostitution or sex-work. It is this controversial debate that is the subtext of discussions with regard to trafficking and the reason why it remains such a divisive issue, especially among women activists. One is often asked whether prostitution is sex-work, or violence against women. In surveying different realities around the world, the answer appears to be, *it depends*; it depends on context, and on the person. One major reason why an international approach to trafficking should not make prostitution a central concern is the pragmatic realisation that there is currently no international consensus on the correct approach to take with regard to its regulation.

There are countries throughout the world that still criminalise sex-work and all involved parties, including sex-workers. This approach exists in most Islamic and Catholic states as well as in many states in the United States of America. In reality, in most countries while sex-workers may be subject to fines or imprisonment, their clients are not.<sup>51</sup> Reports indicate that the prohibitionist approach is not very successful as it drives sex-work underground and makes

working conditions more dangerous for sex-workers. It also makes them more dependent not only on their exploiters but on policemen and government officials who, in exchange for sexual services, may be willing to turn a blind eye.<sup>52</sup>

In some countries, everyone involved in the sex trade is subject to criminal sanction, except the sex-worker, who is treated as a victim. This is the abolitionist approach. In reality however, vagrancy ordinances supplement these standards so that sex-workers who work the streets are subject to criminal sanctions. Abolitionist approaches vary from country to country. In some countries as in Hungary sex-workers may be punished for ‘parasitical offences’ connected to prostitution, such as no proof of legitimate employment, i.e., since the act itself is not criminalised women are penalised for other offences.<sup>53</sup> Most countries in South Asia take this approach. The 1949 Convention, based on the perspective of the Abolitionist Movement, criminalises those who exploit sex-work but treats the sex-worker herself as a victim without any criminal liability. A recent addition to this framework from Sweden is the criminalising of the client along with others who profit from sex-work.

Other countries follow the regulationist model that legalises certain forms of sex-work through a system of licensing, and allows the women to see themselves as sex-workers who have labour rights, as well as other economic and social rights, protected by law. The Netherlands and many countries in Europe follow this approach. In regulationist systems women sex-workers are required to register and may work only in brothels. Although registration is supposed to help the sex-worker it often tends to disadvantage women, as many of them do not choose to be known as such because of the attached stigma. For example, in Turkey, when a woman registers as a sex-worker her identity card is withdrawn and a special identity card reserved for sex-workers is issued.<sup>54</sup> This also makes it more difficult for the woman to leave the profession, as many countries such as Turkey do not have provision for de-registration; even where de-registration is possible records are retained, which many women fear may be used against them at a later date.<sup>55</sup> Since many of them may be unable to register due to their illegal immigration status (many countries such as the United Kingdom do not allow foreigners to engage in sex-work) the intended effect of the system—more

protection for the women—is neutralised. In some countries such as Canada, Thailand and Australia where sex-work is regulated, working outside certain designated areas is prohibited, and this may adversely affect the women.<sup>56</sup> If the designated area is situated outside city limits the women may be isolated and unable to establish contact with services that provide assistance, health workers, etc. Countries that require registration also subject sex-workers to taxation, but do not provide the worker with social insurance or support mechanisms.<sup>57</sup>

Many countries have excluded street prostitution in their decriminalisation process, which effectively leaves unprotected one of the most vulnerable groups in the sex industry. The fact that street prostitution has increased in many countries, such as Australia, despite being criminalised means that women are now more vulnerable than ever to abuse and violence.<sup>58</sup> In many cases regulation, which was supposed to benefit the women in the sex industry, has instead made some of them more open to exploitation and violence. It has been argued that 'licensing appears only to substitute or add official police control to that conventionally exercised by pimps or madams, and it further restricts sex-workers' mobility and flexibility.'<sup>59</sup> Legislation regulating sex-work in New Zealand is an example of a law, which while appearing to protect the rights of sex-workers, actually contributes to their exploitation. For example, the fact that the names of brothel owners are classified by law makes thorough health inspections impossible (there would always be some brothels which don't appear on the lists available to authorities),<sup>60</sup> and the NZ Accident Compensation Commission (ACC) has categorised sex-work as a safer job than childcare attendant.<sup>61</sup> Learning from these experiences, some countries have tried to make regulation more effective by formulating progressive methods such as working with NGOs who provide support services to sex-workers, and issuing brothel licenses after ensuring that brothel owners, managers, etc. do not have criminal records.<sup>62</sup> The connection between organised crime and regulated sex-work also makes the effective operation of regulatory regimes difficult.

In many countries, the State has also taken on the historical role of being the protector of the female victim. The worst manifestation of this protection ideology is the protection homes for women victims of trafficking in South Asia. Women and girls rescued from

trafficking are kept in these homes 'for their own protection', but the conditions are jail-like, and inmates cannot leave the premises. They have very little to do, sanitary conditions are often appalling and they languish for years on end until the authorities decide what to do with them.<sup>63</sup> They await case dates and repatriation but since they cannot leave the premises, none of this is done with their consultation. They are the forgotten women and often plead with outsiders to let them out. Meanwhile, traffickers are usually given lesser sentences and are allowed out into the community at a much earlier date. As a result, very few of the women working in brothels and guest houses want to be rescued because they feel life in the government home is sometimes worse than the brothel.

Some women's groups and NGOs reject all these frameworks, arguing for laws and strategies that respect the rights of sex-workers, focusing on issues of violence, abuse and the prevention of AIDS. The United Nations itself is divided, depending on which agency is taking the lead. The CEDAW Committee, in Recommendation 19, seems to take the abolitionist approach; however the UN Declaration on the Elimination of Violence Against Women with its language of 'forced prostitution', and the ILO in some of its reports, seem to take the view that the possibility of legitimate sex-work exists.

### *Decriminalisation and the proliferation of the market*

Research has shown that legalisation leads to a proliferation of the sex industry. In Victoria (Australia) legalisation resulted in an increase in the number of brothels.<sup>64</sup> Although regulation is supposed to provide for more inspection and, thereby, a safe working environment for women, in practice staff shortages in the council and regulatory bodies and lack of funding has resulted in brothels functioning with minimal checks.<sup>65</sup> The expected eradication of illegal operators has also not taken place, with the number only increasing. In Australia even registered brothels have been found to use trafficked women.<sup>66</sup> Street prostitution, which was expected to decrease, has increased in certain countries such as the Netherlands and Australia.<sup>67</sup> Although proponents of regulatory frameworks have always argued that the link between organised crime and sex-work would disappear with

decriminalisation, research shows it has in fact been strengthened, as organised crime now has to satisfy a greater demand/market.<sup>68</sup>

### *Attitudes to sexuality*

Approaches to prostitution and divisions among different schools are deep and acrimonious, as they proceed from radically different attitudes towards human personality and sexuality. One school of thought believes that sex-workers are exploited by the sex industry and by men, and sex-work itself is a means of controlling women and maintaining patriarchy.<sup>69</sup> Seeing sexuality as a site of exploitation and abuse, feminists like Catherine MacKinnon have always been suspicious of sexual expression outside the embrace of intimate partners. Sexuality then is viewed as a site of exploitation, oppression and abuse, and the sex-worker as a victim of male sexuality, particularly as prostitution is gendered—i.e., the majority of sex-workers are women and clients, men.<sup>70</sup> These advocates believe that prostitution is the realm of the powerless, it can never be a site of empowerment. They view power as a commodity that is available to the client and exercised over the sex-worker, i.e., those in positions of power do not prostitute themselves, they use prostitutes.<sup>71</sup> Even in the case of women who have chosen sex-work they question whether the choice was freely made. For example, if poverty is the reason the woman chose sex-work, is the choice freely made?<sup>72</sup>

Pro-sex-work feminists on the other hand, see prostitution as legitimate labour and are of the view that once proper working conditions are established, government policy and policing will become unnecessary.<sup>73</sup> They believe it is possible to use the body as the tool of the trade, while the psyche, which is tied to identity and self-worth, is kept separate.<sup>74</sup> For example, many sex-workers eroticise the sexual acts they perform for money, and at the same time maintain a private sex life. The sex-worker/prostitute might feel the vagina is just another part of the body that can be used for labour, like the fingers or the brain, except that the vagina has erotic value for the customer.<sup>75</sup> Is this power or powerlessness? This challenges the perception that certain sex acts are inherently sexual, and the belief that sex is pleasure, private, sacred etc.<sup>76</sup> Instead of viewing the

sex-worker as a sex object without autonomy, pro-sex-work feminists believe sex can be used to destabilise male power.

The case of the Huli women in Papua New Guinea is an example of this, where their engagement in sex-work is about anger and resistance. While the term used to describe them—passenger women—has negative connotations, the women embrace it as they believe it empowers them.<sup>77</sup> It represents freedoms that other 'good' women do not enjoy, such as freedom of movement, the ability to buy what they want, etc.<sup>78</sup> The Huli women defy the western notion of prostitution in which women are the objects of desire and men are the desirers, because in Huli tradition men are the epitome of beauty and there is no natural commodification of female sexuality.<sup>79</sup> Further, since sex itself is not viewed as work, men do not understand why they should pay for it as it is seen to 'produce' nothing.<sup>80</sup> In the case of the Huli, women do not demand money for sex but are proud if men offer it, as they believe that the man was 'so consumed by desire, that he has overcome his fear that women and their vaginas are dangerous ...'<sup>81</sup> Since desire made him 'abandon the self-discipline that defines masculinity; to get a man to offer money is to vanquish him'.<sup>82</sup> Hence, it is the man's integrity that is damaged not the woman's. Women therefore enter sex-work as a form of protest against the clan-based management of female sexuality.<sup>83</sup> As women play an integral role in the operation of the clans, ranging from obtaining bride-wealth for the family, agricultural assistance, reproductive functions, etc., the cooperation of women is important to the continued existence of the clan.<sup>84</sup> Passenger women, by entering sex-work, are therefore refusing to cooperate, challenging the tradition of determining a woman's value based on bride-wealth.

In the postcolonial era of 'human agency', feminists are taking a second look at the so-called female victim, exploring questions about sexual agency, female desire and choice and calling for a more nuanced understanding of human sexuality. This requires looking at sexuality as a site for women's empowerment and agency, understood to be resistance against the exercise of power. Since it is viewed to have transformative power, only certain actions are viewed as agential.<sup>85</sup> In this discourse, the prostitute becomes the sex-worker, an individual endowed with agency and rights. She does not exist to be rescued by the outside world, but demands her rights as a worker

and a human being. She defines the terms of her salvation, forming trade unions and agitating for human rights. It is said that sex-work can be a site of oppression or empowerment depending on the context. It is therefore important to understand that the context is not uniform and therefore subjectivity is imperative.<sup>86</sup> Feminists now question the sex act itself, i.e., they ask what makes the act sexual? It is said the psychological component makes the act sexual, and since the psychological component is 'influenced by culturally specific patterns and practices of desire and pleasure' context is very important in determining whether sex-work is a site of empowerment or oppression.<sup>87</sup> The question of 'choice' also plays a role in this discourse. For example, should coercion be understood only in terms of physical harm? What are the conditions under which the choice was made?

The case of the women of Sosua in the Dominican Republic illustrates the range of experiences that exist in sex-work. Sosua has been a vacation spot for European sex tourists since the 1990s. Women from other parts of the Dominican Republic migrate here to escape poverty and marry for 'visas'. They women are not coerced into sex-work and are not at the mercy of pimps. They work independently and keep their earnings.<sup>88</sup> 'By migrating to Sosua, they engage in an economic activity that is both familiar and altogether new: they are attempting to capitalise on the very global linkages that exploit them', using sex-work as an advancement strategy.<sup>89</sup> Their main objectives are marriage and migration. Ironically, Brennan states that these women also hope for gender equality in their relationships with European clients-turned-husbands, something they cannot expect in their relationships with Dominican men. However, they too, risk violence and abuse—numerous cases of women returning from Europe after being abused and abandoned have been documented.<sup>90</sup> Despite these cases of women returning to the DR after a breakdown in relations, the profession continues to be idealised and holds hope and promise for the hundreds of women who migrate to Sosua in search of a better future.<sup>91</sup>

The dilemma therefore is that approaches such as 'regulation' and 'protecting trade union rights' of sex-workers results in the proliferation of the sex industry, a position that is anathema to those feminists who see sex-work as part of the commodification of the

female body, a reminder of exploitation and the worst manifestation of patriarchy. On the other hand, 'abolitionist' and 'moralistic' regimes drive the industry underground, making sex-workers vulnerable, marginalised and despised, when they may actually be individuals who approach sexuality with a feminist consciousness, extracting payment for services and controlling the sexual environment.

### National frameworks for defining exploitation

In recent times, due to pressure from the international women's movement and states that strongly support action against traffickers, there have been new initiatives with regard to combating trafficking. Besides uniting on international definitions of trafficking, countries around the world are adopting national measures to deal with trafficking. Cynics argue that these radical measures may be prompted by recent US legislation that requires countries to regulate trafficking in order to qualify for aid. However, all the laws proposed have serious human rights implications; one example of this is the legislation that was proposed in one Asian country that clearly violates the International Covenant on Civil and Political Rights.<sup>92</sup> In this case the draft prepared by the police department criminalises the prostitute, for the first time making her and not the trafficker the target of police action, since she is the visible product and easier to target. The draft gives the police draconian powers to arrest, detain, search and seize material, and shifts the burden of proof so that the accused has to prove that she is innocent. The vesting of enormous powers in a police force usually results in acts of impunity. In India, though The Prevention of Immoral Traffic Act is structured to deal with traffickers, 80 per cent of the cases filed are under soliciting, resulting in the reality that the woman is the person who is arrested most of the time.

### *The criminalisation of the client*

In January 1999 an act prohibiting the purchase of sexual services, which criminalises the buying of sex, came into force in Sweden, stipulating penalties of up to six months imprisonment or fines. As its aim is to abolish prostitution it also provides funds for programmes to support women wishing to exit sex-work.<sup>93</sup>

The reaction to the law has been mixed, with contradictory reports about its effects. A law that criminalises sex for money is an innovative step but has some undue repercussions. It defines sexuality in moralistic terms, outside the actual framework of everyday life. It has been criticised for many reasons, one of which relates to the difficulty of obtaining evidence without the client's confession, as strong evidence is required if the client pleads not guilty. For this reason there have been no convictions under this law. Moreover, since it does not allow the police to use methods such as 'communication control' it is not easy to obtain evidence that an agreement for payment was made.<sup>94</sup> Of the 37 charges dropped in 1999, 51 per cent were due to difficulty in obtaining evidence.<sup>95</sup> Critics also maintain that prostitution has not decreased, only been driven underground, forcing the women to work under dangerous conditions for less money.<sup>96</sup> The difference in the results of the assessment conducted by the Swedish National Board of Welfare and the police also illustrate the difficulty in obtaining accurate data and ascertaining the effect of the law. The National Board estimates that around 180 to 200 women engage in street prostitution, while the police numbers are considerably lower, only 50 to 60.<sup>97</sup> In certain cities such as Stockholm the number of sex-workers engaging in street prostitution in 2003 was considerably lower than in 1999. In Malmö, however, the number has increased.<sup>98</sup> The report also states it is not possible to determine whether the number has dropped due to the law or to the expansion of the indoor market, i.e., the market which functions by the use of mobile phones, internet sex sites, etc.<sup>99</sup> It must also be noted that the techno-dependent indoor market makes it easier for under-age girls to engage in sex-work.<sup>100</sup>

Sex-workers are very critical of the law, which, they say, prohibits women from working together and prevents sex-workers from living with partners, since it is illegal to receive any income from a sex-worker. Petra Ostergren in her article critiquing the legislation, states that many sex-workers she interviewed said it was harder to assess clients as negotiations have to be done rapidly due to extensive policing; chances of choosing a dangerous client are high. Further, women tended to agree to unprotected sex because they could not afford to say No. Sex-workers also complained that they were harassed by police, social workers, anti-prostitution activists etc.<sup>101</sup>

Lack of resources has led to a prioritisation of enforcement based on penalties imposed for each crime. For example, since more resources are allocated for domestic violence the police focus more on the prevention of such crimes.<sup>102</sup> Police continue to concentrate on street prostitution despite its reduction, ignoring indoor prostitution. Thus, the general effect of the law on prostitution is thought to be marginal as two-thirds of the prostitution takes place indoors.<sup>103</sup>

### *Reflection delay and prosecution*

When dealing with issues of trafficking, it is important to recognise that women who are trafficked are, according to the modern definition, victim-survivors, not perpetrators. In many judicial systems, she is treated as the perpetrator of a criminal offence, subject to harshness, cruelty and insensitivity. To formulate policies that benefit women and enable them to enjoy their rights, we must focus on the victim-survivor, her needs and concerns, as well as the obligations of the State in preventing trafficking. For instance, even though she may be a victim-survivor of trafficking, we cannot presume that the woman wants to go home. It is important that immigration and refugee judges observe procedures that allow them to ascertain why the woman left in the first place, and the nature of the abuse, violence or oppression she faced at home that made her a victim of trafficking. Summary deportation cannot be the answer, given the complicated nature of individual histories.

In most Asian countries, a victim of trafficking, especially if she is a sex-worker without proper immigration documents, is deported after a period in detention in a police cell or a woman's home. In many European countries and the United States, the current policy is not summary deportation, but allowing the victim-survivor a few months to decide whether she wants to prosecute her traffickers. She is then given a visa for the period of the trial, and at the end of the trial period is eligible for a visa on humanitarian grounds.<sup>104</sup> In practice however, the situation is quite different, as found by a survey conducted by Anti-Slavery International. According to their report, in the Netherlands and Belgium, unwillingness on the part of officials to inform persons identified as victims of trafficking about their right to 'reflection delay' renders the rule ineffective.<sup>105</sup> Other

countries such as the United Kingdom give trafficked persons the choice of returning immediately to their country (i.e., deportation) or remaining in the UK and prosecuting the traffickers. In such cases it is reported that trafficked persons express a wish to return home.<sup>106</sup> This could be due to many reasons, varying from fear of testifying against traffickers, and having to face them on her return, to the inability to make an informed decision under severe stress. Since the link to prosecution puts an extra burden on the woman there is increasing pressure from women's groups to allow a victim-survivor of trafficking to stay on humanitarian grounds, regardless of whether she prosecutes her traffickers. Further, as most countries are reluctant to provide trafficked persons with permanent residence permits (the temporary permit is given only for the trial period), the trafficked person is forced to return home to the same circumstances that made her leave,<sup>107</sup> and in many cases is subjected to violence or intimidation by the same network of traffickers.<sup>108</sup>

#### *Identification and the sensitisation of immigration officials*

Given the strong link between trafficking and migration in the modern world, the crime of trafficking poses major challenges for refugee and immigration agencies. Unless there is 'trafficking awareness' on the part of immigration officials around the world, problems are likely to be compounded. The reality is that much of the activism on trafficking has been prompted by immigration officials and police taking the lead in trying to prevent illegal immigration, first, and the abuse and violation of women, second. Due to lack of awareness trafficking victims are often identified as illegal immigrants, detained by authorities and deported.<sup>109</sup> As discussed in the first section of this paper, the fact that trafficked women may not fit the expected image of the 'victim' also influences the manner in which they are treated by the authorities.

Though new, strong laws are being adopted throughout the world, the criminal justice systems do not seem to be ready to deal with trafficking. Except for the European Union, there is no joint co-operation among the police forces in different countries. Each operates in its own sphere with a few isolated meetings throughout the year. Arrest and conviction rates also reveal a major problem with regard

to criminal justice. In many parts of the world the police do not have training manuals or special procedures with regard to trafficking. Although some countries have special units within the police department to deal with trafficking, a major problem remains allegations of police corruption.<sup>110</sup> Women and girls interviewed in many parts of the world, especially in Asia and Africa, spoke of police complicity in trafficking, of money changing hands in front of them, of brothel owners being warned of raids, etc. Corruption is seen to be endemic in this trade, and unless serious efforts are made to stem it, it is unlikely that much will change. However, pressure and vigilance by local-level NGOs working on trafficking has helped curtail police corruption in many states.

The legacy of the judiciary in many societies with regard to prosecuting traffickers is also mixed. Conviction rates throughout the world are abysmal. The police argue that this is because the judiciary is patriarchal and insensitive to the issues. Members of the judiciary, on the other hand, say that evidence has not been gathered properly, and because punishments are now draconian, it is unconscionable to convict someone without clinching evidence.

All new measures taken at the national level to combat trafficking appoint the State as the protector of the female victim, strengthening the power of the criminal justice system to arrest, prosecute and punish. This primacy has major implications for sex-workers. Though some women may want to be 'rescued', others want to be left alone to earn an income and continue with their way of life. Whether this is because they have no other option, or because it is a matter of choice, some women just want to be left alone. However, the international community and national states have now developed a framework for intensive law reform with regard to trafficking and enforcement, especially in developing societies. This effort may result in the further marginalisation and victimisation of women sex-workers even as it promises to rescue those who have actually been trafficked across borders.

#### **Conclusion**

The dilemmas that the issue of trafficking poses are far more complex than the easy, moralistic, law-and-order approach appears to suggest.

The belief that trafficking for sex-work is a recognised evil, that those associated with the trade should be severely punished and that rescuing people involved in such a trade is a form of salvation, stems from a worldview that has little understanding of the subterranean world of undocumented, illegal migrants struggling to survive in economies that have no place for the poor and the vulnerable. It also assumes a moral framework that believes that sex should be between intimate partners in the home, and that any other form of sex, especially sex for payment, is marginal and unnatural, and should be disallowed in society.

At the same time, horrendous abuse does take place. Women are trafficked across borders, deceived, abused, subject to dehumanising treatment in slave-like conditions. The need to ensure there is proper protection for the women and punishment for the perpetrators is a necessary part of any human rights regime. Given this reality, a strategy to fight trafficking should involve criminal sanctions and victim protection based on a profound understanding of the economic, social and cultural realities that allow trafficking to continue unabated.

The elements of such a strategy must first involve migration regimes that are sensitive to the woman migrant and the problems of undocumented migrants. This involves sending-country policies that look to the reasons why women migrate: from economic impoverishment and abuse and violence in the home, to cultural restrictions that stifle them. It involves migration regimes in receiving countries that are more humane toward migrants, and that allow women victims of trafficking to remain on humanitarian grounds. Migration regimes and officials are among the main reasons why women migrants choose 'human smuggling' as a route out of their domestic worries, and the primary reason why they remain invisible even when they experience terrible abuse.

Though trafficking has been broadened in concept to include diverse end products, sex-work remains the primary focus of most trafficking legal regimes. Recent attempts at further criminalising sex-work have made matters worse, increasing the vulnerability of sex-workers. At the same time complete decriminalisation may result in a rapid proliferation of the market, a consequence that raises question about perceptions and attitudes towards sexuality, especially in the context of sex-work. In most societies, the climate is just not

right for complete decriminalisation, and opening the debate may actually result in more draconian laws. For the most part, especially for South Asia, the solution may be to continue with the strategy of lax enforcement, except in situations of abuse and violence, and allow sex-workers' organisations to fight for their rights and the necessary health measures particularly with regard to HIV/AIDS.

The law-and-order approach to trafficking has foregrounded the law as the primary means for combating trafficking. Give the complex web of economic, social and cultural factors that drive trafficking, solutions to the abuse may also lie in non-legal strategies. This is especially true for the sending country, where women can be made aware, given other options and opportunities to earn livelihoods. It also means working with women trafficking victims, listening to their experiences, and finding solutions that will allow them the opportunity to live in dignity. Unless we recognize the humanity, the politics, and the choices made by women survivors, no strategy to combat trafficking will ever succeed.

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## Transcultural Judgements: Violence and the Question of Prostitution in Nepal

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In February 1996, a large number of women of the Badi community in Nepalgunj were attacked by a group of local men. In this urban centre of western Nepal near the India-Nepal border, local residents had launched a 'Prostitution Eradication Campaign.' In the following months, many Badi families were evicted from their homes and moved to dispersed settlements in the neighbouring districts. The eviction of Badi families in 1996, which received national media attention, was one among many localised responses to the new visibility of the Badi in professional reports and popular mass media. This essay explores the question of prostitution by examining how international and domestic debates on violence against women, trafficking and prostitution created particular contexts in which local residents disputed the problems of sex-work, children's rights and citizenship in the Badi community, historically considered a 'prostitute' caste in western Nepal.

The Badi, who are treated as an untouchable caste, had originally served as entertainers for minor kings and landlords; but have become increasingly dependent on income from women's sex-work in the recent decades of migration and urbanisation. The practice of sex-work among the Badi received growing attention from national and international mass media from the late 1980s, resulting in renewed forms of discrimination and violence within the local community. Although many NGOs and INGOs in Nepal began taking up the issue of violence against women in the early 1990s, little attention was paid to the problem of violence against Badi women as they were not regarded as victims of violence. This paper highlights the ways in which the categories of 'violence' and 'victim' are defined and applied by the construction of transcultural judgements embodied in international legal instruments to combat trafficking and prostitution, which have been selectively used or challenged by the Nepali state,

NGOs, lawyers and activists in their attempts to respond to specific social and cultural situations in Nepal.

Over the past two decades or so, a cross-cultural criterion for making moral and legal judgements about violence against women has been increasingly taken up by the United Nations in response to global feminist campaigns. Although the problem of trafficking and prostitution had already been addressed in the UN Convention of 1949, the issue was redefined as violence against women in the 1990s. In Nepal, this period coincided with major political changes, which enabled newly formed civic groups to advance public campaigns for the rights of women and children. Activists, lawyers and health professionals participated in global health and human rights discourses on trafficking and prostitution, but they also generated more internalised national debates, raising questions around ideas such as 'Nepali' culture and family values. However, their efforts to promote particular visions of moral improvement were not only contested among themselves, but also at odds with diverse practices of local communities, families and women. By examining the ways in which policy makers, lawyers and activists selectively used international legal instruments, this paper interrogates what is now defined as 'unallowable violence' that needs to be eliminated, and what remains as 'socially accepted suffering' that has to be endured by particular categories of women.

Talal Asad suggests that the historical process of constructing a human society is often narrated as a process of progressive moral improvement accompanying the abandonment of morally shocking practices. This moralising process, he suggests, is highly selective in that only some kinds of suffering are seen as inhuman, while certain other types of suffering are retained as necessary for society.<sup>1</sup> Contemporary debates on trafficking in women and prostitution are also directed towards certain moral improvement by eliminating suffering of particular categories of women who are identified as victims.

Mary Douglas suggests some of the ways in which we might think of conflicts between different sets of moral judgements. She points out the limitations of current theories of justice, community and self, which proceed from a notion of the human subject as a sovereign agent for whom free choice is the essential condition. She

says that the limitation of this view becomes apparent when we consider the fact that passing laws against wife battering, child abuse or polygamy is not likely to stop these practices. She argues that the most profound decisions about justice are not made by individuals as such, but by individuals thinking within and on behalf of institutions, including domestic situations which define the roles of children, adults, males and females.<sup>2</sup> Any institution, she argues, not only provides shared classifications as the basis of understanding self and others, but also the principle of justice with which to defend its moral values. Douglas seems to go beyond the comparison between different systems of justice, directing our attention to situations in which the conflict between ideas of justice occurs in the context of social transformation. The more severe the conflict, she says, the more useful it is to understand the institutions that are doing most of the thinking. I shall take the issue of prostitution as one case of such severe conflict, and will identify the institutions which engage in the task of defining and solving the problem.

Conflicts between different sets of moral judgements happen when the practices of certain sections of society are problematised by other sets of norms. In nineteenth century Europe, trafficking and prostitution were seen as forms of working class immorality.<sup>3</sup> In recent years, the issue of trafficking and prostitution has been categorised as violence against women in global institutions, along with battering, marital rape and female genital mutilation. These are examples of the ways in which global public opinion in alliance with international legal instruments have problematised certain local practices which may have been held unproblematic by society, communities or families. By examining the manner in which the question of prostitution has been dealt with in international conventions, national debates, and local disputes, I will attempt to identify conflicts between different sets of moral judgements in the context of social transformation or encounter with other groups.

The first section of this paper describes the prostitution eradication campaign in the Badi community in western Nepal. Although Badi residents experienced violent incidents, they could not seek legal solutions because they were labelled the 'prostitute caste' and therefore unworthy of protection by the state. The second part of this paper traces how the practice of sex-work in the Badi

community has been problematised by the national debates on prostitution. In these debates, the Badi community was portrayed as deviant from the Nepali ideal, where women 'voluntarily' engaged in sex-work. The third section describes how the international and national discourses on prostitution have been entangled with the polarised notions of 'consent' and 'coercion' which are often detached from reality. Although it was difficult to determine 'choice' and 'force' in many women's complex decision-making processes, women had to claim that they were 'forced' in order to seek justice and protection from the state. The fourth section of the paper describes the legal strategies of Badi activists, who argued that women in the Badi community were historically 'forced' to engage in prostitution. Although legal professionals who were sensitive to the international human rights standards argued that Badi women who chose to live with sex-work should also be protected by the state, the Badi activists did not make their arguments based on individual rights to choose, but on the right to a dignified life.

### **Prostitution eradication campaign in the Badi community**

In Nepalgunj, many Badi families migrated from rural districts during the past several decades and owned property in a neighbourhood called Gagangunj. Although the practice of sex-work in the community had long been the cause of local conflicts, a decisive campaign against the Badis began in February 1996 by the Drug and Prostitution Eradication Committee formed by high caste residents in neighbouring communities. One evening, when Badi residents were preparing for dinner or watching TV, many local men entered their houses, messed up the rooms, dragged women out, hit them and tore their clothes. They also attacked families who were not involved in sex-work; this event was followed by similar ones several times.

The prostitution eradication campaign continued for several months; many Badi residents were taken to the police station and commanded to stop prostitution in the community. Some of them were hospitalised as a result of violent treatment. The police detained women who engaged in sex-work and demanded large amounts of bail money for their release. In order to pay up some women were

forced to sell their houses at throwaway prices. In Nepalgunj, a large-scale demonstration was organised by the Chief District Officer (CDO), and all 17 wards of the municipality participated in the demonstration to protest against the presence of Badis in Nepalgunj. A delegation of Badi women who were evicted from their houses travelled to Kathmandu to meet the Home Minister, who guaranteed their safety and promised to visit them in Nepalgunj. When they returned from Kathmandu however, they were not allowed to enter their own homes.

During the campaign, members of the Drug and Prostitution Eradication Committee took turns keeping watch on the community, day and night, in order to stop sex-workers and their clients from entering the area. Outsiders were not allowed to enter the community. When relatives and friends visited the residents, they had to register before entering and explain the purpose and length of their stay. After several months, only a few Badi families remained in the community—many left the neighbourhood and moved to other districts. Some women tried to rent rooms within Nepalgunj, but it was difficult. This large-scale displacement occurred because many Badi women supported a large number of family members, and all dependents left with them.

As the Drug and Prostitution Eradication Committee was supported by the police, CDO and District Development Committee (DDC), Badi residents were left without any legal recourse. Leaders of the Badi community consulted their legal advisors and negotiated with the Committee, arguing that the evicted residents be allowed to return and live in their own homes. They also tried to convince the Committee that they themselves wished to stop sex-work in the community. After protracted negotiations, several Badi leaders undertook to make sure that sex-work would not be practiced within the community; evicted residents were allowed to come back on this condition. In the following months, Badi families gradually began returning, but some of the women who experienced severe violence and harassment lived with fear for many years after the campaign.

Badi community leaders pointed out that as a consequence of this large-scale campaign their neighbourhood, Gagangunj, became widely known as a red-light district. In the late 1980s, the practice of sex-work in Gagangunj was covered by national and international

mass media, and local high caste residents felt the neighbourhood was 'polluted' by the presence of Badi residents. Their harassment by high caste neighbours and the police increased. Before the prostitution eradication campaign started, however, Badi leaders were arguing that resolving sex-work in the area would be a gradual process as many Badi women had no other means of support. By the early 1990s, Badi residents themselves had begun to reform their community by establishing a local NGO called Social Awareness For Education (SAFE), which first started hostel and school programmes for Badi girls so that they would not take to prostitution in the future. SAFE also ran health and income generating programmes for women. Because alternative employment opportunities were difficult, SAFE aimed to discourage sex-work in the community gradually. However, local neighbours and the police were impatient and became violent, and after a series of incidents, Badi residents themselves tried to rebuild their community without sex-work. Once it was completely terminated in the area, they renamed their neighbourhood Pragatishil Marg, Progressive Path.

Despite the success of health and education programmes within the community, it was difficult to deal with the problems of violence against Badi women. The establishment of SAFE was partly motivated by two violent incidents in the community: the rape of a six-year-old Badi girl which the police failed to file; and shortly after that, the rape of a 50-year-old woman. This time, the boy's family was advised by the court to pay only a small amount of money as compensation. Although these women were not sex-workers, rape cases were not registered on the grounds that there could not be rapes in a 'prostitute community.'

Apart from this, Badi women also faced various forms of violence when they engaged in sex-work. They were forced to work even when sick, menstruating, or with fever, during pregnancy, or right after delivery. When men visited Badi houses, women were not allowed to refuse. If they did, the men became violent. Men got drunk and were violent, or paid too little or not at all. In some cases, they tortured women, looted their money and threatened them.

In the early 1990s, when many NGOs and INGOs in Nepal started to take up the issue of violence against women, there was little attention to the problem of violence against Badi women. The

prostitution eradication campaign in Nepalgunj should be understood in this larger context, where local high caste neighbours and government authorities reacted to negative media coverage and tried to cleanse the whole neighbourhood by evicting the Badis. The next section describes how the practice of sex-work among Badis was problematised by national debates on trafficking and prostitution in the 1990s.

### Public debates on prostitution

In Nepal, prostitution became a matter of public concern as part of the emerging social responses to the interlinked problems of AIDS, trafficking and prostitution. By the late 1980s, those women who were identified as sex-workers within and outside Nepal were seen to be the main risk group that would soon spread HIV/AIDS viruses in Nepal. In the early 1990s, while AIDS and trafficking prevention programmes were being developed, different forms of sex-work in Nepal became classified. Pauline O'Dea, for example, suggested that there were three major patterns: cross-border trafficking, prostitution with roots in cultural and religious tradition, and local sex-workers.<sup>4</sup> Among the three categories, cross-border trafficking became the most visible and controversial issue in the media.<sup>5</sup> Prostitution with roots in cultural and religious tradition usually referred to the Badi and Deuki communities in western Nepal, where women's practice of sex-work was thought to be traditionally accepted by communities and family members. The term 'local' referred to women who made a living on their own by practising sex-work in urban areas or small towns along major roads. These categories were produced by Kathmandu-based institutions to provide information for international aid agencies. As there had never been any scholarly investigation of the subject in Nepal, these writings tended to rely on very few descriptions and stereotyped images of particular minority communities.

While public debates on trafficking and prostitution were produced in order to eliminate the suffering of victims or to protect women and children from potential danger, they also opened up the question of the 'traditional' and 'cultural' practices of particular ethnic and caste groups as obstacles to solving the problems of

trafficking and prostitution. The Badi had been regarded as untouchables, and Badi women were often described as practising 'traditional' forms of prostitution. Thomas Cox suggests that, historically, the Badi served as entertainers under the patronage of rulers of small principalities and landlords in western Nepal; as the demand for singing and dancing decreased and their patrons lost their privilege and the ability to support them, they became more dependent on income from women's prostitution.<sup>6</sup> The growing reliance on prostitution was also encouraged by new access to the Terai towns following the malaria eradication programmes in the 1960s.

Cox suggests that, historically, Badi women had sexual liaisons only with specific patrons, and that prostitution was taken up in response to political and economic changes only over the past several decades. In public discourse, however, the Badi as a group was associated with prostitution as if it were their caste occupation.<sup>7</sup> Linnet Pike maintains that prostitution was not perceived as a caste occupation within the Badi communities.<sup>8</sup> Although many Badi women engaged in sex-work, particularly in urban areas, there were also many Badi households which did not depend on it. Pike argues that while the practice of sex-work was socially accepted, it was not regarded as normative among Badi men and women. This internal moral discourse stood in sharp contrast to stereotyped representations in the media of Badi prostitution as a 'family enterprise.'

In the early 1990s, Badi communities were identified as a major target group in AIDS prevention projects.<sup>9</sup> The National AIDS Prevention and Control Project of Nepal visited them for the first time in 1991 to provide information about HIV/AIDS and risk behaviour, and offered voluntary confidential testing for STDs and HIV.<sup>10</sup> Most subsequent AIDS prevention programmes funded by international organisations were intended to provide health education and skills training for Badi women. However, local NGO workers noted that women would not participate in these programmes if they felt that they were trying to force them to stop sex-work. Since it was difficult to provide alternative job opportunities for women, many programmes shifted their focus from changing the behaviour of adult women to providing educational opportunities for children.<sup>11</sup> It was thought that Badi girl children were socialised to become sex-

workers, but that they could make other choices if provided with a good education.

In contrast to the intervention programmes for victims of girl trafficking, many professionals in Nepal found it difficult to deal with the problems faced by women who 'voluntarily' engaged in sex-work. Part of the reason was that prostitution in Nepal was relatively discreet, as it had never been institutionalised through the creation of red-light districts as in other countries in South Asia. Because of this, many social workers had difficulty dealing with the question of those women who engaged in sex-work to support themselves and their children. At the level of policy making, however, many activists and lawyers began debating the creation of a concrete national policy and a new legal code to control prostitution, in the late 1990s.

### Consent and coercion

In July 1999, the Center for Legal Research and Resource Development (CeLRRd) proposed a new bill, the Human Trafficking Activities Eradication Act 2056 [1999/2000], which recommended significant amendments to the Human Trafficking (Control) Act 2043 [1986/7] to include specific provisions for eliminating prostitution. For the advocates of the new bill, prostitution was considered to be fundamental in perpetuating the phenomenon of trafficking among women and children. However, critics of this proposed bill cautioned that for the first time in Nepal it had the potential to criminalise sex-workers within the legal code. They pointed out that the bill did not adequately address the question of 'consent' and 'coercion', or respect an adult woman's right to make her own decision to migrate and work. They argued that the definition of 'human trafficking' should be limited to the coercive practices in the process of transporting and recruiting persons.

There is a long history of legislative debates on trafficking and prostitution which has generated intense controversies over legalising or criminalising prostitution. When the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others was adopted by the United Nations, prostitution was condemned even with 'consent' (United Nations 1949). This term was challenged in the 1990s with the introduction

of the distinction between 'forced' and 'voluntary' prostitution. While the question of 'consent' and 'coercion' had become an international human rights standard to ensure the individual's right to choose, many professionals in Nepal expressed concern that the notion of 'consent' might not be appropriate for specific social and cultural contexts in Nepal.

In 1998, members of the Institute for Legal Research and Resources (ILRR) and Asmita, a feminist publisher, argued that the existing laws on trafficking were inadequate because they did not criminalise prostitution. Article 4 of the Human Trafficking (Control) Act 2043 [1986/7] banned 'human trafficking,' a term which includes the following activities: selling a person for any purpose; taking a person abroad with an intention of selling her/him; or having a woman engage in prostitution by persuasion, enticement, deception, fraud, or pressure. Asmita published a review report in 1998 which pointed out that the 2043 [1986/7] Act was limited to the protection of victims of trafficking and forced prostitution, and silently granted legal status to voluntary prostitution.<sup>12</sup>

When the new bill was proposed by CeLRRd in 1999, several activists and law professionals pointed out that there was a serious problem in it as it explicitly criminalised sex-workers by bringing prostitution under the rubric of 'human trafficking'. In the proposed Human Trafficking Activities Eradication Act 2056 [1999/2000], the definition of human trafficking was expanded to include those who engaged in prostitution in the country or abroad (Section 5). In the section on punishment, up to three years of imprisonment was provided for clients (Section 12 (8)) and anyone who voluntarily engaged in prostitution, in consideration of her economic and social condition (Section 12 (7)).<sup>13</sup> The new bill was developed on the premise that harsher punishment for prostitution was the necessary condition for stopping trafficking. Critics of the bill, on the other hand, warned that criminalising it would make it more difficult for women and girls, who fell victim to trafficking, to file court cases against traffickers and clients as they would be afraid of being treated as criminals themselves. Activists and legal advocates suggested that many sex-workers and victims of trafficking had already been mistreated in practice, even before the new bill was proposed.

When the existing laws were reviewed in the mid-1990s, several observers suggested that there was no shortage of statutes that described the prohibition of human trafficking, slavery, and forced labour within the law. Human slavery was first outlawed in Nepal during the Rana regime (1854–1951) under the Muluki Ain legal code. During the Panchayat period (1951–1989), human trafficking was prohibited under the New Muluki Ain of 1964, the chapter Relating to Human Trafficking, which was revised by the Human Trafficking (Control) Act 2043 [1986/7]. The 1990 Constitution of Nepal outlawed human trafficking, slavery and forced labour (Article 20), and the Labour Act and Children's Act, 1992 further banned forced child labour and the use of children in immoral professions. Several major international agreements were ratified during the 1990s, including the 1949 UN Convention for Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others, the 1979 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the 1989 Convention on the Rights of the Child (CRC), and the South Asian Association for Regional Cooperation (SAARC) anti-trafficking resolutions. Based on the Beijing Declaration at the Fourth World Conference on Women in 1995, the Ministry of Women and Social Welfare, in collaboration with representatives from several NGOs, prepared a National Action Plan for Women's Development in their ninth national plan in 1997, adding several points on violence against women, including trafficking.

For reviewers who examined national laws from the international human rights perspective, the problem was not a lack of legal prohibitions but the difficulty of enforcing them. However, several national policies and law reform proposals drafted in the late 1990s elaborated on the need to adopt a broader definition of trafficking in order to effectively intervene in a wider range of sexual exploitation. For example, the Trafficking in Human Beings (Control) Bill, 1999, prepared by the Ministry of Women, Children and Social Welfare aimed to simultaneously deal with various sexual crimes such as rape, child sexual abuse, pornography, sex tourism, and prostitution. This draft bill was reviewed at the National Workshop on Trafficking in Human Beings (Control) Bill organised by the Forum for Women, Law and Development (FWLD) in 2001. According to the detailed comments presented at the workshop, many of the practical problems

were revised in the following Amendment Proposal. However, recommended revisions of specific sections prohibiting consensual prostitution were not incorporated.<sup>14</sup> Reviewing the national policies and bills developed in the late 1990s, Jyoti Sanghera and Ratna Kapur posited that these proposals were more concerned with public morality than with specific cases and individual right.<sup>15</sup> They argued that serious human rights violations could occur if trafficking cases were handled without making a distinction between 'consent' and 'coercion.'

In many national policies and proposals developed in Nepal, the term 'trafficking' was often equated with migration and prostitution. Sanghera and Kapur noted that part of the reason for this confusion lay in the absence of an internationally recognised definition of trafficking. The 1949 UN Convention, Article 1, stated:

The Parties to the present Convention agree to punish any person who, to gratify the passion of another:

- (1) Procures, entices or leads away, for the purpose of prostitution of another person, even with the consent of that person;
- (2) Exploits the prostitution of another person, even with the consent of that person.<sup>16</sup>

While prostitution was condemned even with 'consent' in the 1949 Convention, the term 'forced prostitution' was adopted in the 1990s to respect adult women's right to choose.

In the 1990s, the issue of trafficking in women and prostitution was redefined as violence against women, in response to contemporary feminist demands as well as the international recognition that trafficking had become a highly organised worldwide phenomenon. The 1993 Vienna Declaration on Violence against Women defines the concept of 'violence against women' as encompassing:

- (a) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;
- (b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment

and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;

- (c) Physical, sexual and psychological violence perpetrated or condoned by the state, wherever it occurs.<sup>17</sup>

From the above definition of 'violence against women,' several features can be identified which clearly signal a major shift in the conception of trafficking and prostitution, as well as in how the problem should be dealt with. First, the use of the term 'forced prostitution' shows that the international community's view of prostitution has changed. Although the issue of trafficking in women and prostitution was addressed in the CEDAW Declaration of 1979, it retained the basic view of the 1949 Convention, which was indifferent to the question of choice. The term 'forced' was inserted in the 1993 Declaration.

Second, the Declaration of 1993 recognised the problem of violence against women, even in the private sphere, as a violation of human rights. In the 1970s, women's issues were generally related to problems of discrimination and equitable participation in the development process. In 1992, CEDAW formally included gender-based violence in its definition of 'discrimination.'<sup>18</sup> General Recommendation 19 deals with prostitution and trafficking as activities that put women at special risk of violence and abuse.

Third, the question of state responsibility for the actions of private citizens has emerged—the family, the community and the State are identified as possible sites of violence against women. In the past, a strict judicial interpretation had made the State responsible only for actions for which it or its agents were directly accountable; states did not consider themselves responsible for violence against women by private actors. Such individuals were not generally bound by international human rights law, but this shift acknowledged states' responsibility for their failure to meet international obligations even when violations originate in the conduct of private individuals.

Within the United Nations, however, the ambiguity remained as to how the issue of trafficking and prostitution should be addressed. Although the term 'forced' prostitution was incorporated in various conventions during the 1990s, specific UN bodies such as the Working Group on Contemporary Forms of Slavery continued to argue that prostitution itself is a human rights violation, noting that

slavery has not been abolished but modernised. Yet another approach was adopted in the 2001 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime. Radhika Coomaraswamy and Ambika Satkunanathan suggest that the Protocol had a complex approach to the definition of trafficking associated with prostitution. On the one hand, it implied that the transport and transfer with the free and full consent of an adult woman for the purpose of prostitution is not trafficking; on the other hand, the interpretive notes in the Protocol allowed each country to interpret the term 'sexual exploitation' according to its own experiences, making room for different approaches to prostitution and sexual services. This complex approach was taken because there was no international consensus on the appropriate approach to the regulation of prostitution, as shown in the essay by Coomaraswamy and Satkunanathan in the present volume.

