

# Feminist Engagements with Violence

Contingent Moments from Sri Lanka

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Lisa Kois

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International Centre for Ethnic Studies

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To Amara, Jeyanthi and Viji  
with deep respect and admiration for their radical politics, and  
commitment to peace, justice and equality in Sri Lanka

To the memory of Kethesh Loganathan,  
fellow friend and activist, assassinated by the LTTE on  
August 12th 2006  
and to his wife, Bhawani Loganathan,  
who had the courage to pick up the pieces of her life after

To all the women along the way who shared their stories

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## Introduction

### *Freedom, Protection and Feminist Engagements with Violence in Sri Lanka<sup>1</sup>*

Nimanthi Perera-Rajasingham

The four chapters in this book attempt to document and analyse contingent moments in the feminist movement in Sri Lanka as feminists have attempted to address issues of gendered violence. Violence against women, as a campaign, has been the focus of feminist interventions for a period of over two decades. Therefore, to analyze and come to terms with such a large corpus of work has been a necessary and difficult challenge. We hope this book is part of a process of rethinking feminist engagements with violence in relation to the diverse responses feminists have formulated over the last twenty years. What we hope to mark in the following chapters are the dominant and significant moments and shifts within a movement. Through the analysis of such moments, these chapters attempt to look at issues that are important for feminist activity in the areas of gender and violence. The introduction will look at some of the important issues feminists have grappled with in their campaigns and writings on gendered violence.

This Introduction, therefore, maps and brings together a framework through which issues of violence against women in Sri Lanka can be analyzed. It looks not only at the emergence of identity politics as the dominant mode through which gender issues

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<sup>1</sup> I would like to thank Kanchana Ruwanpura and Radhika Coomaraswamy for their valuable comments in writing this introduction. Overall, I am indebted to Sumanasiri Liyanage who has supported my work and listened to my ideas over the course of this project. His remarkable knowledge of Marxist scholarship and history has been very useful in all my thinking. All errors in writing are of course my own.

were tackled, but also investigates two ways in which the movement has sought redress gendered violence. These two modes can be broadly categorized as freedom and protection. I have attempted in this Introduction to understand and complicate how these two notions of freedom from violence and protection from violence have been negotiated by the movement. I argue that the dominant manner that the feminist movement in Sri Lanka has attempted to do this is by placing the state as the main arbiter of both, and thereafter, resorting to the law as the ultimate form of redress from gendered violence. This Introduction, and some of the chapters that follow critique a reliance on the law arguing that it is insufficient to deal with problems of gendered violence. Furthermore, I will argue that feminists need to incorporate a more sustained criticism of capitalism into identity based debates for a complete criticism of violence.

Some of the main questions that these chapters pose and hope to tackle are as follows:

The first chapter in this book, “The re-emergence of Adeline Vitharne: The beginnings of a feminist discourse on gender based violence in Sri Lanka” by Nimanthi Perera-Rajasingham, studies what enabled a feminist response to gendered violence in the mid-1980s. How does an analysis of two feminist collectives at the time, the Voice of Women (*Kantha Handa*), and Centre for Women’s Research (Cenwor), enable us to understand the nature of feminist engagements with violence? This chapter attempts to look at how a new feminist discourse called ‘violence against women’ came into being in Sri Lanka in the 1980s by looking at an important film released in 1982 called *Dadayama*, and how responses to the film articulated gendered violence within it. This film re-depicts the 1959 murder of Adeline Vitharne, which, until its re-depiction in the film *Dadayama*, was seen as a straightforward murder case.

While the first chapter of the book looks at this specific debate in the 1980s, the second chapter, “Traversing the Global Village: Violence against Women, Discourses, Dialectics, and Dialogues,” by Lisa Kois, is an analysis of some feminist engagements with gendered violence in the 1990s. Through a series of interviews

with Sri Lankan feminists, she looks at two linked and prolonged engagements by the feminist movement in Sri Lanka with issues of gendered violence, namely the internationalisation of the violence against women movements, and the Sri Lankan campaign over the rape and murder of Krishanthi Koomaraswamy<sup>2</sup>. What does an analysis of this case reveal about this specific campaign, the biggest effort made by feminists in Sri Lanka to bring to justice a victim of gendered violence, but also about issues regarding human rights as women’s rights, about pressurising the state to bring to justice the rapists/murderers, and about the law?

In a sense, placing gendered violence within the fold of human rights and international frameworks also resulted in the foregrounding of a certain set of strategies for combating gendered violence. The law became one such important strategy as the campaigns against violence against women became internationalized. As Chapter Three, “Private Battles in Public Domains: Going Beyond Legal Terrains,” by Rizvina Morseth de Alwis suggests, the enforcement of fundamental human rights meant that the law was used to ensure that these rights were protected. Hence, the post-Vienna era of the mid-1990s also saw the emergence of the law as the site of feminist engagements with violence. De Alwis’ chapter draws attention to this overwhelming reliance on the law, and through a careful analysis of feminist lobbying to pass the domestic violence bill, she critiques the unqualified use of law as a site of both protection from violence and freedom from violence. Her argument is not simply that laws should be better and enforcement more effective, but that the very logic of the law, its inability to tackle multiple realities and influences, and its capacity to produce certain kinds of subjects, need to be kept in mind. Her chapter ultimately suggests the need for alternative measures to the law.

The final chapter in this book, “Feminist Politics Beyond the Law: Poorani as a site of Empowerment and Resistance,” by Perera-Rajasingham, extends de Alwis’ critique by looking at

<sup>2</sup> Koomaraswamy’s name has been spelt interchangeably as both Koomaraswamy and Kumaraswamy in newspaper reports and other documents.

some alternatives to the law. As this introduction will make clear, this chapter attempts to look at the site of a specific shelter called Poorani that existed in Jaffna in the later 1980s. Through a detailed construction of this space and the activities of its loose membership, this chapter attempts to look at what alternative feminist attempts can enable.

### **Conceptualising Gender and Violence**

Violence against women as a category of feminist inquiry began in Sri Lanka only in the mid-1980s and continues to date (This is not to suggest that issues of gendered violence were never discussed prior to this time, but that feminists prioritized it as an important feminist concern only at this time). The different stands feminists take regarding violence against women seem to fall into two general theoretical categories, and are interrogated in this collection. One strategy has been to see women as being prone to different kinds of violence across the world, which despite the different natures of these forms of violence, seem to be targeted at “women”. This is what Lisa Kois argues in her chapter in stating that violence against women is an objective category, but what feminists lacked were a set of tools and vocabulary to understand and analyse this violence. Hence, men and patriarchy sought to normalise violence against women, while simultaneously occupying positions of power in institutions like the law, and as such depriving women of opposition to this violence. Kois’ chapter is an analysis of how feminists penetrated institutions that had hitherto been male dominated, at least in perspective, and engendered institutions to accept issues of gender and violence. Kois looks at how activities from women’s groups around the world demanded that the UN take the issues of women’s rights and violence against women seriously and mainstream them into the UN bodies.

Feminists would also use the term “gendered violence”. Obviously, this second strand of debate would critique the very notion that anything inherent about being a “woman” enables violence. Indeed the very term “violence against women” would be abandoned

for the term “gendered violence” so as to conceptualise gender and violence as relational and contingent.<sup>3</sup> The debates around issues of pornography, censorship and freedom of expression are only one set of examples relating to the unstable nature of gendered violence itself. For example, the different stances taken on pornography by feminists like Catherine McKinnon on one hand and Carol Smart on the other reveal the different analyses feminists make regarding what constitutes gendered violence. In this understanding of gender and violence, what enables a space for gendered violence depends on the context and the variables that define that moment. The first chapter in this book attempts to highlight such variables or factors that enabled a feminist discourse and response to “violence against women” in Sri Lanka in the mid-1980s. Hence the chapters in this book, especially the first two, take divergent stands on how to define gender, woman, violence. These differences lend to a rich dialectic of how feminists can approach some of the categories of inquiry in this book.

### **Identity Politics and the Politics of Distribution: Freedom and protection from violence**

Another manner in which to frame these four chapters is to look at how each one marks changes in Sri Lankan politics in general, as identity based politics displaces earlier methods of understanding social inequality.

One story of the last two decades in relation to gender and violence reads something like this. One of the main shifts has been the changes in the kinds of debates that have come to be significant in the Sri Lankan context. The 1980s, along with the election of the UNP to power in 1977 and the commencement of the ethnic conflict in 1983, saw a marked change in political strategy on the part of the feminist movement. If the pre-1980s were marked by a bourgeois state that managed the demands of left groups through

<sup>3</sup> Mary E. John, “Gender, Development and the Women’s Movement,” ed. Rajeswari Sunder Rajan, *Signposts: Gender Issues in Post-Independence India* (New Delhi: Kali for Women, 1999).

welfare strategies, then the 1980s and after saw the gradual withdrawal of the state's welfare responsibilities. This had a great deal to do with the UNP's liberal policies and structural adjustment patterns in the Sri Lankan economy.<sup>4</sup> This has led in general to increased privatisation and capitalist relations and the displacement of some welfare activities to the non-governmental sector. The state sector has as a result not expanded much since the Mahaweli Dam Project, particularly in the 1990s.<sup>5</sup>

If the pre-1980s were marked by the disciplinary powers of a welfare state, then the post-1980s moved toward increased disciplinary tactics through the state's heavy use of military force and coercive activities such as warfare, arbitrary arrests, disappearances and checkpoints. Secondly, the 1980s saw a change in the manner in which political protest has come to organise itself. While the earlier decade focused on class relations, the unequal distributions of wealth, and through it the unequal distribution of power as a pivot around which political activity was organised, the 1980s inaugurated firmly a shift into identity/ ethnic politics as the

<sup>4</sup> See W. D. Lakshman, "Introduction" in *Dilemmas of Development: Fifty Years of Economic Change in Sri Lanka* (Colombo: Sri Lankan Association of Economists, 1997), 1-27.

<sup>5</sup> The Mahaweli Dam Project was the biggest dam project ever carried out in Sri Lanka. It was carried out at an accelerated rate from the late 1970s to about 1990. The Mahaweli Authority still exists and carries out various activities in relation to the dams and the populations resettled due to its construction. This project, which was meant to enhance development and increase agriculture, has not achieved most of its goals. If anything, the Mahaweli enabled large settlements of Sinhalese from the South of Sri Lanka in Tamil and Muslim areas, thereby displacing Tamils and Muslims from those regions. Subsequently, it also resulted in the state effectively organising home guards, armed and paid a daily wage to be border guards and protectors of those areas. This project has in effect intensified ethnic tensions in the area and enabled the state to use unemployed Sinhala men in the service of warfare. See Robert Muggah, "Chapter Four: Resettlement and the Mahaweli Programme: from Development to Militarization of Systems L and B," in *Resettlement ergo Impoverishment: Internal Displacement and Resettlement Regimes in Sri Lanka* (Unpublished PhD dissertation, Oxford).

dominant marker of social protest.<sup>6</sup> The feminist movement and its protests, especially in areas of gendered violence, have followed some of these shifts also.<sup>7</sup> The pre-1980s feminist movement was strongly tied to Marxist ideologies, and paid attention to class, the commodification of social relations and the unequal *distribution* of

<sup>6</sup> The only "left" group that has any force or influence today is the JVP. However, its attitudes toward minority issues have also meant that it has constantly used nationalist rhetoric to prevent the devolution of power to the minorities in Sri Lanka. As stated by David Rampton and Asanga Welikala, despite the fact that the JVP does represent to some extent the subaltern rural youth in Sri Lanka and their marginalization from employment and educational distribution, "the ideology that underpins and sustains the JVP's political cohesion lies not so much in the doctrines and theories of Marxism as in the more effective and emotive appeal of Sinhala nationalism. Additionally, it should be recognized that the JVP has taken on the mantle of Sinhala Buddhist nationalism." See David Rampton and Asanga Welikala, *The Politics of the South: Part of the Sri Lanka Strategic Conflict Assessment 2005* (Colombo: Asia Foundation, 2005), 33. Hence, it is difficult to think of the JVP as a progressive left option. It has consistently seen any effort to think about the rights of Tamils as an imperialist conspiracy by the Western states and India to split the country and plunder it. Furthermore, it continues to be extremely hostile toward feminism as a whole not only within the party but also in the manner in which it attacks feminism as western, and imperialist. In a debate (2006) between Wimal Weerawansa (Publicity Secretary, JVP) and Kumar Rupesinghe (Foundation for Co-Existence), for example, Weerawansa held up a petition signed by various members of the women's movement, demanding both parties deescalate violence and resolve the ethnic question through negotiation, as part of an imperialist project interested in dividing the country and challenging its unitary status. Such hostile and reductive statements by the JVP regarding the women's movement in Sri Lanka are constant and numerous.

<sup>7</sup> I do not wish to suggest that there are no feminist activities that focus on issues of distribution, but that feminists have tended to do so less and less. For example Neloufer de Mel's chapter on "Mother Politics and Women's Politics" in *Women and the Nation's Narrative: Gender and Nationalism in Twentieth Century Sri Lanka* (New Delhi: Kali for Women/SSA, 2001) looks at examples of women's organizations that do retain some focus on issues of class, redistribution and rural poverty to the present day. Her discussions on the work of the Women's Development Foundation in Kurunegala and the Uwa Welassa Govi Kantha Sanvidanaya, document and analyzes the work of these two collectives that straddle multiple issues simultaneously.



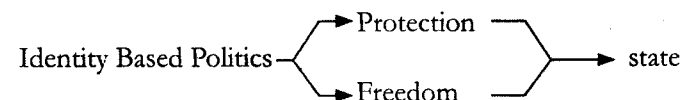
wealth. However, the 1980s and after have been marked by the need to *recognize* identity based inequalities as the dominant mode of feminist activity. For example, the earlier movement's emphasis on women's access to health and education, and demands for equal pay, were linked to access for all to health and education, as a promise by the welfare state to deliver basic requirements. Within the feminist movement, the post-1980s marks the articulation of "woman" as the foundation upon which the women's movement has campaigned and later by adding the category of ethnicity (namely Tamil woman) to the category of woman in its campaigns. It is not that prior to the 1980s the feminist movement did not use identity politics, but that it has become an increasingly entrenched and marked category since the 1980s. When looking at efforts relating to the violence against women campaigns, the dominant conceptualisation of why violence against women occurs is seen to be because of woman's essential qualities of "being" a woman within a patriarchal society. Difference, though acknowledged at moments, predominantly through the naming of the Tamil woman as opposed to the Sinhala woman, is silenced by normalising women's common experiences of violence. Furthermore, other kinds of politics are often silenced continuously as the focus on identity/ethnic politics has increased.

Hence, the four chapters in this study are an analysis of feminist engagements with gendered violence, often in the form of identity based politics. The mid-1980s mark the inaugural moment of feminist engagements with violence in Sri Lanka. This moment also marks the tensions within the movement and a turning point in its strategies for the future. As noted in the first chapter "The re-emergence of Adeline Vitharna," the 1980s marked an awareness of increased commodification through increased capitalist relations, but also a disavowal by the feminist movement of class struggles as the ultimate resolution to women's issues. This chapter looks at how well-known feminist Kumari Jayawardena demands a new set of tools and analytical vocabulary as necessary for the future of the feminist movement in Sri Lanka (see Chapter One). Her critique of Marxist ideology as insufficient to explain women's oppression is important to note. If this moment marks an uncertainty and hesitation, or

perhaps a moment of strategic change, the subsequent development within the movement has propelled it toward espousing identity based politics or the politics of recognition. This marks a general shift in the movement as a whole, and as Wendy Brown suggests, "identity politics is partly dependent upon the demise of a critique of capitalism and of bourgeois cultural and economic values"<sup>8</sup> in Sri Lanka.

As Kois suggests in her analysis of the international women's movement and the Sri Lankan campaign against the rape and murder of young Krishanthi Koomaraswamy (Chapter Two), identity based politics consolidated itself through the connection of women's rights to human rights. A woman's essential identity, of being a woman and experiencing life as a woman, became the core of feminist campaigns against violence. This is suggested when Kois discusses the operations of the tribunals in Vienna. In Sri Lanka, Krishanthi Koomaraswamy's identity as a (Tamil) woman became the manner in which identity politics operates. The campaign linked the specific murder and rape of Krishanthi and her family by equating it to violence against women across time, to larger debates on the suffering of Tamils, and to the racist nature of the state.

In many feminist discussions regarding identity politics, freedom and protection have been some of the demands of the movement. The form that freedom and protection operate is as follows:



What becomes clear as we study demands for freedom and protection is that these efforts produce unstable results regarding the nature of emancipatory politics within the feminist movement in Sri Lanka.

<sup>8</sup> Wendy Brown, *States of Injury: Power and Freedom in Late Modernity* (New Jersey: Princeton University Press, 1995), 59.

## Freedom

General theorizations of freedom mark it as a political horizon we must reach. It becomes clear, however, as we analyze this concept, that freedom needs to be conceptualized differently. Let us perhaps select two examples, not within the chapters of this book, but which are important in Sri Lankan debates, to mark the way freedom needs to be interrogated. The figure of the LTTE woman cadre is a subject of interest to many feminists. The question often posed in one form or another is that of “empowerment” of the LTTE woman, or in other words, to ask if the LTTE woman has agency. Arguments generally follow a pattern where questions posed include: has the increased militarization of women in the LTTE emancipated them from traditional Tamil hierarchies? Have the increased numbers of women in the structures of the LTTE meant more space for them? If they have become more empowered in this way, how can one reconcile this with the violent nature of the LTTE? How can emancipation or increased freedom in one sphere be reconciled with motifs of self-sacrifice, suicide attacks and the violent acts of these women upon Tamil civilians?<sup>9</sup>

<sup>9</sup> See Nanthini Sornarajah, “The Experiences of Tamil Women: Nationalism, Construction of Gender, and Women’s Political Agency” in *Lines* 2, no. 4 (2004); Sumathy Sivamohan, “The Rise of Militant Tamil Nationalism, Its Assumptions and the Cultural Production of Tamil Women” in S. H. Hasbullah and Barrie M. Morrison (eds.) *Sri Lankan Society in an Era of Globalization: Struggling to Create a New Social Order* (New Delhi: Sage Publications, 2004); Miranda Alison, “Uncovering the Girls in the Boys: Female Combatants of the Liberation Tigers of Tamil Eelam” in *Nivedini: Journal of Gender Studies* 10 (2003), 41-70; Adele Balasingham, *Will to Freedom: an Inside View of Tamil Resistance* (England: Fairmax Publishers, 2001); Adele Ann, *Women Fighters of Liberation Tigers* (Jaffna, 1993); Peter Schalk, *Birds of Independence: on the Participation of Tamil Women in Armed Struggle* (Sri Lanka, 1992); Rajani Thiranagama, “No More Tears Sister: the Experiences of Women” in Rajan Hoole et al, *The Broken Palmyrah: the Tamil Crisis in Sri Lanka – an Inside Account* (CA: the Sri Lanka Studies Institute, 1992). See also Radhika Coomaraswamy, “Tiger Women and the Question of Women’s Emancipation” in *Pravada*, Vol. 4 (9) 1997, 8-10; Neloufer De Mel, *Women and the Nation’s Narrative* (Colombo: SSA, 2001), 203-232.

A somewhat similar argument may be raised with regard to women working in free trade zones (FTZs), a post-1977 phenomenon. These occupations allow young women to escape the domestic, village and family domains, where they may have been forced to adhere to many restrictions. Furthermore, FTZ employment opportunities provide women with some independence; however, they fall into different kinds of oppression in FTZ factory environments. Often they may be paid extremely low wages and exploited in these factories. They may become vulnerable to harassment and violence in the work place. They may also have to accept employment well below their educational qualifications. As Kumudhini Rosa has suggested, “A large number of young women (usually between ages of 18-25) receive employment in light manufacturing industries, and particularly in garment industries. They offer cheap, dispensable, and disciplined labour, rarely in keeping with their needs or their educational qualifications.... A vast majority of women remain highly concentrated in gender stereotyped occupations in offices and on the factory floor, which offer few opportunities.”<sup>10</sup> As unionising within the FTZ is strongly discouraged, women often do not have much opportunity to organize themselves to obtain greater benefits for themselves. This kind of developmental violence happens in the context of increasing numbers of women entering the work-force, and becoming the main income earners for their families.

These two examples illustrate the complexity of questions of freedom within feminist discourses themselves. Perhaps what can be examined is the manner in which identity and freedom are constructed in relation to one another. As Wendy Brown suggests, “freedom is neither a philosophical absolute nor a tangible entity but a relational and contextual practice that takes shape in opposition to whatever [is] locally and ideologically considered as unfreedom.”<sup>11</sup> If we consider that the LTTE’s existence or politics is intrinsically linked to state oppression rather than outside of it, then we can note how women in the LTTE are effects of power that operates within

<sup>10</sup> See Kumudhini Rosa, *Women of South Asia*. (Colombo: Gala Academic Press, 1995), 88.

<sup>11</sup> Brown, *States of Injury*, 6.

nationalist politics. Hence, the institutionalisation of the LTTE and its increase of power has meant similar consequences for women within such a movement whose demands for freedom are always produced, contained, subjected to and dominated by nationalist impulses. To think of an LTTE woman who transcends such effects of power is difficult. Thus the LTTE woman is not a subject before history but an effect of power relations, produced at certain junctures because of a certain manner in which power is organized. In a sense, her emancipation can exist only within the bounds of oppression, the two co-exist and one cannot exist without the other. This is similar to the case of women who work in the FTZ, where they are produced as certain kinds of workers, women, subjects and disciplined by the operations of capitalism at the same time. "[Their] free will is actively constrained by coercion. At another, more subtle level, what appears to be free will is produced by the operation of structures of power that hegemonize notions of right and wrong."<sup>12</sup> If we keep in mind the dual manner in which freedom from violence operates, it will help us understand the difficulties feminists need to negotiate when responding to gendered forms of violence.

Take for example, our understanding of freedom that has come from debates on gendered violence in Sri Lanka in the mid-1980s (Chapter One). The very emergence of debates on violence against women in feminist quarters is an effect of greater focus on identity politics and increased capitalist relations. The increased access of the state economy to capitalist relations, with the accompanying individualisation, control and disciplining of trade union politics, and the decrease of the state's welfare functions, gave rise to spaces catalysed by global forces. The focus on violence is partially the result of one of these forces at work. Hence, over the years, the state has withdrawn from welfare services, through privatisation, and simultaneously that space has been given to organizations considered better fit to do this work: civil society. These civil society institutions have become, fashionably, vectors of freedom and democracy. The responsibilities of the state

<sup>12</sup> Nivedita Menon, *Recovering Subversion: Feminist Politics Beyond the Law* (New Delhi: Permanent Black, 2004), 209-210.

toward delivering certain services have as a consequence declined, though not the state's powers to coerce its subjects differently. The experiences of violence that feminists saw as urgently demanding responses were conditioned by changes in the construction of credible politics. In other words, class politics were displaced by the strengthening of liberal politics, which has focused more on rights and less on capital relations and commodification. The larger issues of unequal distribution of power through the commodification of labour and the increase in exploitative working condition have been neglected as one of the most important sites that produce violence. Hence, we have been disciplined to think of the rights discourse as the most important mode of politics, and our confessions of our 'experiences' of violence and identity based politics seem to validate a furthering of rights discourses, while simultaneously hiding and obscuring other forms of oppression and the erosion of structures to deliver these rights. Furthermore, as Kois points out (Chapter Two), many of the campaigns of early feminists were done through awareness raising and sharing of experiences, which were seen as essentially women's experiences. Yet the manner in which experience is constructed comes to be ignored.

If freedom, or its more contained term, empowerment, is to be retained for politics despite these challenges in our understanding of freedom, how might one attempt to do so? How do debates on gender and violence in Sri Lanka contribute to such an exploration? Perhaps one way is by understanding freedom and emancipatory politics as attempts to locate these moments within the contexts in which they emerged and to understand the reasons for the emergence of these responses. It is also important to understand freedom as a process constantly open to change and to co-optation, rather than as a straightforward horizon we hope to reach. If freedom is understood in this way, with every success we could continue to be vigilant of possible cooptation. These efforts then become part of the "struggle within an amoral political habitat for temporally bound and fully contestable visions of who we are how we ought to live"<sup>13</sup> rather than visions of "truth". They mark moments of success and failure simultaneously.

<sup>13</sup> Menon, *Recovering Subversion*, 235.

The chapters in this collection reflect such negotiations. The first chapter attempts to analyse the beginnings of the violence against women debate. The emergence of this debate, however, also marks, as suggested earlier, a decline in other kinds of progressive political formations. Also, while greater funding became available for feminist activity and catalysed feminist efforts, this era also marked the commencement of the institutionalisation of feminist politics. The autonomous women's groups that foregrounded issues of gender and violence have over the years become increasingly project oriented and focused on professional activities. This has led to feminist politics becoming a profession in which completing projects has become more important than radical and critical thinking.<sup>14</sup>

Chapter Two marks the enormous success of the international women's movement in catalysing responses from around the world regarding violence against women. Many Sri Lankan feminists were part of that larger movement of mainstreaming gender issues into institutions that had resisted this for many years. The success of such efforts has borne fruit in the efforts to lobby against gendered violence and larger human rights issues in Sri Lanka. As Kois illustrates, the enormous energy for this effort is also marked by the very symbolic nature of that victory. While the rapists and murderers of Koomaraswamy and her family were brought to justice, due process, and larger substantial changes in the state's behaviour toward its minorities remained unchanged, as did substantial investigations of the material and social conditions that produce this kind of violence. Furthermore, the "victim" has become the ground of feminist politics, a symptom within both the human rights and violence against women movements, as well as the larger women's rights agenda. As Ratna Kapur has illustrated, differences among women were overcome by locating violence as a common experience of all women in all races, classes and religions.<sup>15</sup>

<sup>14</sup> Ibid, 220-221

<sup>15</sup> See Ratna Kapur, "The Tragedy of Victimization Rhetoric: Resurrecting the "Native" Subject in International/Post-Colonial Feminist Legal Politics," in *Harvard Human Rights Journal*, Spring, (2002), 15 (1).

Hence, the woman victim became the pivot upon which these movements developed. Difference among women had become subsumed in identity politics that sought to resolve differences through the violated victim woman. While the movement had many successes in raising awareness and mobilizing for reforms in law, it also entrenched and entrapped women within definite identities and heterosexual matrices. Within this victory for both the women's rights and civil rights movements lay also the conditions of its failure.

The third chapter too echoes the dual nature of feminist engagements with the law. While successful and aggressive lobbying have forced the state to enact laws against violence, in this case domestic violence, this success is marked by a myriad of failures. For one, the bill that was ultimately passed was hardly the bill desired by the feminist movement (see Appendix II & III). Secondly, the legislation of the domestic violence bill, as explained by de Alwis, reduces the complex and competing demands and experiences of women into fixed stable categories, reducing rather than expanding the number of choices available to them. Finally, in the fourth chapter, the shelter Poorani is produced as a site of protection and resistance to the oppressive actions of both state and non-state actors. Its success, forging collective resistance against forms of oppression, became co-opted in the end by forces of power, here the LTTE. Each of these chapters mark the unstable nature of attempts at freedom and larger spaces for women.

## Experience

If the chapters in the book look at both the positive and negative aspects of identity politics, a word must be said about the manner in which experience comes to be constructed in these chapters. As Ratna Kapur has argued, the differences among women become diminished or negotiated through references to universal experience of violence across cultures. Hence,

[t]he victim subject has allowed women to speak out about abuses that have remained hidden or invisible in



human rights discourse. Moreover, the Vienna World Conference and subsequent women's conferences have enabled women to speak out to the international community. A powerful form of this presentation has been through personal testimonials in public tribunals, as at Vienna, or through international video links. These accounts are usually very graphic and horrifying, and are told through the location of the victim subject.

The victim subject also provides a shared location from which women from different cultural and social contexts can speak. It provides women with a subject that repudiates the atomized, decontextualized, and ahistorical subject of liberal rights discourse, while at the same time furnishing a unitary subject that enables women to continue to make claims based on a commonality of experience.<sup>16</sup>

Hence, the dilemmas of difference seemed to have been tackled in the realm of violence against women campaigns. At one level, the strategies adopted at the Vienna conference and thereafter negotiated the manner in which the overlaps and continuities of gendered violence are linked together. They also marked the manner in which categories that were very different were subsumed under one sign. The tribunals are more than simply an important moment in the international terrain such as at Vienna or Beijing. They also signalled a practice that locates experience as the foundation upon which to understand violence against women. Therefore, women are different from men because they experience violence, they experience violence because they are different from men. A certain circular tautological argument becomes one of the main focuses of the violence against women discourse in Sri Lankan debates that uses the victim subject, the unified woman, as the basis for its politics. This can be seen in the first chapter of the book which looks at the first set of papers presented in Sri Lanka on violence against women. Similarly, as Kois describes, the international women's movement continued to use experience as a way to access the truth of what

it was to be a woman. How such experiences were constructed were left largely unexamined. As Joan W. Scott comments, such an understanding, in which "experience is taken as the origin of knowledge, the vision of the individual subject...becomes the bedrock of evidence upon which explanation is built. Questions about the constructed nature of experience, about how subjects are constituted as different in the first place...are left aside."<sup>17</sup>

As Rizvina Morseth de Alwis points out, by reverting to the terrain of the law, identities and experiences become further frozen by the disciplinary techniques of the law – a woman must be able to narrate her experience, relive it in a courtroom and be able to convince a supposedly impartial audience of the authenticity of that experience to be given justice. The experiences of certain kinds of women deserve justice under the law, while others seem to be un-worthy. As de Alwis recounts, a woman who is continuously battered by her husband but does not wish to leave the marital house will find the law is of little use to her. The law, in de Alwis' words, operates through validating certain experiences, actions, identities and patterns of behaviour. Complex social relations become frozen in the terrain of the law. Other institutions necessary to facilitate options for women who want to leave abusive situations have been minimal. If we look at the number of shelters, safe houses in Sri Lanka, they are few and inadequate to cope with demands created by the very rhetoric of the feminist movement in Sri Lanka.

## Protection

Freedom, emancipation and agency imbued with the contradictions and complexities that have been signalled above have brought also a different kind of response from the feminist movement in Sri Lanka. The second set of expectations from the feminist movement in engaging with issues of gender and violence is to do with protection. The feminist movement in Sri Lanka has been overtly dependent on the legal system to redress issues of gendered

<sup>16</sup> Ibid, 4.

<sup>17</sup> See Joan W. Scott, "Experience" in eds. Joan Scott and Judith Butler, *Feminists Theorize the Political* (New York: Routledge, 1992), 25.

violence. As de Alwis notes, many of the feminist campaigns in the last two decades have been to introduce new bills of law or to reform old laws. Hence, I will attempt in this section to think through the significance of the relationship the feminist movement has with the law and consequently with the nation-state. If freedom is too difficult to imagine in an era of globalization, increased capitalist exploitation, and the disciplinary powers that construct our realities, then protection from violence would seem to be an adequate term to use.

Resorting to the law has had mixed results for the feminist movement. I understand the demands of many feminists to hold the state accountable for the safety and protection of women. In a liberal understanding of citizenship, one held on to “the universal ideal of civic nationalism, based on individual freedoms and equal rights irrespective of distinctions of religion, race, language, culture and the particular demands of cultural identity, which call for the differential treatment of particular groups on grounds of vulnerability or backwardness or historical injustice.”<sup>18</sup> This understanding sought to locate the state as the site that negotiated differences and enabled a distribution of justice to all. The nation state was for the people and by the people. This description of the state preumes that it will safeguard the sovereignty of the people, and their citizenship rights. In this conceptualization, women can seek and find adequate protection from the state.

However, as Partha Chatterjee remarks, this notion of the state or the nation in progressive terms is “the utopian time of capital. It linearly connects past, present and future, creating the possibility for all those historicist imaginings of identity, nationhood, progress and so on.”<sup>19</sup> What Chatterjee considers the real time of heteretopia operates differently. The concept of a neutral state that can objectively decide on issues of rape and violence is possible only within a liberal understanding of the state that depoliticises and dehistoricizes the complex manner in which nation states are created

and exist. This conceptualisation would ignore that the state as we know it today continues, albeit modified, as part of our colonial inheritance in which the native was a subject to be governed because of his inferiority to the colonizer. Subsequent nationalist struggles that attempted to gain independence from the colonizers privileged the “inner” spiritual aspect of the native people and the nation over the material advancement of the west. Women came to be placed within this inner, spiritual realm and represented “culture.” This fixed the domains of private and public and subsequently relegated women from outside of the public or political sphere. This drawing of separate domains in turn created the privileging of the state as being the realm of politics and negotiations. The private sphere for years was seen as the domain of domestic issues, as separate from high politics. Rajeshwari Sunder-Rajan echoes Chatterjee in remarking how the celebrated ideals of citizenship come to us not through progressive politics but through “insufficiency, inefficiency and exclusion” as partition in India clearly signifies.<sup>20</sup>

In Sri Lanka, as in many other third world countries today, “governmentality” has become the main mode of operation through which states govern, control and discipline its subjects. “[T]his regime secures legitimacy not by the participation of citizens in matters of the state but by claiming to provide for the well-being of the population.”<sup>21</sup> As we have claimed earlier, the tasks of the welfare state have receded further and further in recent years to be placed in the hands of civil society and international organizations. Further, this bourgeois state (here also the LTTE semi-state formation), has over the years increased its military might to produce and sustain its power as well as to control dissent.

If we take the example of the formation of the Sri Lankan state, we also see the problems of such a state within history. For example, the Sri Lankan state has long exercised its capacities to exclude minorities from power sharing. Estate Tamils were one of the first groups to be disenfranchised, in 1948, and forced to return to

<sup>18</sup> Partha Chatterjee, *The Politics of the Governed: Reflections on Popular Politics in Most of the World* (New Delhi: Permanent Black, 2005), 4.

<sup>19</sup> Ibid., 6.

<sup>20</sup> Rajeshwari Sunder-Rajan, *The Scandal of the State: Women, Law and Citizenship in Postcolonial India* (New Delhi: Permanent Black 2003), 20.

<sup>21</sup> Chatterjee, *The Politics of the Governed*, 34.

India as non-Sri Lankans.<sup>22</sup> The Sri Lankan state has also continued to refuse possibilities of power sharing mechanisms with Tamils in Sri Lanka, which has in turn resulted in two and a half decades of warfare and bloodshed. Furthermore, the state's main interests lie not only in maximising its own powers, but also in expanding capitalist relations through means such as corruption and increasing the base of big business at the expense of state sector industries. LTTE state politics have operated through excessive taxation of its subjects, forcible recruitment, the increased procurement of arms and gun-running, the trafficking of drugs and humans in the region, while simultaneously using the oppression of Tamils as the basis for its actions. The state has not in anyway withered away, to be replaced by more equal social or capital relations. On the contrary, it has expanded the power it has lost because of privatisation through military arms and strengthening its machinery for destruction. In such a context, it becomes increasingly difficult to think of the law as a viable strategy for feminists to use in relation to gendered violence. This is not to collapse the distinctions between the law and the state, but to accept also that while the law may operate at certain moments to check the excessive powers of the state, using the law extensively may also allow the state deeper and deeper access into the lives of women. It is also to acknowledge that despite continuous feminist demands for greater protection and accountability over the years, "the increase in the incidence of violence despite the laws, the virtual absence of court convictions on most cases of violence, the paucity in the number of amenities of custodial institutions for victims, and the instances of custodial rape"<sup>23</sup> illustrate the unwillingness of the state and the law to come through with its promises.

In today's context (2007), as war has resumed in Sri Lanka after a four year hiatus from overt violence, the nature of the state

<sup>22</sup> Work on the estate Tamils of Sri Lanka marks how both the state and the LTTE have avoided looking at issues of estate Tamil workers at large. Even today, despite the oppressive conditions under which estate workers live, the extreme exploitation of their labour, low levels of education and high mortality rate, there is less and less interest in dealing with issues of recognition and distribution for them.

<sup>23</sup> Sunder-Rajan, *Scandal of the State*, 27.

and its use of the law has become clear to us even in Colombo, the city where we live. There have been increased checkpoints, cordon and search operations, arbitrary arrests and disappearances. All this is done in the name of the protection of civilians against terrorists. In this heightened and fearful political climate, Tamil women are being searched increasingly, especially after the attempted assassination of the army Commander Sarath Foneska by a supposedly pregnant woman on April 25<sup>th</sup> 2006. All this is done of course under the Prevention of Terrorism Act (PTA) and under Emergency Regulations (ER). In such a climate, the call for the feminist movement should be to reduce the powers of the state and attempt to curtail its interference into the private lives of its citizens. A demand for further laws that collapse the boundaries between the private and the public will only enable the state to interfere further in the lives of its subjects, namely Tamils, in the guise of protecting civilian populations and in the welfare of the Sri Lankan state. Hence, further demands for legal reform or for the introduction of new laws will only increase the disciplinary and coercive powers of the state.

Take for example what Wendy Brown suggests regarding feminist resort to the law as an attempt to redress injuries:

This effort, which strives to establish racism, sexism and homophobia as morally heinous in the law, and to prosecute its individual perpetrators there, has many of the attributes of what Nietzsche named the politics of *ressentiment*. Developing a righteous critique of power from the perspective of the injured, it delimits a specific site of blame for suffering by constituting sovereign subjects and events as responsible for the 'injury' and the injuring social positions, and codifies as well the meanings of their actions against all possibilities of indeterminacy, ambiguity, and the struggle for resignification or repositioning. This effort also casts the law in particular and the state more generally as neutral arbiters of injury rather than as themselves invested with the power to injure....Finally, in its economy of perpetrator and victim, this project seeks not power and

emancipation for the injured and subordination, but the revenge of punishment, making the perpetrator hurt as the sufferer does.<sup>24</sup>

Brown argues elsewhere in the same text that the feminist movement (in the US) itself is born of resentment toward those in power, and that it needs to think through different strategies for its future. What she suggests is that resorting to the law not only ignores the fact that the state is not neutral, but also that seeking its protection is part of a strategy of revenge. Hence, we seek protection from those we hate, and wish to hurt them the way in which they hurt us. This desire for revenge, for punishment leaves women very few options. As de Alwis' chapter highlights, many women who live in battered conditions do not seek to punish their husbands, nor do they desire to leave their marital home – they simply want their spouses to stop battering them, or behaving in an abusive manner. Resorting to the law and the state for this is impossible, and feminists need to rethink the terrain of their future engagement in relation to the law. I would also suggest that a focus on protection through the law in a state that is both bourgeois and racist works antithetically to feminist desires for emancipation, for a new social order that does not freeze identities and confine women to limited, entrenched and inflexible options, of which one is heterosexuality.

As an alternative, the final chapter in this collection looks at a different way of seeking protection and practicing emancipatory politics. This chapter looks at a shelter that existed between 1989 and 1991. Poorani came into being at a time of terrible political atrocities by state and non-state actors. During this time, this shelter and resource centre offered women who came to live there, and women of the neighbouring villages, an opportunity to both find protection from violence and simultaneously look to radical feminist politics. I believe this was possible because of a strategy the feminists at Poorani took with the state, IPKF and the LTTE. This was to demand minimum interference and to view those representing both the state and non-state actors with suspicion in

an attempt to reduce their interference in the lives of the women involved at Poorani. This rule of minimal interference was easier perhaps for this feminist collective to conceptualise because of the mass-scale violence that was occurring in Jaffna at the time.

However, one has only to think of “institutions” that exist in “normal” conditions to see how appalling their conditions may be. Rajeswari Sunder-Rajan's chapter, “Beyond the Hysterectomies Scandal,” is a sharp reminder that even though formally the state may draw distinctions between “protective homes” and “corrective institutions,” there is a blurring of boundaries between the two. Often the logic of state run shelters maybe to “offer protection to women (from the world ‘outside’, as the familial ‘home’ does) because women are ‘vulnerable’ and they offer protection (to society) from women because of the threat, nuisance or danger they represent.”<sup>25</sup> Horror stories one often hears of the few state institutions that exist mark how some homes are run in the poorest of conditions and that those within these institutional structures are often prone to further assault. Further, the disciplining practices of such a space that control and make women docile and further victimise them leave little to be hopeful about. Protection issues can often, as in the case with law enforcement, become entangled in practices of control, coercion, disciplining and violence. Hence, the few shelters that exist today, run by women's organizations, are temporary shelters that take in women for the short term but also ensure they do not remain in the shelter for too long. Often, the logic of feminist demands for further welfare facilities and alternatives to a violent family home clash with the institutionalizing and controlling practices of confined spaces such as shelters.

Poorani too, despite being a model shelter, had its experiences with violent caretakers. For example, when many feminists who were part of Poorani were forced to leave the shelter soon after 1990, it was taken over by a pastor and his wife who were more interested in making money off the shelter than running the place as its initial organizers had desired. Hence, the suggestion of a shelter as an alternative to the law too needs to be considered only within

<sup>24</sup> Brown, *States of Injury*, 27.

<sup>25</sup> Sunder-Rajan, *Scandal of the State*, 90.



careful parameters and much of the success of such a space may lie with the radical nature and commitment of those who conceptualise and run the shelter. The women who lived at Poorani and the village women around it were fortunate that feminists interested in social transformation rather than reform ran it. For most of its existence, Poorani operated as a space for feminist activity that continuously challenged and subverted norms, rather than conformed to them.

