

REFUGEE WOMEN AND DOMESTIC VIOLENCE: COUNTRY STUDIES

A report by

Refugee Women's Resource Project

Asylum Aid

**Edition 4
February 2003**



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Explanatory note

This publication is the fourth edition of the report *Refugee Women and Domestic Violence: Country Studies*, published by RWRP in September 2001, March 2002 and September 2002. Those reports examined the situation in 9 countries – Albania, Bosnia & Herzegovina, China, Colombia, Democratic Republic of Congo, Iran, Iraqi Kurdistan, Kosovo and Pakistan – and also included an introduction, which outlined the aims and objectives of the report and an overview of the issue of domestic violence in the context of refugee and asylum law.

This edition contains an additional country study on India as well as updates on 4 of the 9 previous country reports. It is intended that the updates be inserted (as Appendix B or C) after the appropriate initial report.

Copies of the first three editions of the report can be obtained from RWRP at the address on the previous page at £10 each. Alternatively, the reports can be downloaded from our website.

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INDIA

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INDIA

1. Introduction

1.1 Political background

India is a federal republic with a bicameral parliament comprising of a lower house directly elected by the public and an upper house indirectly elected by the State Assemblies and the President. The President is a constitutional head of state elected by a committee consisting of members selected from both houses of the parliament. The President appoints the Prime Minister and other members of the Cabinet. The Prime Minister, Atal Bihari Vajpayee, whose Bharatiya Janata Party (BJP) leads a multi-party coalition, took office in October 1999. India has 28 states with constitutionally defined powers of government. Though the state governments have the constitutional power for maintaining law and order, the central government exercises a great deal of power throughout the country through the use of its paramilitary forces.

The Union Ministry for Home Affairs controls most of the paramilitary forces, the internal intelligence bureaus, and the nationwide police services; it provides training for senior police officers of the state-organised police forces. The armed forces are under civilian control. Security forces committed numerous significant human rights abuses, particularly in Jammu and Kashmir and in the north-eastern states.¹

Although India is generally characterised as a stable country, its territorial dispute with Pakistan over the Kashmir territory continues to threaten the peace in the country. Though Kashmir has been disputed for 55 years, the tension has escalated since both India and Pakistan acquired nuclear weapons. The internal religious and caste retaliatory violence in several states is also a fundamental threat to the existence of the state of India.

Animosities within and between the country's religious communities have roots that are centuries old, and these tensions--at times exacerbated by poverty, class, and ethnic differences--have erupted into periodic violence throughout the country's 54-year history. The Government makes some effort, not always successfully, to prevent these incidents and to restore communal harmony when they do occur--; however, tensions between Muslims and Hindus, and increasingly, between Hindus and Christians, continue to pose a challenge to the concepts of secularism, tolerance, and diversity on which the State was founded. ---- The Government is led by a coalition called the National Democratic Alliance (NDA), which has pledged to respect India's traditions of secular government and religious tolerance. However, the leading party in the coalition is the Bharatiya Janata Party (BJP), a Hindu nationalist political party with links to Hindu extremist groups that have been implicated in violent acts against Christians and Muslims.

¹ US Department of State (March 2002), *2001 Country Reports on Human Rights Practices: India*, Washington, Bureau of Democracy, Human Rights, and Labour, available at www.state.gov/g/drl/rls/hrrpt/2001/af/8322.htm

The BJP also leads state governments in Gujarat, Himachal Pradesh, and Uttar Pradesh. Human rights groups and others have suggested that the response by authorities in these states to acts of violence against religious minorities by Hindu extremist groups has been ineffective, at least in part because of the links between these groups and the BJP, and have noted that the ineffective investigation and prosecution of such incidents may encourage violent actions by extremist groups. Governments at state and local levels only partially respect religious freedom. A number of such governments considered legislation during the period covered by this report that would limit religious freedom.²

India's democracy is also facing challenges due to growing separatist movements and the government's response to such oppositions. The 1980s and 1990s saw an active Sikh separatism movement. The secessionist movements in Kashmir and the north-eastern regions of the country, and the government's action to suppress them remain the cause of extensive violations of human rights.

1.2 Human rights practice

The 2002 US Department of State Report summarised the human rights situation in India as follows:

The Government generally respected the human rights of its citizens in some areas; however, numerous serious problems remain in many significant areas. Significant human rights abuses included: Extra judicial killings, including faked encounter killings, deaths of suspects in police custody throughout the country, and excessive use of force by security forces combating active insurgencies in Jammu and Kashmir and several north-eastern states; torture and rape by police and other agents of the Government; poor prison conditions; arbitrary arrest and incommunicado detention in Jammu and Kashmir and the northeast; continued detention throughout the country of thousands arrested under special security legislation; lengthy pre-trial detention; prolonged detention while undergoing trial; occasional limits on freedom of the press and freedom of movement; harassment and arrest of human rights monitors; extensive societal violence against women; legal and societal discrimination against women; female bondage and forced prostitution; child prostitution and female infanticide; discrimination against persons with disabilities; serious discrimination and violence against indigenous peoples and scheduled castes and tribes; widespread intercaste and communal violence; religiously-motivated violence against Christians and Muslims; widespread exploitation of indentured, bonded, and child labor; and trafficking in women and children.

² US Department of State (2001) *Annual Report on International Religious Freedom: India*, Washington, Bureau of Democracy, Human Rights, and Labour, available at www.state.gov/g/drl/rls/irf/2001/5685.htm

[...] These problems are acute in Jammu and Kashmir, where judicial tolerance of the Government's heavy-handed counterinsurgency tactics, the refusal of security forces to obey court orders, and terrorist threats have disrupted the judicial system. In the northeast there was no clear decrease in the number of killings, despite negotiated ceasefires between the Government and some insurgent forces, and between some tribal groups.³

Human rights groups criticised the government for failing to bring to justice members of the police and security forces who have committed human rights violations, and for granting impunity to officials under special security laws.

The government failed to act on recommendations made by several commissions of inquiry after identifying the involvement of police and security forces in human rights violations. The recommendations of the Shrikrishna Commission, concerning the communal riots, which took place in Mumbai in 1992 and 1993 following the destruction of the Babri mosque in Ayodhya, were implemented extremely slowly. Seventeen police officers had been issued with charge sheets by the end of the year for having taken sides with violent Hindu groups during the riots, which claimed 1,788 lives. Similarly, the recommendations of the Pandian Commission on the unlawful killings in April 2000 of protesters at Barakpore, Jammu and Kashmir, were not implemented by the government. The report itself was not made public. Special security laws, as well as the Protection of Human Rights Act grant impunity for government officials and army officers committing human rights abuses while acting in their official capacity.⁴

In its 2001 report Amnesty International stated,

While in a few cases individual members of the security forces were brought to justice for human rights violations, most violations were committed with impunity. Lack of political will, compromise and coercion allowed law enforcement officials to escape censure for violating the rights of peoples who were mostly members of the underprivileged section of the society.⁵

Although the Constitution and other laws provide for equality of all persons there is widespread discrimination on the basis of gender, religion, and caste. In its 2002 report Amnesty International notes,

Socially and economically marginalized sections of society such as women, dalits, adivasis (tribal people) and religious minorities continued to suffer abuses as a result of discrimination by both the police and non-state actors. Their access to justice remained limited,

³ US Department of State (2002), op.cit.

⁴ Amnesty International (2002), *Annual Country Report, India*, available at [Hhttp://web.amnesty.org/web/ar2002.nsf/asa/india!OpenH](http://web.amnesty.org/web/ar2002.nsf/asa/india!OpenH)

⁵ Amnesty International (2001), *2000 Annual Country Report India*, available at, [Hhttp://web.amnesty.org/web/ar2001.nsf/webasacountries/INDIA?OpenDocumentH](http://web.amnesty.org/web/ar2001.nsf/webasacountries/INDIA?OpenDocumentH)

*despite the existence of some progressive pieces of legislation, as the criminal justice system tended to reproduce in its functioning the gender, caste, and class discrimination existing in the society.*⁶

The government is under increasing criticism for failing to act effectively to prevent, investigate and prosecute societal attacks against minorities and human rights defenders. Human Rights Watch reported that in 2001,

Police violence, attacks on the country's minority communities including Muslims, Christians, Dalits and tribals, and violence against women continued to be serious problems, though some positive steps were taken to help better ensure women's and children's rights. Human rights defenders came under legislative assault through changes to laws and procedures aimed at restricting their ability to travel, hold conferences, and receive foreign funds. The U.N. World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance (WCAR), held in South Africa from August 31 to September 8, paved the way for unprecedented international as well as national scrutiny of the problem of caste discrimination.

Dalit communities continued to suffer systemic discrimination and violence. In a number of cases, police were complicit in the attacks or used excessive force against Dalits when they organized to respond to the attacks, rendering legal protections meaningless. Violence was particularly acute in Uttar Pradesh and Bihar, and those responsible were rarely brought to justice by the authorities.

*The conflict in Kashmir remained a flashpoint for violence, as all parties failed to protect civilian non-combatants. On November 19, 2000, Prime Minister Vajpayee declared a unilateral ceasefire, but, shortly thereafter, Jammu and Kashmir police chief A.K. Suri announced that the ceasefire would not affect police counterinsurgency operations. Indian security personnel continued to target Muslim citizens suspected of supporting guerrillas. Arbitrary arrests, torture, and staged "encounter killings" were reported throughout the year, both when the ceasefire was in effect and after it was lifted on May 23, 2001.*⁷

1.3 International legal instruments

India is a party to the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social, and Cultural Rights, the Convention on the Rights of the Child, and the Convention on the Elimination of All forms of Racial Discrimination. It ratified the Convention on the Elimination of All forms Discrimination Against Women (hereinafter CEDAW) in July 1993 with the following declarations, which The Netherlands has noted as being incompatible with the object and purpose of the Convention:
Declarations:

⁶ Amnesty International Country Report (2002), op. cit.

⁷ Human Rights Watch (2002) *World Reports Human Rights Developments, India*, available at [Hwww.hrw.org/wr2k2/asia6.html](http://www.hrw.org/wr2k2/asia6.html)

With regard to article 5 (a) of the Convention on the Elimination of all Forms of Discrimination Against Women, the Government of the Republic of India declares that it shall abide by and ensure these provisions in conformity with its policy of non-interference in the personal affairs of any community without its initiative and consent.