Global feminist campaigns, too, had different conceptions of prostitution. On the one hand, some radical feminists viewed it as inherently oppressive, exploitative and a form of sexual abuse; on the other, sex-workers' rights groups defined prostitution as a form of labour, and made a distinction between 'forced' and 'voluntary' prostitution.<sup>19</sup> These two positions were reflected in two global networks against trafficking in women: the Coalition Against Trafficking in Women (CATW), which furthers the abolitionist position; and the Global Alliance Against Trafficking in Women (GAATW) which distinguishes between forced and voluntary prostitution and calls for the right to self-determination.<sup>20</sup>

In Nepal, NGOs working against trafficking have formed two large networks, adopting the different positions represented by the two global networks. The National Network Against Trafficking of Women and Girls (NNTWG) shares the perspective of the CATW, and the Alliance Against Trafficking of Women in Nepal (AATWIN) works closely with GAATW. Activists and social workers in member organisations of AATWIN made an effort to clarify the concept of trafficking so that it could be more effectively applied to specific situations in Nepal. For example, the distinction between trafficking, prostitution and migration was discussed in the Workshop on

Conceptual Clarity on Trafficking organised by AATWIN in 1997,<sup>21</sup> and elaborated in the training manual, *Advocacy Against Trafficking in Women Training Manual*.<sup>22</sup> Jyoti Sanghera of GAATW, who facilitated the workshop and the manual, used the following definition offered by the UN Special Rapporteur on Violence Against Women for assessing national laws and policies in Nepal:

Trafficking in persons means the recruitment, purchase, sale, transfer, harbouring, or receipt of persons by threat or use of violence, abduction, force, fraud, deception or coercion (including the abuse of authority), or debt bondage, for the purpose of placing or holding such persons, whether for pay or not, in forced labour or slavery-like practice, in a community other than the one in which such person lived at the time of the original act described.<sup>23</sup>

In the above definition, trafficking was defined as coercive transportation, recruitment or labour, and the term 'prostitution' was avoided. Sanghera and Kapur pointed out that national policies and bills developed in the late 1990s in Nepal were aimed at criminalising prostitution and did not conform to the global trend that focused on ending exploitation rather than eliminating prostitution. For many people in Nepal, however, the distinction between trafficking and prostitution was either not clear or not considered important. The Nepali term for 'trafficking' is *celi beti bech bikkhan*, which literally means 'selling and buying of girls' and does not indicate the process of movement. 'Prostitution' is usually translated in Nepali as *beshyabritti* or *deha byapyaar* which is literally, 'flesh trade.' Trafficking is commonly understood as the selling of women and girls for the purposes of prostitution. In addition to the problem of translation, some people found it difficult to imagine that a woman or a girl would consent to be a sex-worker. There were also people who adopted a stronger moral stance to argue that the concept of sex-work based on consent should not exist in Nepal.

For many other activists and lawyers in Nepal, it had been difficult to make legal interventions against violence within brothels in India. Legal advocates suggested that these cases be treated under extraterritorial law. However, regional agreements such as the convention drafted by SAARC primarily focused on cross-border trafficking, and did not provide effective policies for dealing with violence and forced labour conditions within brothels within national

borders.<sup>24</sup> The Human Rights Watch/Asia report (1995) was one of the few documents which, in legal terms, addressed the problems of physical abuse, bondage and rape within brothels.<sup>25</sup> The report reviewed many applicable international conventions on slavery, forced labour and bonded labour including: Article 4 of the Universal Declaration, Article 8 of the International Convention on Civil and Political Rights, ILO's Forced Labour Convention (No. 29) of 1930, and the Abolition of Forced Labour Convention (No. 105) of 1957. 'Forced or compulsory labour' was defined by ILO as 'all work or service which is extracted from a person under the menace of any penalty and for which the said person has not offered himself voluntarily.' Most of the debates on 'consent' and 'coercion' in trafficking cases, however, were concerned with the process of migration and recruitment; coercive conditions within brothels were rarely discussed in relation to the above conventions except for the one on the exploitation of child labour.<sup>26</sup> As it was practically difficult to enforce legal sanctions against larger global sex industries, several NGOs and the government made some efforts to control the Nepal-India border and monitor the movement of women and girls who were leaving their villages and crossing over.

The 1950 Open Border Agreement between Nepal and India was often regarded as a major obstacle to control cross-border trafficking. This agreement allowed citizens of Nepal and India to travel freely between the two countries without presenting passports or visas. As the problem of trafficking and sexual violence outside Nepal was officially recognised, the cross-border migration of women was increasingly restricted in the late 1990s. In 1998, the Foreign Employment Act 1985 was amended to prohibit the foreign employment of women and minors without the permission of their guardians and the government.<sup>27</sup> This order was widely implemented by immigration authorities, especially in the case of young and single women, or women from disadvantaged social groups. At the border, women and girls were required to show Village Development Committee (VDC) certificates to prove their relationship with their male guardians.<sup>28</sup>

From the perspective of those activists and lawyers who argued for making a distinction between 'consent' and 'coercion,' one of the important questions was the difference between trafficking and

migration. They contended that it was necessary to determine the purpose for which the border was crossed and whether movement occurred as a result of the actions of another person. But ambiguity still remained as to when and by whom the end goal was determined. It was difficult to distinguish between voluntary migration and trafficking at the departure point, since the act of deception may not be apparent at the time; it was only after their arrival at an unexpected and exploitative juncture that the crime of trafficking would be revealed. Social workers strongly argued that in order to protect women and children before incidents of violence and deception occurred, cases of trafficking and forced prostitution could not be identified after the fact. In Nepal, prostitution was not regarded as a profession, and many people including professionals, maintained that no Nepali woman would take up prostitution unless 'forced' to by others.

On the question of 'choice' and 'force,' Doezema analyses the way in which the image of the 'innocent victim' was created in the narratives of forced prostitution, child prostitution, and sex tourism produced by high-profile NGOs and the media.<sup>29</sup> Emotive words such as 'duped,' 'tricked' or 'lured' were often used to stress that women did not 'choose' to be prostitutes. In Doezema's view, it became necessary to prove the fact of 'forced prostitution,' since prostitution was reconceptualised in terms of choice and force. However, she goes on to argue that there was an underlying rejection of prostitution as a profession in discourses of 'innocent victims,' which often implied that no 'normal' woman would take up the work unless 'forced' to. She points out a parallel between the image of 'innocent victims' in the nineteenth century white slavery scandals, and the contemporary myth of trafficking. 'Innocence' was often established by focusing on 'force,' poverty, and youth. In the present context, in order for a 'victim' to be eligible for the protection recommended by international human rights instruments, she would have to prove her innocence by the fact that she did not know that she was going to be a prostitute. 'Voluntary' sex-workers, on the other hand, were disqualified from human rights considerations even when they were imprisoned, detained, or subjected to cruel and degrading mistreatment.

In Nepal, some feminist legal advocates argued that women who chose to live with sex-work should also be protected by the State. In the case of the Badi community, many women did not 'choose' sex-work as their profession, but they were also not 'forced', in a strict legal sense. It was often a survival strategy when there was no other means of livelihood. At the level of advocacy campaigns, however, Badi activists put forward a strong argument that sex-work in the community was 'forced prostitution', compelled by historical discrimination.

### Struggle for dignity

During the prostitution eradication campaign in the mid-1990s, Badi activists developed their capacity to negotiate with local authorities, the police and government offices. They took up the responsibility to ensure that sex-work did not take place in the neighbourhood. At the same time, they ran programmes for health, education and community development through SAFE, their own NGO, to improve the daily lives of Badi residents. By the late 1990s, they had started advocacy activities for legal reform at the national level. During the campaign, Badi activists claimed that the Badi had been historically discriminated against by the State and deprived of the basic civil rights guaranteed by the Constitution.

Although many Badi women were not involved in sex-work, all the members of the community suffered from the label attached to them as a 'prostitute caste'. When women went to the municipality to register their marriages, they were often humiliated by being asked how a Badi woman could be married. It was very difficult for many Badi children to obtain citizenship certificates. A majority of men from other castes who married Badi women treated them like mistresses and never took them home. When Badi women gave birth to their children, these men did not legally recognise them as theirs. As the procedure of birth registration required the father's identity, many Badi children could not obtain birth certificates. Without them they could not claim citizenship and faced problems while seeking admission to schools. Badi activists also started to expose the legacy that Badi women historically had relationships with high caste

men, but children born of these relations were always considered untouchable.

Badi activists' arguments regarding the historical discrimination by the State were gradually recognised at the national level and discussed in a number of meetings and conferences in the late 1990s and early 2000s. In 2001, the Judges' Society Nepal, UNIFEM and Pro Public (Forum for Protection of Public Interest) jointly organised a programme on 'Gender Equality and Justice' in Nepalgunj. Here, Badi activists raised the issue of violence against Badi women, and argued that the problem of the Badi community was not just one community's problem, but a national one. At the end of the programme, the participant judges passed a declaration which made clear that the State was responsible for ensuring a dignified life to the Badi and for providing legal aid so that they could enjoy their fundamental rights as Nepali citizens.

In the following years, Pro Public continued to support Badi activists' efforts to achieve social justice and legal rights. The Dalit NGO Federation (DNF) had also been working closely with Badi activists against caste discrimination at the national level. In 2003, Pro Public and DNF filed a writ petition in the Supreme Court for the emancipation of the Badi community from caste discrimination, sexual exploitation and forced prostitution. The petitioner asked the Supreme Court to issue a directive to the government to provide rehabilitation for and guarantee citizenship rights to the Badi. The report submitted to the Supreme Court discussed the question of caste discrimination, violence against women, and child sexual exploitation in the Badi community by drawing on international instruments such as CEDAW, CRC and CERD General Recommendation. In May 2004, the Supreme Court ordered the government to review state programmes regarding the promotion of the Badi community. The Prime Minister's Office and the Cabinet, the Home Ministry and Ministries of Law, Justice and Parliamentary Affairs, Local Development, and Women, Children and Social Welfare were directed to form study panels.

Badi activists' efforts to change the legal status of the Badi at the national levels were supported by dalit rights activists and organisations. At the 5th National Annual General Meeting of the

Dalit NGO Federation (DNF) held in Nepalgunj in June 2004, a 16-point Nepalgunj Declaration included the following statement: 'In the case of Badis, the Federation demands the legal declaration to end their occupation of prostitution and provide them with Nepalese citizenship and allow them to live a dignified life.' Badi activists' concerns were also expressed at the International Consultation on Caste-Based Discrimination organised by the International Dalit Solidarity Network (IDSN) and the Dalit NGO Federation of Nepal in November 2004. This consultation meeting was aimed at implementing the General Recommendation on 'descent-based discrimination' adopted by the Committee on the Elimination of Racial Discrimination in 2002.

Against the widely accepted assumption that Badi women 'voluntarily' chose sex-work, Badi activists, together with human rights activists and legal advocates in Kathmandu, put forward a strong argument that sex-work in the Badi community was 'forced prostitution' (*badhyatmak dehayyapar*) compelled by historical discrimination. Badi activists also claimed that the number of women involved in such work had decreased significantly over the past years, and it was no longer fair to label them a 'prostitute caste.' At the national conference on the status and rights of Badis in January 2005, Badi activists presented a paper, collectively prepared by the National Struggle Committee for the Development of the Badi Community, which demanded that the government declare the Badi as a 'sex-work-free community,' and to provide alternative job opportunities for those Badi women who were still compelled to continue the profession for a livelihood. Some feminist legal advocates pointed out that Badi women could be broadly categorised into two groups: women who wanted to live with sex-work as their profession, and women who had left or wanted to leave the profession. They argued that both categories of women had a right to choose their way of life, and that both needed to be protected by the State. Although this position was sensitive to the human rights standard to respect an adult woman's right to make her own decision to work, Badi activists developed their legal arguments based not on an individual's right to choose, but on the right to a dignified life.

## Conclusion

I have attempted to describe how the international and domestic debates on violence against women, trafficking and prostitution became entangled with local residents' disputes over the problems of sex-work, children's rights and citizenship in the Badi community. When many institutions took up the issue of violence against women in the early 1990s, Badi women were not regarded as victims of violence. This paper has paid particular attention to the ways in which categories of 'violence' and 'victims' have been defined by the transcultural judgements embodied in the international legal instruments to combat trafficking and prostitution. When the question of prostitution was reconceptualised in terms of 'choice' and 'force' in the UN Conventions, there was a kind of unspeakability surrounding the conditions of sex-workers who were not 'forced,' and many institutions and professionals dealt with concepts such as 'consent' and 'coercion' with great ambivalence. In Nepal, public debates on HIV/AIDS, trafficking and prostitution had been produced to eliminate the suffering of women who were identified as victims, but the sexual practices of Badi women became problematised because of the assumption that they 'voluntarily chose' sex-work, encouraged by their families and communities.

Although the question of 'consent' and 'coercion' became the human rights standard to respect women's rights to choose, these polarised notions were often detached from the real material and social conditions in which women made difficult decisions to migrate and work. As in many places in the world, Badi women and their families migrated from rural districts to urban areas in search of work and a better future for their children. Although their choice for survival might require recognition, the discourse of 'consent' and 'coercion' posed difficult questions when they tried to seek justice. In order to be eligible for the protection recommended by international human rights instruments, women had to prove their innocence by the fact that they did not know that they were going to be involved in prostitution. Women who were not 'forced' in a strict legal sense, were disqualified from human rights considerations even when they were imprisoned, detained, and subjected to cruel and degrading mistreatment. These polarised concepts tended to force women to

account for their terrible choice, and it became necessary to prove the fact of 'forced prostitution.'

As the problem of violence had become increasingly represented in the language of rights, Badi activists formulated their own strategic languages to achieve social justice through legal struggle. Based on the realisation that Badi people had been suffering from violence and discrimination because of the label 'prostitute caste,' Badi activists engaged in simultaneous efforts to reform daily practices within their community, and to change the public image of the Badi. They argued that sex-work in the community was 'forced prostitution' compelled by historical discrimination. They also revealed the problem that the Badi had been historically discriminated against by the State and deprived of fundamental rights as Nepali citizens. In formulating their strategic languages, Badi activists did not argue for individual women's rights to choose, but demanded collective rights to a life with dignity.

In September 2005, the Supreme Court passed the verdict in response to a writ petition filed by Pro Public for the rights and welfare of the Badi community. The court ordered the government to provide citizenship to every child, even if his/her father's identity was not known. This decision was made by interpreting Article 9 (2) of the 1990 constitution, which states: 'Every child who is found within the Kingdom of Nepal and the whereabouts of whose parents are not known shall be recognised as a citizen of Nepal by descent until the father of the child is traced.' Before this court order, CDOs, who were authorised to award citizenship, used to interpret the provision on their own and deal with the cases of children whose fathers were not identified at their discretion.

The media reported this Supreme Court decision as a landmark verdict, which made it possible for every child to obtain a citizenship certificate without presenting his/her father's identity. However, several Badi activists, youths and women expressed their concern that the court had merely interpreted the existing law and did not allow them to obtain citizenship certificates on the basis of the mother's identity. Even if a child whose father could not be identified got citizenship, a remark 'father not identified' would be written on the citizenship card. For many Badi women and activists, their demand for the rights to citizenship was not just a practical concern, but also a

matter of dignity. They did not wish their children to carry citizenship cards with the remark 'father not identified,' which would imply that they were illegitimate. They continued to argue that citizenship certificates should be issued based on the mother's identity without a specific remark. In their efforts to demand a dignified status for their community, Badi activists accused the State of depriving them of their rights as Nepali citizens. At the same time, it was also through the State that they tried to transform particular legislative, administrative and judicial practices for vindicating their rights.

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- from their respective perspectives on morality, public health and family values.
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  - <sup>13</sup> CeLRRd, 2056 v.s., *Jiu Masne Becne Karya Unmulan Ain 2056 ko Masyauda tatha Masyauda Karyadalko Pratibedan 2056* (Kathmandu: CeLRRd, 2001) pp. 43–47.
  - <sup>14</sup> For detailed comments and recommendations on the draft bill proposed by the Ministry of Women, Children, and Social Welfare in 1999, see Forum for Women, Law and Development, 2058 v.s. *Jin Hasne Beene Taina Djar Pasar Aparadh Nishedh Garna Prastavit Vidheyakma Garnuparne Subdharharu* (Kathmandu: FWLD).

- <sup>15</sup> Jyoti Sanghera and Ratna Kapur, *An Assessment of Laws and Policies for the Prevention and Control of Trafficking in Nepal* (Kathmandu: The Asia Foundation, 2000).
- <sup>16</sup> United Nations, Document 18, "Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, adopted by the General Assembly on 2 December 1949" (United Nations, 1949)
- <sup>17</sup> United Nations, Document 107, "General Assembly Resolution Adopting the Declaration on the Elimination of Violence against Women" (United Nations, 1993).
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- <sup>19</sup> For feminist debates on prostitution, see Kathleen Barry, *Female Sexual Slavery* (New York: New York University Press, 1984) and *The Prostitution of Sexuality* (New York: New York University Press, 1995); Shannon Bell, *Reading, Writing, and Rewriting the Prostitute Body*, (Indianapolis: Indiana University Press, 1994); Catharine MacKinnon, *Feminism Unmodified: Discourses on Life and Law* (Massachusetts: Harvard University Press, 1987) and *Toward a Feminist Theory of the State* (Massachusetts: Harvard University Press, 1989); and Carol Pateman, *The Sexual Contract* (Stanford: Stanford University Press, 1988). Sex-workers' rights groups proposed the 'decriminalisation' approach to address the problem of health and work conditions without either legalising or criminalising prostitution.
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- <sup>21</sup> "Conceptual Clarity on Trafficking" (Kathmandu: WOREC, 1998).
- <sup>22</sup> Renu Rajbhandari and Lisa Gibson, *Advocacy Against Trafficking in Women Training Manual* (Kathmandu: WOREC, 1999).
- <sup>23</sup> Radhika Coomaraswamy, "Report on Trafficking by the Special Rapporteur on Violence Against Women, its Causes and Consequences" (United Nations, 2000), cited in Sanghera and Kapur 2000, supra note 15, pp. 5–6.
- <sup>24</sup> In January 2002, the Eleventh SAARC Summit adopted the Convention on Preventing and Combating the Trafficking in Women and Children for Prostitution. Reviewing this Convention, the Forum for Women, Law and Development commented that the recognition of the need for extraterritorial law was a positive improvement, but its application was limited to trafficking for the purpose of prostitution without addressing other purposes such as forced labourers, domestic servants and organ transplants. See *Comments on SAARC Convention on Preventing and*

*Combating Trafficking in Women and Children for Prostitution, 2002* (Kathmandu: FWLD, n.d.)

- 25 Human Rights Watch/Asia, *Rape for Profit: Trafficking of Nepali Girls and Women to India's Brothels* (New York: Human Rights Watch, 1995).
- 26 Many UN-supported programmes and workshops in Nepal in the late 1990s were supported by the framework of the Convention of the Rights of the Child: UNICEF operated their programmes through the Child Protection Unit; and the ILO focused on the programmes for the International Programme on the Elimination of Child Labour (IPEC).
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- 28 For discussions of women's rights of mobility, see Sushma Joshi, "Cheli-Beti Discourses of Trafficking and Construction of Gender, Citizenship and Nation in Modern Nepal," in *South Asia* (24), 2001, pp. 157–75. She argues that notions of female citizenship in Nepal are based on ideas of kinship, and that all Nepali women regardless of age, are imagined as younger family members within the nation. She suggests that regarding female citizens as dependent kin in need of paternalistic protection allows the State to evade responsibility for providing certain rights to women, including non-discriminatory laws on labour and migration. At the border and the airport, young women are frequently stopped and returned if they cannot prove their male guardians' presence or permission to travel.
- 29 Jo Doezema, "Forced to Choose: Beyond the Voluntary vs. Forced Prostitution Dichotomy," in Kempadoo and Doezema, *supra* note 20, pp. 43–46.

## The Gender and Spatial Politics of NGOs: Spaces of Subversion, Sites of Reinforcement\*

KANCHANA N. RUWANPURA

### Introduction

Non-governmental organisations form the main site of activity in the development arena at this juncture.<sup>1</sup> Much faith is placed in the power of participatory development to build upon the 'social capital'<sup>2</sup> of rural poverty groups. Many feminists are enthusiastic about the potential for progress in grass-roots activities.<sup>3</sup> Undoubtedly, there are many examples of 'best practices,' yet from a feminist political economy perspective<sup>4</sup> there is a case for drawing attention to the limitations of these institutional actors. This essay addresses the difficult question of whether NGOs of a particular type may be violating feminist interests through the developmental projects they advocate and implement.<sup>5</sup> Local communities are after all not free of structures of differential power and inequitable distributive practices. Moreover, these structures are founded on patriarchal values that often tend to be propagated through development projects. Are NGOs aware of these limitations or do they simply act as service providers, with little regard for the necessity of critical engagement and social consciousness?

My initial interest in these issues arose when doing fieldwork in 1998–99 for my PhD, which explored the reasons for the emergence of female-headship in Eastern Sri Lanka and the livelihood strategies of the three main ethnic groups in the region.<sup>6</sup> It emerged that a significant proportion of female heads adopted strategies bound up with projects implemented by the numerous NGOs operating in the

\* A version of this chapter, titled "Awareness and Action: The Ethno-Gender Dynamics of Sri Lankan NGOs," appeared in *Gender, Place and Culture* 14 (3), 2007, pp. 317–33. Although this chapter was written prior to the appearance of the journal article, it was published afterwards for reasons beyond the author's control.

region. While there is little doubt that these projects provided an important and immediate means of income-generation for many women, the nature, viability, and structures underpinning these projects were hardly under scrutiny. Yet conversations with many female heads made it clear that a number of these projects are embedded within interlocking patriarchal structures. Consequently, the everyday lives and local realities of these women tended to confirm their sense of social exclusion, along with the felt need to adhere to patriarchal gender roles and relations. This standpoint was voiced by a number of female heads, whose critical assessment of the seemingly benevolent roles of NGOs made me aware of the need to reappraise the projects they promoted and implemented.<sup>7</sup>

The need to explore this issue was pressing, given the importance of NGO activity in Eastern Sri Lanka, so in early 2004 I carried out further fieldwork to see if a feminist framework informed the development projects implemented by NGOs, primarily those targeting female heads.<sup>8</sup> Interestingly, a few NGOs had come full circle, accepting that their prior approach may have only fed preconceptions of the social, political, and economic vulnerabilities of female heads.<sup>9</sup> Yet there were also those that continued their activities as before, with little critical engagement with the ways in which they might be perpetuating patriarchal relations and gender roles.

There were a limited number of institutional actors who were able to subvert the patriarchal status quo, yet this group was involved primarily in raising awareness, rather than in implementing development projects. Does this point to inevitable problems with development-oriented projects, in that they work within the rubric of capitalism, known to collude with patriarchal interests? In this regard, is there violence to development that needs equally close consideration when analysing the role of NGOs?<sup>10</sup>

The conceptual framework adopted is a feminist political economy perspective reflective of my training and thinking. I use the narratives and reflections of female heads and NGO workers to explore the assumptions about female-headed households underlying the development projects NGOs promote, which may ignore or downplay the complexities of the decisions that have to be taken by these women. The premises upon which development projects are

based may therefore be seen more generally as a violation of the welfare and interests of women in their everyday social and economic realities. In this way, the social group of female-headed households helps us test the extent to which NGOs are spaces for subverting gender roles, as also identify ways in which they are sites for reinforcing these roles, and thereby for violence against women.

### NGOs: the current development mode

Taking note of the paradoxical outcomes of development discourse and policies is nothing new. The contradictory ways in which development impacts upon diverse social groups, especially the vulnerable, has been examined across the ideological spectrum. Feminists and heterodox scholars within and outside of economics have subjected this matter to scrutiny for many decades.<sup>11</sup> Increasingly even the World Bank—the forerunner of institutionalised development thinking—has shown willingness to acknowledge the differential impact of the development paradigm on marginal social groups, including women.<sup>12</sup> Though the World Bank recognises the inequalities that development may give rise to, along with other major bilateral donors it continues to rely unquestioningly on NGOs to promote its development agenda. The main rationale for doing so stems from the commonly held perception, endorsed by the Washington Consensus, that the State is unable to deliver public services efficiently and effectively.<sup>13</sup>

Nira Wickramasinghe meticulously demonstrates how this thinking has generated its own dynamics in Sri Lanka's political economy.<sup>14</sup> Different periods of political instability in Sri Lanka, owing to the conflict with the JVP (Janatha Vimukhti Peramuna) and the LTTE (Liberation of Tamil Tigers for Eelam), provided the justification for interventions directed towards human security and peace by international civil society actors.<sup>15</sup> From 1983, the social fabric was especially volatile owing to political unrest. Meanwhile, there was growing concern among international donors to link the provision of foreign aid with human rights records, though this was disregarded when economic interests dictated (as in the case of Bill Clinton ignoring China's human rights record).<sup>16</sup> The articulation of this link came together with the international economy's drift towards

market reforms, which advocated good governance with a reduced role for the State as the way to development.<sup>17</sup> Sri Lanka's local realities and the trajectory of the international political economy combined to strengthen the position of civil society actors as agents who could be relied on to deliver human and social security. Therefore, in the development sphere, alternative providers of services, mostly NGOs, have been established and promoted to carry out simple service-delivery tasks. The visible presence of these actors, local and international, is undeniable in Eastern Sri Lanka.

However, it is not just the mainstream politico-economic order that places so much faith in grass-roots activity. For a multitude of other reasons even feminists generally view the contribution of grass-roots actors positively, documenting the many ways in which they have benefited marginal groups, particularly women.<sup>18</sup> Beyond doubt there are many laudable aspects to grass-roots activity, particularly where NGOs are involved in promoting awareness of rights and in consciousness raising. Naila Kabeer provides a succinct, yet thorough, assessment of the ways in which 'empowerment' from below can, and does, take place through grass-roots activity.<sup>19</sup>

Of the many positives, the one key to explaining the enthusiasm of feminists is the notion that grass-roots actors advocate activities and policies informed by everyday realities and practices. This is contrasted to traditional top-down approaches to development, where policies are devised by a select group of development professionals, usually from the upper strata of their societies, who have been known to ignore or downplay not only the needs of the poor, but also the implications for women from marginal or poverty-level groups.<sup>20</sup> Despite the currency of rhetoric on women, gender, and development, policy-makers tend to prioritise the needs of men over women, or simply base their assessment of needs on the model of a nuclear family whose breadwinners are male. NGOs are therefore welcomed for creating the space to challenge conservative thinking of this kind, as their policies are believed to reflect the lived experiences of women, the poor, and other socially marginal groups.<sup>21</sup>

The problem with Kabeer's reading is that it homogenises NGOs and their activities, leaving out space for the critical evaluation of organisations involved primarily in implementing development projects and/or service delivery. These institutions may be equally

culpable of the failures and limitations that Kabeer sees as characteristic of mainstream development programmes. Indeed, it is obvious that if mainstream NGOs see it as their brief to implement development projects, there is no reason to expect them to be any different from traditional development planners. Such NGOs are no more than executing agencies for projects and policies conceived by a coterie of development professionals, whether of the local, national or international community. Consequently, the steady expansion of NGOs in recent times and the very diversity of their agendas require more careful scrutiny.

Given the feminist political economy perspective of this paper, its focus is on how these various NGO activities and agendas impinge on the welfare and interests of women. This line of enquiry is not entirely new. Recent feminist work has explored the ways in which NGO activity and social movements may foster discord and violence between communities, with grass-roots women's groups unable to resist sectarian violence in Uttar Pradesh, India during and after the demolition of the Babri Masjid.<sup>22</sup> The core argument of these studies is that without directly confronting structures that maintain women's subordination and coercive identity politics, it is unlikely that NGO activities and movements will lead to transformative feminist politics. The need to recognise and understand the power of social structures, exclusion and social injustice is thereby underscored.

In my analysis these two strands of thinking—the contradictions of development and the ambiguous contribution of certain types of NGO—are brought together to argue that the general developmental thrust of much NGO activity must be evaluated in the light of the 'violence of development.' By weaving together these themes and using illustrative fieldwork narratives, this essay seeks to show that without critical engagement with the development paradigm, patriarchal relationships and social structures, the spaces created by particular types of NGO are likely to be sites for rehearsing—rather than subverting—gender roles. This paper then hopes to show that much more than tinkering is required if NGO interventions are to break down interlocking structures of caste, religion, ethnicity, gender and patriarchy, and realise social transformations that enable women's agency. The next section presents the fieldwork findings.

**NGOs: alternative approaches of action and inaction?**

In order to indicate the divergent ways in which NGOs operate, this section looks at the activities of two types of NGO in Eastern Sri Lanka. Careful examination of the ways in which they have worked with female heads shows that, despite their best intentions, these grass-roots actors may be inadvertently helping to reinforce existing structures, including gender hierarchies. Where this is the case, what becomes of gender rights, politics, and interests? Since an avowed goal of NGOs is to promote gender-conscious development activities, there is a need to query the ways in which this is accomplished and to what level. Similarly, it is important to be aware that many NGOs work within constraints specific to a region and locale, which may hamper them from achieving broader and desirable objectives. I will therefore argue that to acknowledge the prevalence of material and structural constraints may be far more prudent than to pay lip service to the issues of gender constantly invoked by these grass-roots actors.<sup>23</sup>

In discussing the fieldwork findings, I distinguish between grass-roots actors involved in 'development' activities and those involved in awareness-raising. Categorising NGOs thus is at best done for reasons of expediency, because we should not discount the possibility of NGOs who do not proclaim themselves feminist acquiring a feminist consciousness through the processes of their work. Then again, NGOs that set out with a feminist agenda may have this derailed or diluted by donor-driven agendas. These caveats are to signal that the space of feminism is itself contradictory and contested; nonetheless, there is a need to capture the moments of feminist resistance and creativity as encountered in this embattled space.<sup>24</sup>

First, I outline the ways in which the former group targets female heads, showing how 'development' projects accommodate themselves to gender hierarchies. As noted by Lubna Chaudhry in her essay in this volume, the everyday violence that is manifested here must be seen as providing a necessary condition for extra-ordinary forms of violation. Against this backdrop is examined the work of NGOs involved in consciousness-raising, to argue that even though the outcome of such activities is not tangible, and certainly not computable and quantifiable, these activities are more likely to promote women's rights and interests. From a feminist political

economy perspective, then, there is a need to pay greater attention to the latter type of grass-roots movement, while ensuring that even these actors are not romanticised as the beacon of hope for structural change.

***Bankruptcy of development ideas?***

When the Grameen Bank was introduced in the 1970s in Bangladesh, it was heralded as an innovative project with the capacity to raise poor people, especially women, out of absolute poverty by providing them access to much-needed credit.<sup>25</sup> Following this initial enthusiasm, there has been a steady growth of concern about and criticism of the ways in which the programme operates. Questions have been raised about the efficacy with which women are removed from mere survival, the sustainability of micro-enterprises, the social costs of peer pressure among the poor, and ultimately whether micro-credit schemes are necessarily empowering for women.<sup>26</sup> Notwithstanding these important reassessments, micro-credit schemes, which are usually implemented via NGOs, continue to be propagated as the universal solution for the failure of the state and the market in making credit available to the poor.<sup>27</sup>

Given that protracted conflict leads to severe economic deprivation, particularly among marginal communities, the proliferation of NGOs involved in micro-credit and income-generating schemes in Eastern Sri Lanka is not on the face of it remarkable. But local realities alone are not responsible. Of equal importance has been the channelling of international funding into activities that are potential 'success stories.' The fact that micro-credit and income-generating schemes are 'known' to remove vulnerable groups from absolute poverty was repeatedly cited as a reason for their adoption by local NGO actors. A founding manager of an NGO working exclusively with Tamil war widows in Trincomalee candidly admitted that because donor funding was crucial to the survival of the organisation, its project activities were for the most part externally determined, i.e., decided by donors. The donor-driven emphasis on income-generating schemes was to some extent perceived by the organisations themselves as an important initial step in the endeavour to remove people from positions of

economic vulnerability. In an early meeting with CARE in 1998 in Batticaloa, an employee spoke enthusiastically of its ability to meet the pressing economic needs of its target group, also Tamil war widows, using micro-credit and income-generating schemes.

The crisis in Eastern Sri Lanka coincided with the broader development agenda of donor organisations that sought to provide the 'vulnerable' assistance through projects with an explicit market orientation. Market-driven activities are perceived as computable in straightforward ways, making it simple to gauge the success of the project. Such measures of success also serve to confirm the faith in the power of economic expansion to remove people from precarious positions, without considering how class, ethnic, class and patriarchal structures interlock to buttress the multiple dimensions of inequality.

The refusal to address these interlocking structures makes social exclusion and economic deprivation an everyday reality for many female-headed households in Eastern Sri Lanka. Probing this point further through conversations with NGO actors elicited the unspoken perception that many of these war widows are objects of pity.<sup>28</sup> The attention this social group has attracted is telling of a charitable approach that many NGO workers have adopted. The founder of an NGO working only with women in Trincomalee expressed these sentiments:

The position of many war-widows, we also refer to them as female heads, is appalling to put it mildly. Because our culture provides limited options for women to work we cannot but feel sorry for them. Partly it is this surge of pity that pushes us to work with these women and try to make their lives better. This is the least we can do, because we have to protect these women, and the day will come when they will once again be looked after by their sons, brothers, fathers, or husbands—if they are fighting with the LTTE or another para-military group.

Despite the gender rhetoric used, there is no waning of patriarchal ideologies; in fact, the discourse of 'protecting women' underscores the reality that many NGOs are very far from promoting women's rights and interests.

Similarly, development projects with a stated market-orientation are unlikely to challenge the patriarchal status quo, insofar as the market is premised on abstract rational individuals, without accounting for the gendered character of social relations. The words

of the representative quoted above illuminate this point, 'Equally, doing micro-credit projects was important because it allowed us to measure the ways in which we have succeeded. We had the figures to show our donors—and potential donors—how this scheme was a success in generating incomes for women.' A similar view was expressed by a field officer of an international NGO:

When our organisation started working with war widows, our initial response was largely determined by the ways in which the donors wanted us to work. The work we do, mostly giving micro-credit lending for war widows to start up small-scale enterprises, we think is largely appreciated by the local community. The thinking from the head office also was similar. If our books would balance then our many of the projects financed by the micro-credit schemes would have been a success. However, we have to counter-balance our need to get good results with the awareness ... that there are only a limited number of economic activities that we can promote in the region. Our projects shouldn't seem in any way to challenge the idea that when everything becomes 'normal' many of these women are highly unlikely to be working.

In other words, the market orientation of many development projects is likely to emphasise computable outcomes, not changes in gender relations. Hyndman and de Alwis have noted that even NGOs that are not gender-sensitive provide women micro-credit to satisfy the gender quota fixed by donors, and because women are found to be more conscientious in repaying loans, making projects look more successful.<sup>29</sup> The gendered aspects of the income-generating activities that tend to be sponsored by many NGOs across the board continue to be underrated.<sup>30</sup> A significant proportion of NGOs tend to continue the association between women and the domestic sphere, by supporting schemes like poultry rearing, home gardening and sewing, that enable them to be home-makers and bread-winners simultaneously.<sup>31</sup>

While there is little doubt about the gender assumptions implicit in the promotion of many income-generating activities, it is equally important to recognise that a significant proportion of female-headed households have young children needing care and protection.<sup>32</sup> Given that many NGOs mention their sensitivity to ground realities as the reason for promoting income-generating activities, which on the surface is difficult to fault, their failure to come up with adequate

child-care facilities for the female heads they work with is a significant lapse. Had some NGOs been creative and taken the initiative to use the thousands of un- or underemployed older women to perform the much-needed task of caring, and found alternative avenues of income-generation that would free younger female heads from the domestic sphere, then the stereotype of 'women's work' would have been doubly challenged.<sup>33</sup> Firstly, by 'monetising'<sup>34</sup> caring labour, and secondly, by creating the opportunity for women workers to occupy a visible presence in the public imagination. Not even progressive NGOs that seek to challenge notions of gendered work—World University Services of Canada (WUSC) comes first to mind—went that extra mile to start projects that provided adequate childcare facilities to the many female-headed households in desperate need of them. Indeed, because the battle against gender stereotypes tends to concentrate on attacking the perceived dichotomy between men's and women's work, the NGOs that did take that extra step and provide training in alternative skills did not go beyond ensuring that women were trained in skills traditionally perceived as 'men's' work.<sup>35</sup> What these more visionary NGOs thereby lost was the chance to transcend this dichotomy, and show appreciation for the unpaid caring labour that remains unrecognised in the development paradigm, and consequently, it seems, by a large section of the NGO sector.

From a feminist political economy perspective, these observations go to show that many civil society institutions largely reflect the social structures and material realities at the grass-roots level. The tendency of social institutions at every level to reflect and perpetuate the hierarchies of patriarchy, class or ethnicity, forces us to re-think the naïve assumption that grass-roots actors may transcend prevailing structures in the absence of political consciousness. This would constitute grounds for interrogating the familiar argument that the involvement of NGOs, particularly their income-generating activities, is likely to eliminate the many problems associated with state-centred development programmes. In other words, the problems lie not necessarily with the agents executing projects, but rather with the poverty of development thinking that remains oblivious of the gendered nature of its conception and execution.

### *Development Praxis and Issues of Ethnicity and Gender*

If we start from Arturo Escobar's premise that development is gendered, and is likewise structured by class and North–South power equations, what is the likelihood that these civil society actors are aiming to build ethnic harmony?<sup>36</sup> There are two reasons to pose this question. In the immediate context of Eastern Sri Lanka, relations between the three ethnic groups (Muslims, Sinhalese and Tamils) are at best those of fragile co-existence, something that local NGOs need to be cognisant of, and this also has important implications for violence against women. Secondly, ethnic harmony is essential to human security, the need to establish which provided the international politico-economic context for rebuilding civil society in Sri Lanka, so it is worth assessing the extent to which these civil society institutions are working towards this goal.<sup>37</sup>

There is an established corpus of feminist literature on the gendered nature of conflict and violence.<sup>38</sup> Sri Lanka's experience has been no different; there have been numerous studies of how the political instabilities and social breakdown caused by the ethnic conflict have exposed women to sexual assault, everyday violence, and rape.<sup>39</sup> The absence of social stability and the breakdown of norms have led to new forms of everyday violence between ethnic communities. Violence against women forms a means of asserting the power of one ethnic community over another, and ranges from the harassment of Tamil and Muslim women by Sri Lankan (read: Sinhala) soldiers during their daily travels and work, to Sinhala and Muslim women having to flee the hostility and revenge of the LTTE in border areas. Nationalism is a gendered project, and such violence is a case of the hostility and aggression of ethno-nationalism being fought over women's bodies.<sup>40</sup>

The foregoing discussion provides the necessary context for an analysis of the ethnic–gender praxis of development: the ways in which NGO development projects targeting female heads work towards defusing ethnic tensions. Most NGOs in the region tend to focus on the ethnic community affected by the conflict in a given locality, which usually makes for a plethora of NGOs working with one community on a range of issues, inadvertently ignoring the presence of other ethnic groups and relationships with them. The unfortunate effect of this is the exacerbation of ethnic tensions. As

de Alwis and Hyndman point out, the sharpening of ethnic divisions, despite generations of inter-marriage and mixing, means that each group closely monitors how NGO funds are disbursed among other groups.<sup>41</sup>

This is problematic from the perspective of human security, which as mentioned above was one of the initial justifications for NGO activity in Sri Lanka. More importantly from a feminist standpoint, the failure of a significant number of NGOs to tackle ethnic hostilities in a legitimate manner, through civic-conscious projects, is potentially lethal for the welfare of women at several levels. Intentionally or otherwise, NGOs are responsible for aggravating communal tensions, and women face a greater proportion of the everyday aggression that results. Tamil women are constantly subjected to unnecessary security checks and harassment by state (Sinhala) forces;<sup>42</sup> Muslim and Sinhala women who turn to INGO intermediaries to seek out lost or kidnapped male relatives meet with silence and resistance from the Tamil workers in these organisations. The failure of NGOs to make peace the basis of their activities is responsible for these everyday violations of women's rights and interests, which also carry within them the potential for extraordinary forms of violence during eruptions of communal hostility. For, as has been shown in numerous contexts, women's bodies are the primary sites for declaring the power of one ethnic group over another, and conflict likewise exacerbates violence against women from the same ethnic community.<sup>43</sup>

Here then we are concerned not only with the threat to human security, but with issues of gender security. Having said that rape and sexual assault are likely consequences of social breakdown and conflict, it must be understood that women themselves may be involved with violence when they identify more with their community or ethnic group than with those of the same gender.<sup>44</sup> While this was not something I had set out to investigate in the field, the numerous allusions to the ways in which one ethnic group derived benefits over others did hint that women are more likely to feel an affinity with their community than with other women in similar economic and social positions. I was frequently reminded that the needs of another ethnic community were more likely to be met than that of the speaker's community, so there was a real perception of unfairness and

inequality. Again, NGOs working with one community to the exclusion of others would justify doing so on the grounds that it was not necessary to work with other communities, as they were more likely to be targeted by a better known and/or international NGO, and consequently, there was little or no attempt to forge alliances between female heads in the three communities faced with similar issues. As Kalpana Sharma points out, poor communities ensure their daily survival through a struggle for basic resources and services such as food, income, housing, water and sanitation, the burden of acquiring which tends largely to fall on women—particularly in conflict-ridden areas. Hence, women may be in direct competition over limited resources, and the survival strategies they develop in these situations influence their response to women from other communities.<sup>45</sup> Even the more progressive NGOs, such as SURIYA and Affected Women's Forum (AWF), which have ended up working across the ethnic divide, are largely mono-ethnic when it comes to staff composition.<sup>46</sup>

This practice of NGOs means that during times of heightened tension and outbreaks of violence between communities, women are more likely to place each other in categories of 'them' vs. 'us,' rather than begin to recognise the ways in which violence leaves all women vulnerable. This is all the more likely when NGOs have not confronted the many structures within which they operate, and become complicit in the class, gender, and ethnic power equations prevailing in the locality. It should now be evident that it is not only human security that is at stake, that we must move beyond this frame of reference to address gender security, social safety and economic rights. In other words, the gender-consciousness and mainstreaming to which many NGOs pay lip service in promoting their projects seems hollow when their activities are stripped down to the particulars of the social location. The spatial and gender politics of each locality then needs to be given conscious and careful consideration by NGOs if they are to go beyond brokering economic welfare and are to achieve sustainable social transformations by ensuring their target groups human security and gender rights.

The neglect of the nuances of class, ethnicity, and gender stems partly from the way development continues to be conceptualised. Historically, the development paradigm has emerged from a Euro-

centric and male-centric vision of economic progress, and its lack of critical engagement with the post-colonial world has meant the perpetuation of hierarchies not simply between North and South but also within any local political economy.<sup>47</sup> As long as development is based on a notion of market-based advancement, the promotion of some projects over others will entail giving precedence to one group over another. Many civil society institutions are the fashionable architects of the development industry, so their uncritical, problematic approach to the ethnic-gender nexus in Eastern Sri Lanka, where gender-sensitive projects themselves work against the rights of women, should come as no surprise. From a feminist political economy perspective, the short-term focus on alleviating economic deprivation, in this case that of female heads, may be at the cost of intensifying ethnic tensions and further weakening tenuous social relations, and thereby precipitating the context for acts of violence against women. Such situations, needless to say, also undermine women's ability to meet the needs of economic survival on an everyday basis, perpetuate their sense of social marginalisation or exclusion, and so affect their welfare in a way that amounts to an everyday form of violence.

*Awareness and action: NGOs as spaces of protest*

But are all NGOs in Eastern Sri Lanka guilty of these limitations? For several reasons the response is in the negative. While a sizeable number of civil society actors are involved in service delivery and market-oriented development projects, there is also a group involved in activities that directly confront the structures perpetuating gender, ethnic, class, religious, and caste hierarchies. These institutional actors, few as they are, are the preservers of protest spaces in many ways.<sup>48</sup> As this category of NGO holds out the greatest promise of feminist vision and transformation, it is important to consider their activities in some depth, and discuss how their awareness-raising programmes make attempts to acknowledge and resist the constraints and structures within which their daily lives are shaped.

By the time of my second field trip to Eastern Sri Lanka in early 2004, NGOs across the spectrum—not just those involved with awareness raising—had openly assumed the mantle of tackling issues of domestic violence and child abuse. However, there was a qualitative

difference in the way activist NGOs engaged with these issues that sheds light on how they can create critical spaces of transformation because of their opposition to the status quo.

Dealing with issues related to domestic violence and child abuse is considered taboo because of the need for 'cultural' sensitivity.<sup>49</sup> There were also other unspoken reasons, which were candidly revealed by activists with SURIYA Women's Development Centre and AWF: according to other NGOs, in these exceptional circumstances communities felt the need to hide from other communities the everyday violence inflicted on women and children by 'their own' men. It was far easier to demonise 'other' men rather than to acknowledge the aggression of men within the community.<sup>50</sup> It was clear during my fieldwork that SURIYA and AWF had the courage to challenge this simplistic thinking that had prevented other NGOs from addressing domestic violence.

The fact that ethno-nationalist battles are fought over women's bodies reflects not just the gendered nature of ethno-nationalist projects, but also the gendered social relations that make extraordinary acts of violence an inevitable corollary of the everyday forms of violence and social exclusion that usually go unaccounted for in women's lives.<sup>51</sup> The prevalence of gendered social relations also implies that when ethnic conflict leads to a breakdown in the social order, there is every possibility of domestic abuse becoming part of the social fabric in conflict-ridden areas. In these troubled periods, an ethnic community's denial of domestic violence is likely to be associated with the desire to see 'one's own' men as protectors of women.