Poorani was a space of feminist emancipation and organization that enabled collectives of women to demand greater and greater rights for themselves. Many of its activities also kept sight of the need to improve the material conditions of women while empowering them in other areas and raising consciousness regarding their rights as women. We offer this chapter as a possible alternative to the law that may enable more flexible strategy and identity formations. Furthermore, Poorani's assurance of both protection and freedom was through practice of these in the daily lives of its collective, rather than through an attempt at strict institutionalisation. Emancipation and protection from violence can be seen as a form of *work* here, rather than as an institutionalisation of these concepts. The centre remained porous, often connected with feminists from the Jaffna University, students from Jaffna, feminists from the south and from visitors abroad. The institutionalisation it did was in the form of offering its loose membership an out from nationalist politics. Hence, even though Poorani existed for a brief time only, the practices learnt by feminists in it were exercised and continuous. Further, the members of the shelter made decisions regarding how the shelter should be run together and during their Sunday meetings. Even though Pat Ready was the formal administrator of the space, decisions were made collectively and through a vote.

### Revisiting old spaces

This introduction has attempted to flag some of the shifts and changes in the feminist movement's engagements with the categories of gender and violence. It has looked in some detail at issues of recognition and identity politics that have come to displace debates

of class and distribution. Nancy Fraser aptly calls this a desire to repress socialist memory and to struggle for recognition rather than for redistribution.<sup>26</sup> Hence, while identity based politics has gained great ground through a recognition of previously unexplored sites of oppression such as violence, such an approach has also lost ground because we have failed to investigate the increased unequal relations neo-liberalism has brought with it, and the heightened violence this has produced. This is similar to the manner in which Sri Lankan politics has continued to focus on resolving the ethnic question or the national question, while not adequately paying attention to economies that further entrench unequal ethnic relations and reify ethnic identities. Models such as road maps to peace and conflict resolution attempt to bring together elite groups into power sharing models, rather than to think through how capitalism and globalisation have produced certain kinds of identity formation. For example, the present day war on terror has produced an intensification of ethnic relations in Sri Lanka in a manner not possible before 9/11.

This introduction is not meant in any way to call nostalgically for a return to a better past, but to re-think the strategies feminists have been reliant on in some of the campaigns of the last two decades. I have also tried to signal that attention to class relations alone will not suffice in analysing the ubiquitous manner in which power operates to discipline subjects and subvert agendas. For this, I have argued, we need to hold on to the concept of freedom, no matter how tenuous that freedom maybe. Attempting to rely heavily on protection and the law as the model for feminist strategy in the realm of gender and violence would mean a continuing reliance on the state. One of the main arguments this study makes is to critique the Sri Lankan feminist movement's reliance on the law to resolve issues of gender and violence. Chapters three and four look at the limits of the law and also think through alternative strategies to the law and the state.

The main focus of the chapters in this collection is not only to bring politics and history into debates on gender and violence, but

<sup>26</sup> Nancy Fraser, "Feminist Politics in the Age of Recognition: A Two Dimensional Approach to Gender Justice" in ed. Selvi Thiruchandran, *Nivedini: Journal of Gender Studies*, 1(1) 2006, 1-18.

also to look at the limits of identity based politics. While attention to identity has meant an increased recognition of oppressions and discrimination, it has also meant a suppression of difference and a dependence on the category of experience as the base of feminist engagements with violence. Sri Lankan feminist debates have reached the limits of identity based politics and rights discourses, and perhaps need to re-examine new strategies of engagement for its future.

## Chapter One

### *The re-emergence of Adeline Vitharne: The beginnings of a feminist discourse on gender based violence in Sri Lanka<sup>1</sup>*

Nimanthi Perera - Rajasingham

I wish to quote two documents when writing on the beginnings of a feminist discourse on violence against women. The first is by Ameena Hussein, a well-known feminist in Sri Lanka whose work *Sometimes there is No Blood* precedes my work at the International Centre for Ethnic Studies (ICES). She asserts that “for many centuries violence against women was not only unrecognized: it was quite often legitimized in some way or the other. Cultural practices, religious beliefs, and state laws are a few instances that have *imposed* violent practices or acts *upon* women”<sup>2</sup>(emphasis mine). The assertion is that violence against women has been “shrouded in darkness”<sup>3</sup> until recently, and that feminists have created social consciousness over this issue. In such assertions culture, religion and law act upon a biologically constituted woman, and the linear history of feminism tells a story of creating increased awareness regarding women and violence. While I do not deny that a feminist consciousness has emphasized the importance of the issue of women and violence, such perceptions often suggests a transparent obviousness to the category of violence against women.

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<sup>1</sup> I am indebted to Pradeep Jeganathan’s work for some of my thinking in this paper.

<sup>2</sup> Ameena Hussein, *Sometimes there is No Blood: Domestic Violence and Rape in Rural Sri Lanka* (Colombo: ICES, 2000), 1.

<sup>3</sup> *Voice of Women: A Sri Lankan Journal for Women’s Liberation* 2(3), (1985), 1.

The second example is a statement by Radhika Coomaraswamy, former director of ICES and former UN Special Rapporteur on violence against women, who asserts, "in Sri Lanka, until the late 1980s, violence against women was seen as a taboo subject. Women who raised these issues were dismissed as family-wreckers and troublemakers. At independence in 1948, the problem was completely invisible. A review of the literature of the period, even among women's groups and organisations, shows a thrust on economic and social developments with no thrust on violence against women."<sup>4</sup> This second quotation I find especially useful as it points to a shift in the feminist debate by the 1980s from a previous focus on economic and developmental issues. Hence, gender based violence or "violence against women" is only two decades old, while it is simultaneously claimed as a problem that has existed as far back as history can recall. From the 1980s onwards in Sri Lanka, this issue has consumed the energies of many feminists, and the stories of brutal rape, harassment, beating have flooded feminist consciousness. What this paper then hopes to do is marked by the work of the above two quotations. One is to look at why a feminist focus on violence against women emerged only in the 1980s in Sri Lanka, and secondly, to take into account how it emerged at a certain moment in history because of a certain set of political, structural shifts in sections of Sri Lankan society.

Prior to the 1980s, there is no work done on this issue in post-colonial Sri Lanka; rather feminists had looked into issues of health, equal pay, education, all of which I shall for convenience's sake call gender and development, heavily influenced by concerns of labour and class. What then motivated feminists in Sri Lanka to focus on the issue of women and violence only in the 1980s? This paper then hopes to do three things in relation to the above question:

1. It will attempt to argue that feminists did not come to "see"

<sup>4</sup> Radhika Coomaraswamy, "Violence, Armed Conflict and the Community," Swarna Jayaweera (ed.), *Women in Post Independence Sri Lanka* (New Delhi: Sage, 2002), 81.

the violated woman simply because violence against women occurs as an objective act, grasped by feminists simply because it happens. Rather, this paper will argue that it is only in the 1980s that feminists had a set of analytical tools and vocabulary to comprehend the phenomenon of violence against women. To understand the emergence of this category of violence against women, I will use the figure of Adeline Vitharne and the powerful film *Dadayama* of the early 1980s that re-portrayed the brutal murder of Vitharne in 1959. My argument in this instance will be that what was clearly a case of murder, that of Vitharne, became a case of violence against women in the 1980s. This example illustrates the multiple ways in which an event can be configured over time.

2. This paper will look at the nature of some of those debates and definitions of violence against women in the early 1980s. I will comment on what kind of woman became the victim of violence deserving rescue and who was neglected by the feminist movement.
3. This paper will also tease out some of the social and political changes that may have lead to the very emergence of the category and how this emergence may have configured the feminist object, the brutalized woman and her body, in a certain way. Some of the reasons for the emergence of this debate are the decline of the left and feminist orientation away from leftist politics, the emergence of radical anti-nationalist political formations that challenged predominant notions of Sri Lankan society and culture, and the global campaigns on violence against women that have informed Sri Lankan feminist debates.

This work is focused primarily on a certain section of the feminist movement, those belonging predominantly to the Voice

of Women (Kantha Handa),<sup>5</sup> and Centre for Women's Research (CENWOR) collectives. These consisted of feminists predominantly from the south of Sri Lanka, but with links and networks to other parts of the country. This analysis also stops by the mid-1980s, and hence is a limited study. Through an analysis of two of the most dynamic feminist collectives of the time, I hope to make a set of larger statements about the emergence of the violence against women debate at this time period. I hope this work will suggest to the reader the very contextual, political nature of the emergence of violence against women in Sri Lanka, and its complex links to a variety of activities both within and outside the state.

### Retelling an old story with a different twist

In 1985, the *Voice of Women* special issue on Violence Against Women stated:

This issue of Voice of Women (Kantha Handa) is devoted to a theme with which women have been increasingly concerned in recent years – women and violence. Women are subjected to many forms of violence- from harassment in the streets and the workplace to domestic violence, rape and incest. Many cases of women victims of such violence have been highlighted recently in the national press.<sup>6</sup>

The special issue was one of the earliest attempts in which feminists focused on violence against women in Sri Lanka, and included “papers presented at the February [1984] seminar on ‘Women and Violence’, they give some account of the existing situation in Sri Lanka with regard to crimes against women. We also reproduce articles describing the situation in other countries where some form of organized resistance to violence against women has

<sup>5</sup> *Kantha Handa* or Voice of Women was a feminist organization that came into existence in 1977 and had branches in many places in the Island. Many of its founding members were socialist feminists.

<sup>6</sup> *Voice of Women* (1985), 1.

already emerged.”<sup>7</sup> The conference referred to here is also the first in Sri Lanka to focus on women and violence.<sup>8</sup>

The cover page of this issue is, for this paper, as important as some of the contents in it. The cover has shots from Vasantha Obeysekere's award winning film *Dadayama* (1982). One shot is of the heroine of the film, Ratmali Kekulawala, brandishing a pole at her murderer moments before her death. He is visually placed over her, driving in the shattered vehicle that he uses to kill her. This cover page then opens up a space, or is emblematic of the topic to be discussed in the special issue of violence against women by feminists in Sri Lanka such as Kumari Jayawardena, Rohini Dep Weerasinghe, Manouri Muttetuwagama, Hema Dassanayaka of whom at least some were part of Kantha Handa. A discussion of the film occurs only in the Sinhala edition of the journal entitled “Sinhala Cinemave Nirupita Kanthave”, however, the cover opens up a general space for the discussion of violence against women.<sup>9</sup>

This film is interesting not only because of its cinematic excellence, but also because it is at least partially a re-depiction and a re-narrativization of a murder that occurred in 1959 in Sri Lanka, in which Adeline Vitharne, in an advanced stage of pregnancy, was murdered at the turn to the Wilpattu National Park by her lover, Jayalal Anandagoda. She had already borne one child by him and he

<sup>7</sup> Ibid.

<sup>8</sup> It is also in 1986 that in the North of Sri Lanka one of the slogans for the International Women's Day procession highlighted “sexual violence against women. This was in the context of a large military presence in the Tamil majority regions that had led to numerous incidents of rape and sexual harassment of women. ...[it was a time when] activist women's groups focused on rape as a question linked to gender/power, also stressing, importantly, its relationship to the general level of violence directed against women.” See Sitralega Maunaguru, “Gendering Tamil Nationalism: The Construction of ‘Woman’ in Projects of Protests and Control,” eds. Pradeep Jeganathan and Qadri Ismail, *Unmaking the Nation: The Politics of Identity and History in Modern Sri Lanka* (Colombo: SSA, 1995), 166.

<sup>9</sup> While the *Voice of Women* Journal is published in all three languages, I was unable to find the Tamil version of this issue. Inquiries made at the Voice of Women office confirmed that probably no Tamil version of this issue had come out.



had promised to marry her many times. Meanwhile, he had become engaged to be married to a woman of higher social class than Adeline and needed to silence her quickly. He did this by driving her to Wilpattu, drugging her and killing her. This incident, which caused a sensation at the time, was documented in Judge A.C. Alles' well-known *The Wilpattu Murder Case*<sup>10</sup> in 1975 and translated into Sinhala as *Wilpattu Sihiwatanaya* in 1976. The case's popularity is further testified to in the multiple appearances it makes in newspaper reportage over the decades, even as late as 1991 when Alles sued film director Obeyesekere over copyright issues.<sup>11</sup>

What the first part of the paper hopes to do is to locate the shifts in discourse that took place by the 1980s over this event from those in the 1950s and 1970s. I use the figure of Vitharne to draw attention to the multiple ways an event can be understood, and how concerns of a certain time period will influence the manner in which an event comes to be understood. Hence, it was only when feminists started working on violence against women that Vitharne's murder emerged as an instance of violence against women. To trace the shifts in discourse, I will focus on what one may call part of the public domain: the print media such as newspapers and journal articles. Here, I wish to suggest more than the fact that a feminist consciousness makes it possible for us to see the category of violence against women; rather, I will argue that responses to the film changed because political and social structures within the feminist movement had shifted by this time.

### From Murder to Violence Against Women

In this section I will attempt to illustrate some of the 1980s shifts from the previous periods. I will map the differences in relation to,

1. The definition of what happened to Adeline Vitharne

<sup>10</sup> A.C. Alles, *The Wilpattu Murder* (Colombo: Wits Associates, 1999).

<sup>11</sup> For a fuller summary of Adeline's life and incidents that led to her death, please see Appendix 1.

2. Adeline Vitharne's sexual encounters with Jayalal Anandagoda
3. The figure of Millie<sup>12</sup>

While there are differences between the way the event is described in the 1959-1960 period and that of the 1975 Alles' publications and responses to them, for the purposes of this paper I will draw only on the marked differences between the earlier analyses of Adeline Vitharne's death and the 1980s take on it.

I hope through this to illustrate that what becomes fact or real, of what we "see," is conditioned by the questions posed and the dominant concerns of our time. I wish to re-iterate that feminists do not encounter instances of violence against women simply because it is there objectively to be grasped, but because of certain conditions that constitute what the event may be and how meaning is created out of that event.

I illustrate this section at some length as an attempt to critique the way work on violence against women is sometimes carried out, as a self-evident act, or an act testified to through the appearance of body marks.<sup>13</sup>

In the reports of the murder trial in the *Daily News* in 1959 and in Alles' book *The Wilpattu Murder Case*, Adeline Vitharne's death is a murder case only. The accusations against Anandagoda and his two accomplices are only conspiracy to commit murder and the murder of Adeline Vitharne.<sup>14</sup> There is no real attention paid to how she may have been treated by Anandagoda, to whether there was abuse or intimidation, except the statements that she had

<sup>12</sup> In many of the discussions on the role of the sex worker in the Vitharne case, her name is spelled sometimes as Millie and at other times as Milly.

<sup>13</sup> While I recognize the need to have obvious and quick ways of identifying violence against women when it comes to feminist praxis in campaigns and awareness raising projects, I wish also to highlight the need to pay careful attention to contexts and the dynamics that make an event violent.

<sup>14</sup> These are the official charges against the three accused in her case. The reporting of this in the newspapers did not open the case up for any further commentary. Alles' version, too, sticks to this line of thought, as do responses to his work.

been “ravished,” drugged and induced to have sexual intercourse with him. Both reports see Adeline Vitharne as an innocent victim of a heinous murder crime. The comments project an ideal village innocence, of a young girl’s struggle to make something of herself, to perhaps overcome her class position through marriage to Anandagoda. Much of the energy of the prosecution was spent in establishing her good nature and seriousness of intent. Despite the terms “seduced” and “ravished” being used during the trial, there are no suggestions that she may have been victim to any form of gendered violence.

Alles’ book states,

She had an unblemished moral character and although she had fallen to the wiles and glib talk of a smooth-tongued young man from the South, she never stooped to becoming a common strumpet. After her seduction her one object was to use all means within her power to get her seducer to marry her honourably. In this venture she failed and paid for it dearly with her own life. When Anandagoda in later years took her away on the pretext of getting married and kept her at bawdy house, she returned home after a short time, indignant that she should have been treated like a common prostitute.<sup>15</sup>

Alles too, obviously saw Adeline as a victim of a manipulative man, but not a victim of gendered violence. Commentaries on Alles’s publication did not differ greatly in their analysis of the Adeline Vitharne case in this regard. It is obviously this that allowed both the trial and Alles’s book to see her case as a clear cut incident of murder.

According to Adeline’s account of her sexual encounter with Anandagoda [as stated to the police at the Wattagama police station during her first pregnancy]:

Anandagoda met her in the car and invited her to go to Colombo regarding a job. She refused as she had come without her parents’

knowledge. He then took her to the Kadugannawa Rest House, where Anandagoda signed the book and invited her to come inside the room. At first she refused, but after some coaxing on Anandagoda’s part, she entered the room. Anandagoda then gave her some aerated water....He then closed the door and she felt herself lapsing into unconsciousness. When she recovered consciousness she realized she had been ravished...If Adeline’s account of her seduction represents the truth, *Anandagoda had committed a criminal offence behind the closed doors of a room at the Kadugannawa Rest House.*<sup>16</sup> (emphasis mine)

Notice that the possibility of violence against Adeline is indexed as a horizon of possibility, only later to be reduced to the term “seduction” rather than rape. Alles’ awareness that it is a possible rape case is suggested in the term “criminal offence” that he used to describe the incident. He does not name it, however. This, I would suggest, is not simply because Alles was a man, nor only because women were not allowed the space to articulate issues of rape at the time, but rather because the issue of rape, though obviously in existence as a legal category, did not present itself as an analytical problem to be grappled with by society at large, and definitely not by feminists.

Similarly, attitudes toward Adeline’s forced stay at Millie’s brothel, where Anandagoda had left her on the pretext of intending to marry her, were glossed over and ignored. This was borne out in a number of statements made in the 1960 reports on Adeline’s stay with sex-worker Millie, to whose house Adeline went under the belief that she was Anandagoda’s mother. For example, the *Daily News* reported, “As Adeline went up to the car, she asked Anandagoda ‘Have you come to take me away again with these two prostitutes?’ Adeline then said that she had not told her mother that she was taken to a brothel.”<sup>17</sup> In another instance, when reporting the testimony of Chandra de Silva, the young woman who posed as Anandagoda’s sister, the papers said, “[Chandra] had lived in Ragama and Pussellawa with Milly Fernando. From Waturugama

<sup>15</sup> Alles, *Wipattu Murder*, 20.

<sup>16</sup> Ibid., 29.

<sup>17</sup> Correspondent, *The Daily News (Colombo)* 22 June 1960, 10.

they were compelled to leave as the neighbours were hostile to Milly Fernando. At this stage, Crown Counsel said that the witness had not been brought there as a paragon of virtue but there were certain standards of decency in cross-examination.”<sup>18</sup>

In Alles’ book the instances when Adeline stayed with Millie are described with little reference to what may have happened to Adeline during her sojourn there. Millie is treated conventionally as a woman of ill repute. Firstly, she is described as “a woman with a murky past” who “went on a man hunting spree” and ran “a house of ill fame.”<sup>19</sup> She was “such a miserable specimen of womanhood that she had no qualms about making immoral arrangements for her own relations.” At Millie’s house, Adeline had been “treated like a common prostitute.”<sup>20</sup>

How Adeline may have been treated like a common prostitute is of no interest to Alles or to the reading public at the time. Alles’ book came out in 1975 and a Sinhala version of it in 1976, neither of which gathered much comment from feminists despite the text’s rich insinuations. It was only later that the sex-worker or prostitute emerged as an area of feminist discussion.

While, one may argue that by 1960 the feminist movement in Sri Lanka had not organized itself sufficiently to demand the analysis of the case as an instance of violence against women, by 1975 feminists had organized far more to combat patriarchy, but we see that there is still no such response. While Alles may not have been savvy with feminist terminology, it becomes clear that for feminists violence against women had not arrived at the horizon of their inquiry. Surely, the 1970s was a time of rich feminist scholarship and activity? Feminists such as Kumari Jayawardena, Manouri Muttetuwegama, Selvy Thiruchandran, Mala Dasanayake, Hema Goonetilleke were all part of the feminist movement in Sri Lanka. They had organized branches of Voice of Women throughout the country and spoke out vociferously on women and oppression. This gaze however had not yet seen violence against women as an analytical problem.

<sup>18</sup> Ibid., 2 July 1960.

<sup>19</sup> Alles, *Wipattu Murder*, 41.

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

I do not refer here only to the lack of response to Alles’ publication, but also to the murder by the armed forces of Premawathie Manamperi during the 1971 JVP<sup>21</sup> insurrection. Premawathie, a beauty queen from Kataragama, was detained at the army camp in the area overnight, made to march naked and then killed by the armed forces. Feminists at the time did not see this as a moment of gendered oppression, but only as a murder case.<sup>22</sup> Once the imprisoned JVP insurrectionaries were released from prison and the Manamperi case became a point of reflection, there was still no reference to Premawathie being anything other than murdered. It is only much later that this issue was used by both feminists and the JVP as an example of state violence against women. Interestingly, as noted by Kois in the next chapter, by the 1990s, when there were protests against the gang rape and murder of Krishanty Kumaraswamy, the Premawathie Manamperi case was named as another instance of state violence against women.

A careful look at H.A.I. Goonetilleke’s *A Bibliography of Ceylon (Sri Lanka)*,<sup>23</sup> which records published works until 1979, will confirm that the feminist gaze was elsewhere. Leelangi Wanasundera’s *Women of Sri Lanka: An annotated bibliography*<sup>24</sup> confirms this point further. While most feminists may suggest that violence against women is an

<sup>21</sup> The *Janatha Vimukthi Peramuna* (JVP) at the time was an insurrectionary group that desired to overthrow the government and bring in a new socialist state.

<sup>22</sup> Ironically, Alles comments on this incident in 1976 in *Insurgency – 1971: An Account of the April Insurrection in Sri Lanka* (Colombo: Trade Exchange (Ceylon) Ltd., 1976). While I do not look at the material available on the Mannamperi case, I believe that an analysis of this case’s reports over time will provide a rich set of conflicting readings of the event.

<sup>23</sup> H.A.I. Goonetilleke, *A Bibliography of Ceylon (Sri Lanka): A Systematic Guide to the Literature on the Land, people, History and Culture Published in Western Languages from the Sixteenth Century to the Present Day* (Switzerland: Inter Documentation Company, 1983).

<sup>24</sup> Leelangi Wanasundera, *Women of Sri Lanka: An annotated bibliography* (Centre for Women’s Research: Colombo, 1986). Of the references to violence that she makes, only one reference, a paper written by Wimala de Silva to the *International Journal of Child abuse and Neglect* in 1981, is outside the special issue on violence against women in *Voice of Women*.

age-old phenomenon, it was not the focus of feminist intervention in the pre-1980 period.

By the 1980s, this had changed. From the '80s to date, this issue has been one of the most important debates in Sri Lanka, assured of enormous feminist interrogation, donor funding and legal energy.

The special issue of *Voice of Women* on violence against women in 1985 foregrounded the film, and through it the death of Adeline Vitharne, very differently. I do not attempt here to suggest that the creative work of the film can parallel reality. I have chosen to look at commentaries on this film because of the very realist mode in which the film was put forth. In addition, there is a general acceptance of the film as a re-depiction of the Adeline Vitharne incident, not only by the general public, but also by the director himself. In the numerous interviews he gave after this film, Obeysekera repeated his commitment to realist film that would reflect the true experiences of people.<sup>25</sup> Furthermore, according to Laleen Jayamanne's study on women in Sinhala cinema,<sup>26</sup> the realist mode was the aspired-to form and a productive shift in films from the melodrama and generic films produced in our cinematic history. As Reggie Siriwardena says of the film, it turned "popular melodrama into serious and meaningful cinema....go[ing] to the heart of our social life."<sup>27</sup> When asked why he chose to work on the film, Obeysekera admitted that it was because the murder happened in his home town that he wished to re-capture the incident.<sup>28</sup> Many of the commentaries cross continuously from the film to the Adeline Vitharne case.

In the *Voice of Women* special issue on *Dadayama*, the Sinhlala article translates as "Best Portrayal of a Woman in the Sinhala Cinema." In it the writer has this to say: "With a feminist revolution

<sup>25</sup> *The Island*, 7 March 1982. *Sarasaviya*, 23 August 1984.

<sup>26</sup> Laleen Jayamanne, *Positions of Women in Sri Lankan Cinema 1947-1979* (Ph.D. diss., New South Wales University, 1981).

<sup>27</sup> Reggie Siriwardena, "Obeysekera's cinema: From 'Palangetiyo' to 'Dhadayama,'" *Lanka Guardian* 5(8), (1983), 6.

<sup>28</sup> *Lankadeepa*, 10 December 1991, 9.

in mind, this film portrays a contemporary woman's ability to fight against oppression. Rathmalie (the character of Adeline Vitharne in the film) contains within her all the virtues of an Eastern woman. Her obeisance to Jayanath (the character of Anandagoda) reflects the one weakness in womanhood. *She dies only when she destroys the life of her rapist.* Rathmalie's character portrays the real struggles of today's women."<sup>29</sup> (emphasis mine) *Dadayama*, then is a representation of real social issues, of a grave concern of the present time, a film that delves into feminist issues of rape and violence.

Let us look at some other commentaries. In 1983 Jagath Senaratne writes in the *Lanka Guardian*, in an article entitled "Dadayama: a fugue on the politics, resistance, passion and despair of woman," that the film "is based upon an actual event that took place in the 1950s." In it the heroine, an innocent young village woman who had fallen in love with an indifferent lover "begins to slough off her naiveté.... Her resistance is not merely that of *violated motherhood*.... It is *violated motherhood* that fights back, and hence deeply subversive of capitalist patriarchal ideology." The reference to violated motherhood became an emotive symbol. The suggestion is that capitalism and patriarchy go hand in hand to oppress women, and that to some extent women's oppression can be tied to class oppression. Later Senaratne comments on the final death scene as "the culmination of the sex-politics within their relationship, the metamorphosis from *lover-violator* to *violator-killer*."<sup>30</sup> In this article not only does the term violator come in, but I believe there is an addition made here to the earlier debates on the Adeline Vitharne case. In the past, this event was defined in terms of

Lover → killer = murder

By the '80s, as suggested by Senaratne, an addition has been made to the equation:

Lover → violator → killer = violence against women + murder

<sup>29</sup> Here, the term *dushanya* is used which in English translates as rape. *Voice of Women* 2(3), (1985), Sinhala edition.

<sup>30</sup> Jagath Senaratne, *Lanka Guardian* 6(6), (1983), 21-22.

Adeline Vitharne's case is no longer only an instance of murder, but also an instance of rape, or violence against women. Sexual conduct and misconduct are opened up at this time for discussion. In later years, when Alles sued Obeysekera over copyright issues, Obeysekera himself admitted the insertion of an incident which according to him had not been documented in Alles' book. He states "Rathmalie was raped by an outsider in the film....By this rape incident Jayanath shows her that he was not interested in marrying a prostitute."<sup>31</sup> The brothel incident refigured in the film and discussed in the public domain, suggests the shifts that had occurred by the early 1980s that enabled a portrayal and a discussion of violence against women. Similar readings of the brothel incident did not occur earlier, as social awareness and political will to understand sexual politics of this nature had not yet come into their own.

Why then did the 1980s become an era in which violence against women could be championed by feminists? What conditions made this possible, and how did the feminist subject become configured? Let us then shift to the early '80s and the special issue on violence against women in *Voice of Women* to try to answer this question

### Feminism and Violence Against Women: The beginnings of a debate

What brought questions of violence against women to the Sri Lankan feminist gaze in this manner in the early 1980s? The conditions that I outline below are based on the writings of CENWOR, *Voice of Women*, and the *Lanka Guardian*<sup>32</sup> collectives.

To trace the conditions of such a possibility and the nature of some of these debates, I will look at two essays of the time,

<sup>31</sup> There is a scene in the film in which Rathmalie (Vitharne's character in the film) is brutally raped by an outsider while she is at the brothel. The opening up of rape in this manner is absent in the 1950s or 1960s discussions. See *Lankadeepa*, 19 November 1991.

<sup>32</sup> *The Lanka Guardian* was a very important journal that was published fortnightly in Sri Lanka in the 1980s. It had overt left leanings and many of the feminists I refer to in this essay contributed to this journal regularly.

and through them revisit the question of feminism and gendered violence. Kumari Jayawardena, well-known Sri Lankan feminist, has written two seminal essays, "Feminism in Sri Lanka in the Decade: 1975-1985"<sup>33</sup> and "Time to mobilise for women's liberation."<sup>34</sup> In these two essays, Jayawardena attempts to map some of the large national or economic changes that have impacted the feminist movement. These essays have two very specific objects, of 1) being a historical document of mapping and writing/creating the progress and history of a movement within a country, and 2) inciting feminist activism to organize and think through its own conditions better. The titles of the two essays themselves suggest this mode of thinking. I believe these two essays can be useful to map the emergence of a feminist focus on women and violence in the early 1980s.

In doing this, I will highlight three main changes that brought to focus the issue of women and violence in Sri Lanka:

- 1) the influence of transnational networks;
- 2) how the decline of broadly socialist based left wing politics in Sri Lanka aided in a change in the feminist agenda in Sri Lanka, and
- 3) how movements critical of nationalism at the time enabled a space for the discussion of gendered violence.

### Transnational Networks<sup>35</sup>

Jayawardena states,

"The Year of the Woman" proclaimed in 1975 by the UN served to bring the issue to the forefront again. Almost

<sup>33</sup> *Lanka Guardian*, 8(6), (1985).

<sup>34</sup> *Lanka Guardian*, 8(7), (1985).

<sup>35</sup> I use this term as used by Margaret E. Keck and Kathryn Sikkink in *Activists Beyond Borders: Advocacy Networks in International Politics* (Ithaca: Cornell University Press, 1998). Here they refer to this network as "transnational advocacy networks [which] must also be understood as political spaces, in which differently situated actors negotiate – formally or informally – the social, cultural and political meanings of their joint enterprises," 3.

all political parties, trade unions and non-governmental organizations celebrated the event. Feminists travelled around Sri Lanka speaking on the women's issue and meeting with a good response from all classes of women. Feminist literature from abroad also influenced many local women....New organizations arose ranging from liberal to Marxist, which represented various shades of feminism.<sup>36</sup>

The importance of these large-scale networks on the debates on violence and women in Sri Lanka cannot be underestimated. For example, the trans-national networking of feminist groups led to some of the key issues of violence and women being taken up at UN conferences. The increased exchanges among women in the South Asian region should also be noted at this point. Furthermore, funding agencies that are hugely influenced by such large scale meetings began to fund certain kinds of initiatives and projects in the 1980s. By 1963 the Teheran Human Rights Conference had already discussed the issue of "the protection of women and children in armed conflict and emergencies."<sup>37</sup> Furthermore, the General Assembly resolution adopting the declaration on the protection of Women and Children in Emergency and Armed Conflict had been ratified by 1974 stating that "all the necessary steps shall be taken to ensure the prohibition of measures such as persecution, torture, punitive measures, degrading treatment and violence, particularly against that part of the civilian population that consists of women and children."<sup>38</sup>

While the 1975 UN conference in Mexico City brought up briefly the issue of sex work in the term "specific legislative and other measures should be taken to combat prostitution and illicit traffic in women, especially young girls," sex work was in no way seen as a gendered form of violence at this point. Rather, this

conference focused much more on issues of development and integrating women into the development process. But after the conference, in "March 1976 [the] First International Tribune on Crimes against Women, held in Brussels, two thousand women from forty countries spoke out on family violence, wife beating, rape, prostitution, female genital mutilation, murder of women and persecution of lesbians."<sup>39</sup> It is at the 1980 mid-decade UN conference on women in Copenhagen that violence against women became a larger issue. As Keck and Sikkink state "the seeds of an international network on violence against women were planted in a series of meetings at the UN Women's Conference in Copenhagen in 1980. Charlotte Bunch, who had organized a set of panels on international feminist networking at the nongovernmental forum held parallel to the official conference, recalls: we observed in that two weeks of the forum that the workshops on issues related to violence against women were the most successful...they were the workshops where women did not divide along north-south lines."<sup>40</sup>

In Sri Lanka, it has become part of the feminist common-sense to highlight the importance of the 1975 UN conference, the 1980 mid-decade meeting in Copenhagen, the 1985 conference in Nairobi and 1975-1985 Women's Decade for feminist politics in Sri Lanka. It becomes very clear that this network of activity, these links, played a direct role in the areas of work feminists engaged with in Sri Lanka. The setting up of the Women's Bureau, numerous women's organizations, and increased funding for women's affairs are all fore-grounded as a result of the UN emphasis on women. Hence, by 1985, when violence against women was established as an important issue in the international sphere, the importance of the UN was already in place in Sri Lanka among at least some branches of feminism. Jayawardena and Malathi de Alwis in their essay on contingent politics in the women's movement state, "it is now an acknowledged fact that the increased presence and visibility of autonomous women's organizations in Sri Lanka primarily resulted from the significant attention paid to women and women's issues

<sup>36</sup> Kumari Jayawardena, "Feminism in Sri Lanka in the decade: 1975-1985," *Lanka Guardian* 8(6), (1985), 7.

<sup>37</sup> *The United Nations and the Advancement of Women 1945-1995* (New York: The United Nations, Department of Public Information, 1995), 32.

<sup>38</sup> Keck and Sikkink, *Activists Beyond Borders*, 175-176.

<sup>39</sup> *Ibid.*, 175.

<sup>40</sup> *Ibid.*, 177.

with the UN declaration of the 'Year of the Woman' in 1975 and the Decade of Women from 1976 to 1985. Foreign funders, also pressurized by feminist movements in their own countries, began to support local women's groups."<sup>41</sup>

Time too comes to be marked differently as international influences increase on the feminist movement in Sri Lanka. Jayawardena's evaluation of time, of developments within Sri Lanka, is part of global debates as she marks the ten years of progress according to the UN decade. CENWOR's publications tend to reflect development, progress, and women's rights marked by global agendas. Note that the publication *UN Decade for Women: Progress and Achievements of Women in Sri Lanka*<sup>42</sup> or *Facets of Change: Women in Sri Lanka 1986-1995*<sup>43</sup> organize the developments within Sri Lanka to be measured by a set of principles and time outlined elsewhere. It is perhaps important to keep in mind that integration of the feminist agenda into the UN system through a "world Plan of Action" is at least to some extent part of maintaining "a global project...a new economic order"<sup>44</sup> or aligning the world according to a certain way of thinking.

In the special issue on violence against women brought out by Voice of Women, there is a series of articles that describe violence against women in different parts of the world. The list of articles is important because each of them delves into violence in different countries marking the similarities and self-evident nature of violence committed in each country. The paper on violence against women in Sri Lanka is simply one of the articles that describes women being subject to physical brutality. Violence against women in Sri

<sup>41</sup> Kumari Jayawardena and Malathi de Alwis, "The Contingent Politics of the Women's Movement in Sri Lanka after Independence," Swarna Jayaweera (ed.), *Women in Post-Independence Sri Lanka* (New Delhi: Sage, 2002), 254.

<sup>42</sup> Swarna Jayaweera, *UN Decade for Women: Progress and Achievements of Women in Sri Lanka* (Colombo: CENWOR, 1985).

<sup>43</sup> Swarna Jayaweera, *Facets of Change: Women in Sri Lanka 1986-1994* (Colombo: CENWOR, 1995).

<sup>44</sup> Document that emerged out of the 1975 world conference, in *The United Nations and the Advancement of Women* (177).

Lanka describes the state of affairs in the country as self evident, but does not attempt to look at *what constitutes* this category. It is significant that the issue contains articles from around the world, from Pakistan to Korea, to America to Malaysia, to Sri Lanka and that violence against women remains the same for women across the world. Violence against women then is a cross-cultural phenomenon that can be similarly understood by feminists as similar around the world. Hence, it is possible for a Japanese woman to visit Lahore and remark on the similarities in violence against women that exist in both countries. At one level this internationalism and networking was important for local feminist groups as they tried to challenge local forms of patriarchy. The enormous energy and strength they received through cross-cultural comparisons have no doubt mobilized effective campaigns in Sri Lanka.

The papers presented at the first conference on women and violence and republished in the issue echo this. For example, in Kumari Jayawardena's essay, in a subheading entitled, "A Note on Violence Against Women," she uses Susan Brown Miller's well-known text *Against Our Will* to suggest the impetus in her own analysis. To quote Jayawardena on Miller, "She defined sexual assault as a conscious process of intimidation by which **all men keep all women** in a state of fear" (emphasis in original). Hence, the thrust of the argument suggests the universality of such an experience, and the homogenizing tendency within certain branches of feminism to see women and men as concrete, definite categories. Violence against women is the same, because all women are the same, because their biologies are the same, because they experience violence in the same way. In these arguments, biology is destiny and women experience violence universally.

The focus of this issue of *Voice of Women* and many of the issues in the 1980s is in accordance with what Malathi de Alwis has aptly termed the "retrieval of women in the past as well as the present [whereby]....[m]any articles concentrated on analyzing the representation of women in the local media, literary texts and school textbooks, while others sought to highlight the hitherto hidden inequalities and forms of violence that existed within



society.” In her work which looks at the absence of theorizing of gender and ethnicity in feminist scholarship, de Alwis emphasises that at the time the women’s movement was concentrated more on “sexual difference rather than ethnic, religious, or class difference to highlight patriarchal structures that impinged on all women.”<sup>45</sup> Thus when violence against women becomes part of the feminist debate in Sri Lanka, sexual difference and the universality of *experience* became important factors in the debates that ensued.

Experience is posited as a primary means to explain violence against women. Women around the world experience violence in a similar manner; the problem of violence against women does not need deep analysis because it can be explained experientially. I think a reliance on experience has been substantially criticized in the work of Joan Scott, who observed that “the notion that categories of identity reflect objective experience seemed to lead to explanations that served more often to confirm than to challenge prevailing views about women. By assuming that women have inherent characteristics and objective identities consistently and predictably different from men’s and that these generate definably female needs and interests... imply that sexual difference is a natural rather than a social phenomenon. The search for an analysis of discrimination gets caught by a circular logic in which “experience” explains gender difference and gender difference explains the asymmetries of male and female ‘experience.’”<sup>46</sup> In assuming that women unproblematically share and experience violence suggests a lack of interest in the political and cultural categories that inform gender. It ignores the fact that “politics is the process by which plays of power and knowledge constitute identity and experience. [It ignores the fact that] identities and experience are variable phenomena... discursively organized in particular contexts or configurations.”<sup>47</sup>

<sup>45</sup> Malathi De Alwis, “Reflections on Gender and Ethnicity in Sri Lanka” in Wenonna Giles, Malathi de Alwis, Edith Klein and Neluka Silva (eds.), *Feminists Under Fire: Exchanges Across War Zones* (Toronto: Between the Lines, 2003), 19-20.

<sup>46</sup> Joan W. Scott, *Gender and the Politics of History* (New York: Columbia University Press, 1988), 4.

<sup>47</sup> *Ibid.*, 5.

The acceptance of a universal, biologically defined woman as the victim of violence is perhaps partially a result of the international movement that has influenced the debates in Sri Lanka. By 1981, Sri Lanka had ratified the CEDAW convention. By 1985 violence against women had gained greater prominence in the UN and also in Sri Lanka. Hence, the re-emergence of Adeline Vitharne, and the Kataragama beauty queen Premawathie Mannamperi, as rape victims by 1985 can be situated in the context of transnational debates that placed their very specific cases within the parameters of a global violence against women context.<sup>48</sup> Thus, while the emergence of the category of violence against women can be seen as a breaking of taboo and silences, the discourses in Sri Lanka on this area also concealed the differences within the category of women and the kinds of women who are represented.<sup>49</sup>

### The decline of the Left and the feminist movement in Sri Lanka

While the UN influence partially explains why violence against women became an important part of feminist debates in Sri Lanka, it is perhaps important to also look at some other factors that have impacted this shift to violence against women. I would argue that the shift took place while simultaneously displacing some of the earlier feminist work on gender and development/class. The decline of a gender and development focus within the movement is deeply linked to some of the political shifts that took place in Sri Lanka in the late 1970s, when the political leadership and politically dominant

<sup>48</sup> While I agree partially with the comment asked of me once regarding the need to have concrete categories for activist projects, I believe that using the category “woman” without qualification can lead to very limited forms of feminist activism that obscures and excludes rather than illuminates the issues at stake.

<sup>49</sup> For example Shermal Wijewardena’s exciting essay “Gender-based Violence in Sri Lanka: Some perspectives of lesbians, bi-sexuals and trans-gendered persons,” on violence faced by trans-gendered, bi-sexual and lesbian persons in Sri Lanka, and the feminist movement’s continuous silence regarding it, is a case in point. See Radhika Coomaraswamy and Nimanthi Rajasingham (eds.) forthcoming publication by *Women Unlimited*.

mode of thinking state structures, and modes of production, changed from an overtly socialist one to a capitalist one.

If we look closely at feminist activities prior to the 1980s, this becomes quite clear. As Jayawardena states, "by 1975, women had already made important strides, not only in obtaining political rights, but also in education, employment, literacy, life expectancy and health."<sup>50</sup> Further examination of activist and written work in earlier decades suggests that the women and development agenda, issues of equal pay, had dominated the horizon. Mary John's statement regarding Indian feminism can be applied to the situation in Sri Lanka as well:

it was [more] important to emphasise the exclusion of the vast majority of women from the promises of progress, modernisation and development, than to focus on the gains made by a minority of highly visible relatively privileged women,"<sup>51</sup> and that the 1970s saw the "proliferation of studies that emerged at the cross-roads of class and gender... and the special place of the debates on women's work within the nexus of intellectual and political engagement...[where lay] criticisms of the very concept of work itself."<sup>52</sup>

In 1977 the left parties had a humiliating loss at national elections. The election of the UNP into power meant the beginning of the seemingly unending 17 year rule of an openly capitalist party. Sirimavo Bandaranaike's stint as prime minister previously had meant in contrast a closed door economy and a claim to building up the national economy. The opening up of the economy to the global markets also lead to a deep crisis in many intellectual terrains. A look at the early issues of the *Lanka Guardian* (LG), for example,

<sup>50</sup> Jayawardena, "Feminism in Sri Lanka in the decade: 1975-1985," *Lanka Guardian* 8 (6), (1985), 7.