With regard to article 16 (2) of the Convention on the Elimination of All forms of Discrimination Against Women the Government of the Republic of India declares that though in principle it fully supports the principle of compulsory registration of marriages, it is not practical in a vast country like India with its variety of customs, religions and level of literacy.⁸

However, India has not ratified the first and second Optional Protocols to the Covenant on Civil and Political Rights, and the Optional Protocol to the CEDAW. Several reports due to be submitted to the supervisory committees remain outstanding at 6 June 2002.⁹

1.4 Women's human rights

1.4.1 The status of women in India

India has guaranteed women's equality in its Constitution and has prohibited discrimination on the ground of sex.¹⁰ There are also various pieces of legislation reinforcing women's equality and providing for affirmative action for vulnerable groups in society including women and scheduled castes. India was also one of the first countries to accept unreservedly the Beijing Platform for Action.¹¹ Successive governments have undertaken various steps to implement CEDAW. These include the establishment of the National Commission for Women in 1992 which is the national ombudsperson for women, the establishment of a parliamentary committee on the empowerment of women in 1997, and in January 2001 the present government announced its commitment to the empowerment of women and that a new National Policy on Women's Empowerment would be launched. Despite all these positive developments, the situation on the ground remains harsh for women. A study conducted by Amnesty International on the situation of women in India came to the following conclusion:

Amnesty International welcomes these indications that the government of India and state governments wish to address continuing problems of violence against women throughout the country. However, it is

⁸ See Netherlands Institute of Human Rights Website at [Hhttp://sim.law.uu.nl/SIM/Library/RATIF.nsf/be2c697381d495be41256bfb003493b1/3879720615d692a4c12568b900451c40?OpenDocument](http://sim.law.uu.nl/SIM/Library/RATIF.nsf/be2c697381d495be41256bfb003493b1/3879720615d692a4c12568b900451c40?OpenDocument)H

⁹ United Nations (2002) *Reporting History of States as of 6 June 2002*, available at [Hwww.unhcr.ch/html/menu2/convmech.htm](http://www.unhcr.ch/html/menu2/convmech.htm)H

¹⁰ The Constitution of India, adopted on 26 November 1949, articles 14 and 15 available at [Hhttp://alfa.nic.in/const/const.html](http://alfa.nic.in/const/const.html)H (Indian Parliament Website)

¹¹ The Beijing Platform for Action is an agenda aimed at facilitating the implementation of the Nairobi Forward looking Strategies for the Advancement of Women and removing all obstacles to the realisation of women's rights. It was adopted at the 1995 Fourth World Conference on Women in Beijing, China. Full text available at [Hwww.un.org/womenwatch/daw/beijing/platform/plat1.htm](http://www.un.org/womenwatch/daw/beijing/platform/plat1.htm)H

concerned that these policies should be more than just further rhetoric and should firmly address ongoing problems of non-implementation and/or discriminatory implementation of safeguards and impunity for perpetrators of violence against women.

[...] The reality of the situation on the ground for women and members of vulnerable groups continues to be extremely harsh despite the Constitutional, legislative and administrative framework in place in India. The failure to implement protective provisions and continuing gender, caste and class biases within society ensures that Constitutional, legal safeguards are rendered meaningless to many.¹²

1.4.2 Discrimination

The lower social status that women have is reflected in marriage, divorce, custody rights, inheritance rights and in traditional practices such as son preference, and giving nutritional and health priority to boys. The family and the society consider women as second-class citizens. Strong patriarchal traditions persist shaping the lives of women of all religions. In most Indian families, a daughter is viewed as a liability, and she is conditioned to believe that she is inferior and subordinate to men. In contrast, sons are idolized because they are expected to care for the family as they age.¹³

1.4.3 Female foeticide and infanticide

Discrimination against women is made visible by the fact that India is one of the few countries in the world where men significantly outnumber women. The practice of female foeticide and infanticide has grown to such a degree that the ratio of women to men is not in line with global trends.¹⁴ The European Centre for Law and Justice reports,

In many parts of the world, including the U.S., Europe and Japan, females outnumber males by 3-5 percent. In India and China, by contrast, males outnumber females by 6-8 percent.¹⁵

A national survey has shown that in 1991 there were only 927 women for every 1000 men.¹⁶ UNDP office in India reports that discrimination against women is the cause for one out of six infant deaths.¹⁷ Female foeticide and

¹² Amnesty International, (2001), "The Battle Against Fear and Discrimination; The Impact of Violence Against Women in Uttar Pradesh and Rajasthan," available at [Hwww.amnestyusa.org/women/violence_discrimination_india.html](http://www.amnestyusa.org/women/violence_discrimination_india.html)H

¹³ Carol S. Coonrod, The Hunger Project (an international NGO networking several organisations and individuals with a mission to end world hunger), "Chronic Hunger and the Status of Women in India," (June 1998), available at [Hwww.thp.org/overview/index.html](http://www.thp.org/overview/index.html)H

¹⁴ The European Centre for Law and Justice, "India Religious Leaders Decry Killing of Unborn Baby Girls," June 27 2001, available at [Hhttp://www.eclj.org/news/euro_news_010627unborn_baby_girls.asp](http://www.eclj.org/news/euro_news_010627unborn_baby_girls.asp)H

¹⁵ The European Centre for Law and Justice, "India Religious Leaders Decry Killing of Unborn Baby Girls," op. cit.

¹⁶ Kalyani Menon-Sen A K Shivakumar, "Women in India how free? How equal," Report commissioned by the Office of the United Nations Resident Coordinator in India, 2001, at 73, available at, [Hhttp://www.un.org.in/wii.htm](http://www.un.org.in/wii.htm)H, p. 8-9.

¹⁷ UNDP, *UNDP Country Reports, India*, available at [Hhttp://www.undp.org.in/report/IDF97/idfdimns.htm](http://www.undp.org.in/report/IDF97/idfdimns.htm)H

infanticide compounded by high maternal mortality, violence, and malnutrition are factors for the “missing” 20-25 million women in India’s population. The United Nations Special Rapporteur on Violence Against Women reported,

A study of 10,000 abortions following gender tests by amniocentesis in Bombay, India revealed that 9,999 of the foetuses were female. [...] In India, where there is a strong societal preference for sons, many sex identification clinics have started up. Sex identification before birth was made unlawful many years ago but is commonly practised throughout India. It is argued that a girl will be a financial burden that will only increase as she grows. A modern saying in India, “Better 500 rupees now than 5,000 rupees later”, compares the cost of sex selective technology and the future dowry.¹⁸

It is also reported that in rural areas infant mortality rates are higher for girls than for boys. There are reports of different methods of female infanticide practised in different parts of India.¹⁹

1.4.4 Nutritional discrimination

The Indian tradition of *pati parmashwar* subjects girls and women to nutritional discrimination requiring them to eat last and least. UNICEF has concluded that women and girls in South Asia particularly in India are less well cared for by their families, their partners, and their societies than in the most deprived regions of sub-Saharan Africa.

In both regions [South Asia and Sub-Saharan Africa], it is common for the men to eat the most and the best, leaving the women and children to eat the last and the least; in South Asia the mother will then feed her sons the best of what is left, at the expense of her own and her daughters' nutritional well-being. Women in both regions, indeed in all regions, may be subordinated; but the demands made in patriarchal South Asian societies on the time and energies of women are visibly more excessive and unfair than in other regions of the world.²⁰

1.4.5 Caste and gender

Despite several legal provisions, discrimination on the basis of caste is endemic. People of lower caste are denied their civil and political rights and live in inhumane and segregated conditions. They live in extreme poverty forced to take up traditionally unclean occupations, having no access to land ownership or opportunities for better employment and education. Women of lower caste face double discrimination because of their gender and caste. According to Human Rights Watch,

¹⁸ Report of the Special Rapporteur on Violence Against Women, “Integration of the Human Rights of Women and the Gender Perspective,” *Submitted to the Commission on Human Rights, fifty-eight session*, 31 January 2002, E/CN.4/2002/83, available at [Hwww.un.org](http://www.un.org)H

¹⁹ Kalyani Menon-Sen A K Shivakumar, “Women in India how free? How equal,” *op. cit.*, p. 28

²⁰ UNICEF, *The Progress of Nations Report 1996*, “Nutrition, The Asian Enigma,” available at [Hwww.unicef.org/pon96/nuenigma.htm](http://www.unicef.org/pon96/nuenigma.htm)H

Lower-caste women are singularly positioned at the bottom of caste, class, and gender hierarchies. Largely uneducated and consistently paid less than their male counterparts worldwide they invariably bear the brunt of exploitation, discrimination, and physical attacks. Sexual abuse and other forms of violence against women are often used by landlords and the police to inflict political "lessons" and crush dissent within the community. Lower-caste women also suffer disproportionately in terms of access to health care, education, and subsistence wages as compared to women of higher castes.

Dalit women in India and Nepal make up the majority of landless laborers and scavengers, as well as a significant percentage of the women forced into prostitution in rural areas or sold into urban brothels. As such, they come into greater contact with landlords and enforcement agencies than their upper-caste counterparts. Their subordinate position is exploited by those in power who carry out their attacks with impunity. Incidents of gang-rape, stripping, and parading women naked through the streets, and making them eat excrement are all crimes specific to Dalit women in India. Sexual violence is also linked to debt bondage in India, Pakistan, and Nepal.²¹

²¹ Human Rights Watch, *A Report for the United Nations World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance*, Durban, South Africa, September 2001, available at www.hrw.org/reports/2001/globalcaste/H

2. Domestic violence

Patriarchy has created an environment in which violence within the family is tolerated and considered necessary to maintain women's low status in society. Statistics on the prevalence of domestic violence indicate that it is a widespread phenomenon affecting women of all ethnic groups, religion, and socio-economic background.