Translating this awareness to women, including female heads, is challenging in a context of ethno-nationalist rhetoric and the 'us/them' discourse circulating in the region. SURIYA and AWF have the broader objective of engaging with difficult social issues with a view to making people agents in control of their lives, so they are better placed to deal with the harsher social realities that tend to be brushed aside in the name of cultural sensitivity or ethno-nationalism. By making people actors who devise their own solutions, the activities of SURIYA and AWF create a context conducive for prioritising basic social rights and represent a 'useful attempt to build (a) deep or progressive democracy that entails profound social reform.'<sup>52</sup>

Neither SURIYA nor AWF focus exclusively on the popular income-generating activities. Instead they work with women directly or indirectly affected by the conflict, urging them to become aware of their social and economic rights, which would include awareness of the detrimental consequences of ethno-nationalism on the welfare of the community. Since both organisations work primarily with women (in some cases also with children), much of their work focuses on the gendered aspects of the nationalist project, and the ways in which patriarchal interests are promoted via ethno-nationalism. Consequently, they work with all the ethnic communities in a given area: SURIYA, located in Batticaloa, with Muslims and Tamils, AWF, located in Akaraipattu (Ampara), with all three communities. The simple act of working with women across the ethnic enclaves is a powerful preliminary move to show that the sense of exclusion and marginalisation felt by female heads cuts across communities, owing to the nature of the intersections between class, ethnicity, gender, religion, and caste. In this spirit SURIYA and AWF carry out a range of activities and projects that contribute crucially to creating a space for challenging the status quo and transcending both oppressive patriarchal relations and bloodied ethnic relations.

At the primary level, both organisations work with local communities to raise awareness of the pressing social issues before them, which are first brought to their notice by women from the locality. The fact that their agendas are not imported from elsewhere, but are formed on the basis of wants identified locally confers a degree of legitimacy on SURIYA and AWF when they deal with the more unpleasant social issues ignored by most other NGOs in the region.

This is not of course to deny that the concerns of SURIYA and AWF are grounded in their feminist agenda, and would also arise from the exigencies of an ethno-political conflict. It is only to clarify that the issues they take up are not necessarily of their own choosing, though they approach them from a feminist perspective.<sup>53</sup> The areas of Batticaloa and Akaraipattu are similarly placed in terms of the political situation. Located in adjoining districts, both towns have witnessed ferocious fighting between the LTTE and the state military or other para-military forces, leading to tensions between communities. Though it is not always obvious, one must also

emphasise the stranglehold of the LTTE on cleared areas, where SURIYA and AWF primarily work, for it can constrain their activism in subtle ways. At the same time, it is crucial not to overstate the political clout of the LTTE; to do so would be to usurp the creative moments of resistance and agency displayed by numerous people, social groups, activists, and organisations (including SURIYA and AWF) in their daily lives. And indeed from a feminist perspective, articulating the moments when the LTTE and other para-military groups' power over these communities is dislocated is vital to understanding how women negotiate the multiple levels of violence that they encounter—and do so effectively.

SURIYA and AWF created the space for questioning and subverting the status quo by educating the public on important social issues, organising workshops by and for local women and providing legal counselling. These were seen as ways of responding to the needs of the women, and thereby of contributing to community development. The core belief of these organisations is that social transformation requires making local communities aware of their social, political, and economic rights, including the entitlements of women, and therefore impressing upon them the need to try and take control of the changes brought about by the ethno-nationalist conflict and economic deprivation. Both SURIYA and AWF thus explicitly address the social structures—the interconnections between class, gender, ethnicity and caste—underpinning everyday institutions, and build the capacities of local communities by providing them a sense of power and equipping them with political strategy.

Theatre is frequently deployed by these organisations, which creatively involve the community in scripting plays on issues affecting women.<sup>54</sup> This creates the space for women to express imaginatively their sense of social marginalisation, a form of everyday violence otherwise neglected. In this way, culture proves a powerful medium for recreating mundane realities and personal lives, so as to catalyse women's agency as they make changes to their lives and thereby experience a sense of self-worth and empowerment (to whatever degree any sense of 'empowerment' may be felt in a context of conflict and deprivation).<sup>55</sup>

Another recent and daring step in the Eastern Sri Lankan context is that of AWF providing shelter to women and children facing abuse

and violence until they receive legal protection; in the interim, AWF women activists access the state machinery and legal institutions to ensure they get necessary guidance and that their welfare and rights are protected. While SURIYA lacks the capacity to provide shelter to women and children in similar circumstances, the work they do on domestic violence and child abuse is very similar to that of AWF. The interventions of both organisations have been successful in bringing to a satisfactory conclusion many cases brought to their attention. Throughout, both individuals and the organisations have had to face the wrath of members of the community (said to be mostly men), who argued that such work brings shame upon the community—without ever referring to violence and abuse degrading the moral fibre of community. The organisations have stood their ground and faced the patriarchal power dynamics often at play in community structures. Consequently, they have shown how NGOs can be spaces of subversion, and directly confront both everyday and extra-ordinary forms of violence against women, providing a platform to resist patriarchal relations and a legitimate base for progressive and democratic social change.

Our consideration of SURIYA and AWF has demonstrated the need to pay close attention to the dynamics of the projects promoted by NGOs. The work undertaken by these two institutional actors underscores the importance of making connections between the separate realms of power and political strategy within civil society, without which social, political, and economic inequalities are more likely to be strengthened and progressive struggles thwarted.<sup>56</sup> The specific implication for gender politics is that when NGOs openly grapple with social institutions both daily and unusual forms of violence against women receive attention, whereas these are currently neglected. Or, more often, NGOs themselves become sites for the reinforcement of gender inequities and exclusions, and so of the violation of women's interests.

### **Civil society intersections: political strategy, power and feminism**

NGOs are regarded as bastions of contemporary civil society and are often uncritically promoted as important institutions for exercising

democratic accountability and generating cooperative attitudes among communities.<sup>57</sup> A number of feminist development scholars have taken this line, stressing the proclaimed ability of NGOs to break through the gender hierarchies of development thinking and 'empower' women. Much of this literature has neglected to analyse the power and politics within the various institutions of civil society, factors which also bear on the social relations at play in the social, political, and economic activities of NGOs. By attending to the fact that there are different types of NGO, my research seeks to integrate questions of political strategy, power and feminism into the analysis of civil society actors in Eastern Sri Lanka. My central point is that to neglect these issues would be inadvertently to encourage everyday forms of exclusion, which are structurally related to extraordinary forms of violence against women. Ignoring the former is tantamount to promoting the latter.

The dependence on NGOs for basic support and services because of the failure of the State to provide these is partly responsible for the failure to adequately assess the ways in which the quest for modernity and modernisation remains a fundamental concern of civil society institutions.<sup>58</sup> Chatterjee's insights on the need to engage attributes of political strategy and power as two important dimensions of civil society rightly emphasises the need to understand the political complexities of historical epochs.<sup>59</sup> In this sense, Wickramasinghe's work on the international, national and local conditions that have made civil society actors so crucial in Sri Lanka's political economy provides a necessary backdrop to understanding the dynamics of NGO activity in Eastern Sri Lanka. My feminist political economy analysis further demonstrates the ways in which the spatial and gender politics of much NGO activity in this region is constrained by the need to continue the capitalist development processes through the infusion and encouragement of 'modern' economic values. Not acknowledged in the promotion of social and economic institutions of market-based activities by some NGOs are the myriad ways in which women's political interests are violated, even as lip service is paid to gender issues.

The exception is when the scripting of development and social reform is by local women exercising their agency through everyday practices of politically aware activities, such as the projects through

which SURIYA and AWF activists address the felt needs of the community. These NGOs show us the potential of spaces of subversion, but these spaces should not be presumed but must be created. The discourse of gender rights and interests means little unless articulated by NGOs that explicitly factor in the social and gender relations specific to the context of ethnic violence and conflict. Failure to do so only helps perpetuate everyday social exclusion and ethno-nationalism, both of which violate women's interests in distinct ways. This essay concludes by reiterating the urgency of bringing questions of politics and power into civil society discussions in order to assess the impact of gender and spatial politics on feminist interests. By bringing the factors of political strategy and power into our analysis of NGO activities it becomes possible to conceptualise this space as one where social relations and inequities may be subverted in the cause of progressive social reform. Otherwise, NGOs may remain sites for the reinforcement of oppressive gender, ethnic, and social relationships because of the numerous ways their gender and spatial politics are enmeshed within the status quo.

### Acknowledgements

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### Notes and References

- <sup>1</sup> Nira Wickramasinghe delineates the historical and political contours of the process by which these institutional actors have come to form Sri Lanka's new 'circles of power.' See *Civil Society in Sri Lanka: New Circles of Power* (New Delhi, Thousand Oaks, London: Sage Publications, 2001). She posits the conjunction of global factors (the Washington Consensus) with local factors (security and humanitarian issues in Sri Lanka), as facilitating the creation of a 'civil society' where NGOs are powerful actors. Similarly, Ariane McCabe attributes the construction

- of civil society in Russia to the Washington Consensus, and notes how NGOs are also a means of co-opting into the neoliberal paradigm which takes the onus of development initiatives from the State. She goes on to contend that these are initial moves by the donor community to create the space for more private sector involvement in the social service sector ("The Politics of Development: Creating Civil Society in Post-Soviet Russia," unpublished M.Phil. Thesis, Cambridge, 2000). These issues are dealt with in more detail in the next section.
- <sup>2</sup> The concept is put within quotes to signal awareness of the problematic aspects to the usual uncritical application of the term within development circles. For further discussion of attempts at depoliticising development, see Ben Fine, "The Developmental State is Dead—Long Live Social Capital?" *Development and Change* 30 (1), 1999, pp. 1–19.
  - <sup>3</sup> Naila Kabeer, *Reversed Realities: Gender Hierarchies in Development Thought* (London and New York: Verso, 1994); Maxine Molyneux, "Analysing Women's Movements," in *Feminist Visions of Development: Gender Analysis and Policy*, ed. by Cecile Jackson and Ruth Pearson (London and New York: Routledge, 1998), pp. 65–88.
  - <sup>4</sup> A perspective that recognises that a multiplicity of attributes—including (but not limited to) class, race, ethnicity, caste, and religion—are constitutive of and constituted by each other—and therefore, recognises the many kinds of transformative potential in socio-economic processes.
  - <sup>5</sup> It is important to make categorical differences between NGOs. My fieldwork in Eastern Sri Lanka and Bangladesh has shown that these institutional actors are not always and everywhere the same, they have very different agendas and their projects pursue diverse goals, all of which need not be subjected to the criticisms raised here. I shall be identifying two main categories of NGO in Eastern Sri Lanka.
  - <sup>6</sup> Kanchana N. Ruwanpura, "Matrilineal Communities, Patriarchal Realities: Female-Headship in Eastern Sri Lanka: A Feminist Economic Reading," Unpublished Ph.D. thesis, University of Cambridge, 2001.
  - <sup>7</sup> While the thinking for this essay began as early as 1998–99, during its writing the tsunami of December 2004 hit 70% of the coastline of Sri Lanka, and Eastern Sri Lanka was badly affected. The burden of relief fell mainly upon NGOs, with many 'do-good' middle-class Sri Lankans, mostly Colombo-based, also contributing charity and relief work. As my focus here is on NGOs and similar social movements, and the ways in which they deal with gender relations and roles, it may flag issues useful to their future initiatives, especially during rehabilitation work. In this sense, although concerned with the development sector of NGO activity, this essay should be seen as an extension of the research by Malathi de Alwis and Jennifer Hyndman, in "Capacity Building in

Conflict Zones: A Feminist Analysis of Humanitarian Assistance in Sri Lanka" (Colombo: International Centre for Ethnic Studies, 2002) and "Beyond Gender: Towards a Feminist Analysis of Humanitarianism and Development in Sri Lanka," *Women's Studies Quarterly* 31 (3/4), 2003, pp. 212–226. But despite the concerns this essay raises, it must be stated at the outset that I wish in no way to depreciate some of the essential relief work many established local and international NGOs provided in the immediate aftermath of the tsunami.

<sup>8</sup> Related themes have been explored by Wickramasinghe, *Civil Society in Sri Lanka*, supra note 1, pp. 13–16, and by de Alwis and Hyndman, "Capacity Building in Conflict Zones," supra note 7. Wickramasinghe argues that unless the new dependence on civil society actors is scrutinised, the nation may be steered into a position that limits its ability to set its terms of engagement with the international political-economic order. De Alwis and Hyndman focus on the capacity-building activities of humanitarian agencies, whom we may call a subset of civil society actors. Their concern is with the feminist issues these agencies are supposed to grapple with but usually address in limited or problematic ways. While the two studies focus on the macro- and micro-order respectively, both have influenced my engagement with the subject, including my discussion of the subjects of civil society, the feminist issues and gender questions involved, and the ways in which this essay addresses the problems of Eastern Sri Lanka. Equally, since Malathi de Alwis and I shared many sites and respondents during my doctoral fieldwork, our conversations and shared anecdotes have undoubtedly had some bearing on the issues taken up on my return field-trip, and subsequently on the framing of this essay.

<sup>9</sup> This acceptance, however, had been at the cost of violating these women's interests and reinforcing exclusions, an issue to which I will return.

<sup>10</sup> See Karin Kapadia, *The Violence of Development: The Politics of Identity, Gender and Social Inequalities in India* (New Delhi: Kali for Women and Zubaan Books, 2002).

<sup>11</sup> See for example Esther Boserup, *Women's Role in Economic Development* (New York: St. Martin's Press, 1970); Lourdes Beneria and Gita Sen, "Accumulation, Reproduction and Women's Role in Economic Development: Boserup Revisited," *Signs* 7, 1981, pp. 279–98; Diane Elson, "Male Bias in the Development Process: An Overview," in *Male Bias in the Development Process*, ed. by Diane Elson (Manchester: Manchester University Press, 1991) pp. 1–28; Kabeer, *Reversed Realities*, supra note 3; and Arturo Escobar, *Encountering Development: The*

*Making and Unmaking of the Third World* (Princeton: Princeton University Press, 1995).

<sup>12</sup> See *Engendering Development: Through Gender Equality in Rights, Resources, and Voice* (Washington, DC: World Bank Publications, 2001).

<sup>13</sup> McCabe, "The Politics of Development," supra note 1.

<sup>14</sup> Wickramasinghe, *Civil Society in Sri Lanka*, supra note 1.

<sup>15</sup> Ibid., p. 36. She also points out that security is not a given, for the ways in which different social groups conceive of it is determined by time and place, as well as class, gender and community (p. 17).

<sup>16</sup> Ibid., p. 66.

<sup>17</sup> Ibid., pp. 49–57.

<sup>18</sup> See Kabeer, *Reversed Realities*, supra note 3, and Molyneux, "Analysing Women's Movements," supra note 3, pp. 65–88.

<sup>19</sup> See Kabeer, *Reversed Realities*, supra note 3, pp. 223–63.

<sup>20</sup> Ibid., p. 230.

<sup>21</sup> Ibid., pp. 230–33. Kabeer is in the main enthusiastic about the ways in which empowerment from below takes place through grass-root level organisations. However, it would be flippant to suggest that she is not aware of the differences between NGOs that simply execute the development agenda of donors and the others that are involved in consciousness-raising. Because her work largely focuses on the latter-type of NGO activity, there is very little attention paid to the limitations of the former group's activity. One aim of my paper, therefore, is an attempt to fill this lacuna in feminist development thinking.

<sup>22</sup> Urvasi Butalia, "Confrontation and Negotiation: The Women's Movement's Responses to Violence against Women," in *Violence of Development*, supra note 10, pp. 207–34; Kalpana Sharma, "Surviving Violence, Making Peace: Women in Communal Conflict in Mumbai," *ibid.*, pp. 183–206; Nisha Srivastava, "Multiple Dimensions of Violence against Rural Women in Uttar Pradesh: Macro- and Micro-Realities," *ibid.*, pp. 235–91.

<sup>23</sup> In the absence of effective government-sponsored social protection mechanisms, there is little gainsaying that the work of a significant proportion of NGOs working with female heads in Eastern Sri Lanka are fairly critical to these women's daily struggles for survival. However, to make the leap that meeting basic survival needs is equivalent to promoting gender rights and women's interests appears at best an extravagant claim that may please the ears of donors but jars with realities on the ground.

<sup>24</sup> An anonymous reader of this essay noted that there are also NGOs that adopt an integrated perspective and engage in both types of work. While it is important to bear this in mind, I did not come across any

- examples of such NGOs in Eastern Sri Lanka, so have no data for the comparison of all three types of NGO.
- <sup>25</sup> See Kabeer, *Reversed Realities*, supra note 3, p. 231; Syed M. Hashemi, Sidney Ruth Schuler, and Ann P. Riley, "Rural Credit Programs and Women's Empowerment in Bangladesh," *World Development* 24 (4), 1996, pp. 635–653.
- <sup>26</sup> Anne Marie Goetz and Rina Sen Gupta, "Who Takes the Credit? Gender, Power, and Control Over Loan Use in Rural Credit Programs in Bangladesh," *World Development* 24 (1), 1996, pp. 45–63; Richard Montgomery, "Disciplining or Protecting the Poor: Avoiding the Social Costs of Peer Pressure in Micro-Credit Schemes," *Journal of International Development* 8 (2), 1996, pp. 289–305.
- <sup>27</sup> Shahidur R. Khandker and Baqui Khalily, "The Bangladesh Rural Advancement Committee's Credit Programs: Performance and Sustainability," World Bank Discussion Paper No 324, 1996.
- <sup>28</sup> The very discourse employed when targeting female heads betrays the patriarchal attitude that prevails in the region, where widows are both pitied and seen as ill-fated (de Alwis and Hyndman, "Capacity Building in Conflict Zones," supra note 1, p. 42). In this context, the nuances of language become much more than a matter of semantics.
- <sup>29</sup> Hyndman and de Alwis, "Beyond Gender," supra note 7, p. 218.
- <sup>30</sup> de Alwis and Hyndman, "Capacity Building in Conflict Zones," supra note 7.
- <sup>31</sup> Ibid., p. 15, de Alwis and Hyndman, "Beyond Gender," supra note 7, p. 215.
- <sup>32</sup> Ruwanpura, "Matrilineal Communities, Patriarchal Realities," supra note 6; Kanchana N. Ruwanpura and Jane Humphries, "Mundane Heroines: Conflict, Ethnicity, Gender and Female-Headship in Eastern Sri Lanka," *Feminist Economics* 10 (2), 2004, pp. 173–205.
- <sup>33</sup> Even caring labour remains a gendered activity. However, it is also a task that remains in the most cases unpaid, and, if not, underpaid. See Nancy Folbre, *Who Pays for the Kids?: Gender and the Structure of Constraints* (London and New York: Routledge, 1994). Therefore, if not carried out by working mothers themselves it is usually carried out by older women in the family and/or women friends. See Michele Gamburd, *The Kitchen Spoon's Handle: Transnationalism and Sri Lanka's Migrant Housemaids* (Cornell: Cornell University Press, 2000); Kanchana N. Ruwanpura, "Matrilineal Communities, Patriarchal Realities," supra note 6. Gamburd shows poignantly the ways in which transmigration, despite its trials and tribulations, has wakened a sense of self-worth among women from Southern Sri Lanka performing caring labour. If Sri Lanka has willingly exported women as domestic workers, mainly

- to the Middle East, to earn much-needed foreign exchange, the same principle should encourage attempts to bring caring tasks into the public domain.
- <sup>34</sup> Here a vital point is that it is the market-driven nature of development that leads to projects focused on computable activities, and thus the promotion of income-generating activities by NGOs. From a feminist perspective, one could then easily and rightly challenge the advocacy of the monetisation of caring labour as a submission to this current trend. But the counter-argument would be two-fold. First, since our space of engagement is largely constrained by capitalist development, to be aware of these structures and advocate valuing care is a significant step towards valuing all forms of labour. Second, if middle-class Sri Lankan working women, primarily Colombo-based, are able to participate in the formal labour market because their children are 'looked-after' by domestics paid to carry out caring labour, then there should be no reason not to support paid care in rural communities, which would release younger women to find work commensurate with their educational qualifications.
- <sup>35</sup> De Alwis and Hyndman, "Capacity Building in Conflict Zones," supra note 7, pp. 40–41. Although in fairness to WUSC, they gave women a stipend to meet costs of transportation and childcare (although no such facilities exist in the area!).
- <sup>36</sup> See Escobar, *Encountering Development*, supra note 11.
- <sup>37</sup> See McCabe, "The Politics of Development," supra note 1; Wickramasinghe, *Civil Society in Sri Lanka*, supra note 1.
- <sup>38</sup> See Cynthia Cockburn, "The Continuum of Violence: A Gender Perspective on War and Peace," and Nira Yuval-Davis, "Gender, the Nationalist Imagination, War and Peace," in *Sites of Violence: Gender and Conflict Zones*, ed. by Wenona Giles and Jennifer Hyndman (Berkeley: University of California Press, 2004).
- <sup>39</sup> See Rajan Hoole, Daya Somasundaram, K. Sritharan and Rajani Thirananagama, *The Broken Palmyra: The Tamil Crisis in Sri Lanka: An Inside Account* (Claremont, CA: The Sri Lanka Studies Institute, 1990); de Alwis and Hyndman, "Capacity Building in Conflict Zones," supra note 7, p. 2; Cockburn, "The Continuum of Violence," supra note 38.
- <sup>40</sup> "Capacity Building in Conflict Zones," supra note 7, p. 2; "Beyond Gender," supra note 7, pp. 220–22.
- <sup>41</sup> "Capacity Building in Conflict Zones," supra note 7, p. 30.
- <sup>42</sup> The comments of a young Tamil NGO worker from Trincomalee with whom I spoke many times in 2004 have resonance here. When talking about the everyday differences and practical changes brought about the cessation of hostilities, she mentioned that political and social conditions

in Trincomalee were better than they had been during her teens. However, she went on to say, Sri Lanka still did not have any real peace, made evident by the fact that she still feels a sense of fear when crossing security check-points. While check-points and checks were now much fewer, her fear as she cycles between her home and workplace is an indication of the lack of 'real' peace even though there is a greater sense of normalcy in the region. Her reflections also remind us of the reality of everyday harassment and violence. Thus the ways in which her rights as a woman are violated on a daily basis must be factored into any discussion on violence against women, and the everyday forms it takes.

<sup>43</sup> See Butalia, "Confrontation and Negotiation", supra note 10; Sharma, "Surviving Violence, Making Peace", supra note 10; Srivastava, "Multiple Dimensions of Violence Against Rural Women in Uttar Pradesh", supra note 10; "Capacity Building in Conflict Zones", supra note 7; Malathi de Alwis, "The 'Purity' of Displacement and the Re-territorialisation of Longing: Muslim Women Refugees in Northwestern Sri Lanka," in *Sites of Violence*, supra note 38, pp. 213–30.

<sup>44</sup> Kalpana Sharma, "Surviving Violence, Making Peace," supra note 10.

<sup>45</sup> Ibid., p. 185.

<sup>46</sup> This could lead to difficulty when working with women from the 'other' communities. By pointing to this the aim is to avoid romanticising these actors as beacons of change and to recognise that political work and activism is located within specific historical conditions.

<sup>47</sup> See Escobar, *Encountering Development*, supra note 11; Eiman Zein-Elabdin and S. Charusheela, *Post-Colonialism Meets Economics* (London and New York: Routledge, 2003); Ulla Grappard, "Trading Bodies, Trade in Bodies: The 1878 Paris World Exhibition as Economic Discourse," *ibid.*

<sup>48</sup> A similar overview of the issues is presented by de Alwis and Hyndman, in "Capacity Building in Conflict Zones," supra note 7, p. 32, where they discuss the activities of these NGOs in terms of their potential for feminist capacity building. My essay borrows from this research, but extends the analysis to understand the ways in which these organisations are examples of spaces for articulating gender rights and interests because they have explicitly dealt with women's multiple roles and positions so as to challenge the divisions that prevent women from building alliances.

<sup>49</sup> A disturbing example serves to illustrate this attitude—indeed, from a particular perspective, this apathy—towards issues of child abuse. Representatives of the Batticaloa branch of a well-reputed foreign NGO working to promote and safeguard the interests of children stated unabashedly that even though there seemed to be evidence of

child abuse in the region, they wouldn't tackle the issue because it was culturally sensitive. When pressed further as to whether such indifference does not violate children's interests and rights, the response was that maintaining the sanctity of cultural difference was important in a context of ethnic conflict. This reaction was revealing of the perverse ways in which cultural rights and issues are upheld even in the face of violent and tragic outcomes for children. The incest and rape of many children, usually girls, by fathers and/or male relatives therefore usually go unaccounted for by NGOs—including those supposed to be working for children.

<sup>50</sup> During the presentation of an earlier version of this essay, Kumkum Sangari noted that one should not discount the possibility of naming one's own men as perpetrators of violence and still being racist towards men of other communities.

<sup>51</sup> See Lubna Chaudhry, "Mapping Women's Agency", pp. 149–80 below.

<sup>52</sup> Wickramasinghe, *Civil Society in Sri Lanka*, supra note 1, p. 66.

<sup>53</sup> Likewise, if both organisations focus on a particular set of issues it means that there are some needs identified by the communities that are neglected. Neither organisation denies this possibility, but they also pointed out that when women bring up problems that they don't have the capacity to handle, they refer them to other organisations they feel would be of assistance. Aware that such a response may not help in their broader goal of creating women's agency, women activists also point to the constraints within which they operate.

<sup>54</sup> While the dynamics of different scripts and plays put together by SURIYA is clearly a potentially fruitful area of research, it is beyond the scope of this essay, and indeed my expertise, to provide such a close reading.

<sup>55</sup> My limited analysis of theatre and its relation to social transformation has been decisively influenced by Dia Mohan's incisive and fascinating analysis of Jana Sanskriti's political theatre in Bengal, India. She points out the ways in which representations in cultural plays can be an engine of social transformation, and challenge notions of what counts as popular, what counts as culture, and what counts as political, because of the ways in which people make commitments for their off-stage lives through their on-stage experiences of constructing alternative solutions. See Dia Mohan, "Reimagining Community: Scripting Power and Changing the Subject through Jana Sanskriti's Political Theatre in Rural North India," *Journal of Contemporary Ethnography* 33 (2), 2004, pp.1–40, and "Jana Sanskriti's Theatre and Political Practice in Rural Bengal: The Making of Popular Culture," *South Asian Popular Culture* 2 (4), 2004, pp. 39–53.

- <sup>56</sup> Partha Chatterjee, "Beyond the Nation? Or Within?" *Economic and Political Weekly*, 4–11 January 1997, p. 34.
- <sup>57</sup> Putnam 1993, cited by Partha Chatterjee in "Community in the East," *Economic and Political Weekly*, 7 February 1998, pp. 277–82; Lucio Baccaro, "Civil Society, NGOs, and Decent Work Policies: Sorting out the Issues," Decent Work Program—Discussion Paper 127 (Geneva: ILO, 2001), pp. 7–11.
- <sup>58</sup> Chris Hann and Elizabeth Dunn (eds.), *Civil Society: Challenging Western Models* (London: Routledge, 1996); Chatterjee, "Beyond the Nation? Or Within?" supra note 56; John and Jean Comaroff (eds.), *Civil Society and the Political Imagination in Africa* (Chicago: University of Chicago Press, 2000); Wickramasinghe, supra note 1.
- <sup>59</sup> Chatterjee, "Beyond the Nation? Or Within?" supra note 56; see also his "Community in the East," supra note 57.

## The Politics of the Governed: Maternal Politics and Child Recruitment in the Eastern Province of Sri Lanka

NIMANTHI PERERA-RAJASINGHAM

This chapter's investigation of the position of women within nationalist projects grows out of an earlier paper, "Being Tamil a Different Way: A Feminist Critique of the Tamil Nation," presented by Radhika Coomaraswamy and myself at a conference on Tamil nationalism organised by the International Centre for Ethnic Studies in Colombo, in 2004, where we looked at different constructions of Tamil womanhood from the period of the reformer Navalar to the present. We looked also at a debate very popular in the Sri Lankan feminist movement, on the politics and agency of women in the LTTE. To quote from this paper:

Indeed, a consequence of nationalist thought is that the imagined nation must always be the foremost and perhaps the only aim of the Tamil people. ... Hence, not only must the nation of Eelam be the only objective of the people, but its people must die and be martyred as having *given up* their lives rather than *live for* the nation ....

The nation, though often clothed in the rhetoric of citizenship and rights, is in reality about populations, duties and macro-, top-down approaches .... As suggested by the work of Foucault, and Chatterjee (we can also add Memdani) a majority are populations that are 'a wholly descriptive and empirical' category. 'Populations are identifiably classifiable, and describable by empirical and behavioural criteria and are amenable to statistical techniques such as censuses and sample surveys. Unlike the concept of citizen, which carries the ethical connotation of participation in the sovereignty of the state, the concept of population makes available to government functionaries a set of rationally manipulable instruments for reaching large sections of the inhabitants of a country as the target of their "policies"—economic policy, administrative policy, law and even political mobilisation' [Partha Chatterjee, *Politics of the Governed: Reflections on Popular Politics in Most*

*of the World* (New Delhi: Permanent Black, 2004), p. 43]. This is in other words the notion of governmentality.... The struggle for a Tamil nation has resulted in an excess of governmentality and has become the main means through which politics in the Tamil nation is carried out today. The LTTE politics have surely come to operate in this mode.<sup>1</sup>

One of our main criticisms of feminist politics in movements like the LTTE, which treat Tamils as subjects to be governed and controlled rather than as citizens with rights and powers, was its inability to critique a nationalism that homogenises and refuses difference. In this context, we looked to maternal politics in the Eastern Province in April 2004 during and subsequent to a rift within the LTTE, as providing such a challenge to nationalism. Developing ideas only touched on in that paper, this chapter discusses maternal politics in the East vis-à-vis child recruitment by the LTTE.

I look at a specific kind of violence against women, arguing that since motherhood locates women as nurturers and the primary carers for children, the forcible recruitment of children can be read as a form of gender-based violence. This also means that because the identities of most women in the East, as in many other parts of Sri Lanka, are largely shaped by notions of motherhood, women become especially vulnerable when their children are recruited.

After going over feminist scholarship on the different kinds of motherhood mobilised in Sri Lanka—the valiant mother who encourages her children to die for the country, the suffering mother and the mother who resists power for the sake of her children—I focus primarily on the last. I look at two instances of protest by mothers: when they demanded the release of their children from the LTTE, and when they refused to surrender their children to the LTTE. These two moments formed a puzzle in my mind. I kept wondering how so many mothers had come together from different villages to demand the release of their children when through decades of recruitment fear and suspicion had prevented such organised resistance. This chapter tries to answer these questions, based on my conversations with young girls and mothers from two districts in the Eastern Province—Batticaloa (both LTTE- and government-controlled areas) and Ampara (villages near Akkaraipattu). Much of the information comes from conversations over an extended period

of interaction between the years 2004 and 2006, though I also conducted formal interviews.

### Child recruitment in Sri Lanka

In an interview with Karikalan, a leader of the LTTE in the East until the year 2000, Nirupama Subramaniam raised the question of the forcible recruitment of children:

Karikalan first ordered an underling to fetch sodas for us and then proceeded to brush away all my questions about forcible recruitment and child soldiers.

'Absolutely untrue.

'False allegations.

'Atrocities committed by our enemies in our name to give the Liberation Tigers a bad reputation.

'We recruit only volunteers and no one below eighteen.'<sup>2</sup>

Child recruitment in Sri Lanka can be placed in the context of community rights on the one hand, and human rights/child rights discourses on the other. At certain moments, the LTTE states publicly that it does not recruit under-aged children, but at other times it says it accepts only child recruits who volunteer, citing poverty as the main reason. This is perhaps best illustrated by the writings of their late spokesperson, Sivaram alias Taraki, who has defended as necessary the recruitment of children and suggested it to be a common practice in war situations around the world. In an article written weeks before his murder, he suggests, 'It is time they acknowledge that in the final analysis only a permanent and decent political settlement to the ethnic conflict will create a climate in which our children can enjoy their childhood in full,'<sup>3</sup> or in other words, recruitment will continue until the final solution or Eelam is realised. The opposite point of view is articulated in UN conventions that declare recruitment under the age of 18 to be a violation of child rights.<sup>4</sup> One of the most consistent denunciations of child recruitment in Sri Lanka has come from the University Teachers for Human Rights, Jaffna.<sup>5</sup>

Recruitment has been a practice of the militant Tamil movements in the North and East for some time, being first documented as early as 1984 when the LTTE set up a base in Pondicherry, India, to train

'tiger cubs.' Thereafter, militant groups started recruiting children regularly as more and more men started dying in the battlefield.<sup>6</sup> Over the years, however, it has become predominantly a practice of the LTTE, which increased its recruitment drastically during its war with the Indian Peace Keeping Force in the late 1980s. Its general policy now is 'one child per family,' though often more are taken. Larger numbers have been taken from the East than the North, historically the base of recruitment. It has been the practice of the LTTE to send out young children as cannon fodder during battles with the government of Sri Lanka. With the signing of the CFA on 22 April 2002, the LTTE's access to families and children in even government-controlled areas has increased.

Over the years, it has been the practice of the LTTE to recruit mostly from poor Tamil families and single-parent households, as families better equipped financially can keep their children by paying the LTTE, or send them abroad or to the south to live with relatives. We now look at how this practice of forcible child recruitment has deep implications for the lives of women and for feminist politics.

### **Motherhood politics in Sri Lanka: a well-traversed terrain**

Motherhood politics in Sri Lanka is nothing new; and Sri Lankan feminists too have expended much time studying these forms of protest in both Tamil and Sinhala societies. While I will not traverse the broad literature on the subject, let me offer a few examples of maternal politics useful for my own work. I will look mainly at the three constructions of motherhood mentioned earlier: the valiant mother, the suffering mother and the resisting mother.

The first study of motherhood in Sri Lanka was probably undertaken by Joke Schrijvers in 1985, who conducted fieldwork in Kurunduvila in the North Central province, the area of the Mahaweli project (one of Sri Lanka's biggest dam projects), to find more and more women being disempowered under development schemes. She asks:

What were the causes of their vulnerability and the sources of their strength? According to the women's own analysis, motherhood formed the main reason why the life of a woman was always more difficult than that of a man. The best period in the lives of all women had been the

years before marriage and especially before the birth of their children. Paradoxically, however, the hardest fate for a woman would be to remain childless for life. And I observed the joy and the pride of mothers and grandmothers when they fondled babies and infants. Without any doubt, motherhood formed the basis of dignity and power as well. It was this paradox which increasingly became the core of my questions concerning the powerlessness and power of women in this region.<sup>7</sup>

I think some of her observations made in 1977 regarding the dual, paradoxical nature of motherhood may hold true for mothers in the Eastern Province. The ideologies of motherhood limit the actions of these women and perhaps in the instance of child recruitment make them especially vulnerable to violence; simultaneously, however, these ideologies enable them to use what Neloufer de Mel has termed the 'moral and emotive power as victimised mothers in a culture supposedly deferential and respectful of them' to protect their children from recruitment.<sup>8</sup>

One of the primary manifestations of maternal politics has been in the mobilisation of Tamils against Sinhala chauvinism. As discussed by Sitralega Maunaguru and Nanthini Sornarajah, the symbol of the mother was used to inspire linguistic nationalism among the Tamils in the 1950s and 1960s, after Sinhala had been made the national language.<sup>9</sup> Nationalist politics of the 1980s also invoked motherhood, but in two significantly different ways.

The first was the revival of the image of 'the puranaanooru mother who describes her womb as the cave and the warrior's son as a Tiger,'<sup>10</sup> who should be sent to fight for the nation. According to Sornarajah, the 'Veera thayar' (brave mothers) 'do not mourn their sons who valiantly fight in the battlefield facing the enemy directly. They disown their sons when they run away from the battlefield. The image of the Tamil woman is from the past, atavistic, and inert not acting for herself, but standing by to celebrate male valour.'<sup>11</sup> So the mother herself is not asked to die for the nation so much as to sacrifice her children for it. The LTTE has continued to celebrate this kind of maternalism through the commemoration of mothers like Annai Poopathy in Batticaloa who in 1988 fasted to death, demanding that the IPKF recommence talks with the LTTE and honour its demands for Eelam. Furthermore, each year the LTTE

honours the mothers of martyrs or cadres who have died for the Tamil nation.

In direct contrast to this construction of motherhood were the associations drawn on by the protest movement of the Mothers' Front in Jaffna in 1984. This was premised on the understanding that women were nurturers and protectors of their children. Women marched to demand the release of their sons from state detention, arbitrary arrests and killings, calling instead for peace. Maunaguru has suggested these women used the public nature of protest, lamenting, cursing and marshalling all external symbols of suffering.<sup>12</sup> Hence one sees the mingling of both protest and lament in one moment.

This is seen even more clearly in one of the largest protest movements in Sri Lanka, which drew as many as 25,000 women to the Mothers' Front in the south during the *beeshana samaya* of 1987–1991 when the Sri Lankan state disappeared approximately 60,000 youth. Malathi de Alwis' work on the Mother's Front in the south suggests that in these practices one can read a complex set of possibilities for maternal politics. As she suggests, 'One could read the practices of the Mother's Front, then, as engendering a fraught maternalism that was domesticated yet not respectable, that was demonic and threatening yet also sentimental and pathetic, that was poor and marginalised yet also racially dominant and exclusionary.'<sup>13</sup> While these observations may not hold exactly for the women I speak of here, the resistance of mothers in the east should be located within the images of motherhood mobilised by the LTTE, and it is important to keep in mind her argument complicating the binaries current in scholarship, where women are seen either as heroic mothers or as victims of cultural ideology.

The Eastern Province too has seen moments like those described above, about which I learned more through discussions with feminists based in Batticaloa. When the number of disappearances by state forces increased rapidly in 1990–1995, feminists located in the east organised mothers to come together. Their efforts included collecting mothers to share their experiences, to pressurise the state into releasing their children and providing information regarding their status, or place of imprisonment. Some of these collective efforts included trying to obtain visiting rights for their children, providing them

money to visit camps to see their sons, organising with activists in the south to get them to the Boosa camp and the camp in Kalutara. The efforts made in collaboration with the church and the Peace Committee in Batticaloa succeeded in securing the release of many of the youth. They obtained support from lawyers in Colombo and recorded the details of the disappeared to be forwarded to international human rights groups like Amnesty International, and assisted the reintegration of these youth into society subsequent to their release.

This period and the atrocious violations of the rights of Tamil youth point to how deeply the Sinhala state has harmed the fabric of Tamil society. The recruitment of children is but one important violation in a series of violations of the rights of communities, especially the youth and women. Hence, while this chapter focuses on maternal politics in response to LTTE recruitment in the Eastern Province, I wish also to recall the crimes of the Sri Lankan state against both Sinhala and Tamil youth. My pointing to one kind of practice is not in any way a whitewashing of others, whether by the state, the LTTE or the IPKF.

### Child recruitment as a feminist concern

In this section I discuss how child recruitment is a pressing concern for the feminist movement, in my view primarily because of the significance of motherhood in Tamil society. While the LTTE has constructed alternative understandings of motherhood based on its need for cadres to fight for the nation, we also see that the image of the nurturing mother who seeks to protect her child is still one of the most powerful social conditioners of women. I show that the recruitment of their children affects women in multiple ways, placing them at the receiving end of violence because of their roles as mothers. My focus on mothers and social bonds between women and children is not to suggest that other bonds are not important, such as the bond between fathers and children or among siblings. Rather, I argue, like Schrivers, that because many women see themselves and are seen as mothers for life, they are impacted in specific ways.

There is another obvious concern for feminists: the way girls are assaulted and bullied during recruitment. A significant number,

approximately sixty per cent, of child recruits have been young girls.<sup>14</sup> The conditions of their recruitment are deeply violent: they are forcibly taken at very early ages, sometimes as young as ten, abducted kicking and screaming on their way to school or from tuition classes, or directly from their homes. One of the first actions of the LTTE with female recruits is to cut their hair short and segregate them from male cadres, as its sexual codes are extremely rigid for girls. Furthermore, when LTTE officers demand a child from every family, especially common in areas controlled by them, often young girls may join in order to protect their younger siblings, particularly in families where there is male preference because the males are the income earners. The narratives below are from women who live in a small town in Batticaloa in the LTTE-controlled areas (all names have been changed, and I am unable at this point to provide more than a very general placement of their villages, though the location of the village would reveal a great deal about the local political landscape). Shanti, a young girl of about 16 said:

They asked us to give one member of the family. My parents kept avoiding it for as long as possible. In this village, we were the last to give them anyone. I joined when I was 13. My parents had no choice as they were coming to homes in the village and taking children at night. I had an older sister, I did not want her to join. She was one year older than me and was going to school. She was good at her studies. I thought it better for me to join. My younger sisters and brother were too young. I told my parents I would go. It is better that I go than wait for them to come knocking on our door and drag me out.

The next story is from a mother, Jayanthi, who had been forced to give two children to the movement. She told me how she gave her eldest daughter as she did not want to give up their only son. When her daughter ran away from the camp, and the LTTE could not trace her, they demanded another child.

My second daughter was 12 then. I did not want to give my only son, so she had to join. When they showed her footage from the war front she went mad. They kept her tied up for weeks and then when she did not recover they left her at Batticaloa Hospital. We had to spend all the money from that year's harvest, Rs. 30,000 for her. We bought her clothes everyday because she would rip off her clothes. She had to be kept tied up.

Such instances illustrate how violently young girls are taken from their parents, the trauma they endure with the rigorous training, and how the devalued position of girl children can lead to their further marginalisation during recruitment. However, Shanti's statement that she 'chose' to join demonstrates that in some instances girls may join for a multiple set of reasons outside the expected patterns. One other consequence is that as the LTTE does not generally recruit married women, parents marry off girls at very young ages, which means they are forced to take on the responsibility of motherhood much too early. The Human Rights Watch report *Living in Fear: Tamil Tigers and Child Recruitment in Sri Lanka* (2004) provides many such examples.

Less evident than these instances of violence may be my larger claim about the gendered dimensions of recruitment in a society that places a premium on motherhood. For one, refusing to give up children or protecting one's own children from recruitment invites direct physical assault. Though the LTTE assaults anyone who resists, women are the butt of more violence than men, as they often cry and become 'emotional' when children are taken. Often it is women, mothers, who are expected to and who do visit camps over and over again asking for their children, and so again face abuse.

Raji is from a small village in the district of Ampara. She comes from a Tamil village close to some Muslim villages. She had lived there for 22 years and had already been displaced twice: once in 1980, when there were clashes between Tamils and Muslims, then in 1989–1990, when the LTTE expelled close to 100,000 Muslims from Jaffna. She also recounted how the STF ganged up with the Muslims in the area to kill and rob the Tamils. The abduction of her son was then one of a series of violations she had endured. She told me how her son was taken into the movement.

Two Tamils had been killed in the paddy fields. The LTTE said it was the Muslims who did that. Then they told us that to stop what the Muslims were doing, to protect us, we had to give up the boys in the village. They said it was only for 15 days. I did not want him to go, but one day he and a group of his friends joined. They all thought they would be sent back. For months we [mothers] went to the camp looking for them. Each time we were abused. After that four or five of us went to the camp in the village. ... Months later he ran away. The day after he

had run away they came looking for him at my house. I did not even know that he had escaped. They told me *I was the mother and had to know where he was*. I said I did not. They started to hit my husband. I cried and asked them to stop it. Then three of them caught hold of me and threw me to the ground and beat me. I could not walk for a week. Then they said I had to come to the camp the next day. I had to go there. Later the villagers complained to the LTTE that it *was wrong to beat me up as I was a mother*. They came and apologised, at which point I told them, *'Am I not a mother. How can you hit me like this? Are you not children of mothers?'*

One can see in this example how maternalism has come to operate in multiple ways. For Raji, her role as nurturer meant not only that she felt the loss of her son deeply, but that she, like many other women in the village, kept going to the camps to look for her child. The image of mothers going from camp to camp is now familiar. Furthermore, as a mother she was assumed to be privy to knowledge unavailable to other family members. Interestingly, the LTTE soldiers were also forced to apologise for their treatment of her because she was a figure to be revered; as mentioned above, the LTTE honours mothers of martyrs (those killed defending the Tamil nation). Finally, we see how Raji herself uses her understanding of motherhood to shame the LTTE.

So while some ideological formulations of motherhood have successfully convinced women to sacrifice their children to the movement, it is also clear that counter-formulations of 'women as nurturers' have legitimised their acting as protectors. The two stories below recall the agony and terror of women when their children were taken.

Mano lives close to Akkaraipattu, in Ampara District. Her husband does coolie labour in the area. She and her parents' family were displaced in 1990 during the Tamil Muslim riots. Their houses were burnt and they ran to Thirukkivil at that point. Earlier, when I had tried to conduct a formal interview with Mano, her son was under threat from the LTTE. She and her son were in the house and she refused to leave him even for a moment. She feared that if neighbours saw me coming to their house, they would tell the LTTE and her son would be at greater risk. She could not leave the house as she feared leaving her son alone, and she dared not bring him out

of the house even for an instant. The narration below is from a close relative of hers.

Gnanam was taken when he was 13, in Grade 7, in 2002 when the peace talk started. They went to the school to ask them to come. He came home that day. Then there was a festival, Mariamman festival. He had gone to see that. Then he went to the boutique, there they took him. The following day we went to Kanchikudi Aru, and inquired here and there. They said, 'We never brought him. You go and find out somewhere else. If you are here a very long time we are going to kill you.' We never saw him then. We went everywhere to look for him.

After one year they sent the letter. It says, 'Mother and Father, I am living very quietly. If you want to see me, bring some rice and curry, and shirts and trousers.' They prepared this and took it with them. That was on Prabhakaran's birthday. This time they showed him to the parents. This time they showed him for one hour. The camp was in Vakarey. They took a bus and walked miles and miles.

Then Mano spent much money going from temple to temple, asking the gods to give him back to her. After some months, when she could not find him, she started getting very depressed. She became like a mental case. She was running here and there. She kept saying 'Here is my son coming, there is my son coming.' She started imagining that he was coming back to her. This went on for some months. We did not know what to do. Her husband could not go to work as he had to stay at home with her to look after her. They could not live on what their eldest son, who was 14, was earning. Then we took her to a doctor, to hospital. They gave her electric shock treatment. She had to have that every week for a month.

Unable to cope with the loss of her son, Mano lost all sense of reality. When visiting the camps, reporting to UNICEF, to other organisations and finally to God did not bring her son back, she started to believe he had been returned to her. She had to be subjected to shock treatment to calm her down. When large numbers were released from the LTTE in April 2004, after the LTTE-Karuna battle in Verugal, her son was among them. Thereafter, she confined herself and her son to the home to ensure his protection.