<sup>51</sup> Mary E. John, "Gender, Development and the Women's Movement," Rajeswari Sunder Rajan (ed.), *Signposts: Gender Issues in Post-Independence India* (New Delhi: Kali for Women, 1999), 109.

<sup>52</sup> Jayawardena, "Time to mobilise for women's liberties," *Lanka Guardian*, 8(7), (1985), 110.

would show this pre-occupation and nervousness with the open economy.

From the LG at the time:

The 1977 debacle when the giants of the past fell like nine-pins, almost all losing their deposits, the death of N. M., the pitiful performance in the contest for Colombo municipality which had once flaunted red flags, and the humiliation of Galle where the LSSP was beaten by the JVP had extracted a heavy price from the LSSP's<sup>53</sup> self-confidence.<sup>54</sup>

Furthermore, the Programme of United Action forged by five leading left parties had collapsed by the time of the Galle elections in 1980. Moreover, the general strike launched in July 1980 led to a complete demoralization of militant left activism in Sri Lanka with "several thousand workers who having lost their job won the 'concession' of getting their own back-wages. They had moved from frustration to anger, bitterness to desperation."<sup>55</sup> The setting up of free trade zones for example meant "the national textile industry, which covers nearly 50 firms with a labour force of 27,000, is now threatened to extinction."<sup>56</sup> As Sarath Muttetuwegama<sup>57</sup> commented, "in its attempt to stabilize capitalist society in Sri Lanka, the government has moved so fast that it has virtually opened the door to blatant neo colonialism."<sup>58</sup>

<sup>53</sup> The LSSP is the *Lanka Sama Samaja Pakshaya* which was the main left party in Sri Lanka at the time and had enjoyed enormous support till then.

<sup>54</sup> *Lanka Guardian*, May 1980, 5.

<sup>55</sup> "Special Report: Strikes, satyagraha and violence," *Lanka Guardian*, 15 August 1980, 3.

<sup>56</sup> Maitripala Senanayake, "UNP-Same style," *Lanka Guardian*, August 1980, 11.

<sup>57</sup> He was one of the most prominent labour lawyers in Sri Lanka at the time.

<sup>58</sup> Sarath Muttetuwegama, "No happy ending," *Lanka Guardian*, 3(7), August 1980, 14-15.

Perhaps Vasudeva Nanayakkara<sup>59</sup> puts it best when he enumerates “the principal sign-posts of 3 years of UNP misrule” as

- (ii) The new economic policy, Open-door orientation towards world imperialism, submission to the world capitalist ‘free’ market, reliance on local and foreign private capital to stimulate development, ending of previous semi-welfare state.
- (iii) An unconcealed attack on the trade union movement and the working class.<sup>60</sup>

While it is true that comments of corruption, neo-colonialism, terrorism and increases in the cost of living are part and parcel of the accusations made by one party to another, it is also true that by the early 1980s there was a substantial change in the country’s development agenda. For the first time, the country opened its doors wide to free trade. This led to the establishment of the FTZs, the accelerated construction of the Mahaweli project etc., all of which meant that massive amounts of investor money flooded through Sri Lanka’s economic gates as foreign investors, funding agencies and banks such as the IMF set up office in Sri Lanka. The failure of the Joint United Action Committee (JTUAC) to successfully carry through its massive strike movement, and the UNP’s tyrannical crushing of it, meant a great loss of face for left based parties and movements of the time. Furthermore, the change of constitution meant that by fixing the cut off point as high as 12%, J R. Jayawardena effectively shut out the smaller, leftist parties.

In terms of feminist thinking this brought two important simultaneous but different strains of thinking. First was the realization that a Marxism could not provide full answers for feminism. Second was that the opening of the economy to market forces also

meant new problems for women in the face of increased forms of capitalism and the decline of the welfare state. I will further suggest that shifting away from development or explicitly left based feminist issues also meant a new way of looking at women’s bodies.

The realization by the 1980s of what were perceived as the shortcomings of socialist feminism is what prompts Jayawardena to state “one group would give primary emphases to achieving changes in the economic and social structures, believing that a socialist society would pave the way for women’s liberation. The other would give more emphases to the struggle against patriarchy believing that unless continuously opposed, patriarchy is likely to survive even in a socialist mode of production.”<sup>61</sup> This division even within left-feminists in their conceptual orientation is captured by Jayawardena’s statement which illustrates her shift from thinking Marxism could answer feminist issues to the realization that a more nuanced, elaborate and sophisticated mode of analysis was needed for feminism to achieve its objectives. Hence, she speaks of a “consciousness [that is] now emerging in contradistinction to both the traditional ideology of female subordination and the presently dominant school of women in development.”<sup>62</sup> This consciousness or shift is possible because of a decline in the left in Sri Lanka, and the emergence of a new set of intellectual debates for feminism. Another section of Jayawardena’s analysis illustrates the shift she herself makes from development issues to violence against women:

They [socialist feminists who go beyond Marxism] have shown that in spite of high achievements in education, literacy, health, life expectancy in Sri Lanka, women can yet be subordinate since patriarchy prevails. They have also raised the issue of violence against women, from harassment on the road and buses, to molestation, rape, incest and wife beating, and violence of all types.<sup>63</sup>

<sup>59</sup> He is and has been one of the leading political actors of the left LSSP in Sri Lanka.

<sup>60</sup> Vasudeva Nanayakkara, “The next stage for struggle,” *Lanka Guardian*, August 1980, 18.

<sup>61</sup> Jayawardena, “Time to mobilise for women’s rights,” 16-17.

<sup>62</sup> Ibid., 16.

<sup>63</sup> Ibid., 17.

Notice the shift she makes from issues of development such as literacy and health to the new area of violence. She enunciates a crucial doubt in feminism as to whether a class based analysis of gender will suffice. I believe with this shift also comes an awareness that women's bodies are not only part of "work," but also sexual sites upon which multiple forms of violation and force can be enacted. This new reading of the body comes into being because the body is loosened from a socialist reading of it. Perhaps this move can be seen as defined by Michelle Barrett as "a radical new theorisation of politics, in which the iconic factor of class is dramatically shifted from its privileged position."<sup>64</sup>

While this realization may have become part of Sri Lankan feminist thinking, the opening of the economy also meant a weariness of new forms of oppression that capitalism will bring to Sri Lankan society. Such weariness can be seen in Jayawardena's statement that "the open economy has also had consequences in making the country equally open to cultural and ideological pressures from the advanced capitalist countries.... Women, in their roles as housewives and mothers, play a prominent part in these campaigns - from the woman who advertises her clean bathroom on TV to the *beauty queen* who extols the merits of a particular brand of milk powder. Women are also used as *sex symbols* - to advertise anything from a car to a eau-de cologne"<sup>65</sup> (emphasis mine). The feminist gaze moves to encompass the ways in which the body is produced in the media by the late 1970s. For example, the first issue of *Voice of Women* looks at a packaging company that has placed a woman tied up, in a box, looking blissfully happy in her helplessness. There is a shift from defining the body as part of work, as part of the national development agenda, to understanding it as sexualized and objectified. Jayawardena illustrates this through the example of women's bodies

being used as commodities to advertise cars or perfumes. Criticisms of the new economic order in Sri Lanka become quite clear for "with a consumerist culture encouraged by the open economy, advertisements began to occupy a major place... There has emerged consequently the 'modern' woman-consumer par excellence who is in search of a packaged psyche in the form of new life styles and new fashions. At the same time, old established ideas of femininity and the role of the mother and homemaker have gained a new life although in a different form."<sup>66</sup> Hema Goonetilleke's further analysis that this new open economy has led to a "proliferation of fashion shows and beauty contests" which signify "*embodiment*" illustrates this point neatly. Her observation that sex magazines are a result of "the liberalization of the economy"<sup>67</sup> reflects the belief that capitalism has led to the commodification of women. Hence, this double move of releasing feminism from a class grip, to observing that capitalism also meant the use of women's bodies as commodities enabled a discussion of violence against women.

In the film *Dadayama*, one finds concerns over the open economy expressed through the male protagonist Jayanath (the character of Anandagoda) depicted as a nouveau rich figure, earning quick money, driving new fast cars and using women. At one point in the film, he accuses Rathmalie (Vitharne) of liking him for the material comforts he represents rather than for himself. Obeyesekere the director himself expresses concern regarding youth problems that are on the rise because of money flooding into the country in the post 1977 open economy era.

### Unmaking the Nation: theorizing ethnicity

Finally, let me point to the third factor that influenced feminist discourses on violence. Previously I argued that the feminist movement at the time saw gender in terms of a biologically constituted woman upon whom violent acts were carried out. This, as de Alwis has pointed out, was because feminists emphasised

<sup>64</sup> Michelle Barrett, *The Politics of Truth: From Marx to Foucault* (Cambridge: Polity Press, 1991), 68. For a deeper understanding of this shift from Marxist politics to "new radical social movements," please see Ernesto Laclau and Chantal Mouffe, *Hegemony and socialist Strategy: Towards a Radical Democratic Politics* (London: Verso, 1985).

<sup>65</sup> Jayawardena, "Feminism in Sri Lanka in the decade: 1975-1985," 9.

<sup>66</sup> Hema Goonetilleke, "Women and the Media," in Jayaweera (ed.) (1985), 182.

<sup>67</sup> Ibid., 188.

that women were different from men and desired to forge a united feminist struggle of all women against patriarchal oppression.<sup>68</sup> She also states that feminists at the time were theorizing issues of nationalism and ethnicity, but in different spaces from the feminist ones. The overlap between these two categories did not frequently occur at this time. However, this time period overlapped with scholars and activists re-theorizing nationalism. If previously nationalist struggles were defined as anti-imperialist, by the 1980s this view had drastically altered. As noted by many scholars, this was a time when the Social Scientists' Association (SSA), one of the leading left intellectual spaces of the time, started to theorize the violent nature of nationalism itself in its series of presentations and subsequent publications such as *Facets of Ethnicity* and *Ethnicity and Social Change*. Radhika Coomaraswamy herself at the time published a series of essays on nationalism in the third world in the *Lanka Guardian*. What I wish to note here is that while feminists did not link gender and ethnicity till much later, the very criticism of nationalism itself may have opened up space for discussion on gender and violence. Kumari Jayawardena, was also part of the SSA that began to critique Sinhala nationalism.

After the July 1983 riots, in which large numbers of Tamils, many in Colombo, were killed and their shops burnt, violence seems to have emerged into the horizon of Sri Lankan life where "1983 is a crucial punctuation point in the modern history of Sri Lanka."<sup>69</sup> To use Pradeep Jeganathan's insightful paper on the emergence of violence subsequent to 1983, "1983 is where the possibility of modernity, the dream of every nation, turned into a nightmare. That is its central significance. If the point of origin of the possibility of a Sri Lankan modernity is marked, historically, by the Colebrooke-Cameron reforms of 1832, then the violence of 1983 marks, in this very field, the possibility of its impossibility."<sup>70</sup> In other words, the

<sup>68</sup> Malathi de Alwis, "Reflection on Gender and Ethnicity in Sri Lanka," in *Feminists Under Fire*, 17.

<sup>69</sup> Pradeep Jeganathan, "'Violence' as an analytical problem: Sri Lankanist Anthropology after July 1983" in *Netbra Special Issue July '83 and After*, 6(1) and (2), 12.

<sup>70</sup> *Ibid.*, 16.

political horizon of Sri Lanka that seemed to have been moving toward modernity became more and more remote with 1983. As publications by the SSA suggest, the nation became an impossible dream. Instead, scholars began to question the very desirability of nationalism that seemed to subsume difference.

This milieu in which the nation seemed to be in the unmaking suggests a shift in the country's regard of itself. Sri Lanka was no longer a peace-loving, progressive, modern Buddhist country; rather, it had become a country ravaged by ethnic conflict and violence. As Jeganathan suggests, the similar incidents of the 1958 riot and the later insurgencies of 1971 seem to only mark a moment of terror quickly managed and brought under control. 1983 was different from this. This shift in the perception of Sri Lanka as non-progressive also influenced and mobilized feminist forces. Ethnicity and gender, or difference were not theorized at this point because forging a common feminist consciousness was important at the time, but critical inquiry into Sri Lanka as a violent nation, and criticism of nationalism itself enabled the study of violence in general.

## Conclusion

As I conclude this paper, I would like to briefly return to the film *Dadayama* and the figure of Millie, the sex worker. The *Voice of Women* had operated on a model that emphasised that "unless woman wins total freedom, independence and the control of her labour power, she can never become a true partner in the struggle of the oppressed masses for liberation."<sup>71</sup> The work of many of its feminists was openly socialist and sympathised with the lot of working women in the estate sector, the FTZ, women trade union leaders and lower class women. If so, what had become of the links with women in these sectors when violence against women is introduced to the equation? Both the working woman of the lower classes and the sexually exploited woman become represented in the figure of Millie, the madam, in *Dadayama*.

<sup>71</sup> Editorial, *Voice of Women* (June 1980), 1.

In Adeline Vitharne's story the figure of the sex-worker Millie is understood as the morally improper person. What happened in the 1980s to the figure of the prostitute? She was, after all, the lower class woman and the sexually exploited one. The prostitute seems to combine issues of labour and sexuality together within one field of vision. I believe the response to prostitution is ambiguous where she emerges briefly and disappears subsequently from the feminist focus of the time.

In the early 1980s, the figure of the prostitute emerged within feminist discourse. She was seen as the figure to be most pitied for she was the worst exploited. Let me point to some of the work in *Voice of Women* regarding prostitution: prostitution of women suggests prostitution of "indigenous culture."<sup>72</sup> It is without doubt a social evil to be got rid of, the prostitute may be sympathised with, but she must be stopped from practising as this exploits and degrades her, but also degrades the "nation."<sup>73</sup> Such comments were scattered in the issues of the *Voice of Women* from 1980 to 1983.

However, I believe even a response that condemns prostitution suggests a concern for women in the lower classes, however problematic this rescue, or concern, may be. Over the subsequent years however, feminists in Sri Lanka have not really grappled with this crucial figure whose exploitation really falls within the nexus of work and sexuality. She has disappeared from the horizon of feminist work. Silence regarding an issue that may be important to both socialist feminists and to issues of violence against women indicates a lacuna that needs to be further investigated. Though the conditions of possibility emerge for feminist intervention on violence against women, certain silences persist.

## Chapter Two

### *Traversing the Global Village: violence against women discourses, dialectics, and dialogues*

Lisa Kois'

The internationalization of the violence against women discourse in the 1990s grew out of a dialectical process between governmental and non-governmental bodies, between institutions and grassroots movements, and between the global and the local. As women's movements had done and were doing at the local and national levels, a dynamic and broad-based international women's movement, "claiming hundreds of thousands of members in over one hundred countries,"<sup>1</sup> exposed the way in which women and women's rights had been marginalized through law and practice. The international women's movement challenged the failure of international bodies and governments to provide equal protection to women through international human rights law and the continuing discrimination against women within systems of international governance. It then worked to broaden protections so that women's rights were indeed human rights.<sup>2</sup> The 1993 World Conference on Human Rights

\* The author would like to thank Sunila Abeysekera, Radhika Coomaraswamy and Savitri Gooneskere for their time, their words, their wisdom, and their example.

<sup>1</sup> Elisabeth Friedman, "Women's Human Rights: *The Emergence of a Movement*" Julie Peters and Andrea Wolper (eds.), *Women's Rights, Human Rights: International Feminist Perspectives*, (New York: Ronteledge, 1995), 18.

<sup>2</sup> The notion that "women's rights are human rights" became a mantra for the international women's movement, which was able to successfully lobby for an expanded conceptualisation of human rights. See Johanna Bond and Robin Phillips, "Violence against Women as a Human Rights Violation: International Responses Institutional Responses," Claire M. Renzetti et al, (eds) *Sourcebook on Violence Against Women* (London: Sage, 2001), 493.

<sup>72</sup> Selvy Thiruchandran, "Tourism at what Cost?," in *Voice of Women*, 2(1), (1983), 5.

<sup>73</sup> Ibid.

("Vienna") was a pivotal moment not only in reconceptualizing human rights generally to include women's rights, but also in identifying violence against women as a priority concern. This evolution of the violence against women discourse impacted women's rights work and activism both internationally and in Sri Lanka.

This chapter examines the ways in which global efforts to advance the women's human rights agenda both grew out of and informed local efforts to address women's rights and violence against women. For the purpose of this chapter, violence against women is understood to be

...any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.<sup>3</sup>

This definition, from the UN Declaration on the Elimination of Violence against Women, is expansive and unspecific about the particular forms such violence takes, thereby reflecting the recognition that violence against women is as specific as it is general; within the general category of violence against women exists numerous distinct manifestations. In fact, international definitions are intentionally broad in order to provide for the shifting and evolving understandings of what constitutes violence. Unlike my colleague Nimanthi Perera-Rajasingham, I would assert that violence against women, as an objective reality, has always existed, even if violence against women as a discursive category has not. The category emerged out of reality. It was only possible to conceptualize such a category because there existed a recognizable pattern of violence that was particular to women. What did not always exist was the language to analyse it. As highlighted by Sunila Abeysekera in describing the World Conference on Human Rights in Vienna:

*It was a historical moment where you had women working on female genital mutilation from Africa, Southeast Asian women working on sex tourism, Korean women working on female sexual slavery or comfort women, the Americans working on domestic violence, dowry-related deaths from North India, acid burning in Bangladesh....All these culturally specific manifestations of violence really highlighted that it was about women. There was something about being a woman that made it possible, at any time, anywhere...you could be vulnerable.*

The language of law, which is the language of power, has been constructed and employed to perpetuate violence. Thus, the murder of a woman by her lover was simply murder. The assault of a woman by her husband was a legal fiction. Rape was rape, but had no connection to that murder or that assault. Marital rape was an oxymoron. The discursive category of violence against women is so powerful because violence against women did not "exist" according to the men who made and enforced the laws. It was when women broke through the pretence of the neutrality of power and the law, and captured the normative space at the national and international levels, that the reality of violence against women, in all its many forms, could be articulated.

This chapter emerged out of discussions with three leading Sri Lankan feminists,<sup>4</sup> all of whom have played pivotal roles in advancing women's rights and combating violence against women at both the national and international levels – Sunila Abeysekera, feminist activist and leader of the international women's movement; Radhika Coomaraswamy, academic and former UN Special Rapporteur on violence against women, and Savitri Goonesekere, professor of law and former member of the UN Committee on the Elimination of Discrimination against Women.

<sup>3</sup> Declaration on the Elimination of Violence against Women, G.A. Res. 104, U.N. GAOR, 48<sup>th</sup> Sess, 85<sup>th</sup> plen. mtg, Supp. No. 49, at 217-19, U.N. Doc. A/48/49 (1993), Art. 1.

<sup>4</sup> The "dialogue" presented in this paper has been pieced together from a number of conversations between myself and Sunila Abeysekera, Radhika Coomaraswamy and Savitri Goonesekere, as well as a joint conversation between Radhika Coomaraswamy and Sunila Abeysekera, held between January – March 2006.



The heavy reliance on the words of Abeysekera, Coomaraswamy and Goonesekere is intended to highlight the inextricability of the experiences of the national and international, and convey the rich texture of that experience. There are some who argue that violence against women was an agenda imposed from outside: that it was a western or United Nations driven agenda. While it is true that work at the national level was influenced by work at the international, the opposite is equally true. Work on violence against women at the national and local levels not only influenced work at the international level, but also drove it in both subtle and overt ways. The chapter weaves together the voices and experiences of Abeysekera, Coomaraswamy and Goonesekere to reflect on Vienna and the post-Vienna era as it explores the interdependence of the local and the global in advancing the women's human rights agenda.

The chapter is divided into three sections: (1) the road to Vienna; (2) Vienna and the violence against women agenda; and (3) bringing Vienna home. It begins by looking at women at the international and national in context of the road to the Vienna World Conference on Human Rights. It explores the ways in which women connected internationally – through the work they were doing at the national level and through the enabling environment they created at the international level – and, eventually, women's impact on the way in which human rights would come to be understood. The violence against women agenda was part of this process, emerging at Vienna as the central organizing principle through which the call for women's rights as human rights was articulated. Out of Vienna emerged standards and mechanisms that would inform the way in which women's human rights would be conceptualized and understood. The Vienna Tribunal on Women's Human Rights, the creation of the post of Special Rapporteur on violence against women, and the Declaration on the Elimination of Violence against Women, all emerged out of Vienna as a consequence of international feminist action. This chapter explores the emergence of violence against women internationally. It then looks at the process of bringing Vienna home to Sri Lanka generally, and through responses to the case of Krishanthi Kumaraswamy specifically.

## A. THE ROAD TO VIENNA

### Women at the International

Although the equality of men and women is a fundamental principle upon which the United Nations was founded, as articulated in the UN Charter as well as the Universal Declaration of Human Rights, the UN has been slow to give meaning to this formal pronouncement. Recognition of the gap that existed in the protection of women's rights emerged as early as 1963, when the General Assembly called upon the Economic and Social Council to invite the Commission on the Status of Women to draft a declaration that would bring together the international standards relating to the equal rights of men and women into one comprehensive document.<sup>5</sup> This process, which led to the drafting of the Declaration on the Elimination of Discrimination against Women, was part of a larger process happening throughout the world characterized by growing consciousness of the patterns and persistence of discrimination against women. An outgrowth of second wave feminism, the Declaration's emphasis was on economic, social and political equality. At that time, the silence that had always shrouded violence against women was only beginning to lift and violence against women was emerging as an area of particular concern and intense activism for second wave feminism. The lack of centrality afforded to violence against women at that time is evident in the exclusion of violence against women in both the Declaration and the subsequently elaborated Convention on the Elimination of All Forms of Discrimination against Women.

The International Year of Women (1975) heralded the beginning of a new era for the UN, both in terms of women's rights and NGO participation in UN processes. Based on its success, the UN extended the International Year of Women into the Decade of Women (1975–1985). Three world conferences on women – Mexico City (1975), Copenhagen (1980), and Nairobi (1985) – were timed to provide strategic interventions throughout the Decade. Mexico City

<sup>5</sup> See G.A. Res. 1921 (XVIII), 5 December 1963.

launched the Decade, Copenhagen provided the opportunity for a mid-Decade review, and Nairobi concluded the Decade, setting an agenda to take issues forward. The timing of the Conferences highlights the importance ascribed to world conferences for their potential to raise consciousness and set standards. Generally, world conferences provide the international community an opportunity to come together on a particular thematic issue in order to articulate and agree upon a common set of values, goals and strategies. This aspect of the UN's functions has been identified as "one of the United Nations system's greatest strengths: the ability to move from consciousness-raising to agenda-setting to agreement on action by Member States to follow-up on conference commitments and to effective assistance for the countries that need help in realizing their commitments."<sup>6</sup> The first three world conferences on women were used to set an enduring international agenda for women's rights.

The first three world conferences also provided space for networking and institution building, out of which came many new institutions within the United Nations and international civil society. The First World Conference on Women, for example, led to the creation of two UN agencies for women. The UN Development Fund for Women (UNIFEM) and the International Research and Training Institute for the Advancement of Women (INSTRAW) were established to advance women's rights through research, training and operational activities relating to women and development. The First World Conference also created space for NGOs to enter and influence what was happening at the UN. The creation of the first NGO forum, which ran parallel to the official conference, signified the beginning of a shift in the UN's relationship with NGOs, as well as in their outlook and approach. The First World Conference opened space for women's groups and enabled them to work more effectively within the UN system. Consequently, the Decade spawned an international women's movement and helped open the

UN and its processes. The Third World Conference on Women in Nairobi was charged with both reviewing the progress of the Decade and seeking new ways to overcome obstacles for achieving the objectives of the decade: equality, development and peace. The Nairobi Forward Looking Strategy<sup>7</sup> recognized that gender was not an isolated issue, and encompassed all areas of human activity. This laid the foundation for what would become one of the demands of the Global Campaign for Women's Human Rights, the mainstreaming of gender into all areas of the UN's work. It also recognized that violence against women was a major obstacle to achieving peace.

World conferences have provided women exposure to a wide range of issues, as well as an opportunity to network with other women from throughout the world. Radhika Coomaraswamy, Sunila Abeysekera and Savitri Goonesekere each recount how they engaged in these international forums. Abeysekera, who had been engaged in women's rights work since the mid 1970s, was marginally involved in the First World Conference on Women, when she contributed to a book that the then Prime Minister, Mrs. Sirimavo Bandaranaike, took with her to the conference. At that time Abeysekera's contributions were on women and media. All three women attended the 1985 World Conference in Nairobi. Coomaraswamy, who would go on to play a pivotal role as the first UN Special Rapporteur on violence against women, credits Nairobi with bringing alive women's issues. "It was the first time women's issues came to me in a big way," says Coomaraswamy. "At that time, the emphasis overwhelmingly was on issues of equal protection and discrimination, though issues of violence, particularly domestic violence, were starting to appear on the UN's radar." Goonesekere points out that the three women were all in Nairobi and that, by then, the connections between them had already been made. In fact, Abeysekera had interviewed Goonesekere for a film she did on illegitimacy that was screened in Nairobi.

<sup>6</sup> "The United Nations World Conferences: A Brief Introduction," at <http://www.earthsummit2002.org/toolkits/Women/un-doku/un-conf/un-conf%20intro.htm>, citing UN Briefing Papers, *The World Conferences: Developing Priorities for the 21st Century* (1997).

<sup>7</sup> The Conference produced the Nairobi Forward-Looking Strategies for the Advancement of Women, July 1985, available at <http://www.un.org/womenwatch/confer/nfls/Nairobi1985report.txt>

The three World Conferences on Women prepared the groundwork for Vienna. Preparations for the World Conferences on Women provided the impetus for action at the national and local levels, as women, women's organizations and states took steps to address women's rights at a formal level. The promulgation of formal mechanisms, such as laws and national policies, was one way in which states could demonstrate to the international community their commitment to women's rights and equality. At the NGO level, the World Conferences on Women, with their parallel NGO forums, provided the enabling environment for the birth and growth of an international women's movement, without which the achievements of Vienna would not have been possible. The first three women's conferences helped build the networks that would become critical in the Global Campaign for Women's Human Rights.

### Women at the National: Sri Lanka

Although work on various issues of violence against women was well underway in Sri Lanka by the early 1980s, violence against women as a clearly articulated conceptual category was not the driving force behind this work. The process of recognizing the links between different forms of violence, and the act of naming or categorizing these forms within one overarching reality called violence against women, was only made possible through the element of consciousness-raising inherent in the preparations for Vienna, as well as the World Conference itself.

In Sri Lanka, the early and mid 1980s was a critical time for women's rights. According to Abeysekera and Goonesekere, there were numerous different campaigns on different issues during that time. The rape of women, sexual harassment of women workers in the free trade zones, and domestic violence were issues emerging in women's consciousness. A number of women and groups throughout the island were addressing issues of violence, despite the fact that these issues were neither labelled as violence against women nor perceived to be inter-connected.

Goonesekere links the emergence of work on violence against women to women's entrance into the labour market, in

particular in the free trade zones in the mid-1980s.

*In the middle of the '80s, the free trade zones were opened, and the minute the free trade zones were opened, there was this massive exploitation of those early garment workers. That was a reality. So there were occupational health hazards, there were issues of violence, etc. So this whole issue of sexual harassment, violence against women, was definitely connected with the concern with the large, large numbers of women who went into the formal working sector.*

Although Abeysekera likewise remembers a number of strikes by women calling for equal pay for equal work, she highlights the fact that violence against women was not the organizing principles behind the women's rights work that was being undertaken in the early and mid 1980s. According to Abeysekera, "in '82 and '83, there was a kind of a moment that lasted for about a year in which there was an intense amount of activism around women's rights. To me it's quite interesting, because violence against women wasn't on our agenda at that time."

According to Abeysekera, it wasn't until 1985 or 1986 that violence against women, in particular domestic violence, was articulated for the first time. Coomaraswamy and Abeysekera recall that they, and other women's rights' advocates, were labelled home wreckers and lesbians after highlighting the issue at a seminar. But the work that was beginning on violence against women was quickly sidelined when, "in 1987, after the Indo-Lanka peace accord,<sup>8</sup> the

<sup>8</sup> The Indo-Sri Lanka Peace Accord was signed on July 29, 1987 by Indian Prime Minister Rajiv Gandhi and Sri Lankan President J.R. Jayawardene. The Accord was an attempt to create a political solution to the ongoing war by setting out a framework for devolution of power to the provinces, the merger of the North and East, and official status for the Tamil language. India agreed to establish order in the North and East with an Indian Peace-Keeping Force (IPKF) and to cease assisting Tamil insurgents. The IPKF's presence in Sri Lanka created a strong backlash in the South, fuelling nationalist sentiments. In 1990, India withdrew the last of the IPKF from Sri Lanka, and fighting between the LTTE and the government resumed.

JVP started its campaigns of killing.<sup>9</sup> It targeted people who had been members of the JVP, including me,” remembers Abeysekera.

It is interesting to note that, to some extent, work on violence against women in Sri Lanka grew out of the repression and violence committed in context of armed political conflicts. The war between the Government and the LTTE in the North and East and the violence of the Reign of Terror in the South contributed to an emerging consciousness about violence against women. According to Neloufer de Mel, “the focus of the early 1990s [grew] from protest against state violence and rape to encompass issues of domestic violence, cultural oppression and discrimination of women in areas of health, education and employment.”<sup>10</sup>

Savitri Goonesekere recollects that period:

*Then came the '80s. Those were the JVP years with all that violence....It was mostly a phenomenon of male violence, but the women intimately connected with the men, either as supporters and activists in their own right or, mostly as family members, were targeted. So we didn't see the massive killing of women, like we saw the dead bodies of men on the road. But it had an impact on the women, particularly the abduction cases.*

*We had this network called University Teachers for Human Rights. Rajani Thiranagama<sup>11</sup> used to come from Jaffna and we used to have meetings....I was Vice-Chairman of the*

<sup>9</sup> In 1987, the nationalist Marxist Janatha Vimukthi Peramuna (JVP or People's Liberation Front) launched an armed uprising against the Government, which lasted until 1991 and claimed the lives of close to 40,000 people.

<sup>10</sup> Neloufer de Mel, Editorial, *Options* No. 3, February 1995.

<sup>11</sup> Dr. Rajani Rajasingham Thiranagama was a founding member of University Teachers for Human Rights, as well as a human rights and feminist activist and lecturer at the Medical Faculty of the University of Jaffna. With three others, she co-authored the groundbreaking book, *The Broken Palmyrah*, which chronicled violations of human rights by all sides to the conflict. Mere weeks after the book was published, she was murdered by an unidentified gunman thought to have been an LTTE cadre.

*Southern Committee. The Northern Committee was Rajani and Rajan Hoole,<sup>12</sup> this person who had gone into hiding. The Southern Committee eventually fell apart because...[it] was full of conflict and personal agendas. At some point I said, 'I'm sick of it. I'm not going to be there anymore.... I can't stand this dissention among you.' I quit and then the Chairperson also quit. So University Teachers for Human Rights flopped here. They continued – Rajani and Hoole continued – and then Rajani got killed in the North.*

*Rajani, herself, was concerned with violence against women. All the cases she would report were issues of violence against women. I remember that so vividly. She would take all women who were exposed to violence. She used to say, 'We don't want any of the violence...We don't want it from the IPKF,<sup>13</sup> we don't want it from the government, we don't want it from the LTTE.' That was her message.*

Although there were some connections being made between political violence and violence against women, overwhelmingly, political violence was seen as separate and distinct. The gross and persistent nature of human rights violations during the period, however, contributed to the internationalization of the Sri Lankan situation. International solidarity networks were formed and the UN became increasingly involved through the Working Group on Enforced Disappearances, which made several trips to Sri Lanka after the Reign of Terror (1987 – 1991). As Sunila Abeysekera's

<sup>12</sup> Rajan Hoole is a founding member of University Teachers for Human Rights (Jaffna). UTHR(J) is the only human rights organisation that has systematically documented violations of human rights by all parties to the conflict, and has provided a consistent critique of the LTTE from within the Tamil community. He lives in hiding due to threats to his life by the LTTE.

<sup>13</sup> The Indian Peace Keeping Force was the contingent of the Indian military sent to Sri Lanka in 1987, after the signing of the Indo-Lankan accord, to assist in keeping peace between the Government of Sri Lanka and the LTTE. Their mission became mired in local nationalist politics and violence, and their presence became an instigating factor in the JVP uprising of 1987. The IPKF pulled out of Sri Lanka in 1990. The allegations of widespread rights violations by the IPKF have not, to this day, been investigated.

experience highlights, the urgent need to address the human rights violations of this period not only took activists, like Abeysekera, into the international arena, but also took them there at a time when the connections were being made between women's rights and human rights and as the international women's movement was beginning to prepare for the World Conference on Human Rights in Vienna.

*The JVP violence was seen as a human rights issue, which was quite separate from the women's rights stuff. I remember so clearly in 1990 – or 1991 actually – I had gone to the Commission on Human Rights<sup>14</sup> with petitions about disappearances<sup>15</sup> in Sri Lanka. That was one of the scariest moments of my life. I was alone. I was in Geneva. I didn't know anything about the system. Somebody told me you have to take these lists to Geneva. So I took the lists and went to Geneva.*

*One evening I was wandering around – I wandered around a lot because I really didn't know anything about anything – and I met Charlotte Bunch.<sup>16</sup> I had first met Charlotte in 1985*

<sup>14</sup> The now defunct UN Commission on Human Rights was established by ECOSOC Resolution 5 (I) of February 16, 1946. Until March 27, 2006, when the Commission concluded its final session, the Commission met annually and reported to the Economic and Social Council. It established special procedures, special rapporteurs, representatives or experts and working groups to investigate, discuss and report on specific human rights issues under a country mandate or thematic mandate. See <http://www.ohchr.org/english/bodies/chr/index.htm>. It will be replaced by the Human Rights Council, which will be established under General Assembly Resolution A/RES/60/251 of March 15, 2006. See <http://www.un.org/Docs/journal/asp/ws.asp?m=A/RES/60/251>

<sup>15</sup> An estimated 40,000 people were disappeared during the JVP period, which is commonly referred to as the Bheesanaya or Terror Period. The term "disappearance" is used to refer to a particular kind of human rights violation that is characterized by the intentional and clandestine nature of the act of "disappearing" or killing, usually by the military, police or a paramilitary organisation.

<sup>16</sup> Charlotte Bunch is an American activist, author and organiser in women's and human rights movements. In 1989 she founded the Center for Women's Global Leadership (CWGL) at Rutgers University. She went on to become one of the most prominent leaders of the International Women's Movement, steering the Women's Rights are Human Rights campaign at Vienna and beyond.

*in Nairobi. So it had been five or seven years since I had met her. Charlotte said, "Oh Sunila, what are you doing here?" So I said, "Well, I'm trying to get these disappearances from Sri Lanka on the agenda." And then I said, "Charlotte, what are you doing here?" She said, "You know...they're going to have a world conference on human rights and we want to have a women's agenda for the world conference." And that was a moment when I just went "ah!" and realized that the work I was doing with women's rights could fit into the human rights agenda.*

*It's so strange now when you look back at it, that you thought these two things existed quite separately from each other. With the women's rights' issues you went to CEDAW,<sup>17</sup> and for the human rights' stuff you went to Geneva to the Commission. And we never – I never – had a sense that there was anything that connected the two.*

As the connections between women's rights and human rights were being made, preparations were underway for the World Conference on Human Rights. The first World Conference on Human Rights to be held since 1968, and only the second World Conference on Human Rights ever to be held, Vienna was made possible with the fall of the Berlin Wall and the end of the Cold War. During the Cold War, human rights were a particularly divisive issue – with an East/West divide that translated into an Economic and Social Rights/Political Rights divide. The crumbling of the Eastern Bloc paved the way for an expansive approach to human rights, which highlighted the indivisibility of all rights, including women's human rights. Thus, the process of seeing the links between women's rights, which had been overwhelmingly defined in the language of economic and social rights, and human rights, which were understood in terms of political rights, was part of a

<sup>17</sup> The United Nations Committee on the Elimination of All Forms of Discrimination against Women (CEDAW) was created in 1982. It is a body composed of 23 experts on women's issues from around the world. The Committee's mandate is very specific: it monitors implementation of States parties to the 1979 Convention on the Elimination of All Forms of Discrimination against Women.

larger process of recognizing the inextricability of economic, social and political rights.

## B. VIENNA AND THE VIOLENCE AGENDA

The UN World Conference on Human Rights in Vienna in 1993 provided a forum for women's movements to come together and articulate their demands that "Women's Rights are Human Rights" within the context of the mainstream human rights discourse. According to Bond and Phillips:

The Vienna Conference is widely recognized as one of the important milestones in the international women's human rights movement. The women's movement is credited with successfully persuading the governmental delegates to add a women's human rights agenda to the work of the United Nations. Governmental delegates agreed to include women's human rights and violence against women as major themes of the conference and to begin a process of integrating gender issues into all of the human rights mechanisms of the United Nations.<sup>18</sup>

The document that emerged from the conference, the Vienna Declaration, emphasised women's human rights and violence against women, and specifically stated that

[t]he human rights of women and of the girl-child are an inalienable, integral and indivisible part of universal human rights....Gender-based violence and all forms of sexual harassment and exploitation, including those resulting from cultural prejudice and international trafficking, are incompatible with the dignity and worth of the human person, and must be eliminated.<sup>19</sup>

Internationally, violence against women as a discursive category was broad enough to encompass the varied experiences of the world's women, and thus bring them together in common pursuit of women's rights, while simultaneously acknowledging the different experiences and forms of violence faced by women of differing regions, states, religions, classes, castes and other social groups. The Global Campaign for Women's Human Rights, "a loose coalition of groups and individuals worldwide working for women's human rights," prioritized violence against women in their effort to demonstrate "both how traditionally accepted human rights abuses are specifically affected by gender, and how many other violations against women have remained invisible within prevailing approaches to human rights."<sup>20</sup> While there was some disagreement among the women who comprised the core organizing group of the Global Campaign – i.e. whether the focus should be on women's human rights generally or violence against women specifically, and whether it should be limited to violence against women only or whether the definition of violence against women should be left broad to include its causes and consequences – the decision to frame the struggle in terms of women's rights as human rights, with an emphasis broadly on violence against women, including its causes and consequences, was a consensus decision.

The focus on violence against women was not without precedent. Prior to Vienna, the CEDAW Committee had elaborated Recommendation 19 on violence against women. The CEDAW Committee's General Recommendation 19 recognizes that "gender-based violence is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men."<sup>21</sup> The Convention's gap in terms of violence against

<sup>18</sup> "Violence against Women As a Human Rights Violation," 493.

<sup>19</sup> United Nations World Conference on Human Rights: Vienna Declaration and Programme of Action, U.N. Doc. A/CONF.157/24 (Part I), at 23, para. 18.

<sup>20</sup> Charlotte Bunch and Niamh Reilly, *Demanding Accountability: The Global Campaign and Vienna Tribunal on Women's Human Rights*, 10-12, (Center for Women's Global Leadership and the United Nations Development Fund for Women (UNIFEM), 1994), 3.

<sup>21</sup> Committee on the Elimination of Discrimination against Women, General Recommendation 19, Violence against women (Eleventh session, 1992), U.N. Doc. A/47/38 at 1 (1993), reprinted in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.6 at 243 (2003).

women emerged in the reports being submitted to CEDAW. The CEDAW Committee identified this pattern and drafted Recommendation No. 19 as a result.

An important component of the Global Campaign's Vienna strategy was the inclusion of a day-long tribunal on women's human rights. The Tribunal brought together women survivors of violence to testify before three judges and the public. As Indian feminist and legal scholar, Ratna Kapur, recounts:

Moreover, the Vienna World Conference and subsequent women's conferences have enabled women to speak out to the international community. A powerful form of this presentation has been through personal testimonials in public tribunals, as at Vienna, or through international video links. These accounts are usually very graphic and horrifying, and are told through the location of the victim subject.

The victim subject also provides a shared location from which women from different cultural and social contexts can speak. It provides women with a subject that repudiates the atomized, decontextualized, and ahistorical subject of liberal rights discourse, while at the same time furnishing a unitary subject that enables women to continue to make claims based on a commonality of experience.<sup>22</sup>

While Kapur challenges the reliance, by the international human rights community, on the third world victim subject, the fact is that women from the global south were instrumental in the conceptualization and organization of the Tribunal. Women from all regions testified, as did women from both industrialized and non-industrialized countries. Sunila Abeysekera's experience speaks to a more complex reality:

<sup>22</sup> Ratna Kapur, "The Tragedy of Victimization Rhetoric: Resurrecting the "Native" Subject in International/Post-Colonial Feminist Legal Politics," *The Harvard Human Rights Journal*, Spring 2002.