Violence against women within families is often justified and condoned as being necessary to establish men's authority over women, to discipline them and to punish them for derelictions of duty. This view is held not only by men, but often by women themselves.²²

There is increasing evidence to show that all women, regardless of age, class, caste and community are vulnerable to domestic violence; marriage, a joint family, education, economic security and social status do not provide any real protection. The reasons for domestic violence are equally disturbing and the most trivial of causes apparently justifies extreme punishment.²³

The 2002 US State Department Report notes:

Domestic violence is common and a serious problem. In a survey of 10,000 women released during 2000, more than half of the women said that violence was a normal part of married life. The Health Ministry released a different survey in 2000 that indicated that, of 90,000 women surveyed, more than half acknowledged being battered. An International Institute of Population Studies survey in 2000 found that 56 percent of women believe that domestic violence is justified. These sentiments, combined with ineffective prosecution, make progress against domestic violence difficult.²⁴

The 2002 Home Office Country Assessment reported similar findings:

Violence against women has increased in recent years. Wife beating is a problem, which cuts across all castes, classes, religions and education levels. A report published in 1999 in the Journal of the American Medical Association found that 46% of husbands interviewed abused their wives either physically or sexually. The data came from more than 6,000 men who were interviewed over a period of two years in Uttar Pradesh.²⁵

²² Kalyani Menon-Sen A K Shivakumar, "Women in India how free? How equal," op. cit., p. 74

²³ Kalyani Menon-Sen A K Shivakumar, "Women in India how free? How equal," op. cit., p. 73

²⁴ US Department of State (2002), op. cit.

²⁵ UK Home Office Country Information and Policy Unit (April 2002), *Country Assessment: India*, available at: [Hwww.ind.homeoffice.gov.uk](http://www.ind.homeoffice.gov.uk)H

2.1 Dowry related violence

Violence against women within the home is often associated with the practice of dowry (price that the bride's family pay to the groom and his family as part of the marriage arrangement). Dowry is at the root of discrimination and violence against women in India. Women are regarded as a liability and female infanticide is largely practiced mainly because dowry is a real financial burden to the parents of a bride.²⁶ Traditionally, dowry was given in the form of gifts and jewellery. This practice has now become a means to increase the wealth of the groom's family. Dowry is demanded both in money and kind and the amount is often exorbitant. It is not uncommon for the husbands' family to make more demands after the conclusion of the marriage.²⁷

It is common for the groom and/or his mother to murder the new bride in the first year of an arranged marriage because they consider her dowry insufficient. It is also common for the bride to kill herself to spare her family further hardship. In either case, the man is then free to seek a new bride who presumably will fulfil the dowry demands. Every day in India fifteen women are murdered by their new husbands and/or in-laws for failing to bring a sufficient dowry to the marriage.²⁸

Regarding dowry-associated violence within the family Amnesty International stated,

Methods of killing women in the home include soaking them with kerosene and setting light to them and poisoning, either claiming that the death was accidental or that the woman committed suicide. Violence within marriage in India is often associated with the practice of "dowry" although it is by no means the only cause of violence. The practice of dowry has been prohibited in law since 1961 when it was recognized that it was contributing to high levels of violence against women as husbands and their families harassed wives for increased dowry. However, the practice continues. According to the Annual Report for 1999 of the Rajasthan Police, dowry deaths over the period 1997-1999 increased by 24.43%.²⁹

Citing the statistics of The National Crime Records Bureau (NCRB) the 2002 US State Department Report states that dowry related violence is a phenomenon that cuts across caste and religion:

²⁶ Report of the Special Rapporteur on Violence Against Women, "Integration of the Human Rights of Women and the Gender Perspective," *Submitted to the Commission on Human Rights, fifty-eight session*, 31 January 2002, E/CN.4/2002/83, op. cit, p. 23

²⁷ Angela K. Carlson-Whitley, "Dowry Death: A Violation of the Right to Life Under Article Six of the International Covenant on Civil and Political Rights," 17 *University of Puget Sound Law Review* (Now Known as the *University of Seattle Law Review*) 637, p. 639, available at [Hwww.law-lib.utoronto.ca/Diana/fulltext/carl.htm](http://www.law-lib.utoronto.ca/Diana/fulltext/carl.htm)H (Women's Human Rights Resources website, University of Toronto)

²⁸ Angela K. Carlson-Whitley, "Dowry Death: A Violation of the Right to Life Under Article Six of the International Covenant on Civil and Political Rights," op. cit, p. 638

²⁹ Amnesty International, "The Battle Against Fear and Discrimination; The Impact of Violence Against Women in Uttar Pradesh and Rajasthan," (2001), op. cit., at 6.

[...] 6,917 dowry deaths occurred in the country in 1998, including 2,229 dowry deaths in Uttar Pradesh, 1,039 in Bihar, 598 in Madhya Pradesh, 500 in Andhra Pradesh, 420 in Maharashtra, 200 in Karnataka, 176 in Tamil Nadu, and 21 in Kerala. Studies in Assam between 1992-97 by the Law Research Institute found 10,423 registered cases of crime against women in the state's 23 districts, which likely is a low figure since it widely is believed that most dowry cases go unreported. LRI statistics show that 17.19 percent of the reported cases are dowry-related harassment or murder. In December in Bihar, police searched for a judge who allegedly had chained up his daughter-in-law in his home and physically abused her over a dowry dispute.³⁰

In its concluding observation the Committee on CEDAW stated,

The Committee is concerned that there is a high incidence of gender-based violence against women which takes more extreme forms because of customary practices, such as dowry, sati (widow burning) and the devadasi system (a system where by young girls are pledged for life to a god or goddess by their parents to be prostitutes in temples³¹). Discrimination against women who belong to particular castes or ethnic or religious groups is also manifest in extreme forms of physical and sexual violence and harassment.³²

³⁰ US Department of State (2002), op. cit.

³¹ Report of the Special Rapporteur on Violence Against Women, "Integration of the Human Rights of Women and the Gender Perspective," *Submitted to the Commission on Human Rights, fifty-eight session*, 31 January 2002, E/CN.4/2002/83, op. cit, p. 15

³² Committee on the Elimination of Discrimination Against Women, *Concluding Observations: India*, 2000, A/55/38, available at www.unhcr.org

3. Domestic violence and the law

There is no law that addresses domestic violence in its entirety. Legal provisions can be found in the Penal Code and other acts regulating certain aspects of domestic violence. Article 498A of the Penal Code, which is referred to in domestic violence cases, states:

Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation- For the purpose of this section, "cruelty" means-

(a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

In relation to these provisions Dr Purna Sen wrote,

While these provisions may cover some of the areas of domestic violence they are lacking in a number of respects. The everyday or less immediately life-threatening regular violence is not recognized and the standard clauses on assault tend not to be used by women against their husbands.³³

Apart from its failure to cover all aspects of domestic violence, this article has been criticized by women rights groups for its ambiguity. The International Center for Research on Women³⁴ studied the record of the police Special Cell for Women and Children in India and came to the following conclusion:

While Section 498A of the Indian Penal Code makes "cruelty" a punishable, cognizable offense in the Indian Penal code, "cruelty" is a vague term and courts are often reluctant to define it. The judicial system's definition of mental cruelty and trauma is especially unclear and even judges who are sensitized to the issue of domestic violence may find themselves constrained in the types of rulings they can make. The lack of clarity leaves room for inconsistency among judgments, particularly as a large segment of the judiciary is not yet fully sensitized

³³ Purna Sen, "A Basket of Resources: Women's Resistance to Domestic Violence in Calcutta," A thesis submitted to the University of Bristol for the Degree of Doctor of Philosophy in the Faculty of Social Sciences, Department of Sociology, December 1997, p. 188. Dr Sen is a lecturer in the Development Studies Institute at the London School of Economics. An expert on violence against women and researcher and activist for over 10 years, she has published widely on violence, especially in India.

³⁴ The International Center for Women is a non-profit organisation founded in 1976 and based in Washington D.C., USA, with an office in India. It promotes women's rights through research, technical support for capacity building and advocacy.

*to the dynamics and dimensions of domestic violence. Thus in some cases, psychological abuse and mental “torture” may be recognized and punished, while, in others, it is ignored.*³⁵

The Indian government introduced a draft bill on the 8th of March 2002³⁶ on domestic violence in the lower house of the parliament, which is still awaiting debate and passage. Several women’s rights organizations, legal experts specializing on women’s laws, and the National Commission for Women have argued that the bill not only fails to address all aspects of domestic violence but also justifies violence. The National Commission for Women³⁷ stated,

Although the Bill purports to be in favour of women, a close reading of the provisions shows that instead of protecting women from domestic violence, the Bill seeks to give legitimacy to some forms of violence in order to maintain “domestic harmony”. The definition of domestic violence is not only inadequate but also not in conformity with that contained in the International Conventions to which India is a signatory but has left it to the discretion of the judges to decide what constitutes domestic violence.

The Bill makes domestic violence an offence punishable with imprisonment for one year and states that the “conduct of a relative of the victim which subjects her to habitual assault or makes her life miserable or injures or harms, or forces her to lead an immoral life would constitute domestic violence”. Does this imply that a woman would have to subject herself to repeated assaults and torture to prove that her husband ‘inhabitually’ beats her? Worse still, is the sub section which says that if the respondent follows a course of conduct which is “reasonable for his own protection or for the protection of his or another’s property, then the section that defines domestic violence “that any conduct that otherwise injures or harms the aggrieved person” will not apply. In other words, a man can beat his wife and get away with it by saying he did this to protect his property.

Moreover, the Bill ignores the needs of women and children, who are victims of domestic violence, for shelter and monetary assistance. The law fails to take into account the fact that often a woman who complains about domestic violence is thrown out of the house along with her children and very often they have no where else to go. It is because of this threat of eviction, many women silently suffer violence at the hands of the husbands, in-laws and other relatives. However, there is no provision in the Bill to give an abused woman the right to

³⁵ International Centre For Research on Women, (May 2000), “Domestic Violence in India: A Summary Report of Four Records Studies, (Washington D.C, International Centre for Research on Women, 2000), p 37

³⁶ For a full text of the draft bill see Appendix B

³⁷ The National Commission for Women is a statutory body established in 1992 under the Act No. 20 of 1990 of Government of India to review the Constitutional and Legal safeguards for women, recommend remedial legislative measures, facilitate redressing of grievances, and advise the Government on all policy matters affecting women. See <http://www.ncw-india.org/H>

*reside in her matrimonial house. And without this right, a law on domestic violence will have no meaning at all.*³⁸

3.1 Rape

Marital rape is not recognized as a criminal offence. Article 375 of the Indian Penal Code specifically exempts marital rape from the legal definition of rape in breach of India's obligation under international law to protect women's dignity and physical integrity. This reinforces the social belief that a husband has complete control over his wife:

A man is said to commit "rape" who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions: -

First- Against her will

Secondly- Without her consent.