Jayanthi, whose story was told above, did not know what to do when her eldest daughter was taken from her when she was 12. From the beginning the LTTE said the girl was not with them. She visited many camps, but went mostly to the Karadiyanaru camp, the main

one in the area. She went alone twice a month for seven years but never saw her daughter. She told me she knew that she might never see her, but unable to live with the pain of losing her, she continued to go over and over and over again. She said it was the only way she could feel close to her daughter. Her daughter ran away in 2003 and is now in hiding elsewhere.

The stories of many mothers in the districts of Batticaloa and Ampara show how the social construction of motherhood creates intense agony in the lives of many women once their children are taken. Motherhood is for these women one of the most important means through which they affirm their identity. Often extremely poor, they see the education and progress of their children as important for their own sense of self-worth. The forcible recruitment of their children meant for these women a brutal violation of their own sense of self. Furthermore, the social perception of motherhood meant that they were held responsible when their children escaped from camps, and were made to suffer accordingly.

The stories of the unarmed, non-violent resistance of these women form, I believe, one of the strongest critiques of Tamil nationalism available to us. It brings to crisis the call of this nationalism that demands that the nation be the ultimate goal of all Tamils. These mothers clearly refuse this call.

### **Resisting armed violence: motherhood politics in the east**

If you think of looking at women and violence, try to look at mothers and how they keep their children. Every decision they make, in a split second, can mean so much. They are so poor and uneducated but they make decisions constantly to protect their children

Peace Activist in Batticaloa

This section will focus on a series of incidents that started in April 2004 and continued thereafter. I will focus mainly on two sets of incidents in Batticaloa and Akkaraipattu that were collective, large-scale strategies by women to protect their children.

Before I begin my analysis of motherhood politics in the East, let me briefly describe the split within the LTTE that drastically affected many processes in the ceasefire agreement and the lives of people in the Eastern Province.

On 5 March 2004, Vinayagamoorthy Muralitharan alias Colonel Karuna defected from the main Vanni (Northern) LTTE. He claimed that the Vanni LTTE discriminated against Eastern Tamils and Muslims. Out of the 30 LTTE departments none were headed by Easterners, and only two of the 15 members of the central committee were from the East, despite that fact that over half the Eastern recruits killed had lost their lives in Northern battles.<sup>15</sup> Karuna then started to talk of the authoritarian and fascist nature of Prabhakaran, claims that were surprising considering that Karuna is known to be a brutal leader himself and is said to have orchestrated the massacre of many Muslims in the East. Furthermore, he is said to have been actively involved in the forcible recruitment of children for the Vanni LTTE in the past. His defection and with it that of many other LTTE recruits marked a decisive break in the hegemonic control the LTTE has exerted over the Tamils in the East. This break sent ripples of panic through the LTTE as Karuna had since 1995 been the regional leader for Batticaloa and Ampara. He had been a favourite with Prabhakaran and an exceptional military leader.

This split led to protests by Tamils and Muslims in the East with 'demonstrations ... being staged in Batticaloa and Ampara condemning the LTTE hierarchy for removing Karuna [and] effigies of the LTTE leader and his intelligence-wing head Pottu Amman being taken out in processions and burnt.'<sup>16</sup> The political motives and the mobilisation of these protests are complex, but while Southern-based peace lobbyists and the international community agonised over the possible collapse of the ceasefire if the LTTE was challenged, people in the East felt they had carved out space for open defiance. They felt that they need not be silent about the Vanni treatment of the Eastern populations, and long term rumblings of discontent burst onto the surface.

This break marked perhaps the first serious rift in the LTTE in recent history. In a speech to LTTE cadres in Batticaloa and Ampara, Prabhakaran warned them:

Our cadres should comprehend Karuna's treachery and keep away from him. Anybody who opposes disciplinary action against Karuna will be considered as a traitor to the Tamil National cause. ... if any of the cadres decide to arm in favour of Karuna, he/she would be deemed responsible

for the consequences. The demise of such a cadre will not be with the honour of a martyr.<sup>17</sup>

Subsequently hundreds of Northern Tamils who had made the East their home for many years had to flee to the north while the supporters of the Eastern lobby such as Sathyamoorthy were gunned down by pistol gangs operating on behalf of the Vanni. Tensions between the two groups mounted and led to what is known as the Good Friday battle on April 9 along the Verugal river on Batticaloa's northern border, while Vanni cadres simultaneously attacked from the south of Batticaloa. The battle came to an end by April 10, with the Northern LTTE routing the Eastern faction, most of whom were asked to disperse and return home.

The uncertainty of the period just after the breakaway, the sense in the East that the days of the LTTE were over, the rejoicing in the streets in the previous weeks had created a large space for the open expression of anger. Subsequently, when war became imminent, and it became even clearer that 'Tamil was going to kill Tamil' and Easterner would kill Easterner, a certain set of actions became possible for the mothers of child recruits. It encouraged large numbers of women to visit the battlefield and demand the release of their children. These demands, along with the loss of Eastern cadres to the Northern LTTE meant the release of 6,000 cadres, about half of whom were children. Furthermore, for many months to follow, mothers continued openly to defy LTTE calls to re-recruit these children.

To analyse further these forms of protest and resistance, I turn to two articles. One is by feminist anthropologist Malathi de Alwis, on the mothers in the East who demanded the return of their children from the LTTE in April 2004.<sup>18</sup> The second is by political economist Sumanasiri Liyanage, who discusses the spaces the CFA has opened up despite the concerns of peaceniks in Sri Lanka that formal, two-party peace talks have not recommenced.<sup>19</sup> He reads a moment of resistance to nationalist politics in the actions of those mothers in Akkaraipattu who refused time and again to hand over their children to the LTTE in October 2004.

As stated earlier, the mobilisation of mothers to resist the LTTE recruitment of their children left me perplexed. I had wondered how such a space for resistance and protest had been created in a climate

of intense fear and tension. In other words, how did unarmed, poor women, very much part of a 'subject population' with few rights and few options manage to resist? More striking still, these protests seemed mostly spontaneous and with very little formal organisation.

I will argue in the following section that it is the daily networks of resistance women had been developing individually and in small groups over a period of time that enabled the larger collective movements in April 2004. By the time of the Karuna defection and the battle along the Verugal in April, loose networks among women had been formed, against which backdrop larger, seemingly spontaneous protest movements emerged. In all these practices, I wish to point to the resistance of women in the East to the call of nationalism, which demands that their children die rather than live for the nation. If the passive mother blessing her children as they sacrifice themselves on the battlefield was an image the LTTE mobilised, then that image has been strongly challenged in the Eastern Province. For these women the lives of their children matter a great deal more than a future state of Eelam.

Malathi de Alwis reports:

On April 10th, parents who had got word that Karuna was considering releasing most of his child combatants (prior to a possible battle with the Vanni group) went to the Meenaham training camp to claim their children. When Karuna's middle-level cadre started stalling, a large group of parents, and most significantly many mothers, became incensed. They set up a road block outside the camp and proceeded to beat up some of the LTTE cadre with bicycles and whatever else they could get their hands on until their children were released.<sup>20</sup>

What I recount below is part of an incident that took place a few days later at the Kathiraveli camp where too a group of mothers had gathered again to demand the release of their children. One story is of Pushpa who went in search of her daughter at the camp with other mothers from the village:

We were told the child was released, but she did not come home. I went to Kathiraveli to look for her. There were about 500 of us. There were a few men also. We stopped the vehicles, and protested. We kept shouting that they should release our children.

I never thought she would come back to me.

A few days earlier, when the two groups were fighting, I went to Vakarai to look for my daughter.

There was no leadership, we all gathered and spoke together. We stood on the road outside the camp and started shouting. We were told they had already surrendered 300 children, but this was not true. Some girls had run away during the war. We wanted our children back. We stopped vehicles passing on the way and shouted that we wanted our children. We were told there were 300 children and they would be surrendered, but it did not happen like that.

Someone told me my daughter had come home. I left and went there. We saw bodies of young children on the road. Then we were beyond fear. We only wanted our children back.

Afterwards we were fearful that they would come and take back our children. Then I sent my daughter away to hide at a training centre. Until the tsunami she was at the centre.

While the mother had been visiting camps looking for her and had been part of the group that gathered in Kathiraveli to ask for their children, her daughter had already escaped from the camp at Kathiraveli and had been trying to return home through the forest areas. Below is her story:

There were 10 girls and 15 boys. There was no one around the camp. We were in Kathiraveli camp in Vakarai. There was no control in the camp. No one knew what we should do. The next hut caught fire and we saw them burn.

We went to the jungle, and we could not see anything or any people. The boys took a different route and the girls took a different route. We were hiding in someone's house for some days. We had been walking through the jungle for 3 to 4 days. We were walking through the jungle and as we came near the road and were about to cross, the Vanni group came. They asked us who we were and we said we were *pura* ['doves,' probably the name of the regiment they belonged to]. We just mentioned the name and started running away. They started shooting into the air.

The boys were in front and the girls were behind. We ran back into the jungle. Then we came to a village called ... and then we met Karuna's group. They gave us some food to eat.

The next morning the Karuna group brought tractors to take us to Meenaham. On our way, they gave us some clothes. In Meenaham people told us there was a split in the LTTE. We met Karuna Amman. He told us there was a split and that we should go to Vakarai. There was a river,

one group was there and the other group was on the other side of the river. We were put on sentry position in Vakarai.

My father had been told where I was. I was in Alankulam. He came to look for me. Some of those who escaped with us joined the Vanni group. When their parents came to look for them, they could not find them.

The story Shanti narrated to me was in the form of fragments, of moments of flashback in the midst of all the chaos. Her recollections of the sequence of events were hazy. When sporadic firing started, the leadership at the Kathiraveli camp had abandoned the cadres and the ensuing chaos allowed her and her regiment to run away. After eventually being taken to Meenaham, she had somehow found herself in Alankulam where her father met her and took her home. It is possible that the intense fear she felt at seeing those around her die, the days in the jungle with little or no food, and being pursued by the LTTE made her memories of those days very unclear. Thankfully, Shanti's parents who had been looking for her in every possible camp managed to locate her.

Pushpa's account testifies to the large numbers of women who went to camps to demand the release of their children. Their anger upon seeing the bodies of children by the wayside, and their determination to retrieve their own children illustrate a certain space created by the uncertainty of the moment. Furthermore, their cries to the LTTE cadres, 'We want our children, we did not bring them up to see them kill Tamils' marks a realisation of the petty power struggles between these two groups. While sacrificing their children to fight the Sinhalese, an external enemy who had oppressed them for years may have made some sense in their minds, this battle and the sacrifice of their children to kill other Tamils inspired little sympathy.

When I asked this woman Pushpa how she heard the news and if she was not afraid of going to the battlefield, she told me that everywhere there was news of their children possibly dying in the battlefield. They heard that many people were going from all over, that mothers from the neighbouring village had set off. She said that she and some of the other women from the village had then decided to go as well. Possibly the release of children a few days earlier from the Meenaham camp had given them courage.

What may have been some of the practices in place by this time that enabled such large gatherings of women to come together so spontaneously? Pushpa affirmed that there had been no leader who had organised them or told them to go to the camps. Having arrived there individually and in small groups, they gathered as a larger group to protest. When I asked about her past activities from the time of her daughter's recruitment, she told me that mothers from the village had gone together to camps regularly over the last few years to visit their children:

We started by bus, then we had to walk. We would get there only by evening. We could only talk to them for one hour, from five to six. Then the next morning we would return home. Sometimes we would reach there in the afternoon, we could see them for a few hours. Sometimes, we stayed and cooked there, ate and stayed together. We had a place to stay. Our children would come and stay with us for the night. We would cry when we saw our children and talk to them.

The repeated journeys to the camps, where these groups met women from other villages had created various loose networks among them by April 2004. These are not conscious practices or the organised efforts of any of the local organisations. These were regular conversations along the way to camps and sharing of stories upon returning, shared experiences of sadness at losing their children, joy at seeing them, shared disappointments at not being allowed to see their children at the camps. I do not suggest that the women may have consciously been forming groups among themselves, for whenever I asked questions about organising themselves they usually denied doing so. But the shared ritual of visiting the camps had enabled them to come together at a certain historical juncture to demand the release of their children. As parents were summoned to see children on specific days, such as Prabhakaran's birthday, women from numerous places collected at camps, which in itself created an awareness of common concerns despite distances and differences dividing these villagers. The larger moment of collective struggle is then premised, I would argue, on long-term, smaller, repeated struggles that for many women had strengthened the conviction that they wanted their children back unconditionally and did not believe in sacrificing them for the nation.

As a peace activist recalled that moment:

We saw masses of children just walking along the streets. Some did not know where to go. Some had been taken so many years ago, they did not know how to get home. Some were very scared, had seen many of their colleagues die. We organised to quickly list them, then to try to get UNICEF to come and help them get to their homes. There were so many of them, we were not prepared to cope. All around we saw also mothers reunite with their children, hugging them, crying at having them back, and taking them back home. There were also other mothers who had gone to get their kids, but could not because they belonged to the Vanni LTTE and had not been released, who returned empty-handed, angry and frustrated that their own children had not been set free.

This moment of elation was, however, extremely short-lived. Fearing that the Karuna faction, now dispersed but operating underground, would try to re-recruit these children, the Vanni cadres started demanding these children back. This, along with the inter-factional killings that started in earnest thereafter created intense fear among the Tamils in the East.

However, their success in obtaining their children had strengthened the will to resistance in many mothers with recently released, under-age cadres. In Akkaraipattu in October 2004 the LTTE officers were demanding the re-conscription of children. Letters were sent to the parents asking for their children. The LTTE held several meetings asking parents to come with their children:

[T]he LTTE asked about 200 mothers to be present with their children who are ex-combatants of the LTTE at the LTTE office in Akkaraipattu 8. Only about 50 mothers were present; but none were with their children.

Nearly 150 mothers had defied the LTTE orders. It asked them to come once again with children the following day. Once again a significant number defied the order.<sup>21</sup>

I carried out an interview with such a mother. Her son had been taken at the age of 13, while attending a temple festival, after the ceasefire agreement was signed in 2002. She had been part of the group of mothers who had refused to hand over their children. She told me how the women in the neighbourhood would all meet and talk about what to do. They had heard from other women that some were not going, and that others were going but not taking their children. They knew that if they took the children, they might not

be able to bring them back. At the camp, the women told the LTTE officers, 'You do not need to ask for our children. If you have problems you tell us. We will come. If you give us guns, we are fighting.' My informant told me that they had gone three or four times to the camps, 'Then for some time they forgot about it [recruiting the children]. They gave us a little interval.'

These women discussed strategies to keep their children safe. They would move them from house to house, send them away and tell the LTTE they were ill and in hospital. These women who saw motherhood as the most significant role in their lives would resist armed cadres to keep their children. As another mother who was also the head of the household told me, 'Now we have got him back, I will die before I let them take him back again.'

While writing this paper I am well aware that romanticising these moments may be counter-productive. As the political analyst Kethesh Loganathan, alias Sathya wrote:

There have been reports of some families showing resistance against the LTTE's recruitment drive. There are some intellectuals who feel that ultimately this is the most effective deterrence to the LTTE's recruitment drive. Some of these intellectuals and activists seem to feel that the 'liberal' intervention that involves lobbying with the Government and the international community would come to naught and that what is required is the 'radical' intervention aimed at strengthening the resistance capacity of the families and local community against the LTTE.

The latter option suggested by armchair radicals, in the opinion of Sathya, is more romantic than radical. Or as Subramanya Bharathi, the Tamil poet penned, 'brave only in words' (Vaaisolil Veerar). The resistance being shown by some families in the East to the LTTE is largely individual and based on a parental instinct to protect their children. It is yet to assume the form of collective resistance. In fact, recent reports indicate that the LTTE has already commenced a drive against the parents who are defying the LTTE that includes physical assault as well as death threats. Given the LTTE character, it will not be long before these death threats are executed, literally speaking.<sup>22</sup>

I am all too aware of the tenuous and fragile nature of this resistance and the complex set of reasonings behind these practices. The last example I offer I hope demonstrates clearly this ambivalence. It marks how women will endure different forms of violence against

themselves. This example suggests simultaneously the power and the limits of motherhood politics.

I met three sisters, Krishna, Manju and Rani, who live in a village in the LTTE-controlled area in Batticaloa. They lived in extremely poor circumstances where even travelling to Batticaloa town was a great expense. Only one of them had ever left Batticaloa district. Their lives had been tied to their village. Two of these women had abusive husbands who drank and beat them, and some of their stories were truly horrific. While they tried to resist such instances of violence in small ways by running out of the house, they never imagined leaving their homes or their husbands. However, when all three women had to face the LTTE's demand for their recently-released children, they were far more energetic in thinking up means of resistance. The sacrifices they were willing to make to protect their children were endless. They managed to seek out external assistance and reached out to peace activists in Batticaloa, to find a way of hiding their children. One woman had two sons who were at risk. She managed to get them out of the village, one to Batticaloa town and another to a Muslim area in which they would be safe. The second woman with the support of the first then hid her son in a Muslim town. The third could not send her daughter out as easily as the others, whose children were boys and could look after themselves. In the end, the three devised a means of hiding the daughter in the village as best they could. However, they were willing to send her out if she was sure to be safe. They all knew that these moves could lead to severe repercussions. Only a few days prior to one of my visits, the LTTE had called a meeting in their office asking for these children. On my final visit, I found that the girl had recently been married off, even though she was only 15, as a way of preventing her from being re-recruited.

It became very clear to me that the sense of their responsibility as mothers was so strongly embedded that though they would endure assault on themselves they would risk all for their children. They would never think of leaving the village and their abusive husbands for whom they had very little love, yet they would find means of escape for their children, reach out to support networks outside and spend all their money and energy visiting these children. Hence, many of their strategies of resistance are based on the notions of

nurturing, self-sacrifice and tolerance which have adverse effects on the well-being and safety of the women themselves. Motherhood then both expands and limits the space for women to act on their best interests, for their best interests are not themselves but their children. Their lives became secondary to the lives of their children.

These practices that I have tried to map out signal the complex, tentative and unstable politics of the governed, of communities of people who have attempted to negotiate with an authoritarian military organisation that has time and again demanded their children. Ironically it is the children of the Tamil community that the LTTE claims to protect and represent who are brutally taken from their homes. The attempts of these mothers illustrate the tenuous ways in which subjects of a de facto state are forced to operate: under great risk, negotiating, defying when possible, possibly often losing out. Hence, in no way do I wish to mark these continuous strategies and the two larger collective moments as celebratory for they also signal the extreme fear these women live with and their very fragile hopes.

### Southern responses to recruitment

When large numbers of children were released after the Karuna split in April 2004, activists, civil society organisation workers, local church communities in the Eastern province attempted to organise appropriate responses to an eventuality they had never expected. Many of them have supported and continue to support families under threat of recruitment and their patience and endurance is greatly to be admired. In the South too, numerous INGOs responded by extending structural support for vocational training programmes and trying to start children's clubs. There was in this sense a breathless commencement of activities to try and help these children to settle back in.

However, before these programmes could provide sustained support for these children and their families, recruitment had resurfaced as a serious threat. Many of those re-taken forcibly were children participating in these training programmes, as their appearance in public and travel to and from training centres made them easy targets.<sup>23</sup> Unfortunately, human rights, women's rights and peace lobbies in the South did not respond strongly to this news

of the resumption of recruitment. Often a phrase heard from these lobbies was that protecting these children was really the responsibility, 'the mandate' of UNICEF, who alone could secure their safety. While this issue has lately gained some international attention with the visits of organisations such as Human Rights Watch, the Coalition to Stop the Recruitment of Children to Sri Lanka, and the recent mention of Sri Lanka's recruitment status by Olara Otunnu, southern civil society groups by and large have not responded significantly. Instead, unfortunately, child recruitment is eagerly highlighted by the Right, such as the Sihala Urumaya and the JVP, not only to condemn the LTTE but also to resist options such as federalism and the devolution of power to Tamil people. The lack of a more progressive discourse on this issue has allowed it to be hijacked by them for their own agendas.

The Sri Lankan state too washed its hands off the affair by suggesting it was too touchy an issue to take up directly, and should be left to UNICEF and other international organisations. While it used the issue of child recruitment to shame the LTTE and sporadically register serious concern for the Tamil people, the State did not feel in any way responsible to take measures to protect children. Questions of extreme poverty, of the lack of education, employment opportunities and safe spaces for the children and their families were not acknowledged as factors contributing to the risk of recruitment.<sup>24</sup>

Within the feminist movement too there has been consistent silence on this subject. Indeed, the gender sub-committee from the South, consisting of some of the most prominent feminists from Sri Lanka, met with LTTE women twice but failed to refer at all to child recruitment, probably considering it too risky a topic. Unfortunately, this body is so linked to the formal process of talks that it stopped meeting the LTTE the moment the talks collapsed. Nor is this issue picked up by the *Women's Manifesto*, a combined effort of various women's NGOs. My aim here is not to take issue with all these collectives but to show that this subject is not addressed by many, not because it is not 'in their mandate' or 'outside their area of work' but because of a certain conceptualisation of peace.

The reasons for this silence perhaps lie in the way the present peace talks are structured. As Sumanasiri Liyanage has observed, the general tendency of civil society has been to push for quick two-party

talks between the LTTE and the Sri Lankan government rather than to ask questions regarding the nature of the peace being offered to the Sinhalese, Tamil and Muslim communities. As he suggests:

Peace movements on the contrary should posit contending parties in the violent conflict as movement adversaries; as parties that stand for violence and armed action and are engaged in gross human right violations. It appears that many people and organisations have failed in grasping the difference between conflict resolution framing and the framing of social movements.<sup>25</sup>

The very nature of the ceasefire agreement seems to privilege negotiations between the State and the LTTE. I would like to suggest that the international community that has invested a great deal of energy in the current process through international conflict resolution organisations like the Sri Lanka Monitoring Mission, a body set up to monitor the ceasefire agreement, generally value the model of conflict resolution as the way to a lasting peace. For, it wishes to patch things up between the two main parties so that it can leave, with the credit for having solved the crisis of another third world country. While I in no way wish to underestimate the importance of two-party negotiations, it is possible, as suggested by Liyanage, for civil society not to focus exclusively on resolution, but to question the practices of both the parties involved and change the very terms of their dialogue. It is perhaps a failure to prioritise such initiatives that has resulted in the silence regarding child recruitment as well. As Liyanage suggests, those who have challenged the practices of child recruitment such as the UTHR(J) have been seen as 'spoilers' who are anti-peace, rather than as people seeking to broaden the scope and breadth of peace. This is because peace activists tend to conflate the categories of conflict resolution and those of human rights.

The example I offer below illustrates the dominant discourse that wishes to silence criticisms of the way recruitment is practiced. A collective of which I was part organised to travel to the East soon after the April 2004 fighting, and the release of hundreds of children from the camps. We had heard of the recruitment process that had resumed and knew that killings had also commenced. This was planned as a solidarity- and fact-finding visit. While we wished to

take about 50 people in a series of visits to show support, this became impossible as FLICT (Facilitating Local Initiatives for Conflict Transformation, part of GTZ or German Development Foundation) and DFID (Department for International Development, UK) were dragging their feet over the funds that would allow us to take such a large group. Rather than delay, ten of us decided to go anyway, and called ourselves the Batticaloa Collective. The visit culminated in a report, *Also in Our Name*, containing a substantial section on recruitment, which we circulated widely to mobilise people to respond.

Once the report reached the FLICT office all promises of funds evaporated quickly. In an objectionable letter, one Jan Koettner suggested our document was 'politically partisan' and had a 'questionable approach [which] is prone to do harm.' He also let slip that they had come to this conclusion after consulting with the Berghof Foundation for Conflict Studies, a centre set up just before the signing of the CFA. Once we made a row about their consulting another institution in order to censor us, there was a flurry of exchanges between FLICT and Berghof and in August 2004 the Director of Berghof, Norbert Ropers, himself wrote me a letter apologising and denying their involvement in FLICT's decision.

This example, I suggest, marks the dominant discourse of the peace lobby, backed largely by an international community that wishes to resolve conflict without necessarily ensuring a broad-based, multi-layered process going beyond two-party talks. They had seen our report as a nuisance, an element that interfered with their attempt to restore the status quo that prevailed before the Karuna split. As Alan Keenan has noted:

Indeed, according to the vision of conflict resolution that has come to dominate internationally supported peace work in Sri Lanka, the Batticaloa Collective's approach could well be seen as irresponsible and disruptive of efforts to build trust and understanding between opposing political and ethnic groups. ...

As it turned out, the significance of the Batticaloa Collective's report was borne out by the subsequent dialogue it generated among activists throughout the country and the Sri Lankan diaspora. And the recent Human Rights Watch report on child soldiers in Sri Lanka confirms virtually all of the report's claims—and much of the political analysis—albeit with more extensive documentation and in a more professional form.<sup>26</sup>

We were talking of things better left unsaid, we were a spoiler element that should not be supported. It is then the inability of civil society organisations in the south to challenge this silencing that has lead to a politics of appeasement and is at least partly responsible for the apathy about forming a vigorous lobby against child recruitment. While the lobbying of a few has resulted in international human rights organisations responding positively, there is a marked absence of support from local communities, which has resulted in a general disregard for the extremely high numbers of child recruits. Within the feminist movement too, then, it is perhaps time to strategically retrieve the category of 'woman' from the mire of nationalist and ethnic politics, to extend support to families facing the threat of their children being forcibly taken. The politics of motherhood vis-à-vis recruitment signals the urgent need for a feminist response.

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- <sup>24</sup> Since writing this essay, it has become clear that the government of Sri Lanka has not only neglected to protect children from being recruited, but has also turned a blind eye to the recruitment of children by the Karuna group. Indeed, since 2006, it has worked closely with this group and its political wing, the TMVP, to rid the East of the LTTE.
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## Mapping Women's Agency: On Violence, Difference and Silence in a Village in Southern Punjab, Pakistan

LUBNA NAZIR CHAUDHRY

### Foreshadowing

As Nadia and I walk up the winding lane into the residential cluster the villagers call *vaddi* ('big') *basti*, we wonder if we are going to have better luck with our research participants today.<sup>1</sup> Unlike the other five main *bastis*, or residential clusters, in Mouza Tibba Channa, it is proving quite difficult to find willing participants in the *vaddi basti*.<sup>2</sup> Even when people talk to us, they seem reticent and laconic, and we are unable to conduct any in-depth interviews, or satisfactory focus group discussions.<sup>3</sup>

As we enter the *basti*, we pause before the open doorway of a small house. The two rooms, surrounded by a courtyard with a low boundary wall, are adjacent to the residence of Jam Abbas Channa,<sup>4</sup> the local councillor; the day before, his nieces had told us it was the home of their servants. As Nadia, my research assistant, and I discuss the best course of action, we see a group of men running up the lane and entering a rundown little building almost directly across from us. When I hear an Imam begin reciting verses from the Koran as a prelude to leading the prayer, I realise the men are stragglers hurrying to join the Friday congregation. Evidently, the dilapidated structure serves as a mosque, which, like the home before us, seems an extension of one of the largest houses in the *vaddi basti*.

Matters are taken out of our hands when a woman appears at the doorstep and asks us to come in. We are pleased, if surprised, at the friendly welcome. The woman, who is probably in her early thirties, introduces herself as Shamim, and asks us our names. As we answer, we are led into the courtyard where a group of six women of varying ages are sitting on two cots with a quilt-in-progress spread out between them. We recognise one of the young women, Sadiqa, from one of our failed attempts to elicit a life story the day before. Shamim introduces the middle-aged woman apparently in charge of the quilt project as Jameela, her husband's sister, who shares the house with her. Just then, a man around the same age as Shamim steps out from one of the rooms, and

assists Shamim in clearing a space on one of the cots for Nadia and me to sit. He also greets us warmly, tells us that he is Shamim's husband's brother, Jamal, and that he lives in one of the rooms with his children and sister Jameela.

Nadia sits on the cot and starts taking notes. As soon as I sit down, Jamal asks us our purpose in visiting the village. A couple of others chime in with questions that are a variation on this theme. Shamim points to my shoulder bag and asks rather aggressively, 'What do you have in that bag? Are there guns in there?' Others echo her question. I quietly open the bag and pull out my water bottle, wallet, and assorted stationery, but even as I do so Jamal restrains me. He says they do not need to see anything. He only wants to know why we are in the village, since the landlords are spreading rumors about us.

I carefully explain our research for the Pakistan Poverty Assessment. My Siraiki has improved in the last week, my anxiety subsides, and I am able to focus on people's reactions. For the most part, they watch intently as I hold forth on our endeavour to understand poverty as social exclusion. I emphasise the importance of getting perspectives from women of different caste and class backgrounds, and end my little speech with a request for interviews.

With an air of defiance, Shamim sits next to me on the cot, and looks me squarely in the eye, 'I will give you an interview.' She adds that she is only doing so because the landlords do not want her to, and she wants to make a point of letting them know that they cannot stop her from talking, as she does not eat from their house. She also tells us that Sadiqa, the young woman whose interview was cut short the day before, has been frightened into believing that we are dacoits and carry guns in our bags. Sadiqa, nodding vigorously, confirms that she had been very frightened. The other women tease her about her innocence, but she says she only believed what was said because she cannot understand why 'those who were her own' would not tell her the truth.

We decide to fill out a household-level questionnaire with Shamim. We invite Jameela, her sister-in-law to participate, but she shakes her head, and continues to work on the quilt. Shamim tells us that Jameela is unmarried. Nadia catches whispers and snickers from two of the other women suggesting that Jameela was married, but it did not work out. Jamal, tells us that he loves his sister too much to marry her off, because she cannot be given to any one except a Channa man, and they really make their wives work hard. Jameela quietly says that Jamal's wife passed away, so she is helping him raise his children. Jamal sits with us for a while, and then leaves.

As we are plodding through the rather tedious questionnaire, trying to make the experience as pleasant as possible, we realise that one of the older women is from the landlord Channa family, the wife of the councillor's brother. We figure this out because every time Shamim refers to the plight of the landless and the scarcity of livelihoods, she utters a sarcastic aside for this woman's benefit. The others openly enjoy and appreciate the comments. Evidently, there are two tiers of the kin-group Channa: the landed and the landless. Shamim belongs to the landless tier, and the income in her household is primarily generated through wage labour, including that of the older children. The men, and sometimes the women, do chores for the Jam households for very little remuneration. In response to the question on the household's voting preferences, Shamim looks around at the others, and they all laugh and say, 'Whom do you think we vote for if we live in this *basti*?'

By the time we end the interview, a few other women have joined us, and the two cots are rather crowded. One very old woman informs us that she is living with her brothers because her husband has married another woman. Someone else says her brothers take care of the old woman because she has a lot of land in her name.

Nadia suggests we ask a few general questions about the *vaddi basti* and the village. After listing the women's names, castes, and the location of their homes, we ask them about the accessibility and quality of the health, educational, law-and-order and judicial institutions available to Tibba Channa.

With the exception of Jameela, all the women chip in during the description of the poor health care and schooling, expressing the hope that we would convey their opinions to wherever decisions are taken on these matters in Islamabad. They all agree that a good school for girls in the village is sorely needed, since it is more difficult for them than for their brothers to walk or take the bus to the nearby village or town. Many girls, including Shamim's daughters, have dropped out of school.

Shamim, still the lead spokesperson, tells us that the police never come into the village unless the landlords give them permission. A young woman who has arrived with the very old woman tells us that her uncles, the bigger landlords, have just come through a major problem. When I ask what this was and how it was settled, she says something about *choairs* (girls), but neither of us can catch it properly because several others, including Shamim and the woman from the landlord family she has been teasing mercilessly, begin talking loudly about how land disputes are widespread in southern Punjab and are put to rest at election time. According to the women, the landlords patched up their quarrel after

the intervention of a powerful landlord who convinced them that peace was necessary if they wished to elect their kinsman Jam Abbas. They all laugh rather nervously, and Jam Abbas' sister-in-law brings the conversation back to the matter of the police not being allowed into the village by the landlords. The other women agree with Shamim's assertion, one adding that the police only come if the conflict is between the landlords.

Efforts to 'probe' further prove futile. Our visit ends on a musical note, as some of the women begin to sing us their favourite songs, modifying the verses to address us as the recipients of their love. The women tell us they listen to the radio using batteries stolen from the rich men's tractors because the village has no electricity.

As we take leave of Shamim and Jameela, Sadiqa invites us to come to her house. She wants us to interview her in peace.

Field Journal, 19 October 2001

### On feminist desires, agency and power

My endeavour in this essay is to complicate understandings of Pakistani rural women's agency and their experiences of multiple forms of violence through an attention to actual women's constructions and perspectives within the context of research in Mouza Tibba Channa, an administrative village unit in Southern Punjab, Pakistan.<sup>5</sup> The focus is on direct violence, the immediately visible, and recognisable forms of physical violence, as well as on structural violence, the violence produced by structures of domination, exploitation, and exclusion that can maim, marginalise, and fracture the human body, mind, and spirit over time.<sup>6</sup> I take the threat of violence to be itself a form of violence.<sup>7</sup>

I am especially concerned with the forms of violence, both overt and structural, that appear to have been normalised as the acceptable order of things.<sup>8</sup> Such violence is rendered invisible as it is perceived as the status quo, but 'it is experienced as injustice and brutality at particular intersections of race, ethnicity, class, nationality, and gender.'<sup>9</sup> Within Mouza Tibba, caste, class, and geographical location in the village emerged as the crucial axes of difference structuring women's realities.<sup>10</sup> These vectors of difference mediate and are mediated by relations of domination and subordination as well as histories of coercion and contestation in the village. Women are not

just marked by these vectors, but are themselves markers of differences between collectivities.<sup>11</sup> To sift the layers of violence (that turned out to be not so hidden after all), this essay takes into account women's specific locations vis-à-vis these axes as they determine multi-level patriarchal codes for their roles and behaviour.<sup>12</sup> While the control of women's bodies is seen across castes (that is, kin-groups) and classes, the nature of the labour and services extracted from these bodies, in sexual, reproductive and productive terms varies along lines of kinship, class and location.

How do the different forms of violence in and around women's lives constrain their agency? How do women attempt to constitute themselves as agents, even as this agency remains circumscribed by their positioning in a society fraught with multiple forms of violence? How are the very terms of women's agency as survivors and/or witnesses of violence derived from contexts that make violence possible?<sup>13</sup> What possibilities for resistance for the movement towards alternatives to violence in their life-worlds exist within women's constructions? These questions position women as 'grounded in history, mediated by cultural discourses and practices, and yet makers of history, of culture, and selves.'<sup>14</sup> From such a perspective, agency is dynamic, entailing an ongoing negotiation with power relations, but does not presuppose a transcendent subject outside the context of her constitution.<sup>15</sup>

While I am cognisant of analyses that stress 'the opacity and inertia that stem from the embedding of social structures in bodies,'<sup>16</sup> I am concerned with delving deeper into what can initially be perceived as such. Even when women appear silently or actively complicit with the violence of structures, it may be erroneous to perceive them as mere conduits of patriarchal power.<sup>17</sup> The categories of caste and class, within which violence is generated, experienced and resisted, also form the basis of women's identification with particular collectivities as well as an agency deriving from their roles within these. Women may at times have a vested interest in the maintenance of power relations and social hierarchies, even at the cost of violence to themselves or those around them. At other times, structures of violence can silence challenges or erase signs of struggle.

I chose to begin this article with a vignette reconstructed from field notes for three reasons. First, it brings together the central

preoccupations of the article: rural women's attempts to constitute themselves as agents; the threat of violence in their lives; livelihood and food insecurities as key manifestations of structural violence; the differential awareness of threat, fear and insecurity based on social location; and the silences—omissions, evasions, and outright lies—framing fear and violence. Second, the vignette conveys the vitality and complexity of the women's lives and characters, the multi-layered nature of field encounters, and the transient, yet highly significant relationships underpinning the context for the generation of knowledge.<sup>18</sup> Finally, the vignette shares the incident that provided the initial impetus for this essay.

Given that a central project of feminist research is to debunk the myth of the passive third-world woman, the urge to cast Shamim, as the unqualified heroine of my story in Tibba Channa, the landless woman valiantly challenging prevailing power relations, is quite pressing.<sup>19</sup> We heard from other women and men in the neighbourhood that she chose to be interviewed by us in the face of strict instructions to the contrary by her landlord neighbours. In addition, she and her brother-in-law Jamal had deliberately set out to prove to Sadiqa and the others that the landlords were lying about the guns in our bags.

My desires as a feminist ethnographer notwithstanding, Shamim's rather flamboyant resistance coexists in this narrative with her silence on at least two counts. First, she seemed to go along with Jamal's depiction of his sister Jameela as unmarried. Jameela and he had married another brother and sister pair in an *adl-badl* arrangement: Jameela was thus married to Jamal's brother-in-law, his wife's brother.<sup>20</sup> According to other women and men, after his wife died Jamal had essentially forced Jameela to live in his house rather than with her husband, by picking a quarrel with their in-laws. He needed help with his children and could not afford to remarry, being a man with relatively few means and no unmarried sister to offer in exchange for a bride. Second, Shamim vociferously joined the women, including the women from the landlord Channa family, who sought to suppress the reason for the dispute between the landlords, which, as we later found out, had arisen a few months earlier because of the conduct of Jam Ashiq's two sons: they had spent a few days with some Baloch

women at their *daira* in the fields outside the *vaddi basti*, and in some quarters the matter was being framed as *zabardasti*.<sup>21</sup>

We also had to remind ourselves that the interview itself represented another field of power, enabling and delimiting Shamim's agency as a citizen-subject. During the interview, Shamim and the others were giving us messages for the high-ups in Islamabad, and in a brief interaction afterwards, Shamim did mention her hope that the 'government' would intervene to improve her economic situation.

Shamim's words as well her silences withheld from us the possibility of drawing facile conclusions about her 'coming to voice' through our fieldwork, and ultimately I was led to the realisation that both speech and silence must be subsumed in an account of the conditions of her agency.<sup>22</sup> Abandoning the 'romance of resistance'<sup>23</sup> and heeding the call to 'thick description',<sup>24</sup> we sought to situate her speech acts and silences in the interview setting within the larger context of the hierarchies and loyalties in which she was implicated. We learned from various sources that there was a history of conflict and reconciliation between Shamim's household and the Jam Channa households. Despite their relative powerlessness, Shamim's family had held their own, and the landed Channas displayed a high tolerance for this assertiveness by a landless household. Admiration was tinged with envy, and perhaps resentment, when people told us that Shamim could afford to defy the landlords because of the favoured status of her family, and especially Shamim. Shamim chose to share her powerlessness and economic helplessness with people from Islamabad because they might help her family, and in so doing flouted the authority of the landlords. It is possible she wanted to settle scores with them, and in defying their authority, also found an opportunity to do her family good by speaking to the visitors from the 'goirment.' Subsequently, however, she respected her loyalties to her brother-in-law and allegiances to the Channa landlords. Of course, we can attribute this to fears of reprisal, but it appeared that her vested interest in maintaining her relationships with her brother-in-law and her landlord neighbours was also about the preservation of a certain sense of self, physical and psychic. Shamim's agency, as manifest in words, acts, and silences, was in part derived from her relationships with those around her, which unfolded in dynamic fields of domination and subjugation.<sup>25</sup>

But where and how do we locate agency for Jameela, the assiduous quilt-maker, or the women who were 'brought' to the Jam's sons? In my story Jameela figures as little more than a quiet figure, but she remains for me a person with a particular presence, firmly asserting that she lived with her brother to raise the children, while I cannot visualise the faces or silhouettes of the Baloch women who were raped. In fact, we received conflicting reports about the number of women involved. Still, the women on our team could feel the pain of these women, especially in Tibba Channa, even before we learned of the actual incident from other women, which was only in the last two days of our eight-day stay. To our surprise, we learned that the men on our team had been told of the incident much earlier by men from various *bastis*, but had chosen not to share it with us during our debriefing discussions every evening. The plethora of these male narratives construct the women either as bearers of dishonour for the Baloch clan or as objects of transaction between their Baloch relatives and the landlord's sons. In the few stories we got from women and one fifteen-year-old girl, the women were represented as survivors of rape. Can the subaltern perhaps speak through another women's reliving of her pain?<sup>26</sup> The fact that even this agency achieved through identification was barely visible testifies to the efficacy of power structures in the village, even as the fact that it did surface points to fissures in these structures.

There is a tendency to think of Pakistani village women, especially those from regions designated 'remote,' as outside modernity and the purview of the State, their bodies and lives at the mercy of feudal structures. But the responses from Shamim and other women who chose to be interpellated as citizen-subjects through their demands on the 'government,' and also as labourers in the Pakistani workforce, challenge the premises of this image. For one, it is very clear that the State is implicated in the dominance of the landlords, whose ties with the police, courts and revenue officers have helped them expand their assets, not always legally. The Jam men have consolidated their power base by forging alliances with even bigger landlords who have helped them become players in local electoral politics. The power configurations exemplify the persistence of a colonial mode of control: the landlords in southern Punjab receive state patronage in exchange for keeping the masses in check.<sup>27</sup> In fact, the fixing of caste differences,

and the entrenchment of class and gender inequalities are a consequence of colonialism,<sup>28</sup> and the post-independence phenomenon of *biradarism*,<sup>29</sup> the articulation of sociopolitical affiliations in terms of kinship during the formation of a ruling elite in Pakistan. It is important, therefore, to bear in mind that the violence against the village women is embedded in larger historical forces, although the scope of the essay eschews a detailed analysis of these macro-micro links.

The next section locates this study in geographical terms and also within the existing feminist scholarship. I then discuss the contours of women's agency in three overlapping domains of violence that emerged as salient in Mouza Tibba Channa: women's experiences within their families and in communities they see as 'their own'; women's experiences of sexual harassment and violence in the village; and poor women's experiences of structural violence, especially in terms of food and livelihood insecurities. Violence is defined as any act, behaviour, or circumstance contributing to 'unequal life chances, usually caused by great inequality, injustice, discrimination, and exclusion, needlessly limiting people's physical, social, and psychological well-being.'<sup>30</sup> While I privilege the voices of a few women, in each section, I try to provide an overview of the contexts for violence in Mouza Tibba Channa and the implications for women's agency. The final section brings these strands together to highlight their inter-relatedness and simultaneity in lived experience, even as it poses questions for feminist theorising and praxis.

## Locations

### Theoretical context

This essay continues the work of South Asian feminists in developing women-centred analyses of violence, conflict and insecurity. In the last decade and a half, feminist scholarship worldwide has taken on the project of reinterpreting international politics and militarism from a perspective that privileges the voices and experiences of women.<sup>31</sup> This has entailed an interrogation of the concept of security. Feminist Security Studies concerns itself with the gendered nature of citizenship, war and geopolitical processes, showing how

domestic, national, and international spheres bear upon one another so that the impact of violence on women is multi-layered. It also foregrounds the 'theme of the everyday politics of security,'<sup>32</sup> bringing out the precariousness of women's lives in patriarchal contexts, even when there is no official war between states.<sup>33</sup>

These international currents have influenced feminists concerned with how violence and insecurity specific to South Asian histories and geopolitics have affected women of the region.<sup>34</sup> Within the Pakistani context, women in the Karachi conflict and Afghan refugee women have recently been the focus of feminist scrutiny.<sup>35</sup> We also have excellent explorations of the legal and political structures and institutions inimical to the interests of Pakistani women.<sup>36</sup> However, there are no noteworthy feminist studies based on the voices and experiences of rural women vis-à-vis the violence in their everyday lives. This paper tries to address this gap by putting rural women at the centre of analysis. It takes forward the South Asian feminist preoccupation with the way social relations 'violently mark women's bodies'<sup>37</sup> to locate 'peace-time crimes'<sup>38</sup> within the realm of the mundane, with its implications for the agency of women in different social locations.

### Geographical context

Mouza Tibba Channa has a population of 1592 (789 female and 803 male); the residents speak various dialects of Siraiki and the literacy rate is 11.5%.<sup>39</sup> Although the Channas dominate in terms of their power, the various Baloch tribes put together form the largest group in the village.<sup>40</sup> Other key groups in the *mouza* are the Mohana, a caste associated with riverine activities and therefore denied the right to land from colonial times, and *kammi kameen* households, Punjabis who form the serving caste and also do not own land.<sup>41</sup>

The *mouza* is 90 kilometres from the district headquarters, Muzaffargarh, which houses the nearest full-fledged in-patient hospital and judicial court.<sup>42</sup> It is north of Kisar,<sup>43</sup> a small town that is the seat of the revenue circle, and houses public services used by the residents of Tibba Channa, such as a government school and a Basic Health Unit (BHU), as well as the bus stop which links them to the outer world. The river Chenab forms the eastern border of the *mouza*.

The Jams own 900 of the 1400 acres of cultivable land in the *itals*, which they claim to have bought from Indian immigrants who had been allotted land in the *mouza* after Partition. Other accounts, however, refer to the land being forcibly taken over.

The *mouza* consists of six *bastis*, including one called Tibba Channa. The *bastis* and other isolated or smaller groups of houses are spread all over, separated by fields, tracks and paths, including a relatively wide unpaved road through the centre of the *mouza*.

Tibba Channa, the *vaddi basti*, and Kanda Channa are mostly populated by Channa households: the bigger landlords reside in the *vaddi basti*, the landless Channa generally live adjacent to them, while families with smaller landholdings, who rely on sharecropping, land-leasing and wage labor to supplement their income, live in both *bastis*. Kanda Channa has a peripheral wing for the *kammi kameen*, literally, the lowly workers. The Mohanas live in their own *basti* near the *vaddi basti*, and run the few shops.

Baloch families of various sub-castes<sup>44</sup> live in the three other settlements: Basti Gabol, Gopang ki Basti and Basti Arfani. Historically, all of them have been landowners, but their holdings are mostly small. Many families take on sharecropping, land-leasing, or wage labour. In recent years, some have expanded their landed power. In particular, one key Gopang household strives to be seen as an equal of the Jam Channa families by cultivating their friendship. A few households in Basti Arfani that have also become relatively affluent over the years through remittance money from Karachi are intent on challenging the Channa landlords.