*From 1991 on there was this huge process of preparing to go to Vienna, and preparing for the Tribunal. The Women's Human Rights Tribunal was the big activity. This involved identifying cases, and trying to get people to bring so-called 'victims' so that authentic voices could be heard.*

*The Tribunal was a tremendous experience. The Tribunal was what made me believe in the possibility of transnational networks. I remember we were doing a lot of organizing at that time, and we didn't email easily, we didn't phone easily, we didn't fax. When I look back at it now I wonder how we organized that damn tribunal to run the whole day with 30 or 40 testimonies. I don't know how we did it, but we did it. It's those moments that really give you inspiration.*

*The Tribunal was huge. And then there was the petition, which had 100,000 signatures from women all over the world asking for the creation of the Special Rapporteur.<sup>23</sup> Again, that was a moment because it said 100,000 women from all over the world have signed this damn petition and you take it. It was so nice because it was in all different languages. People had signed in Bengali, Farsi, Sinhala and Tamil. It was so beautiful to look at all these signatures.*

The Vienna Tribunal for Women's Human Rights was part of the non-governmental activities that were taking place parallel to the official UN World Conference on Human Rights. The Tribunal was intended to educate human rights NGOs about women's human

<sup>23</sup> The annual 16 Days of Activism Against Gender Violence campaign, which was designed to link the International Day Against Violence Against Women (November 25) to International Human Rights Day (December 10), began in 1991. Arising out of the 1991 Women's Global Leadership Institute, the first campaign, which was supported by the Center for Women's Global Leadership and the International Women's Tribune Center, was used to initiate a petition drive, which called on the UN to "comprehensively address women's human rights at every level of its proceedings." The petition was eventually translated into 23 languages, had over 1000 sponsoring groups and 500,000 signatures from 124 countries. Bunch and Reilly, *Demanding Accountability*, 5.



rights, address the official governmental delegates and influence their deliberations, while simultaneously using the media that was present at the Conference. The Tribunal was intended to accomplish the following specific objectives:<sup>24</sup>

1. Demonstrate obstacles to women's enjoyment of human rights that stem from the distinction between public and private, especially around violence against women;
2. Expose the often ignored violations of female human rights in war and conflict situations;
3. Reassert that women's human rights are indivisible and universal, and highlight the ways in which some claims to cultural and religious rights impede the universality of human rights with respect to women;
4. Illustrate the gender-specific dimensions of already recognized international human rights violations;
5. Underscore the implications for women of the secondary status of social, economic and cultural rights relative to political and civil rights;
6. Evaluate the effectiveness of human rights instruments, procedures, bodies and agencies, including non-governmental human rights organizations, in protecting and advocating for human rights of women, and
7. Show that violations of women's human rights occur in both industrialized and "less developed" countries.

Although it is difficult to assess to what extent the objectives

<sup>24</sup> Ibid., 10-12. See also "The Vienna Tribunal: Women's Rights are Human Rights" (Augusta Productions and the National Film Board of Canada, 1993).

of the Tribunal were fulfilled, the success of the Global Campaign's multi-pronged approach cannot be underestimated. Vienna set the trajectory for the years of national and international work and activism that were to come. As Goonesekere and Abeysekera recall:

*Goonsekere: Vienna and the whole subsequent momentum for the Declaration on Violence against Women and the appointment of the Special Rapporteur on violence against women... Those came from the NGOs. Radhika's appointment, the Special Rapporteur's office, came from the NGOs.*

*Abeysekera: Vienna was a kind of a shifting moment in the international women's human rights movement. For the first time you had this very clear articulation that violence against women was a violation of human rights and that the UN Human Rights Commission should take it on through the creation of a Special Rapporteur for violence against women.*

*Goonsekere: Then the momentum on rights came into it. And that, of course, really fertilized the whole thing because it legitimized this whole process of taking rights on, the usefulness of rights, and then NGOs came on board. You see, there was a dynamic there... it was an international process. Vienna was therefore useful in putting the concept of international human rights into an agenda that had also been there as part of women's concerns, but it legitimized that whole process. It legitimized it even for the states with the Declaration on the Elimination of Violence against Women. So then rights could not be perceived as a no-no.*

The Global Campaign was as diverse in perspectives as it was singular in purpose. This was its strength. The language of human rights was a powerful unifying force that gave women a common language to articulate their common, yet distinct, grievances. As Abeysekera recalls:

*A lot of the women I know who were in Vienna from Africa, Latin America and Asia were there because there was also this kind of understanding of class politics or race politics or post-colonial politics. And somehow there was a space for all of that. There was a space for all of that to happen which was not our experience with a lot of Western women.*

*In an interesting way, Vienna was really a moment of resistance by southern groups against the domination of human rights agendas by northern groups, against Amnesty, against the International Commission of Jurists, against Human Rights Watch. And actually the reason why I think a lot of people of colour were there was because there was a moment in which you said, ok, we are no longer going to be the suppliers of the information so that you can write your reports. We are going to take over some of that space for ourselves. We're taking our space. So there was that mainstream, largely male-dominated dynamic which was black and white, north and south, developed and underdeveloped. And then the women's caucuses, and the women's tribunal and all that activity, had a completely different dynamic that was not positing that you're white...you're North American...we're coloured... we're black. I think a whole lot of people are responsible for it. The Network of Women Living under Muslim Law,<sup>25</sup> the East European women who brought the poor white agenda – the under-developed white agenda – into the discussion, the women from Bosnia, etc.*

As recalled by Coomaraswamy and Abeysekera, strong leadership, respect for diversity, and a shared worldview that emerged from coming of age in the 1960s, facilitated the creation of a strong international feminist lobby in the 1990s. But like feminist movements at the national level, the international women's movement is suffering in the current regressive political climate under

<sup>25</sup> Women Living Under Muslim Laws is an international solidarity network that provides information, support and a collective space for women whose lives are shaped, conditioned or governed by laws and customs said to derive from Islam.

the emerging leadership of third wave feminists, who are fractured and overwhelmingly lacking a shared political consciousness.

COOMARASWAMY: *We had some good leaders...people like Charlotte Bunch and Florence Butegwa.<sup>26</sup> And also I think Charlotte's Rutgers groups<sup>27</sup> played an important role. She has this program where she gets women's rights leaders from all over the world to come for three months. Charlotte was going to the grassroots activists and pulling them all and bringing them to Rutgers and then, there, they networked. So when she called out the troops, they would come out and they would come out at the grassroots because they identified with the grassroots. A lot has been done because of Charlotte.*

ABEYSEKERA: *I think her strength has always been her ability to understand her position as a white, Anglo-Saxon, Protestant, North American woman who was involved in anti-race politics and Vietnam and also in lesbian politics in the US in the 1960s and '70s.*

*The level of discussions in the 1990s was very nuanced partly because there were less power struggles in the leadership. Everyone was quite comfortable in their own leadership. Wherever people came from, everybody was very comfortable because they had power in their own places. When you have power in your own space you are better able to negotiate in other spaces.*

<sup>26</sup> Florence Butegwa is a prominent international feminist and human rights activist from Uganda. She is the former Director of Women in Law and Development Africa (WiLDAF), a pan African network of people and organisations working on issues of women's rights. She was a member of the core Vienna organizing group.

<sup>27</sup> Charlotte Bunch founded the Center for Women's Global Leadership (CWGL) at Rutgers University in New Jersey, where she continues to serve as Executive Director. Since 1990, CWGL has held annual global leadership institutes to foster women's leadership in the area of human rights. See <http://www.cwgl.rutgers.edu/globalcenter/staff.html>.

*So, for example, the issue of female genital mutilation... When the African women said this is what we want to do on this issue, there was a big discussion because some of the North American and Western European women said that was not what they wanted to do. But there was a discussion and ultimately the African women prevailed. In the end, there was recognition that you had the right to decide because it is a difficult decision and it's your context. With Muslim personal laws, there was also a huge discussion. And, again, the Network of Women Living under Muslim Law said, ok, this is what we want to do. There was a kind of acceptance. You come from that place...you come from that community...You tell us this is what you want to do and we don't want you to do anything else. There was an acceptance of difference.*

COOMARASWAMY: *Within the women's movement there was an incorporation of difference in a very healthy way – from 1993 to about 1999. Now I would say it has been taken over by a driving northern agenda.*

*That's why nobody wants to reopen these debates. It's why we didn't have Beijing Plus10. We should have had it last year. We should have a meeting every 10 years. 2005. We should have had a world conference. But one look...the US, Iran, they're all ready to roll back everything we fought for.*

ABEYSEKERA: *They wanted to renegotiate the word gender! Some of the Arabic states insist that gender means that you're talking about a third gender and that it's a kind of a euphemism for talking about lesbians and gays and transgenders.*

COOMARASWAMY: *First they wanted to renegotiate reproductive rights. Even violence, they wanted to renegotiate.*

ABEYSEKERA: *So these are bad times.*

COOMARASWAMY: *These are times when you lie low and hope that something will happen.*

## UN Special Rapporteur on Violence against Women

The Global Campaign presented two primary demands to the official delegates at Vienna. These were: (1) the creation of a special UN mechanism on women's human rights, and (2) the mainstreaming of women's human rights into all UN bodies and work. The UN accepted the demands, adopted a resolution calling for the mainstreaming of women's human rights into all aspects of the UN and its work, and the creation of the post of Special Rapporteur on violence against women, including its causes and consequences. In 1994, the UN Commission on Human Rights appointed Radhika Coomaraswamy, Sri Lankan feminist and academic, as its first Special Rapporteur on violence against women. Coomaraswamy held the post for three terms, totalling nine years.

The international women's movement felt a strong sense of ownership over the post of the Special Rapporteur and thus actively engaged in the process of elaborating a mandate and identifying candidates to fill the post. The articulation of the mandate was an articulation of a paradigm for addressing violence against women and was debated strongly amongst the women, as Abeysekera recalls:

*Even amongst the women, there were huge battles about the mandate – about how to define the mandate and about the causes and consequences piece of it. There were so many people who wanted violence against women, full stop. And there were those who wanted causes and consequences in the mandate. It was a political divide and a divide between North American or Western European women and Southern women. Southern women – African women, Asian women, Latinas – wanted causes and consequences in there. Causes and consequences was the part about poverty and patriarchy as the causes of violence against women. In the end, the recommendation was for the creation of a post of Special Rapporteur on violence against women, including its causes and consequences.*

According to the mandate,<sup>28</sup> the Special Rapporteur on violence against women shall:

- a) Seek and receive information on violence against women, its causes and consequences from Governments, treaty bodies, specialized agencies, other special rapporteurs responsible for various human rights questions and intergovernmental and non-governmental organizations, including women's organizations, and to respond effectively to such information;
- (b) Recommend measures, ways and means, at the national, regional and international levels, to eliminate violence against women and its causes, and to remedy its consequences;
- (c) Work closely with other special rapporteurs, special representatives, working groups and independent experts of the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities and with the treaty bodies, taking into account the Commission's request that they regularly and systematically include in their reports available information on human rights violations affecting women, and cooperate closely with the Commission on the Status of Women in the discharge of its functions.

In the discharge of the mandate the Special Rapporteur:

Transmits urgent appeals and communications to States regarding alleged cases of violence against women.  
Undertakes fact-finding country visits.  
Submits annual thematic reports to the Commission on Human Rights.

<sup>28</sup> U.N. Res. 1994/45, Question of integrating the rights of women into the human rights mechanisms of the United Nations and the elimination of violence against women (4 March 1994).

The processes of drafting the Special Rapporteur's mandate and the Declaration on the Elimination of violence against women were separate and distinct, although they were simultaneous processes. Interestingly, the perspectives represented in each document vary slightly, reflecting the divergent ideologies that fuelled earlier debates amongst the women about how to define and understand violence. While the mandate has an expansive definition that includes the causes and consequence of violence against women, the Declaration defines violence against women more narrowly, in more traditional human rights terms that focus exclusively on the violation or the act of violence.

*COOMARASWAMY: The next mark was the General Assembly in June 1993. That's when the UN Declaration on the Elimination of Violence against Women<sup>29</sup> was passed. The Declaration was drafted by Northern women. It focuses primarily on the act of violence.<sup>30</sup> There is also language like religion,*

<sup>29</sup> See Declaration on the Elimination of Violence against Women, G.A. Res. 48/104, U.N. GOAR, 48<sup>th</sup> Sess., Supp. No. 49, at 217, U.N. Doc. A/48/49 (1993).

<sup>30</sup> According to Article 1 of The Declaration on the Elimination of All Forms of Violence against Women violence against women is defined as:  
any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.

Further, according to Article 2:

this includes, but is not limited to:

- (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.

*tradition and custom cannot be invoked to justify violence against women. I think it was the wrong definition. I think it should have had the causes and consequences piece. Otherwise, it's a very good act. It spoke of the private and the public and the historical unequal power relations between men and women, recognizing those as causes of violence against women. It's a very good document.*

The selection of a candidate for the post of Special Rapporteur was equally important. The Special Rapporteur would be instrumental in articulating and helping to set international standards on women's human rights. Numerous candidates were identified and debated. At least two candidates – Costa Rican Alda Facio, and Pakistani Asma Jehangir, both names forwarded by the international women's movement – were rejected at the official level prior to the selection of Coomaraswamy. Coomaraswamy had not been on the original list circulated by the international women's movement. Instead, they had identified five women, all of whom had played integral roles within the movement. Coomaraswamy had not been involved in the international women's movement at that time and thus was not on the women's list. However, once her name was mooted and her feminist credentials were verified, the international women's movement began to back her for the post.

The feminists who were instrumental in the creation of the post considered Coomaraswamy “theirs,” maintaining a sense of ownership throughout her three consecutive terms. Coomaraswamy's appointment was significant on a number of levels. Not only was she the first woman special rapporteur, but also she was one of the first rapporteurs from the NGO sector. Prior to her appointment, special rapporteurs overwhelmingly heralded from diplomatic circles.

*ABEYSEKERA: So you know why this one got selected. She was quiet... she wouldn't rock the boat... she was always wearing silk saris... She was diplomatic.*

*I remember, that was the thing, that she was diplomatic. And that was the thing that we hated about her! And that was the thing that ultimately got her the post. And that was the thing that let her keep the mandate for nine years. That was a bloody incredible thing. That was because of her diplomacy. We gave her a really hard time throughout all those nine years. But the reason she kept it for nine years was, I think, because Radhika was very calculating in terms of risks and in terms of confronting issues. For us it was sometimes really frustrating, but in the end you look at nine years – three terms – which almost nobody has had.*

Coomaraswamy's NGO background, her keen interest and involvement in the issues and her open and inclusive style, combined with the movement's sense of ownership to create a vibrant relationship between Coomaraswamy and the international women's movement, particularly among the core group of women who had worked for the creation of the post. Women's groups and feminist networks supported her mandate throughout, often tailoring their work and documentation in accordance with her annual thematic focus. The relationship between the mechanism, the process of its creation and the approach of the newly appointed Special Rapporteur helped change the way the UN worked. It opened space for a more inclusive and democratic engagement between the UN and international civil society, as well as providing for a more expansive approach to documentation that looked to sources outside the large western human rights organizations.

As the first Special Rapporteur, Coomaraswamy played a vital role in articulating and analyzing standards relating to violence against women. Perhaps the greatest substantive gains came in two areas: recognition of violence against women in the family as a violation of human rights and recognition of violence against women as a war crime. The breakdown of the public/private divide and the articulation of due diligence standards for violations by private non-state actors had far reaching implications, not only in terms of violence in the family, but also in relation to violence by non-state actors during times of armed conflict. International obligations

relating to violence against women during wartime were elaborated through the efforts of the international women's movement and Coomaraswamy's work, which laid the foundation for the creation of the Women's Caucus for Gender Justice and the International Criminal Court.

The relationship between the movement and Coomaraswamy was a dynamic and mutually supportive one. In some ways, Coomaraswamy served as a conduit for feminist movements around the world and the documentation and work that was being done by them. She was able to take that work and use it in her reports, thereby giving it added force and legitimacy as it carried the imprimatur of the United Nations. These reports were then presented to the UN Commission on Human Rights, conveyed to governments and picked up and used as lobbying tools by women in national and local level struggles for women's rights.

### C. BRINGING VIENNA HOME

Vienna came home to Sri Lanka in numerous distinct forms, and impacted the de facto and de jure situation of women in many different ways. Both the governmental and non-governmental sectors took up issues of violence against women, thus highlighting the catalyzing role played by Vienna.

NGO women who had participated in Vienna brought the ideas, definitions and documents home to share with others within the NGO community and found ways to use the outcomes of Vienna to support the work local women and NGOs were already doing. However, the connection was not always an easy one, or necessarily a natural one, to make. Locally, the women did not have the same access to the comparative perspective so acutely represented in Vienna. Further, the energy of Vienna and the activities leading up to it could not be easily translated or conveyed at the local level. Vienna was a moment that would influence the trajectory of work being done locally. Abeysekera and Coomaraswamy highlight the difficulty in translating the international discourse locally:

*ABEYSEKERA: In the '90s, after Vienna, there was a global movement. Vienna enabled the conceptualization and then globally there were a lot of different things happening. Violence against women in the home is connected to violence against women in conflict...It's all a continuum. It's all to do with patriarchy. It was so interesting for us. We were all very pleased with the outcome of Vienna. We went home and then we started doing things about Vienna with the women at home. We met with women, talked to different women's groups, and tried to fit violence against women into the work we were doing. It was quite a challenge because a lot of people locally had to make the shift. We had made it collectively with 300 or 400 women in Vienna, but then almost everyone had to take it back home and that was really hard.*

*COOMARASWAMY: But I do think that Vienna and the Declaration on the Elimination of Violence against Women did something for the people who earlier had not thought about these things – people who were more in the mainstream. Don't you think?*

*ABEYSEKERA: Yeah, violence against women became a really legitimate issue. Before Vienna violence against women was like some strange, radical, mad feminist issue.*

*COOMARASWAMY: No one wanted to take it up, and I think that was a big change. But I think violence against women did get a space.*

*ABEYSEKERA: In terms of the daily work, I don't think women in Sri Lanka are affected. They know that the international mechanisms and structures are there and they know if your recourse to justice at the local level is exhausted, then there are also places where you can put your petition or put your claim. I think that is very important for women to know.*

COOMARASWAMY: *And also conceptual clarity. In the sense that what was earlier articulated as general outrage is now international language.*

The Government of Sri Lanka, which had signed the UN Declaration on the Elimination of Violence against Women in 1993 in preparation for Vienna, drafted and adopted The Women's Charter the same year, after which the National Committee on Women was created to monitor the Charter. The Women's Charter is the "main policy statement by the government, regarding the rights of women, expressing the States' commitment to remove all forms of discrimination against women and address crucial areas relevant to women."<sup>31</sup> The Charter states the following in relation to violence against women:

The State shall take measures to prevent the phenomenon of violence against women, children and young persons in society, in the workplace, in the family as well as in custody, in particular such manifestations of it as rape, incest, sexual harassment and physical and mental abuse, torture, cruel, inhuman or degrading treatment.

Such measures shall include:

- (i) The promotion of legislative reforms not only in terms of the substantive law but also with regard to preventive and punitive measures which would clearly recognize the rights of the women victims of violence.
- (ii) The promotion of structural reforms within the law enforcement machinery and sensitization of enforcement authorities so as to strengthen their capacity to deal with crimes of violence directed against women.

- (iii) Provision of support to non governmental organizations, community based organizations and programmes which provide support and counseling services to women victims of violence, including those affected by armed conflict and civil strife.<sup>32</sup>

Soon after Vienna, the Government began working on penal code reforms to strengthen protection for children against abuse. However, violence against women became a part of the process when the Ministry of Justice set up a committee to review the rape laws. This committee worked parallel to the Committee of the Ministry of Social Welfare originally looking into issues of child abuse, but then came to address rape in particular, and violence against women in general.

Since Vienna, feminist activists had been increasingly grappling with questions of violence against women, working to find ways and means to strengthen protections for women against the violence experienced as part of their daily lives generally, and in context of the ongoing war in the North and East. In 1995, those who had been advocating for criminal law reforms met with partial success. The penal code was amended, which "enhanced the punishment for sexual offences such as rape, gang rape, and custodial rape, and introduced new offences such as sexual harassment, incest and marital rape in circumstances of judicial separation."<sup>33</sup> Despite changes to the penal code, corresponding changes to criminal procedure and evidentiary laws were not simultaneously made, thereby limiting the effect of the penal code reforms. "The failure to address this very important and critical area of law reform is a manifestation of the tendency in Sri Lanka to introduce ad hoc

<sup>31</sup> Kamalini Wijayatilake, Study on Sexual and Gender Based Violence in Selected Locations in Sri Lanka, CENWOR & UNHCR, August 2004, 15.

<sup>32</sup> Sri Lanka Women's Charter (Ministry of Women's Affairs, March 1993), art. 16.

<sup>33</sup> Centre for Women's Research, "Sri Lanka Shadow Report on the UN Convention on the Elimination of All Forms of Discrimination Against Women," December 2001, 38, citing Savitri W.E. Goonesekere, Camena Guneratne, "Women, Sexual Violence and the Legal Process in Sri Lanka, a Study on Rape," (Sri Lanka: Centre for Women's Research, 1998).



rather than holistic and comprehensive regulatory controls.”<sup>34</sup> One of the areas of disappointment for feminist activists and scholars who had been working on the reforms was the limited way in which marital rape was introduced into the penal code – solely in situations of domestic separation – and the lack of a comprehensive domestic violence provision.

In April 1994, Sri Lankan academic and lawyer, Radhika Coomaraswamy, was appointed UN Special Rapporteur on violence against women, including its causes and consequences. As an independent UN expert, Coomaraswamy was based in Sri Lanka and worked from her home institution, the International Centre for Ethnic Studies in Colombo (ICES). Although Coomaraswamy points out that her role in Sri Lanka became overwhelming ceremonial, the fact that the Special Rapporteur on violence against women was based in Sri Lanka meant that issues of violence against women received more attention in the media and public discourse. Among other things, the feminist column, *Cats Eye*, started by Coomaraswamy and feminist Kumari Jayawardena, tackled issues of violence against women, in addition to other feminist topics. Further, the regional network, Asia Pacific Women Law and Development, held annual regional meetings in Colombo to provide women’s rights advocates from the region an opportunity to meet with and inform the Special Rapporteur about the particular manifestations of violence facing women in their countries. Further, throughout her term, Sri Lankan women’s groups and feminist activists consulted Coomaraswamy and fed information to her, with the hope that she would highlight Sri Lanka in her work.

Coomaraswamy’s appointment in 1994 corresponded with an important political shift in Sri Lanka. The year 1994 was an important moment for the reconfiguration of the political landscape in Sri Lanka. The United National Party, which had been in power for 17 years, during which political repression and violence became commonplace, was finally voted out of power. The Sri Lankan Freedom Party was voted into power and the first woman President, Chandrika Kumaratunga, was elected. The election of

Kumaratunga, who heralded from a socialist background and had moved within Colombo civil society with NGO leaders and activists, seemed initially to provide an opening for more active participation by democratic, rights-minded civil society in governance and activism.

Leading up to the election, 34 NGOs issued a statement to political parties demanding legal reforms to better protect and promote women’s human rights, setting forth an agenda that would be pursued by Colombo feminists and women’s organizations for the years to follow. These included demands for either the reform or introduction of legislation on sexual offences such as rape, trafficking, prostitution, domestic violence, incest and sexual harassment, only some of which were addressed through the penal code reforms of 1995. Subsequently, the new government ratified the Convention Against Torture in 1996 and signed the Optional Protocol to the International Covenant on Civil and Political Rights.<sup>35</sup> The criminal law reforms of 1995, the formation of a working group to draft domestic violence legislation 1996, and the Canadian International Development Agency’s Shakthi funding scheme all played a role in advancing women’s rights and combating violence against women. The climate was charged with hope and optimism. As Abeysekera states:

*You need to look at the timing. ‘93 June was Vienna. ‘94 was the year that everybody began getting excited about going to Beijing in September of 1995. ‘94 was also Chandrika and there was this euphoric moment where we thought that everything was going to be resolved forever and we were going to have peace. There was a kind of a mood which you really can only understand if you look at the context of what had happened before Chandrika became President...if you look at all the violence. There was a hopeful moment. And in that hopeful moment the fact that women were being beaten to a pulp by their husbands, or that women were*

<sup>35</sup> “Gaps in the Krishanthi Kumaraswamy Case: Disappearances & Accountability” in UTHR(J), Special Report no. 12, 28 April 1999, 2. [http://www.uthr.org/Special reports/spreport12.htm](http://www.uthr.org/Special%20reports/spreport12.htm)

<sup>34</sup> Ibid.

*being raped, wasn't really there. It's interesting to look at what we did at that time. We were much more focused on peace issues and conflict and the relationship of conflict to violence against women. And we were much more focused on getting some kind of women's commission and institutional mechanisms... on getting the National Commission on Women. The stuff on the ground was happening but it was happening in small pieces, here and there and there. The national stuff, the stuff that was Beijing, was the Women's Ministry, was the peace process, that was our focus.*

However, disillusionment with Kumaratunga and her regime set in early, as efforts at peace failed and the government launched the so-called "war for peace" against the LTTE. Fighting broke out with renewed intensity. After a brief hiatus in 1995 during which the two parties engaged in preliminary peace talks, the two sides escalated the war to unprecedented levels until, finally, in 2002 after Kumaratunga's Peoples' Alliance was temporarily voted out of power, a Ceasefire Agreement intended to pave the way for peace talks and a political solution was signed. The period between 1995 and 2002 was characterized by high levels of recruitment of men and women by both sides and child recruitment by the LTTE, large scale battles, attacks against civilians in the North and the East, including massacres of civilians, disappearances, arbitrary executions and torture by both sides, and periodic suicide bombings in the South.

Initially, an atmosphere of shocked silence prevailed amongst Colombo civil society as Kumaratunga broke her election promises and restarted the war with unprecedented intensity. Human rights violations also started to re-emerge. In 1995, for example, bodies of tortured Tamil males were washing up in Bolgoda Lake, outside of Colombo. Almost daily, photographs of decomposed bodies appeared in the press, along with pleas to families to come forward to identify the bodies. Nonetheless, Colombo civil society was overwhelmingly silent as individuals grappled with their own positions as advisors to or supporters of the new regime in a situation in which failed expectations were becoming difficult to deny. As Abeysekera remembers:

*I think you have to understand the dynamics of the politics of the time. I know people were really exhausted after 1988, 1989: all the disappearances, trying to get the commissions going<sup>36</sup>, and trying to get the Working Group reports. I even remember when Chandrika came to Sri Lanka and started doing her public meetings, I was at one of the first meetings that she did. There was a mood. So I think in terms of women's politics – if you looked at violence against women politics – there was a big agenda. Like a really national and international agenda and then there were the bits and pieces. So, Women in Need<sup>37</sup> was doing domestic violence. The women in Kurunegala were doing some rape cases. And women in the free trade zones were doing sexual harassment work. So that was all pretty fragmented. The big thing was violence against women in the armed conflict...*

By 1996 civil society was ready for a cause and ready to more openly challenge the government. It was in this context that the Krishnanthy Kumaraswamy case emerged, garnering national and international attention and outrage. This case served as a catalyst for action, with Vienna's demand that women's rights are human rights serving as the framework for activist interventions.

<sup>36</sup> In November 1994, the President established three Commissions of Inquiry into the Involuntary Removal or Disappearance of Persons. The Commissions were mandated to inquire into and report on involuntary removals and "disappearances" that took place after January 1 1988. Their mandate expired on 31 May 1997. Each Commission had jurisdiction over a geographic area: Southern and Sabaragamuwa Provinces, Central, North Western, North Central and Uva Provinces; and the North and East provinces.

<sup>37</sup> Women In Need (WIN) is a nongovernmental voluntary organisation (NGO) established in Sri Lanka in 1987 that offers respite, shelter, guidance, counseling and rehabilitation and legal services to women in need from all walks of life and from all over the island of Sri Lanka. See Savithri Wijesekera, "Women In Need: Legal Aid and Social Services in Sri Lanka," [http://www4.worldbank.org/legal/publications/Legal\\_Services\\_Poor/LSO\\_Sri\\_Lanka.pdf](http://www4.worldbank.org/legal/publications/Legal_Services_Poor/LSO_Sri_Lanka.pdf).

## The Case of Krishanthi Kumaraswamy<sup>38</sup>

*On September 7, 1996 18-year-old Krishanthi Kumaraswamy was abducted, raped repeatedly and murdered by members of Sri Lanka's government forces at the Chemmani checkpoint on the Jaffna Peninsula in Sri Lanka. At the time of her abduction, Krishanthi had been returning on her bicycle from her friend Gnanandhi's funeral, after sitting that morning for her Advanced Level Exam. After failing to return home the afternoon of September 7, Krishanthi's mother, Rasamma Kumaraswamy, received information from a neighbor that Krishanthi had been detained at Chemmani checkpoint. Rasamma Kumaraswamy, along with her son, Pranavan Kumaraswamy (16 years of age), and their friend and neighbor, Sithamparam Kirubamoorthi, went to the checkpoint in search of Krishanthi. They inquired at Chemmani checkpoint, but were told that she was not there and sent away. The group then went on to another checkpoint, but later returned to Chemmani and demanded Krishanthi's release. On the afternoon of September 7, 1996, Rasamma Kumaraswamy, Pranavan Kumaraswamy and Sithamparam Kirubamoorthi likewise disappeared. As Krishanthi's disappearance began to receive attention in the press locally and internationally, the government responded to demands for accountability. By October of 1996, the government had arrested eleven members of Sri Lanka's government forces. Two of the original 11 turned state's witness and, according to reports, the remaining nine confessed. The trial proceeded on the basis of the testimony of the two state witnesses and the confessions. It reached its conclusion on July 3, 1998, when six of the original nine who stood trial were found guilty on multiple counts of murder, rape and conspiracy, and were sentenced to death.*

<sup>38</sup> Much of the detail on the case has been gathered through my own personal experience and involvement in the campaign leading up to the Kumaraswamy case and through the documentation done by UTHR(J).

Krishanthi Kumaraswamy's name is one of the few that is known and remembered among the forgotten thousands in Sri Lanka who have been raped, tortured, disappeared or murdered in the course of decades of political violence and war. Once news of Krishanthi's disappearance and the disappearances of her mother, brother and neighbor reached Colombo, outrage spread swiftly and it reached across ethnic lines. It traveled across the country, leaked into government circles, and was fueled by activist communities in Sri Lanka and abroad. It was one of those rare moments when fact and circumstance fused, engendering spontaneous movements in seemingly intransigent systems.

After a suicide bomb attack on a visiting Minister in Jaffna in July 1996, which killed a well-respected army commander, Ananda Hamangoda, the government security forces reportedly began a covert campaign of disappearances and extrajudicial killings. In the area just outside Jaffna town, which led down the lonely main road away from town and towards the forward defense lines where the government and LTTE troops faced off against each other, civilians began to disappear. Censorship and controls on movement blanketed Jaffna in an almost total news blackout, limiting the rest of the country's access to information about what was happening in Jaffna. As the UTHR(J) reported, "the suicide bomb attack in Jaffna on the 4<sup>th</sup> of July 1996, though not in the least unexpected, resulted mainly from complacency. The system went into a panic and Jaffna was blacked out to journalists. The defense ministry ran the show. The safeguard of receipts for arrests remained a dead letter. The Human Rights Task Force was virtually told to stay out of Jaffna until things improved."<sup>39</sup>

In September 1996, Krishanthi Kumaraswamy, her mother, brother and neighbor, became four of the estimated 400 to 500 civilians who were detained, tortured, killed, and then buried in clandestine graves in 1996 in Chemmani, on the outskirts of Jaffna. Unlike the hundreds of other cases, however, information about Krishanthi's alleged gang rape and disappearance, and the

<sup>39</sup> Ibid.

disappearances of her mother, brother and neighbor, leaked out of Jaffna to Colombo. In Colombo, word began to spread and the four disappearances were highlighted in the press and in Parliament, and then picked up by activist communities, namely feminist activists who were working on issues of violence against women at the time.

The timing of Krishanthi's disappearance coincided with growing frustration amongst civil society about the deteriorating human rights situation in Sri Lanka. The promises of peace, human rights and democracy, which helped elect President Kumaratunga's People's Alliance government, were proving to be hollow. The disappearance of Krishanthi Kumaraswamy proved what the activists had been alleging – nothing much had changed. Sri Lanka's Tamil population remained under siege. Led by feminist activists in Sri Lanka, the case was picked up by international human rights networks and the UN, and was used to shine a spotlight on the new government's failed human rights program. Amnesty International urged government that (a) a speedy, impartial and independent investigation under a civilian authority be established forthwith to ascertain the precise circumstances of their 'disappearances' and killing; (b) the safety of witnesses for such investigation be ensured; and (c) those responsible be brought to justice in civilian courts. The persistent national and international activism challenged early denials by the Deputy Minister of Defense, and President Kumaratunga eventually intervened and called for those responsible for the disappearances of Krishanthi and the others to be held accountable.

Soon after news of Krishanthi's disappearance reached Colombo, a candlelight vigil was organized in her name at Independence Square. The vigil was remarkable for drawing a wide spectrum of Colombo civil society, including activists, academics, artists, religious dignitaries, and parliamentarians. The group that gathered included both the usual, fairly small, group of Colombo activists who could be found at most anti-war, anti-violence against women, or pro-peace protests, as well as many who did not generally take part in public protests.

Krishanthi's case was unique in that respect; it generated outrage from all corners. It cut through the subtle communal politics that, at times, plagued even activist efforts. In addition to the timing, and the fact that Krishanthi's case provided a catalyst for the expression of growing concern over government action in relation to the war, the widespread shock and outrage also can be explained by the extreme brutality of the murders, and the fact that Krishanthi was, in some respects, the "perfect" victim, in the way that mainstream society wants victims of sexual violence to be, namely virginal. Krishanthi was, at the time of her death, 18 years old, though she was reported to be 16 in many press accounts. Further, she was a schoolgirl from the prestigious Jaffna girls college, Chundukuli, who excelled in academics, and was popular with other students and teachers. On the morning of her disappearance, Krishanthi had completed the first part of her 'A' level exam for physics. Her age and schoolgirl status were repeatedly highlighted by the media. Krishanthi was also middle-class. Her mother was a former school principal and her brother had attended prestigious St. Johns College. All of these factors helped create an innocent, and virginal, image of Krishanthi, which protected her from being characterized and dismissed as a possible LTTE suspect, and enabling unfettered empathy and outrage for her.

After the success of the candlelight vigil, a small group of women linked to different organizations decided to organize a sustained protest campaign. This coalition of individuals from various organizations and representing different perspectives came together for weekly protests, and demanded accountability for the crimes committed against Krishanthi and her family. The group originally called itself the Krishanthi Coalition. Later, as additional cases were revealed – in particular the rape and disappearance of Rajini Velauthapillai in Jaffna and the murder of Koneswary in Central Camp on the East Coast – the group changed its name to the Vigil Coalition to reflect the broader focus of its public interventions. The organizers were increasingly aware of the class biases that resulted in disparate levels and kinds of concern, activism and state action. The protests continued, demanding prosecutions for the crimes

committed against Krishanthi, Rajini, and Koneswary, as well as more generally demanding an end to violence against women, an end to human rights violations, protection for civilians in the North and the East, adherence to international humanitarian law, and an end to war.

Many of these protests carried Krishanthi's photograph and used slogans that resonated internationally, like "never again" and "women's rights are human rights". The influence of Vienna could be seen in the heavy reliance on the language of human rights, humanitarian law and accountability. One of the statements by the Vigil Coalition called "Vigil for Non-Combatant Victims of Armed Conflict" looked at how this case was but one instance of violence against women by armed forces over time and across different categories. Krishanthi's case was compared to the killing of Premawathie Manamperi, popularly known as the beauty queen of Kataragama, murdered by the army during the JVP insurrection of 1971. The document states "there were many cases of rape, murder and torture of non-combatants related to the JVP insurrection in 1971, including the rape, public humiliation and murder of Premawathie Manamperi."<sup>40</sup> Linking these cases through public statements attempted to accomplish within the public discourse what had been accomplished in Vienna by demonstrating how there existed a continuum of violence against women that extended over time and across ethnic or political differences. This strategy is part of human rights discourse that seeks to establish patterns and persistent practices of the state as a means of establishing the accountability of the state. It was only after Vienna that feminists really started making these connections.

Abeysekera recalls:

*...we hadn't been able to connect rape, domestic violence, incest, violence against women in conflict, etc. It was all happening separately, right? Vienna enabled us to see the continuum of this whole range of violations.*

<sup>40</sup> See archive on the Krishanthi Kumaraswamy case at the International Centre for Ethnic Studies, Colombo.

And as Coomaraswamy also remarks:

*It enabled us to put it in a discourse that is now internationally legitimate. Even state repression could be talked about as violence against women, not just some radical movement of some national liberation movement or something. I think it allowed us to talk about certain issues here. It gave us space here and internationally. I would like to say that the women's movement gave space to talk about a lot of things that were unspeakable....It became a cutting edge way of looking at human rights issues generally.*

These linkages become apparent in the way the Kumaraswamy case became articulated. Hence, Amnesty International and Women Living under Muslim Law issued urgent action appeals regarding the rape and murder of Krishanthi, but also other forms of gross human rights violations such as disappearances. Embassies intervened and demonstrations were held by the Sri Lankan expatriate community in London and Oslo. Official interventions to the government of Sri Lanka were also made by various mechanisms of the United Nations, including the UN Special Rapporteur on violence against women, and the UN Special Rapporteur on extrajudicial, summary and arbitrary executions.

It was the first time, in fact, that the Special Rapporteur, Coomaraswamy, intervened in her official capacity with the Government of Sri Lanka. Until that point, although she had included information in her reports about the situation of violence against women in Sri Lanka, she had made no official representations to the Government of Sri Lanka. This stance was taken out of concern for neutrality and the perception of neutrality that may have been jeopardized by her Sri Lankan citizenship and minority Tamil status within Sri Lanka. As Coomaraswamy herself notes,

*My background was Amnesty International and you never do your own country. And that was embedded in me, this notion of impartiality. It wasn't a UN rule. It was just me. I never got over it, even now...Basic impartiality requirements for Amnesty and*

*other human rights organizations is that you never do your own country or anything in which you have strong opinions about, where you're not an outsider. You come with a history, and you can't be impartial.... But Param Kumaraswamy<sup>41</sup> didn't believe in that and got into deep trouble. He came from Malaysia and he decided to look into Malaysia and they sued him for defamation. You can't escape your country. I would do the communications. The first time I did an official communication was the Krishanthi Kumaraswamy case. If a woman was raped, I would write to the government and ask for clarification. But to visit and write a full report, that was not on....*

The Krishanthi Kumaraswamy case, however, forced the Special Rapporteur to set aside her concerns and call upon the government to ensure accountability for those responsible for the crimes. The high levels of local and international attention and organizing around the case may have both compelled the Special Rapporteur to act and protected her when she did. Although the case implicated the Government in human rights violations, politically it was a "safe" case because the Government responded quickly and positively to the pressure. After early denials by the Deputy Minister of Defence, it was rumoured that the President took a personal interest in the case and sought to ensure justice was done. Consequently, arrests and a trial proceeded at an unprecedented pace, demonstrating the importance of political will in the administration of justice and, thus, raising questions about independence of the systems of justice.

One of the results of the national and international pressure was that the legal process was accelerated, and important steps in the criminal justice process were bypassed. By limiting opportunities for investigation and discovery, the speed with which the case was

brought to the trial phase resulted in a weak case full of evidentiary holes. It also restricted the complexity of the truth that was revealed. The acceleration of the process was accomplished largely because of the state's willingness to grant the state's request for a trial at bar. The trial at bar, which is a trial that is heard by a panel of three judges as opposed to being heard by a jury, had only been used three times previously in the history of Sri Lanka. Krishanthi Kumaraswamy's case was the first case in which the state, rather than the defense, sought and was granted a trial at bar. The State generally does not have the authority to bypass the defendant's right to be tried by a jury.

The trial rested on the confessions of the accused, which had been made during questioning by military police investigating the crimes. Although there exists a statutory exclusion on the use at trial of confessions made to police officers, the court distinguished military police from civilian police in this case and allowed the confessions to be admitted after they withstood a *voir dire* inquiry into voluntariness. In Sri Lanka, where standard interrogation techniques are more commonly known to rely on coercive practices,<sup>42</sup> the voluntary nature of the confessions was treated as a given by human rights activists, who tended to view allegations of force and coercion as predictable defence tactics to avoid prosecution. This perspective stood in stark contrast to their customary stand on custodial violence and misconduct.

Except to deny that the confessions were voluntary, no defence was lodged on behalf of the nine accused. In any criminal case, but particularly in a capital case, the failure to provide criminally accused clients with a defence is inexcusable and suggests incompetence, if not malice, on the part of the defence counsel. Other incidents throughout the course of the trial also raised questions about the competence of the defence counsel. Most notable was the refusal to put the defendants on the stand at either the trial or the *voir dire* hearing, despite their wish to testify. The lack

<sup>41</sup> Dato Param Kumaraswamy was the Special Rapporteur for independence of judges and lawyers when he issued a report on Malaysia, his country of origin. Subsequently the Malaysian government lodged a case of defamation against him.

<sup>42</sup> For further details on statements obtained under duress see V. Varathasuntharam, "Witnesses deny statements were obtained under duress," in *The Island*, December 11, 1997.

of competent legal counsel suggests that the defendants failed to receive a fair trial.

The attention focused on the case compelled the President and other government officials to make numerous statements in public. The President's interventions – particularly those that were reportedly made immediately prior to the issuing of the judgment and the sentencing of those convicted – raised questions about independence of the judiciary. While it cannot be definitively said that the panel of three judges was swayed by executive interventions in the media or otherwise, the President did not give the court the chance to be unquestionably independent.