Thirdly- With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or hurt.

Fourthly- With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly- With her consent, when at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly- With or without her consent, when she is under sixteen years of age.

Explanation-Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Exception-Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.³⁹

The law on rape implies that consent to matrimony presupposes consent to rape. Regarding the vulnerability of married women Dr Purna Sen wrote:

Marriage is at once the only socially legitimate site to be an adult woman and the place where male violence against women is generally free from public judgment. This makes it a dangerous place for women but one for which women have few real alternatives. It is at once a place of terror and a place of social acceptance and it is from this combination that many of women's conflicting views of and responses to violence stem. Women from all backgrounds reported physical and

³⁸ National Commission for Women, (April 2002), Newsletter, Vol. 3 No. 30, available at [Hwww.ncw-india.org/publications/rashtra_mahila/english/apr2002/page1.html](http://www.ncw-india.org/publications/rashtra_mahila/english/apr2002/page1.html)H

³⁹ The Indian Penal Code, Act No 45 of Year 1860, available at [Hwww.indialawinfo.com/bareacts/mainbare.html](http://www.indialawinfo.com/bareacts/mainbare.html)H

*sexual violence and sadly for all groups of women, those who experienced violence outnumbered those who did not.*⁴⁰

⁴⁰ Purna Sen, "A Basket of Resources: Women's Resistance to Domestic Violence in Calcutta," op. cit. p. 140-141.

4. The reality of seeking protection

4.1 Stigma of reporting domestic violence

In spite of the increase in reports of violence, many victims of domestic violence continue to suffer in silence. The stigma attached to reporting violence and the fear of reprisal restrain women from reaching out for help. A woman who reports violence may be thrown out of the house. Most parents are not willing to take in their abused daughter; they generally try to send them back.⁴¹

Many women who suffer from domestic violence have little or no education, are not likely to be able to support themselves, and are unlikely to be able to turn to their parents if they leave their husbands because their parents either will not (because of the social stigma) or cannot (because of economics) take them in. Generally, the police have not been helpful to women in domestic violence cases, and there are few community support programs available to these women. Thus, many victims of domestic violence remain in abusive situations.⁴²

A woman who escapes an abusive husband may also be required to prove in court a reasonable excuse for leaving the marital home, if the husband petitions for restitution of conjugal rights. The Special Marriage act of 1954, which is applicable to all citizens of India, states,

Restitution of Conjugal Rights and Judicial Separation

22. Restitution of conjugal rights. - When either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other the aggrieved party may apply by petition to the District Court for restitution of conjugal rights, and the Court, on being satisfied of the truth of the statements made in such petition, and that there is no legal ground why the application should not be granted, may decree restitution of conjugal rights accordingly.

Explanation- Where a question arises whether there has been reasonable excuse for withdrawal from the society, the burden of proving reasonable excuse shall be on the person who has withdrawn from the society.⁴³

The same rule is found under the Hindu Marriage act of 1955.⁴⁴

⁴¹ Veena Poonacha and Divya Pandey, "Responses to Domestic Violence in Karnataka and Gujarat," (Washington D.C, International Centre for Research on Women, 1999), p. 22, available at

[Hwww.hsph.harvard.edu/Organizations/healthnet/SAsia/forums/dv/articles/karnataka.html](http://www.hsph.harvard.edu/Organizations/healthnet/SAsia/forums/dv/articles/karnataka.html)H

⁴² V.A Vekoff and A.Adakha, "Women's Health in India," US Census Bureau, December 1998, p. 5, available at [Hhttp://www.census.gov/ipc/prod/wid-9803.pdf](http://www.census.gov/ipc/prod/wid-9803.pdf)H

⁴³ See Chapter V Section 22 of the Special Marriage Act, 1954 (Act. No, 43 of 1954, 9th of October 1954).

⁴⁴ The Hindu Marriage Act, Act 25 of 1955 (18 May 1955), available at [Hwww.indialawinfo.com/bareacts/mainbare.html](http://www.indialawinfo.com/bareacts/mainbare.html)H

4.2 Lack of enforcement of measures to protect women

In addition to lack of adequate legislation that addresses all aspect of domestic violence, failure to enforce existing laws is an obstacle to the protection of women's rights. For example the US State Department reported,

Numerous laws exist to protect women's rights, including the Equal Remuneration Act, the Prevention of Immoral Traffic Act, the Sati (Widow Burning) Prevention Act, and the Dowry Prohibition Act. However, the Government often is unable to enforce these laws, especially in rural areas in which traditions are deeply rooted. According to press reports, the rate of acquittal in dowry death cases is high, and because of court backlogs it takes 6 to 7 years on average to rule on such cases. In February 2000, CEDAW noted, "there is an urgent need to introduce comprehensive [legislative] reform to promote equality and the human rights of women."⁴⁵

The CEDAW committee also made a similar observation in its 2000 Concluding Observation,

The Committee considers that inadequate allocation of resources for women's development in the social sector and inadequate implementation of laws are serious impediments to the realisation of women's human rights in India. [...]

The Committee urges the government to implement existing legislation prohibiting such practices as dowry, devadasi and cast-based discrimination. It calls upon the Government to strengthen law enforcement and introduce reforms proposed by the National Commission on Women and women activists in regard to the law on rape, sexual harassment and domestic violence.⁴⁶

4.3 The police and security forces

Human rights groups accuse the police of participation in violence against women and obstructing women's access to justice. Documented reports indicate that the police have not only failed to protect women from violence but also played an active part in it.

Amnesty International's report on violence against women in India stated,

Often women will not approach police because they fear being dishonoured, dismissed or further abused. One activist working with Dalit women in Uttar Pradesh estimated that only five percent of cases of violence against women are registered. Many Dalits are not aware of their rights under special legislation designed to protect them, and it is rare that police voluntarily inform them of those rights.

Police are also accused of withholding and destroying evidence in many cases, usually at the behest of the accused, with whom they may

⁴⁵ US Department of State (2002), op. cit.

⁴⁶ Committee on the Elimination of Discrimination Against Women, (2000) *Concluding Observations*, paragraphs 56 and 69, op. cit.

*have caste or other links. Witnesses often withdraw testimony after taking bribes or being threatened by the accused; medical evidence is lost because simple procedures are not followed. The discouraging length of time required to pursue torture cases through the courts often causes victims to make compromises or to withdraw their cases entirely.*⁴⁷

There are also documented cases indicating police unwillingness to follow proper procedures in cases involving violence against women. According to the US Department of State, “Only 10 percent of rape cases are fully adjudicated by the courts, and police typically fail to arrest rapists, thus fostering a climate of impunity.”⁴⁸

The UN Special Rapporteur on Violence Against Women has received several reports of abuse and rape of women while in police custody.⁴⁹ She stated,

*Torture, including rape and other sexual violence, is also reportedly used by the police and security forces. In certain reports that the Special Rapporteur has received with regard to custodial violence outside the armed conflict areas, women from certain castes and ethnic or religious minorities appear to be at risk of being targeted by the police.*⁵⁰

In another report she noted,

*Although India has a strong legal framework for prosecuting cases of rape by security forces, including provisions relating to custodial rape that provide victim-friendly evidentiary procedures, neither investigation nor prosecution by State authorities has been adequately pursued, thus suggesting a lack of political will to prevent, prosecute and punish such violations of women's human rights.*⁵¹

The police have also been accused of misusing the criminal law relating to domestic violence. Discussions between government officials, lawyers and women activists, highlighted this problem: it was pointed out that compared to the level of violence against women, very few cases have been lodged under

⁴⁷ Amnesty International, (March 2001), “Discrimination Against Women in India,” available at [Hwww.amnestyusa.org/countries/india/women.html](http://www.amnestyusa.org/countries/india/women.html)H. See also V.S Elizabeth, “Empowerment, Security and Opportunity Through Law and Justice, A World Bank Conference, July 8-12 2001, Saint Petersburg, Russia at [Hwww.worldbank.org/legal/ljr_01/doc/Elizabeth.pdf](http://www.worldbank.org/legal/ljr_01/doc/Elizabeth.pdf)H

⁴⁸ US Department of State (2002), op. cit.

⁴⁹ Special Rapporteur on Violence Against Women, *Communications to and from Governments*, E/CN.4/2002/83 Add.1, 28 January 2002, available at [Hwww.unhchr.org](http://www.unhchr.org)H

⁵⁰ Special Rapporteur on Violence Against Women, *Violence Against Women Perpetrated and /or Condoned by the State During Armed Conflict (1997-2000)*, E/CN.4/2001/73, 23 January 2001, available at [Hwww.unhchr.org](http://www.unhchr.org)H

⁵¹ Special Rapporteur on Violence Against Women, *Report to the Commission on Human Rights on Violence Against Women*, Fifty-fourth Session, E/CN.4/1998/54, 26 January 1998, available at [Hwww.unhchr.org](http://www.unhchr.org)H

section 498A of the Indian Penal Code. This was attributed to the attitude among the police that violence against women is acceptable.⁵²

There are also other problems such as corruption and inefficiency that make justice inaccessible for women. For example the US State Department has reported,

*Under the Penal Code, courts must presume that the husband or the wife's in-laws are responsible for every unnatural death of a woman in the first 7 years of marriage--provided that harassment is proven. In such cases, police procedures require that an officer of deputy superintendent rank or above conduct the investigation and that a team of two or more doctors perform the post-mortem procedures. According to human rights monitors, in practice police do not follow these procedures consistently.*⁵³

Victims or witnesses withdraw testimony from criminal cases due to threats leading to a high number of acquittals in criminal cases. There is no protection program for victims or witnesses in India.