Relationships between women are demarcated by caste, class and geographical boundaries. In the *vaddi basti*, relations between landless Channa women and women from landlord families are complex, characterised by contradictory dynamics of intimacy and mistrust. While the landless Channa women are not subservient towards the more affluent women, *kammi kameen* women observe the hierarchies. There are a few close friendships between Channa women from the *vaddi basti* and Kanda Channa, and they participate in each other's *ghami* (sad occasions) and *khushi* (happy occasions). The women from Gopang families are the only Baloch women who interact with Channa women as friends. Among Baloch women themselves, close

friendships are restricted to their *bastis*, and only *ghami* brings them together across *bastis*. Mohana women keep to themselves.

### Exposition

#### *In the hands of 'our own'*

'My mother did her best by us. She sold most of her jewellery when my father fell ill. She took him to the doctors in Muzzafargarh. She was still young when my father died 16–17 years ago, but she did not get married. She became a labourer to feed us.'

There are tears in Sadiqa's eyes as she speaks fondly and proudly of her mother. Her husband is a wage labourer in Karachi. Her in-laws are her mother's relatives, but when Sadiqa's husband is not around, they try to restrict her movements and diet unnecessarily. So Sadiqa and her mother managed to convince her husband to have her move back to Tibba Channa from the small town where his family lived.

'I am very happy to be back in her *basti*. I can roam around visiting friends,' she says. Her mother has made sure Sadiqa follows the norms of propriety and decorum suited to a girl of a landlord Channa family. She covers her face if there are outsiders present.<sup>45</sup> Even when her mother was forced to turn to wage labour herself, Sadiqa only picked cotton in the fields of relatives near her home, and only in the company of other young girls from Channa households.<sup>46</sup> Now that she has a baby, Sadiqa does not even go to pick cotton. She tries to help her mother by taking on the responsibilities at home. She has a younger brother of around 17, who is a factory worker in a relatively distant town.

Sadiqa's father was a first cousin of one of the influential Channa landlords. Her uncles, her father's brothers, co-own around 30 acres of land. At the death of her father, her uncles told Sadiqa's mother that she would only have rights to her husband's portion of land if she cultivated it herself: she was not allowed to lease the land or work with a sharecropper. With two small children and no assistance from any quarter, all attempts at cultivation proved futile. Sadiqa's uncles continue to control the land. When her brother became old enough to work in the fields, the uncles exploited his services to the limit, but

did not give him enough grain to sustain the family. Ultimately, the boy chose to leave for the town.

'We take whatever is given to us. We remain quiet,' responds Sadiqa, when I ask her why she and her mother do not protest against the injustice. She goes on to explain that they do not fight for their share because they cannot. The Jams have friends everywhere, including the courts. Even sharecropper families lose the land that forms the basis of their subsistence if the male head of the household dies, or is sick for an extended period. The few women in the village who have land in their own name have inherited it from their fathers; mostly, husbands and brothers control the women's shares. Sadiqa's assessment of their situation is borne out through other reports: women, whether daughters or daughters-in-law, are interpellated as outsiders in the family and for the most part are treated as lacking entitlement to the possession and control of land.<sup>47</sup> So when their land is taken over, generally after the death of a husband, brother or father, the dispossession is not framed as theft. Other families are willing to dole out occasional financial assistance—the women's households are deserving of *zakat*<sup>48</sup>—but the denial of her inheritance responsible for the women's descent into poverty remains unquestioned.

Even as Sadiqa conceded the harshness of the treatment from her uncles, she is insistent throughout that they are 'her own.' She emphasises the security she and her mother enjoy as residents of the *vaddi basti* and as members of the influential Channa family. She does not want her family to have the same fate as another Channa household which recently moved to another *basti* under duress. However, this security rules out livelihood and food security, and remains contingent on her family's silence about their inheritance.

Sadiqa and her mother's resilience in the face of adverse circumstances remains unquestionable. Sadiqa's mother continually struggles to provide her children, especially her daughter, what she considers the best possible life within the gendered and classed life-world of the Channa clan. Although none of her relatives in the *basti* sought her daughter's hand for their sons or brothers, Sadiqa's mother found a reasonably good match for her daughter among another set of relatives. Sadiqa's husband is quite devoted to her, and sends her money regularly.

The parameters of agency for Sadiqa and her mother remain circumscribed by their desire to retain identities as members of the landlord Channa caste. Sadiqa seems to posit this identity as a site of both compliance and resistance. Yes, 'their own' have disenfranchised them, but against all odds, her mother has ensured their survival within the *vaddi basti*, and Sadiqa has a good husband and a baby, a future she would have been denied by those who did not think her a worthy match for their sons. What is striking is the manner in which continued identification with the Channa landlords is predicated on Sadiqa's comportment and behavior. Even though the family has fallen on bad times, as long as the daughter of the household follows the norms, their place within the upper stratum is assured.

Although Sadiqa's story sidelines her brother's role in her life, brothers figure prominently in other women's interviews and personal histories, especially in their constructions of security. Even a not-so-reliable brother is better than no brother at all, for just the presence of a brother in one's life can ensure better treatment from one's in-laws, or defuse gossip if one is unmarried. The extent to which brothers affect the scope of their sisters' agency became clear from accounts of *adl-badl* marriages that we heard in different *bastis*.

With the exception of the Jam households, most other Channa families, the majority of the Baloch, Mohana, and the *kammi kameen* marry their daughters into a family in exchange for a bride for a son or other close family member. This practice is regarded as providing both families equal leverage: in-laws are less likely to mistreat a woman if one of their female relatives is married to the woman's brother or male relative. An irresponsible brother in an *adl-badl* situation can of course make his sister's life insecure by not being a good husband, while a selfish brother like Jamal can pick a quarrel with his in-laws and endanger his sister's marital life for his own purposes.

We also heard stories of brothers, Channa and Baloch, who forced their sisters to marry men whose sisters they wanted to marry; on the flip side, we heard of men in both communities who chose to marry into certain families because it was rumored their sisters wished to marry into them. While in most cases caste lines were

maintained in these marriages, there were some reports of cross-group weddings, especially between the Mohana and the Baloch.

Many women, especially Baloch women, speak of brothers as their primary support during crises such as illness, which drains household resources and usually means a loss of income. An example is Mai Salma, a widow of around 60, living in Basti Arfani with her married daughter. Five years before our study, she sustained some incapacitating injuries, after which, though she did raise farm animals for herself and other people and would occasionally undertake agricultural labour, she had to rely on financial and physical support from her brothers, who would divide their time between the *basti* and Karachi. One brother bore all her medical expenses, another helped tend the animals when Salma was too unwell, and also sold the eggs and milk in nearby towns.

Unmarried women seem to get less support from their brothers, possibly because taking care of a sister who is married is also about one's *izzat*, dignity, before her in-laws. Indeed, with the exception of the most well-off Channa households, unmarried women are the most likely to be deprived of proper health care. We came across several young women in the *vaddi basti*, Kanda Channa and Gopang ki Basti, who displayed the symptoms of either acute respiratory diseases or tuberculosis, but were receiving little or no care. Women's access to healthcare is mediated by their families; even when women like Mai Dahay, described later, are the decision-makers in the household and control its finances, they do not prioritise their own medical treatment. This is partly for financial reasons. The BHU in Kisar is hardly ever open, and when the dispenser is present, he charges an 'unofficial' fee. Given the pervasive climate of insecurity, women are expected to travel in groups, or a male relative accompanies them, especially if they are unmarried. Taking the bus to a further town would entail more expense, and also the loss of income, because the escort loses a day's work.

The denial of health care to unmarried women and girls cannot, however, be fully accounted for in economic terms. For one, as several women explained, going to see a doctor brings a certain stigma on a young woman, undermining her desirability as a match. Second, and perhaps more importantly, parents and brothers regard marriage preparations as a more important long-term investment in

the household's well-being than taking a young woman to a doctor. This holds true even if the young woman is an active contributor to the household, either by earning a formal income, or through her domestic and agricultural labour. Young women and girls across castes, again with the exception of the Jam families, are regarded as a burden on the household, whose weddings entail lavish feasts and dowry expenses. The provision of health care to young women corresponds to the value, or lack thereof, placed on their bodies, in a set-up where, across castes and classes, the birth attendant receives more money for delivering a male child and where many women in the middle and lower tiers admit to giving their daughters smaller portions of food. Although married women's access to health care is also affected by their relationships with in-laws or their husbands, women who are mothers do stand a better chance of funds and time being allocated for their medical treatment.

Surprisingly, old men in the middle-tier and poorer landed families represent the other group most likely to be denied anything beyond minimal health care, particularly in the case of long-term illness. This also has implications for the well-being of women, since sons who do not take care of their fathers are more likely to neglect their sisters, although mothers with grown-up sons seem to fare better. An illustrative case is that of Sabir Channa, a man in his sixties living in the *vaddi basti* with his wife, his 15-year-old daughter Farzana, and a married son with small children. Five years before our visit Sabir Channa was diagnosed with tuberculosis, and had gradually to give up control over his three acres of land to his son. Though in the beginning he took regular medication, at the time of the fieldwork he was taking only analgesics. His daughter Farzana provided the daily ten rupees by selling baskets, fans, and other items made from date-palm leaves and reeds. During our interview with the household, it was Sabir's daughter-in-law who was quite blunt in her arguments against spending on his health care. It is a matter of priorities. Her father-in-law is old, and her children are young. The household has only one real earning member, her husband, and they have to choose between nurturing the potentially productive young and saving the old.

Still, Farzana refuses to give up on her father. 'My father is the tree that gives me the shade I need to survive in the heat.' When

Farzana fell ill shortly before our visit, Sabir, who could not secure funds for his own care, collected enough grain to pay for his daughter's treatment at the BHU. The villagers, including her own brother, comment on Farzana's waywardness—she loves taking long walks along the bank of the Chenab, and now also goes there to collect date-palm leaves and reeds—but the frail Sabir does not let anyone get away with badmouthing his daughter, and still commands enough respect for people to back off. Farzana cannot imagine life without the loving father who tells her stories every night.

To sum up, the agency of women within their families and communities is bound up with a patriarchal connectivity,<sup>49</sup> whereby women's relationships with their male relatives in the nuclear and extended family is 'built on the duality of love and power.'<sup>50</sup> This duality also plays out in women's relationships with each other. Primarily interpellated as daughters, mothers, and sisters, as bearers of respect and the producers of children for their families (and at times for entire kin-groups), the range of subject positions available to women remains circumscribed by patriarchal imperatives within specific class and caste contexts. Adherence to these norms, however, is no guarantee of security. While agency is made possible through group identities and family roles as well as the protection extended by a caring father or brother, it is also constrained by forces within families and kin-groups that exclude women from landed power or deem them unworthy of healthcare.

It was also the Baloch women's male relatives who allegedly took them to the Jam's *daira* to be raped.

### 'O this Women's Body of Mine!'

'Ever since the *zabardasti* I am more careful about going to the river. Especially when it is getting dark. All the girls in the *basti* also stay away from my cousins now. I am not very friendly with many girls. They don't like going out like I do. I don't like talking with them, you know, mean stuff about other people. But now we talk about the bad thing my cousins did. We talk about the dangers of having a woman's body.'

Farzana invites Nadia and myself for a walk along the river. She tells us it is a pleasant route to their plot of land, and one can avoid

passing the Jam's *daira*. We ask her why we need to avoid the *daira* but do not get our answer till we are some way beyond the village.

Among the female population, Farzana is the first to talk to us openly about the rape. Later in the day, two older women, again Channa women from landowning families in the *vaddi basti*, corroborate her construction of the incident as *zabardasti*, rant against the cruelty of the Jam's sons, express their sympathy for the women and share their fears for their own daughters. They only do so, however, because I ask direct questions. Earlier, other women from landlord families in the *vaddi basti* had hinted at sexual liaisons between Channa landlords and women from landless Channa families, but circumvented attempts to talk about the Baloch women at the *daira*. Whereas some of them framed the matter in terms of 'we all know how men are' and that the women 'should know better,' others tried to defend the women by emphasising their powerlessness, adding that women would do anything to feed their children.

Before and after the walk with Farzana, women in different *bastis* conveyed to us their sense of heightened insecurity in recent months, but were vague in their explanations. Some women from the landless Channa group, and a few Baloch women in Gopang ki Basti referred to the roving eyes of powerful men, and the latter also said that they would never send their daughters to the elementary school in the *vaddi basti*. Women from the *kammi kameen basti* and poorer Baloch households in particular felt the increased restrictions on their mobility; until recently their menfolk had not been concerned about their going out. They understood the danger of going out after dark, but were resentful of the men trying to change the rules. 'We can not afford the pretensions of the landlords,' said Sughran in the *kammi kameen basti*. She and her friends did concede that they felt more vulnerable when their male relatives went to the cities for work, but we got only a burst of laughter in response to our polite probe, 'vulnerable to what?'

The Baloch women in Basti Arfani were very vocal in their statements against the Channa landlords—accusing them of land appropriation, of pocketing state *zakat* funds, and of snatching identity cards during elections from those they guessed might not vote for their candidates—but withstood all attempts to elicit an account of the *zabardasti* at the *daira* from their point of view. They

did make general statements about the misconduct of both Baloch and Channa landlords with women, and talked about the impossibility of justice for women and the poor when the formal judiciary system and community-based processes were both controlled by those most likely to be the culprits. They were obviously not afraid of the landlords: they freely shared the strategies adopted by their families to remain independent of the Jams, especially with regard to livelihoods. Why would they remain quiet about the incident at the *daira*? Did they, like some of the Baloch men, think of it primarily in terms of a slur on Baloch honour? Or were they perhaps ashamed of the complicity of the Baloch men?

The men had fewer misgivings about talking to our team.<sup>51</sup> The Baloch, Mohana and *kammi kameen* men talked about the climate of sexual harassment in general, and the incident in the *daira* in particular. Both the Jams and the landless Channa focused mainly on the mechanics of conflict and peace processes among the Jams, touching briefly on the waywardness of young men. When some Baloch men raised an outcry about what Jam Ashiq's sons had done, a few of the Jams sided with them, but withdrew this support once there was peace among the landlords. Although a few Baloch men continued to voice the need to take steps for 'the satisfaction of their honour,' the matter was essentially put to rest. The men who spoke to our team were impressed by the stand taken by these Baloch, and expressed the hope that they could be as bold when it came to protecting their own honour.

Although other cases of sexual exploitation are not as blatant as the incident at the *daira*, we hear from the Baloch, Mohana and *kammi kameen* men that the landlords have a practice of soliciting sexual favors from poor women. Household location is significant in this context: there are landless Channa women in the *vaddi basti*, *kammi kameen* women living on Channa land and not far from Gopang ki Basti (whose affluent landlords, political comrades and friends of the Jams, also treat poor women as sexual objects), and poor Baloch women in Gopang ki Basti.

The inscription of power thus occurs on the bodies of poor women. Some accounts referred to the complicity of their husbands, who would provide access to their wives in return for privileges such as the option to pay lease money at harvest time, instead of upfront,

before ploughing. But there were also men who told us they felt so threatened by the landlords' interest in their wives they chose not to go to Karachi for work, although, partly because of the landlords' machinations, they were not getting work in the *mouza*. There were also stories of families leaving the *mouza* for the sake of the women's security.

As among the women, there were a few men who presented the class of women involved with landlords as 'impure' or simply 'evil.' It was also said they extended sexual services in exchange for protection or resources. One of the Gopang men told Nadia and myself about a woman who had chosen to be with him, though his political opponents were trying to accuse him of abduction.<sup>52</sup> While such accounts make room for women's agency, the fact remains that even relationships said to be based on mutual consent are formed in the context of unequal power relations.

We must then understand women's agency as *embedded within* the sexual politics of the *mouza*, with its systems of patronage, co-operation and conflict. Men, who provided the majority of our narratives, tended to construct sexual exploitation either as a violation of male honour or as an exchange of favours between the landlords and women's male relatives. This applied especially to the representation of the incident at the *daira*: since the Baloch men *brought* the Baloch women, it was merely a deal between men, where women were reduced to commodities. The few women who openly addressed issues of sexual exploitation, in relation to the rape at the *daira* as well as relationships between landlords and poor women in general, were more concerned with what the motives of the women might have been, and with their anguish. I find it noteworthy that only Channa women from the landlord class talked openly about the rape, and that they unequivocally framed it as *zabardasti*. Despite their caste and class positioning, they identified with the Baloch women as women, though it is also clear that caste and class power were what permitted them to lift the silence around the incident. Of course, barriers of caste, class and location did prevent them from actually communicating their solidarity, at least in this instance with the Baloch women.

Women across *bastis* faced restrictions on their mobility in the aftermath of the incident in the *daira*. These had different implications

for women from different backgrounds, and for those from poorer and landless households this meant a greater likelihood of their families going hungry. These women were indeed afraid, and their observing restrictions was more a consequence of identification with those raped than an unquestioning adherence to gendered codes of conduct. However, for some of the men from landless and poor families, the opportunity to control women configured possibilities for the assertion of masculinity hitherto denied them in their position on the lowest rung of village patriarchy. In other words, the rape was used to augment a discourse of fear, which served not only to keep women in their place but also to insert poor men into the equations of honour and self-respect. Gendered norms were reasserted in upper-caste, and middle-tier households as well, but the agency of *kammi kameen* and poor Baloch women was especially affected. During their struggle to feed their families they had to negotiate the actuality of their own vulnerability to sexual abuse as well as their male relatives' new preoccupation with honour as reflected in their bodies.

#### 'Wells that must be filled regardless'

'We moved here at the time of the last big flood. The river took away part of our town. The Jam gave us this place to live. At first it was difficult, but I created a place for my family in our new home. I handle the straightforward birth cases in the *mouza*. Sometimes they give me grain, sometimes it is 50 or 100 or 200 rupees. It is more when it is a boy.' The old woman, who asks us to call her Mai Dahay (Dahay being her caste), dominates the conversation; her children and grandchildren surround us (her married daughters and son live with her) but only occasionally interject. We have to rely primarily on Mai's representation of their realities. We fill household- and community-level questionnaires and Mai Dahay also tells us her life story.

'The flood took away everything. My childhood friend died. But when the children cried with hunger, and our own stomachs rumbled, I had to think of getting food for my family. I am getting older. I fall sick too easily now. But I get up because the wells have to be filled continually. The stomach doesn't care if you are poor and helpless.'

Mai's son and sons-in-law transport bricks from kilns to construction sites on their donkey carts. Her daughters and daughter-in-law work outside only during the cotton and wheat harvests because their children are small, but they do tend to the cow, goat, and hens. Mai controls the finances, and she tells us that she worries about how her children will manage after she dies, because they are so naïve. Her son worked for some time in Karachi, but she made him come back after the violence in the city.

For the most part, Mai and her family say positive things about their landlord benefactors. However, towards the end of the visit, Mai, her son, and one son-in-law tell us that if we think their kind can be helped through surveys, we are very foolish. The landlords swallow any aid that comes through this region, even during the floods. As long as there are the landlords, the poor will not have enough to eat.

The themes of life as eternal struggle and of the impossibility of conditions improving surface in all the interviews with women from the *kammi kameen basti*. They vary in their analyses of their deprivation: only two older women attribute their circumstances to God's mysterious ways, most others accuse the Channa and Baloch landlords openly, telling us how they took away their identity cards so that they could not vote. A few, like Mai Dahay, prefer to share more general and systemic analyses. 'False consciousness' about their poverty and their social location is definitely not what is keeping these women poor and powerless. This critical consciousness is also visible in their comments on education. They say the Jam families want their children to remain uneducated, and for this reason support the inept teacher who runs the school in the *vaddi basti*, and that even if their children obtain degrees, they will continue to struggle, because they will still be *kammi kameen*, and jobs these days are hard to find. Despite the scepticism about the potential of education, most interviews end with participants clamouring for a girls' school in their *basti*, or some neutral zone outside the influence of the Baloch and Channa landlords.

While these women cast themselves as the protagonists of their own stories, the stories are set in a world that is relentlessly unfair and cruel. There are no happy endings, but there is occasion to laugh; interviews with Mai Dahay are punctuated with humorous comments

from herself and her children. As we take their leave, they regale us with the tale of the television license inspector (the Dahay family owns a small battery-run TV). Mai set her dogs on the unfortunate man, who ran away screaming. We are told that we were spared because we appeared likeable.

While Mai Dahay rules everyone in her household with an iron hand, for the most part relations between women and men are relatively egalitarian in this *basti*, so that even the younger married women have decision-making powers in the household. In general, women here have greater mobility than women in the other *bastis*, even in the wake of the rapes at the *daira*, and they resist men's attempts to restrict their movements. However, this exercise of relative power is enacted in a larger context of insecurity that is felt at many levels.

There is a general sense of livelihood insecurity, intensified in recent years with the decline in the demand for skills traditionally associated with *kammi kameen* castes.<sup>53</sup> It is true that a number of households juggle multiple occupations and are managing better than many small farmers. In addition to working as agricultural and non-agricultural labourers, the women take in other peoples' animals to tend.

But, as mentioned earlier, living on a powerful landlord's property and close to the richer Baloch households in Gopang ki Basti makes these women easy targets of sexual aggression, and subject to other forms of coercion. The security provided them by their Channa landlords is more precarious than even the limited patronage extended to the poorer Channa families as members of the same kin-group. If *kammi kameen* women move around more freely, partly because of livelihood pressures, this increases the risk of assault, as they are then seen as having no *izzat*, or dignity, in the first place, so that the violation of their bodies becomes permissible.

With landowners increasingly turning to *mustajiri*, renting out agricultural land for cash—which they usually demand upfront—farming is no longer proving viable for many households with little or no land of their own, who had hitherto depended on sharecropping. Opportunities for non-agricultural labour being limited, men go to the cities to look for work, and while their absence leaves all women

more vulnerable to harassment, the *kammi kameen* feel more unprotected than others.

Livelihood and food insecurities are rampant across the *mouza*, but what distinguishes the lives of *kammi kameen* women is their exclusion from the social networks and support systems enjoyed by even the poor Channa and Baloch women. They are not visited during weddings or funerals and nor are they the recipients of *zakat*. During illnesses, their families are mostly on their own.

Cotton-picking, a domain of agricultural labour that tends to be exclusively female, provides a compelling illustration of how class, caste and age structure different realities for women. All women pick cotton, excepting those with small children, the very old, the sick, and the two or three very affluent Channa households whose women move between the village and nearby towns. The more affluent women tend to pick cotton in their own fields or those of relatives; poorer women take up labour wherever they find it. Hours of work are also related to levels of poverty. More time freed for domestic chores is seen as a luxury; during cotton-picking season, poorer households are able to cook only two meals a day. While women from landlord families can 'spy' on other women to ensure they do not steal cotton, the actual supervision of women is a male task. Men patrol the field and weigh the cotton at the end of the day, each woman's contribution is recorded in a ledger, and payment is usually made after the cotton is sold to traders. Some women insist on weighing the cotton themselves to ensure the men do not cheat them, and while making entries in the ledger there is again the opportunity to cheat, with the majority of women being illiterate. There are caste and class dimensions to both the surveillance and the cheating: women from *kammi kameen* households tend to be more strictly supervised, and face punitive measures that are more severe (they have even been physically punished, in addition to being barred from work), while poor women, including the *kammi kameen* women, are more frequently cheated of their wages.

Given the humiliation and hardships suffered by *kammi kameen* women in their struggle to feed themselves and their family, their relative mobility cannot be read one-dimensionally as a form of power denied other women. In fact, to a certain extent, the power relations in the village demand this mobility. On the one hand, these

women serve as foils to women with 'honour' from landed households, who observe the norms even when the family has fallen on hard times; on the other, their bodies have to remain available for labour and services not provided in other quarters. Like other women in the *mouza*, *kammi kameen* women derive their agency from their roles as mothers, daughters, sisters or wives, trying to keep their family from need. The fact that they have greater say in running the household must be seen in the context of their larger disenfranchisement. This is not to lose sight of the strength of these women, but to caution against the valorisation of life in such harsh and degrading conditions.

### Parting Ruminations

I have addressed the problematique of women's agency in relation to three distinct domains with the questions: what do women inhabiting different locations say? What do they not say? What nuances are conveyed by their words and their silences?

Seen together, these different pieces of women's lives in Mouza Tibba Channa inform the realities of women in different caste, class, and geographical locations. Anthropologists of violence posit a genocidal continuum, wherein exceptional forms of violence are possible because violence has become part of the social fabric through everyday small acts directed at people deemed superfluous or unworthy.<sup>54</sup> From such a perspective, the gang rapes of the Baloch women took place, and Sadiqa's mother could be divested of her land, because a sister can be forcibly married off in an *adl-badl* arrangement, and birth attendants are rewarded less handsomely if a daughter is born. Terminally ill people, young women or older men, can be denied health care, because it has been acceptable to give girl children less food than their brothers.

Constructions of women's worth and place take precedence over considerations of women's humanity. While the bodies of women born or married into certain kin-groups are repositories of honour and worthy of protection, the bodies of poor or/and lower-caste women become the territory on which power is violently inscribed. In the first case, protection remains contingent on compliance to norms prescribed for respectable women. Even compliance, though, does not guarantee medical treatment or proper food. In the second

case, insecurity is the norm, both within and outside the home. The *kammi kameen* women envy the landed Channa women their relatively cloistered existence. In their world, the freedom to move around comes at a heavy price, and with a heavy responsibility: the risk of assault, and the burden of providing for their families.

Processes of structural exclusion interface with the ideational underpinnings of gender and class to frame the space for agency in women's daily lives, creating the conditions for multi-faceted violence. The gang rapes and land theft take place because the so-called rule of law remains remote from rural women's lives. Lack of livelihood opportunities and the inadequacy of local health services are other structural constraints on women's agency. Conversely, the material and ideational constraints on women's agency within these contexts of structural violence are deepened subsequent to acts of exceptional violence such as rape. In women's lived experience, structural and direct violence are not felt separately; each feeds into the other, renewing the ideological, sociopolitical, and material conditions of their possibility.

The women in Mouza Tibba Channa are connected by their common fear in the wake of the gang rapes, yet barriers between castes, classes and *bastis* prevent them voicing this fear to each other. In a locale where women's agency is circumscribed by patriarchal connectivity, or relationships with men, the possibility of solidarity as women remains limited. Feminist explorations of the possibility of Pakistani women using modalities other than caste or ethnicity to form alliances have indicated that where women live in spaces that are gendered, classed, and ethnicised, the likelihood of their mobilising across these divisions in any significant manner is virtually non-existent.<sup>55</sup> In Mouza Tibba Channa, the Channa women identify with the pain of the Baloch women who were raped, but are quite impervious to the structural violence faced by the women around them. Indeed, the way one of the Jam women disrupted my first interview with Sadiqa, whose uncles had laid claim to her father's assets, speaks of the investment some women have in the status quo.

In June 2002, as I was wrapping up the preliminary report based on this fieldwork, southern Punjab hit the news when Mukhtar Mai, a 30-year-old woman, was gang-raped at the orders of a tribal council.<sup>56</sup> Despite death threats, Mukhtar lodged a complaint, and,

after a long battle, the Supreme Court sentenced the men in June 2005. In the intervening years, Mukhtar Mai had become an icon for activists and human rights workers, capturing the imaginations of thousands with her willingness to talk about her ordeal, and her commitment to the education of girls in her part of the world. Despite the Pakistan government's attempts to restrict her international travel, she visited the US as the guest of an NGO, and received an award from *Glamour* magazine.

While there are no questions about her resistance or sincerity, the emergent discourse around Mukhtar Mai is troubling in its deployment of the tropes of voice and agency: as long as women speak out, things can change. What is missing in this notion of the humanist subject carving out her reality in the face of insurmountable odds is an attention to the nature, depth, and scope of the violence in women's lives, whether in Punjab or elsewhere. In such a discourse of heroism, there is no space for a nuanced analysis of the violence against Mukhtar Mai or of its context. Mukhtar Mai, the woman from southern Punjab, gets lost in this bid to interpellate the ideal feminist subaltern, the one who speaks out. Does present feminist activism, then, have no use for the subaltern from southern Punjab who does not/will not/cannot speak out about her gang rape?

While this must remain a question for further debate, I have tried in this essay to map the contours of women's agency in one village in southern Punjab to press the importance of locating the terms of agency within the specificity of women's circumstances in their life-worlds. The violence in and around their lives, structural as well as direct, constrains women's agency, but also constitutes them as subjects who derive their agency as members of a particular class and caste. Their actions, speech and silences in response to violence can be read as attempts to negotiate their multiply-determined social locations. A feminist theorising of violence, and of women's agency in the face of it, needs to make room for words AND silences if at all the objective is to probe beyond the dominant discourse in our quest for equitable societal transformation.

## Notes and References

<sup>1</sup> This essay is based on fieldwork conducted for a study, *Pakistan Qualitative Poverty Survey 2001* (Washington, DC: World Bank, 2002),

jointly undertaken by the World Bank and the Sustainable Development Policy Institute (SDPI), Islamabad, for which I was one of the two Senior Researchers. Of the eight members of the team in Mouza Tibba Channa, I would like to acknowledge especially the efforts and insights of Nadia Assad, Saadia Almas and Shahbaz Bokhari.

- <sup>2</sup> The names of the village, its *bastis* and its residents have all been changed.
- <sup>3</sup> The 'official' data was collected through structured and semi-structured interviews based on prepared questionnaires, ranging from group interviews at the village level to household-level discussions to in-depth, one-on-one interviews. I 'informally' supplemented these protocol-based data with life-history based interviews, where participants were free to construct their own narratives, and we also took extensive field notes.
- <sup>4</sup> Channa is one of the castes, or kinship groups, that belong to the Sammat category of castes. Sammat landlords are referred to as 'Jam.' In this essay I use the terms 'caste' and 'kinship group' interchangeably, in accordance with the usage of my research participants.
- <sup>5</sup> I interpret the interviews and interactions through a 'feminist-standpoint' framework that privileges the subject who knows the world through experience, but combines this with feminist objectivity, emphasising the researcher's responsibility to locate women's experience in social relationships, cultures, and structures. See *The Feminist Standpoint Theory Reader: Intellectual and Political Controversies*, ed. by Sandra Harding (New York: Routledge, 2004).
- <sup>6</sup> John Galtung, "Violence, Peace, and Peace Research," *Journal of Peace Research* 6 (3), 1969, p. 168.
- <sup>7</sup> John Galtung, "Cultural Violence," *Journal of Peace Research* 27 (3), 1990, p. 292.
- <sup>8</sup> See the discussion in Nancy Scheper-Hughes, "Small Wars and Invisible Genocides," *Social Science and Medicine* 43 (5), 1996, pp. 889–900.
- <sup>9</sup> Mary K. Anglin, "Feminist Perspectives on Structural Violence," *Identities* 5 (2), 1998, pp. 145–46.
- <sup>10</sup> Caste refers to the kinship collectivity with which a household identifies. While some castes, like those in the *kammi kameen* group, are always seen as 'lower castes,' others participate in horizontal relationships, where power relations are determined by socioeconomic status and sociopolitical networks in a village or region. Class refers to socioeconomic status, determined by household income as well as the possession or lack of assets and resources, including land.
- <sup>11</sup> Radhika Coomaraswamy, "Preface: Violence Against Women and 'Crimes of Honour,'" in *Honour: Crimes, Paradigms, and Violence*

*Against Women*, ed. by Lynn Welchman and Sara Hossain (Victoria & London: Spinifex Press and Zed Books, 2005), p. xi.

- <sup>12</sup> By patriarchal codes I refer to norms premised on the superiority of men over women, which usually entail a gendered division of labour, and arise from the need to control women's bodies and sexuality. These norms are multi-levelled in that notions vis-à-vis women's status, labour, bodies, and sexuality are disseminated at levels ranging from the familial to the regional to the national to the transnational, and at different points in time intersect at the micro-level to circumscribe women's existence.
- <sup>13</sup> Shani D'Cruze and Anupama Rao write of the relationship between violence and 'bounded agency and expression' in "Violence and the Vulnerabilities of Gender," *Gender & History* 16 (3), 2004, p. 504.
- <sup>14</sup> Debra Skinner, Dorothy Holland and Alfred Pach III, "Selves in Time and Place: An Introduction," in *Selves in Time and Place: Identities, Experience, and History in Nepal*, ed. by Debra Skinner et al. (New York: Rowman & Littlefield, 1998), p. 6.
- <sup>15</sup> Bronwyn Davies, "The Concept of Agency: A Feminist Poststructuralist Analysis," *Social Analysis* 30, 1991, pp. 42–53.
- <sup>16</sup> Pierre Bourdieu, *Masculine Domination* (Stanford: Stanford University Press, 2001), p. 42.
- <sup>17</sup> Darini Rajasingham-Senanayake, "Between Reality and Representation: Women's Agency in War and Post-Conflict Sri Lanka," *Cultural Dynamics* 16 (2/3), 2004, pp. 141–68.
- <sup>18</sup> The imperative to build a linear argument in an academic essay does preclude a consideration of the myriad dimensions of the women's personalities and perspectives that I encountered. This essay is also about the scope and limits of my agency, as a feminist researcher striving to maintain some semblance of integrity vis-à-vis the women who have made this essay possible, given that my research is an area which remains impacted by colonial and neo-colonial constructions of the South Asian woman as victim of her culture.
- <sup>19</sup> Chandra Mohanty, *Feminism Without Borders: Decolonizing Theory, Practicing Solidarity* (Durham: Duke University Press, 2003).
- <sup>20</sup> The custom of *adl-badl* or *watta-satta*, literally meaning 'exchange', where a brother and sister are married to another brother-and-sister pair, is common in Mouza Tibba Channa, as it is in other parts of Sindh and Punjab, especially among lower middle-class and poorer families across castes. This custom is not that prevalent among the more affluent rural populations.
- <sup>21</sup> A *daira* refers to a sitting-living area maintained by landlords near or on their agricultural land, which are almost exclusively male spaces,

- usually at a remove from the residential parts of a village. *Zabardasti* refers to rape (literally, 'done with force; imposition; coercion').
- <sup>22</sup> For a discussion of silence as agency, see Kamala Visweswaran, *Fictions of Feminist Ethnography* (Minneapolis: University of Minnesota Press, 1994), pp. 60–72.
- <sup>23</sup> Lila Abu-Lughod, "The Romance of Resistance: Tracing Transformations of Power through Bedouin Women," *American Ethnologist* 17 (1), 1990, p. 41.
- <sup>24</sup> Sherry Ortner cautions those researching resistance against 'ethnographic thinness,' a concept she develops as an antonym to Geertz's notion of 'ethnographic thickness,' or the richness and detail about peoples' lives and their contexts necessary for sound ethnography. See Sherry B. Ortner, "Resistance and the Problem of Ethnographic Refusal," *Comparative Studies in Society and History* 37 (1), 1995, pp. 173–93.
- <sup>25</sup> For a discussion of connective selves forged through relationships in the context of power asymmetries, see Suad Joseph, "Gender and Relationality Among Arab Families in Lebanon," *Feminist Studies* 19 (3), 1993, pp. 465–86.
- <sup>26</sup> Here I echo and extend the oft-cited query posed by Gayatri Chakravorty Spivak in 'Can the Subaltern Speak?' in *Marxism and the Interpretation of Culture*, ed. by Cary Nelson and Lawrence Grossberg (Chicago: University of Illinois Press, 1988), pp. 271–313.
- <sup>27</sup> Imran Ali writes that the British relied on the landowning segment in Punjab, a class they had created by their 'grants' of large plots, 'for political support, revenue returns, and military recruitment.' See *The Punjab Under Imperialism, 1885–1947* (New Delhi: Oxford University Press, 1989), pp. 4–5.
- <sup>28</sup> Kumkum Sangari and Sudesh Vaid, "Recasting Women: An Introduction," in *Recasting Women: Essays in Colonial History*, ed. by Kumkum Sangari and Sudesh Vaid (New Delhi: Kali for Women, 1989), pp. 5–6.
- <sup>29</sup> Ayesha Jalal, "The State and Political Privilege in Pakistan," in *The Politics of Social Transformation in Afghanistan, Iran, and Pakistan*, ed. by Myron Weiner and Ali Banuazizi (Syracuse, NY: Syracuse University Press, 1994), pp. 152–83.
- <sup>30</sup> Peter Uvin, *Aiding Violence: The Development Enterprise in Rwanda* (West Hartford: Kumarian Press, 1998), p. 145.
- <sup>31</sup> For a comprehensive discussion, see Eric M. Blanchard, "Gender, International Relations, and the Development of Feminist Security Theory," *Signs* 28 (4), 2003, pp. 1289–314.
- <sup>32</sup> *Ibid.*, p. 1303.

- <sup>33</sup> Christine Sylvester, *Feminist Theory and International Relations in a Postmodern Era* (Cambridge: Cambridge University Press, 1994), p. 183.
- <sup>34</sup> For a recent overview of security issues and studies in South Asia, see Swarna Rajagopalan's "Women and Security: In Search of A New Paradigm," in *Women, Security, South Asia: A Clearing in the Thicket*, ed. by Farah Faizal and Swarna Rajagopalan (New Delhi: Sage Publications, 2005), pp. 11–88.
- <sup>35</sup> See for example the *Archive on Women, Conflict, and Security* (Islamabad: SDPI, 2001), a series of working papers brought out by SDPI, and Anis Haroon, "'They Use Us and others Abuse Us': Women and the MQM Conflict," in *Women, War, and Peace in South Asia: Beyond Victimhood to Agency*, ed. by Rita Manchanda (New Delhi: Sage Publications, 2001), pp. 177–213.
- <sup>36</sup> For example, Shahnaz Rouse, "The Outsider(s) Within: Sovereignty and Citizenship in Pakistan," in *Appropriating Gender: Women's Activism and Politicised Gender in South Asia*, ed. by Patricia Jeffrey and Amrita Basu (New York: Routledge, 1998), and Shahnaz Khan, "Locating the Feminist Voice: The Debate on the Zina Ordinance," *Feminist Studies* 30 (3), 2004, pp. 660–85.
- <sup>37</sup> Sukanya Bannerjee et al., "Engendering Violence: Boundaries, Histories, and the Everyday," *Cultural Dynamics* 16 (2/3), 2004, p. 125.
- <sup>38</sup> Nancy Scheper-Hughes, "The Genocidal Continuum: Peace-time Crimes," in *Power and the Self*, ed. by Jeannette Mageo (Cambridge: Cambridge University Press, 2002), p. 30.
- <sup>39</sup> These figures are based on the survey conducted by our team.
- <sup>40</sup> These tribes, who migrated from Balochistan around 500 years ago, are scattered across Sindh and southern Punjab. For their history in the colonial period, see David Cheesman, *Landlord Power and Rural Indebtedness in Colonial Sindh: 1865–1901* (Richmond, UK: Curzon Press, 1997), and J. Royal Roseberry, *Imperial Rule in Punjab: 1818–1881* (New Delhi: Manohar Publications, 1987).
- <sup>41</sup> The dichotomy between agricultural and non-agricultural castes was instituted by the British with the Land Alienation Act of 1900, under which only those deemed agricultural castes could own or lease land. See Ali, *Punjab under Imperialism*, supra note 27, p. 5.
- <sup>42</sup> For a historical perspective on Pakistani administrative structures, see Charles H. Kennedy, *Bureaucracy in Pakistan* (Karachi: Oxford University Press, 1987); for a contemporary scrutiny, see Shahrukh Rafi Khan, *Pakistan Under Musharraf (1999–2002)* (Lahore: Vanguard Books, 2004).
- <sup>43</sup> Fictitious name.

- <sup>44</sup> It is customary in common parlance as well as the existing literature to use 'sub-caste' and 'tribe' interchangeably when discussing the Baloch.
- <sup>45</sup> Only Channa women of the landlord class and the Baloch women in Basti Arfani are strict about covering their faces in the presence of men who do not belong to their immediate family.
- <sup>46</sup> The big landlords allow their young daughters to pick cotton, but not their daughters-in-law.
- <sup>47</sup> For a discussion of how the introduction of land inheritance concepts by the British led to the systematic exclusion of Muslim women from landownership, see Nighat Said Khan, "The Political Economy of Pakistan: An Overview," in *Unveiling the Issues: Pakistani Women's Perspectives on Social, Political, and Ideological Issues*, ed. by Nighat Said Khan and Afiya Shehrbano Zia (Lahore: ASR publications, 1995), pp. 5-6.
- <sup>48</sup> Among Muslims, 2.5% of the value of assets or savings should be given to the poor; this obligation may be discharged at a personal level and may also be enforced by the State.
- <sup>49</sup> Joseph, "Gender and Relationality Among Arab Families in Lebanon," supra note 25, p. 467.
- <sup>50</sup> Suad Joseph, "Brother/Sister Relationships: Connectivity, Love, and Power in the Reproduction of Patriarchy in Lebanon," *American Ethnologist* 21 (1), 1994, p. 66.
- <sup>51</sup> While at first they would only discuss sexual violence with the males on our team, in the last half of our stay they did speak of it to the women as well, without referring to the actual rape at the *daira*. I attribute this change to their feeling more comfortable with us, as well as to our increased engagement with the issue once we started to get women's perspectives.
- <sup>52</sup> The police 'settled the matter' in his favour.
- <sup>53</sup> Traditionally, each *kammi kameen* group was associated with a task in the service of the landlords, who in return provided them grain. The Mochis, for instance, made the landlords shoes, but since the latter now buy their shoes commercially, older Mochis are forced to make shoes for the market and supplement their income through other labour.
- <sup>54</sup> Scheper-Hughes, "The Genocidal Continuum," supra note 38.
- <sup>55</sup> See, for instance, Haroon, "They Use Us and others Abuse Us," supra note 35, p. 212, and Lubna Nazir Chaudhry, "Reconstituting Selves in the Karachi Conflict: Mohajir Women Survivors and Structural Violence," *Cultural Dynamics* 16 (2/3), 2004, pp. 259-90.
- <sup>56</sup> See <[http://news.bbc.co.uk/2/hi/south\\_asia](http://news.bbc.co.uk/2/hi/south_asia)> for a series of articles on Mukhtar Mai, sometimes referred to as Mukhtar Bibi.

## Missing Niche Audiences and Underground Views on Sexual and Gender-based Violence in Sri Lanka

SHERMAL WIJewardene

### Introduction

Despite increased awareness of and a widening of the range of research and analysis on sexual and gender-based violence in Sri Lanka in the past decade, the specific concerns of those identified as lesbian, gay, bisexual, transgendered, intersex and questioning (LGBTIQ) are yet to have an impact on mainstream discussions and consultations. This chapter addresses the lack of purchase for LGBTIQ views, urging the necessity of involving the voices of these communities in transformative social action on sexual and gender-based violence.

The alienation of LGBTIQ perspectives is found at the very core of mainstream discussions on sexual and gender-based violence, whose conceptual frameworks and terms of participation are still not informed by an awareness of LGBTIQ identities and realities. This is apparent in critical positions on 'gender' and 'sexuality'. Acknowledging that the specific realities of those identified as LGBTIQ are relevant to researching and discussing sexual and gender-based violence would require constant revision of critical positions on 'gender' and 'sexuality' in research and discussion mandates. More than anything else, it requires some conceptual sensitivity to consistently deploy the categories of 'gender identity' and 'sexuality' on a more inclusive and contingent basis. And in order to admit LGBTIQ perspectives, our critical frameworks for sexual and gender-based violence must accommodate an awareness of diffuse manifestations of power and violence.

While a sensitive review of critical frameworks can do much to raise awareness of the involvement of these stakeholders on the subject, it would be naïve to assume that these measures in themselves are sufficient to enable their participation. Deep-rooted and pervasive

social marginalisation is undeniably central to their alienation from mainstream transformative research that concerns them in a way that cannot be addressed by mere conceptual responsiveness. However, it is important to obtain acknowledgement that these initiatives need to be informed at a fundamental level by the multiple sociopolitical-cultural constraints on the inclusion of LGBTIQ-specific concerns.

*Launching LGBTIQ views on sexual and gender-based violence in the public space: LGBTIQ lobbies in Sri Lanka*

Increasingly, Sri Lankan LGBTIQ lobbies have kept LGBTIQ positions on sexual and gender-based violence in the public eye through a strategic annexing of public space. In recent times, the most visible of these groups, Companions on a Journey, the Women's Support Group (WSG), and Equal Ground have voiced these concerns through media interventions and publications, among other means.

Two examples of such activism are the episodes in 2005 related to the International Day Against Homophobia, May 17. On this day, Equal Ground launched an educational booklet on homophobia and human rights, *Human... Right?* in a mixed gathering in Colombo. Intended as an accessible introduction to the human rights issues relevant to sexual and gender-based violence for both young and old readers, the booklet inaugurates a new chapter in the research in these domains in Sri Lanka. A week later, the WSG published a paid advertisement in the Sinhala daily newspaper, *Ravaya*, appealing to all citizens to take a stand against homophobia just as they would condemn any other form of discrimination in society. The appearance of the advertisement was delayed by the refusal of two newspapers (Sinhala and English dailies) to publish it because of its 'objectionable' references to homophobia.

This gatekeeping may have come a little too late. The WSG had already succeeded on one previous occasion in using paid advertisements in newspapers to break the silence on the country's sexual minorities. In 2004, the WSG made a strategic intervention in the flurry of promises accompanying elections in Sri Lanka. Using a paid advertisement published in several Sinhala and English dailies, the group queried the lack of representation in any party manifesto of marginalised communities—lesbians, bisexuals, transgendered

persons, commercial sex workers and people living with HIV/AIDS. It followed up this protest by inviting responses to be e-mailed to a recipient named, significantly, 'the floating vote.' Acknowledging a gamut of marginalised identities, the 'challenge' makes mocking use of the language of electioneering to highlight their disenfranchisement, even as it makes a strategic demand for a voice by offering itself to candidates as a potential voter population hitherto ignored. However its success is measured, the intervention undeniably made clever use of the discourse of political representation in more than one way.