Although death sentences in Sri Lanka have not been carried out since 1979, the death penalty remains on the books and Sri Lanka's judges continue to use the death penalty in sentencing. The Krishanthi Kumaraswamy trial resulted in six death sentences. The press and human rights activists venerated the trial's outcome, without distinguishing the guilty verdicts from the death sentences. Amnesty International's post-conviction statement was notably weak in respect to both the irregularities of the trial and the imposition of the death sentence. Furthermore, human rights groups generally failed to highlight that "those who are sentenced to death are too often scapegoats from the humbler orders of society."<sup>43</sup> The President subsequently used the Krishanthi Kumaraswamy case as an example of why the government was going to start enforcing death sentences.

These and other irregularities and dilemmas highlight some of the problems with the Krishanthi Kumaraswamy case. Many observers, including human rights activists, either overlooked the irregularities or justified them by an end, justifies the means theory – an argument that is most commonly invoked by states to justify the abuse of authority and human rights. Despite such apparent problems, the case was nonetheless touted as proof of Sri Lanka's adherence to the rule of law. It was advertised as a victory for the

state. It was heralded a victory for human rights. But was it? Or was it a case of symbolic, but not substantive, justice?

The women's rights and human rights community followed the trial and, when the guilty verdicts were delivered, celebrated a much-needed victory in their struggle for accountability for violations of human rights by the state. The fact that the Krishanthi Kumaraswamy case was prosecuted at all, coupled with the speed and determination with which the trial was undertaken and the final finding of criminal culpability, were all perceived to have resulted, at least in part, from the widespread and sustained activism. The perceived victory vindicated the struggle for human rights in Sri Lanka and the power of activists. The women's human rights community had won its bragging rights.

The speed and determination with which the government responded, coupled with the six guilty verdicts, was heralded by the government as irrefutable proof of its commitment to human rights and the rule of law. Soon after the sentences were issued against the six individuals, the Minister of Justice G. L. Pieris proclaimed that the Krishanthi Kumaraswamy case demonstrated very clearly that Sri Lanka adheres strictly to the tenets of the rule of law. The government had won its bragging rights too.

But, was there anything much for either the government or the activists to brag about? For many, the Krishanthi Kumaraswamy case became a model of what the judicial system could be. On its face, the case seemed to exemplify the effectiveness of human rights organizing and activism. Nationally and internationally, shame was effectively mobilized and pressure was sustained. The government not only responded, it responded swiftly and with purpose. Once the President intervened, the state legal machinery initiated an accelerated process through which those accused of the abuses – all of whom were state actors – were tried and convicted. It would seem like it was just what human rights activists had been seeking when they took to the streets and drafted their appeals. It was human rights accountability in practice. Or was it?

In fact, the case raised more questions than it answered. Although the trial may have appeased the immediate quest for

<sup>43</sup> See "Gaps in the Krishanthi Kumaraswamy Case: Disappearances & Accountability" in UTHR(J), Special Report no. 12, 28 April 1999: 3. <http://www.uthr.org/Special reports/spreport12.htm>



accountability in this particular case, it did little to answer many of the questions that arose in relation to the case. These questions included specifics about the rape and murder of Krishanthi Kumaraswamy and the murder of the others, as well as larger issues of accountability and command responsibility for the abuses that were being committed in Jaffna at the time of the murders. The prosecution's case against the nine accused was weak and full of evidentiary holes. Nonetheless, six men were pronounced guilty of various counts of abduction, rape, and murder, and were sentenced to death. These sentences were then celebrated. Furthermore, this case seemed to suggest much more the exigencies of a government under pressure over its human rights record than a commitment to issues of rights, and issues of gendered violence. The speed with which the Colombo authorities had proceeded to institute and begin the trial against the alleged offenders indicates the government's serious concern that its human rights image had been badly dented. Hence, the victory of this case seemed more a result of a government attempting to project itself as a protector of human rights issues rather than an actual desire to stop the overall violence that had become an everyday practice.

For example, during the process of the trial, revelations about the Chemmani mass graves were brought out. When the task of investigating this was given to the Human Rights Commission, the HRC wrote to the UN High Commissioner for Human Rights Mary Robinson asking for assistance. She and her office agreed to do so as long as the state supported this; however, subsequently the President's office never responded to requests and reminders in this regard. In a sense, the Krishanthi case was an ideal model, but the general structures of oppression did not change.

As the Krishanthi Kumaraswamy case was brought to trial and was tried, the simplistic legal and moral equations relied upon in much human rights work, including within violence against women movements – which pit innocence against guilt and good against evil in absolute terms – were revealed to be much more complicated, even if few were willing to admit it. Krishanthi and the others were undeniable victims of the most extreme forms of state abuses. For this, there can be no justification and, for this, there must be

accountability. But the nine men who stood accused and the six who were eventually found guilty in the case likewise became victims of state abuses. These included forced testimonies and torture under arrest. Although the abuses against the accused were less egregious, they were consistent with the government's human rights record and thus had implications for human rights policies in Sri Lanka. While there was no question about the injustice of the abuses committed against Krishanthi, Rasamma, Pranavan and Kirubamoorthi, the abuses committed against the accused were either not admitted or, when they were, were defended by an ends-justifies-the-means argument.

The Krishanthi Kumaraswamy case illustrated the capacity of human rights activism generally – and women's human rights activism specifically – to galvanize the otherwise unresponsive machinery of the state to respond to allegations in respect to specific cases. In a situation in which very few cases of sexual violence ever reach the level of a trial, this case demonstrated the potential of the legal system to respond to remedies for victims of violence against women. In this case, however, the victims were dead, which may have made it easier for the State to respond. Ultimately, there could be no real remedy, only the hope that the convictions would serve to deter others from committing similar abuses in the future.

The Krishanthi Kumaraswamy case also illustrated, however, the much more sinister potential of human rights activism to stimulate a response that may lead to additional violations committed by the state in the name of justice and accountability. As such, this case must raise concerns about possible consequences that demands for accountability may have in situations in which there has been a breakdown in the rule of law. The Krishanthi Kumaraswamy case illustrates the conflicts that may arise when formal justice is sought of a government that continues to commit gross and persistent violations of human rights and humanitarian law. As happened here, human rights pressure may have a tendency to legitimize flawed national legal systems and/or exacerbate its flaws. In dissecting this case and trial, numerous predicaments arise that raise larger questions for human rights movements and human rights work.

The Krishanthi Kumaraswamy case was the first of its kind in which government actors were tried and convicted for human rights abuses committed against Tamil citizens. This is significant. If for no other reason, its value rests in the fact that some form of justice was done for the victims and for the surviving family. In this one case, there was accountability. In this one case, the state did act on behalf of the victims, who were Tamils from the war-torn North of Sri Lanka. The guilty verdicts may also have been significant for the message they sent to the military and police. As mixed as that message may have been, the prosecutions did provide the International Committee for the Red Cross (ICRC) and other human rights and humanitarian education programs a training tool in their efforts to train members of the military on human rights. The case did seem to symbolize a small step toward countering the impunity with which human rights violations have traditionally been treated. However, this case also leaves many questions unanswered. Furthermore, it also illustrates the enormous energy the feminist movement needs to bring even one case to successful completion. The scale of the protest in the Krishanthi Kumaraswamy case has not been paralleled since, and the efforts and energy needed for sustained action were enormous and draining.

This case demonstrates the way in which the international movement for women's human rights adopted, somewhat uncritically, the mainstream human rights paradigm. As a legal discourse, human rights relies heavily on the law and the state for the realization of rights. Thus, the state is called upon to provide protection for individuals and their rights. This assumes a certain level of benevolence by the state. It assumes that the state has the capacity to protect rights. It also assumes a legal order in which the state can and does exercise its authority to hold individuals accountable. It assumes there is independence of the judiciary and political will. As the Krishanthi Kumaraswamy case demonstrates, these assumptions cannot be automatic. When the state acts as the abuser rather than the enforcer of rights, the assumption that the state is a benevolent protector becomes problematic. As happened in the Krishanthi Kumaraswamy case, and is happening increasingly with the violence

against women discourse, pressure on the state to take proactive measures to protect or promote human rights may translate into additional violations of rights. In the Krishanthi Kumaraswamy case, such violations were actual abuses against those accused of the high profile crimes. In the current climate of violence against women work, the violations take the form of increasingly regressive policies that limit women's freedom and rights. As such, a profound question is raised. Can a rights-abusing state simultaneously be a rights-protecting state? There is an inherent contradiction: a contradiction that has not been adequately addressed in the black and white rhetoric of human rights.

## Chapter Three

*Private Battles in Public Domains: going beyond legal terrains*

Rizvina Morseth de Alwis

Home is the locus of fear for many women. This fear emanates from the violence unleashed by the ones they love and is shrouded by shame and silence. The response to this “private shame” is a call to break the silence, by bringing the “private” into the “public” domain.

In many countries, framing this “private problem” in legal terms has become a popular strategy of deprivatizing domestic violence. Since the enactment and enforcement of laws occur in highly public settings, it is assumed that laws circumscribe the actions of individuals, thus making the “legal system a valuable public forum to negotiate the roles and boundaries that structure society.”<sup>1</sup> Thus campaigns for legal reform are often based on a conviction that bringing domestic violence into the purview of the law would make it a “public” issue. Women’s movements around the world have therefore fought for and continue to fight for legislation to protect women from domestic violence.

This “legal reform” response to domestic violence has much to do with how both domestic violence and the role of law are understood, by reformist movements. First, domestic violence is conceptualized as a human rights issue, which is framed within the public/private debate and the slogan “the personal is political”.

<sup>1</sup> Kristin A. Kelly, *Domestic Violence and the Politics of Privacy* (Ithaca and London: Cornell University Press, 2003), 68.

Whilst this conceptualisation has reaped many benefits in recognising domestic violence and the private/familial sphere as legitimate areas for state intervention, it is limited. For despite the formulation of rights to deal with a social problem, it still focuses on individuals who must prove that their rights have been violated. Similarly, when domestic violence is framed as a legal rights violation, the focus is on individuals, as victim and violator, rather than a conceptualisation of domestic violence as an expression of power that perpetuates the subordination of women. This is primarily due to the heavy reliance of the rights movement on law, which is problematic when addressing gender concerns, such as domestic violence.

This heavy dependence of the human rights movement on legal formalisation of rights is based on the assumption that law is an instrument of social change. This positive instrumental idea of law fails to acknowledge its role in constructing and reinforcing women as subordinated subjects. But at the same time a simplistic “either/or” conceptualisation of law as an instrument of oppression or positive change is also limited. In this paper I will challenge such a dichotomous view of the law and argue for a complex understanding of the law given its ambivalent and contradictory response to women’s concerns. I will argue that law is not outside the socio-political context, but is discursively constituted, and implicated by relations of power. It is therefore limited in addressing gender issues. By highlighting these limitations, I will question the efficacy of relying on law to address the complexity of domestic violence. To do this, I will focus on the Sri-Lankan Women’s Movement’s campaign for legal reform to address domestic violence.<sup>2</sup>

<sup>2</sup> My concern in this paper will be to review how the Sri Lankan women’s movement has collectively responded to domestic violence, while acknowledging that this “movement” is neither unified nor homogenous, but comprises “a variety of organisations and groups that have arisen out of different struggles and conflicts, at different historical moments.” See Kumari Jayawardena and Malathi de Alwis, “The Contingent Politics of Women’s Movement in Sri Lanka after Independence” in Swarna Jayaweera (ed.), *Sri Lankan Woman in Post-Independence Sri Lanka* (New Delhi: Sage Publications, 2000), 246.

First, I will examine the Sri Lankan campaign for legal reform on domestic violence and highlight the limitations of a legal response by arguing that the law, which is based on binary logic, cannot address the complex multi-causal nature of domestic violence. Given that the law has a tendency to focus on individual incidents and view domestic violence as an interpersonal act, it cannot address the underlying power dynamics of domestic violence, which is a systemic problem arising out of asymmetrical power relations between men and women and further complicated by factors such as class, religion and ethnicity, which highlight how other forms of oppression and power relations intersect with gender. I will argue that the law simplifies these complex power relations, and fails to account for the multiple identities and multi-layered experiences of women. In fact, law tends to reinforce gender essentialism and the notion of women as victims. I will also argue that a legal reform approach is state-centric as it assumes that the law and the state are the only sites of power that could bring about social transformation. I will highlight the limitations of this juridical model of power which is based on the state-citizen dichotomy and draw on Foucault who, by contrast, conceptualizes power as multiple, continuous and pervasive.

Given the limitations of using the law I will argue for the importance of focusing on sites of power other than the state/legal institutions. I will argue that the women's movement will be better served in using its limited resources and energies on strengthening and improving community responses to domestic violence. But I will not argue for the total abandonment of the law or legal rights strategies, but propose that feminist engagement with the law should be more critical and measured, particularly given law's power to disqualify women's knowledges and experiences.

### Legal Response to Domestic Violence: The Sri Lankan Debate

Following a long drawn out campaign for legal reform on domestic violence, the parliament of Sri Lanka unanimously passed the

Prevention of Domestic Violence Act in August 2005. While the passing of this law is cause for jubilation, a critical review of the strategy of using law to address domestic violence highlights the limitations of that victory.

In Sri Lanka the role of the state in dealing with domestic violence has been minimal. The state's hesitation to deal with this problem mirrors the social construction of the public-private divide, reflecting widely held social perceptions that what happens within the privacy of the home, between two intimates, is a private matter and therefore unworthy of legal attention. This has not only resulted in the movement being burdened with the task of providing counselling services, temporary shelter, legal assistance and conducting public awareness programs, but also in channelling the movement's limited resources to make the state accountable to national and international commitments. Wijayatilake and Gunaratne emphasize the importance of the state's commitment to international instruments such as CEDAW, and highlight its obligations to protect its female population and uphold their rights within and outside the home.<sup>3</sup> Goonesekere and Gunaratne highlight how the Women's Charter, which is based on CEDAW, recognises that "gender based violence is a violation of human rights and fundamental freedoms in that it impairs or negates women's enjoyment of these recognised rights and freedoms", and imposes a responsibility on the government to prevent violence against women.<sup>4</sup> Gomez and Gomez examine how the international frameworks on human rights can be used in domestic legal systems to prevent and protect women from violence.<sup>5</sup>

<sup>3</sup> Kamalini Wijayatilake and Camena Guneratne, *Monitoring Progress in the Elimination of Discrimination Against the Achievement of Equality for Women - Sri Lanka Report on Domestic Violence* (Centre for Women's Research (CENWOR): Colombo, 1999), 5.

<sup>4</sup> Savitri Goonesekere and Camena Guneratne, *Women, Sexual Violence and the Legal Process in Sri Lanka: A Study on Rape* (CENWOR: Colombo, 1998), 14.

<sup>5</sup> Shyamala Gomez and Mario Gomez, *Striking a Balance: Using International Human Rights to Achieve Gender Equality* (Canadian International Development Agency (CIDA), SHAKTHI Project: Colombo, 2004).

Thus the model for the Sri Lanka movement in addressing domestic violence is one of service provision and advocacy for state intervention through legal reform. The latter involves a campaign for legal reform to address domestic violence and systems advocacy, focusing primarily on the justice system. Thus a positive role is assigned to the state to protect women from asymmetrical power relations.

The movement's interventions to address domestic violence are thus conceptualised within the public/private dichotomy. This challenges the understanding of domestic violence as a private matter by attempting to bring it into the public sphere through the introduction of a law, thereby making the state accountable for actions both within the public and private domains.

This rationale is very much premised on the discourse that "women's rights are human rights," which is based on challenging the public/private divide. As noted by Charlesworth and Chinkin, human rights are most commonly thought of in terms of "public" rights (i.e. the right to freedom from torture, which is perceived as a public issue), thus reflecting a hierarchy of significance of public over private, which is indicative of the male bias inherent in the rights discourse.<sup>6</sup> Feminists have argued that the realities of women's lives do not permit a distinction between one set of rights and the other, for the absence of rights for women in one sphere (i.e. political and civil) could obstruct the exercise of rights they already have in another sphere (i.e. socio-economic and cultural). Thus, in recognition of the fact that for women, all human rights have both personal and socio-political dimensions that are intimately connected. The campaign is for an indivisibility approach, which is seen as critical for the achievement of gender equality.

Despite the positive characteristics of the rights discourse, the nature and meaning of rights are being contested from a variety

of positions, including those within feminism.<sup>7</sup> As noted above, feminists have challenged its claim to universality by highlighting its male bias and challenging the hierarchy of rights from civil, political to socio-economic and cultural rights. They have challenged the public/private divide along which human rights had operated and have demanded for an indivisibility approach. At the same time the notion of universal rights has also been challenged both from within and outside feminism on the basis of cultural relativism.<sup>8</sup> Yet others have highlighted that rights are discursively constituted and are the outcome of a particular historical and political context.<sup>9</sup> While the debate is ongoing, it confirms that "rights" strategies are no longer unproblematic.

The critique most pertinent to this paper is the dependence of rights on law for their implementation. While the idea of rights is based upon the expectation that violations would lead to action resulting in redress, human rights often remain without effective remedies. To have rights does not guarantee that claims on those rights will be honoured. In fact, using a rights-based language to assert women's claims to equality in economic, political, and social life carries some dangers. First, "law is taken to be outside the social body, it transcends it and acts upon it."<sup>10</sup> The language of law creates an impression that everyone is equal before the law, dealing justly with both men and women and thereby allowing the illusion

<sup>7</sup> For critiques of the human rights discourse see Carol Smart, *Feminism and the Power of Law* (London and New York: Routledge, 1989); Nivedita Menon, *Recovering Subversion: Feminist Politics Beyond the Law* (Delhi: Permanent Black Publishers, 2004); David Kennedy, "Boundaries in the Field of Human Rights: The International Human Rights Movement: Part of the Problem?," *The Harvard Human Rights Journal*, Spring 2002. See also *Boundaries of International Law*.

<sup>8</sup> See Nancy Kim, "Towards a Feminist Theory of Human Rights: Straddling the Fence between Western Imperialism and Uncritical Absolutism," *Columbia Human Rights Law Journal*, Vol. 25, (1993), and Anne Phillips, *Which Equalities Matter?* (Cambridge: Polity Press, 1999).

<sup>9</sup> See Kennedy, "Boundaries in the Field of Human Rights" and Menon, *Recovering Subversion*.

<sup>10</sup> Smart, *Power of Law*, 12.

<sup>6</sup> Hilary Charlesworth and Christine Chinkin, *The Boundaries of International Law: A Feminist Analysis* (Manchester: Manchester University Press, 2000), 201-249.

that gender is irrelevant in a court of law. On the contrary, women and men face the law with multiple identities, including gender, which carry different status, position, and power within society, and which are not taken into consideration in international and national legal systems. Although women and men are theoretically equal before the law, women's subordinate position to men is not taken into consideration, which means that the law is based on the male norm. Thus complex power relations are ignored which limits the possibility of the law being of practical help for many.

Thus, as much as "rights" are a site of contestation, the role of law is also contested from a variety of positions. Some defend the role of law in feminist struggles for social change (i.e. liberal feminists through equality and radical feminist through feminist jurisprudence). Others have challenged the centrality of law in bringing about social change by highlighting its role in reinforcing women's subordination.<sup>11</sup> Yet others have argued that a focus on law may be inherently restricting and dangerous and that feminists ought to be concerned with de-centring law,<sup>12</sup> whilst some have in fact gone further yet by rejecting law as a subversive site of feminist struggle.<sup>13</sup> These debates highlight the fact that law is not an unproblematic terrain. Therefore, in this paper I will maintain that the women's movement should be more concerned about how and when to use the law and not resort to it "as if it holds the key to unlock women's oppression."<sup>14</sup>

In Sri Lanka, the dominant trend is to defend the role of law in feminist struggles for social change. This emphasis on legal reform is reflected in the women's movement's campaign against domestic violence, which culminated in the passing of the Prevention of Domestic Violence Act. This campaign involved a debate within the movement that focused on whether legislation on domestic violence should be incorporated into the existing laws

<sup>11</sup> See Brenda Cossman and Ratna Kapur, *Subversive Sites: Feminist Engagements with Law in India* (New Delhi: Sage Publications, 1996).

<sup>12</sup> See Smart, *Power of Law*.

<sup>13</sup> See Menon, *Recovering Subversion*.

<sup>14</sup> Smart, *Power of Law*, 5.

through amendments to the penal code, or whether a separate law should be enacted to deal with the issue.

The following sections provide brief summaries of the debate, which are based on a review of available literature<sup>15</sup> and interviews with activists.<sup>16</sup>

### *For a Separate Law:*

The argument for a separate legislation is based on the view that provisions in the penal code are inadequate to address domestic violence. Given the intimate nature of the relationship between the victim and perpetrator, domestic violence cannot be compared to grievous hurt inflicted on strangers. The fact that the scene of the crime is the home, where both the victim and the perpetrator continue to cohabit under unequal power relations, where the woman is the subordinate, highlights the complexity of the issue. Within such a scenario, it is argued that the criminal procedure alone cannot redress the problem because civil matters, such as obtaining protection orders, should also be made available to the victim. The proponents for a separate domestic violence law, therefore, pointed out that the criminal law alone, which is litigation oriented and adversarial, is not the ideal means of settling domestic disputes, as it deals with relationships which have reached more complicated stages of aggravation. For, once the dispute is taken to courts, it is extremely difficult for women to prove violence by their husbands "beyond

<sup>15</sup> "The Domestic Violence Act: a Consultation," *Options*, No. 18, 2<sup>nd</sup> Quarter, 1999; Shyamala Gomez and Mario Gomez, *Rights and Shame to Remedies and Change* (CIDA, SHAKTHI Project: Colombo, 1999); Shyamala Gomez and Mario Gomez, *Striking a Balance*; Kamalini Wijayatilake and Camena Guneratne, *Monitoring Progress in the Elimination of Discrimination Against the Achievement of Equality for Women - Sri Lanka Report on Domestic Violence* (CENWOR, Colombo, 1999); Kamalini Wijayatilake & Camena Guneratne, *Abuse within the Family - A Study on Domestic Violence*, presented at the Seventh National Convention of Women's Studies, CENWOR, Colombo, 2000.

<sup>16</sup> See Annex for names of activists interviewed. Please note that interviews were conducted before the Prevention of Domestic Violence Act was passed.

reasonable doubt” as is required by the criminal jurisprudence. The victim may not have witnesses to corroborate her evidence because the offence is committed behind closed doors. Thus, they proposed that it was necessary to introduce alternative mechanisms in the form of civil remedies to deal with problems in their incipient or intermediate stages. They also highlighted the limitations of the penal code to deal with “what happens afterwards”, for issues such as who should stay in the marital house, what portion of the property will be shared, and amongst whom.<sup>17</sup> Thus they proposed a separate law, which would combine both criminal and civil remedies. Their approach was comprehensive as evident in the “NGO draft act,” (see Appendix II) which moved beyond traditional definitions of domestic violence and conventional legal remedies, by providing for duties of police officers on handling domestic abuse; providing for training criminal justice personnel; and obliging the state to provide emergency services. This draft also provided for alternate complaint procedures by allowing third parties to file action on behalf of the victim.

#### *For Integration:*

The argument for “integration” is based on the view that domestic violence can be addressed by amending existing laws, and strengthening provisions for grievous hurt and assault under the penal code. This argument draws heavily on the notion that the penal law is taken more seriously by the police and the prosecuting officers than any other law. According to this argument, a separate law risks marginalisation of domestic violence as a “women’s issue” and would not be taken seriously. This argument is based on the need to mainstream laws with regard to gender-based violence, so that the issue of domestic violence will receive due recognition as a problem of grave consequences.

However, this school conceded that the penal code in its current form is inadequate to deal with the problem of domestic violence, as it only provides remedies if the woman is prepared to go

to courts and impeach her husband. Therefore they proposed that different criteria to measure injury and hurt in cases of domestic violence be developed, and special categories of offences be created to deal with cruelty to spouse. Thus, they proposed amendments to the current penal code that would accommodate new offences, such as marital assault, along with enhanced penal sanctions beyond those for the regular offence of assault, so that acts of domestic violence (physical, emotional and psychological) would be viewed as grave misdemeanours by the law. They suggested that the burden of proof in these proceedings should be on the accused, and that the provision for domestic violence itself should be defined in broad terms, in order to capture not only physical abuse but also emotional and mental cruelty. Further, they also proposed that in addition to the penal code, other laws, including the Evidence Ordinance, the Civil Procedure, and personal laws, which cover issues such as divorce, maintenance, custody, property and inheritance also be revised, so that there would be no contradiction in the laws to effectively address domestic violence.<sup>18</sup>

#### *The Government Draft:*

Whilst the women’s movement contested over strategies to address domestic violence, the government came up with its own draft, which was eventually passed by Parliament in August 2005. Unlike the comprehensive draft proposed by the NGOs, this Act provides only a civil remedy, whereby an “aggrieved” person can obtain an Interim Protection Order (IPO), which constitutes a speedy remedy without a full fledged trial. Subsequently, a Protection Order (PO) can be obtained after hearing the respondent. The Act sets out that in making these POs the court is required to take into consideration the accommodation needs of the aggrieved person and the children and also any hardship that may be caused to the respondent as a result of the order. The court can also make

<sup>18</sup> Kamalini Wijayatilake and Camena Guneratne, *Monitoring Progress in the Elimination of Discrimination Against the Achievement of Equality for Women - Sri Lanka Report on Domestic Violence* (CENWOR; Colombo, 1999).

<sup>17</sup> “The Domestic Violence Act,” 17.



supplementary orders to protect and provide safety, health and welfare of the aggrieved person. But since the Act is only a civil remedy, when a PO is issued it does not mean that the respondent is guilty of any offence. For such an action s/he must be charged in a criminal court for assault. It could be argued that the Act in effect does not criminalise domestic violence.

Irrespective of the merits and demerits of the arguments for a separate law or for integration into existing laws, the debate indicates the movement's heavy reliance on the justice system to address domestic violence. The rationale for resorting to law is based on the view that isolating women from the legal order contributes directly to their "inferior" status by denying them legal relief and by sanctioning the conduct of the men who control their lives. In this view, by its very absence in the private sphere, law plays a powerful role in shaping and maintaining women's subordination. This view thus subscribes to the concept of law as an instrument of change, and is predicated on the belief that law has tremendous power in setting social boundaries and declaring what is legitimate and illegitimate. Hence, by extending the law to the private sphere, it can, as noted by Gomez, provide a "powerful symbolic message that domestic violence is wrong."<sup>19</sup> This explains why despite the watered-down version of the original proposal, the movement supported the establishment of the Prevention of Domestic Violence Act as a pragmatic step in the hope that "something is better than nothing."

A review of existing literature sheds further light on the movement's emphasis on legal strategies to bring about gender justice. Among the many comprehensive studies on violence against women and domestic violence are those that focus on the remedies the law offers to women victims of violence, and those who consider how the language of international human rights could support law related strategies for change.

Goonesekere and Guneratne note that the inadequacies of law enforcement appear to be connected with gender discriminatory biases and attitudes regarding the phenomenon of sexual violence

against women.<sup>20</sup> They highlight how acts of rape and sexual violence and the response to the situation of the victim clearly reflect perceptions on gender relations that are deeply rooted in negative or discriminatory attitudes to women and note that the incidence of rape is a reflection on male/female power relations. The manner in which judges impose sentences and award compensation, or the law enforcement authorities approach investigation and prosecution, and legal norms themselves indicate gender bias against the victim. Consequently, they emphasise the need to recognise gender bias as it emerges in cases of rape and sexual violence and use the international standards on human rights, to address the problem of rape and sexual violence through the legal system.<sup>21</sup>

Thus they propose that changes be effected not only in the substantive and procedural law, but also in the perceptions and attitudes of those who administer it, for law will be of no avail "if judicial minds continue to perceive rape as an offence against morality rather than as a crime of violence."<sup>22</sup> They propose that law reform has to go hand in hand with strengthening the criminal justice system through awareness, training and adequate allocation of resources to provide the supportive infrastructure for effective law enforcement.<sup>23</sup>

Similarly, Gomez and Gomez identify the lack of awareness among victims of their rights and remedies, and lack of awareness among law enforcement officers, judges, and lawyers of the full potential of the law, as problems relating to effective law enforcement.<sup>24</sup> They note that in Sri Lanka, while the legal system has condoned very little explicit discrimination, "Discrimination has occurred in the manner in which an act of violence has been investigated and prosecuted, the way a perpetrator of violence has been sentenced, the manner in which rules of evidence were interpreted, and in the way the victim was projected in court."<sup>25</sup>

<sup>20</sup> Goonesekere and Guneratne, *Study on Rape*, 6.

<sup>21</sup> Ibid., 14-15.

<sup>22</sup> Ibid., 56-58.

<sup>23</sup> Ibid., 85.

<sup>24</sup> Gomez and Gomez (2004) *Striking a Balance*.

<sup>25</sup> Ibid., 22-23.

<sup>19</sup> Gomez and Gomez, *Striking a Balance*, 109.

These studies reveal two issues. First, they highlight problems relating to the absence of laws and the inadequate enforcement of existing laws (i.e. rape, sexual harassment). These have to be addressed by introducing new laws, strengthening the criminal justice system and by creating awareness.<sup>26</sup> Secondly, the prevalence of discriminatory laws and practices (i.e. defence of grave and sudden provocation, requirement of corroboration) have to be amended. This reflects a liberal feminist approach which is based on the assumption that law can play an important role in advancing women's equality by removing legal obstacles that have limited women's full and equal participation. By acknowledging gender bias these studies also challenge the notion of neutrality of law, but nevertheless see it as a problem of systematic implementation largely due to lack of gender awareness among the judges, which can be overcome through training and sensitization. While these analyses are extremely useful in exposing the inadequacies of law to address gender issues, these inadequacies are largely seen as gaps that have to be addressed within the existing legal framework. Thus, law at the conceptual level remains untouched, and consequently, the dominant notion of law as outside the social order remains unchallenged.

### Limitations of Legal Response

This view of the law as an instrument of change, which is based on the assumption that law is detached from politics, is limited. First, by seeking to advance women's equality through amendments to the existing legal frameworks, the agenda for gender justice gets trapped in the binary logic of equality/difference or dominance/subordination. Secondly, it is based on essentialist assumptions of the universal category of woman, and is therefore unable to account for difference, diversity and the multi-layered experiences of women. Finally, such a view of the law is based on the assumption that the law and the state are the only agents that have the power and the

legitimacy to bring about social transformation.<sup>27</sup> In the following sections, I will discuss these limitations in detail and question the efficacy of using the law to address domestic violence.

**Binary Logic:** By advocating legal reform either by amending discriminatory laws or by extending law through new laws to cover women's concerns, the aim is to seek equal opportunity through law in the form of legal rights. But claiming rights to be equal with men means taking the existing conditions or status of men as the norm. Further, the suggestion that people should be treated as equals, regardless of gender or other differences, promotes a disembodied understanding of the abstract individual, and makes it more difficult to address gender specific constraints on equality. On the other hand, acknowledging gender difference reinforces a generalised notion of womanhood that usually derives its characteristics from a dominant group, and therefore obliterates differences among women. Hence, this raises the equality/difference dilemma, which forces a decision between competing principles. For pursuing equality by ignoring difference creates a faulty notion of neutrality, while recognising difference underscores the stigma of deviance, and makes it more difficult to claim equality based on difference.<sup>28</sup> It could be argued that the domestic violence debate in Sri Lanka is framed within this equality/difference discourse. The argument for integration falls within the equality framework, as it is based on a strategy of inclusion that encourages assimilation of domestic violence into existing laws so as to be taken seriously, not marginalized as a "women's" issue. The argument for separate legislation is based on "difference" as it takes into account the gendered nature of domestic violence,<sup>29</sup> and the constraints in addressing it through existing laws. But both of these approaches based on equality or difference presume that

<sup>27</sup> See Menon, *Recovering Subversion*.

<sup>28</sup> See Phillips, *Which Equalities Matter?*

<sup>29</sup> Although domestic violence is defined broadly, the argument takes into account the gendered nature of such violence, given the overwhelming statistical evidence that indicates perpetrators to be largely male and victims female.

<sup>26</sup> Gomez and Gomez, *Rights and Shame*, 51.

men are the norm against which women, as different or equal, are measured.<sup>30</sup>

In an attempt to resolve this equality/difference dilemma, many feminists have advocated the concept of substantive equality, which focuses on "equality of outcome." The doctrine of substantive equality acknowledges women's right to be the "same" as well as "different."<sup>31</sup> According to Gomez and Gomez, "true or substantive" equality means eliminating all the disadvantages that are attached to the status of womanhood, and eliminating all the privileges that are attached to men as a result of their sex.<sup>32</sup> For substantive equality requires that "opportunities, life chances, resources, rewards and the ability to influence decisions does not depend on sex."<sup>33</sup> But this emphasis on "sex" dangerously reinforces the binary construction of men/women and fails to take into account "differences" among both men and women. At the same time the concept of substantive equality is based on the assumption that the justice system is outside the socio-political context. It suggests that once judges are sensitised to the doctrine of substantive equality, law can be interpreted progressively to achieve gender justice and social transformation.<sup>34</sup> Hence, none of these approaches challenge law's claim to neutrality. Instead they leave law as it is, and try "to find the most successful way of squeezing the interests of women past the legislators and judiciary."<sup>35</sup>

<sup>30</sup> For analyses of the Equality/Difference dilemma see Joan Scott, "Deconstructing Equality Versus Difference: Or the Uses of Poststructuralist Theory for Feminism" in *Feminist Studies*, Vol.14, No.1, Spring, (1988), 32-50; Linda Gordon, "On Difference," in *Genders*, Spring 1991 (GI Off Prints, 1991); Nancy Fraser, "Equality, Difference and Democracy: Recent Feminist Debate in the United States," in Jodi Dean (ed.), *Feminism and the New Democracy: Resisting the Political* (London: Sage, 1997). See also *Which Equalities Matter?*

<sup>31</sup> Gomez and Gomez, *Striking a Balance*; Cossman and Kapur, *Subversive Sites*.

<sup>32</sup> Gomez and Gomez, *Striking a Balance*.

<sup>33</sup> Ibid., 12.

<sup>34</sup> Menon, *Recovering Subversion*.

<sup>35</sup> Smart, *Power of Law*, 82.

An alternative formulation is provided by Mackinnon, for whom inequality is a matter not of sameness and difference, but of dominance and subordination. She sees the state as male, which in part through law, institutionalises male power. Thus, "the law sees and treats women the way men see and treat women."<sup>36</sup> Feminists in Sri Lanka have constantly critiqued the highly adversarial nature of the legal system, which is based on a masculine model, and therefore discriminatory towards women. Goonesekere highlights how the law on rape adopts a discriminatory approach as legal norms perceive the issue from the point of view of protecting the man from false allegations of rape.<sup>37</sup> In fact, provisions in the penal code regarding rape and marital rape, largely protect men's interests in women's sexuality rather than protecting women's bodily integrity. The rule regarding corroboration of the victim's story to prove rape is an example of inherent gender discrimination in the historical development of rape law.<sup>38</sup> Even though law allows juries to convict on uncorroborated testimony, in practice there is tremendous emphasis on the need for corroboration of a woman's evidence, where judges warn the jury against convicting solely on uncorroborated testimony. Thus, women victims of sexual assault are treated as unreliable witnesses. Similarly, despite provisions in the penal code which state that evidence of physical injury is not necessary to prove absence of consent in a case of rape, recent judgements indicate the importance accorded to such evidence.<sup>39</sup>

Experiences of battered women also illustrate how the criminal justice system serves to re-victimize women. For proving violence that takes place behind closed doors "beyond reasonable doubt" is not only a formidable challenge, but women who bring forward such cases against their husbands are seen by a largely

<sup>36</sup> Catherine Mackinnon, "The State," *Toward a Feminist Theory of State* (Massachusetts: Harvard University Press, 1989), 206-208.

<sup>37</sup> Goonesekere and Guneratne, *Study on Rape*.

<sup>38</sup> See Goonesekere and Guneratne, *Study on Rape*; Wijayatilake and Guneratne, *Monitoring*; Gomez and Gomez, *Rights and Shame*.

<sup>39</sup> See Gomez and Gomez, *Rights and Shame*; Goonesekera and Guneratne, *Study on Rape*.

gender biased judiciary as deviant and selfish, as placing their own interests over that of their family. The civil remedy provided in the Sri Lanka Prevention of Domestic Violence Act addresses domestic violence only as an interpersonal act, and not as connected to the structural inequality of women within the family. Thus, a gender ideology based on dominance/subordination, where women are constructed as mothers, passive, weak and in need of protection, continues to shape laws that intervene in the private sphere.

These experiences indicate that equality in law has not been meaningfully defined for women. Instead, it is defined from the male point of view to correspond with the existing social reality of sex inequality.<sup>40</sup> In this view, by highlighting male bias, the notion of law as a neutral system of adjudication is challenged, but only to be replaced by another abstract concept of the law based on feminist jurisprudence, which is propagated by MacKinnon. But, by insisting on “sex” as the material basis of women’s oppression and constructing male power as omnipotent, this argument for a feminist jurisprudence is based on gender “essentialism” and fails to break away from the binary logic of men/women, dominance/subordination and perpetrator/victim.

Thus these analyses, whether framed within the equality/difference or dominance/subordination discourses, view law in dichotomous terms as an instrument of change or oppression. They fail to displace the hegemony of law as an objective system of adjudication and do not explain the political nature of law and its ambivalence in responding to women’s oppression. The ambivalence and contradictions of law’s response to gender concerns is clearly seen in the private/familial sphere. For despite legal regulation in the familial sphere on many matters (i.e. terms of marriage and divorce), the family continues to be constructed as beyond the legitimate intervention of the law on other matters, as in marital rape, which is not recognised in Sri Lanka other than where couples are judicially separated. Thus, sometimes law constructs the family as private and in need of protection (adultery and now domestic violence), and other times as private thus beyond its reach (marital

<sup>40</sup> Mackinnon, “The State,” 206-8.

rape).<sup>41</sup> These analyses are, therefore, unable to capture the complex and contradictory nature of law in addressing gender issues.

This is because law is conceptually designed as a system of rules and/or norms, which is universally applicable. As noted by Fineman, the process of lawmaking relies on the formation of broad generalisations about groups or classes of people.<sup>42</sup> Courts make decisions based on analogies and distinctions within the context of precedent – “tying ‘like things’ together in a web of consistent and coherent doctrine,” which means that those who have disproportionate power will disproportionately influence lawmaking and implementation.<sup>43</sup> Similarly, as noted by Smart<sup>44</sup> and Hirsh,<sup>45</sup> law is governed by binary logic, which sets up oppositions such as consent/non-consent, guilty/innocent, thus disallowing any room for ambiguity. Hence the universality and uniformity required by the law becomes problematic when feminists attempt to use it to address women’s issues in their endless variety. For the functioning of hegemonic legal discourse, based on concrete identities, flattens “all ambiguity and multiplicity to fit dominant norms”<sup>46</sup> and disqualifies women’s multiple experiences.

**Gender Essentialism:** Thus while feminists have succeeded in opening up the field of law to address gender concerns, either through the equality/difference discourse or through feminist jurisprudence, by focusing too much on gender as the central analytical category, they have reinforced gender essentialism. For example, women access the law not only as women, but also as Tamils (ethnicity), Muslims (religion) or upper, lower or middle-

<sup>41</sup> Cossman and Kapur, *Subversive Sites*, 126.

<sup>42</sup> Michele E. Beasley and Dorothy Q. Thomas, “Domestic Violence as a Human Rights Issue” in Martha Albertson Fineman and Roxanne Mykitiuk (eds.), *The Public Nature of Private Violence: The Discovery of Domestic Abuse* (New York and London: Routledge, 1994).

<sup>43</sup> Ibid., xvi.

<sup>44</sup> Smart, *Power of Law*.

<sup>45</sup> Susan F. Hirsch, “Introduction,” *Public Nature of Private Violence*.

<sup>46</sup> Menon, *Recovering Subversion*, 208.

class women. Law cannot address these multi-layered experiences of women, but depends on an overly simplistic vision of womanhood, which cannot explain the complex ways in which women's lives and experiences are mediated by race, religion, class, and gender.<sup>47</sup> Women play many roles, roles that often conflict with one another. They are often called to adapt simultaneously to the demands of their roles as wives, mothers, autonomous individuals, members of a particular ethnic or religious group, etc. Domestic violence provides an excellent illustration of the various types of conflicts that can materialise as a result of these multiple role identities and how they could influence women's decisions to either tolerate abuse in silence, try to stop it, or leave the relationship.

Consider the following cases:

**Melina** is a 30-year old, educated woman who gave up her job as a dental nurse in a private hospital, on the insistence of her husband. Her "troubles" started almost immediately after marriage, when she discovered that her husband had "other women in his life" and had a fondness for pornography. Whenever she confronted him about his "affairs" he would beat her relentlessly and force himself upon her sexually to "teach her a lesson." She was afraid of him, ashamed of her situation and kept it hidden from her family, despite being close to them. As a practicing Catholic, she believed in the sanctity of marriage and tried to work out her problems by herself. Having suffered several miscarriages as a result of her husband's violence, she desperately tried to have a child in the hope that it would "change" her husband's attitude towards her. In fact, after she had their son, "he was okay, but

only for a while'." The "affairs" and the beatings continued and the attacks became particularly brutal when she was pregnant with their daughter. During one of his violent outbursts, when he tried to attack their infant daughter, Melina finally decided to report him to the police. But her husband had "got around the police" as they did not even record her statement. She had to go to the police station in the neighbouring division, to place an entry. After eight years of violence and abuse Melina decided to move in with her mother. But despite the support she received from her family, she could not continue to stay with them as her husband started attacking and threatening her family. He also forcibly took their son, who is still with him. Hence Melina was "forced to move into a shelter and get a restraining order." Subsequently, with the help of her family and WIN,<sup>48</sup> she filed a case for divorce and custody of children.