*[...] In the case of women victims from marginalized communities, the odds are stacked against them and without some form of protection or removing them from the context in which they might be receiving threats it is not surprisingly rare for women to pursue complaints through the courts. In numerous cases documented by Amnesty International, victims received direct or indirect threats from perpetrators but received no protection from the state despite complaining to the authorities -- ensuring that perpetrators could continue to harass them and in several cases commit further acts of violence.*⁵⁴

4.3 All women police stations

All women police stations (AWPS) were established to encourage women to report violence, to provide an organised response and to facilitate the enforcement of laws on violence against women. They are authorised to handle reports involving domestic violence, dowry-related offences, sexual harassment, trafficking of women and children, rape, and other crimes against women. According to a report based on a study conducted in two provinces of India, the AWPS are not accessible to women and have failed to achieve their objectives.

⁵² A Panel Discussion on the Protection Against Domestic Violence Bill, 12 January 2002. For the Full Transcript of the Panel Discussion see http://www.the-week.com/22feb03/panel_ds.doc (India's weekly national newspaper). Similar accusations have been made in another report-see V.S Elizabeth, "Empowerment, Security and Opportunity Through Law and Justice," op. cit. p. 5.

⁵³ US Department of State (2002), op. cit.

⁵⁴ Amnesty International, "The Battle Against Fear and Discrimination: The Impact of Violence Against Women in Uttar Pradesh and Rajasthan," op. cit., p. 26

Procedures to respond include filing a complaint, trying to resolve the issue with the accused through counselling or mediation, or sending the case to court. Police officers may collect evidence including medical reports, fingerprints, eyewitness accounts, and circumstantial evidence. If this evidence supports the charge as a cognisable case, the police can then arrest and charge the accused. Contrary to these stated purposes and goals of AWPS, however, the case studies of AWPS in Karnataka and Gujarat revealed poor quality services and low rates of utilization. Although some AWPS personnel stated that women travel long distances in order to come specifically to the all-women stations, and that women reportedly feel more comfortable bringing sex-related cases to these stations, the number of recorded and prosecuted cases in the official records remain low for the size of the stations' jurisdictions. This is attributed in part to a kind of discriminatory attitude and a lack of gender awareness among the police and a lack of any accompanying changes within the judicial process. For example, cases often have to be dowry-related to be taken seriously, and the first procedural step in dealing with new cases still seems to be counselling and family reconciliation, regardless of whether or not that is the most appropriate action for a particular woman. Field researchers and station personnel have pointed to many problems with All Women Police Stations that include inadequate training of staff, insufficient facilities of the station, and poor integration of the women's station with the rest of the police force.⁵⁵

4.4 The judiciary

A patriarchal attitude among the judiciary has also been raised as one of the major obstacles to women's access to justice. Even though the Supreme Court has made certain positive decisions by interpreting the gender equality provisions of the Constitution, there is disturbing evidence concerning the individual attitudes of members of the judiciary. The judgement in a 1995 rape case involving a worker in a government programme, who was gang-raped in retaliation for her opposition to child marriage in her village, provides evidence of this fact.

The fact that the alleged rapists were all middle-aged men with a respected position in their community was cited as evidence of their innocence, since rape is usually committed by teenagers. The judgment repeated these arguments, and added that since the accused were all from an upper caste, including a Brahmin, the rape could not have taken place because the victim was a woman from a lower caste. The judge also endorsed insinuations by the defence about her immoral character. All five accused were acquitted of the charge of rape.⁵⁶

The research also cites the following statistics:

⁵⁵ Veena Poonacha and Divya Pandey, "Responses to Domestic Violence in Karnataka and Gujarat," op.cit

⁵⁶ Kalyani Menon-Sen A K Shivakumar, "Women in India how free? How equal," op. cit, p. 76.

In a study conducted in 1996, 109 judges were interviewed to assess their attitudes to violence against women.

48% believed that there were certain occasions when it was justifiable for a husband to slap his wife.

74% believed that the preservation of the family should be the woman's primary concern, even if she faces violence.

50% believed that child sexual abuse is not common.

68% believed that provocative clothes are an invitation to sexual assault.

34% believed that dowry has an inherent cultural value.

55% believed that the moral character of a woman is relevant in cases of sexual abuse.

9% believed that a woman who says no to sexual intercourse often means yes.⁵⁷

The India National Commission for Women has also made the following assessment regarding the attitude of the judiciary towards victims of sexual abuse:

Not many of these cases reach the courts for trial, partly in view of the shame and honour involved and partly due to the existing difficult and complicated procedural laws. It was also noticed that the police are generally apathetic to the registration of complaints involving rape. Even in those cases which come up to courts for trial after going through all the investigations and medical examinations; our courts had not been sensitive to the trauma undergone by the rape victims, both during the actual commission of the offence and during trial in the courts. The courts are also oblivious of the social stigma and ostracism a victim of rape has to face throughout her life and allow rapists to be acquitted on wholly irrelevant and flimsy grounds of age, religion, caste, status and other considerations.⁵⁸

Another study shows that:

There is also the problem of the backlog of cases that exists generally in the Indian judicial system. In domestic violence cases, especially dowry-related cases, delay becomes very crucial. The delay between the filing of the case and trial can sometimes be so long that the memory of the witnesses may be affected. In addition, the interests of the witnesses during this period may have so changed that they will be unwilling to come to court and provide their evidence.⁵⁹

⁵⁷ Kalyani Menon-Sen A K Shivakumar, "Women in India how free? How equal," op. cit, p. 76.

⁵⁸ National Commission for Women *Annual Report for 1995-96*, cited in Amnesty International, "The Battle Against Fear and Discrimination: The Impact of Violence Against Women in Uttar Pradesh and Rajasthan," op.cit. p.17.

⁵⁹ V.S Elizabeth, "Empowerment, Security and Opportunity Through Law and Justice," op. cit.

4.5 Other support services

Regarding the role of NGOs working for women's rights, Amnesty International states,

Many women victims of violence are in desperate need of relief and rehabilitation. Many need to be at least temporarily and permanently placed outside the community where the offence took place. This rarely happens. There are no efforts towards social rehabilitation of women victims of violence. They are left entirely on their own or subject to the mercy of their families and the social pressures inherent in that situation. Professional counseling of women victims is virtually unheard of.

Outside the formal criminal justice system, women can turn to other bodies for support and redress. There are a large number of active non-governmental and voluntary organizations, which provide legal support and temporary shelter and economic support to women. However, given their localized nature, the lack of resources available and the vulnerability of such initiatives to pressure from families, police, community or state, these initiatives cannot wholly address the scale of the problem in a country the size of India. There is clearly room for discussion on ways in which the state can address the needs of abused women through supporting the work of voluntary sector organizations.⁶⁰

Even though there are both state-run and NGO controlled temporary shelters for survivors of domestic violence, they have failed to address the women's needs adequately.

[...] The research revealed that the average usage rate at many government shelters is only 30 percent of capacity. Important reasons for this include restrictions on the number and age of dependents accompanying their mothers, a lack of recreational facilities, and inadequate infrastructure. While shelters managed by voluntary agencies are less restrictive, relatively few childcare arrangements exist, causing difficulties for working women.⁶¹

The inaccessibility of shelter homes and unavailability of other support services has also been stressed by another study.⁶²

Amnesty International has also stressed that despite its efforts the National Commission for Women has remained largely ineffective due to its lack of

⁶⁰ Amnesty International, "The Battle Against Fear and Discrimination: The Impact of Violence Against Women in Uttar Pradesh and Rajasthan," op. cit., p. 29-30

⁶¹ Tata Institute of Social Studies, Women's Studies Unit, "Responses to Domestic Violence in India: A study in Maharashtra and Madhya Pradesh," 1998 available at [Hhttp://www.cedpa.org/publications/PROWID/AME/mitraindia.pdf](http://www.cedpa.org/publications/PROWID/AME/mitraindia.pdf)H.

⁶² Veena Poonacha and Divya Pandey, "Responses to Domestic Violence in Karnataka and Gujarat," op.cit

power and resources. It has no power to exert pressure on the government to implement its recommendations.⁶³

⁶³ Amnesty International, “The Battle Against Fear and Discrimination: The Impact of Violence Against Women in Uttar Pradesh and Rajasthan,” *op. cit.*, p. 16

5. The situation of separated or divorced women

5.1 Risk of rape and sexual violence

Various reports indicate the prevalence of rape in India, in particular sexual violence against women of lower caste. According to the US State Department,

*Mass rapes often form part of the tactics of intimidation used by upper caste gangs against lower castes, and gang rapes often are committed as a punishment for alleged adultery or as a means of coercion or revenge in rural property disputes.*⁶⁴

The UN Special Rapporteur on Violence Against Women has reported that rape and sexual abuse continue in areas of armed conflict such as Jammu, Kashmir, Assam and Manipur. She stated,

*As fighting escalated in Jammu and Kashmir, all parties to the conflict committed serious abuses against the civilian population. The Special Rapporteur has received reports that the Indian security forces have raped women and girls in certain search operations.*⁶⁵

The incidence of rape is very high among scheduled caste women.

*Of serious crimes against scheduled castes including murder, rape, kidnapping and abduction, dacoity [banditry], robbery and arson, rape was the highest in the period 1996-1998 according to NCRB figures. The same was true of serious crimes against scheduled tribe women. While 516 cases of murder of scheduled castes were recorded in 1998, 923 cases of rape were recorded in the same year. Rajasthan officially recorded 136 cases of rape of scheduled caste women during 1999. This is certainly a severe underestimate. Well-known journalist P. Sainath, after researching the situation of dalits in Rajasthan, reported that on average a dalit woman is raped every sixty hours and that one dalit is murdered every nine days.*⁶⁶

In conflict between different communities rape is used as a weapon to induce terror and humiliation. In these circumstances it may be argued that single women and women estranged from family face a higher risk of sexual abuse.⁶⁷

Regarding separated women, Dr Purna Sen notes:

⁶⁴ US State Department, (2002), op.cit.

⁶⁵ Special Rapporteur on Violence Against Women, Violence Against Women Perpetrated and /or Condoned by the State During Armed Conflict (1997-2000), op. cit., paragraph 85.