*Ceding public space to negative narratives of violence against LGBTIQ persons: print media reportage*

Sadly, inspired interventions such as these are also reminders that they can aspire to only furtive visibility in the fraught forum of the Sri Lankan print media. Sporadic newspaper accounts of sexual and gender-based violence involving LGBTIQ persons within families, workplaces, law-enforcement scenarios etc. arguably constitute the most visible discussion and pool of 'information' on this subject, but have also kept negative or harmful narratives in circulation in the public space. An archive of reports from Sinhala newspapers on violent incidents involving transgendered persons reveals as many as 11 reports between March 2000 and May 2005, almost all exploitative and sensationalist information/opinion pieces designed to rouse the curiosity of readers (on one occasion, a series of reports kept alive this interest for three weeks). Headlines, translated from Sinhala, include:

I was a woman until three years ago, when I became a man: then I was to be married to my friend Vasundara' (S. Weeraratne, *Lankadeepa*, 9 March 2000);

Young woman arrested for duping other women into marriage while disguised as a man (V. Kumarasiri, *Lankadeepa*, 6 January 2001);

Woman who entered into marriage disguised as a man is discovered with mental health problem (M. Goonesekera, *Lankadeepa*, 23 January 2001);

Youth turns into 18-year-old girl on Dambulla temple grounds (K.K. Ariyadasa, *Lankadeepa*, 10 March 2004);

Young woman disguised as a man spent a year and a half of conjugal life with another woman (S.P. Nammunige, *Sunday Lakkima*, 28 January 2001);

This is how 'Devinda,' married for many years to a young woman, was exposed as a woman disguised as a man (S.P. Nammunige, *Sunday Lakkima*, 4 February 2001); and

After revelations that Buddhima's spouse was a woman disguised as a man... (S.P. Nammunige, *Sunday Lakkima*, 11 February 2001).

Although this scanty number cannot be representative of the incidence of such violence, the collection is a useful partial index of reporting on this subject. Awareness of the gender-based persecution and discrimination experienced by the LGBTIQ persons concerned is patently missing in these accounts.

The profile given to such reports has often damaged the interests of those identifying as LGBTIQ, rather than generated a sense of the need to involve their voices in discussions on sexual and gender-based violence. There are cases suggesting that, in the absence of voices challenging homophobic views, visibility in the print media only fuels sexual and gender-based violence, such as the notorious incident in connection with an announcement by the WSG in the print media of a regional LGBT conference in December 1999. On 7 August 1999, *The Island* published a 'citizen's letter' from Mr. P. Alles in which he called for the mass rape by convicts of the lesbians at the conference. Although Companions on a Journey and the WSG made a strong protest to the National Press Council of Sri Lanka against the publishing of views inciting hate-crimes against sexual minorities, the Council upheld the right of a citizen to publish his comments in the press.

Accounts of sexual and gender-based violence published by LGBTIQ lobbies in newsletters and other documents are expectedly more sensitive to issues involving LGBTIQ persons. Examples even include research-and-report exercises set up as 'correctives' to reports in the press. However, their influence has remained confined to a small readership.

As a *review* of the constraints on the involvement of LGBTIQ perspectives in discussions on sexual and gender-based violence is beyond the scope of this essay, I have presented the *idea* of constraints through two related approaches which attempt a partial assessment of both public and private dimensions of the question. The first section, based on a survey of newspaper reviews, considers the public discourse in response to the controversial Sinhala film, *Flying With*

*One Wing*, which featured events in the life of a transgendered Sri Lankan. It examines how this discourse sought to regulate the expression of LGBTIQ-specific concerns and the emergence of LGBTIQ audiences (hereafter 'niche audiences') for the film. The second half of the essay moves from this analysis of 'public documents' to consult the private views of lesbians and transgendered persons/female-to-male transsexuals on sexual and gender-based violence, who may well have been members of the missing 'niche audiences' for Handagama's film. The tools used to access their views included a questionnaire and follow-up interviews. The questionnaire elicited their responses to 'sexual and gender-based violence', including their awareness of its meanings, their identification or otherwise with its scope, and their re-definition of its possibilities. The objectives were to identify these communities as potential stakeholders in the issue; to draw out views not usually solicited on this subject; and to provide these communities an opportunity to reflect on their own levels of awareness and to analyse their perspectives.

### **The missing niche audience for *Thani Thatuwen Piyabanna*/*Flying With One Wing***

'Apé vágé sanskruthika jeevithiyak nethi samajayaka oba apeksa karana diyunu samaja kathikaava kiyana eka hatheitha?'

('Can a progressive social discourse such as the one you anticipate be formed in a society like ours which has no cultural life?')

Thilak Kodagoda to Asoka Handagama<sup>1</sup>

Perhaps no recent work of art has showcased constraints on the 'right to speak' of atypical gender behaviour and sexual choice in Sri Lanka as provocatively as Asoka Handagama's *Thani Thatuwen Piyabanna* or *Flying With One Wing* (2003), hereafter *FWOW*. From the start of the film's circuit of the international film festivals in 2002 to its debut at the Sri Lankan cinemas in early 2003, its presentation of sexual and gender-based violence both physical and mental—however misunderstood, resisted, defended—earned credit for one main reason: that it made possible a *samaaja kathikaava* (social discourse).

Set in the seaside town of Galle in Sri Lanka, *FWOW* presents the tragic turn of events following the accidental discovery of the protagonist's transgendered identity. Employed as a garage mechanic

in the village and happily married to a young woman who maintains their home, the unnamed protagonist has a lot to lose if exposed as a 'woman' by the doctor who makes the discovery. The doctor's clinic is the site of parallel narratives involving forced abortions and other forms of sexual and gender-based violence. Other such narratives are enacted in the protagonist's workplace, where young female employees are sexually harassed by their superior. The protagonist's fraught circumstances are complicated further by an alliance with a homosexual co-worker who desires him. These are the cinematic contexts built by Handagama around a story inspired by the real-life events reported in three *Sunday Lakkima* news features (mentioned above).

Once the film was screened before local audiences, the *samaaja kathikaava* around it was manifest most visibly at the numerous public symposia organised in Colombo and elsewhere, with panel presentations drawing packed audiences. Public seminars with a range of speakers—including a former priest, politicians from left- and right-leaning political parties, an editor of an English newspaper, a photographer-filmmaker, a writer, and representatives of smaller independent political groups—inaugurated the spectacular phase of this social discourse, with provocative rhetoric and energetic wrangling. Whatever other impact the film had on sexual and gender-based violence in Sri Lanka, it had created a 'space' or an *avakaashaya* for *discourse* on gender/sexuality/the body/patriarchy/violence. In other words, it had introduced the value of 'dialogue' on the above concerns, where previously only constraints had been apparent. And whatever other aims were achieved by these public seminars, they were clearly self-consciously celebrating their place in this *samaaja kathikaava*, this new 'permission to speak' of sexual and gender-based violence. To this extent, the film's very presentation of these constraints was invoked as a step towards the 'freeing' of social discourse in Sri Lanka. Attending two such symposia, I wondered whether this *samaaja kathikaava* endorsed the lifting of *all* the constraints on discussing the issues of gender non-conformity and sexual choice explored by the film. Thinking specifically of its presentation of sexual and gender-based violence against lesbians and transgendered persons, I asked myself three questions:

After this event, which also contributes to sociopolitical discourse, will 'sexual and gender-based violence' continue to be ghettoised in public rhetoric as 'women's issues'? Or will this *samaaja kathikaava* radicalise the domain by involving LGBTIQ-specific perspectives on sexual and gender-based violence? Can we hope, at least, for an acknowledgement of the constraints on mentioning sexual and gender-based violence against LGBTIQ persons?

These questions stayed with me, and encouraged me to look for answers by searching out more permanent embodiments of the social discourse than the public seminars. I began to put together a corpus of printed matter on the film, sourced from the Sinhala and English print media, feminist quarterlies, 'leisure' magazines, social science journals, Internet sites, and an unpublished collection of newspaper commentary on *FWOW* compiled by Sanghida Printers, Colombo. My primary aim was to scan a selection of 100 commentaries for any discussion—however slight—of *FWOW*'s projection of sexual and gender-based violence against lesbians and transgendered persons. *I wished to see if this violence had been noted, and given its due salience as one of the film's major victories in achieving this celebrated breakthrough* discourse. At the same time, I also realised that the lack of such a discussion might itself constitute a significant finding. We may need a theory/theories of cinematic representation that helps us articulate the relation between the visual constitution of atypical genders or diverse sexualities and the empowerment of different 'reading' practices. Perceiving that this material was valued as publicity for the *film*, as much as for the *samaaja kathikaava* it had generated, I assumed I would encounter anxious attempts to monitor the consequences of publicity. In other words, the absence of such discussion may be the obverse of a discreet policing—strategies to look out for and preempt commentary directing attention to the film's handling of sexual and gender-based violence against lesbians and transgendered persons.

Archiving a social discourse formed two years earlier, I was confronted with reminders of its immediacy. Far from being a collection of historical documents that had served their purpose and exhausted a debate, the social discourse was ripe for a discussion on its continuing 'openness.' Even in 2005, *FWOW* was playing to both local and international audiences. It was screened at the French Film

festival in March 2005 in Colombo, and also at a Sri Lankan cinema retrospective at the Cannes Film Festival in May 2005. Apart from actual screenings, the *avakaashaya* (space) for social discourse created by the film two years earlier remained something on which it could capitalise to attract audiences. Media commentary on the film was compiled for publication in Colombo (the compilation on which the present essay draws). Providing a chance to re-scrutinise the *kathikaava*, this compilation will ensure that it endures in popular memory. The *kathikaava* now also has the crucial dimension of 'hindsight' on the issues debated. This is an opportune moment to re-visit the body of ideas on the 'permission to speak'—to revise, recant, rephrase ideas that can now be perceived as premature, and to continue to luxuriate in the visibility of the exercise. I examine this corpus of commentary to test if the same prospects obtained within the *kathikaava* to assign a high profile to sexual and gender-based violence against lesbians and transgendered/female-to-male transsexual characters.

#### Analysis of the *kathikaava*

*FWOW* features 18 instances of sexual and gender-based violence targeted at a female-to-male transsexual and gay man. These incidents also include violence inflicted on the protagonist and his partner when the public exposure of his natal female identity leads the mob to perceive them as lesbians. The different types of violence include *inappropriate touch* (three instances), *derogatory language* (two instances), *coercion* (two instances), *bullying* (one instance), *intimidation* (one instance), *indecent exposure* (two instances), *threat of dismissal* (one instance), *forcible stripping* (one instance), and five incidents of mob violence—*stone-throwing*, *indecent graffiti*, *jeering*, *whistling*, and *the demeaning mimicry* of transgendered self-expression. Apart from this laundry list of brutalities, *blackmail* constitutes the most pervasive form of violence in the film. *FWOW* also contains 14 instances of sexual and gender-based violence against women, either represented directly, or recounted by female characters. These include *sexual harassment*, *rape*, *incest*, *seduction*, *coercion*, and *forced abortion*.

Despite the high levels of on-screen violence against lesbianism and female-to-male transsexual self-expression, only 12 of the 100

reviews scanned recognised this violence as homophobic and transphobic. The majority emphasised the film's main thematic as 'violence against women,' or the protagonist's transgendered identity was interpreted as a woman's desperate strategy to escape her powerlessness in a patriarchal society, and the chain of violent events was interpreted accordingly.

Only half of the 12 articles mentioned above contextualised this violence within the *samaaja kathikaava*, seeing beyond the cant of the 'permission to speak' granted gender-atypical behaviour and sexual choice to the very real possibility of a canny pragmatism surfacing from various quarters within the *kathikaava* to consent to the (long-withheld) visibility of this violence in a prominent work of art. Two of these reviews can be juxtaposed to bring out their contrasting views on this opportunity. Champika Ranawaka notes warily:

There is room for this film to be used as a propaganda tool in the service of gay communities. However, considering the progress of gay organisations in Sri Lanka today, the influence which can be exerted by this film can only be minimal.<sup>2</sup>

The fear of the film being deployed as propaganda by the so-called 'gay community' invokes the bogey of gay identity politics to remind audiences that any response to the violence of hegemonic positions on gender and sexual expression risks succumbing to that propaganda. It is implied that the constraints on the *kathikaava* must be zealously guarded to avoid this eventuality, and any appropriation of this public space by the gay community be recognised as 'propaganda.' Below are the arguments that can be distilled from this review.

The *kathikaava* on the film's potential to lift the constraints on the 'permission to speak' (of the violence associated with hegemonic positions on gender and sexuality) is obviously an ideological contest playing out before the general public, not addressed specifically to a defined 'gay community.' Yet the *space/avakaashaya* for an inclusive discussion on the cinematic projection of sexual and gender-based violence can encourage the participation of diverse group interests, and by extension risks conceding a certain legitimacy to marginal positions, specifically the political agendas of the 'gay community.' Audiences are cautioned to resist responding to this cinematic violence,

as it would entail an alliance with a seductive marginality. It is claimed that the country's gay organisations are not positioned to make capital of any propaganda in their favour.

This line of argument is not anomalous in the *kathikaava*. Its warning tone lays bare a pervasive unease discerned in other contributors about unfettering completely social discourse on sexuality. These interventions are keen to deflect the liberal humanist delight in lifting constraints and pushing boundaries, and to radicalise, for readers and contributors, the very real social and personal choices involved in lifting constraints. The film's kaleidoscopic projection of sexual and gender-based violence as, *at the same time*, homophobic and transphobic violence, sexual harassment, rape, seduction, forced abortion, incest, and coercion is far from the predictably variegated cinematic spectrum of sexual and gender-based violence with which viewers are familiar. As such, these commentaries remind viewers of their responsibility to themselves to examine any provisional or equivocal commitments they may feel to discussing a particular aspect of this cinematic projection—such as homophobic and transphobic violence. It is only a short step from this advice to imply that this cinematic projection has already compromised the viewer's choice to commit herself to an open discussion on a *general* thematic of sexual and gender-based violence. The rationale for this position recognises that *a discussion on homophobic and transphobic violence constitutes gay rights propaganda, which is different from the freeing of constraints enabled by the film's imaging of other forms of violence*.

Dhamma Dissanayake's observations also glimpse the opportunities to lend visibility to this violence in a *kathikaava*, but differ in their affirmative approach.<sup>3</sup> From his point of view, the film is able to prompt a radically open discussion on the 'discourse surrounding sexuality' because it retrieves this discourse from a peripheral position:

In Sri Lanka, as in the rest of the world, sexual relations and the discourse surrounding sexuality are mystified. Even today it remains secret. It is considered as something which should not be discussed, and is ignored. Thus, sexuality is socialised as unimportant or insignificant. As a result, silence reigns over social oppressions and inhuman social institutions based on sexuality. However Handagama in *Flying With One Wing* treats this marginalised zone, that is usually cast aside, as a central or significant

theme, and engages in an analysis of the total crisis surrounding it. It is extremely decisive, but it is a responsibility.<sup>4</sup>

According to Dissanayake, the absence of an open and freethinking discourse on sexuality is the flip side of a society in which the oppressive regulation of sexuality goes unnoticed. Although his statement on the 'marginalised zone' is carefully evasive of more specific reference, he appreciates its centrality in the film as a step towards inaugurating an open 'discourse surrounding sexuality.' While the term is used by him to allude to the virtual invisibility of sexual relations as well as the oppressions based on sexuality that consequently continue unchecked, in the present essay, 'marginal zone' refers to the film's representation of oppression in the form of sexual and gender-based violence. *FWOW* does succeed in inaugurating a public *kathikaava* on sexuality, as Dissanayake argues, but his analysis is not sufficiently critical of how the very openings it provides serve to contain responses. In other words, we may applaud this film for representing the 'marginal zone' to break the silence on sexuality; however, has this also empowered voices identifying with that 'zone'? Or do we care?

#### *Losing the plot: FWO's cinematic-ideological provocation on sexuality*

Dissanayake's statement should be contested on its most basic premise. *FWOW* does *not* provide a central position to the marginal zone of 'social oppressions and inhuman social institutions based on sexuality.' Indeed, were we to accept Dissanayake's thesis, we would be entitled to expect a different engagement with the film: one in which just the representation of the marginal zone—i.e., the film's visual constitution of sexual and gender-based violence against women, non-heteronormative sexual relations, and atypical genders—is proffered as the basis of a *kathikaava*. Even a cursory overview of the *kathikaava* proves that a mere reversal of margins-centre relations could not have fuelled such heated debate. Let us also consider if the marginal zone attains a central position vis-à-vis the film's main visual theme, which is that of 'scrutiny.'

*FWOW*'s visual language of scrutiny constitutes characters within the film—such as the football players, the mechanics, the family next

door—as model spectators for the protagonist's performance of gender well before the final scene when, in fact, the roles of both performer and spectator crumble. The audience's gaze can be modelled on that of the character-spectator: viewers may employ the same techniques for scrutinising the protagonist's performance of gender. Consider, then, if this performance of gender can hold a thematically central position in the film under the double scrutiny of character-spectators and film audience. Is it not, rather, continually displaced by this double scrutiny? I have also suggested elsewhere that the film instils apprehension in the viewer over the protagonist's gender presentation, not allowing for many attitudes towards his life choices other than vigilance, pity and fear.<sup>5</sup> Insisting on the thematic centrality of the marginal zone may lead us to misread the film's movement, which is to *constitute marginality as provocation, and in doing so appear to give it centrality. Thus, though the film does not in fact bring the margin to the centre, its very constitution of the marginal zone succeeds in arousing debate.* It is this provocation and the resistance to it that occupy the central thematic position in the film.

What this cinematic-ideological provocation achieves at the level of a *kathikaava* is a visible clash with the constraints on representing the marginal zone of sexuality. In fact, the *kathikaava* arises from the cathartic confrontation with these constraints. Although this, in itself, is a justifiable exercise, this catharsis is sometimes no more than another form of resistance to this provocation or a reactive support of it. The *kathikaava* has produced some of the most blatant and hysterical attempts at viewer censorship *by* viewers in recent memory. These alone should indicate that the provocation has worked, and the constraints have been brought to the surface. But is this exercise productive? Consider one of the most common reactions, in which a commentator adopts an avuncular role vis-à-vis local audiences, and tries to frame their reception of a range of flashpoints in the film according to the (re-drawn) boundaries of 'our culture.' Some of these flashpoints include:

- full-frontal female nudity in Sinhala cinema, said to have created a breach for the entry of pornography into national culture
- full-frontal female nudity, discussed in the context of the morality of using the director's wife to sell the film

- hate-crimes against lesbians, excused because lesbianism is unnatural because of its refusal of the sacred role of motherhood, among other reasons
- transgendered self-expression, accounted for as a form of aberrant resistance where women take on a 'masculine spirit' to avoid living with violence under patriarchy
- tobacco use in the film, seen as an insidious way of pushing this habit on a new generation to oblige corporate sponsors

Consider now some of the most common 'reactive' forms of support for the film's provocation:

- self-flagellating digressions on the patriarchal oppression of women
- smug, back-to-square-one, 'social constructivist' views of gender and sexual choice
- luxuriously bleak histories of cartoon sex and sexuality in Sinhala cinema before the revolution brought about by *FWOW*
- gloating attacks on the superficial activism of the country's feminists in comparison with this film's courage

Without cynicism or caricature, this small window on the *kathikaava* allows a reader to judge the worth of eliciting such responses. Furthermore, to pick up the reviewer's concern with audiences, even a cursory analysis of the *kathikaava* indicates that the readings represented above have overshadowed the emergence of other responses that are not reactive in the same way. There are also responses which consider the provocation a reactionary cinematic strategy, and the *kathikaava* generated no more than a boundary-policing parade of views. These are responses which do not represent a knee-jerk reaction to the provocation, but quietly acknowledge its rhetorical value for a discourse on sexuality; unfortunately, they are lost in this flurry.<sup>6</sup> Similarly, commentaries which ignore the provocation, or take it for granted, have little continuity or space within the *kathikaava*.

Quite clearly, a tyrannical focus on discursive constraints and their cathartic breach has had a reductive effect on the *kathikaava*. It has not only inhibited different readings of the film; it has also threatened the emergence of audiences who see the 'provocation' as a distraction. Malinda Seneviratne and Dhamma Dissanayake are

among the few critics alert to the possibility that a discussion of constraints within this *kathikaava* need not be reductively boundary-hugging, but can actually enable a broader exchange of views. For instance, Seneviratne certainly privileges a wider array of audience reception theories over an investigation of director intentionality.<sup>7</sup> However, both also display intense suspicion and anxiety over the proliferation of audiences and the cultivation of tastes encouraged by the film. They warn that as the 'open' text it now is, the film may be annexed by narrow sectarian interests. They complain, high-mindedly, that the film has stimulated 'political' responses that are too self-interested to have a place in film reception theories. Although this advice is deliberately too vague to constitute the censorship of a particular voice, the attempt to make the cinematic focus of sexual and gender-based violence too 'precious' for 'niche' opinion is highly suspicious. It nets a range of responses obviously inspired by the unprecedented profile given to these usually hidden concerns, and undermines their position within the *kathikaava*. For instance, as a perspective on the currency of *kathikaava* readings concerned with the visibility of violence against lesbians and transgendered characters, this essay also can be held up as evidence of these much-feared niche audiences. Insisting primly on a 'disinterested' tone for all commentators, while delighting in a discourse on sexuality lent piquancy by cinematic representations of violence against non-heteronormative sexualities and gender transgression, is, undeniably, disingenuous.

### *The fear of 'niche' audiences*

Let us examine the magnanimity of this call for wider audiences, this touting of the film as a text belonging to its audiences, paradoxically accompanied by paranoia about audiences, at a historical moment when the *kathikaava* of *FWOW* is once more under scrutiny. Alexander Doty has examined the significance queer audiences place on assigning 'queer versions of authorship' to mainstream films:

[W]e might recognise a queer version of authorship in which queerly positioned readers examine mass culture texts ... in order to indicate where and how the queer discourses of both producers and readers might be articulated within, alongside, or against the presumably straight

ideological agendas of most texts. These types of queer readings are tricky and interesting because they establish queer authorial discourses by negotiating a range of textual meanings caught somewhere between auteurist considerations of director (or star, writer, etc.) intentionality and cultural/cultural studies considerations of reception practices and uses of texts.<sup>8</sup>

However cautiously asserted, Doty's thesis is biased towards audiences seeking meanings from clearly identified subject positions. His 'queerly positioned readers' of cinema do not threaten to overwhelm cinematic discourses with their responses; their interests are unapologetically identified, legitimate directions of inquiry. Responding 'within, alongside, or against' other cinematic readings, they are neither sheltered nor privileged by their identification as 'queerly positioned readers'. However, they do attract critical interest, both as an 'audience' identified by such a focus, and for the value accorded to any evidence of a 'cultural correspondence' in their society's cinema to their lives.

If we were to 'revise/recant/rephrase' the commentary from the *kathikaava* armed with this insight, the insidious undermining of niche audiences merits a direct challenge. What can claim the status of a disinterested and representative commentary? If the ground is prepared for distinguishing the interests of niche audiences and general audiences, whose interests does this serve? Whatever the outcome, the exercise seems to signal strongly that some meanings derived from *FWOW*'s cinematic focus on sexual and gender-based violence—such as the regulation of the conduct of lesbians and transgendered persons—will only interest and be highlighted by niche audiences. By the same token, it also implies that mainstream audiences may engage with the film's 'other' representations of sexual and gender-based violence, such as macho masculinity and violence against women, to the exclusion of all other considerations.

### *FWOW's depiction of LGBTIQ 'social reality' and the empowerment of LGBTIQ audiences*

There is good evidence that 'carving up' *FWOW*'s representation of violence has had a debilitating effect on theorising the cinematic constitution of sexual and gender-based violence and audience reception. It has virtually stifled a debate on how theories of reception

might be enriched by discussing some of the patent incongruities between cinema and a social discourse on sexuality. Consider the award given to *FWOW* at the San Sebastian Film Festival in 2002, by the Basque gay and lesbian GEHITU Association for the 'movie best reflecting the reality of lesbianism and homosexuality'. Handagama has explained in an interview that the award symbolised the appreciation of the city's gay and lesbian community for the film's reflection of their 'social reality'.<sup>9</sup> Is there a more ironic statement on the *kathikaava* than this citation? The events of *FWOW* are based on newspaper reports of an incident in 2001, the arrest of a transgendered person in Marawila, who had lived in 'matrimony' with a woman.<sup>10</sup> Yet, apart from 12 out of the 100 commentaries scanned which take note of the film's engagement with lesbianism and transgendered behaviour, there is little analysis of the visibility and 'visuality' of this cinematic adaptation of a newspaper report in terms of the 'social reality' of that historical incident. This gap in the *kathikaava* may be illustrated by Rosemary Betterton's arguments for scrutinising the means by which different reading practices are elicited by visual culture:

If, as Nicholas Mirzoeff describes it [in Nicholas Mirzoeff, *An Introduction to Visual Culture* (London: Routledge, 1999), p. 4], the study of visual culture is not so much a discipline, but 'a tactic ... a fluid interpretative structure, centred on the response to visual media of both individuals and groups,' then there is some urgency in thinking about the processes through which individuals and groups are empowered to respond or not.<sup>11</sup>

Let us extend Betterton's use of Mirzoeff's analysis of the study of visual culture as a 'tactic' to our inquiry into the empowerment of *FWOW*'s audiences. The views of international audiences continued to filter into the *kathikaava* with the film's success at overseas film festivals. In 2003 alone, the film was submitted for presentation at six international lesbian and gay film festivals alongside mainstream film festivals. Clearly not governed by the same protocols as Sri Lankan audiences, these responses were disruptive and demanded that audiences be differentiated. The Regus London Film Festival review, dubbed *FWOW* as the 'most revolutionary South Asian film of the year,' describing it as an 'edgy story of transsexuality' and a 'community marked by homophobia and sexism'. A Vancouver

International Film Festival review observes that 'the film satirises gender roles, sexual bigotry, homophobia and the constant low-grade sexual harassment of "normal" small-town Sri Lankan society.' The audience invoked by the Vancouver review cannot be ignored in the *kathikaava* for another reason: the review expresses solidarity with Sri Lankan audiences for nearly missing an opportunity to view *FWOW* due to the controversy the film aroused at the censor board in Sri Lanka. Similarly, we may consider, for instance, the empowerment claimed through *FWOW* by the San Sebastian gay and lesbian audience. The reference in their citation to the film's correspondence with the 'reality of lesbianism and homosexuality' can be contested on many grounds. But it has already served another purpose, which is the focus of this essay. It has been transmitted to audiences in Sri Lanka, and has entered the *kathikaava*. As such, it has established two critical roles for itself in the debate: placing the 'reality of lesbianism and homosexuality' as another way of decoding the film, and presenting itself publicly as an audience empowered by this reading.

A Sri Lankan audience—lesbian, gay, straight, or otherwise identified—could have been formed as a response to this construction of the film, and might have examined the 'social reality' invested in the newspaper report of this story through the film adaptation. The Vancouver review's reference to *FWOW*'s parallels with *Boys Don't Cry* suggests a similar direction: queer audience analyses of the second film lifted the real-life hate crime against the transgendered Teena Brandon out of obscurity. But where, then, is the claim of the story in *FWOW* on the queer gaze in Sri Lanka? Handagama, although acknowledging his debt to the real-life events reported in the newspaper, rightly disclaims responsibility for 'telling a story' through his film, and has in fact, astutely suggested that the variety of local and overseas audience responses makes the question of 'telling the story' invalid.<sup>12</sup> The story as reported in newspapers certainly does not have the status of an originating matrix of ideas on 'the reality of lesbianism and homosexuality' as implied in Handagama's interviews. Instead, the film's adaptation of a mainstream Sinhala-language newspaper report places this cinematic version at the juncture of many reproductions of that 'reality'; it certainly does not have the status of a reflection of that 'reality.' So, if the citation

in San Sebastian is taken not as an evaluation of *FWOW*'s fidelity to a specific social context but as a reference to the empowerment of an audience through a 'tactical' engagement with the film's visuality, it is then necessary to consider if the film did empower such an audience in Sri Lanka. LGBTIQ-specific views were virtually absent in the *kathikaava*. Where, then, can we position the missing Sri Lankan 'niche [LGBTIQ] audiences' in relation to the *kathikaava*?

### The 'foreignness' of LGBTIQ perspectives on *FWOW*

Although only one of the 100 items scanned made direct reference to the San Sebastian audience,<sup>13</sup> other commentaries skirted warily round the consequences of the film's international exposure. As the boundaries differentiating audiences could no longer be assumed by protocols on what should be said, and these protocols were muddled as a result, various strategies had to be employed to reassert them in the public eye. Whatever was considered outré in Sri Lanka was most commonly assigned a space outside the nation, as another country's aesthetic-ideological preoccupations. Predictably, these included female nudity and sexuality.<sup>14</sup> Whether or not these issues had come up in the responses of overseas audiences, national borders were suddenly conveniently symbolic of this stated 'difference,' signifying that the discussion of these issues would take place 'elsewhere'—never mind *where*, geographically, as long as there remained unexamined faith in the contention that far-away borders would contain discourses on those issues that could not find place in Sri Lanka.

Despite initiating this differentiation, these commentaries are wary of any challenge to their specious boundary-marking. Their objective is clearly to forestall a discussion deemed 'inappropriate' (which this essay reads specifically as the visibility of violence against lesbianism and transgendered self-expression). However, what is deemed inappropriate must also be unequivocally defined as such, a taxing task for these commentaries. Establishing a boundary is, perhaps, the most difficult part of this exercise. Satha Ranasinghe, for example, is critical of the female nudity in the film, arguing that it runs counter to the sacredness accorded motherhood in Sri Lanka:

We have to face reality. However, we cannot build an England or a France. Although it is said that a nation that does not innovate cannot ascend the summit of the world, we should still retain the belief that respect for conventional and traditional ideas is important.<sup>15</sup>

While Ranasinghe takes feeble recourse to the boundaries of 'conventional and traditional ideas' setting the limits to 'innovation', her response is characteristically anxious about these boundaries. Her greatest fear is that the *kathikaava* has been made labile by the proliferation of audience views, particularly from overseas. The strongest response lies in extending the boundary beyond the immediate realm of apprehension, throwing the net so wide that 'conventional and traditional ideas' would prohibit much more in the film than female nudity. As a result, the purpose of boundary marking becomes a non-specific rhetorical challenge to the very volatile quality of the *kathikaava*. This attitude should be of concern to most critical positions, and not limited to an investigation of a 'queer voice' in the *kathikaava*.

Some representative responses are easier targets than others. In response to Nalin de Silva's observations that *FWOW* was a 'Western film despite its Sinhala dialogue'<sup>16</sup>, Sumathy Sivamohan inquires, 'What is the east? Is Sri Lanka, which is almost wholly a product of the violence perpetrated upon colonised peoples by European imperialism, the east?'<sup>17</sup> In case we perceive de Silva's views to be too soft a target for Sivamohan's critique, or so extreme an example of an already discredited school of thought as to be fit only for caricature, we should take note of their cachet in the *kathikaava*. In contrast, Sivamohan's estimation of *FWOW* as an 'important film ... [because] it shows a love for and intimacy with marginal people—marginal in the sense that these people have been denied citizenship in the country of Sri Lanka' stands alone in the corpus.<sup>18</sup> On the one hand, it shares ground with numerous commentaries that gloss the film's depiction of 'marginal people' as a denunciation of violence against women in Sri Lanka. On the other hand, if we are to infer that the film also discusses the marginality of lesbianism, homosexuality, and transgendered self-expression, then Sivamohan's 'marginal people' receive support only in an essay by Gamini Veragama.<sup>19</sup>

Sivamohan's response represents an empowering use of 'tactics' in assigning meaning to visual culture, in its endeavour to invert the

impact of a destructive polemic where the parochial articulation of national boundaries entailed the exclusion of discussions on 'marginal people' from the *kathikaava*. Her intervention wrested the initiative of the equation that defined the nation against the marginal, in arguing that the film's presentation of marginality as disenfranchisement would not permit grand narratives of the nation.

However, by its very isolation, Sivamohan's commentary draws attention to a crucial absence in the *kathikaava*: a lack of theories on empowering a 'queer gaze' on the film. And in the final analysis, the contrast between the views of Sivamohan and de Silva shows us a bleak aspect of the *kathikaava*: a poverty of conceptualisation which was responsible for its failure to empower audiences, queer, straight, or otherwise identified. In this vacuum, small wonder that the responses that emerged would alienate a body of uncertain, unheard voices from a discussion of marginality.

So we conclude the first part of this essay by pointing to a significant vacuum which the niche audiences of Handagama's film might have occupied, had they emerged. It was this vacuum that inspired my consultation with lesbians and female-to-male transsexuals, as an appropriate channel to pose the broad question that now lingers: *what constitutes awareness of 'sexual and gender-based violence' amongst LGBTIQ communities?* The form of the exercise—discreet individual consultations—sought to offer conditions of participation (in a discussion on sexual and gender-based violence) different from those for the missing niche audience.

### **Preliminary: Protest**

*'Not at all. We are invisible and illegal. And underground'*

This section is framed by the response of the second participant from among a group of 20 respondents consulted in March–May 2005 in Colombo, to my question as to whether the views of communities of those identified as LGBTIQ were reflected in any mainstream transformative research and action to combat sexual and gender-based violence in Sri Lanka. Her unequivocal reply became my inevitable point of departure, and this section begins by registering

her bitter protest and borrows her haunting metaphor, UNDERGROUND.

### **Journey UNDERGROUND: a consultation of LGBTIQ perspectives on sexual and gender-based violence**

In a country that still nurtures taboos and institutionalised discrimination against gender-variant behaviour and homosexuality, the rewards of research on LGBTIQ concerns on sexual and gender-based violence compete with a number of drawbacks for both researcher and participant. Therefore, I felt that one of the prime objectives of this study was accomplished when a small but revealing index of views on sexual and gender-based violence was formed with the participation of 17 persons self-identified as lesbian and female-to-male transsexuals (FTM). Here, I use Arlene Istar Lev's description of FTM as a range of experience broadly defined in terms of those who are 'natal females who live as men,'<sup>20</sup> and her definition of 'lesbians' as 'women who are sexually and emotionally attracted to other women'. In my preliminary research to select the participant group, the appropriateness of limiting this study to these two groups was immediately apparent, for although participants from these groups *could* have been part of the ideal target group of mainstream studies on sexual and gender-based violence, because their experiences could also be narrated in intersection with those of women who *are* consulted as a part of such research, such consultations, which would also have to register their gender-variant identification and sexual choices, have not been attempted too frequently.

These 17 voices emerged from a larger group of 20 persons chosen for the survey with the aid of personal contacts established through the WSG, the Colombo-based lesbian, bisexual and transgender peer support and advocacy organisation mentioned earlier. It was necessary to identify participants through the WSG, as most of these individuals tended to be cautious and unwilling to risk public exposure, despite assurances of confidentiality. Two persons declined to join the study, while one failed to confirm her participation. The final 17 participants were required to complete a questionnaire (prepared in both Sinhala and English) which gauged

their sensitivity to and views on the scope and reference of the term 'sexual and gender-based violence.'

Drawing out 17 participant voices and examining these UNDERGROUND meanings required a strict observance of both practical and philosophical considerations. Some participants were new to a consultation of this type, whereas others grasped what was required of them more readily. At the same time, the sensitive nature of the study called for careful observance of ethical considerations. Participants could only join the study once they were taken into confidence about the objectives to which they contributed. It was necessary to make a brief mention of the orientation of the study, as the first step. This step had to be taken with great care, however, to avoid lending a bias to their responses, or in any other way compromising their participation in the second stage of the consultation, which comprised the questionnaire. The transition between these two stages had to be negotiated carefully, trust and respect being paramount considerations.

#### *A 'bare-facts' profile of 17 UNDERGROUND voices*

All participants had at one time or other been associated with the WSG, having accessed its services or/and helped provide them. This would include attending its social events or meetings, or engaging in volunteer or full-time work. All are between 24 and 35 years old. 15 are resident in Colombo, while two reside in outer areas but are engaged in employment or other business in Colombo. Within this group, there were 10 degree holders (two had additional professional qualifications, while two held postgraduate qualifications), one diplomate, one school dropout, three with 'O' levels, and two with 'A' levels. One participant was unemployed, one was self-employed, and two were working in the education and health departments of the public sector. 13 were engaged in full-time private sector employment in a whole range of areas, comprising banking, management, marketing, advertising, the health sector, research, real estate, the media, as well as in women's and LGBT NGOs.

#### *Self-definitions*

While only a crude gauge of the differences between participants, the 'bare facts' above do signal the danger of assuming a facile commonality on the basis of sexual orientation or gender identity. Having spoken of their association with 'a community of LGBTIQ persons in Sri Lanka,' let us re-consider the use of the term 'community' to describe the participant group.

In a study of kinship relations among gay men and lesbians, Kath Weston has weighed the use of the term 'community,' retracing the history of its use in scholarship and activism. She questions the usefulness of studies that define and analyse gays and lesbians in terms of de-historicised and integrated collectives, asserting that the 'relationship between claiming an identity and feeling a sense of belonging or community' cannot be taken as given.<sup>21</sup> However, Weston recuperates the use of 'community', arguing that the history of its use also includes the contexts in which discourses on gay and lesbian groupings emerged. She contends:

Gay community can best be understood not as a unified subculture, but rather as a category implicated in the ways lesbians and gay men have developed collective identities, organised urban space, and conceptualised their significant relationships.<sup>22</sup>

Weston's definition of community raises an important question: with what self-definitions would participants have approached the study? The description 'community of LGBTIQ persons in Sri Lanka' was borrowed from the survey where its validity might have been challenged. However, neither the use of the term 'community' nor their identification with an 'LGBTIQ community' was disputed by participants. Instead, the statement of Participant 2, quoted above, offered an alternative way to gloss their common affiliations. This statement would resonate with Weston's definition of community as a 'category' rather than a 'unified subculture' and brings us to Sarah Thornton's analysis of 'subcultures' within the formal mapping of social groups in disciplines such as sociology, cultural studies, and subcultural studies.<sup>23</sup>

Sarah Thornton states in her introduction to an anthology of essays on subcultures, that social groupings, such as 'community/society/societies/cultures/subcultures', are charted through exercises

in representation' which *construct* these meanings. She warns that any assumptions of inferiority in the study of subcultures in these fields can impose 'subordinate, subaltern or subterranean' status to social groups assigned this label. As we try to ascertain if there is resonance between Participant 2's statement and Thornton's analysis of subcultures, we also need to be alive to the values disseminated by these critical paradigms.

According to Thornton's analysis, the broadest definition of 'subcultures' presents them as 'groups of people that have something in common with each other (i.e., they share a problem, an interest, a practice) which distinguishes them in a significant way from the members of other social groups'.<sup>24</sup> Although this broad definition of subcultures is applicable to the term 'community' as described by Weston, it is more sensitive than the latter term of the shared 'interests' and 'problems' registered in Participant 2's statement, which clearly maps out the common ground between the 17 participants, and between the participant group and a broader collective, by pointing to what distinguishes them from the rest of society, that is, their UNDERGROUND status. Thornton has observed that 'groups studied as subcultures are often positioned by themselves and/or others as deviant or debased'.<sup>25</sup> At first glance, Participant 2's statement may be perceived as such a self-positioning, but in the context of its expression, it is clearly a protest against outsider status. It is an oppositional perspective on disempowerment rather than a self-definition, which may itself lend an identity to the collective, such as that of 'subculture'. Participant 2's statement gives rise to these ambiguities, but does not commit us to the use of either 'community' or 'subculture' to define the participant group. Rather, as one voice that describes a collective to which it belongs, the statement performs a function similar to Leslie Feinberg's comments on the need to tread carefully when defining (the transgender) movements through language: '[T]he language I'm using in this book is not aimed at *defining* but at *defending* the diverse communities that are coalescing'.<sup>26</sup> Perhaps Participant 2's views on the collective she supports may also be perceived as a defence, rather than a definition.

# UNDERGROUND views: awareness

The questionnaire first focused on participants' exposure to discourses of sexual and gender-based violence. Fourteen participants confirmed familiarity with the term and the meanings attaching to it. This number, a significant proportion of the group, was distributed equally among English and Sinhala responses. But as this required closer scrutiny, subsequent questions used different approaches to investigate the means by which they had gained awareness of this term, and the responses are tabulated below:

Participant	Learning context
1	books, articles in the press, movies, friends
2	reading, discussion with friends, straight and gay
3	reading, discussion, media interactions, formal education and other sources
4	[...] I attended an awareness and training programme in Colombo where I learned of the concept of gender and the issues relating to it, i.e., gender-based discrimination and sexual and gender-based violence
6	studies in university, activism in WSG
7	through conversations with friends
8	legal texts [relating to sexual and gender-based violence] and workshops
9	experience
10	reading investigative reports on true stories; through movies (documentaries); reading articles in LGBT newsletters
12	participation in various training workshops as a result of an affiliation to the WSG
13	through media
14	through facing harassment in society as a result of my external appearance
15	not sure
16	experienced and explained by others. By media (mostly newspapers)

There emerge eight major contexts for learning the term: reading, cinema, formal education, awareness and training workshops, activism, discussions with friends, everyday experience, and the media. Reading is cited most frequently, followed by discussions

with friends and the media, followed by participation in awareness or training workshops. Significantly, for a group with over half the participants (nine) possessing tertiary-level educational qualifications, formal education ranks a low fourth with cinema and everyday experience. Activism, ranked fifth, is cited only once.

### *Learning contexts*

Disseminating, accessing and sharing knowledge and information on common concerns are important activities in the formation of collective identities. In the absence of varied contexts for learning about LGBTIQ perspectives on sexual and gender-based violence, five participants cited reading as the context for learning of sexual and gender-based violence. Asked to describe their reading context in some detail, most opted for non-specific responses, referring to 'books', 'reading material', journals, newspapers, and LGBT newsletters. Not one identified the source of this material as a public library, a personal collection, or a research centre where they had membership. This fact is significant, considering that some participants stated in the follow-up interviews that they had access to the collection of journals, films and (approximately) 200 books on LGBT themes maintained by the WSG, which has a lending library and basic reference facilities open to persons affiliated to the group and to researchers at its office in Colombo. Despite announcements publicising the WSG book and film collection over the Internet and in their newsletter, the library has remained underutilised ever since it was opened in 2001.

Responses provided no evidence that the use of reading material had led to interactive learning exercises amongst participants, such as the formation of book clubs or discussion groups. Thus, although reading was a common learning activity, there was little to suggest it was perceived as a means to create a common learning context.

### *Personal initiatives*

Participants' attitudes towards learning about sexual and gender-based violence had played a crucial role in the learning contexts cited, given the absence of public concern to provide information

and suggest strategies for their personal security from these forms of violence. In eliciting these attitudes, the primary interest was in individual motivation to actively seek out information and undertake independent learning on the subject. Nine of the 15 participants who had confirmed their understanding of 'sexual and gender-based violence' said they did not seek information on their own initiative, while five confirmed having undertaken independent learning through various means. It is significant that the two participants (Participants 3 and 6) who had cited formal education as a context for learning about sexual and gender-based violence formed part of the second group.

Those who had pursued knowledge on the subject independently were mainly motivated by factors relating to their professional advancement (almost all of them also referred to personal initiative as a closely associated motivation). They were employed in management, the health sector, teaching, the media, and LGBT activism. All of them stated they had participated in awareness-raising workshops on sexual and gender-based violence. Apart from the six sources listed above, they cited initiatives in the following contexts:

- survey on sexual and gender-based violence
- study of sexual and gender-based violence
- Internet discussions
- consulting the police for information
- consulting other organisations for information

### *In their own words*

The third question required participants to provide their own descriptions of sexual and gender-based violence. Eighteen definitions surfaced from the responses of 16 participants given below:

Participant	Description(s) of sexual and gender-based violence
1	Any abuse directed towards me because of being female and/or lesbian. This can include verbal or physical harassment, publicly or privately resulting in feelings of distress by the victim.
2	For me it means that society has certain ideas of what a woman should be like and what a man should be like. If you

- differ in any way from this, people react harshly and express their annoyance and displeasure at you through violence. This violence can take many forms but most often starts with name calling in the first instance. So, as a girl if I dress in jeans etc. people may whistle or make kissing sounds at me, try to knock against me and touch me.
- 3 Is a form of discrimination which prevents women from enjoying their rights and freedoms on a basis of equality with men. Society's perception of the role of women as subordinate and the rigid social and cultural stereotypes perpetuate various discriminations such as violence against women.
- 4 I believe it's any form of violence, physical, verbal, or psychological, which is directed at a person purely based on her/his gender identity/non-identity (by non-identity I mean one's refusal to adhere to the 'normal' socially constructed gender stereotypes).
- 5 [not aware of the expression 'sexual and gender-based violence' so did not offer a description]
- 6 Any form of violence directed against [sic] that is due to they [sic] being female, and due to the negative concept of gender in Sri Lanka.
- 7 Violence or violations against women and sexuality. I would personally extend this to men, too, although they are generally not included.
- 8 Any abuse that is a human rights violation based on male-female gender identity [trans. from Sinhala].
- 9 Oppression that occurs when a woman refuses to live under male rule and wishes to exercise her independence [trans. from Sinhala].
- 10 A marginalised or demeaning position that is a result of being gay or lesbian [trans. from Sinhala].
- 11 From the point of the law, it is not wrong. I mean, when a 'masculine character' confronts society, they are perceived to be lesbian. If there is a person who doesn't fit either a male or a female character, then, they can face severe punishment [trans. from Sinhala].
- 12 Problems and harassment caused by society that one has to face specifically because one is a woman or a man [trans. from Sinhala].
- 13 Most often, the helpless situation of a woman as a result of being female because of the harassment or abuse that's caused by male oppression [trans. from Sinhala].

- 14 Men and women should be left alone to maintain their desired gender presentation (through dress) [trans. from Sinhala].
- 15 Violence—exertion of authority/abuse of power based on gender, usually against females.
- 16 I presume it could happen between straight-straight people, straight-LGBTIQ people, LGBTIQ-LGBTIQ people.
- 17 Sexual harassment directed at women by men?