In response to her divorce case, her husband has filed "interrogatories" questioning her "character" and fitness to be a good mother. As a result the case is being dragged out and has not even been called for trial yet. It is four years since she filed for divorce. Given that her husband has hired the best lawyer money can buy, who is more than a match for the lawyers she can afford, Melina is not very optimistic about the outcome of the legal proceedings. She is "tired of the whole thing" and is considering settling the case out of courts.

**Ratna** is 50 years old and has been married for almost 30 years. Her husband does not have a permanent job, had been doing odd jobs and, at the time of the interview, was working at a relative's illicit liquor (*kassipu*) brewery. She has two children. Her daughter, who is 24 years old, is not in contact with her as she had "runaway" with a man in the village, without parental consent. Her son, who is 27 years old, is running a "Communication Centre" that she had set up. Ratna had worked in the Middle

<sup>47</sup> For critiques on "universal subject" and intersectionality see bell hooks, "Feminist Movement to End Violence," *Feminist Theory: From Margin to Centre* (Boston: South End Press, 1984); V. Amos and P. Parmar, "Challenging Imperial Feminism" in K.K. Bhavnani (ed.), *Feminism and Race* (Oxford: Oxford University Press, 2001); C. Mohanty, "Under Western Eyes: feminist scholarship and colonial discourses," A. Mohanty, A. Russo and L. Torres (eds.), *Third World Women and the Politics of Feminism* (Bloomington: Indiana University Press, 1991).

<sup>48</sup> Women In Need (WIN) is a Colombo based NGO which supports women and children who are victims of violence in Sri Lanka.

East for seven years as a domestic worker and had saved enough money to set up the Centre and buy a plot of land on which she has built a house. She acknowledges that her married life prior to her departure to the Middle East had been chequered by some instances of violence by her husband, but that they had intensified upon her return. Her "success" arising out of her Middle East job was not only a source of envy to the villagers but seen as a threat by her husband, who constantly accused her of undermining his position as the head of the household. He beat her without the slightest provocation, called her derogatory names and accused her of prostitution. He alleged that she had earned money in the Middle East by sleeping with men and also spread rumours that she had contacted HIV/AIDS. These allegations made Ratna more determined in making her Communication Centre a success, which she managed with the help of her son. But her husband turned her son against her, and together they attacked her with acid while she was working at the Centre.

While Ratna remained in hospital, her husband and son were released on bail. When she was discharged from the hospital she could not return to her house, as her husband, son and his family had occupied the house and were not allowing her back in. She has also lost access to the Communication Centre, but has managed to remove some of the goods, like the photocopier and other communication equipment, from the Centre to her own custody. She has no support from her extended family nor the community. Her neighbours are afraid to get involved, given her husband's connections with "thugs" in the village. Since a criminal case against her husband and son is pending, she is afraid to return to her village and is living in hiding, in a "small room" on rent. While Ratna wants her husband and son punished for their cruelty towards her through the criminal procedure, she does not want to access civil procedures in order to obtain a restraining order or divorce as she finds them too much of a hassle. All she wants is to locate her daughter, sell her house and resettle in another village.

**Farah** is 32 years old and hails from a middle-class Muslim family. She was given in marriage at the age 18 to a man who was 40 years old. Within four years of marriage, her husband died in a motor accident, when her daughter was only two years old. Farah's parents arranged a second marriage for her with a "businessman." She lived happily with him for a few years and had 2 more children from this marriage. But her husband's business got into trouble and the ensuing financial difficulties "turned him into a different man." He became resentful and abusive and berated her parents for trapping him into a marriage with a widow and child. He accused her parents of cheating him with promises of dowry, which they never gave him, and started demanding money from her parents. Her parents responded by giving him money on several occasions and continue to help her financially, but his abusive behaviour towards Farah has not stopped.

On many occasions Farah has considered separation. But given the strict social norms that govern the Muslim community, her parents advise her against it as they do not want Farah to suffer from the stigma of divorce. This would also bring disrepute to their family name. At the same time, Farah also believes that she should remain with him for the sake of her children who need a father.

The above cases highlight the different strategies used by women to deal with domestic violence. Law, if accessed, is in fact the last resort. Melina accessed the law to formalise her separation from her husband through divorce and secure custody of her children. Ratna, on the other hand, will proceed with criminal charges initiated by the police, given the gravity of the assault on her. But given the fact that she feels that her life has already been made complicated by the criminal case and the threat to her life, she does not want to access other legal options, such as obtaining a restraining order or a divorce. For Farah, the law is irrelevant, as she has decided to remain in the relationship for the sake of her children. In all three cases the initial strategy has been to "put up" with the abuse. In Melina's case,

it is only after eight years that she reached out for help, first to her natal family and then to an NGO. While Melina is fortunate to have a supportive family, Ratna did not have this support from her family and community. For Farah, family support comes with the pressure to keep the violence hidden. The response of Farah's family reflects social norms that do not encourage women to leave their marital home.<sup>49</sup> The feminist imperative to "break the silence" is hence often at odds with the social imperative to maintain silence.<sup>50</sup> Thus the justice system approach is not oriented towards women who are unable or unwilling to break the silence. For a legal reform response to domestic violence is a measure that depends entirely on individual women who initiate the search for help outside the home.

In fact, the legal solutions provided in Sri Lanka's Prevention of Domestic Violence Act serve to maintain domestic violence as an individual problem rather than as a societal problem. The Interim/Protection Order (I/PO) does provide a much-needed breathing space to women who want to get out of an abusive situation. On a more symbolic level, it also challenges the notion that forcing a man from his home constitutes a violation of his property rights, and conveys a clear message that the actions of the perpetrator warrant legal action. However, despite these positive effects, it still treats domestic violence as a problem for an individual woman to deal with. This becomes more evident in the aftermath of separation where women face considerable difficulties, for civil remedies rarely provide for such hardships. Although the PO, which requires the batterer to leave the marital home, is crucial to the woman's safety, it can result in impoverishment and greater economic vulnerability

<sup>49</sup> See Wijayatilake and Guneratne *Monitoring Progress in Elimination of Discrimination*, 1999, 28; and Leela Visaria, Nishi Mitra, Veena Poonacha and Divya Pandey, *Domestic Violence in India – a Summary Report of Three Studies* (International Centre for Research on Women (ICRW) and The Centre for Development and Population Activities ((CEDPA): India, 1999) who note the absence of support from families and communities to survivors of domestic violence.

<sup>50</sup> Purna Sen, "Domestic Violence, Deportation and Women's Resistance: Notes on Managing Intersectionality," Tina Wallace (ed.), *Development & Management* (Oxford: OXFAM Publications, 2000), 274.

for the woman and her children. Although the Sri Lankan Act provides for emergency monetary assistance, whether it would be adequate or enforced by the court, given that the Act insists that the financial resources of the respondent also be taken into account, is a moot point. But even in the absence of economic constraints many women are simply not willing to expose their families to the perceived "shame" and dishonour that they believe "going public" will bring.

These associated difficulties, whether economic or social, are pertinent to assessing the efficacy of legal remedies available to survivors of domestic violence. The power of these constraints is evident in the fact that even if a woman does find the strength to file action against her abuser, the likelihood that she will withdraw her claim is very high. In Sri Lanka, women are often forced to withdraw their cases as a precondition for an easy divorce, or are forced to continue in the abusive relationship due to social and economic dependency or for fear of losing custody of children, etc.<sup>51</sup> According to WIN only 15% of their clients seek legal redress, whilst many go back to live with the abuser.<sup>52</sup> Because law remains centred on individual needs, there is little acknowledgement by the justice system of the crucial role that social attitudes and the availability of familial and non-familial support networks play in influencing women to effectively use legal provisions. Thus while the movement's campaign to eliminate domestic violence through legal reform is formulated to deal with a social problem, it is focused on the individual who must prove the violation of her rights by accessing the law.

The legal reform approach is thus based on the "rational individual" who, given the opportunity, will act in her own best interest. Hence, it assumes that the best way to help a battered woman is to make sure that an effective legal system is in place. Thus the approach takes for granted that given the opportunity women will access the law and leave the abuser. But as seen in the above cases,

<sup>51</sup> Gomez and Gomez, *Rights and Shame*, 156.

<sup>52</sup> Interview with Savitri Wijesekera and Dilki d' Alwis of WIN.

reality is much more complex. Melina, an educated middle class woman, took eight years to leave a violent marriage. Her decision to stay in the abusive relationship was not the outcome of her ignorance of her rights or the availability of legal redress. Given her religious beliefs, economic dependence on her husband and existing social stigma against single women, she rationalized that it is in her best interest to stay in the marriage. Farah's decision to remain in the marriage reflects a similar complex web of factors, including her religious/ethnic identity, family pressure to maintain silence and her own belief in the need to keep the family together. Ratna's decisions to co-exist with her abusive husband until he brutally attacked her, and subsequently to stay away from her husband, are complex decisions, they are connected to issues of physical safety and security, as well as, forceful eviction from her own home by her husband.

Thus the availability of the Prevention of Domestic Violence Act, which provides women the legal right to apply for a Protection Order and remove the perpetrator from the marital home, will not stop the problem of domestic violence. As illustrated above, domestic violence is a complex issue which cannot be resolved through a legal system that treats couples only as adversaries, given that factors such as economic dependency, welfare of children and social perceptions are also key considerations of the relationship.

Articulating domestic violence in terms of legal rights also risks resorting to competing rights. For instance, while the woman has the right to be free from violence, the man also has rights that the law will uphold, specifically in relation to his right to live in his home and the right to see his children.<sup>53</sup> Given that the domestic violence law was just passed, it is premature to speculate on how this issue will be resolved in Sri Lanka, but it is likely that the victim's rights may be compromised by resorting to competing rights. Thus legal rights which are formulated with the intention of protecting the weak against the strong may in fact be appropriated by the more powerful.<sup>54</sup>

In fact, the victim orientation of the legal rights discourse is problematic for feminism. For the rights language not only casts victims as passive and innocent, while defining violators as deviant,<sup>55</sup> it also erases differences among victims. Thus, while the commonality of women's experiences of gender-based violence has provided the women's movement a shared location from which to launch its campaign to address domestic violence, based on a legal rights approach, it reinforces gender essentialism and the notion that women are victims.<sup>56</sup> This highlights the importance of not viewing women as powerless. To do so is to focus on gender oppression to the exclusion of other forms of oppression and construct women as victims. For instance, decisions made by Melina, Ratna and Farah to deal with domestic violence were mediated not only by their gender, but by class, religion and other social factors. Similarly, the coping mechanisms and strategies they adopted to deal with domestic violence reflect their resistance and agency. A legal reform approach cannot account for these factors, for it is grounded in a dichotomous vision of the world in which the fundamental dichotomy of men/women functions in tandem with powerful/powerless, perpetrator/victim and strong/weak. Law itself is governed by this binary logic, which sets up oppositions such as consent/non-consent, guilty/innocent, thus disallowing any room for multiplicity and ambiguity.<sup>57</sup> With regard to domestic violence, there is a tendency in the law to treat the "stay/separate" dichotomy as analogous to the "victim/agent" dichotomy, which traps battered women with the choice of staying or separating. The "wrong" choice could undermine their victim status or expose them to further violence.<sup>58</sup>

<sup>55</sup> Kennedy, "Boundaries," and Menon, *Recovering Subversion*.

<sup>56</sup> See Ratna Kapur, "The Tragedy of Victimization Rhetoric: Resurrecting the 'Native' Subject in International/Post-Colonial Feminist Legal Politics," *The Harvard Human Rights Journal*, Spring 2002, 3.

<sup>57</sup> See Smart, *Power of Law* and Hirsh, "Introduction," *Public Nature of Private Violence*.

<sup>58</sup> Smart, *Power of Law*.

<sup>53</sup> Smart, *Power of Law*, 145

<sup>54</sup> Ibid.



As a result, the criminal justice system is generally unsympathetic towards victims of domestic violence, who often express ambivalence about abusive relationships and pressing charges.<sup>59</sup> In Melina's case, the fact that she took eight years to leave the relationship prompted the police to suggest that her abuse could not have been so serious. Thus, a legal approach to domestic violence cannot appreciate the many legitimate reasons a woman might have for not reporting abuse to the police or accessing the law – i.e. distrust of police/legal system because of gender/race/religious/class/ethnic bias, fears of escalating violence, economic dependency; love for the abuser, desire to keep family together, lack of community support networks; discourse of shame and community pressure to suffer in silence, among other possibilities. The three cases cited clearly reflect many of these factors. The “irrational” decisions of the three women to remain with the abuser are the results of careful evaluations of how to maximise the achievement of competing objectives.<sup>60</sup> Hence to identify these women only as victims is to deny their resistance, both during the years of abuse and after. A legal approach based on binary logic, which conceptualizes false dichotomies such as victim/agent and stay/separate as mutually exclusive fails to depict the “dualism and resistance”<sup>61</sup> that characterizes battered women's lives.

**State-centric:** The complex nature of domestic violence is simplified by a legal rights framework dependent on the state. For

<sup>59</sup> See Kamalini Wijeyatilake, “Violence Against Women - Review of a Decade,” *Facets of Change – Women in Sri Lanka 1986 - 1995* (CENWOR: Colombo, 1995); Gill Hague and Ellen de Malos (eds.), “Policing Domestic Violence: Crime Prevention and the Public/Private Divide,” *Domestic Violence: Action for Change* (Cheltenham: New Clarion Press, 1998), 64; Demie Kurz, “Social Science Perspectives on Wife Abuse: Current Debates and Future Directions,” and Kathleen J. Ferraro “Cops, Courts and Woman Battering,” Pauline B. Bart and Eileen Geil Moran (eds.), *Violence Against Women: The Bloody Foot Prints* (London and New Delhi: Sage Publications, 1993).

<sup>60</sup> See Kelly, *Politics of Privacy*, 55.

<sup>61</sup> Hirsh, “Introduction,” *Public Nature of Private Violence*, 6.

no sooner is an issue articulated as a right, that it automatically implies that someone (rights holder) has a claim or legal entitlement and someone else (duty bearer) holds a corresponding duty or legal obligation to fulfil that entitlement.<sup>62</sup> As noted by Kennedy, there is no one to triage among rights and rights holders except the state.<sup>63</sup> Depending on the state to address gender issues such as domestic violence is problematic not only because such an approach is based on the assumption that the state is a neutral arbiter, but also because it reinforces the view that power rests exclusively in the state, thus pitting the individual citizen against the state.

The concept of the state as neutral has been critiqued by feminists who have highlighted the male bias inherent in the state.<sup>64</sup> Others have extended that critique by highlighting that the state is not a static, monolithic entity, but is in fact, erratic, partial, temporary and amorphous.<sup>65</sup> In fact, men and women have different relationships to the state as the impact of state structures, policies and laws are gendered. At the same time state policies do not impact on all women in the same way, for race, ethnicity, class, religion and sexual orientation all affect the ways in which women enter into relations with the state.<sup>66</sup>

In Sri Lanka, law enjoys “very little autonomy vis-à-vis the state”<sup>67</sup> and the “independence of the judiciary” is under constant

<sup>62</sup> [www.unhchr.org/publications/training](http://www.unhchr.org/publications/training)

<sup>63</sup> Kennedy, “Boundaries in the Field of Human Rights.”

<sup>64</sup> Mackinnon, “The State.”

<sup>65</sup> S. Rai, “Women and the State in the Third World: Some Issues for Debate” in Rai and G. Lievesley (eds.), *Women and the State: International Perspectives* (London: Taylor and Francis, 1996); Bina Agarwal, “Patriarchy and the ‘Modernising’ State,” in Agarwal (ed.), *Structures of Patriarchy: State, Community and Household in Modernising India* (London: Zed Press, 1988).

<sup>66</sup> This is particularly relevant to Sri Lanka with the ongoing ethnic conflict, the increasing militarization of the state and what that means to minority ethnic communities, particularly to women, on whose lives the state can encroach in brutal ways (e.g. custodial rape, violence against women by the state during war).

<sup>67</sup> Radhika Coomaraswamy, “To Bellow Like a Cow: Women, Ethnicity and the Discourse of Rights” in R. Cook (ed.), *Human Rights of Women: National and International Perspectives* (Philadelphia: University of Pennsylvania Press, 1994), 47.

threat by state "interference" and party politics. In fact, there is increasing evidence of the coming together of state power, politics and religion, which has significant gender fall-outs. For instance, the campaigns to increase age of marriage and criminalize marital rape (a form of domestic violence) in the Penal Code indicated the susceptibility of the state to pulls and pressures from different communities.<sup>68</sup> Consequently, the amended penal code recognises marital rape only in cases where spouses are judicially separated, thus reinforcing the view that rape in marriage is impossible. This means that married women have no protection against the sexual violence of their husbands. At the same time, as already noted, the state machinery such as the police and judiciary are far from neutral in situations of gender-based violence. Therefore appealing to the state through campaigns for legal reform on gender issues runs the risk of strengthening a conservative state whose response to gender issues could be protectionist and not liberating for women.

Likewise, appealing to the state to address domestic violence as a legal rights issue subscribes to the notion of the state as the sole agent of power. This juridical model of power has been challenged by Foucault, who conceives of power not as a commodity owned by some (state/men) but as pervasive and present everywhere. He challenges the nexus between power and judicial rights, by highlighting the growth of new knowledges (i.e. medicine, psychiatry, psychology) and the development of the disciplinary society, which bring in new modes of surveillance that work in tandem with law's punitive/deterrent regulatory role. According to Foucault, populations are controlled and managed through disciplinary and regulatory powers. While regulatory power works through policy and legal interventions, disciplinary power denotes control of the individual body, its movements and gestures, through the establishment of

<sup>68</sup> The campaign to recognise marital rape as a crime mobilized conservative elements of the Muslim community, who successfully lobbied against the proposal and stopped it from being included in the amended penal code.

norms.<sup>69</sup> Foucault therefore stresses the systemic nature of power, its presence in multiple social relations, and its exercise through the smallest elements: the family and social relations.

The problematisation of power beyond the state-citizen dichotomy that governs legal rights is very pertinent to addressing domestic violence. For domestic violence, which is an expression of power relations, has to be addressed by looking beyond the law and its regulatory power. Any attempt to address it has to include tackling multiple sites of power including the family and the community. Thus, appealing to the state not only fails to acknowledge these sites of power located in the larger community, including family, religion, culture, but also fails to take into account new players in the public sphere, such as the private/business sector, who decentre the power of the state, as a result of globalization and privatisation.

While acknowledging that the Sri Lankan women's movement has been successful in pushing back the boundaries of "private," by naming domestic violence, the legal reform strategy has not succeeded in displacing the underlying power structures of violence against women and domestic violence, nor the gender ideology that sustains them. The ideas of family as private and women as victims in need of protection are apparent in both the laws and in the judicial interpretation of laws intended to benefit women. Thus, the duality of law, which promises women non-discrimination and equality with men on the one hand, and "protection" for women because they are weak and vulnerable on the other, denies women agency and the right to protect themselves.<sup>70</sup> A legal reform approach tends to overly focus on an essentialised victim subject, which is based on a unitary category of woman.

<sup>69</sup> Michel Foucault, *Discipline and Punish: The Birth of Prison*, A. Sheridan (trans.), (Harmondsworth: Peregrine, 1977), and *The History of Sexuality: An Introduction*, R. Hurley (trans.), (Harmondsworth: Penguin, 1978); Smart, *Power of Law*; Nancy Fraser, "Foucault on Modern Power: Empirical Insights and Normative Confusion" in *Praxis International*, No. 1, October 1981, 272-287.

<sup>70</sup> Coomaraswamy, "To Bellow Like a Cow," 42.

## Beyond the Law

The above analysis highlights the complexity of domestic violence and the limitations of a legal reform approach to address it. It confirms the importance of focusing on the processes of power outside state/legal institutions to address domestic violence, as law has often proved to be impervious to women's concerns. This is clearly illustrated in how hard-fought struggles to achieve legal reforms have only slightly improved the position of women. Many legal reform campaigns in Sri Lanka have been successful in so far as the state has responded by amending/enacting laws, such as amendments to the penal code regarding rape, sexual harassment, and the Prevention of Domestic Violence Act. Despite these "successes," the gap between formal rights and the reality of women's socio-economic status remain. Many women do not access the law due to a variety of reasons, as reflected in the low levels of reporting incidents of violence against women and domestic violence. In fact, to date not a single case based on gender discrimination has been presented in courts. As already noted this is largely seen as the outcome of the lack of awareness among women and/or as a problem of under-enforcement due to lack of resources, awareness and gender sensitivity among the criminal justice system.

The movement, therefore, considers the law to be an important site of struggle. According to Goonesekere and Guneratne the law must continue to be an important strategy in dealing with violence against women as "... understanding the manner in which the legal system functions affords insights into the dimensions of the problem, and what needs to be done to impact upon this critical situation which diminishes the right of women to expect personal safety and security in the community."<sup>71</sup> The fact that the law through its regulatory power challenges the notion of impunity, by assuring the protection of the weak against the strong, is also a forceful argument made in favour of legal reform. Similarly, given the many achievements of the women's movement in campaigning for formal equality through citizenship rights, the right to vote, property rights etc, the movement is not ready to give up the legal rights discourse, despite its limitations. In many ways, the movement

reflects sentiments expressed by Martha Minow who notes that "criticizing rights and legal language just when they have become available to people who had previously lacked access to them" is worrying.<sup>72</sup> This is particularly pertinent given that despite law being a traditional area of intervention, attempts to use the law to deal with violence against women is a recent phenomenon, triggered by the 1995 amendments to the penal code.<sup>73</sup> There have been several instances in recent years where the women's movement monitored legal proceedings in rape cases, successfully raising public awareness through publicity in the media, and ensuring that prosecutions are initiated. For example, a case involving a retired police officer alleged to have raped a child domestic; a rape case involving a famous film actor, and a gang rape and murder case of Krishanthi Kumaraswamy are among those that elicited strong NGO campaigns for proper investigation and prosecution.<sup>74</sup> Thus, since law is enacted in highly public settings, the visibility and legitimacy that it provides to an issue are reasons why despite the negative experience and women's reluctance to use the law, the women's movement continues to use law as an arena of struggle.

Yet, the movement is not under any illusions that law by itself can resolve gender inequalities. The literature review and interviews conducted echo the sentiment that enactment of legislation is only a first, but important step in declaring that domestic violence is unacceptable. Gomez notes that if "the law with its biases and patriarchal bent 'outlaws' domestic violence and provides remedies" it would send "a powerful symbolic message," which can "help in changing attitudes of the batterer, battered and the larger public."<sup>75</sup>

But conferring such a powerful role on the law strengthens its hegemony as *the* site that legitimizes and delegitimizes issues. Such a view of the law undermines other sites of power, in the social and ideological arenas, which in the case of domestic violence are more important sites of struggle. Thus, despite Foucault's insinuation that the power of law is diminishing, the importance accorded to law by the feminist movement, which is quick to resort to law on almost

<sup>72</sup> Cited in Charlesworth, *Boundaries of International Law*, 61.

<sup>73</sup> Gomez and Gomez, *Rights and Shame*, ix.

<sup>74</sup> Goonesekere & Guneratne, *Study on Rape*, 119.

<sup>75</sup> Gomez and Gomez, *Striking a Balance*, 108.

<sup>71</sup> Goonesekere and Guneratne, *Study on Rape*, 2.

every issue, reflects the contrary. Further as noted by Smart, while other mechanisms of discipline develop, "law itself can deploy those mechanisms to enhance its own power."<sup>76</sup>

What this means is that law continues to remain a site of power, albeit not *the only* site of power. It also means that as long as law remains a site of power feminists cannot abandon it as a site of struggle. But at the same time it does not mean that feminists should resort to law for every women's issue. In fact feminist engagement with the law should serve to dehegemonise law, which would involve challenging law in multiple ways. This would include critiquing the content and enforcement of the law, questioning the basic foundations of law, and at times strategically refraining from resorting to law. It means acknowledging the limitations of law to challenge underlying assumptions about gender, violence, family and relations of power between men and women. It means acknowledging law's tendency to disqualify alternative knowledges, specifically women's experiences. It means asking when and how to engage with the law to address specific gender issues. In this case, it means asking whether legal reform is the best and only way to address domestic violence.

While the movement has acknowledged that law alone cannot resolve domestic violence, its efforts to focus on other sites of power have been limited. The movement does engage in creating public awareness through the media and workshops but these campaigns are sporadic, ad hoc and not sustained over a period of time to have long-term impact. Goonesekera and Guneratne in fact note the "significant gap in the community's response" to violence against women due "to the inability to catalyse grass root communities to monitor violence..."<sup>77</sup> Wijeyatilake notes that women do not receive support at the point at which they need it most, i.e. from their families and the community.<sup>78</sup> In comparison to the movement's investment in legal reform, its investment in changing responses of the family and community to domestic violence is woefully inadequate. For instance, "Community Organising" approaches such as those

advocated by Lori Heise,<sup>79</sup> which involve working with women over a longer period of time to analyse and mobilise local resources to respond to domestic violence, are not adequately explored by the movement in Sri Lanka.

This overwhelming focus on law has in many ways subsumed the movement's capacity to respond to domestic violence in more appropriate and alternative ways. In fact, it has kept the movement from building an alternative vision which, according to Wickramagamage, is due to the movement's tendency to work within the existing social parameters.<sup>80</sup> Hence, the movement's potential to subvert, destabilise dominant values and patriarchal structures remain at large. This could be attributed to a lack of complexity in the movement's agenda for gender justice, which has not adequately taken into consideration the critique of gender essentialism, nor found ways to account for the multiple identities and multi-layered experiences of women. As the above analysis indicates the legal reform campaign to address domestic violence cannot reflect the complex ways in which women's lives and experiences are mediated by race, religion, class and gender. On the contrary, it reinforces the universal category of woman and underpins the concept of an all-powerful state at the expense of addressing social power and ideology.

The movement's legal reform campaigns show a wide gap between its demands and the final law passed by the state, reflecting important compromises and trade-offs. The significant difference between the NGO proposal (which was comprehensive and progressive) and the Act that has been passed underscores the relative weakness of the movement in negotiating with the state. Wickramagamage, for instance, observes that the adoption of a "conciliatory approach" with the state has enabled the women's movement in Sri Lanka to remain in good terms with patriarchal social hierarchy.<sup>81</sup> While this strategy of collaboration has reaped

<sup>76</sup> Smart, *Power of Law*, 6.

<sup>77</sup> Goonesekere and Guneratne, *Study on Rape*, 123.

<sup>78</sup> Wijayatilake and Guneratne, *Monitoring Progress*, 28.

<sup>79</sup> Lori Heise, "Violence Against Women – Global Organizing for Change" in *Future Interventions with Battered Women and their Families*, Jeffrey, L. Edleson (ed.), (New Delhi: Sage Publications, 1995).

<sup>80</sup> Carmen Wickremagamage, "Sri Lankan Organisations for Women: A Critical Appraisal," in Srimal Kiribamune (ed.), *Women and Politics in Sri Lanka* (Kandy: ICES, 1999), 176.

<sup>81</sup> *Ibid.*, 165

some benefits, it has left existing structures unchallenged. Thus, often the outcome of the movement's lobbying efforts, which depend on the goodwill of the state, is the enactment of laws that strengthen the state rather than empower women. The Prevention of Domestic Violence Act which gives women the option of applying for a Protection Order is limited because it does not define domestic violence, nor criminalize it. In fact, it is couched in gender neutral terms and fails to challenge the underlying social and structural causes of domestic violence.

This paper is not, however, suggesting that the legal rights discourse should cease to be a focus of concern. Instead it highlights the urgent need to rethink the movement's politics and overall strategy, which involves questioning fundamental assumptions of law and feminist politics. Such interrogations of basic assumptions do not mean an abandonment of law or feminism, but rather an opportunity to question all that has been taken for granted and resignifying it with new meaning.<sup>82</sup> Such interrogation will allow the opportunity to reformulate alternative ways of politically and legally intervening on women's issues. It will challenge universalising assumptions about women and recognize the reality of women's multiple experiences. Such an interrogation will also open up space for addressing power structures that are not within the ambit of the state (law), such as social power, and the ways in which they interact and uphold each other.

With regard to domestic violence, this interrogation should lead to finding a proper balance between saving individual women in crisis today, versus working towards long-term fundamental social transformation. This means a shift in emphasis from assisting individual victims to systemic reform by organizing entire communities against domestic violence.<sup>83</sup> Such fundamental social change requires going beyond the law. This means moving beyond the state or relying on the law to declare that domestic violence is

unacceptable (which is helpful, but not sufficient). It means tackling multiple sites of power to build a **cultural consensus** that domestic violence is wrong. It means that the movement should shift its focus from advocacy on the justice system to reforming the response and attitudes of family and community, including the medical profession, the private sector, trade unions and religious organizations. It means investing more time and energy into changing the underlying beliefs and attitudes that justify men's violence. For, as noted by Smart "it is not rape law that needs to be the exclusive focus of concern so much as heterosexism. Equally, tackling family law means tackling constructions of fatherhood, masculine authority and economic power. Similarly women's low pay is not a matter of equality but of segregated labour markets, racism, the division of private and public and the under-valuation of women's work. Law cannot resolve these structures of power..."<sup>84</sup>

Therefore, in conclusion, I have argued that given domestic violence is not merely an outcome of deviant behaviour of individuals, but an expression of power that perpetuates the subordination of women, these underlying power structures have to be addressed. But power is not the privilege of the state and the law. It is pervasive, "local, continuous, productive, capillary and exhaustive."<sup>85</sup> Hence multiple sites of power, including the law, have to be tackled simultaneously. Given the limitations and the dangers inherent in using the law, I have argued that it is a strategy that has to be considered cautiously. For other sites of power, including the community, religion and private sector, which at times work in congruence with and at times against the power of law, are important in addressing domestic violence and have to be challenged. Therefore, I propose that Sri Lanka women's movement should shift emphasis from law to other sites of power. It should shift its focus from overwhelmingly relying on the justice system to declare that domestic violence is illegal, to creating a cultural consensus among the larger social body that domestic violence is wrong and unacceptable.

<sup>82</sup> According to Judith Butler, no foundations, even basic assumptions about women's subjectivity or subordination, should be left unquestioned in the effort to develop politically effective theory. Butler, "Contingent Foundations: Feminism and the Question of Postmodernism," Judith Butler and J. Scott (eds.), *Feminists Theorize the Political* (New York: Routledge, 1992).

<sup>83</sup> Heise, "Global Organising for Change," 26-7.

<sup>84</sup> Smart, *Power of Law*, 87.

<sup>85</sup> Fraser, *Foucault on Modern Power*, 276

### List of Interviewees

1. Dr. Radhika Coomaraswamy - Former UN Special Rapporteur on Violence against Women; Former Chair, Human Rights Commission of Sri Lanka; Former Director, International Centre for Ethnic Studies (ICES). Currently UN Special Rapporteur on Children and Armed Violence.
2. Dr. Kumari Jayawardena - Director, Social Scientists' Association
3. Dr. Sepali Kottegoda - Director, Women & Media Collective
4. Dr. Camena Guneratne - Head, Law Department, Open University of Sri Lanka
5. Ms. Savitri Wijesekera - Executive Director, Women in Need (WIN)
6. Ms. Dilrukshi de Alwis - Programme Manager, Women in Need (WIN)
7. Ms. Dhara Wijetilake - Additional Secretary, Ministry of Justice of Sri Lanka
8. Ms. Ramani Jayasundera - Independent Researcher & Programme Manager, UNIFEM
9. Ms. Saama Rajakaruna - Programme Officer, Canadian International Development Agency (CIDA)

### Chapter Four

#### *Feminist Politics Beyond the Law: Poorani as a space for empowerment and resistance<sup>1</sup>*

Nimanthi Perera-Rajasingham

However, the fact is that the law, as the state's emissary, had already arrived at the site...and claimed it as its own by designating the event as a 'case', the death as a 'crime'.... The consequence of this appropriation has been to clip those perspectives which situated this incident within the life of a community where a multitude of anxieties and interventions endowed it with its real historical content. Some of those perspectives could perhaps be restored if the stratagem of assimilating these statements to the processes of the law were opposed by a reading that acknowledged them as the record of a[n]...effort to cope collectively, if unsuccessfully, with a crisis.

Ranajit Guha, *Chandra's Death*<sup>2</sup>

This final chapter of the women and violence study looks to feminist politics beyond the law, or politics that may be *differently* meaningful from the way a legal case may create expectations and notions of justice. I will not venture into a discussion of why the law may be insufficient and unable to deal with issues of gender-based violence. Rizvina Morseth de Alwis has already argued this point convincingly in the preceding chapter. While my examples look at geographic

<sup>1</sup> I wish to thank Sharika Thiranagama, who was one of the first people to mention Poorani to me and talk about the history of that place.

<sup>2</sup> Ranajit Guha, "Chandra's Death" in *Subaltern Studies V* (New Delhi: OUP, 1987), 142.

spaces and histories which are part of the ethnic conflict between the Government of Sri Lanka (GoSL) and the Liberation Tigers of Tamil Eelam (LTTE), the conclusions I make may be relevant to areas that are not “extraordinary” or conflict riddled. For the purposes of this chapter, I will look at some feminist practices in the Northern Province of Jaffna, within the space of a shelter called Poorani. If the first chapter in this book looked at how spaces opened up for feminists to interrogate the category of gendered violence, this chapter will construct a space that attempted to provide empowerment and security for collectives of women outside the terrain of the law. As Guha argues, in the quotation above, this chapter will attempt to historicize a space in its rich complexity and “real” historical content. Therefore, I include many details of my interviewees’ lives, so some record of the complexities of their histories will remain with us.

Needless to say, the conflict in Sri Lanka has resulted in large numbers of women being subjected to grotesque forms of violence such as rape, harassment, assault, displacement, disappearances, abductions and the killings of members of their families. Over the years, “Gender in/and conflict” has been an area of study undertaken by Sri Lankan feminists in their attempts to understand the different forms of gendered violence women in Sri Lanka have endured. I hope this chapter will add to this endeavour because it will look at how feminists located in the margins negotiated spaces for themselves and for women who had endured violence, when the state and the law were oppressive. In a sense then, I wish to look at the state not as a site of negotiation and protection, but as part of the problem, a site of domination and discipline, as one of the main violent parties that actively and brutally disregard women. The state’s interests lie with consolidating its own powers, at the cost of subjects who it considers opposed to its projects. This was no doubt the case in the instance of Poorani as well.

Thus, in no way do I wish to suggest that in Jaffna the state and the LTTE were unable to carry out their objectives of law and order to protect women. In a highly nationalist terrain like Sri Lanka, state practices often function to serve the interest of nationalist

groups; this in turn oppresses those whom the nation considers outsiders, opposers or contesters of its rhetoric. As Veena Das and Deborah Poole suggest, and what I hope to do, is to “rethink the boundaries between center and periphery, public and private, legal and illegal,”<sup>3</sup> for I believe that margins offer a perspective of what the state may really be about. I too wish to propose as they do that “the forms of illegibility, partial belonging and disorder that seem to inhabit the margins of the state constitute its necessary condition as a theoretical and political object.”<sup>4</sup> For how else can the state create its sense of righteousness, other than through constructing its power by creating outsiders?

### Democratic practice, political society, and marginal spaces

A great deal of my analysis of the women’s shelter, Poorani, is indebted to the work on collective resistance by Partha Chatterjee and what he calls “political society.” I use this reference in relation to Partha Chatterjee’s work in the *Politics of the Governed: Popular Politics in Most of the World*.<sup>5</sup> In it, he defines two kinds of social orders. One is civil society while the other is political society. Some definitions of civil society would suggest that it is the realm of progressive politics, that space outside of the state that is able to criticize the state. Hence, many of the projects of present day democracy are to expand this space of civil society intervention. As Chatterjee states, today, all non-governmental organizations are marked as civil society organizations. Often civil society is marked as opposed to the state/ the right/ and reactionary politics. It is in modern day developmental rhetoric, the space for progressive politics.<sup>6</sup>

<sup>3</sup> Veena Das and Deborah Poole (eds.), “Introduction,” *Anthropology in the Margins of the State* (New Delhi: OUP, 2004), 4.

<sup>4</sup> Ibid., 6.

<sup>5</sup> Partha Chatterjee, *Politics of the Governed: Reflections on Popular Politics in Most of the World* (New York, Columbia University Press, 2004).

<sup>6</sup> See also Nira Wickremasinghe, *Civil Society in Sri Lanka: New Circles of Power*. (New Delhi: Sage, 2001).

Chatterjee, however, does not subscribe to this facile resolution to social problems. For him civil society is “restricted to a small section of culturally equipped citizens, represent[ing] in countries like India [or in this instance Sri Lanka] the high ground of modernity.”<sup>7</sup> They consist of individuals and collectives with rights, and citizenship, those invested with notions of modern rationality. For Chatterjee, civil society is not marked by its desire for democracy, but rather with desires to spread modern enlightenment institutions.

Instead of civil society, Chatterjee uses the term political society to define a space of democratic practice. He does not subscribe to the Gramscian use of political society in which Gramsci defines civil society as closely linked to a capitalist state (political society). Political society for Chatterjee is within the sphere of populations who are governed. They are not people with rights, but populations who are administered, controlled, the receivers of “economic policy, administrative policy, law and even political mobilization.”<sup>8</sup> This is the realm which the law cannot reach. It is a space which the law, by using a language of rights, can use to evict and disenfranchise these populations even further. In this realm, communities may demand rights, attempt to exercise democracy at the cost of modern rationality. This is a realm that feminist politics should consider seriously. As Nivedita Menon also suggests for the feminist movement, “the struggle to reclaim and produce meaning will have to be waged in this uncomfortable realm.”<sup>9</sup>

In this chapter, I hope to illustrate the ways in which women who clearly belong to the segment of society called political society, bargain and negotiate collectively with the state and the LTTE to obtain for themselves greater space and some semblance of rights. The examples I offer are also those where collectives strategically accepted the support of women from middle/ upper/ professional classes to expand their spaces..

<sup>7</sup> Chatterjee, *Politics of the Governed*, 41.

<sup>8</sup> Ibid., 34.

<sup>9</sup> Nivedita Menon, *Recovering Subversion: Feminist Politics Beyond the Law* (New Delhi: Permanent Black, 2004), 217.

My choice of Poorani may be self-evident. Sri Lanka has few shelters for women who have endured violence, and most that exist are run privately through donor agencies. One of the reasons I have chosen to look at Poorani is because it was a space that had, I believe, empowered many of the women who were part of it and motivated them to carry out feminist work from whatever location they were/are based after the shelter was forcibly closed down. It was also a space that brought together women from varying backgrounds, classes, castes, villages and enabled a collective spirit that gave birth to vibrant feminists. Furthermore, Poorani embodied an alternative way of thinking through the process of living in the aftermath of violence, rather than attempting to access the legal system as the post-event resolution to a problem. This shelter itself was a space that was created at a time when resorting to the law, the state, the LTTE and the IPKF seemed completely futile and counter-productive. Despite its short existence, Poorani is a clear example of how collective efforts can obtain successes, limited though these maybe, and how these efforts could in turn empower and regenerate the differently placed/located women who were part of it.

A quick word about how I deploy the word “margin” in this paper. There are multiple reasons as to why Poorani is a study of marginal spaces. One reason is that Poorani is a place that has been marginal in feminist writings. Secondly, while Jaffna itself is not marginal to the ethnic conflict, the activism of the women at Poorani was. For one, there was a marginalization of feminist activity that did not belong to the LTTE mould by the LTTE. Furthermore, many of the women who lived in Poorani were from marginal, lower classes, and castes. Hence, they were one of the least politically represented groups in Sri Lanka.

The central tropes upon which my work will revolve are as follows:

1. I will attempt to draw a picture of Poorani, how it came to being, the contours of its space, how it operated and what activities women in it carried out. I will also interrogate the very meaning of home and space as it may have existed at the time.
2. I will document how two individuals recall their time in Poorani and



through their narratives attempt to understand how these two women became empowered, and imbued with a feminist consciousness.

3. Thirdly, I will look at how members of Poorani collectively resisted forces that oppressed them.

The time period of my analysis is approximately 1987-1991. Poorani existed for some of this time, and these years can be marked as a part of critical events and turning points in the lives of the women who were part of various collectives in Jaffna. I hope in conclusion that these narratives and stories will reveal the importance of non-legal strategies in responding to violence. Furthermore, I will suggest that the operations of the state and non-state actors in these regions mark the necessary violence of these groups/structures.<sup>10</sup> The nation state continues to oppress collectives and individuals; and to use the law as the only strategy is to ignore that violence is inherently part of the state and that the law can increase the surveillance and control of individuals and collectives. The alternatives I suggest and map may be an initial inquiry into feminist strategies outside of the law.

<sup>10</sup> I do not spend a great deal of time arguing this point as it is generally clear to those who have done research into areas of gender and conflict that the gendered manner in which nationalism operates often means increased violence upon women. Therefore, states that are nationalist would most often use violence in numerous ways, especially against women, as a strategy to discipline and shame the men in that community. Works such as Ritu Menon and Kamla Bhasin, *Borders and Boundaries: Women in India's Partition* (New Delhi: Kali for Women, 1998) on Partition in India is one such example. Furthermore, Lisa Kois' chapter in this book also looks at the Krishanti Kumaraswamy case, which is an example of how state forces violate women and family members who may protest such violations. It is also an example of how limited the law is. As Kois points out, the case only resulted in convictions against those accused of raping, murdering Krishanti, and thereafter, murdering her family because of certain specific contexts and enormous pressure from the feminist movement. This case became symbolic, while many hundreds of instances of gendered violence by state emissaries are often ignored.