⁶⁶ Amnesty International, "The Battle Against Fear and Discrimination; The Impact of Violence Against Women in Uttar Pradesh and Rajasthan," (2001), op. cit. p. 10

⁶⁷ Amnesty International, "The Battle Against Fear and Discrimination; The Impact of Violence Against Women in Uttar Pradesh and Rajasthan," (2001), op. cit. p. 8

Marriage is socially and ideologically constructed as the only legitimate site for adult women in India (Mukherjee 1994) so that being outside a marriage is considered to place a woman in a questionable state, particularly sexually, as she is beyond the control of any man (Kumar 1993:121; Sen 1997). Calman has described unmarried women in India being regarded as 'culturally abhorrent' (Calman 1992:125) and evidence supports the view that divorced women are the targets of discrimination and 'eve-teasing' (Liddle and Joshi 1986) - which in the west is known as sexual harassment. This can involve degrading comments, propositions or demanding of sexual services (Liddle and Joshi 1986: 137-141). Divorced and separated women are more vulnerable to such abuse (Liddle and Joshi 1986: 140) and are fearful of harassment and rape (Sen 1997; Sen 1998).⁶⁸

The National Commission for Women has reported the increasing trend of sexual harassment at work places and women leaving their jobs because of sexual harassment.⁶⁹ This is in spite of the 1997 decision of the Supreme Court establishing sexual harassment as a violation of the fundamental rights of women workers and laying down guidelines to protect these rights.

5.2 Marriage and divorce

The origin of the Indian belief that a woman must always be under a man's control can be traced to the rules laid down by a Hindu religious scripture, Manu, in 200 B.C.:

By a young girl, by a young woman, or even by an aged one, nothing must be done independently, even in her own house". "In childhood a female must be subject to her father, in youth to her husband, when her lord is dead to her sons; a woman must never be independent."⁷⁰

This attitude is now found in the culture of all societies in India irrespective of religion and class. Marriage is a social obligation imposed on women of all religions and communities. Arranged marriage is still very common. Parents will discharge their obligation to a daughter by arranging her marriage and giving a dowry to her in-laws.⁷¹ Forced and child marriages are also commonly practiced particularly in rural areas.⁷² Once a girl is married she is expected to be subordinate to her husband and his family. Divorce is stigmatised. It is a decision which women cannot make without severe economic and social

⁶⁸ Sen, Purna (2003), *Some notes on single adult women in India*, January 2003, unpublished

⁶⁹ National Commission on Women, Monthly Newsletter, Vol. 3, No. 31, available at

[Hwww.ncw-india.org/publications/rashtra_mahila/english/may2002/page1.html](http://www.ncw-india.org/publications/rashtra_mahila/english/may2002/page1.html)H

⁷⁰ Cited in Carol S. Coonrod, "Chronic Hunger and the Status of Women in India," op. cit.

⁷¹ According to guidelines produced by the Association of UK Foreign and Commonwealth Office, Chief Police Officers, and the Home Office, arranged marriage is quite different from forced marriage. In arranged marriage, both parties consent willingly to the marriage whereas forced marriage is concluded without the valid consent of the parties and is a violation of women's rights. Full text of the guideline is available at

[Hhttp://www.homeoffice.gov.uk/reu/pcgyfoma.pdf](http://www.homeoffice.gov.uk/reu/pcgyfoma.pdf)H

⁷² BBC News "Move to Stop Indian Child Marriages," 14 May 2002, available at [Hhttp://news.bbc.co.uk/1/hi/world/south_asia/1986826.stm](http://news.bbc.co.uk/1/hi/world/south_asia/1986826.stm)H

consequences.⁷³ According to a 1991 census cited by the World Health Organisation, the divorce rate per 1000 population is 7.41.⁷⁴

Attitudes to marriage and divorce are summarised by Dr Purna Sen as follows:

The strength of social, cultural and religious inhibitions to the dissolution of marriage is evidenced by the low divorce rate, which was 0.33% of the total female population in 1971, 0.42% in 1981 (figures from Mukherjee 1994). Despite the legalisation of divorce few communities have found ways to integrate divorced (Mitter 1991:125) or separated women. Tensions exist between pressure for change in social and legal approaches to gender on the one hand and religious frameworks for appropriate behaviour on the other. Women's supposed insatiable sexual appetites require watchfulness and control on the part of men (ie husbands), culturally marriage is widely considered indissoluble, hence divorce and widow re-marriage are considered almost impossible (Calman 1992:124; Mukherjee 1994), certainly a social ill, and separation a matter of great social disapproval across religious communities.⁷⁵

The Personal Laws of different religious communities govern matters relating to marriage, divorce, custody and inheritance.

The Dissolution of Muslim Marriage Act grants men the right to unilateral verbal divorce (*talaq*). Muslim women have no such right. The right of a man to divorce his wife spontaneously is said to deter women from speaking out against abuse or seeking help.⁷⁶ Under the Hindu Marriage Act of 1955 both women and men have equal right to petition for divorce. According to the 1869 Divorce Act that is applicable to Christians, while men could divorce their wives on the ground of adultery, women were required to prove an additional ground either of cruelty or desertion. The acts of cruelty or desertion did not constitute independent grounds for divorce. However, in 1997 a High Court recognised that Christian women can be granted divorce on the grounds of abuse only.⁷⁷

Muslim women face the additional disadvantage of being women in a minority community. The Shari'a has been subjected to patriarchal interpretations for centuries to relegate women to a subordinate position. A report published by the Minority Rights Group International⁷⁸ summarises the position of women under Islam as follows:

⁷³ Lawyers Collective, "Creation of an Enabling and Gender-Just Legal Environment as a Prevention Strategy for HIV AIDS among Women in India," February 1999, available at [Hwww.hri.ca/partners/lc/unit/women-hiv.shtml](http://www.hri.ca/partners/lc/unit/women-hiv.shtml)

⁷⁴ WHO South East Asia Regional Office, [Hhttp://w3.whosea.org/women2/india.htm](http://w3.whosea.org/women2/india.htm)

⁷⁵ Sen, Purna (2003), op. cit.

⁷⁶ Purna Sen, "A Basket of Resources: Women's Resistance to Domestic Violence in Calcutta," op. cit., p. 189

⁷⁷ UK Home Office Country Information and Policy Unit, India Assessment (2002), op. cit.

⁷⁸ Minority Rights Group International is an international non-governmental organisation founded in the 1960s in the United Kingdom. It has a consultative status with the UN

[The] Islamic order institutionalised women's subordination through the institution of patrilineal marriage laws endorsing the control of women and female sexuality. Laws relating to marriage, the family and women's conduct explicitly endorsed the patriarchal control of women, the notion of women's submission to male control, the practice of polygamy and the unilateral (male) right to divorce.⁷⁹

Though the Child Marriage Restraint (Amendment) Act 1976 makes 18 the minimum age of marriage for women, it is often ineffective. Child marriages are common, particularly in rural areas.⁸⁰

Though the government has been urged to change its policy of non-intervention in the personal laws of religious groups and to ensure that these laws conform to international conventions ratified by India, no step has been taken in this regard. In the case of contradiction between the personal religious laws and the Constitution priority is given to religious laws. This was demonstrated in the case of Shah Bano,⁸¹ who was divorced by her husband through *talaq*. She sued him for maintenance under Criminal Procedure Code (Cr.P.C.), section 125 according to which the former husband of the divorced woman has to maintain her, if she is destitute and has no means of her own for her survival, until she remarries or dies.

However, Bano's husband refused to pay her maintenance beyond the period of *iddah* (i.e. three month's waiting period after divorce before which she cannot remarry), maintaining that this was according to the Muslim personal law. The Indore High Court and later the Supreme Court then decided in her favour granting her maintenance for life under section 125 of Cr.P.C., declaring that Cr.P.C. is common for all citizens, and that Muslim personal law would not be applicable in this matter. However, shortly after this decision the government gave in to religious pressure and enacted the Muslim Women (Protection of Rights on Divorce) Act 1986⁸², which cites the Qur'an to justify a one-off payment of maintenance and denies Muslim women the right to resort to section 125 of Cr.P.C despite the Constitutional provision of equal protection. Thus, the government "*ensured that shariat could not be over-ruled by secular legal provisions.*"⁸³

5.3 The consequences of divorce

Though women have the legal right to divorce, resort to such action is highly stigmatised.

Economic and Social Council and works to promote the rights of religious, ethnic, and linguistic minorities throughout the world.

⁷⁹Seema Kazi, "Muslim Women in India," *Minority Rights Group International Report*, (1999), p. 28.

⁸⁰ UK Home Office Country Information and Policy Unit, (2002), *Country Assessment, India*, op.cit.

⁸¹ Mohd.Ahmed Khan v Shah Bano Begam, AIR 1985 SC 945.

⁸² Muslim Women (Protection of Rights on Divorce) Act 1986, available at http://www.indialawinfo.com/bareacts/muspro.html#_Toc498331475H

⁸³ Purna Sen, "A Basket of Resources: Women's Resistance to Domestic Violence in Calcutta," op. cit., p. 188

Dr Sen describes the problems facing divorced and separated women as follows:

There is little available research or data on the experiences of separated women as a distinct group but their experiences can safely be taken to be similar to that of other adult women outside marriage - divorced, widowed, never-married, destitute and abandoned women. In general, it is safe to note that the similarities across these categories are substantial and provide a sound basis from which to consider them to be a distinct social group, for the purpose of description and analysis. There have been many legislative changes in India since Independence but legal changes have not been widely translated into changed social or cultural practices, so that progress is slow and uneven; remaining difficulties should not be underestimated. While divorce is legally obtainable, the overall situation of separated and/or divorced women is extremely negative.

A survey of divorced and separated women found that they all experienced psychological, economic and domestic problems and the vast majority also reported having social problems (Krishnakumari 1987: 177-185). Social attitudes and reactions to such women often centre on rejection, which compounds their tendency to isolation and withdrawal. In the family home divorced/separated women are not immune from the perception that they are without a proper place: it is common that such women are treated as a liability and a burden, even by their own families.