Key words included 'sexual harassment,' 'abuse,' 'discrimination,' 'violence,' 'violations,' 'oppression,' 'human rights.' Some responses provided two or more meanings. According to both immediate and implied senses, these meanings can be grouped into the four areas discussed below.

#### a) Oppression of/violence against women

The largest proportion of responses (seven) refer broadly to *violence against women* (Participants 1, 3, 6, 7, 9, 13 and 15). The most direct statements come from Participant 3 ('violence against women') and Participant 7 ('[v]iolence or violations against women'). Five participants (Participants 2, 3, 4, 6, and 15) see this violence as structural, relating it explicitly to unequal power relations or society's perception of 'the role of women as subordinate' as Participant 3 puts it. Two participants consider disempowerment to be *generally* implicated in this violence to the extent that they admit men as well as women in their views, without elaborating further. Participant 12's (translated) description, '[p]roblems and harassment caused by society ... specifically because one is a woman or a man' (my emphasis) is balanced and detached. Participant 7 merely 'extends' her analysis ('[v]iolence or violations against women') to men without further explanation. Two participants in this group invoke the discourse of human rights in describing this violence.

#### b) Gender stereotyping/violent repression of 'non-identity'

Six responses describe *gender stereotyping and the violent repression of 'non-identity'* as sexual and gender-based violence. Participant 4 contributes the expression 'gender stereotype,' as well as the term 'non-identity' which is interpreted by her as 'one's refusal to adhere to the 'normal' socially constructed gender stereotypes.' This does

not unpack the term 'gender stereotype,' unlike Participant 2, who without mentioning stereotypes provides what would serve as a simple gloss: 'society has certain ideas of what a woman should be like and what a man should be like. If you differ in any way from this, people react harshly and express their annoyance and displeasure at you through violence.'

All responses indicate a basic awareness that gender stereotyping operates through the dominance and violent enforcement of certain social norms. However, decisive differences in response also emerge in relation to this awareness. Significantly, five responses point to the violent enforcement of these gender norms through prohibitions and exclusion *without displacing the categories of 'men' and 'women.'* Participant 2 illustrates her analysis by stating that, 'So as a girl if I dress in jeans etc. people may whistle or make kissing sounds ...' (emphasis added). Participant 14 asserts that 'men and women should be allowed to maintain their desired gender presentation' (emphasis added). So, the very criticisms of gender stereotyping assume that the subject positions of 'men' and 'women' are common points of identification in no need of qualification. Not many of these responses go far towards radically questioning the sociopolitical premises securing the stability of identifications as 'male/female.'

Participant 11's response is alone in posing a challenge to the stability of this identification by invoking the position of transgendered persons vis-à-vis a critical form of societal control—the law. According to this participant, it is possible to envisage legal scenarios in which *gender stereotyping is not recognised as sexual and gender-based violence*, such as those involving transgendered persons. Participant 11 notes that when a [natal female] who is a 'masculine character' enters society, he is perceived to be lesbian, and that those who don't fit either a male or a female character can face severe punishment. This participant highlights the confusion of identifications—sex, gender, and sexual preference—that arises for subject positions not constituted by the normative relation between these three areas of identification.

#### c) 'Violence or violations against ... sexuality'

Only three participants touch on sexuality in setting out their understanding of sexual and gender-based violence. Two of these do

not provide a rationale for including this violence—Participant 7 ('[v]iolence or violations against women and sexuality') and Participant 1 ('[a]ny abuse directed towards me because of being female and/or lesbian') cite such violence as a statement of fact. Only Participant 10's response—'A marginalised or demeaning position that is a result of being gay or lesbian'—provides some polemical grounds for naming this violence.

#### d) Violation of human rights

Two participants view sexual and gender-based violence as a violation of human rights. Although their perspectives introduce an important dimension to the study, each response failed to fulfil its potential. Participant 8's view that it was 'any abuse that is a human-rights violation based on male-female gender identity' is broad and does not develop into a particularly provocative statement on sexual and gender-based violence. On the other hand, Participant 3's description of sexual and gender-based violence as 'a form of discrimination which prevents women from enjoying their rights and freedoms on a basis of equality with men' commits itself to a definite but partial analysis. Neither response is complicated by an analysis of violence in relation to the rights of those marginal to male/female gender identification.

We now sum up what these responses reveal regarding the group's awareness of sexual and gender-based violence.

Although 'violence against women' described the majority's understanding of sexual and gender-based violence, there was very little supporting analysis to show the grounds for the wide acceptance of this description among the group. In the few responses which provided a rationale for their views, analyses did not go beyond a basic perspective on the oppression of women. 'Gender stereotyping' was also widely accepted as a valid description of sexual and gender-based violence. There was more conceptual support for this view than for 'violence against women'. However, most of the responses displayed two significant gaps in analysis. In expressing the challenge to gender stereotyping, almost none of the participants questioned the dominant assumptions of *gender identification as stable, fixed, and already known as 'male' and 'female,'* or openly recognised the social discrimination arising from such assumptions. The majority of

responses recirculated assumptions about the stability of 'male/female' gender identities, and merely envisaged a revision of norms for these subject positions. The approach to challenging gender norms was mainly defensive—defiance of or resistance to normative behaviour for 'men' and 'women'—rather than a positive acknowledgement of the marginalisation of radically atypical gender identifications. Second, it was significant that responses describing gender stereotyping discussed gender as an abstract identity, rather than as discursively produced across a range of social identities, such as class, religion, race, sexuality, etc.

Overall, there was very little acknowledgement of the need to discuss sexuality in relation to sexual and gender-based violence—the few descriptions referring to sexuality offering little of the analytical elaboration that might justify such a discussion. A human-rights approach to sexual and gender-based violence did surface in the survey, but failed to develop because of the lack of analytical support.

#### *Reporting an incident of sexual and gender-based violence*

Having dwelt on the obscurity of sexuality in the *definitions* of sexual and gender-based violence, we now look at the responses to the sixth question, which were the most explicit in registering participants' awareness of the *relevance of their sexuality to their understanding* of such violence. Participants were asked if they felt their environment was conducive to their reporting incidents of sexual and gender-based violence to the law-enforcement authorities. All but one affirmed that reporting such an incident would expose them to further violence, and over one-third of this group (six) claimed that their sexuality might be a defining factor in determining their comfort-level in making the report. The most vehement statement of this came from Participant 4:

As a woman, it is difficult enough to report an incident of violence. So as a lesbian, I don't see how it is even possible to report such an incidence [sic] to the police or the authority concerned, especially with homosexuality being a criminal offence in Sri Lanka.

This participant was one of three who did not favour reporting an incident of sexual and gender-based violence because of the possibility

of being discriminated against on grounds of their sexuality. Similar reservations were acknowledged by the three participants who affirmed they *had* an equal opportunity to report such violence. Ironically, in weighing the risks of exposing themselves to discrimination, their responses unwittingly presented not freedoms but the limits of choice and the necessity of compromise. Participant 3 admitted that the 'sexuality component' would make her cautious in registering a complaint, but considered her professional affiliations sufficient protection for her vulnerability. Participant 17 stated that she would face less difficulty in reporting such an incident because her appearance and behaviour had not, in the past, readily identified her as a lesbian. Participant 5 favoured reporting such violence, but was certain of its ineffectiveness owing to the discriminatory treatment she would face as a lesbian. An overview of the responses indicated that some participants would prefer to rely on friends and human rights organisations for support.

#### **Conclusions**

The most striking finding from the analysis of the *kathikaava* was the lack of awareness evident in the characterisation of transphobic violence as sexual and gender-based violence, which we may interpret as a lack of awareness when reading gender-atypical identification such as female-to-male transsexuality, or a lack of will to acknowledge it. The majority of reviews retained 'men' and 'women' as the normative gender identifications. Reviewers insisted on typifying atypical gender presentation as a reaction to the powerlessness of 'woman', *rather than affirming female-to-male transsexual identification by understanding the premises of gender-variant self-presentation*. Any possibilities of producing readings of lesbian and transgender identity politics were ignored, and all such signification was bundled into sanctimonious pronouncements about the oppression of women in patriarchal societies. My analysis challenged, on these grounds, the claims made for the film having liberated the discourse on sexuality, contending that the discussion on constraints only aired well-worn prejudices about women's sexuality. It is also possible that this skewed perception of the film may have been because of the difficulty in reconciling in one analysis the range of victimisation represented, and all forms of

sexual and gender-based violence were conflated with violence against women.

The most substantive discoveries in the *kathikaava* concerned the 12 responses that *had* acknowledged transphobic and homophobic violence in the film. Although all these recognised the film's potential to lift constraints on discussing violence related to sexuality and gender in Sri Lanka and the deeply divisive nature of these discussions, a pervasive unease about this potential prompted an impulse to annex it. This appropriation was effected through two main strategies. The first foregrounded the film's potential to lift constraints only to manoeuvre arguments away from an engagement with transphobic and homophobic violence, so as to choke discussions of the film's potential, especially those generated by international audiences concerned with the film's relevance for LGBT communities. The other tactic was to anticipate the emergence of a niche audience of LGBTIQ viewers, and the influence of their perspectives in the wider social context following the loosening of constraints, and to entreat that the film not be used for propaganda purposes, and disinterested perspectives on art be maintained. In general, rhetorical strategies capitalised on the idea of lifting constraints on discussions of violence, sexuality and gender, through specious arguments celebrating this as plural and inclusive. The slice of the *kathikaava* surveyed here was trapped in such wrong turns and dead ends, and frustrated attempts to introduce any other discussion.

The three main findings from the consultation were interrelated: a traditional understanding of sexual and gender-based violence as 'violence against women,' an overall lack of politically-situated awareness of the differences introduced by LGBTIQ perspectives, and therefore an inability to redefine this field accordingly. Taken together, these conclusions make a telling statement on the participants' readiness to assert their claims as stakeholders in the field.

Their understanding of sexual and gender-based violence as violence against women betrayed several problems. The analysis had not moved much beyond primary feminist debates on the oppression of women in patriarchal societies and equal rights for women towards alternative, counter-hegemonic formulations that did justice to the experiences of LGBTIQ persons. In addition, the identification of

'women' as a common subject position would exclude a range of victimisation faced by those with gender-variant identification.

These prevented deeper exploration of the location of LGBTIQ perspectives on sexual and gender-based violence. The unexamined deployment of the terms 'gender', 'sexuality' and 'sexual and gender-based violence' proved particularly disabling for efforts to challenge the silence surrounding LGBTIQ concerns on this violence; although LGBTIQ concerns were touched on in a number of descriptions of this violence, most responses reproduced the dominant understandings and categories that act to exclude LGBTIQ perspectives. Even amongst a few participants whose thinking reflected a critical understanding of the hegemonic categories of 'masculine' and 'feminine', perspectives on sexual and gender-based violence were still defined *in addition* to the possibilities suggested by these binary subject positions, rather than displacing their status as self-evident. Ironically, even descriptions of sexual and gender-based violence resulting from gender stereotyping and gender-variant identifications assumed the victimisation of 'women' (or 'men').

At the same time, 'sexuality' occupied an uncertain position in responses. The understanding of sexual and gender-based violence was limited by an uncritical distinction between gender identity and sexual orientation. Responses that took this division of experience for granted felt no need to justify the distinction between violence related to gender identity and that related to sexuality. Gender-based persecution on the grounds of sexuality was positioned as an 'add-on'—an occasional adjunct to the dominant rubrics of violence against women and gender stereotyping. With few attempts to theorise the intersection of multiple victimisations on the grounds of sexuality and gender identity, responses proved unable to introduce distinctive LGBTIQ perspectives on sexual and gender-based violence.

An equally significant conclusion from the consultation was the lack of a politically situated awareness of the few contexts identified as conducive to learning about sexual and gender-based violence. Although a number of such spaces were identified by participants, these were curiously detached presentations of alternative sites of expression and information, with little evidence that they understood the intricate ideological negotiation of such sociocultural spaces within societies that discourage the dissemination of LGBTIQ-

friendly opinion and information on sexual and gender-based violence. They mark the need for a more politically-informed imagining of how to negotiate space for LGBTIQ perspectives.

This essay has sought to show that despite the occasional emergence of opportunities for the introduction of LGBTIQ perspectives on sexual and gender-based violence in mainstream discussions in Sri Lanka, constraints on their articulation, both public and private, remain deeply entrenched. It has shown that what is also lacking at present is the emergence of a strong concept-based challenge to these constraints from *within* these communities. It is now imperative to confront these constraints publicly.

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### Notes and References

- <sup>1</sup> Thilak Kodagoda, interview with Asoka Handagama, "Mata thiyenne huthakala hageemak: sinemaavethi Ashoka Handagama," *Ravaya*, 24 November 2002.
- <sup>2</sup> See Champika Ranawaka, "Thani Thatuven Piyabanna Gosin Sinhala Samajaye Thatu Sintheema," unpublished collection of newspaper commentary on the film compiled by Sanghida Printers.
- <sup>3</sup> See Dhamma Dissanayake, "Clearing the Old Forest," *Balaya*, February 2003.
- <sup>4</sup> Ibid.
- <sup>5</sup> Shermal Wijewardene, "Flying With One Wing," *Options* 31, 2002.
- <sup>6</sup> See Sumathy Sivamohan, "Flying With One Wing and the West," *The Island*, 11 April 2003.
- <sup>7</sup> See Malinda Seneviratne, "Anunge thātu valin piyāsara kireemé kálāva saha déshapālanaya," unpublished collection of newspaper reviews compiled by Sanghida.

- <sup>8</sup> Alexander Doty, "Whose Text is it Anyway? Queer Cultures, Queer Auteurs, and Queer Authorship," in *Queer Cinema, The Film Reader*, ed. by Harry Benshoff and Sean Griffin (New York: London: Routledge, 2004), p. 29. We may understand Doty's use of 'queer' here to mean lesbian or gay.
- <sup>9</sup> Thilak Kodagoda, *supra* note 1.
- <sup>10</sup> See Rosanna Flamer-Caldera, "Women's Support Group monitoring report," 26 March 2003.
- <sup>11</sup> Rosemary Betterton, "Feminist Viewing: Viewing Feminism", in *The Feminism and Visual Culture Reader*, ed. by Amelia Jones (London: New York: Routledge, 2003), p. 13.
- <sup>12</sup> Prasad Manju, interview with Asoka Handagama, "Sámahára prékshakayānta nothérénne chíthrapātayatha sámājayatha?" *Dinamina*, 15 November 2002.
- <sup>13</sup> Upali Samarasinghe, interview with Asoka Handagama, "Mágé bíriya kíyá vénasák ne; rángapáaththi sháeeraya áithi chárithayata mísa níllyata nové," *Silumina*, 17 November 2002.
- <sup>14</sup> See Satha Ranasinghe, "Thātu halunu kíráll" (unpublished collection of newspaper commentary on *FWOW* compiled by Sanghida), and Nalin de Silva, "Thani Thatuven Piyabeema," *Divaina*, 6 April 2003.
- <sup>15</sup> See Ranasinghe, "Thātu halunu kíráll", *supra* note 14.
- <sup>16</sup> See De Silva, "Thani Thatuven Piyabeema," *supra* note 14.
- <sup>17</sup> See Sivamohan, "Flying With One Wing" and the West", *supra* note 6.
- <sup>18</sup> Ibid.
- <sup>19</sup> Gamini Veragama, "Prathíkshépa kala noheki yátháarthayák" (unpublished collection of newspaper commentary compiled by Sanghida).
- <sup>20</sup> Arlene Istar Lev, *Transgender Emergence: Therapeutic Guidelines for Working with Gender-Variant People and Their Families* (New York: The Haworth Clinical Practice Press, 2004), pp. 396, 398.
- <sup>21</sup> Kath Weston, *Families We Choose: Lesbians, Gays, Kinship* (New York: Columbia University Press, 1991), p. 123.
- <sup>22</sup> Ibid., p. 124.
- <sup>23</sup> Sarah Thornton, "Introduction" to *The Subcultures Reader*, ed. by Ken Gelder and Sarah Thornton (London, New York: Routledge, 1997), p. 4.
- <sup>24</sup> Ibid., p. 1.
- <sup>25</sup> Ibid., p. 4.
- <sup>26</sup> Leslie Feinberg, *Transgender Warriors: Making History from Joan of Arc to Dennis Rodman* (Massachusetts: Beacon Press, 1995), p. 9.

## Reclaiming Spaces: Gender Politics on a University Campus

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### Introduction

In this essay, we detail the engagement of two feminist groups on the Delhi University campus, which have over the last decade and a half been involved in campaigns against sexual harassment. After delineating how the University of Delhi has been suffused by violence against women, particularly sexual harassment, and the struggles to reclaim spaces in the campus for women, we describe how this experience and inherited history of anti-sexual harassment campaigns was translated into a policy against sexual harassment and the negotiation this entailed with the university administration. This story is based on our memories, personal and group archives, and newspaper cuttings and documents gathered by the two groups in Delhi University—Gender Study Group (GSG<sup>1</sup>) [1991 to roughly<sup>2</sup> 1998] and the Forum against Sexual Harassment (FASH) [1996–the present]. We do not aim to provide an exhaustive history of the two groups nor of the anti-sexual harassment campaigns in the University. Instead, we focus on the discursive shifts that spanned the anti-sexual harassment campaigns and the contestation that surrounded the very naming of the harm of sexual harassment.

The discussion on the campaigns illustrates the need to name the violence of sexual harassment in public spaces by critiquing the use of the trivialising discourses of ‘eve-teasing’, while detailing the many ways in which academic hierarchies are implicated in a pernicious politics of sexual harassment in the university as a workplace. The campaign for instituting a policy against sexual harassment in the University, led by FASH, was embedded in this understanding of the nature of sexual harassment in the university as a workplace. The discursive shifts, discussed in the paper, resulted in

the demand to name sexual harassment as a violation of the right to bodily integrity and for the University to commit itself to instituting structural mechanisms of complaint resolution, redressal and prevention of sexual harassment to make the workplace free of gender-based discrimination. The process of drafting a policy led to the emphasis on the need for regulation in the university as a *workplace*,<sup>3</sup> thereby moving the debate on sexual harassment from notions of shame and honour to the question of constitutional rights and bodily autonomy.

In this context, it is important to mention that in Indian law, *sexual harassment of working women* has been named and defined in a Supreme Court judgement of 1997, popularly known as the *Vishakha* judgement. The *Vishakha* judgement makes it mandatory for all workplaces—governmental or non-governmental—to institute a policy against sexual harassment. The judgement has not been implemented in all workplaces, and there have been many discussions within the women’s movement on the drafting of a national law against sexual harassment at the workplace.<sup>4</sup> However, while these debates have focussed on harassment within the confines of the workplace, the need for the induction of a broad definition of sexual harassment that can address it in public spaces remains imperative. This also has an important bearing on sexual harassment at the workplace, since third-party harassment, i.e., sexual harassment of women in the course of their work by persons who do not belong to their workplace, is a common feature of working women’s lives. Moreover, the criminal laws in the Indian Penal Code (IPC) invoked when a woman is sexually harassed do not name the offence as sexual harassment. Instead, they frame sexual harassment as offences that either amount to *obscenity* in public spaces or acts seen to violate the *modesty of women* (under sections 294, 354 and 509 of the IPC).<sup>5</sup> For instance, prosecuting harassment of women students in the University by men who are not part of the university community under these laws, for instance, continue to be framed in colonial categories of modesty or obscenity that detract from the harm of sexual harassment. The only law introduced after independence, in 1988, is a local law to redress sexual harassment of women in public spaces in Delhi, naming this as ‘eve teasing.’ This is defined as ‘words, spoken or written, or signs or visible representations or

gestures, or acts or reciting or singing indecent words in a public place by a man to the annoyance of a woman.<sup>6</sup> These laws have been critiqued by feminists for re-inscribing patriarchal notions that such harassment in public spaces is devoid of actual harm to women, permitting thereby the persistence of serious violence against women in the city. This critique has yet to be translated into legislative reforms of criminal law or local laws in different states. The problems with the law then make it imperative for universities to address sexual harassment in all its forms. Mindful of this critique of the legal discourse, FASH worked into the definition of sexual harassment at the workplace those forms of sexual harassment faced by students and employees from third parties in public spaces, ordinarily regarded as beyond the employer's sphere of responsibility.

Feminist jurisprudence is usually seen as located in the work of feminist lawyers who move courts of law, such as in the case of the public interest litigation filed by women's groups resulting in the *Vishakha* judgement. Apart from feminist legal research or litigation, we wish to suggest that the work of the 'non-expert' feminist draftswomen and men that draws from experience, protest politics, academic literature and research to create discursive shifts, and statutory change has redefined the scope of feminist jurisprudence in India.

Despite numerous struggles, sexual harassment remains the most persistent issue for women in the university, with each generation of women struggling for their right to free mobility, bodily autonomy and dignity, in other words, their right to work without being subjected to the threat or experience of sexual harassment. The trauma of sexual harassment has severe consequences ranging from women students being forced to quit the University to suicide. The collation of sexual harassment and rape cases in Delhi University presents a grim picture of the forms of violence against women that have been normalised for nearly four decades. Campaigns have addressed sexual harassment of students by teachers, between students, between teachers or administrative staff, or street harassment.<sup>7</sup> There have also been campaigns against sexual harassment during certain temporal spans in the academic calendar such as Holi,<sup>8</sup> college festivals and during new admissions under the garb of ragging. However, movements against sexual harassment have tended to be

episodic and centred on 'events.' Each shocking incident provoked formations and alliances between students and teachers and political groups within the university, and the nature of mobilisation has been varied.<sup>9</sup> Even though episodic in nature, these campaigns have been very important in naming sexual harassment as a form of denigration of women. For, while framed within issues that animated the university, these campaigns were also embedded in the discourses of the women's movement. The next section flags events marking the shifts in the naming of sexual harassment over the last 25 years.

### **The 1980s anti-sexual harassment campaigns and institutional responses to 'eve teasing'**

The 1980s campaigns were significant since the awareness of sexual harassment arose from the engagement of individuals and groups with the first national campaign against rape.<sup>10</sup> This period saw the birth of radical feminist politics and autonomous women's groups. Violence against women was named as political violence, and the nature of gender politics underwent a radical change. It was not surprising that the critique of sexual harassment moved into the political life of the campus.<sup>11</sup> This entry was initially marked by protests against specific forms of sexual harassment in public spaces that were characterised as 'eve-teasing', and located this form of aggression in the body of a 'stranger-outsider'. These campaigns underscore the constitution of the university space as a public space, in contrast to the later definition of the university as a workplace.

The characterisation of the violence faced by women in public spaces as 'eve teasing' normalised the experience of sexual harassment. Eve teasing, a colonial category, describes sexual harassment as 'harmless' teasing of women in public spaces, mostly brought about by the 'provocation' women are said to offer by their behaviour, dress, gestures, or presence in public spaces. This discourse constitutes sexual harassment in public spaces as the aberrant acts of a few 'wayward' boys, and masks the injury women experience while surviving everyday forms of sexual harassment.

Until the early 1990s, the campaigns against sexual harassment tended to be inflected by the discourse of eve teasing. These campaigns remained sporadic because the lack of conceptual tools to relate the

violence women experienced within the classroom and other spaces within the University, with the violence on the streets of the campus prevented more a sustained engagement with the issue of sexual harassment at the workplace. It obscured the character of sexual harassment as a systemic form of violence against women at the workplace, while reducing the demand for safety on streets or university buses to a law-and-order problem in public spaces.

The institutional responses to campaigns against sexual harassment, trivialised as 'eve teasing,' in buses took the form of 'emergency measures' resulting in temporal or spatial segregation of men and women. Creating gendered spaces on the principle of segregation rather than institutionalising safety in common spaces within the University was a characteristic institutional response. For instance, the 1980s saw protests by women students against sexual harassment in U-Specials.<sup>12</sup> This led to experiments such as the introduction of 'ladies special' buses. Seating arrangements in university buses were re-organised with 'general seats' separated from 'seats for women' with a bar.<sup>13</sup> Other cases of the creation of gendered spaces<sup>14</sup> exemplified the constitution of a public domain marked by a threat of sexual harassment and rape.<sup>15</sup>

The other institutional response was to institute 'emergency' measures for brief periods, especially at certain points in the academic calendar such as the beginning of the semester, when new students face ragging, during college festivals and at the end of the academic year, during Holi.<sup>16</sup> In 1981, the dark face of sexual harassment entered public discourse when a group of male students from various colleges on the campus entered the premises of another college<sup>17</sup> and assaulted and terrorised women students dragging them to the floor. This was in the name of playing Holi, a festival that has come to represent the license to molest women. This incident provoked protests across the campus since the violence had not taken place on the streets (as had been happening for years—as well as on every Holi), but had entered the shared spaces within the college. Women students from across the campus then took the lead in mobilising the public in a series of demonstrations. The following Holi, a group of students mobilised the university community around the violence they faced during the 'festival,' raising this issue in colleges as well as with the university and city administration. Subsequently, police

swung into action by posting police women as *decoys* on the campus before Holi to nab men who harass women on the pretext of playing Holi.<sup>18</sup> Women's hostels chose to respond by locking residents up from the evening before Holi. Police pickets in front of all colleges at this time every year have become an annual feature on the campus, while women are incarcerated. Such 'emergency measures' have been the dominant institutional response acting to create spaces within the campus based on segregation rather than the creation of safe public spaces. This has acted to hide the everyday forms of sexual harassment that women face on campus, while placing the onus on them to avoid spaces of sexual danger. Apart from enabling individual redressal, campaigns prompted a particular kind of institutional response, best characterised as responses to law-and-order crises.<sup>19</sup>

### **Within the spaces of the college: a matter of 'honour'**

Complaints of sexual harassment within the space of an academic department or a college, which circulate in public discourse, have elicited responses solely oriented to maintaining the reputation of an institution. The idea that honour is 'lost' if such complaints are brought to public view or that these complaints are not a matter of public policy but a private matter are typical institutional responses. The definitions of institutional honour are male: honour is not lost when a woman is sexually harassed or raped, only when there is a complaint of this. The 1980s brought home the realisation that such a notion produces discourses of shame and honour that act to silence women. The complainant finds that the experience of sexual harassment is treated as shameful and that she is blamed for having attracted it.

The institutional responses to sexual harassment within colleges are typically met with concerns about the college getting 'bad press.'<sup>20</sup> The lack of acknowledgement of sexual harassment as a systemic aspect of everyday life in the University was the backdrop to two outrageous episodes of sexist propaganda by male students against women students. These two episodes marked the public discourse on sexual harassment on campus. The first was in 1984 when women students were made the object of sexist representations through the public display of 'chic charts' by male students in the same college

where the Holi attack had taken place. The charts, which rated women students according to their physical attributes, appeared in a locked notice-board of the college, and were reproduced in a magazine published by male students. The authorities took little notice of the issue dismissing it as a bit of harmless fun ('boys will be boys') and even excusing it as a college 'tradition.' Significantly, the women students who protested against this way of trivialising women faced a counter-campaign which declared them 'frustrated' because they had not 'made it' to the charts, an opinion shared by many of the other women students as well. The disciplining of protests within the college on the grounds that the honour of the college is under attack if the matter is taken out of the college, accompanies a particular construction of college 'traditions' that are permissive of sexual harassment and sexist representations.

This issue was followed in 1985 by male students breaking into the lockers of the Girls Common Room (GCR) and hanging women's undergarments on the cross of the college chapel. Across the walls of the GCR was scrawled—'Jack the Ripper Strikes Again'; the 'GCR' was clearly viewed as a sexualised space within the college. College authorities took the second incident more seriously.

The ensuing campaign decried the fact that the college was suffused by a 'rape culture' where all women were seen as potentially 'rape-able.' While the administration did not name the misdemeanour as a form of sexual harassment that creates a hostile work environment, its outrage was on the grounds that this misdemeanour was transgressive and violative of the religious sensibility of the institution.

During the students' campaign to identify the offenders, a number of important issues came up which typify the response of the authorities. The college authorities characterised the episode as a 'family affair' that they would deal with internally, in their own way. The campaigners, comprising both teachers and students, subsequently made the issue public: it reached the press and there was a campus-wide demonstration demanding action against the offenders. The authorities began to take steps against students defying their attempt to settle matters internally. Women students involved in the campaign were externed from the premises as soon as their classes were over so that they could not mobilise others; typically, it

was the women who were victimised even before the culprits were identified and punished.<sup>21</sup>

To sum up, the university is divided into segregated public spaces regulated by the discourses of eve teasing, and those spaces that must not be exposed to public gaze lest institutional honour be lost. The embedding of sexual harassment complaints in discourses of honour and the use of the metaphor of the 'family' for the workplace resulted in specific kinds of silencing that continued into the late 1990s. In 1996, there was another outrageous incident following a series of episodes amounting to sexual harassment by a male professor against his women students in a teaching medical institution. The women made a formal complaint, despite being particularly vulnerable as he was their thesis supervisor. However, when the issue was publicised, it was they who were stigmatised. Everyone in authority took the position that the matter should be resolved 'quietly' without public exposure. The health minister of the Delhi Government chastised the women for going public and bringing ignominy upon themselves—'*Tum to khud hi apni izzat bazaar mein uchhal aayo ho*' ('you have yourselves sullied your reputation in the marketplace'), he told them.<sup>22</sup> What was worse was that the complainants and others in the protest campaign were attacked by the police and faced criminal charges. The in-house enquiry committee dismissed the charges against the male doctor stating that they arose out of his being a 'strict disciplinarian,' while it was the complainants who were dismissed from their positions for participating in the campaign, and had to go to court to get their jobs back.

There seem to be two characterising features of the institutional response to such events. First, the workplace is 'privatised', marshalling notions of institutional honour, akin to the regulatory discourses that increase the opacity of violence within the family. Second, those who bring the issue into public discourse are the objects of disciplinary punishment. While the anti-sexual harassment campaigns that followed challenged the privatisation of institutional spaces, the campaigners framed sexual harassment as a form of hooliganism. For instance, a remarkable attempt to combat the culture of violence within the campus was made by students and teachers of the university by setting up the Goonda Virodhi Abhiyan (literally: campaign against hooligans) in 1985. What was significant was that as part of

discussions on violence against women the issue of sexist teaching and behaviour within and outside the classroom, within the college, and in the interactions between teachers and women students came up. The *Abhiyan* was a vigilante group that patrolled the streets and college premises. It raised difficult questions about whether campus activists should use violence to counter sexual harassment in public cases or whether the offender should be 'caught' and handed over to the police. While the insider-outsider dichotomy was challenged, the insider continued to be characterised as a *goonda*, anchored in the idea that sexual harassment was an aberrant act.

### Anti-sexual harassment campaigns: 1987-1996

The naming of sexual harassment as a form of hooliganism was part of the public discourse whereby sexual harassers wore the face of the hooligan rather than the normal and everyday face of the familiar. In 1987-89, the focus of the campaign broadened from street harassment to include harassment by those in positions of academic and administrative power over students, colleagues, and employees. The most silent aspect of sexual harassment faced by women students at the hands of a supervisor for refusing to give in to demands for sexual favours found discussion only after the university community was shocked by the suicide of a woman student who was finishing her doctoral dissertation in a science department. The authorities refused to recognise sexual harassment as the cause of the suicide. To deflect attention from the act of harassment and the department's responsibility to address it, the authorities insinuated that she was of 'loose' character. Strong protests by democratic groups on campus led to the case being handed over to the Central Bureau of Investigation (CBI). The Department instituted an internal enquiry, which, like the CBI, exonerated the supervisor of all charges including that of academic harassment. This case dramatically illustrated the inherent difficulties of proving the culpability of a powerful and highly-regarded academic. North Campus (a residential campus for teachers and students) was split by different claims to truth, that expressed the politics between factions, neighbourhood loyalties, friendship and also the pervasive disbelief that the face of the harasser could be a familiar face.

The struggles had the long-term effect of bringing into public view the vulnerabilities of research students to '*quid pro quo*' demands, 'in which sexual compliance is exchanged, or proposed to be exchanged for an employment opportunity' or for permitting the student to finish the requirements of an academic degree.<sup>23</sup> It was in 1995 that this definition of sexual harassment of women employees in the University was first articulated in the (Justice) Wad Committee Report (WCR). At the time, there was no separate clause on sexual harassment except one, which allowed disciplinary action against employees on the basis of moral turpitude,<sup>24</sup> nor had any guidelines on how to redress complaints of sexual harassment been instituted. The Wad Committee, headed by a retired judge, was the first enquiry to look into a complaint of sexual harassment, filed in 1989, by a woman faculty member of a small department in the University.<sup>25</sup>

The Report<sup>26</sup> drew from feminist legal writings and international norms of organisations like the ILO governing the workplace, to examine the issue of a hostile environment for women. The Wad Committee also relied upon various articles on fundamental rights and directive principles of the Constitution on non-discrimination in matters of public employment, equality, and the right to live with dignity.

This report brought the University under a constitutional gaze, as a body of the state that is obliged to uphold constitutional rights guaranteed to women. In conceiving of the University as a workplace, a distinct perspective on rights, obligations and liability came to be articulated. The report seemed to concur with Catherine MacKinnon's viewpoint that 'objection to sexual harassment at work is not a neo-puritan moral protest against signs of attraction, displays of affection, compliments, flirtation, or touching on the job.' Rather, there was an implicit recognition of the fact that 'women who protest sexual harassment at work are resisting economically enforced sexual exploitation.'<sup>27</sup> The Wad Committee elaborated that:

Sexual harassment by heads of departments is a frightening and humiliating experience. It is an invidious form of sex discrimination present in academic institutions (which) has a debilitating emotional and physical effect upon its victims. It generates a psychologically harmful atmosphere (and) can have adverse economic consequences such as dismissal from jobs or denial of raise in salaries, or promotion

opportunities. Many a time women who are victims of sexual harassment experience so much anxiety that they solve the problem by quitting their jobs which results in the deprivation of economic security and well being ... this experience is devastating to (women's) self esteem.<sup>28</sup>

The Wad Committee Report thus linked sexual harassment to the loss of the inalienable right to work, to the right to work with dignity; it 'imprinted the social context with images and experiences of hostility and fear'<sup>29</sup> and it recognised the power of sexual harassment to strike at the heart of the constitutional guarantee of liberty. The Report therefore argued that the absence of a specific law on sexual harassment did not constitute grounds for inaction since the University was to be regarded as a 'state' for purposes of the imposition of the constitutional provisions.<sup>30</sup> This perspective is grounded in a reading of constitutional law. Drawing from the appellate jurisprudence on vicarious liability of the State, the Committee concluded that the university must be vicariously liable for legal action for any violations of the constitutional provisions.<sup>31</sup> The long struggle of the women employees of the department during which as many as 20 women left their jobs perhaps accounted for the report also recommending the setting up of a specific standing mechanism to deal with sexual harassment.<sup>32</sup>

For the first time a report of a university enquiry committee recognised that structural problems needed structural solutions.<sup>33</sup> The report challenged the need for women to 'adjust' to such conditions treating sexual harassment as an 'occupational hazard,' a necessary 'price' to be paid for entering formal employment in the public domain; this meant that women were forced to become complicit in acts of violence against them. It was imperative therefore to create a mechanism to make public what was hidden and end the 'isolation of both victim and perpetrator behind a veil of silence.'<sup>34</sup>

As part of the campaign to dismiss the professor, who was demoted by the order of the highest decision-making body of the University, there was set up a coalition called Swabhiman (literally, dignity of the self), comprising teachers and some students, some of whom were active in union politics. Swabhiman was extremely active during this phase and focused on the dismissal of the accused. The coalition raised the issue of the excesses of academic power, especially the sexualised power exercised over women in the faculty. While the

campaign around this incident was gaining ground—first, for an enquiry into the charges, and later for dismissal on the basis of the Wad Committee recommendation—other less visible but important moves were being initiated in the university by the Gender Study Group (GSG). GSG was a students' group which started in 1991 and had campaigned against everyday forms of sexual harassment in the University, not only on the street but also in the classroom and laboratory. In 1995, members of GSG attended the meetings organised by Swabhiman. GSG articulated the need to address more everyday forms of sexual harassment. The members of GSG, while supportive of the demand for justice to the complainants, felt that case-by-case handling of instances of sexual harassment did not address long-term ways in which the campus could be made a safer place.<sup>35</sup> The GSG engaged with everyday forms of sexual harassment, debated how to campaign against systemic sexual harassment, and articulated the need to define and collate data on its nature and extent. This led to the first survey on sexual harassment in Delhi University.<sup>36</sup>

### Gender Study Group Report, 1996

While the Wad Committee Report may be read as a text that is embedded in an understanding of constitutional law, it was not embedded in the histories of the anti-sexual harassment campaigns in the University. In 1991–95, the Gender Study Group had been engaged in a number of such campaigns. The group recognised the scale of everyday street harassment faced by women residing on campus or travelling to the University, and argued that the university administration must take responsibility to prevent and redress sexual harassment in municipal spaces that overlapped with the University. Unlike Jawaharlal Nehru University (JNU),<sup>37</sup> it has not been possible to close off the DU campus to outsiders. The constitution of the university space as a permissive space meant that men could drive into the campus in cars or bikes to hurl sexist abuse at women, proposition or stalk them, molest them or abduct and rape them. Objects such as stones, eggs, water balloons and even ice creams were used as weapons to injure women in the guise of 'fun.' In 1994, GSG was shocked by the news of the death of young woman student by a speeding car. In protest, GSG organised roadblocks to point out

that reckless driving by men who drove into the University to harass women students could result in such tragic consequences as these.<sup>38</sup> The University's response was to institute measures such as improved lighting, police patrols and the appointment of a woman proctor to deal with sexual harassment cases in the Joint Control Room—an office where the proctorial office deals with cases of law and order on campus.<sup>39</sup> It was clear to the group that there were two main tasks ahead of them: to constitute the university as a workplace and to spell out the relationship of the University to the city.

The group had repeatedly pointed out that sexual harassment of women on the streets of North Campus could be prevented if there was effective traffic regulation, police patrolling and effective lighting. When the police claimed that there were insufficient complaints against sexual harassment, some GSG members resolved to file police complaints each time they were harassed. Even though the members did not get any relief personally, they decided that the problem needed to get visibility and those who held the authority to redress and prevent sexual harassment on the streets needed to take everyday humiliation seriously. For some time the group monitored whether streets lights were working and made periodic complaints to the concerned authorities. In other words, the Group argued that a *permissive* form of urban governance enabled the perpetuation of rape culture in public spaces. GSG also argued that sexual harassment of women on the streets of the campus was an issue that concerned the administration, responsible for the welfare of students, teachers and residents of the University.

With the experience of working on the issue, GSG began to collaborate with other organisations and groups in and beyond Delhi University on the issue of violence against women. Around 1993–94, Gender Study Forum (GSF) was formed in JNU, and actively took up the issue of sexual harassment in JNU. Discussions were held with GSF on the possibility of a sexual harassment policy in universities as early as 1995. The politics of denial that greeted each petition to the administration made GSG decide to conduct research by way of a survey to demonstrate the prevalence, nature and extent of sexual harassment in the University. The hope was that the report would help convince the administration that sexual

harassment was widespread, and called for institutional mechanisms of redressal and complaint resolution.

By 1996, when GSG decided to conduct its survey, a number of campaigns against everyday forms of sexual harassment had already been undertaken.<sup>40</sup> We argue that the GSG report is constitutive of a discursive shift. It rejects the framework of 'eve teasing' of women in university spaces to call the violence it normalises 'sexual harassment', while recognising the university as a workplace under constitutional obligations to provide safe working conditions. The group went ahead to insist that university spaces should not be seen as public spaces under the sole jurisdiction of agents of urban governance nor should the definition of workplace restrict the policy to harassment within the premises of the University. If sexual harassment is embedded in the relations of power in the academic hierarchy of the University, equally the University is embedded in city spaces that sexualise spaces of the University. This aspect of our lives as students and teachers, however, is elided in the legal reckoning of a workplace.

The detail which GSG brought to describe the sexualised gaze upon young women who live in university-provided accommodation demonstrated how the resident woman student, as a migrant and a student, has been subjected to serious forms of sexual violence that emanates from her subject position. The sexualisation of the spaces, like the women's hostels, within the University *qua* University made it crucial to change the very definition of the workplace to include the way in which a woman student in Delhi University exists in the imaginations of Delhi as a city marked by a rape culture. It is this understanding of the public as constitutive of the University that makes the GSG report distinct from the Wad Committee Report's definition of the workplace that was primarily embedded in an understanding of the sexualisation of the employer–employee power relationships.

We now turn to how the GSG outlined the different forms of sexual harassment that are dispersed across different spaces and temporalities in the University.<sup>41</sup> The GSG report documented the instances when a student felt uncomfortable with a male teacher:

- when he put an arm around her, or stared at her
- when he refused to let her pass through the door

- when he directed intimate comments at women students. For instance, a male teacher would remark that 'his wife did not let him touch her' and that 'he was not old, even if she was,' thereby suggesting an interest in pursuing a sexual relationship with the student<sup>42</sup>
- when the teacher talked about movies 'that may be objectionable to a young girl'<sup>43</sup>
- when the teacher insisted on giving a postgraduate student his telephone number after imposing a conversation about feminine beauty
- when he remarked on her appearance<sup>44</sup>

Women respondents reported feeling 'uncomfortable' about a range of behaviour and comments but remained ambivalent about terming it sexual harassment. The description of the harassment written down in the questionnaires did not often capture the anger or anguish communicated to the researchers during the accompanying interviews. One of the most important insights of the report was to drive home the point that without languages of suffering, the sense of violation, fear and trauma remains folded in silence. This silence is often read as assent or consent. However, the survey indicated that silence is not assent nor can it be seen as proof that there has been no experience of violation; the 'unnamed should not be mistaken for the non-existent.'<sup>45</sup> The GSG report found that 7.33 per cent women had faced sexual harassment from their peers. These included sexist comments, the use of sexual innuendos to humiliate, stalking and molestation. As a woman student said 'they stare as if you are naked ... that's when you curse your existence as a woman.'<sup>46</sup> Many respondents reported that they experienced such form of leching as a form of 'visual rape.' The report found that shared spaces like a canteen become 'male dominated spaces' where men can 'stare,' 'comment,' 'whistle' or 'sing suggestive songs' at women. The space becomes sexualised in a way by which it is experienced as harassing or even violent by women ...<sup>47</sup> Likewise, libraries and laboratories were identified as hostile work spaces.

Along with individual acts of sexual harassment, the report identified collective forms of sexual harassment during college festivals, hostel nights, Holi or ragging.<sup>48</sup> During college festivals men harass women performers by shouting sexist remarks and even throwing

condoms at them. 60.55 per cent women faced aggravated harassment before Holi, when they are singled out as balloons, condoms filled with water, or stones are thrown from fast-moving vehicles, or they are molested on the pretext of applying colour. 'A number of women stated that the 'water balloons are aimed at buttocks and breasts.' Some women expressed their fear of balloons thrown at great speed at sensitive parts such as eyes or ears.'<sup>49</sup> Hence, 'outsiders' may target women either on the streets of the campus or 'hijack' buses till groups of men corner women and assault them. Women reported feeling 'dirty' and humiliated. Likewise, 'insiders' such as male students residing on campus also target women students during Holi, for instance, by taking out processions that stop in front of women's hostels shouting abuse against them. In March 2006, women students in a campus hostel reported that men from an adjoining college directed sexualised abuse at them and staged sexualised performances including the rape of a makeshift mannequin outside their hostel. This resulted in 'a campaign with 100 signatures ... launched by the girls arguing that what happened was a clear case of sexual harassment, and not some carnival. In any case, carnivals involve an overturning of the traditional order whereas Holi celebrations in Delhi University reinforce the everyday sexual harassment of women. Nor is harassment in Holi part of Indian culture.'<sup>50</sup> The campaigners drew the contrast with the other university in the city, JNU, to say that JNU illustrates that 'Holi is a peaceful affair with boys and girls playing with colour together.'<sup>51</sup>

The GSG Report also pointed to the harassment of those women who do not figure in the official discourses of the University. Yet this form of violence, categorised as a form of 'entertainment,' is a public secret, with the administration discreetly walking away when such shows begin during hostel nights. While GSG was categorical that the group was not advocating sexually puritanical discourses, it was clear that those women performers hired to entertain male students also deserve protection against unwanted sexual advances and the violence of an all-male crowd. Men's hostels have been known to hire women performers, who may 'strip from the skirt to a skimpy top and shorts.'<sup>52</sup> During one incident, inebriated male hostellers threw bottles at the women and tried to grab one of them. These women had to be 'smuggled' out of the hostel.<sup>53</sup> GSG maintained that the

divide between 'good' and 'bad' women allowed male students to justify their behaviour towards these women who are perceived to be devoid of the modesty that 'good' women possess.

A major finding was that 91.7 per cent of the women hostellers spoken to had experienced sexual harassment on campus roads. All of them had experienced gross instances of sexual harassment more than once, and had faced sexual harassment on campus roads everyday, sometimes many times in one day.<sup>54</sup> When women students were asked to specify what they understood by sexual harassment and eve teasing, it was found that women identified verbal harassment as eve teasing and physical harassment as sexual harassment. Or they differentiated between the two in relation to their notions of harm—eve teasing was seen as relatively harmless as compared to sexual harassment. Eve teasing was usually 'committed by strangers while sexual harassment would be grievous behaviour committed by acquaintances or men in positions of institutional power.'<sup>55</sup> Further, eve teasing was usually perceived as an isolated event while sexual harassment typically recurred and was sustained over a period of time. Male respondents mostly described eve teasing as 'fun', flattering and something women enjoyed.

So while most respondents of either sex pointed to differences between sexual harassment and eve teasing, women articulated this in terms of a threshold of indifference, whereby eve teasing is viewed as all behaviour which can be ignored, whereas sexual harassment comprises all that crosses the limit of tolerance. Although individual women seemed to have very subjective definitions of what is tolerable, 'there was a shared basic understanding across the sexes as to what constitutes sexual harassment and eve-teasing.'<sup>56</sup> Many women respondents spoke of having developed a threshold of indifference, or tolerance, as learned behaviour towards harassment whereby silence was an effective practical strategy to stop the harassment. The threshold of indifference thereby suggested the adoption of what Maxine Molyneaux calls 'practical gender interests,' comprising strategies to stop violence immediately through the use of silence, denial and avoidance, contrasted with what she calls 'strategic gender interests' which include acting against violence through collective resistance, which necessarily entails naming the violence of sexual harassment.<sup>57</sup> The GSG Report *named* the everyday violence of sexual harassment

and sought to provide a framework which women students could use to challenge the notion that they must accept having to suffer everyday forms of indignity.