## Methodology

My main interviewees regarding Poorani were Raji and Amita. Raji had been part of the centre since its inception, while Amita joined some months after, but was a very active member of Poorani for the rest of its existence. I had conversations with them regarding Poorani over a long period of time. Subsequently, I interviewed others regarding Poorani and their perceptions of it. As there is very little documented material on this shelter, I have used their memories to construct the shelter. I have also used pseudonyms, or simply used the term interviewee, when those I interviewed did not wish their actual names to be mentioned. The representation of Poorani and its feminists is obviously a task of negotiation and selection. There were at times contradictory views or memories regarding the shelter itself. I have attempted to negotiate this to the best of my ability.

## Historical Background

A detailed description of the crisis in Jaffna at the time is beyond the scope of this paper, and to date the best document that on this period is *The Broken Palmyra*<sup>11</sup>. The Indian Peace Keeping Force (IPKF) had arrived to disarm militant groups and enforce the 13<sup>th</sup> amendment by 1987. This was to implement the provincial council system that would devolve power to the provinces from the central government. An agreement to devolve power to the provinces had come about in 1987 after the signing of the peace accord between then Sri Lankan President J. R. Jayawardena and Indian Prime Minister Rajiv Gandhi. While the LTTE initially embraced the Indian army, very soon it declared war on the army, and bloody combat between the two groups ensued, which then involved LTTE attacks on other militant groups as well. When Premadasa was elected to power as president of Sri Lanka in 1989, he felt the presence of the IPKF was a threat to national security and armed the LTTE to fight the IPKF. Furthermore, in 1990, the LTTE took control

<sup>11</sup> Rajan Hoole, Daya Somasundaram et al, *The Broken Palmyra: the Tamil Crisis in Sri Lanka – an Inside Account* (CA: The Sri Lanka Studies Institute, 1990).

of Jaffna and ousted thousands of Muslims from the North.<sup>12</sup> Once the IPKF had left, however, the truce between the GoSL and the LTTE quickly collapsed as the two parties began warfare. The recommencement of hostilities between the two groups in 1990 is known as Eelam War II. The commencement of Eelam War II meant a new phase of ethnic conflict for many collectives located in the North and East of Sri Lanka. It was a time of displacement, dislocation, and heightened nationalist politics. In the East, many Tamils, Muslims and Sinhalese had to leave the region, which had become a battleground as fighting between the Sri Lankan forces and the LTTE resumed. An estimated 1 million people were displaced for the East at this time, many of whom came to Colombo, to be housed in various camps for a number of years.

During these bloody years women were a target of IPKF and the LTTE violence. The chapter by Rajani Thiranagama entitled “No More Tears Sister: the Experiences of Women” in *The Broken Palmyrah* remains to-date one of the main documents on the lives of women in the Northern Province during that era. “No More Tears Sister” narrates some of the terrible fates that the people in the Jaffna Peninsula, especially women, endured at a time when the LTTE, the army and the IPKF attacked Tamil civilians. The stories of rape, women whose husbands had been disappeared, or shot were numerous. Many women had to visit IPKF, LTTE camps over and over, in the hope of obtaining some information of the whereabouts of their husbands, brothers and fathers. Thiranagama’s chapter also narrates numerous instances when villagers would complain to the IPKF and state forces of violations against Tamil women, only to be ignored. Those who complained were instead subjected to increased violence and harassment at the hands of the officers. At best, an officer who had violated a woman may receive a slight slap on the wrist, but nothing more. Thiranagama documented

<sup>12</sup> See UTHR(J) documents on this event, “Report No. 7: The Clash of Ideologies and the Continuing Tragedy in the Batticaloa and Amparai Districts” <<http://www.uthr.org/Reports/Report7/Report7.htm>>. See also S. H. Hasbullah, “Justice for the Dispossessed: The Case of a Forgotten Minority in Sri Lanka’s Ethnic Conflict,” in S. H. Hasbullah and Barrie M. Morrison (eds.), *Sri Lanka in an Era of Globalization* (New Delhi: Sage, 2004), 221-240.

that the general opinion of law enforcement officers was that men needed to release their battle frustrations by using women. An IPKF officer commented to her as follows, when provided with evidence of IPKF atrocities against women: “I agree that rape is a heinous crime. But my dear, all wars have them. There are psychological reasons for them such as battle fatigue.”<sup>13</sup> It is in this climate that Poorani was formed. It is also no surprise, then, that the women in Poorani never resorted to the legal system to obtain any form of justice.

I do not, however, wish to draw a picture of Jaffna as a bleak space where there was no feminist energy or critical praxis at work. Rather, Jaffna at the time seemed a politically charged space for human rights activists and feminists alike. There was rigorous, if contentious, feminist activity in Jaffna at the time, despite and perhaps because of the exigencies of ethnic conflict. In the early to mid 1980s, the Jaffna Mothers’ Front successfully and persistently protested the release of Tamil youth disappeared, abducted and killed by the state forces.<sup>14</sup> One of the main intellectual feminist groups of the time was the Women’s Study Circle that centred around the University of Jaffna. They worked and operated in a climate of fear and constant monitoring of their actions. Protest of any kind in the form of performance or publication was life threatening. Often people worked in a climate in which they realised that even minor criticism of the LTTE and Tamil nationalism would result in violent responses from the LTTE. Those who did actually risk speaking out against the conditions of the time did eventually risk their lives or had to flee. The power struggles between mainly the LTTE, the IPKF and the Sri Lankan state spelt out clearly the struggles and risks women took on a daily basis. They highlight again and again the violence that is inherently part of the state and non-state actors.

<sup>13</sup> Rajani Thiranagama, “No More Tears, Sister,” in Hoole and Somasundaram et al (eds.), *The Broken Palmyrah*, 315.

<sup>14</sup> The Jaffna Mother’s Front protested the abduction, torture and disappearances of Tamil youth in Jaffna in the early 1980s. There was pressure from the LTTE regarding the Mothers’ Front’s radical agenda in the subsequent years, and many of its original members had to leave the organization. Today, the Jaffna Mother’s Front exists as a social work organization that provides, for example, Jaipur artificial limbs for the disabled.

These risks are then also true for the women who were part of Poorani.

### Poorani: Women's Spaces in a time of conflict<sup>15</sup>

For most women, the home is a site of social relations that are structured by power and inequality. It is the location of unpaid

<sup>15</sup> Darini Senanayake Rajasingham's "Post Victimisation: Cultural Transformation and Women's empowerment in War and Displacement" in Selvy Thiruchandran (ed.), *Women, Narration and Nation: Collective Images and Multiple Identities*, is an example of the kinds of transformations women may obtain in their lives outside of a legal framework. Her ethnographic work is located in the IDP camps in the region of Vavuniya where large numbers of Tamils have been displaced by political violence. Here, "violence against women in this context is the stuff of rape, trauma and disappeared persons, torture, assassination and the gendered politics of body searches at check points usually conducted by armed youth who have been trained in the arts of terror, torture and degradation of their victims" (142). Rajasingham's study is on women heads of households as many of the men in their families have been killed or disappeared. Within these camps a new kind of community of the displaced emerged. Her study illustrates how within the tenuous and fragile conditions of their lives, they had demanded and obtained certain benefits and rights.

Her work looks at the manner in which women within these camps, contrary to the demands of "human rights discourse and humanitarian interventions [which] have significantly contributed to the tendency to view women as victims," have transformed their lives in the aftermath of violence. These women refused to accept the negative place attributed to them in Tamil society as widows, refused to remove symbols that maintained them as auspicious married women, found employment, and empowered themselves. Her work then pays careful attention to the changes in the lives of women who fall within political society. These women not only belong to the minority community in Sri Lanka, but are poor, and have faced harassment and violence at the hands of multiple groups that operate in the region. The land they occupied, at the time the study was done, was not their own even though they lived on it for years. Civil society interventions into their lives, while providing these women with basic material needs, had also contributed to their being treated as victims of ethnic violence. Rajasingham uses the language of agency to locate how these women negotiated their daily lives. They had used the conditions of their lives to transform themselves. I suggest also that some of their refusal to return home or desire to stay within the IDP camps, marks not only their rejection of development logic, but also the need to return to their homeland, to their nation and place. In a similar manner, the women at the Poorani shelter too sought to transform their lives, to empower themselves within the complex and contested space of a home.

labour – still mainly the responsibility of women, despite the rapid rises in women's waged employment in the last decades of the twentieth century. For too many women, too, the home is a place dominated by fears of domestic violence and abuse, where women and children are the victims of male aggression. It is also less private than many commentators assume... The home is also as Foucault (1980) argued so persuasively, the location of self-surveillance that ensures that even in the most private of acts the capillary structures of power of the modern state make certain that most behavior conforms to societal norms.

Linda McDowell, *Place and Space*<sup>16</sup>

Since sexism delegates to females the task of creating and maintaining a home environment, it has been primarily the responsibility of black women to construct domestic households as spaces of care and nurturance in the face of the brutal harsh reality of racist oppression, of sexist domination. Historically, African-American people believed that the construction of a homeplace, however fragile and tenuous... had a radical political dimension... [The] homeplace was the one site where one could freely confront the issue of humanization, where one could resist.

bell hooks, *Yearning*<sup>17</sup>

A shelter or home is undoubtedly a site of contestation. It is both a site of oppression and danger and a site of safety as illustrated by feminists McDowell and hooks. The three interviews with women who have been subjected to violence in de Alwis' chapter in this book provide examples of how the home was a site of violence for these women while simultaneously providing them with financial and emotional security. In this section, I wish to play with these two notions of home: a place of safety, and a site of fear. The home, here Poorani, is very much a site of safety away from homeland – nationalist – politics. Hence, Poorani was a site of humanization for women who were attempting to escape the

<sup>16</sup> Linda McDowell, "Place and Space" in Mary Eagleton (ed.), *Feminist Theory* (Oxford: Blackwell, 2003), 15.

<sup>17</sup> Ibid., 19.

oppressive conditions of their home lives and of homeland politics. It was a space that enabled a critique and disavowal of military and armed penetration into the shelter, albeit for a brief period of time. In a sense then homeland politics occupied the larger central stage of nationalist politics, while Poorani remained marginal in relation to it; it remained until its closure critical of nationalist politics and invested with different ideals of emancipation. The home or shelter here also functioned as both a private space that gave shelter and security for these women, and a public space that enabled organized feminist activism and forms of employment. It was a space in which the categories of ethnic identity = being Tamil, and gender = being women were subverted and questioned.

There is very little documentation of Poorani in the writings of the women's movement in Sri Lanka. Perhaps part of this is its very short existence – between 1989 and 1991. To my mind, its absence in many records of the feminist movement in Sri Lanka is somewhat of a question mark, one which I cannot answer at present. In a time when many women claimed to join various militant movements as a means of protection against state atrocities against women, Poorani offered an alternative space. Hence, to recall Guha's words, Poorani represented "a[n]... effort to cope collectively, if unsuccessfully, with a crisis."<sup>18</sup>

Let me begin this documentation by looking at what meanings the term Poorani may signify. Poorani means whole, complete and is symbolically used to suggest that the women who joined this shelter were whole, not spoilt. Some of the women who did join had been violated, came from abusive homes, or had serious psychological problems because of the violent happenings in Jaffna at the time. However, Poorani was a home for the women who had come there for multiple reasons, not only because they were victims of violence. Some women came simply because they could learn skills there.

<sup>18</sup> When I say unsuccessfully here, I do not mean that Poorani failed to provide space for women, or to empower women. Rather, I mean that its successful continuation and existence were unfortunately cut short as the narrative in this chapter will unfold.

The term Poorani (The name of the shelter symbolizes what this space meant) denotes the following:

1. It is a means of stating that these women were not marginal, unimportant, socially unacceptable women despite their traumatic experiences. In a society that often shamed violated women as impure and spoilt, the name Poorani insisted otherwise. It suggested instead that what was considered whole could be redrawn according to a feminist reading that rejected and challenged conventional notions of what it was to be a good and proper woman.
2. Many of the women who came to this shelter were of low class and caste. To call them whole was to call them complete and to refute social hierarchy.
3. Furthermore, many of the women came to the shelter from numerous backgrounds, classes, castes and with different experiences of war. Many of the women joined out of necessity rather than owing to a feminist ideology. Hence, Poorani created feminist subjects out of many of these differently located women. Through their engagements with feminists in spaces such as the Women's Study Circle in Jaffna University, these women became subjects or attained wholeness.
4. Poorani also suggested that this home would help heal and make whole women whose lives had been shattered. It was a collective space for regeneration, as in hooks' formulation of home.
5. Furthermore, if traditionally the home was the place for women, the designated private sphere to which women were confined, then Poorani as a shelter and a home used this metaphor of place to empower women and send them into the masculine public sphere strengthened and transformed into feminist actors.
6. If homeland politics, or the struggle for Tamil Eelam is a deeply masculine project that places women in specific ways, then Poorani was a home, a shelter that critiqued the very ideals of nationalist struggles.

Poorani offered women who were part of it, ways of coming to terms with and living after violence.

Poorani was a brainchild of Pat Ready and Rajani Thiranagama. Ready had met Thiranagama in London in the 1980s, and they had discussed the possibility of forming a shelter in Jaffna. Through a series of discussions with feminists who were part of the Women's Study Circle in Jaffna, it became a reality. The committee members of Poorani were some of the most vibrant feminists from the University of Jaffna at this time. Ready herself was a Sri Lankan Burgher who had married an Englishman and lived in England for a while. She had studied at the University of Peradeniya and had been long involved in Christian social work. Because of this, she had obtained an opportunity to study in England, and while there she met and married her English husband. While living in England she worked on women's issues for some years, especially on migrant women workers' rights. As one of my interviewees commented, she had felt that her work in England was not as urgent as coming to Sri Lanka. She had heard continuously of the violence in the North, had one day decided she would travel there, and had quit her job in England. She had traveled to Jaffna at a time when most people were attempting to leave it. Pat Ready and her role in Poorani are often forgotten in the chapters of feminist history in Sri Lanka. Poorani and the women who lived there owed a great deal to her courage and wisdom. As another of my interviewees recalled, after she arrived in Jaffna, Ready noticed how women who went to the Kachcheri to get birth certificates, death certificates, or apply for their entitled rations had to queue for hours, only to be dismissed carelessly by government officials. This prompted her to approach feminists in Jaffna to establish a space to strengthen and support women. Many noteworthy feminists of today were all part of the collective effort to realize Poorani, and many of the women who stayed there soon became active feminists.

Poorani started as a women's centre in April 1989 in Uduvil, Jaffna. While the shelter began with about four women, it expanded to accommodate about forty women within six months. Furthermore, these women commenced various development projects, ran a day

care, began home gardening, and generally provided services to women in the surrounding villages. An abandoned house was loaned to Pat Ready by a nun, Sister Theresa. Once the shelter commenced operations there, some of the villagers in the neighboring houses who had left returned to their homes, as Poorani started many activities in the area.

The geographical space of the shelter itself created room for action. There were huge gardens which the women used to grow produce; there were large rooms with high ceilings. There was an inner courtyard which was the meeting space for all house meetings, held on Sundays. As Amita constantly said, the entire place reflected for her the colour green, as it was always full of life and the large airy house enabled a feeling of space. This feeling was probably important in a time of tension and violence that allowed very little free movement in the streets and outside in the public. Poorani was not a self-contained space, and gained much of its energy from these women's interactions with university students, faculty, and village women in the neighbouring areas. These engagements and constant interactions enlarged the space of the shelter to become dynamic, porous and resilient. For example, when the IPKF began bombing Jaffna, the women at Poorani built a bunker in the compound of the shelter with the support of some university students. This simple act of digging marked the resilience of the shelter and the networks it enabled these women to build, even underground.

Within this shelter there were subtle ways in which the women gained a sense of community that was a challenge to society in Jaffna at the time. While one of the main activities of the shelter was income generation, through home gardening and running a kindergarten, the women in the shelter also wrote and performed their own plays, many of which were about the conditions in the area. They made decisions collectively. Pat Ready never saw herself as a head of the shelter, and always attempted to create a form of "horizontal comradeship" different from those of liberation struggles. Ready always had a bed in the dormitory rooms and did equal amounts of work with all the women. As Amita commented on her first encounter with Ready, "she is called aunty. I was very

surprised that she was called aunty. Normally in our culture, hierarchy is there no. We have to call Madam."

One of the small yet more radical changes these women made was that they dressed differently. Often within the space of the shelter they would wear shorts, especially when working in the garden. This would draw comments from neighbors, and the IPKF as this was unconventional dress for women in Jaffna. In a sense they refused to conform to the callings of nationalist rhetoric, that Tamil women did not wear shorts, and identified with a feminist ideology that suggested Tamil women could wear anything they wanted and could not be restricted to wearing only certain kinds of clothing.

Secondly, their hair would also draw critical comments from even the LTTE. As one of my interviewees stated,

*three or four of them were sent to Colombo to one of these hair-dressers to learn to cut hair. After a few weeks, they came back. They had to practice, so they cut each others' hair and they all had really short hair. This was something unusual for Jaffna because everybody had long hair. So, the LTTE area man came one day and said 'look we are not happy about this, you are changing the culture of Jaffna. All these people are with short hair, we don't want this to continue.' Then a few months later they had a big battle somewhere and they found that most of the women cadres died because their hair got entangled in the barbed wire. It's only after that they started having short hair.*

As this interviewee commented, short hair was seen as women transgressing Tamil culture much in the same way that wearing shorts was unsuitable. As Neloufer de Mel comments on her writings on the LTTE in *Women and the Nation's Narrative*, the LTTE had a conservative agenda in place in which women in the movement were allowed certain privileges, but not women outside the organization. She comments that "what is of interest is how, on the terrain of gender, those fighting the establishment, mirror it, conforming to a received conventionality despite their pronouncements to the contrary, in moves that hardly distinguish

them from the order they seek to dislodge."<sup>19</sup> Her example of how the LTTE in its "most bizarre manifestations of such containment... called ten commandments for women in the walls of Jaffna...[which stated that] women should wear traditional dress (sari), that married women should not be seen in public in housecoats...that women should wear their hair long and not ride bicycles."<sup>20</sup> This is perhaps reminiscent of the LTTE ban in April 2006 on women in the Eastern Province from working in NGOs, and the movement's attempts to curtail women's space by demanding that if women needed to work in NGOs this should be done under the strictest of supervision. The LTTE's dictates to women at Poorani were but another instance of attempts to contain women's subversive capacities. It is ironic that the LTTE decision to encourage their female cadres to cut their hair short owes its logic to military strategy rather than feminist ideology.

Before describing how the shelter influenced and affected my two colleagues, let me point to one important instance of Pat Ready negotiating with the LTTE. This example illustrates the manner in which she secured Poorani as a humanizing space while simultaneously dealing with the exigencies of nationalist politics. Sometime in 1990, the LTTE had called an area meeting, which Pat Ready and some of the other women in the shelter had also to attend. At the time, the LTTE was demanding gold sovereigns from most families as contribution towards the freedom struggle and war effort. Pat Ready spoke out and refused to give money to the LTTE. She commented on how she ran a shelter for women which had very little material wealth. After a lengthy discussion with the LTTE officers, they demanded the right to visit the home. She agreed as long as they did not bring arms into the space, came in the daytime and behaved respectfully. While the constitution of Poorani stated that the shelter was non-political, in that it did not belong to any of the political groups operating in Jaffna at the time, it was simultaneously a space for critical thought, especially of

<sup>19</sup> See Neloufer De Mel, *Women and the Nation's Narrative: Gender and Nationalism in Twentieth Century Sri Lanka* (Colombo: SSA, 2001), 212.

<sup>20</sup> Ibid., 215.

nationalism. Ready's refusal to pay anything towards the liberation struggle marks her disavowal of nationalist politics. Her concerns lay elsewhere, in a different kind of empowerment.

## Feminist Empowerment

In this section I will narrate how Amita and Raji joined Poorani, and how the shelter allowed them to become feminist actors. For Raji, especially, both the state and the LTTE had proven clearly how little they cared for people who operated within the margins of the state. Many of her experiences with the two had conditioned her attitude toward the state and de-facto state of the LTTE. For both of them, the lessons learnt during these early years enabled a shaping of their identities and an awakening of a feminist consciousness in them that they carried in their work after the shelter was closed. Furthermore, perhaps in ways that seem insignificant to the larger histories of national politics, they organized themselves to demand rights through collective action.

Raji described to me how she came to join Poorani. Her story recounts for me a telling fragment of feminist practices in the margins:

*In Jaffna I remember that my father used to fight with my mother. I remember that always. Always I think about that. I do not like this situation. Why they are fighting? I don't understand. My father used to do paddy field and business. He used to drink and he used to beat up my mother. Small thing. Curry he doesn't like, he beat her up. Always tension in the house. When my brother was big, he was down. He always had to stop the fighting. Then when I became big, my father didn't like to send me to school. After my O/Levels my father stopped me from studying. After my father died, the family had a lot of problems financially.*

*There were many problems in the 1980s after my father died. I remember bus strikes, protests. Everything is closed. Then I met one visitor, a nun. She came and visited me and helped me. She listened to what we like to do, what I want. I said I like to study.*

*Then she gave her address and asked me to visit. I visited her. This was in 1989. She told me we are going to start women's centre, and we can do whatever we like to do. She was in the team of people who started Poorani. Her house only she was going to give to the centre.*

*At this time I met Pat Ready who came from London and Rajani Thiranagama. They were discussing what they are going to do. They said it was war related because a lot of women were affected by violence, rape. I also joined with them. They had meetings with Shandiham which is a counseling centre there. It's still there. There I met different women who were interested in this work.*

Raji came to live and work with women in Poorani. Her time there enabled her to gain a feminist consciousness that she carried with her in the years to come. The training and empowerment she received at Poorani enabled her to be an active member of other feminists collectives both in Colombo and in the East.

Raji's life had been extremely difficult because of the actions of both the state and the LTTE. She lost her sister in 1996, her brother in 1997 and had to cope with the arrest of her sister's husband by the army in 1998. She recalls these experiences, and the conditions that created these situations. While in Colombo she, her friend Rani, who had also lived and worked at Poorani, and Rani's family were arrested because of a complaint made by an unknown person who suspected them of being LTTE. They were imprisoned for some days and only the urgent intervention of Colombo feminists like Sunila Abeysekera and Kumudini Samuel got her and the others released.

Of this difficult past, Raji's memories of her younger sister's death were most painful to her because of the conditions in which her death occurred.

*In 1996 she died. My mother did not see her during all this time. She went everywhere to ask. Finally, [the LTTE] sent her earrings to say they are having her. Then in 1996 she was staying in a camp and there was a bomb blast. They were making bombs and a bomb*

*burst. Then she and her friends all died. The clip went off.*

*Our brother [had] put her in a boarding. We were scared that if she stayed at home, she will change. She was studying at the time. Hostel is more security.*

*When my sister died I did not know. I went to see my home. I went by flight and when I went home they were crying. Then only I know that she has died.*

In 1990 Raji fled Jaffna for Colombo, as the LTTE took control of the region. Raji's sister was recruited by the LTTE in 1994 at 13 and died while making bombs for the movement. During the period between 1990 and 1995, Raji was unable to visit home because the LTTE had taken control of large sections of Jaffna and links between the south and north were severely restricted. As a result, it is only when she visited home in 1996 that she learnt her sister had died. In her sister's case, the family could not mourn her death as her body was not given to them. Furthermore, Raji's process of mourning came long after her sister's death, and in a sudden visit home once the travel routes were opened again.

In the subsequent year Raji's brother, who had been living and working in Colombo since 1993, committed suicide. By this time, Raji had moved out of Colombo. Like the death of her sister, this death too led to many frustrations and deep sorrow for her and her family. She recalls her brother's death in this way:

*My younger brother, he came to Colombo. My mother sent him because she thought he will be taken. He was staying in a hotel. He came in 1993, I think. He is working here. In 1997 he has some problem, he commit suicide. I don't know what happen. In the restaurant he used to do accounts and some room responsibility. He was alone, without family. He was 25 when he died. I was in Colombo and when I visit he was quiet, no talk. Then when he died, hotel people call me and tell me he has committed suicide. Don't know what happened. He had problems with the LTTE. He was with them for sometime, then he ran away. He joined in 1992 and left soon. They want to send him to the front line. He*

*was so frightened, he ran away. When he died I was so frustrated. I can't take the body home to Jaffna. I had to bury him in Colombo. My friends came to support. Message also we couldn't send. Then Adavan did radio message to them.*

With her brother too, she had to cope with the loss and the process of mourning without her family. Her mother in Jaffna could not afford or risk travelling to Colombo, and the body could not be taken back. Raji's brother's involvements with the LTTE had forced him to leave his home and hide, or be captured and be dealt with as a traitor. Unable to deal with the loss of his younger sister, fear and the meager conditions of his life, Raji's brother chose the option of suicide. Amita recalled that he lived in a dingy room with no sunlight and air. He had had a very difficult time there. Raji heard he had taken poison and was in the General Hospital and had gone immediately to be with him. As a Tamil it had been difficult to visit the hospital at the time, as the security officers did not like Tamils visiting the hospital regularly. After a few days, he died. Again, she was forced to cope with mourning and loss in a fragmented and incomplete way. What became clear to me as Raji and Amita narrated these incidents of Raji's past was that friends and colleagues made during her time at Poorani were her support system during her brother's death. Many of them had by this time moved to Colombo and came from other places to support her. It is they who were there with her when she cremated her brother's body in Dehiwela, Colombo. Adavan who was a student from Jaffna University had befriended these women while they were at Poorani. Her only sense of justice was the support she obtained from these friends and through her work as a feminist. Her brother in law too had been arrested by state forces under suspicion of being pro-LTTE.

Her experiences show clearly that all parties involved in a power struggle over control of Sri Lanka continuously monitor, suspect and interrogate the citizens they claim to represent. Raji and her family had been brutally subject to violence by both parties.

The other member of Poorani who I spoke to at length was Amitha. She too had a complicated and difficult life in Jaffna. She narrated to me her childhood and upbringing in the following



manner:

*I am from Jaffna. I was born in a place near the Vaddukodai area. Then I studied up to A/Level at Victoria College in Jaffna. After my A/Level I learnt typing and short-hand.*

*I grew up with my grandparents. In my family, I have two brothers and one sister. I was staying with them. I did not have anything to do after my A/Levels. In 1989 I heard about the Poorani Women's home. My aunty is a teacher in a school. She said she knows about Poorani and if I want work, I can stay there and work. I applied for a job after. That's in Uduvil. Near the Manipay road.*

*Actually at the beginning I want to have a job. That's my reason. I stayed with my grandparents and they are very traditional and very narrow. Everything controlled by them. Can't do anything. Even if my uncle's friends come to my house, can't make a tea for them.*

While Amita joined Poorani initially to escape the restrictions of her life, in time the shelter came to mean a great deal more to her. In the two years of Poorani's existence, she became deeply influenced by feminist ideologies that would shape her life in the years to come. She joined initially as a kindergarten teacher, then later Pat Ready asked her to take on more and more responsibility. She came to do administration work in the centre and work with village women in the neighboring villages. As the last section of this paper will detail, she obtained enough confidence to ultimately get out of Jaffna in a time of increased LTTE control of Poorani.

### Collective Resistance

In this section, I will briefly analyze and try to understand the collective spirit that women at Poorani developed to help them negotiate spaces for themselves. Many of the women involved in these programmes were "only tenuously, and even then ambiguously and contextually, rights-bearing citizens in the sense imagined by the

constitution."<sup>21</sup> The kinds of collectives that Chatterjee describes as political society operate very differently from civil society. They "pick their way through this uncertain terrain by making a large array of connections outside the group – with other groups in similar situations, with more privileged and influential groups, with government functionaries, perhaps with political parties and leaders."<sup>22</sup> In a way, these kinds of negotiations are similar to the efforts that the women involved in Poorani made.

Of the incidents I will analyze below, one of the initial efforts made by the women in Poorani was to prevent the IPKF from returning to the shelter. As I stated earlier, this area was known as a site of many rapes. These rapes had become so conspicuous that villagers in the area started leaving not only out of fear of rape, but also because of civilian intimidation carried out by the IPKF forces just prior to 1989. Hence, when this house re-opened as a shelter, it became again a target of Indian army interference. As Raji recalls,

*When the home first started there were only a few of us. I lived there. Rajani used to come and visit us all the time. Sumathy and Vasuki used to stay with us often. Sometimes the army commander would come and harass us. They knock on the door and ask us to open the door. They wonder why we are there. They used to drink and come at night. One day the watcher, he used to drink a lot, he took the commander inside. Then Rajani and Pat went and spoke to the commander and they said anybody can't come into the home with arms.*

Subsequently, Raji, Rani and some of the other women in the shelter had to move to a neighbour's house temporarily. By effectively strategizing and using their positions of authority, both Rajani Thiranagama and Pat Ready stopped army interference into the shelter. After discussing the issue at the shelter with all the

<sup>21</sup> Chatterjee, *Politics of the Governed*, 38.

<sup>22</sup> *Ibid.*, 40-41

women, Ready and Thiranagama decided to visit the IPKF camp.<sup>23</sup> Thiranagama was a doctor and taught at the medical faculty in Jaffna. She had some influence and say. Pat Ready was a middle class woman, a British citizen who had some space to refuse intimidation. They both used their class and citizenship status to stop IPKF interference in the shelter. These efforts mark the beginnings of further organization and resistance. They illustrate how in a time of increased tensions, strategic action can enlarge collective space. Soon after this incident of entry into the home, there was a prominent “no guns inside” sign put up outside the shelter.

While carrying out work at the shelter, many of the women were trained in typical skills advocated by developmental organizations. What I narrate now is another effort at negotiations that these women made. Once the centre became somewhat established, they started working with village women in the area, helping them to organize and demand certain political rights. As Raji narrates,

*We started a lot of programmes. We started school for children, vocational training programmes, village women programmes. We would take them to Kachcheri and talk to them. We did carpentry, masonry training. The technical college of Jaffna trained them. Then the LTTE got very tense about us. We were wearing shorts, doing a lot of things. They don't like it.*

Added to this kind of work, the women who lived in Poorani along with the village women started collectively using the organizational structure at Poorani to negotiate with the Kachcheri employees, international donor agencies, and non-state groups like the LTTE. One such example was the manner in which the women who worked at Poorani, women like Amita, organized village committees to ask for basic facilities like toilets in the villages.

<sup>23</sup> In the discussions I had of this incident, one of the women at Poorani said Pat was not present in Poorani at the time, while another affirmed her presence there. I have listed her as present as some of the details of how they both went to the camp to speak to the commander were very vivid in the mind of the interviewee who told me this.

The primary instance of such collective organization was when women in various villages desired to visit Colombo and used their collective strength to obtain passes. The village women managed to obtain passes to travel to Colombo during a time when doing this was becoming more and more difficult. Obtaining passes to travel to the South was an extremely complicated process between the years of 1990 to 1995 when the LTTE had control of Jaffna.

Once the LTTE gained control of Jaffna in 1990, they employed a strict policy of pass systems that restricted the movement of Tamils to the South. A person would have to apply for a pass at the nearest LTTE office and explain why they wished to travel south. According to the LTTE this was to “arrest the tide of Tamil youth traveling to Colombo enroute to western countries seeking asylum....The objective of the LTTE behind the pass system was to stem the exodus of people out of the country, preventing a breakdown of the fabric of society.”<sup>24</sup> As young boys and girls became increasingly vulnerable to recruitment, parents became more desperate to get their children out of the North and East. Again, the rigid pass system attempted to stop such escape. If a person wanted to travel to the south, then the LTTE would inquire into the reasons. If the reason seemed acceptable, such as going for medical care in case of sickness, then a pass would be issued. This would only be done, however, once a relative stood as guarantor for the person who was issued a pass. Therefore, if X wished to travel to the South, Y had to sign on X's behalf to ensure that X returned. If X did not return, then Y would be interrogated and held accountable. Therefore, obtaining permission to travel south was a difficult task.

As Amita recollected, the Poorani employees had told the village women that they would have to organize themselves to obtain passes. Poorani could only provide the necessary funds, and other services required for the trip. Hence, about twenty five women from the village women's committees decided to act collectively to negotiate space for themselves to travel to the South. This was the

<sup>24</sup> Adele Balasingham, *The Will to Freedom: An Inside View of Tamil Resistance* (England: Fairmax, 2001), 274.

first time they were going to leave Jaffna. They first visited the LTTE office in Uduvil and demanded a pass to travel to the south. They had all the necessary documentation explaining why they wished to travel South. The LTTE sent them to the main pass office in Kokuvil. There too, they were told to come back again and again. Finally, they were asked to go back to the office near Uduvil. There too the LTTE kept delaying. Ultimately, the women decided they would not leave the office until they were told clearly if they were going to be given a pass or not. If not, they wanted an explanation. They mounted pressure on the LTTE and spoke out firmly about wishing to go south. If Pat Ready started Poorani because she saw how badly women were treated in these kinds of situations, here was an occasion when these women, through collective effort resisted being dismissed. Eventually, because of this pressure, the LTTE gave all twenty five of them passes.

As Amita recalls,

*They were very surprised to see Colombo. We met with a Sinhala women's group. This was near the Wattala area. We went together to different places. They visited Sinhala villages. They learnt everywhere the same problems. They thought in Colombo, government is supporting the Sinhala people. When they went to the villages, they saw the same problems there. They went to Kandy also. They observed the different environments.*

For these village women, this was their first exposure to the south. They saw quickly through these visits that women in the south shared many of the same fates as them. In a sense it was a realization of gendered and class issues of numerous women in the south. This visit helped subvert the significance of the category of ethnicity and open a space for these women to connect with women in the south by understanding structures such as gender and class. It was a moment of reflection for these women from Jaffna.

I wish to end this section with one small detail that Amita recounted to me of the actual passage to Colombo. All the women

had to use the bus services provided by the LTTE as they could not hire private vans at the time. They would come to the border area and be checked for passes and then be allowed to enter the government controlled area. On their trip, Amita remembers how a woman with a little baby simply joined the group. She had no pass. This scared many of the other women, as it may have jeopardized their own visit if they were caught with this woman without a pass. Amita recalls speaking to her, and asking her what she was doing. Eventually, the group decided to accept the woman and child into their midst. The LTTE cadres at the checkpoint did not check so many women carefully, and the woman and child managed to slip past the LTTE, out of their control.

### **The end of one space and the beginnings of others**

Eventually, the success and strength of Poorani proved to be too much for the LTTE. Perhaps the alternatives it offered, and the radical feminist outlook of women who ran the shelter became too threatening for this authoritarian regime. As Raji commented,

*The day before Rajani died, she came to visit us. We were very young and we did not understand political situation. I was very sad as I was very close to Rajani. When she died there was a protest in Jaffna. After that we were very frightened. Everybody left then. Finally, we had only Selvi and Sivaramani with us. They used to come and stay with us, we were so frightened. At that time Pat Ready also went for the holiday. Only us, all young women were there. Then the LTTE come and check. They used to go through everything. They went through the accounts and all the programmes that we do. They want to take over. Then they want money. They want to run our home. Then Rani also left, she came to Colombo. Amita was also there. They said to go and get money from Colombo. They gave pass to Colombo to go and come. She was so frightened. She was also very young. They put a spy in the home to check on us. Then everyone started leaving. Then they took over and started running a center for injured people. Then it existed for one or two years. Then they shut it down. Now there is nothing.*

Rajani Thiranagama, who was an active member of the shelter, was gunned down on her way home from the medical faculty on the 21<sup>st</sup> of September 1989 by the LTTE. Some time later Selvi was taken by the LTTE. Her disappearance was a traumatic event in the memory of many of the feminists in Jaffna at the time. As one interviewee commented,

*Selvi was the most traumatic event. She was an asthma patient and she did not have any drugs. People would come and tell us, on such and such a night she was brought to the hospital and then taken away. It was all done bush bush so it did not leak.*

The LTTE would slip her into hospital and out as her asthma worsened. Eventually, others heard less and less of these quiet visits to the hospital and at one point they stopped. Selvi disappeared and was never found. In this climate of violence, Sivaramani committed suicide.

As all this violence unfolded and the LTTE gained control of the Northern Peninsula, no space was allowed for any independent activity. The nationalist LTTE demanded that all activities of the Tamils be controlled by it. In this climate, Poorani became a threat, its women too radical and unwilling to join the movement. Rani had to leave as her life was under threat. Pat Ready too was advised to leave and move to Colombo. At the time she did not tell the young women in the shelter that she had to leave, but rather told them that her time there was over, and that it was up to them now to run the shelter. The committee members of the Women's Study Circle at Jaffna University had to disperse. In this climate the young women at Poorani felt alone and extremely vulnerable. Amita and Raji found it increasingly difficult to stay on. The LTTE demanded that money due to the shelter come to it.

As is the practice of the LTTE, it operated by gaining access to the shelter indirectly. Initially, a pastor and his wife became friends with some members of Poorani, and obtained information about the shelter and its members indirectly. As the

political climate deteriorated, especially after the assassination of Rajani Thiranagama, and as the LTTE took control of Jaffna, the pastor and his wife quietly moved into the shelter. The wife took control of the organization funds and wrote to the donor agency that supported Poorani asking for more money. This woman was said to have objected to the girls' behaviour and did not like the amount of freedom given to them, especially that they dressed as they pleased. The pastor was violent with the young women and is said to have assaulted some of them.

The donor agency that supported Poorani had been informed of the new administration and refused to give money so easily, asking that there be a show of expenses before any more funds were released to Poorani. It was on the pretext of doing this that Amita obtained a pass and traveled to Colombo in April 1991. On obtaining the release of further funds for Poorani, she returned to Jaffna. Then in September 1991, she obtained a pass again and this time she stayed in Colombo. Raji had by this time managed to obtain a pass and had already moved to Colombo. Eventually the different women who had lived in the shelter for nearly three years left it in 1991, going their different ways. Some travelled to western countries and escaped from the consequences of ongoing ethnic conflict, some moved back home, and some came to Colombo.

Poorani functioned for a few years under the ownership of the LTTE's development organization, the Tamil Rehabilitation Organisation (TRO), as a shelter for those injured in combat. Its radical agenda of empowering women in resistance to national politics, and the attempt to secure a safe space for collective organization had come to an end. A few years later, it was abandoned. Today, nothing of Poorani, except the physical structure of the house, remains.

While it was the end of a dynamic feminist collective in Jaffna, it was also the beginning of different forms of feminist action for many of these women. The main protagonists in this story, Amita and Raji, moved to Colombo where they became part of another feminist organization working with displaced women from the North and East. Pat Ready returned to Sri Lanka intermittently

after 1991 and continued to work with feminists in the south until her death in the late 1990s. Despite the closing down of Poorani, what I believe this chapter illustrates is the spirit of resistance Poorani gave many of its residents and associates that continued for years to come. I wish to close this chapter by recalling Indian feminist scholar Nivedita Menon's writings, as I think they capture best the collective and individual efforts made by those who created and lived in Poorani:

I understand emancipation as a process without closure, it is not a goal that we can reach. Each victory becomes a site of fresh cooptation, but conversely too, each defeat releases new potential to resist oppression. To move away from legal and state-centred conceptions of political practice is to recognize political practice as the perpetual attempt to eliminate oppression rather than the achievement of this elimination. Nevertheless, "emancipation" remains a horizon that should drive our political practice.<sup>25</sup>

## Appendix I

### Adeline Vitharne: the storyline of events

Shanti Adeline Vitharne was born on June 10<sup>th</sup> 1937 in the village of Palletalawinne in the Kandy District to baker Abraham Vitharne and Punchimanike. She had an older sister named Agnes. Palletalawinne was the family's eventual residence and where Adeline continued to live till her death in 1959.

While travelling on a train on 2<sup>nd</sup> November 1956, Adeline Vitharne met a young man named Jayalal Anandagoda (nee Gernel Anandagoda). She along with her father and grandmother had caught the train to Kandy from the Fort railway station. During this train journey he conversed with Adeline and both of them planned to meet again in the near future. At this time, and for some time to come, Anandagoda gave his name as Lal Attapattu and stated that he was an employer of the Bank of Ceylon.

For some time afterwards, Adeline and Lal Attapattu (Anandagoda) continued as lovers and often met at the Kadugannawa Guest House. By December Adeline was pregnant with child and after discussions with Lal and Adeline's family, Lal had promised to marry Adeline once he had finished his exams. During the months of her first pregnancy Lal refrained from visiting Adeline and her telegrams and letters to an address in Panadura did not bring forth any response from Lal. Sometime during the last two months of Adeline's pregnancy, she and her mother Punchimanike travelled to Panadura in search of Lal. At this point they met Anandagoda's friend Muttulingam who denied knowing a Lal Attapattu. A few days later Adeline Vitharne gave birth to a child. Later

<sup>25</sup> Nivedita Menon, *Recovering Subversion: Feminist Politics Beyond the Law* (New Delhi: Permanent Black, 2004), 20. I wish to thank Nivedita Menon for the time she spent at ICES, Colombo in 2004. The time she spent with me and teaching a few of us has been invaluable. Many of her ideas and much of her theoretical outlook have inspired this chapter, though the flaws in this chapter are entirely mine.

<sup>1</sup> I am thankful to A. C. Alles' *The Wilpattu Murder Case*, from which much of the carefully documented background information has been gathered. Some of the events of the murder case, which were consistently reported in the newspapers at the time, differ from Alles' statements. As these two sources are the main forms of documentation available on the case, I have tried to use only information that both sources state as the same, and do not contest.