Divorce and separation are matters of great scandal generally (Calman 1992: 124-5) and a strong current in Indian popular (and journalistic) discourse views divorce as a practice opposed to Indian tradition and culture; a practice which is inherently western and therefore suspect (Pande 1988). It seems that separated/divorced women face severe difficulties in seeking community acceptance after breaking behavioural norms, built upon the ideological centrality and sanctity of marriage. Women outside marriage often find themselves without support from their natal families, facing difficulty in re-marrying (if this is possible at all), and face widespread social opprobrium (Calman 1992: 138).⁸⁴

5.3.1 Custody of children

Under the law the right of guardianship is automatically granted to the father. The courts then determine custody rights in the event of separation. Dr Purna Sen has summarised how legal provisions discriminate against women as follows:

Indian legal provisions are clearly discriminatory against women, in relation to the guardianship of children. This is despite the provisions of CEDAW, to which India is a signatory. Indian law defines the father

⁸⁴ Sen, Purna (2003), op. cit.

as the 'natural guardian' of legitimate children, while women are natural guardians only where the child is illegitimate. This is a clear impediment to women leaving abusive homes, as they rightly fear the loss of their children. Further, the state has formalised the role of the 'natural guardian' in official documentation in many fields. For example, in school entry papers, and papers relating to exams and so on, all papers require the name and permission of the guardian.⁸⁵

5.3.2 Property rights

Traditions subjecting women to men's control deny them access to property, thereby ensuring their dependency on men throughout their lives. Women do not have equal rights to inherited property and to matrimonial property during the marriage and after its dissolution. The personal laws enforce tradition by effectively restraining women from having access to the natal and matrimonial property.

For instance, under the Hindu Succession Act of 1956, daughters' share of the ancestral home and property is dismal compared to that of sons. Daughters have equal rights in the personal property of the father. However, in the majority of cases, by using their right to alienate their property through testamentary succession, fathers grant their property to sons ensuring that it remains in the patrilineal family. In its recommendation for the amendment of the Hindu Succession Act, the India Law Commission stated:

Social justice demands that a woman should be treated equally both in the economic and the social sphere. The exclusion of daughters from participating in coparcenary (ancestral) property ownership merely by reason of their sex is unjust. The Commission has also taken into consideration the changes carried out by way of State enactments in the concept of Mitakshara coparcenary property in the five States in India, namely, Kerala, Andhra Pradesh, Tamil Nadu, Maharashtra and Karnataka. The Commission feels that further reform of the Mitakshara Law of Coparcenary is needed to provide equal distribution of property both to men and women.⁸⁶

A similarly discriminatory property succession rule is found in the Muslim Land Ceiling Act.⁸⁷

As in the case of the natal family, there is no safeguard to protect the interest of a woman in the matrimonial property.

Both Hindu and Muslim personal laws fail to recognize matrimonial property. Upon divorce, women have no rights to their home or to other property accumulated during marriage; in effect, their contributions to

⁸⁵ Sen, Purna (2003), op. cit.

⁸⁶ For full text of the recommendations see the website of the India Law Commission at <http://www.lawcommissionofindia.nic.in/kerala.htm>

⁸⁷ For a detailed discussion of discriminatory succession rules of India's different communities see Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India*, (Oxford, Oxford University Press, 1999)

*the maintenance of the family and accumulation of family assets go unrecognised and unrewarded.*⁸⁸

Lawyers Collective⁸⁹, a lawyers public interest group in India states,

*Except in the state of Goa, there is no law governing the distribution of matrimonial property. Women are dependent on their husbands for maintenance. Upon divorce, women are given a pittance of a sum as settlement; as a result, they end up considerably poorer. Even the Criminal Procedure Code does not give women more than 500 rupees (the equivalent of \$US12-13) per month as maintenance. As a result, even in a case of marital discord involving cruelty, divorce is usually the last option and women continue to suffer in the confines of disastrous and even deadly marriages.*⁹⁰

For Muslim women this is made worse since the Muslim Women (Protection of Rights on Divorce) Act of 1986 restricts them from raising the secular Criminal Procedure Code in maintenance proceedings (see Section 5.2 for a case study).⁹¹

Dr Purna Sen describes the difficulty a separated woman faces in finding accommodation:

*Women cannot rely on their own families to house them after marital breakdown: women commonly have intense difficulties in finding independent accommodation. Any form of housing is difficult for single adult women to secure and in addition to the practical problems of finding shelter women face the real threat of heightened vulnerability to male violence (Calman 1992:138; Sen 1997).*⁹²

5.3.3 Vulnerability to charges of adultery

In addition, divorced women face the possibility of charges of adultery due to cultural attitudes backed up by legal provisions:

An adult woman who has lived outside marriage is vulnerable to charges of adultery (see also House of Lords 1999) which is a matter not only of social importance but also with legal recognition. The Indian law codifies discrimination against women, contrary to the

⁸⁸ Carol S. Coonrod, "Chronic Hunger and the Status of Women in India," op.cit.

⁸⁹ Lawyers Collective is a group of professional lawyers, law students, and other persons in the law profession established in 1981 in India to fulfil the needs of members of the society relating to the law. Its activities involve legal aid, advice and public interest litigation on the issues of women's rights, rights of the homeless and housing, environmental protection and promotion, health issues including HIV/AIDS, reproductive rights, and rights of the unorganised sector of workers, particularly contract labour. See <http://www.hri.ca/partners/lc/about/india.shtml>

⁹⁰ Lawyers Collective, "Creation of an Enabling and Gender-Just Legal Environment as a Prevention Strategy for HIV AIDS among Women in India," op. cit.

⁹¹ For more information, see Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India*, op. cit., p.105

⁹² Sen, Purna (2003), op. cit.

CEDAW: the Indian Penal Code (section 497) provides for a husband to bring a prosecution against a man who has sexual intercourse with his wife (see eg Arya 2000); a wife cannot bring any similar case against her husband or against any woman with whom her husband is having an adulterous relationship. The cultural mores which this provision demonstrates and supports will obtain regardless of the use (or not) of the law. The legal provisions on adultery (confirmed in a challenge on the grounds of equality, Sowmithri Vishnu v. Union of India, AIR 1985 SC1618) manifest the cultural attitude that women belong to their husbands once married and that this proprietorial relationship is offended by a man other than the husband having sexual relations with a married woman. The discriminatory nature of this provision is clear (Patel 1990) and it illustrates the limits of Indian legal reform in reflecting the modern international trends towards (and the Indian Constitutional provision on) equality for all citizens regardless, inter alia, of sex.

The power of allegations of infidelity or absence of chaperoning of adult women is considerable and can put women in a state of vulnerability to suspicion, allegation or abuse. A women in these circumstances may be subjected to ostracisation, isolation and sexual harassment, by virtue of being constructed as sexually immoral. Having engaged in social activities without male company can lead to a woman being deemed sexually available, and therefore at risk of sexual harassment or assault.⁹³

5.3.4 Economic security

According to Oxfam, in spite of all the technological advances that India has achieved, the majority of its population live in poverty.

[...] nearly a third of the world's absolutely poor people are Indian – 330 million live below the official poverty line. India has almost 2.5 times more illiterate people than the whole of sub-Saharan Africa. About 62 million children under the age of five are malnourished and nearly a third of children below 16 are forced into child labour. Investment in education and health is limited, although where there has been invested in training, eg the software industry, the benefits have been spectacular; India is now the world's second-largest exporter of computer software. India's welfare programmes are the largest in the world but they do not reach the most needy. There are now moves to scale them down in favour of market-led poverty alleviation – but the majority of India's poor people have as little access to market opportunities as they do to welfare programmes. Their lands, rights and livelihoods are often sacrificed to large-scale commercial ventures such as mining, hydro-electricity, and forestry. Millions more are threatened by other trends, including the de-regulation of employment and the use of land for cash-cropping in place of food production, thus further

⁹³ Sen, Purna (2003), op. cit. See also section 5.1

*marginalizing women, increasing vulnerability to disasters and health emergencies (e.g. AIDS/HIV, TB), and increasing urban deprivation and social conflict.*⁹⁴

A United Nations Development Programme (UNDP) report on social advancement in India states,

*Women fare worse than men on most social indicators. A computation of the Gender-related Development Index (GDI) for Indian states reveals not only the low levels of human development and the extent of gender inequalities within India, but more importantly, it provides a measure of how badly Indian states are doing vis-a-vis other nations of the world. At the top of the list of Indian states is Kerala with a GDI value of 0.597. Uttar Pradesh is at the bottom with a GDI value of 0.310, next to Benin. Looked at differently, the GDI value for Uttar Pradesh is only half that of Kerala. There are only 13 countries in the world with lower GDI values than Bihar and Uttar Pradesh. Twice as many people live in Uttar Pradesh and Bihar (combined population of 225 million in 1991) in such abysmal conditions of human deprivation than in the 13 countries that had lower GDI values. Similarly, disparities exist between and within communities in India. For instance, communities classified as belonging to Scheduled Castes and Scheduled Tribes have significantly lower literacy and higher child mortality rates than the rest of the population.*⁹⁵

It is reported that women in India constitute the largest section of the population living in poverty.⁹⁶ The type of work that women do is mainly the traditional household female tasks such as collecting wood fuel, fodder, cooking and care of children, and unpaid work in the family farm or enterprises. According to World Health Organisation, the percent share of women in earned income is only 19.2, which is lower than that in Bangladesh, Nepal, Indonesia, Thailand, and Sri-Lanka.⁹⁷ They have fewer hours for leisure and sleep than men. Their work is unrecognised and unpaid. Men control any income from agricultural products. It is estimated that over 90% of women workers are involved in the informal sector, which pays low wages and does not provide benefits.⁹⁸ Lack of skill, education and prejudicial attitudes limit women's access to the formal employment sector.⁹⁹ According to a 1997 National Survey report the female literacy rate has increased to

⁹⁴ Oxfam, *Oxfam at Work in India*, available at

[Hhttp://www.oxfam.org.uk/atwork/where/asia/india.htm](http://www.oxfam.org.uk/atwork/where/asia/india.htm)H

⁹⁵ A. K. Shiva Kumar (UNDP Reports on India), "Poverty and Human Developments in India: Getting Priorities Right," available at [Hhttp://www.undp.org.in/report/PHDI.htm](http://www.undp.org.in/report/PHDI.htm)H

⁹⁶ UNESCO, "Poverty Alleviation through Community Participation," available at [Hhttp://www.unesco.org/most/asia12.htm](http://www.unesco.org/most/asia12.htm)H

⁹⁷ WHO, South East Asia Regional Office, "Women's Health in South East Asia," available at [Hhttp://w3.whosea.org/women/chap7_1.htm](http://w3.whosea.org/women/chap7_1.htm)H

⁹⁸ A 1991 World Bank Census cited in John E. Dunlop and Victoria A. Velkoff, "Women and the Economy in India," US Census Bureau, International programme Centre, January 1999, available at [Hhttp://www.census.gov/ipc/prod/wid-9802.pdf](http://www.census.gov/ipc/prod/wid-9802.pdf)H, p. 2,

⁹⁹ See, Carol S. Coonrod, "Chronic Hunger and the Status of Women in India," op. cit.