The GSG report strongly argued that the distinction between eve teasing and sexual harassment was 'redundant' as also the distinction between verbal and physical assault, as these exist within a continuum of violence against women. The survival of eve teasing as a cognitive category clouded the issue of sexual harassment of women in public spaces, constituting women as Eves, or temptresses who provoke or arouse men, and implied that women must accept such conditions as part of the burden of entering public spaces. GSG concluded that what appeared individualised acts of deviancy in fact manifested a structure of power relations between men and women.<sup>58</sup> As women respondents put it:

- Eve teasing is a milder form of sexual harassment but a violation all the same.
- [It] degrades a woman without (necessarily) affecting them physically.
- [It] is verbal and mental torture.
- [I] experience mostly anger behind pretended indifference.<sup>59</sup>

The report argued that the term 'eve teasing' legitimised male aggression by blaming the victim for 'inviting' as well as 'enjoying' such aggressive male attention. This is violently restrictive for women's behaviour. Moreover, this understanding of eve teasing naturalises everyday forms of violence against women. The report endorsed the feminist viewpoint that rape and sexual harassment are political acts of oppression 'by which men keep women in a state of fear and therefore of subjugation. There is therefore an express need to redefine eve teasing as sexual harassment—as male assertion of power over all women.'<sup>60</sup>

The GSG report met with a rather ironic response from the university administration, even with the press highlighting its findings and the report finding mention in parliament. A lawyer who had read about the findings of the report filed a petition on the grounds of public interest in the Delhi High Court, which was not admitted, since the court was not convinced that a problem of this nature required judicial intervention. GSG was not made a co-petitioner nor was it present in court when the petition was not admitted.

What was striking is that the University—a respondent in this case—did not claim the report as authentic, nor did the university lawyers feel that there was merit in addressing the issues of violation the report had detailed. The University's response was initially of denial; they questioned the methodology of the survey and unofficially suggested 'ulterior motives' for why the Group wrote the Report. GSG was assigned a position of marginality and associated with this idea of marginality was the assertion that GSG was into the business of forging statistics. The fact that the GSG was not recognised officially as a student 'body' by the administration was used to suggest that the numbers had been forged. The assertion of fudging or forgery sought to represent the group as a 'voice' that was exaggerated, non-academic and concerned with politics *outside* the problem of sexual harassment. The critique was personal (levied against individuals in the group) as well as political (inasmuch as the administration did not want to acknowledge the nature of the problem). The status of GSG as a voluntary, academic and political collective (since GSG not affiliated with any political party) itself came to be questioned by the university administration.<sup>61</sup> The exercise of a survey indicated the need for bringing into public record the nature and scope of sexual harassment in Delhi University through producing 'numerical narratives.'<sup>62</sup> The idea that the administration of the University had to be persuaded through numbers indicates how activist students appropriate the techniques adopted by structures of governance to translate experiences of social suffering into social facts.

While the afterlife of the report is yet another story, the release of the report was in the dark shadow of the rape and murder of Priyadarshini Mattoo, a student of a university faculty, by her ex-boyfriend. The deep despair at Priya's death was not assuaged by what the group had set out to do. Priya had been stalked and terrorised by her ex-boyfriend on the premises of the University. Yet, the University did not take cognisance of repeated incidents of harassment. She was finally raped and strangled with a telephone cord in her home. The most disheartening response was that there was no official recognition that stalking is a serious form of sexual harassment. The trial Court acquitted the accused on grounds of lack of evidence,<sup>63</sup> the High Court took seven years to translate the

District Court judgement to hear it on appeal, and the University did not intervene nor take any measures after the fact to instate an enquiry into whether the student's degree ought to be revoked. As a result of public pressure, the murderer was finally convicted in 2006. While this shocking legal narrative has recently been subjected to public debate, what continues to be puzzlingly absent from public discourse is the culpability of the University in not intervening either prior to or after the assault on, and murder of, the student.

Some of us learned our lessons in intervening in another case of stalking of a woman student of the same faculty as Priyadarshani Mattoo. What was really terrifying was that the stalker cited the man who raped and killed Priya as a 'hero', and the lack of action against him by the faculty encouraged him to continue to stalk the complainant. Recounting the history of this case would involve describing the desperate courage of this woman student who persisted in complaining against the man who stalked her by phone and in person, at work and at home for nearly three years. It would involve describing administrative scepticism and how almost every incident prompting a letter of complaint was followed by inaction. It would mean detailing the struggle to set up an enquiry committee, and reporting how the stalker threatened the women members on the committee. It would mean that we recall how the committee's recommendations were not implemented by the faculty until many petitions led to the institution of an advisory committee to ensure that the recommendations were implemented. It would mean recalling every death threat as well as the hoarse fear for this student that haunted us.

When the death threats did not stop, FASH appealed to the ViceChancellor (VC) to withhold the results of the stalker until the complaints against him ceased. When the student went to court to appeal for the declaration of his results, the University argued that since the petitioner had been found guilty of misconduct and had not mended his ways despite warnings, the University was well within its rights to withhold the examination results:

It is submitted that in terms of the Ordinance XV-B, any practice whether verbal or otherwise derogatory of women is defined to be an act of gross indiscipline and in terms of the Ordinances, the VC has been empowered to take action against a student who indulges in indiscipline including

an action to debar him from taking any examination or cancel the examination in which he has already appeared.<sup>64</sup>

The Court gave the University a directive to declare the student's results only after the Court was satisfied that there were no further complaints. The mobilisation to prevent the accused from completing his degree till he stopped harassing the complainant meant forging a network with a number of feminist academics, lawyers and counsellors within and outside the University. It meant having to tell the authorities that the blinding headaches suffered by the complainant each time she spoke about what was happening to her indicated how the terror of stalking increases manifold with having to repeatedly prove continuing sexual harassment. There were no mechanisms to provide counselling to women students who survive such abuse. The psychological terror that each phone call unleashed convinced some of us that unless structural mechanisms were instituted in the University, each case and indeed, each incident of sexual harassment would remain the first of its kind in the official history of the institution. It was now amply evident that Delhi University, like JNU,<sup>65</sup> should have a policy which declared a firm commitment to prevent sexual harassment, and instituted mechanisms to prevent and deal with instances of harassment.

### **Forum against Sexual Harassment (FASH): drafting a policy**

A group of students that shared much with the Gender Study Group in terms of a core constituency, and teachers who had collaborated with GSG came together under the name, Forum against Sexual Harassment (FASH), to initiate the process of drafting a policy. The group decided to concentrate on studying policies from a number of different universities in order to prepare a draft policy to be presented to the administration. This meant that the kind of work GSG had been involved in by way of campaigns and casework could not be actively pursued. The drafting of the policy, which took the shape of intensive discussions over 15 months,<sup>66</sup> was guided by the insights offered by the GSG Report into the nature of sexual harassment in Delhi University and the failure of the regulatory mechanisms of the University, the law and other forms of urban governance.

While FASH was in the process of drafting the policy, one of the most important shifts in public discourse on sexual harassment came from the Supreme Court. The Supreme Court heard a petition on sexual harassment in the workplace and gave its judgement in August 1997. As we have mentioned earlier, this judgement, widely known as the *Vishakha* judgement, clearly named sexual harassment of 'working women' as a violation of women's constitutional rights and thereafter, sexual harassment at the workplace entered the realm of juridical interpretation. Some of these factors had already been outlined in the 1995 Wad Committee Report in Delhi University but the *Vishakha* judgement was important for its unambiguous position that the employer had a fundamental and primary responsibility in creating conditions for a non-hostile work environment.

FASH used the judgement to argue that it was now mandatory upon the University to institute a policy against sexual harassment that reflected the mode in which academic and administrative hierarchies situated different categories of employees and students in differential positions of power and powerlessness. It was important for the structures and composition of the complaint bodies instituted in the University to counter the way these hierarchies act to silence complaints of sexual harassment.

FASH then argued for the institution of standing committees<sup>67</sup> that were autonomous, representative, accountable and accessible. Experience had shown that when people are nominated on enquiry committees, often such committees are not autonomous or representative. While the group was unanimous about not leaving the nominations to the committees in the hands of the authorities,<sup>68</sup> and recognised that the committees must be representative, everyone did not automatically agree on what was the only alternative to nominations—i.e., to have elected members on this committee. Finally, FASH arrived at a process that combined both election and nomination—not by the heads of departments or colleges but from within the elected members—in the foundational year following the primary elections. The elections to the complaint committees were de-linked from other student or teacher elections (among teachers, non-teaching staff and students) and worked through an electoral college so that committees could be made autonomous, not only

from the authorities but also from the power of electoral forces otherwise dominating the university. All sections of the university—students, teachers, research staff, administrative and maintenance staff, cutting across hierarchies in the university—found representation in the FASH draft policy, most of which was adopted as part of the University Ordinance.<sup>69</sup> It was hoped that decentralising the complaint procedure by setting up committees in colleges and department clusters would assist accessibility. At the same time, the establishment of an Apex Complaints Committee also allows a complainant to approach a central committee.

Defining the jurisdiction of the policy led to the conceptualisation of the University as a workplace not only in terms of its fixed spatial boundaries, but in relation to the nature of 'work' (and study) that different members undertake. Since the university is also a residential space, with students, faculty or administrative staff living on campus, FASH argued that sexual harassment by outsiders, who do not belong to the University, must be brought under the purview of the policy. This was anchored in the understanding of how sexual harassment in public spaces harms women in the course of their academic life in the University. Moreover, FASH argued that the policy should bring under its purview contract labourers, vendors and domestic workers if the harassment is committed by a member of the University.<sup>70</sup>

One of the most fundamental questions FASH had to address was how to define sexual harassment so as to encompass the manifold forms of gendered violence in Delhi University. FASH was agreed that sexual harassment must be seen as a form of sexualised power rather than an expression of aberrant sexual desire.<sup>71</sup> This meant that the policy would have to depart from the existent socio-legal characterisation of sexual harassment as 'outraging modesty,' 'dishonour,' or causing 'irretrievable damage to reputation.' The group wanted to define sexual harassment as an identifiable legal wrong by referring to the provisions on equality and non-discrimination in the Constitution rather than to definitions of criminal conduct in the penal code. There was therefore an urgent need to re-define sexual harassment as a violation of fundamental rights, and a form of political violence rather than a law-and-order problem.

As FASH debated the scope of the definition, it was decided that the *sexual harassment of women at the workplace*<sup>72</sup> did not address other forms of gendered violence at the workplace such as rape and same-sex sexual harassment. FASH defined gender-based violence as including sexual harassment among other forms of violence, specifying that 'not all forms of sexual harassment are specifically sexual in nature, these are *sexualised* in that they are derogatory of a person on the basis of *gender*.'<sup>73</sup> Thus, 'it is crucial to state that all forms of unwelcome behaviour that discriminates people on the basis of their gender that may be explicitly sexual or not be explicitly sexual could amount to sexist behaviour.'<sup>74</sup> Discrimination based on gender or sexual orientation was also built into the ambit of the definition.

The group conceptualised gender violence as a category which included sexual harassment, rape and other forms of discriminatory conduct based on the gender identity of a person. 'What is crucial,' FASH argued, 'for the conceptualisation of what constitutes sexual harassment is the non-consensual nature of the situation. In other words, all situations described will not amount to sexual harassment when the "victim" does not perceive them as harassment.' Hence, the following definition took shape:

Quid pro quo harassment may be defined as sexual harassment when submission to or rejection of unwelcome sexual advances, requests for sexual favours, and verbal or physical conduct of a sexual nature are made, either explicitly or implicitly, a term or condition of instruction, employment, participation or evaluation of a person's engagement in any University activity.<sup>75</sup>

Hierarchies of power were then addressed in two ways in the policy: first through its incorporation in the definition whereby *quid pro quo* was recognised in the context of teaching/guidance, recruitment, promotion, and evaluation; and second, in the complaint redressal structures.

Departing from the definitions of rape in criminal law, FASH defined sexual assault as follows:

When any form of sexual assault is committed where a person uses, with a sexual purpose, the body or any part of it or any object as an extension of the body in relation to another person *without the latter's consent or against that person's will* (emphasis added).

The group borrowed from definitions of sexual assault proposed by various women's groups during the debates on amendments to the criminal law. Not all feminist jurists and women's groups agree that the rape law should be gender neutral.<sup>76</sup> However, the group felt strongly that sexist and homophobic discrimination must be brought under the purview of the definition of a hostile work environment.<sup>77</sup> FASH's understanding of gendered violence on campus drew on the reports of sexual assault and harassment of male students, especially in hostels during ragging, and argued that sexual violence against men in the garb of ragging remained an unnamed form of violence. In a situation where criminal law is totally unequal to dealing with the painful realities of such forms of sexual violence, the group wanted to frame sexual violence in ways that were inclusive of the manifold experiences of sexual violation for women and adult men. Hence, FASH argued in one of its memoranda to the University that:

We recommend that gender violence be defined as an inclusive category, which refers to sexual harassment, rape, as well as gender-based discrimination. The draft does not clearly state whether it considers that both men and women can be victims of sexual violence. We recommend the usage of the term gender violence where gender refers to socially determined relations between men and women, men and men and women and women. This is particularly important given the same-sex harassment that takes place in the University, especially in the hostels. We therefore recommend that gender-based discrimination be defined as all forms of discriminatory conduct based on the gender identity of a person.<sup>78</sup>

Although the University finally accepted the definition, the university committee which framed the policy decided that strategically it would be better to name the policy as one that legislates against sexual harassment rather than gender-based violence, on the grounds that the Supreme Court guidelines and directives were on sexual harassment. It was interesting how the *Vishakha* judgement both enabled the official formulation of the policy, yet circumscribed the terms of the discourse such that sexual assault at the workplace is subsumed under sexual harassment. In a sense, 'sexual harassment at the workplace' acts as a master signifier for different forms of sexual violence at the workplace, drawing a definite boundary to the discourse on gender-based violence in public policy.

FASH strenuously argued that the distinction between consensual relationships and non-consensual behaviour is critical to defining sexual harassment. The centrality of the point of view of the complainant bore repetition because the administration often sought to blame women students for not conforming to codes of behaviour and had also instituted practices of moral policing with wide appeal among the right wing. FASH voiced the importance of challenging the cultural essentialism of right-wing discourses, which would attack expressions of sexual autonomy in the name of safety, and remain within the discourse of victim-blaming by saying women brought attack on themselves by wearing provocative clothes or going out after dark. FASH therefore strongly opposed the inclusion of a moral code of behaviour in the first draft of the policy proposed by the University. We quote:

We strongly believe that even the term 'code of conduct' leaves room for misinterpretation since it may blur the distinction between consent and non-consent and lead to policing of women's and men's behaviour. We recommend that rather than a focus on a code of conduct, the focus should be on a set of guidelines on prevention and deterrence as measures that would provide safety mechanisms for women who have to work late in labs or libraries, good lighting and other facilities to make the campus safer. For instance, a number of women work for late hours in laboratories after official work hours, often we are told that they are discouraged from staying on because they are women. Thus women may not be able to finish their work in comparison to men students (FASH memorandum, 1999).

While the moral code of conduct was eventually dropped from the policy, we have observed in subsequent years that the implementation of the *Vishakha* judgement in universities has periodically become the battleground for *competing* models of regulating sexuality.

### **The sexual harassment policy as a route to moral policing in universities**

The implementation of the Supreme Court judgement has typically led to two kinds of responses from universities. First, there has been an attempt to introduce codes of conduct into the policy—making irrelevant the distinction between consent and coercion, since some

forms of sexuality are seen as morally wrong or deviant with or without consent. The other common response has been to regulate students' sexuality.

JNU, for instance, has witnessed a setback with the announcement of the amendment of their policy. Its recently amended document, held in abeyance until public discussion, is indicative of an attempt to regulate forms of sexuality that do not fall under the ambit of sexual harassment in the workplace.<sup>79</sup> The imposition of dress codes, moral codes of conduct or reporting 'sexual deviance' amongst students living in universities has been a common response across the country. In these instances, the focus on students to the exclusion of the other sections of the university community such as teachers is indicative of the fear of students, who are seen as having the potential of disrupting academic hierarchies. This perceived threat to the *discipline* of the university then extends to regulating their sexuality. Not only is the figure of the student infantilised but also specific classes of students are targeted. The *resident* student is seen as the site of *sexual deviance* or *women* students are told how to dress.

Sexual harassment policies in universities recognise that students, along with *karamcharis*, are the most vulnerable to sexual exploitation. Surely if this is the case we would imagine that policies that work out equitable mechanisms of redressal would be upheld with greatest care. Nonetheless, university authorities have tried to restrict the autonomous functioning of such redressal committees.

The protests that followed the JNU amendment were directed against the move to divest the Gender Sensitisation Committee against Sexual Harassment (GSCASH) of its autonomy. GSCASH is in fact one of the first illustrations of the implementation of *Vishakha* in an Indian University. Typically, policies against sexual harassment have been thought of as a power struggle between men and women. However, sexual harassment is inimical to the interests of *every* person working, studying and/or visiting a university space. The JNU amendment, for example, interprets the *Vishakha* guideline that at least 50 per cent women should be appointed on committees so strictly as to hold that if the committees happen to have 100 per cent women, then it amounts to a 'perversion' of the *Vishakha* judgement. This is the common problem that we encounter elsewhere where the politics of representation becomes contentious. In many

universities there are few women elected or nominated to the Executive Council, and few women professors. The question of representation of women on committees is linked to the routine discrimination against women preventing them from moving up academic or administrative posts, especially in the sciences. It is because this form of gender discrimination was recognised by the Supreme Court that *Vishakha* held that at least fifty per cent of the committees' members should be women. The judges have nowhere indicated that if a committee happens to consist entirely of women then the learned women from academia would act perversely *against* the interests of the University or prejudicially against men.

While the divergent readings of the *Vishakha* judgement in the academia have been put forward in support of competing models of gender equality, there has been a strong reaction from some feminist jurists to the use of judge-made laws to regulate sexual harassment. For instance, Ratna Kapur's reading of the Supreme Court judgement on sexual harassment as the confluence of colonial notions of modesty into the category of unwanted sexual behaviour suggests that the legal responses 'are emerging as tools of repressing sexual speech and expression.'<sup>80</sup> She argues that sexual harassment policies are being used to regulate sexuality. We often hear a concern about political correctness amounting to censorship in the University. This position argues against sexual harassment policies since the law represses sexuality by setting limits on the sayable, or by defining *normal* sexuality versus *deviant* or *pathological* sexuality. However, the implementation of the guidelines in different sites does not produce identical effects of power and knowledge in every workplace. The mediation in the form of the implementation of the guidelines by specific movements or campaigns has also rewritten the Supreme Court definitions and these have been enacted in University. The issue of dress codes for women students, now performed in the name of implementing the *Vishakha* guidelines (even though the Supreme Court says nothing about dress codes), has a different genealogy, linked to the way sexuality is regulated in the name of safety in university spaces.<sup>81</sup> Yet the challenges to sexual repression have also been the loudest in university spaces and hence it is not surprising that the competing norms of sexuality find the most dramatic illustration in the controversy on instituting dress codes for women

in universities. The enactment of sexual harassment policies in university spaces must be read alongside how such policies are annexed by the technologies of power that produce docile subjects.

## Conclusion

In 2004, almost seven years after FASH proposed its draft policy on sexual harassment, the Delhi University enacted the sexual harassment ordinance. While we cannot provide an exhaustive picture of the period after the enactment of the Ordinance, we flag a few issues that have arisen since. Resistance to the implementation of the policy is seen in the fact that many departments and colleges have *still* not constituted complaint committees.<sup>82</sup> In many colleges where committees have been formed it is not clear whether the procedure for the constitution of such committees laid out in the policy has been followed. We were very dismayed when a campus college in a governing body meeting *amended* the Ordinance.<sup>83</sup> Three members of the college (two teachers and one member of the non-teaching staff) filed a case in the Delhi High Court and the college was served a notice seeking clarification.<sup>84</sup> The college responded that it reserved the privilege of making changes to the Ordinance, given that it is a minority institution, thereby raising serious questions about whether other colleges could claim similar privileges.

In those institutions within the University where the policy has been implemented, when a complaint falls under the jurisdiction of two sets of university rules, there has been marked ambivalence as to which ordinance should be applied. This illustrates how the same event can hold different meanings for those who claim to reserve the power to invoke or suspend the invocation of the anti-sexual harassment policy. For instance, one campus college was unclear what it should do in a case of ragging that also amounted to sexual harassment, whether the college should appoint a disciplinary committee or the sexual harassment committee to look into the complaint. That ragging amounting to gendered discrimination should be redressed under the sexual harassment ordinance, irrespective of whether it overlaps with another ordinance, had to be stressed repeatedly.

Similarly, in cases where the complainant and the accused, both members of Delhi University, belong to separate institutions, the contestation centres on which college committee should investigate the case. If the institution of the complainant investigates the case, they cannot exercise effective jurisdiction over the accused, if the college of the accused proceeds with the enquiry, then the discourse of protecting institutional honour is likely to be resurrected. In one such case, the enquiry committee instituted by the college of the accused asked the complainant a number of irrelevant questions, blaming her for having 'provoked' sexual harassment and found the accused innocent of the charge. This case pointed to the way the discourses of institutional honour continue to inform how complaints of sexual harassment are redressed.

The contestations emerging around the Delhi University Ordinance thus point to both entrenched techniques of silencing complaints of sexual harassment on grounds of institutional honour, and to discourses anchored in victim-blaming. The non-implementation of the 'preventive mechanisms' laid out in the Ordinance neglects the fact that the University as a workplace, where academic hierarchies are sexualised and custodial power abused, is equally embedded in the violence of the city that marks out the University as a permissive space. The Ordinance however offers a potential—the possibility of redressal. In detailing the different forms of feminist engagement on the Delhi University campus, we have attempted to flag the discursive shifts from dealing with cases of sexual harassment in an *ad-hoc*, case-by-case way to the institution of mechanisms of complaint redressal and prevention. The realisation of this collective dream of freedom from sexual violence in academic spaces, however, may remain a broken promise unless we continue to sustain a movement against the terrors of everyday forms of gendered violence in the academic community.

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## Notes and References

- <sup>1</sup> Janaki Abraham, Suman Bisht and Pratiksha Baxi were active members of the GSG, while Uma Chakravarti supported the group. Later the four came together with other students and teachers to form FASH.
- <sup>2</sup> An exact date is actually difficult to identify. This is in fact characteristic of university groups, which may not have a formal space, get no funding and comprise primarily students who are a changing population. How active groups are varies not only with the university calendar but also from one year to the next.
- <sup>3</sup> A place of work and study.
- <sup>4</sup> See Indira Jaising, ed., *Law relating to sexual harassment at the workplace* (New Delhi: Lawyers Collective, 2004); Mihir Desai, "Starting the Battle," *Combat Law* 4 (1), 2005; Vibhuti Patel, "Sexual Harassment Free Work Place," paper presented at Round Table on "Sexual Harassment Free Workplace for Women," organised by Maharashtra State Commission for Women, Mumbai, Sahyadri Guest House, on 17–18 October 2005. The judgement has also met feminist critique on various grounds including for instituting employer-based notions of sexual harassment policies. See Savitri Goonesekere, "Overview: Reflections on Violence against Women and the Legal Systems of some South Asian Countries," in *Violence, Law and Women's Rights in South Asia*, ed. by Savitri Goonesekere (New Delhi: Sage Publishers, pp. 13–76).
- <sup>5</sup> Section 294 IPC, 'Whoever, to the annoyance of others, (a) does any obscene act in any public place, or (b) sings, recites and utters any obscene songs, ballads or words, in or near any public space, shall be punished with imprisonment of either description for a term that may extend to three months, or with fine, or with both;' Section 354 IPC, 'Whoever assaults or uses criminal force to any woman, intending to outrage her modesty or knowing it likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;' Section 509, 'Whoever, intending to insult the modesty of a woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or such object seen by such woman, or intrudes upon the privacy of

- such woman, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.'
- <sup>6</sup> Passed in 1988, this law is entitled the Delhi Prohibition of Eve Teasing Act and led to the institution of police decoys and episodic drives in the city to nab 'eve-teasers'. For a statistical profile on the number of complaints and convictions in 1990–95, see Shobha Saxena, *Crimes against Women and Protective Laws* (New Delhi: Deep and Deep, 1995), p. 225.
  - <sup>7</sup> The campus of Delhi University may be termed an open campus in that there is no demarcation between university and college premises and the rest of the city, though there are clusters of colleges and hostels (including women's hostels) in certain areas, particularly in north Delhi. It is therefore open to 'outsiders' or the general public and to traffic flows, and street harassment is endemic.
  - <sup>8</sup> Holi is a Hindu festival that marks the onset of spring and was meant to celebrate good harvest and fertility of the land. As a festival it is marked by exuberant celebrations, including processions, dancing and singing, and is played with coloured powder and water. It has been understood as a festival, which is permissive of certain kinds of transgressions and allows, to some extent, inversions of social relationships. However, the festival is often used as an excuse by men to harass women in the name of custom.
  - <sup>9</sup> The anti-sexual harassment campaigns have been episodic in the first place because of the transient nature of the student population and second, because the response to sexual harassment as a form of structural violence has been understated.
  - <sup>10</sup> Many women on the faculty of colleges were closely involved with the campaigns against dowry, murders, custodial rape, and widow immolations.
  - <sup>11</sup> One of the ways this critique entered campus life was through the medium of theatre. In 1979–80, a street play, *Ehsaas* (experience) was created on the basis of a great deal of information collected on the violence in the everyday lives of women students in educational institutions and at home. More accounts poured in as the play was performed at various locations within and outside the campus. For the first time, there was the awareness of sexual harassment within the campus, although this did not lead immediately to campaigns to demonstrate the extent and nature of sexual harassment and its relationship to academic hierarchies.
  - <sup>12</sup> The city's transport corporation runs special buses for Delhi University students and teachers. In 1979, around 500 women from Indraprastha College, a women's college in Delhi University, protested at the Boat

- Club against sexual harassment in buses. See Nandita Gandhi and Nandita Shah, *The Issues at Stake: Theory and Practice in the Contemporary Women's Movement in India* (New Delhi: Kali for Women, 1991).
- <sup>13</sup> This did not make U-specials safer—in 1993, a Kenyan was molested in a University Special bus near her college. This was followed by a protest march organised by Janvadi Mahila Samiti in which a large number of students participated. See Brinda Karat, *Survival and Emancipation: Notes from Indian Women's Struggles* (Delhi: Three Essays Collective, 2005).
  - <sup>14</sup> The spatialisation of segregation is manifest in the way the university administration would raise the walls of the women's hostels every couple of years! When a male hosteller in a men's hostel raped a woman student, hostel authorities decided that women should not be allowed in male hostels, unless they were related to the student. The earlier rule that women hostellers who entertained male guests in their hostel rooms had to leave their room door open at a certain angle was scrapped.
  - <sup>15</sup> The spatialisation of gendered hierarchies into naturalised segregated domains for men and women is a technique that has been shown to date back to the late colonial period. See Padma Anagol-McGinn, "Sexual Harassment in India: A Case Study of 'Eve-Teasing' in Historical Perspective," in *Rethinking Sexual Harassment*, ed. by Clare Brant and Yun Lee Too (London: Pluto Press, 1994), pp. 220–34.
  - <sup>16</sup> See Gandhi and Shah, *The Issues at Stake*, supra note 12.
  - <sup>17</sup> This college had started admitting women students only a few years before this.
  - <sup>18</sup> Deepti Priya, "Challenging a Masculinist Culture: Women Protest in St. Stephen's College," *Manushi* 28, pp. 32–35. The account here is also based on a personal narration of the campaign to Uma by the author on 4.3.05.
  - <sup>19</sup> Shah and Gandhi suggest that the protests against 'eve-teasing' and the recognition of the problem of eve-teasing led to the enactment of the Delhi Prohibition of Eve Teasing Bill, which 'languished in the Parliament for four years before being passed on the 24th of November, 1988.' See *The Issues at Stake*, supra note 12, p. 224.
  - <sup>20</sup> In 1965, when a woman student was shot dead by her ex-boyfriend in a coffee home on the campus, the institutional response was to prevent adverse publicity about the college and scandal was the dominant way of framing such male violence against young women. See Karat, *Survival and Emancipation*, supra note 13.

- <sup>21</sup> This account is based on conversations with two women who were students in the college at the time, and were actively involved in campaigns and debates on these incidents.
- <sup>22</sup> Neeraj Malik and Uma Chakravarti, "Sexual Abuse taken Lightly," *The Pioneer* (New Delhi, 26 June 1996).
- <sup>23</sup> Catherine A. MacKinnon, *Sexual Harassment of Working Women* (New Haven and London: Yale University Press, 1979), p. 32.
- <sup>24</sup> Ordinance XV-B 3 (e) which described the conditions for the maintenance of discipline in the University among students held that 'any practice—whether verbal or otherwise—derogatory of women' would amount to gross indiscipline. The introduction of the anti-ragging ordinance in the 1990s was an important institutional shift in recognising the derogatory practices of ragging. According to Ordinance XV-C:  
  
ragging for the purposes of this Ordinance, ordinarily means any act, conduct or practice by which dominant power or status of senior students is brought to bear on students freshly enrolled or students who are in all way considered junior or inferior by other students; and includes individual or collective acts or practices which involve physical assault or threat or use of physical force; violate the status, dignity and honour of women students; violate the status, dignity and honour of students belonging to the scheduled caste and tribes, expose students to ridicule and contempt and affect their self-esteem; and/or entail verbal abuse and aggression, indecent gestures and obscene behaviour.
- <sup>25</sup> More complaints were filed against the offending professor and following massive protests an internal enquiry committee was formed. During this period a number of techniques were used to dismiss or defuse the charge (there was no mechanism for making complaints or seeking redressal then) such as dealing with it privately, stigmatising the complainant as unhinged, taking disciplinary action against her for non-performance, among other measures. Further protests resulted in a committee under a senior male professor with the brief to enquire into the malfunctioning and irregularities in the working of the department, during which enquiry the issue of sexual harassment surfaced. The Committee however elided the charge of sexual harassment and dismissed other charges as a consequence of 'temperamental differences' between the head and the other members of the department. The Women's Development Centre, under the charge of a senior woman professor, paid no attention to the complainant who sought help from the centre. One of the lessons learned was that the setting up

- of women's centres is no guarantee of a fair and impartial stand by women in power in a matter like sexual harassment. Other issues of arbitrary action by the head led to a joint 'dharna' (sit-in protest) and a widespread campaign in the University against the accused. A series of articles, including letters from the complainants, a rejoinder by the accused professor, and an editorial by Madhu Kishwar, appeared in subsequent issues of *Manushi* in 1992. The editorial asked for the setting up of an impartial enquiry into the complaint. Ultimately, under pressure from all quarters, the University appointed Justice Wad, a retired judge of the Supreme Court, as the head of the two-member committee, along with Dr. Alice Jacob. The committee upheld the charge of sexual harassment against the head of the department.
- <sup>26</sup> The practice of appointing retired judges to head committees to enquire into various charges such as corruption, failure of governance, sabotage and so on is common; however this was perhaps the first case of sexual harassment to come into the public domain, and resulted in the appointment of an enquiry committee to look into the specific charge of sexual misconduct in Delhi University.
- <sup>27</sup> MacKinnon, *Sexual Harassment of Working Women*, supra note 23, p. 25.
- <sup>28</sup> Justice Wad and Alice Jacob, "Report on S.C. Bhatia Case" (Delhi: University of Delhi, 1994), p. 151.
- <sup>29</sup> Radhika Chopra, "Three Texts, One Issue," *Indian Journal of Gender Studies* 5 (1), 1998, p. 118.
- <sup>30</sup> "Report on S.C. Bhatia Case," supra note 28, p. 150.
- <sup>31</sup> Ibid. The concept of vicarious liability as developed in constitutional tort law has important consequences for post-Vishakha jurisprudence. This gains importance in the context that sexual harassment at the workplace moves away from criminal law jurisdiction to regulation within civil spaces.
- <sup>32</sup> The campaign to dismiss the offending professor raised a number of issues for the employees of Delhi University. Sexual harassment is facilitated by the hierarchies within the university particularly when the exercise of power is magnified by the service conditions of others—in this case only the offending professor was a permanent employee of the university while everyone else, including the complainant, was temporary and so they were all vulnerable to pressure. The power vested in him as the head ranged from allotting work, to recommending leave, writing confidential reports, sending memos which would go into service records, all making for a pernicious work environment and stifling all attempts to bring his offences to light. When the first enquiry committee into his functioning was appointed all complaints had to be routed

through the head so the committee did not even pretend to function autonomously from the head.

- <sup>33</sup> For example, in 1975, Uma (one of the authors of this paper) quit attending a class in which she was the only student and where the professor used this situation to make sexually loaded remarks. This private solution to the problem was part of a 'contract of silence.' Far from this ending the problem, the professor re-victimised her by marking her down in the examinations. It was she who was punished for finding a quiet solution to her humiliation; the professor's power to harass and punish remained unchallenged.
- <sup>34</sup> Chopra, "Three Texts, One Issue," supra note 29, p. 118.
- <sup>35</sup> Swabhiman raised the issue of the implementation of the Wad Committee recommendations in 1995. However, some of the members of GSG felt that Swabhiman could not evolve a clear understanding of sexual harassment since its members were anchored in different frameworks, and felt disappointed when after the protests over the case had died down the coalition did not actively pursue the suggestion of the Wad Committee on the need for a standing mechanism to deal with sexual harassment. However, the effects of the Wad Committee recommendations were clearly articulated in the Delhi University Teachers Association, after some of the women teachers involved in the Swabhiman campaign took up the issue, and in 2005 a resolution was passed demanding the implementation of the Wad Committee recommendation to institute statutory measures against sexual harassment in the University. Thereafter, some of the teachers and groups involved in Swabhiman took up the case of a dalit woman worker, under the banner of the Coordination Committee on the Bina Rani Case, pointing to the way social hierarchies such as caste and class linked to gender in the University. In this case, a dalit woman employed in the maintenance staff was sexually harassed by a dominant caste male employed in a lower administrative capacity, in a college on 30 July 1996. Entrenched biases worked against the complainant to deny her charge despite a sustained campaign on the issue. The enquiry committee dismissed her charges as fabricated and motivated. Among the insulting statements made by a woman member of the committee was 'Are we to take the word of a *safai karamachari* (a cleaner) over three eminent professors?' GSG was supportive of the campaign to bring justice to the complainant. It would be fair to suggest that the perspectives of the members of the GSG and the primarily teacher- and employee-centred campaigns did not really intersect to form a combined sustained campaign against sexual harassment in the University. This meant that apart from the feminist academics in the coalitions formed to redress

individual cases, the other actors withdrew from the everyday anti-sexual harassment struggles.

- <sup>36</sup> The group was supported by many friends and colleagues who came forward to help first with the survey and later with the collation of data and the writing and printing of the report.
- <sup>37</sup> A residential, postgraduate university complex in the southern part of Delhi.
- <sup>38</sup> In 1994, a panel discussion was held at which the Vice-Chancellor of Delhi University, a Deputy Proctor, the head of the Crime against Women's cell, and the chairperson of the Women's Studies and Development Centre spoke, in addition to feminist scholars and activists. Intensive meetings followed the panel discussion, with the Vice-Chancellor, the proctor and the engineering department of Delhi University, regarding the absence and poor maintenance of lights within the University, which perpetuated a rape culture on the streets of the campus.
- <sup>39</sup> The GSG report made it clear that students did not know what the Joint Control Room was or where it was. Subsequently, there was some minimal attempt to publicise the whereabouts and functions of the Joint Control Room where women students ostensibly could lodge complaints of sexual harassment.
- <sup>40</sup> The Archies campaign in 1993 was in many ways the turning point for GSG. GSG initiated the protest against a series of cards titled 'Unholy Greetings' published and issued by the company Archies at Holi and sold in Archies outlets across the city. The cards were objectionable in their use of sexist language, illustrations, and the captions they carried. They legitimised molestation and violence against women in the garb of playing Holi. Most of the depictions portrayed women as rape-able objects and Holi as the licence to rape. The first meetings on the Holi cards were in the Gender and Society course in the Department of Sociology. In a unique confluence, classroom discussions grew into a campaign. Many other groups took up the issue across the country. This was one of the first times that some of the members of GSG had engaged in a campaign that involved the media, other groups and individuals, amounting to a public presence. The public campaign went on to engage in a larger debate on censorship and obscenity. GSG however distanced itself from right-wing assertions that even led to a public interest litigation challenging the Archies cards as obscene and contrary to the Indian tradition. Rather, GSG emphasised the links between sexual harassment with sexist representations while debating with anti-censorship feminists who critiqued GSG for positing a direct correlation between representation and violence.

- <sup>41</sup> The GSG Report is based on a survey conducted in the University of Delhi (North Campus) from 13 January to 26 February 1996. The total sample size comprised 200 completed questionnaires. The questionnaires were distributed to women hostellers in postgraduate and undergraduate hostels in the University, women non-hostellers who lived nearby in off-campus private residences, men hostellers in five postgraduate hostels on campus, women residents in staff quarters and faculty members living on campus. The questionnaire was accompanied by interviews, wherever respondents were willing to talk. Interviews were also conducted with the police and various officials in the university administration. The researchers contributed time and money on a voluntary basis. The report was funded by sponsors. The Report was released in December 1996.
- <sup>42</sup> Gender Study Group Report, *Sexual Harassment in Delhi University* (Delhi: University of Delhi, 1996), p. 8.
- <sup>43</sup> Ibid.
- <sup>44</sup> Ibid., pp. 7–8.
- <sup>45</sup> MacKinnon, *Sexual Harassment of Working Women*, supra note 23, p. 28.
- <sup>46</sup> *Sexual Harassment in Delhi University*, supra note 42, p. 10.
- <sup>47</sup> Ibid.
- <sup>48</sup> In 1991, a woman student, while being ragged, was forced to strip in the men's hostel in a college. This was not an isolated example of sexual harassment during ragging. For first-hand accounts of ragging in Delhi University, see <<http://www.stopragging.org>>. The Society for People's Action, Change and Enforcement (SPACE), is a voluntary organisation that started a nation-wide anti-ragging campaign using the media, the Internet, and the law to fight the violence of ragging after two survivors of ragging approached the association seeking institutional support.
- <sup>49</sup> *Sexual Harassment in Delhi University*, supra note 42, p. 11.
- <sup>50</sup> Mayuri Samant, "Next Holi Lock up the Boys," *Tehelka, the People's Newspaper*, 15 April 2006 <[http://www.tehelka.com/story\\_main17.asp?filename=op041506culture\\_vulture.asp](http://www.tehelka.com/story_main17.asp?filename=op041506culture_vulture.asp)>.
- <sup>51</sup> Ibid.
- <sup>52</sup> *Sexual Harassment in Delhi University*, supra note 42, p. 11.
- <sup>53</sup> Ibid.
- <sup>54</sup> Ibid., p. 12.
- <sup>55</sup> Ibid., p. 4.
- <sup>56</sup> Ibid.
- <sup>57</sup> Maxine Molyneux, "Mobilisation without Emancipation? Women's Interests, the State and Revolution in Nicaragua," *Feminist Studies* 11 (1985), pp. 225–54.

- <sup>58</sup> *Sexual harassment in Delhi University*, supra note 42, p. 5.
- <sup>59</sup> Ibid., p. 4.
- <sup>60</sup> Ibid., p. 5.
- <sup>61</sup> The report marked the first and only survey conducted on Delhi University campus and until now, DU has not commissioned a survey of sexual harassment.
- <sup>62</sup> See Lester Coutinho, Suman Bisht and Gauri Raj, "Numerical Narratives and Documentary Practices: Vaccines, Targets and Reports of Immunisation Programmes," *Economic and Political Weekly* 35 (8/9) 2000, pp. 656–66.
- <sup>63</sup> The trial court judgement stated clearly that the accused was guilty but the acquittal was inevitable since there was insufficient evidence to prove guilt beyond reasonable doubt. It has also been stated that the evidence was tampered as the accused was the son of a police officer.
- <sup>64</sup> *Sushil Kumar v. University of Delhi*, Unpublished Delhi High Court Judgement, CM 3222/2001 & CW 1162/2001, date of decision 11 July 2001.
- <sup>65</sup> The JNU Policy against Sexual Harassment was announced in 1999.
- <sup>66</sup> During these 15 months the group held discussions to gather feedback at different stages of the drafting of the policy with a wide range of people—students, teachers, and non-teaching staff.
- <sup>67</sup> Standing committees marked a shift from the ad-hoc, case-by-case way in which sexual harassment was dealt with in the University. In moving away from this earlier approach, the policy also made it incumbent on the committees to do preventive work. Preventive work is in fact a critical part of the policy against sexual harassment.
- <sup>68</sup> The FASH draft policy stated that 'because the person against whom a complaint has been brought may be in a position of power the process of nomination can and does become a means to shield the person charged and deny redressal to the complainant.' See Forum Against Sexual Harassment, "Draft Policy on Sexual Harassment" (Delhi: University of Delhi, 1998).
- <sup>69</sup> FASH submitted the draft policy to the Vice-Chancellor of the University in November 1998. In 2004, Ordinance XV (D): Prohibition of and Punishment for Sexual Harassment, was finally passed by the Executive Council of Delhi University. In the interim FASH lobbied for the provisions the group had prepared, provided criticisms of the policy versions proposed by the University, staged protests, negotiated, and finally, towards the end, two members of FASH were invited to help finalise the policy. During this period, FASH succeeded in persuading the University to institute an interim committee to look into ongoing complaints of sexual harassment. Furthermore, after the policy was

- passed, one of the members of FASH—Uma Chakravarti was nominated to the Apex Complaints Committee. A number of student groups, academics and administrators supported FASH in these interventions.
- <sup>70</sup> The Delhi University Ordinance finally borrowed the formulation of jurisdiction evolved by Jawaharlal Nehru University, to include sexual harassment complaints when the complainant and the accused belong to or reside in the university, whether or not the harassment takes place in the university; when an outsider complains against a member of the University or an outsider harasses a member of the University and the harassment takes place on campus. In case a member of the University is sexually harassed off-campus by an outsider, the university authorities are obliged to initiate action by registering a complaint with the appropriate authority and providing resources to the complainant to follow up the complaint.
- <sup>71</sup> See Catherine MacKinnon, *Towards a Feminist Theory of the State* (Cambridge: Cambridge University Press, 1989).
- <sup>72</sup> The *Vishakha* judgement defines sexual harassment as, '... such unwelcome sexually determined behaviour (whether directly or by implication) as a) physical contact and advances; b) a demand or request for sexual favours; c) sexually coloured remarks; d) showing pornography; e) any other unwelcome physical, verbal or non-verbal conduct of sexual nature'.
- <sup>73</sup> Forum Against Sexual Harassment, "Memorandum to the Sushila Kaushik Committee," submitted 29 September 1999.
- <sup>74</sup> Ibid.
- <sup>75</sup> "Draft Policy on Sexual Harassment," supra note 68.
- <sup>76</sup> See Flavia Agnes, "Law, Ideology and Female Sexuality: Gender Neutrality in Rape Law," *Economic and Political Weekly* 37 (9) 2002, pp. 844–47.
- <sup>77</sup> One of the few cases that FASH took up while pressing for the institution of the policy was of homophobic sexism against a male teacher in a campus college. To our immense disappointment we could not bring justice to the complainant. The case, however, reinforced the need to fight homophobic sexism and violence on the campus. For a first-hand account of same-sex ragging and homophobia on a campus residency, see Aniruddha Dutta, "Parody and panic: homosexuality and homosocial organisation in sexual ragging," 2006 <<http://www.stopragging.org>>.
- <sup>78</sup> "Memorandum to the Sushila Kaushik Committee," supra note 73.
- <sup>79</sup> The JNU amendment holds that the Gender Sensitisation Committee or any other person must report instances of 'sexual deviance' among students living in hostels to the Vice-Chancellor, even where there is no

formal complaint. Instead of legislating against homophobia, it informs the very category of sexual deviance, and is brought in to regulate same-sex desire.

- <sup>80</sup> Ratna Kapur, *Law and the New Erotic Justice: Politics of Post Colonialism* (New Delhi: Permanent Black, 2005), p. 41.
- <sup>81</sup> Pratiksha Baxi, "Reading the Law within Public Discourses," *The Book Review*, March 2006, pp. 19.
- <sup>82</sup> This is particularly true of department clusters in the university where the policy had not explicitly mentioned who was responsible for constituting the first committee. In colleges, the responsibility for this rests squarely with the principal. However, despite a clarification on this in circulars from the secretariat of the Apex Committee constituted under the Ordinance, very few departments have convened a committee.
- <sup>83</sup> By changing both the composition of the college committee and the method of constituting it, they reversed the central principles of the constitution of the committees—that they should be autonomous of the existing power structures in the college, and be representative. Further, the amended ordinance is in violation of the Supreme Court guidelines that specify that the committee induct someone from outside the institution. Instead of someone 'with a known contribution on women's issues', as specified by the Ordinance, the college psychiatrist was appointed on the grounds that the 'the presence of a psychiatrist on the Committee is a specific expression of our Christian character and concern—concern for both the victim and the accused.'<sup>83</sup> Thereby, the college not only psychologises sexual harassment, putting the complainant and the accused at par, but by using the framework of forgiveness as the dominant mode of reconciliation, it also enforces what Laura Nader calls 'harmony ideology,' in *Harmony Ideology: Justice and Control in a Zapotec Mountain Village* (Stanford: Stanford University Press, 1990).
- <sup>84</sup> Press Trust of India, "HC seeks explanation from Stephen's on sexual harassment Ordinance," New Delhi, 13 April 2005.

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