Adeline would visit Muttulingam again, learn of Lal Attapattu's real name, and realize that he was a teacher at the Nanodaya College, Kalutara.

In June 1958, Adeline finally traced her lover. At this time Adeline was working in Colombo, but Anandagoda had renewed his promises to marry her, and convinced her to give up her employment in Colombo. By this time Anandagoda had already become engaged to a young woman living in Kalutara of the same social standing as him. Hence, Adeline Vitharne would simply be an obstacle to his realizing his dreams. However, from this time onwards the two became lovers once more. By October 1958, Adeline was again pregnant with a second child.

Anandagoda was a teacher at the Nanodaya College in Kalutara, but was also a car dealer and ran a guest house in Moratuwa called The Park-view Guest House.

Adeline Vitharne, by Alles' accounts and newspaper reports, seemed to be determined to marry Anandagoda and rise above the scandal that was facing her in her home town. The continued threats and payments that Anandagoda had made to her had no effect as she continued to demand he marry her. He was becoming desperate to get rid of her.

It was at this point then that he set up a plan to intimidate and humiliate her further. In November 1958 Anandagoda arrived with two women who he claimed were his mother and sister. Adeline, Anandagoda, and these two women met at the Kandy railway station and travelled to Punchimenike's house. Here, Anandagoda's mother apologized to Punchimenike for the shameful treatment his son had put her and Adeline through. They claimed that they had come to take Adeline home with them and get both Adeline and Anandagoda married. (By this time Adeline's father Abraham had abandoned the family and left for his native town Gongala because of Adeline's actions.) Adeline left her child behind, and travelled with the other three to the village of Walakuumbura close to Alawwa. Anandagoda left Adeline with the two women. It turns out that the woman

who claimed to be Anandagoda's mother was actually a woman named Millie who ran a "house of ill fame"<sup>2</sup> there. Adeline stayed there for 12 days, and then returned home.<sup>3</sup>

Despite this episode Adeline was still determined to marry Anandagoda. She visited him again, but he remained unmoved by her pleas. Her persistence was becoming a nuisance to him as he and his fiancée had fixed a date for their marriage in August 1959. If Anandagoda's fiancée were to find out about his affair with Adeline, the wedding would be cancelled.

On March 2nd 1959, Adeline visited Anandagoda in Kalutara. Anandagoda, with the help of Podisingho Perera (one of Anandagoda's workers), housed Adeline for a week at the house of Podisingho's brother, Alo Singho, in Kalawellawa in Kalutara.

On March 14th 1959, Anandagoda picked Adeline from Alo Singho's house on the pretext of finally marrying her. She left Alo Singho's house in Anandagoda's fiat car with Podi Singho accompanying both of them. He later picked up Sirisena, a well known chandiya, who worked as a security guard at Anandagoda's guesthouse in Moratuwa, to accompany them on their journey.

At approximately 10 pm that night, Anandagoda stopped at a restaurant in Puttalam for dinner. During the meal, Anandagoda drugged Adeline before they started their onward journey through the Puttalam-Anuradhapura road. While driving toward the Wilpattu National Park, Adeline had started perspiring and struggling against the drugs she had been given. According to Anandagoda's accomplices he had asked them to hit her on the head with an iron rod to quieten her down. Sirisena hit her hard on the head after which she had lain quietly for a while. She struggled only once after this with the use of her umbrella as defence. Later, the umbrella was found close to where her body lay.

<sup>2</sup> Alles, *Wilpattu Murder Case*, 41.

<sup>3</sup> Alles' book and newspaper reports do not actually venture into detailed discussions on this point.

Close to the small village of Timbiriwewa, they lowered Adeline's body close to the car and drove over her four times. After this Anandagoda returned to Kalutara in the early hours of the morning.

Adeline Vitharne's body was found the very next day by a truck driver, and descriptions of the body were placed in the newspapers on March 16th and 17th. Her body was soon identified and Anandagoda, Podi Singho and Sirisena were tried at the Anuradhapura Assize a few months later. A.C. Alles was the acting solicitor general for the Anuradhapura jurisdiction at the time.

## Appendix II

### Draft

*8<sup>th</sup> March 2001*

### Domestic Violence Act<sup>1</sup>

AN ACT TO PROVIDE PROTECTION TO VICTIMS OF DOMESTIC VIOLENCE; TO EMPOWER COURTS TO GRANT PROTECTION ORDERS; AND TO ENSURE THE LAW COMPLIES WITH SRI LANKA'S INTERNATIONAL OBLIGATIONS

### Preamble

Recognising that domestic violence is a serious social evil and is found in all levels of Sri Lankan society; that it is a violation of the human rights of the victim; that it affects the health, safety and welfare of society; that it results in psychological problems, lost productivity and intergenerational violence; that domestic violence takes on many forms and may be committed in a wide range of domestic relationships; and that the remedies currently available to the victims of domestic violence are not effective;

Recognising that while men are also victims of domestic violence, it is women and girls who are among the majority of the victims of domestic violence;

And whereas the Constitution of Sri Lanka guarantees equality and non discrimination, requires the State to foster respect for international law and treaty obligations, and the Government of Sri Lanka has ratified the Convention on the Elimination of All Forms of Discrimination Against Women and the Convention on the Rights of the Child, and signed the Declaration on the

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<sup>1</sup> This bill was drafted through consultation with other women's groups by the Women & Media Collective, Colombo, Sri Lanka

### Elimination of Violence Against Women;

And having regard to the Women's Charter which requires the State to take all measures, including legislative measures, to prevent violence against women, including violence in the family;

Be it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows:

#### 1. Short title and date of operation

This Act may be cited as the Domestic Violence Act No xx of 200x and shall come into operation on such date as the Minister may appoint by Order published in the Gazette.

#### 2. Right to be free from domestic violence

Every woman, man and child has the right to be free from all forms of domestic violence. This includes all forms of physical, sexual, psychological, emotional, verbal and economic abuse. What constitutes domestic violence is more fully described below.

#### 3. Domestic violence

Domestic violence includes the following acts of violence which take place in the context of a domestic relationship as defined below:

- a. Physical abuse.
- b. Sexual abuse.
- c. Emotional, verbal and psychological abuse, which would include patterns of degrading or humiliating conduct towards a complainant, such as repeated insults, repeated threats to cause emotional pain, whether to the complainant or to some other person, and the repeated exhibition of obsessive possessiveness or jealousy.
- d. Economic abuse, which includes the unreasonable deprivation of economic or financial resources which a complainant requires, such as household necessities, mortgage payments and rent payments, wages in the case of household workers, and the unreasonable disposal of household effects or other property, in which the

complainant has an interest.

- e. Intimidation.
- f. Harassment, which includes repeatedly watching or loitering outside a building where the complainant resides, works, studies or carries out a business, repeatedly making telephone calls, sending faxes, electronic mail, or packages which induce fear in the complainant.
- g. Stalking.
- h. Damage to Property.
- i. Entering a complainant's residence where the respondent and complainant do not share a common residence.
- j. Unreasonable demands on household workers, including long and uninterrupted hours of work without rest, and demands to perform tasks that are beyond the capacity of the complainant.
- k. Poor conditions of living for household workers, including the deprivation of food or medical care, the deprivation of rest, leisure and fresh air, and the prevention of household workers from communicating and meeting family, relatives or friends.
- l. Any other controlling or abusive behaviour where such conduct harms or may cause harm to the safety, health or well being of the complainant.

and harm, or have the potential to harm, the safety, health or wellbeing of the complainant.

#### 4. Domestic Relationships

A domestic relationship includes a relationship between a complainant and a respondent that arises in any of the following ways:

- (a) they are or were married to each other, including marriage according to any law, custom, religion or practice;
- (b) they (whether they are of the same or of the opposite sex) live or lived together in a relationship in the nature of marriage, although they are not, or were not, married to



- each other, or are not able to be married to each other;
- (c) they are the parents of a child or are persons who have or had parental responsibility for that child (whether or not at the same time);
- (d) they are family members related by consanguinity, affinity or adoption;
- (e) they live or lived together as part of a joint or extended family;
- (f) they are or were in an engagement, dating or customary relationship, including an actual or perceived romantic, intimate or sexual relationship of any duration;
- (g) they share or recently shared the same residence, residential facility or household;
- (h) they were or are, in the nature of an employee – employee relationship, where the complainant works as a household worker in a residence, household or other place occupied, shared or frequented by the respondent, whether the work is performed for wages or not.

## **5. Application for a Protection Order**

- (1) Any complainant may apply to the court for a protection order.
- (2) Notwithstanding the provisions of any other law, an application may be brought on behalf of the complainant by any other person, including a counsellor, social worker, medical officer, or other person who has an interest in the wellbeing of the complainant.
- (3) Provided that the application must be brought with the written consent of the complainant, except in circumstances where the complainant is:
  - (a) a minor;
  - (b) mentally retarded;
  - (c) unconscious; or
  - (d) a person whom the court is satisfied is unable to provide the required consent.
- (4) Notwithstanding the provisions of any other law, any

minor, or any person on behalf of a minor, may apply to the court for a protection order without the assistance of a parent, guardian or any other person.

- (5) The court must as soon as is reasonably possible, consider an application submitted to it in terms of the above section.
- (6) The court may consider additional evidence as it deems fit, including oral evidence or evidence by affidavit, which shall form part of the record of proceedings.
- (7) The court may seek the opinion of a social worker, a counselor, psychologist, psychiatrist, medical officer, or any other person in making an order under this Act.
- (8) Ordinarily, an application for a protection order must state:
  - (a) the facts on which the application is made;
  - (b) the particulars of the complainant and the respondent;
  - (c) the police station or stations at which the complainant is most likely to report a breach of the order

## **6. Issuing of a Interim Protection**

- (1) If the court is satisfied that there is prima facie evidence that:
  - (a) the respondent is committing, or has committed an act of domestic violence; and
  - (b) hardship may be suffered by the complainant as a result of such domestic violence if a protection order is not issued immediately;
 the court must, notwithstanding that the respondent has not been heard, issue an interim protection order against the respondent.
- (2) An interim protection must be served on the respondent and must call upon the respondent to show cause on the return date specified in the order why a protection order should not be issued.

- (3) the court must forthwith forward the interim protection order together with a warrant of arrest to the police station or stations of the complainant's choice and the police officer in charge of such station must ensure that the order is served on the respondent.
- (4) If the court does not issue an interim protection order in terms of the above section, then the court must ensure that certified copies of the application and any supporting evidence be served on the respondent, together with a notice calling on the respondent to show cause on the return date specified in the notice, why a protection order should not be issued.
- (5) Provided that the return date shall not be more than three weeks from the date of application of the interim protection order.
- (6) An interim protection shall have no force until it has been served on the respondent, unless the court is satisfied that the respondent is evading the serving of the order

## 7. Issuing of protection order

- (1) If the respondent does not appear on a return date and if the court is satisfied that:
  - (a) the interim protection order or notice of serve has been served on the respondent;
  - (b) and the application contains *prima facie* evidence that the respondent has committed or is committing an act of domestic violence;
 the court **must** issue a protection order.
- (2) Where the respondent appears on the return date in order to oppose the issuing of a protection order, the court must proceed to hear the matter.
- (3) Where the respondent appears on the return date and does not admit the act or acts of violence, but does not oppose the issuing of a protection order, the court must issue a protection order.
- (4) In hearing the matter the court may consider any evidence

previously received and such further affidavits or oral evidence as it may direct, which shall form part of the record of the proceedings.

- (5) Where a respondent is not represented by a legal representative, the court may, on its own accord or on the request of the complainant, if it is of the opinion that it is just or desirable to do so, order that the examination of witnesses, including the complainant, be not conducted by the respondent.
- (6) In such a case the respondent shall state the question to court and the court shall repeat the question accurately to the complainant or witness.
- (7) The court must, after a hearing is completed, issue a protection order if it finds, on a balance of probabilities, that the respondent has committed or is committing an act of domestic violence.
- (8) Upon the issuing of a protection order the court must forthwith cause;
  - (a) the original of such order to be served on the respondent; and
  - (b) a certified copy of such order, and the original warrant of arrest to be served on the complainant.
- (9) The court must forthwith forward certified copies of any protection order and of the warrant of arrest to the police station or stations of the complainant's choice.

## 8. Court's powers in respect of a protection order

- (1) The court may, by means of a protection order or interim protection order, prohibit the respondent from:
  - (a) committing any act of domestic violence;
  - (b) enlisting the help of another person to commit any such act;
  - (c) entering a residence shared by the complainant and the respondent; provided that the court may impose this prohibition only if it appears to be in the best interests of the complainant;

- (d) entering a specified part of such a shared residence;
  - (e) entering the complainant's residence;
  - (f) entering the complainant's place of employment;
  - (g) entering the complainant's school;
  - (h) preventing the complainant who ordinarily lives or lived in a shared residence from entering or remaining in, the shared residence or a specified part of the shared residence;
  - (i) occupying the shared residence;
  - (j) committing acts of violence against any other person, whether it be a relative, friend, social worker or medical officer, who may be assisting the victim;
  - (k) preventing the complainant from using the family car;
  - (l) telephoning or in any other way attempting to establish contact with the complainant;
  - (m) selling, transferring, alienating or encumbering the shared residence in any way;
  - (n) selling jointly owned family assets or assets which although are in the respondent's name, are assets in which the complainant has an interest;
  - (o) working a household worker for long hours or in any way subjecting her to physical sexual, emotional, verbal or economic abuse;
  - (p) committing any other act as specified in the protection order.
- (2) The court may impose any additional conditions which it deems reasonably necessary to protect and provide for the safety, health or wellbeing of the complainant.
  - (3) The court may issue directions to ensure that the complainant's physical address is not disclosed, if disclosure may endanger the safety, health or wellbeing of the complainant.
  - (4) In addition to the above order, the court may order:
    - (a) The respondent to pay emergency monetary relief to the complainant within a specified date, taking into account the complainant's and respondent's financial condition.

This should also take into account any medical or dental expenses incurred by the complainant, loss of earnings, if any, and relocation or other expenses incurred by the complainant.

- (b) The respondent to pay rent or any mortgage payment on a house, keeping mind the financial resources of the complainant and the respondent.
  - (c) The respondent to secure alternative accommodation for the complainant.
  - (d) The payment of punitive damages where the court considers it appropriate. This will take into account the gravity and severity of the abuse and will be in addition to other forms of monetary relief the court may order.
  - (e) The payment any remuneration, wages, salary or other dues that may be owed to a household worker.
  - (f) The police to seize any weapons that the respondent may have in his or her possession.
  - (g) The police to accompany the complainant to any place to assist with the collection of personal property.
  - (h) The respondent alone, or the respondent and the complainant, to attend mandatory counselling sessions, psychotherapy or other forms of rehabilitative therapy.
  - (i) The complainant be placed in a shelter to provide her or him temporary housing where they will be counselled and informed of the alternatives available to them.
- (5) The court may, on the failure of the respondent to:
    - (a) pay emergency monetary relief; or
    - (b) the rent or mortgage payment on a house; or
    - (c) the wages or salary due to a household worker; or
    - (d) any other financial payment that the court may have imposed;
    - (e) direct an employer or a debtor of the respondent, to directly pay to the complainant a part or the whole of such financial relief that the court may have ordered.

## **9. Rights of Children**

- (1) Where the complainant and the respondent are the parents of any child, or have or had, parental responsibility with regard to any child, the court may, if it is in the best interests of the child:
  - (a) refuse the respondent contact with such child; or
  - (b) order contact with such child on such conditions it may consider appropriate; or
  - (c) order the respondent to pay emergency monetary relief or such other financial relief, for the care of the child, taking into account the respondent's financial condition.
- (2) In all matters concerning children, the best interests of the child shall be the paramount consideration.

## **10. The court shall not refuse to grant a protection order**

The court shall not refuse to issue a protection order, an interim protection order, or to make any orders which it is competent to make under this Act on the basis that:

- (a) only a single act of violence has been committed or a single threat made, or that the acts or threats viewed in isolation appear to be trivial or minor.
- (b) The complainant has not previously complained of the acts of violence and had condoned or accepted it.
- (c) Other legal remedies are available to the complainant.

## **11. Warrant of arrest upon issuing of a protection order**

- (1) Whenever a court issues a protection order or an interim protection order, the court must make an order:
  - (a) authorizing the issue of a warrant for the arrest of the respondent; and
  - (b) suspending the execution of such warrant subject to compliance with any prohibition, condition, obligation or order imposed.
- (2) The warrant will remain in force unless the protection order is set aside, or it is cancelled after execution.

- (3) The court must issue the complainant with a second or further warrant of arrest, if the complainant files an affidavit in which it is stated that such warrant is required for her or his protection and that the existing warrant of arrest has been:
  - (a) executed and cancelled; or
  - (b) lost or destroyed.

## **12. Where the protection order is not complied with**

- (1) A complainant may hand the warrant of arrest together with an affidavit stating that the respondent has contravened any prohibition, condition, obligation or order contained in a protection order, to any police officer.
- (2) If it appears to the police officer concerned that there are reasonable grounds to suspect that the complainant may suffer imminent harm as a result of the alleged breach of the protection order by the respondent, the police officer must forthwith arrest the respondent.
- (3) If the police officer is of the opinion that there are insufficient grounds for arresting the respondent, he or she must forthwith issue an original written notice to the respondent calling upon the respondent to appear in court, on a specified date and time, on a charge of committing an offence under this Act.
- (4) The police officer shall obtain the respondent's signature on the duplicate of the above notice and forthwith forward such duplicate to the court concerned. The signed duplicate shall be prima facie evidence that the original notice was handed to the respondent.

## **13. Variation and Revocation of a Protection Order**

- (1) A protection order or interim protection order may be altered, modified, varied or revoked on an application by either the complainant or the respondent, if the court is satisfied that there is a change of circumstances that require such alternation, modification, variation or revocation.

- (2) Provided that no such alternation, modification, variation or revocation, shall be made without hearing both the complainant and the respondent. The court may also seek the opinion of a social worker, a counsellor, psychologist or any other person in making an order under this section.
- (3) Provided further that the court shall not grant such an application to the complainant unless it is satisfied that the application is made freely and voluntarily.

#### **14. Duties of Police Officers**

- (1) Any police officer must, at the scene of an incident of domestic violence or as soon thereafter as is reasonably possible, or when an incident of domestic violence is reported:
  - (a) render such assistance to the complainant as may be required in the circumstances, including assisting or making arrangements for the complainant to find a suitable shelter and to obtain medical treatment.
  - (b) inform the complaint of the right she or he has to apply for a protection order under this Act and the other remedies available under this Act, including the right of access to the shared household, and the rights of custody to the children.
  - (c) inform the complainant of the right she or he has to initiate criminal proceedings against the respondent.
  - (d) contact a counselling organisation, a social service organization, a women's shelter or other group to enable the complainant to access medical, emotional, psychological or other support.
- (2) A police officer may without a warrant, arrest any respondent at the scene of an incident of domestic violence whom he or she reasonably suspects of having committed an offence containing an element of violence against a complainant.
- (3) The police should make every attempt that is reasonably possible, to serve an Interim Protection Order or Protection Order on the respondent.

#### **15. Offences**

Notwithstanding the provisions of any other law, a person who contravenes any prohibition, condition, obligation or order imposed by the court under this Act, shall be guilty of an offence and on conviction after trial before a Magistrate, be liable to a fine not exceeding one hundred thousand rupees, or imprisonment not exceeding five years, or to both such fine and imprisonment.

#### **16. Attendance at court proceedings**

- (1) No person may be present during any proceedings in terms of this Act except:
  - (a) officers of the court;
  - (b) the parties to the proceedings;
  - (c) any person bringing an application on behalf of the complainant;
  - (d) any legal representative representing any party to the proceedings;
  - (e) witnesses;
  - (f) not more than three persons for the purpose of providing support to the complainant;
  - (g) not more than three persons for the purpose of providing support to the respondent; and
  - (h) any other person whom the court permits to be present:
- (2) Provided that the court may, if it is satisfied that it is in the interest of justice, exclude any person from attending any part of the proceedings.
- (3) Nothing in this subsection limits any other power of the court to hear proceedings in camera or to exclude any person from attending such proceedings

#### **17. Publication of information**

- (1) No person shall publish in any manner any information which might, directly or indirectly, reveal the identity of any party to the proceedings.

- (2) The court, if it is satisfied that it is in the interests of justice, may direct that any further information relating to proceedings held in terms of this Act shall not be published;
- (3) Provided that no direction in terms of this subsection applies in respect of the publication of a bona fide law report which does not mention the names or reveal the identities of the parties to the proceedings or of any witness at such proceedings.

## **18. Jurisdiction**

- (1) Any Magistrate's Court within the area in which:
  - (a) the complainant permanently or temporarily resides, carries on a business or is employed;
  - (b) the respondent resides, carries on a business or is employed; or
  - (c) the cause of action arose;
  - (d) has jurisdiction to grant a protection or interim protection order as contemplated in this Act.
- (2) A protection order or interim protection order is enforceable throughout Sri Lanka.

## **19. Availability of other remedies**

Nothing in this Act shall prevent a complainant from pursuing any other remedies, whether they be civil, criminal or constitutional remedies, that may be available.

## **20. Recourse to international or comparative law**

In interpreting a provision of this Act a court may have recourse to international law or comparative law.

## **21. Regulations**

- (1) The Minister may make regulations in respect of any matter concerned with the application of this Act.
- (2) Every regulation shall be published in the Gazette as soon as possible and shall be brought before Parliament

for approval. Any regulation which is not so approved shall be deemed to be rescinded as from the date of such disapproval but without prejudice to anything previously done.

## **22. Interpretation**

In this Act unless the context otherwise requires:

"Complainant" means

any person who is or has been in a domestic relationship with a respondent and who is or has been subjected or allegedly subjected to an act of domestic violence, including any child in the care of the complainant.

"Court" means

any Magistrate's Court.

"Economic abuse" includes:

- (a) the unreasonable deprivation of economic or financial resources to which a complainant is entitled under law or which the complainant requires out of necessity, including household necessities for the complainant, and mortgage repayments or payment of rent in respect of the shared residence;
- (b) the unreasonable disposal of household effects or other property in which the complainant has an interest.

"Emergency monetary relief" means

compensation for monetary losses suffered by a complainant at the time of the issue of a protection order as a result of the domestic violence, including:

- (a) loss of earnings;
- (b) medical and dental expenses;
- (c) relocation and accommodation expenses; or
- (d) household necessities.

**“Emotional, verbal and psychological abuse”**

means a pattern of degrading or humiliating conduct towards a complainant, including:

- (a) repeated insults, ridicule or name calling;
- (b) repeated threats to cause emotional pain, whether to the complainant or to some other person;
- (c) the repeated exhibition of obsessive possessiveness or jealousy, which is such as to constitute a serious invasion of the complainant’s privacy, liberty, integrity or security.

**“Harassment” means**

engaging in a pattern of conduct that induces the fear of harm to a complainant including:

- (a) repeatedly watching, or loitering outside of or near the building or place where the complainant resides, works, carries on business, studies or happens to be;
- (b) repeatedly making telephone calls or inducing another person to make telephone calls to the complainant, whether or not conversation ensues;
- (c) repeatedly sending, delivering or causing the delivery of letters, telegrams, packages, facsimiles, electronic mail or other objects to the complainant;

**“Household worker” means**

any person whose main role in any residence, residential facility, or shared household is to perform household tasks, chores or other work, whether for payment or otherwise;

**“Intimidation” means**

uttering or conveying a threat, or causing a complainant to receive a threat, which induces fear.

**“Physical abuse” means**

any act or threatened act of physical violence towards a complainant.

**“Respondent” means**

any person who is or has been in a domestic relationship with a complainant and who has, committed or allegedly committed an act of domestic violence against the complainant.

**“Sexual abuse” means**

any conduct that abuses, humiliates, degrades or otherwise violates the sexual integrity of the complainant and includes sexual intercourse that takes place in coercive circumstances or without the consent of the complainant and the refusal to cooperate in contraception when the complaint may reasonably require it. Where the complainant is below the age of sixteen, sexual intercourse, with or without her consent, would still constitute sexual abuse.

**“Shared residence” means**

any residence, household or tenement where the complainant and the respondent live or have lived together and includes property owned jointly or individually by either person.

**“Stalking” means**

repeatedly following, pursuing, or accosting the complainant;

**“This Act” includes the regulations.**

Appendix III



**PARLIAMENT OF THE DEMOCRATIC  
SOCIALIST REPUBLIC OF  
SRI LANKA**

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**PREVENTION OF DOMESTIC VIOLENCE  
ACT, No. 34 OF 2005**

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[Certified on 3rd October, 2005]

*Printed on the Order of Government*

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*Prevention of Domestic Violence  
Act, No. 34 of 2005*

[Certified on 3rd October, 2005]

L.D.—O. 8/2002

AN ACT TO PROVIDE FOR THE PREVENTION OF ANY ACT OF DOMESTIC  
VIOLENCE AND FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL  
THERE TO

BE it enacted by the Parliament of the Democratic Socialist  
Republic of Sri Lanka as follows :—

1. This Act may be cited as the Prevention of Domestic  
Violence Act, No. 34 of 2005.

2. (1) A person, in respect of whom an act of domestic  
violence has been, is, or is likely to be, committed (hereinafter  
referred to as “an aggrieved person”) may make an application  
to the Magistrate’s Court for a Protection Order, for the  
prevention of such act of domestic violence.

(2) An application under subsection (1) may be made—

(a) by an aggrieved person ;

(b) where the aggrieved person is a child, on behalf of  
such child by —

(i) a parent or guardian of the child ;

(ii) a person with whom the child resides;

(iii) a person authorised in writing by the National  
Child Protection Authority established under  
the National Child Protection Authority Act,  
No. 50 of 1998; or

(c) by a police officer on behalf of an aggrieved person.

(3) An application under subsection (1) shall be made  
in duplicate and shall be substantially in the form set out in  
Schedule II hereto and shall be made to the Magistrate’s Court  
within whose jurisdiction the aggrieved person or the relevant  
person temporarily or permanently resides, or the act of  
domestic violence has been or is likely to be committed.

Short title.

An aggrieved  
person to make  
an application.

Considering the  
application.

Procedure for  
the issue or  
refusal of an  
Interim  
Protection Order.

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Act, No. 34 of 2005*

(4) Affidavits of any person who has knowledge of the  
aforesaid acts of domestic violence may be attached affidavits  
to the application, in support thereof.

3. Upon an application being made in accordance with  
the provisions of this Act, the Court shall forthwith consider  
the application.

4. (1) Upon the consideration of the application and the  
affidavits, if any, the court shall —

(a) where it is satisfied that it is necessary to issue an  
Interim Protection Order (hereinafter referred to as  
an “Interim Order”), until the conclusion of the  
inquiry into the application, forthwith issue an  
Interim Order having regard to the provisions of  
subsection (2), and shall also make an Order for the  
holding of an inquiry in respect of such application  
on a date not later than fourteen days from the date  
of the application; or

(b) where it is satisfied that it is not necessary to issue  
an Interim Order in the circumstances, make an Order  
for the holding of an inquiry in respect of such  
application, on a date not later than fourteen days  
from the date of the application :

Provided however, that the court may, where it considers it  
necessary, examine on oath prior to the issue of such Interim  
Order, any person referred to in subsection (2) of section 2 or any  
other material witness, as the case may be

(2) In determining the issue of an Interim Order the  
court shall take into consideration the urgent need to prevent  
the commission of any act of domestic violence, and the  
need to ensure the safety of the aggrieved person.

(3) Upon the issuing of an Order under paragraph (a) or  
paragraph (b) of subsection (1), as the case may be, the court  
shall cause Notice to be issued on the respondent, to show  
cause on the date specified therein, why a Protection Order  
should not be issued against him.

*Prevention of Domestic Violence  
Act, No. 34 of 2005*

(4) An Interim Order made under paragraph (a) of subsection (1), together with the Order made under paragraph (a) or paragraph (b) of subsection (1) as the case may be, shall be served on the respondent along with the Notice issued under subsection (3). Where service of such documents cannot, by the exercise of due diligence be effected by the fiscal or other authorized officer, such documents shall be deemed to be served on such respondent if it is posted in a conspicuous place at his usual place of residence.

5. (1) An Interim Order—

Interim Order.

- (a) shall, pending the issue of a Protection Order prohibit the respondent from committing or causing the commission of any act of domestic violence;
  - (b) may, contain any other prohibition or condition specified in sub-paragraphs (a) to (l) of subsection (1) of section 11 where the Court is satisfied, that by reason of the circumstances of the case, and upon evidence given on oath by the aggrieved person or any other person on behalf of the aggrieved person, or any material witness, that such prohibition or condition is necessary to prevent any act of domestic violence.
- (2) Where an Interim Order has been made, the Court may where it is satisfied that it is—
- (a) in the interest of the parties to do so, order a social worker or a family counselor to counsel the parties and order the parties to attend such counseling sessions.
  - (b) reasonably necessary to protect and provide for the immediate safety of the aggrieved person, order a social worker, family counselor, probation officer, family health worker or child rights promotion officer to monitor the observance of the Order and submit to Court a report on the date specified for the inquiry into the application in terms of subsection (1) of section 4.

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(3) An Interim Order shall remain in force until a Protection Order is issued by the court or such Interim Order is vacated.

Issue of  
Protection Order  
where the  
respondent  
appears.

6. (1) Where, on the date specified in the Notice issued under subsection (3) of section 4, the respondent is present in Court, the Court shall proceed to inquire into the application, and consider any evidence previously received along with such further affidavits or oral evidence as it may deem necessary which shall form part of the record of the proceedings.

(2) Where the respondent is not represented by a legal representative, the Court may of its own accord or on the request of the aggrieved person, order —

- (a) that the examination of witnesses including the aggrieved person shall not be conducted by the respondent ;
- (b) the respondent to state the questions to Court so as to enable the Court to repeat the question accurately to the aggrieved person or witness.

(3) After the inquiry where the Court is satisfied that it is necessary to issue a Protection Order, issue a Protection Order having regard to the provisions of section 8.

(4) Where on the date specified in the Notice issued under subsection (3) of section 4 the respondent appears and does not admit to the act or acts of violence, but does not object to the issue of a Protection Order, the court shall issue a Protection Order having regard to the provisions of section 8.

Issue of  
protection order  
when respondent  
does not appear.

7. (1) Where on the date specified in the Notice issued under subsection (3) of section 4 the respondent does not appear and the Court is satisfied that the Notice has been served on the respondent, the court shall proceed to consider the application on the evidence previously received and such further evidence by way of affidavits or any oral evidence recorded in the absence of the respondent as it may deem necessary, which shall form part of the record of the proceedings.

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(2) The Court may upon being satisfied on a consideration of the evidence before it, that it is necessary to issue a Protection Order, issue a Protection Order having regard to the provisions of section 8.

8. In determining whether a Protection Order should be issued or not, the court shall take into consideration the need to prevent the commission of any act of domestic violence and the need to ensure the safety of the aggrieved person.

9. Upon the issuing of a Protection Order the Court shall forthwith cause —

- (a) such order to be served on the respondent; and
- (b) certified copies of such Order, to be served on the—
  - (i) aggrieved person ;
  - (ii) applicant, where the applicant is not the aggrieved person ;
  - (iii) officers in charge of the police stations within whose jurisdiction the respondent and the aggrieved person reside.

10. (1) A Protection Order —

- (a) shall, prohibit the respondent from committing or causing the commission of, any act of domestic violence;
- (b) may, contain any other prohibition specified in subparagraph, (a) to (l) of subsection (1) of section 11, or any supplementary order specified in subsection (1) of section 12 where the court is satisfied that by reason of the circumstances of the case, and upon evidence given on oath by the aggrieved person or any other person on behalf of the aggrieved person as the case may be, or any other material witness, that it is necessary to do so to ensure the safety and well being of the aggrieved person.

Matters to be taken into consideration in issuing a protection order.

Protection Order to be served on the respondent.

Protection Order.

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(2) A Protection Order shall remain in force for a period not exceeding 12 months as specified therein.

11. (1) The Court may, by means of an Interim Order or Protection Order prohibit the respondent from :—

- (a) entering a residence or any specified part thereof, shared by the aggrieved person and the respondent;
- (b) entering the aggrieved person's —
  - (i) residence;
  - (ii) place of employment;
  - (iii) school;
- (c) entering any shelter in which the aggrieved person may be temporarily accommodated;
- (d) preventing the aggrieved person who ordinarily lives or has lived in a shared residence from entering or remaining in the shared residence or a specified part of the shared residence;
- (e) occupying the shared residence ;
- (f) having contact with any child of the aggrieved person or having contact with such child other than on the satisfaction of such conditions as it may consider appropriate, where the Court is satisfied that it is in the best interest of such child ;
- (g) preventing the aggrieved person from using or having access to shared resources ;
- (h) contacting or attempting to establish contact with the aggrieved person in any manner whatsoever ;
- (i) committing acts of violence against any other person, whether it be a relative, friend, social worker or medical officer, who may be assisting the aggrieved person ;

Prohibitions that an Interim Order or Protection Order may contain.

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- (j) following the aggrieved person around as to cause a nuisance ;
  - (k) engaging in such other conduct as in the opinion of the Court will be detrimental to the safety, health or well being of the aggrieved person or other person who may require protection from the respondent as the Court may specify in the Protection Order ;
  - (l) selling, transferring, alienating or encumbering the matrimonial home so as to place the aggrieved person in a destitute position.
- (2) In imposing any prohibition referred to in subsection (1) the Court shall have regard to—
- (a) the need for the accommodation of the aggrieved person or the children (if any) of the aggrieved person and the children (if any) of the respondent ;
  - (b) any hardship that may be caused to the respondent or to any other person as a result of the making of the Order.

12. (1) Where a Protection Order has been made and where the Court is satisfied that it is reasonably necessary to protect and provide for the immediate safety, health or welfare of the aggrieved person the Court may order—

- (a) the police to seize any weapons that the respondent may have in his or her possession ;
- (b) the police to accompany the aggrieved person to any place to assist with the collection of personal property of such person and of any children ;
- (c) the respondent and the aggrieved person to attend mandatory counseling sessions, psychotherapy or other forms of rehabilitative therapy as may be available ;

Supplementary  
Orders.

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- (d) the aggrieved person if such person so requests, be placed in a shelter or provided with temporary accommodation the location and other details of which shall be kept confidential if necessary ;
- (e) a social worker, family counsellor, probation officer or family health worker to monitor the observance of the Protection Order between the aggrieved person and the respondent and submit to Court a report relating thereto, once in every three months.
- (f) the respondent to provide urgent monetary assistance to any person, where such respondent has a duty to support such person ;
- (g) the respondent to make such payments and provide such facilities, or make such payments or provide such facilities as the case may be, as are necessary to enable the aggrieved party to continue in occupation of any residence in which such aggrieved party will reside during the period of operation of such Order, notwithstanding that the respondent has been prohibited from entering or remaining in such residence by an Order made under section 11.

(2) An Order under paragraphs (f) and (g) of subsection (1) shall only be made after due inquiry and having regard to the financial needs and other resources of the aggrieved person and the respondent :

Provided however such an Order shall not affect the rights of any person under the Maintenance Act, No. 37 of 1999.

(3) The Court may, on the failure of the respondent to make any payment ordered under paragraph (f) of subsection (1) direct an employer of the respondent, to directly pay to the aggrieved person a part or the whole of the remuneration due to the respondent as financial relief that the Court may have ordered.

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13. The Court may, with the consent of the parties to the proceedings, make any Order under this Act without proof or admission of guilt and such Order shall not be construed as having been made consequent to an admission of guilt or upon proof of guilt.

Orders made  
with consent of  
parties.

14. (1) A Protection Order may be altered, modified, varied, extended or revoked, on an application made either by the aggrieved person or the respondent, and where the Court is satisfied that there is a change of circumstances that require such alteration, modification, variation, extension, or revocation :

Variation or  
revocation of a  
Protection Order.

Provided however, no such alteration, modification, variation, extension or revocation, shall be made without hearing both the aggrieved person and the respondent :

Provided further that the Court shall not grant such an application to the aggrieved person unless it is satisfied that the application is made freely and voluntarily.

15. The provisions of Chapter V and VI of the Code of Criminal Procedure Act, No. 15 of 1979 shall be applicable for compelling the attendance of the respondent and any person required by the applicant to give evidence, and for requiring the production of any document necessary, for the purposes of this Act.

Attendance of  
respondent and  
witnesses.

16. In any proceedings under this Act a spouse shall be a competent witness against the other spouse.

Spouse to be a  
competent  
witness.

17. Any person who is dissatisfied with an Order made by a Magistrate under section 6 or section 7 may prefer an appeal to the High Court established under Article 154p of the Constitution in like manner as if the Order was a final Order pronounced by a Magistrate's Court in a criminal case or matter, and sections 320 to 330 (both inclusive) and sections 357 and 358 of the Code of Criminal Procedure Act, No. 15 of 1979 shall, *mutatis mutandis*, apply to such appeal :

Right of Appeal.

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Provided however, that notwithstanding anything to the contrary in section 323 of the Code of Criminal Procedure Act, No. 15 of 1979 an Order under section 6 or section 7 shall not be stayed by reason of such appeal, unless the High Court for reasons to be recorded directs otherwise :

Provided further that the Magistrate in forwarding the record to the High Court shall retain a copy of his Order for purposes of enforcement.

Enforcement of  
Order.

18. Where respondent against whom an Interim Order or a Protection Order, as the case may be, has been issued and has failed to comply with such Order, such respondent shall be guilty of an offence and shall be liable on conviction after summary trial before a Magistrate to a fine not exceeding ten thousand rupees or to imprisonment of either description for a term not exceeding one year or to both such fine and imprisonment.

19. Notwithstanding anything contained in the Code of Criminal Procedure Act, No. 15 of 1979, the Court may adopt a procedure as it may seem expedient in respect of the framing of charges.

Court to adopt  
procedure in  
framing charges.

Persons printing  
or publishing  
any matter in  
certain cases to  
be punished.

20. Any person who prints or publishes—

- (a) the name or any matter which may make known the identity of an applicant or a respondent in an application under this Act; or
- (b) any matter other than a judgment of the Supreme Court or Court of Appeal, in relation to any proceeding under this Act, in any Court,

shall be punished with imprisonment of either description for a term which may extend to two years or to a fine or to both such imprisonment and fine.

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21. Nothing in this Act shall be construed as depriving an aggrieved person of a right if any, to institute a separate civil action or criminal proceeding.

Other actions not barred.

22. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.

Sinhala text to prevail in case of inconsistency.

23. In this Act unless the context otherwise requires —

Interpretation.

“child” means a person who is under the age of 18 years ;

“domestic violence” means—

(a) an act which constitutes an offence specified in Schedule I ;

(b) any emotional abuse,

committed or caused by a relevant person within the environment of the home or outside and arising out of the personal relationship between the aggrieved person and the relevant person ;

“emotional abuse” means a pattern of cruel, inhuman, degrading or humiliating conduct of a serious nature directed towards an aggrieved person ;

“shared resources” means movable or immovable property which both the aggrieved person and the respondent have habitually used or have had access to ;

“relevant person” in relation to an aggrieved person means,

(a) (i) the spouse ;

(ii) ex-spouse ;

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(iii) cohabiting partner ,

of an aggrieved person ;

(b) (i) the father, mother, grandfather, grandmother, stepfather, stepmother ;

(ii) the son, daughter, grandson, grand daughter, stepson, stepdaughter ;

(iii) the brother, sister, half-brother, half-sister, step brother, step-sister ;

(iv) siblings of a parent ;

(v) the child of a sibling ;

(vi) child of a sibling of a parent,

of an aggrieved person or of the spouse, former spouse or cohabiting partner of the aggrieved person ;

“respondent” in relation to a Protection Order or an Interim Order means the relevant person against whom such Order is sought or made.

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**SCHEDULE I**

Section 22

1. All offences contained in Chapter XVI of the Penal Code
2. Extortion-Section 372 of the Penal Code
3. Criminal Intimidation-Section 483 of the Penal Code
4. Attempt to commit any of the above offences

**SCHEDULE II**

Section 2(3)

**APPLICATION**

In the Magistrates Court of.....

A.B. of.....(name, description and address of the aggrieved person, and if he/she sues in any representative capacity, state the capacity- e. g., if the aggrieved person is a minor or person of unsound mind appearing by his/her guardian or next friend, say "a minor, by C. D. of.....his/her next friend").....(Aggrieved person).

*Against*

Y.Z., of.....(name, description and addresses of the respondent).....Respondent.

The.....day of.....20.....

The application of the above-named aggrieved person (and if the case is so add: appearing by C. H, his/her registered attorney) states as follows :

(Here set out the circumstances of the case)

Wherefore the aggrieved person (or aggrieved persons) prays for a Protection Order against the respondent with effect from the.....day of .....20.....

.....  
Signature of Applicant



*Feminist Engagements with Violence: Contingent Moments from Sri Lanka* reflects on two decades of feminist responses to gendered violence in Sri Lanka at a time of increased ethnic violence and warfare. The chapters by Nimanthi Perera-Rajasingham, Lisa Kois, and Rizvina de Alwis draw attention to some of the important local and international campaigns, but also highlight some of the limits of these strategies. The criticism of the movement's heavy reliance on the law, in the cases of the domestic violence bill, and the Krishanthi Koomaraswamy case, invite us to reflect on alternatives. These essays attempt to understand how feminists responded to violence, both gendered and ethnic, in a time of increased militarization.

**Radhika Coomaraswamy**

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**International Centre for Ethnic Studies**

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