50% from 39% in 1991.¹⁰⁰ The report however also indicates that there are still 245 million Indian women who cannot read and write.¹⁰¹

The US Census Bureau states,

Although the cultural restrictions women face are changing, women are still not as free as men to participate in the formal economy. In the past, cultural restrictions were the primary impediments to female employment; now, however, the shortage of jobs throughout the country contributes to low female employment as well.

The most recent available survey (1990-91) showed that female unemployment rates were virtually the same as male rates; just over 2 percent for each gender in rural areas, and just over 5 percent in urban areas. Data show substantial drops in unemployment rates since 1977-78, particularly for women. At that time, the female unemployment rate was 4.1 percent in rural areas and 10.9 percent in urban areas, while the male rates were 3.6 percent and 7.1 percent, respectively (National Sample Survey Organization (NSSO), 1994). The above trend in unemployment rates does mask other less-positive developments, however. Although female unemployment rates were falling, there was not a corresponding increase in employment rates.

For example, in 1977-78, 23.2 percent of all rural females were employed, but by 1990-91, the share of rural women unemployed remained essentially unchanged. For males, on the other hand, drops on their unemployment rate translated almost directly into comparable increase in their employment (NSSO 1994).¹⁰²

Employed women face discrimination. According to the US Department of State 2002 report,

The law prohibits discrimination in the workplace, but enforcement is inadequate. In both rural and urban areas, women are paid less than men for doing the same job. Women experience economic discrimination in access to employment and credit, which acts as an impediment to women owning a business. The promotion of women to managerial positions within businesses often is slower than that of males. State governments have supported micro-credit programs for women that have begun to have an impact in many rural districts.¹⁰³

Despite minimum wage legislation there is no State where women are paid equal wages to men. On average women's earnings are 30% lower than that of men.¹⁰⁴ Women in home based work are affected most, earning just 50% of

¹⁰⁰ Kalyani Menon-Sen A K Shivakumar, "Women in India how free? How equal," op. cit., p. 43

¹⁰¹ Kalyani Menon-Sen A K Shivakumar, "Women in India how free? How equal," op. cit., p. 43

¹⁰² John E. Dunlop and Victoria A. Velkoff, "Women and the Economy in India," US Census Bureau, op.cit., p. 3

¹⁰³ US Department of State (2002), op.cit.

¹⁰⁴ Kalyani Menon-Sen A K Shivakumar, "Women in India how free? How equal," op. cit., p. 56

the official poverty level income and having no access to health care and pensions.¹⁰⁵ Women's economic dependency on men and limited access to employment subjects them to men's control and may constrain their choices when considering an escape from an abusive relationship.¹⁰⁶

The CEDAW Committee has expressed its concern about the increasing feminisation of poverty and the growing income disparities that prevent the benefits of economic development being transferred to women. It has also stated,

*The Committee is concerned with significant disparities in economic activity rates for men and women. It is concerned that the practice of debt bondage and the denial of inheritance rights in land result in gross exploitation of women's labour and their impoverishment.*¹⁰⁷

Economic situation of divorced and separated women

Dr Purna Sen describes the particular difficulties faced by this group in providing for themselves and their children:

If separated, single or divorced women do not enjoy financial or housing support from their kin; they will need to provide for themselves and their children. They need to secure employment, which pays adequately to maintain the family and possibly pay for accommodation (which in itself is not easy for an unmarried woman to obtain). If legal action is required (for maintenance or divorce etc) women need to pay for this. The Indian state does not provide much in the way of legal aid and there are but few Ngos which are able to provide legal support [in] such cases. It is most likely that women will have to engage lawyers at commercial rates, which are likely to be prohibitive.

Research into prostitution has found that divorced, separated, widowed and abandoned women feature disproportionately in this industry (Sleightholme and Sinha 1996; Mukherjee 1994:122). There is no certainty that separated women in India can find paid work and the possibility that they are cajoled or forced into dangerous work, such as prostitution, is great. The UN has noted that it is difficult to find paid work in India, including for graduates and long-standing gender occupation segregation is slow to change (see eg UNDP, Bennett, Banerjee). While some employment opportunities for women are improving they tend to be in the poorer paid and more insecure sectors (Banerjee). Women who are most able to take these opportunities are either single/childless or have a family network to assist with childcare. For a single mother it is extremely difficult to be involved in the world of paid work, especially so in any professional sectors where it is not possible to have children accompany their mother to work.

¹⁰⁵ Kalyani Menon-Sen A K Shivakumar, "Women in India how free? How equal," op. cit.

¹⁰⁶ Lawyers Collective, "Creation of an Enabling and Gender-Just Legal Environment as a Prevention Strategy for HIV AIDS among Women in India," op. cit.

¹⁰⁷ Committee on the Elimination of Discrimination Against Women, Concluding Observations, op. cit., paragraph 51 and 82.

*It is safe to conclude that a single adult woman in India would have great difficulty in supporting herself financially and in the absence of familial support may be destined to destitution or prostitution.*¹⁰⁸

5.4 Women's right to health

In most countries including those in Sub-Saharan Africa, women have higher life expectancy than men; however India is one of the few countries where women's and men's life expectancy is similar.¹⁰⁹ This is attributed to the persistent discrimination that women face throughout their lives including nutritional discrimination, different health care for boys and girls within the family, violence against women, and high maternal mortality rates. Studies indicate that boys are breast fed longer than girls and they are more likely to be taken to professional health care than girls in cases of illness.¹¹⁰

There is a high maternal mortality rate in India. It is reported that every year 100,000 to 120,000 women die from pregnancy related illness.¹¹¹ Inadequate nutrition, overwork, lack of access to clean water and sanitation contribute to maternal mortality. The high prevalence of anaemia (50% of all married women suffer from anaemia) coupled with lack of access to prenatal care has resulted in this distressing rate of maternal death. Only 50% of India's villages have any government health facility and only 10% of people in rural areas live in villages that have hospitals.¹¹² A survey indicated that two thirds of all births are not attended by trained medical professionals.¹¹³

Pollution has become a major source of concern for women in India. The Hunger Project stated,

The impact of pollution and industrial wastes on health is considerable. In Environment, Development and the Gender Gap, Sandhya Venkateswaran asserts that the high incidence of malnutrition present amongst women and their low metabolism and other health problems affect their capacity to deal with chemical stress. The smoke from household biomass (made up of wood, dung and crop residues) stoves within a three-hour period is equivalent to smoking 20 packs of cigarettes. For women who spend at least three hours per day cooking, often in a poorly ventilated area, the impact includes eye problems, respiratory problems, chronic bronchitis and lung cancer. One study quoted by WHO in 1991 found that pregnant women cooking over open biomass stoves had almost a 50 percent higher chance of stillbirth.

¹⁰⁸ Sen, Purna (2003), op. cit.

¹⁰⁹ V.A Vekoff and A.Adlakha, "Women's Health in India," US Census Bureau, December 1998, available at <http://www.census.gov/ipc/prod/wid-9803.pdf>

¹¹⁰ V.A Vekoff and A.Adlakha, "Women's Health in India", op. cit.

¹¹¹ Kalyani Menon-Sen A K Shivakumar, "Women in India how free? How equal," op. cit., p. 33

¹¹² Kalyani Menon-Sen A K Shivakumar, "Women in India how free? How equal," op. cit., p.30

¹¹³ V.A Vekoff and A.Adlakha, "Women's Health in India," op. cit., p. 4

Anaemia makes a person more susceptible to carbon monoxide toxicity, which is one of the main pollutants in the biomass smoke. Given the number of Indian women who are anaemic — 25 to 30 percent in the reproductive age group and almost 50 percent in the third trimester — this adds to their vulnerability to carbon monoxide toxicity.

*Additionally, with an increasing population, diseases caused by waste disposal, such as hookworm, are rampant. People who work barefooted are particularly susceptible, and it has been found that hookworm is directly responsible for the high percentage of anaemia among rural women.*¹¹⁴

The subordinate position of women has also made them vulnerable to HIV infection. According to UNAIDS, there are over four million people with HIV/AIDS in India, over 25 percent of whom are women.¹¹⁵ It is reported that gender inequality denies women the power to negotiate the use of condoms to protect themselves from contracting the virus.¹¹⁶

5.4.1 Women's access to health services

Different factors such as availability, cost, and cultural constraints affect women's access to health services. According to the World Bank about 80% of the health service is provided by the private sector, while government service is restricted to preventive care such as immunisation and family care.¹¹⁷ While there are non-profit health care services provided by NGOs, these services are "*relatively small in scale and are available to only a small proportion of the rural population.*"¹¹⁸ The majority cannot afford private health services. As a result many people resort to traditional practitioners and faith healers.

The World Bank reports,

The widespread utilization of traditional practitioners suggests that they are more trusted, more accessible, and more affordable than public sector or formal private sector practitioners. In choosing between government and private services and practitioners, better-off Indians tend to favour private sector treatment, since competence is often associated with cost. Patients are frequently dissatisfied with the government services they receive, for reasons that include the cost of nominally free services and drugs, rude and improper behaviour on the part of health staff, staff shortages, a lack of supplies and drugs, and long waiting times to see a doctor. The availability of female doctors, nurses, and midwives affects women's use and choice of health

¹¹⁴ Carol S. Coonrod, "Chronic Hunger and the Status of Women in India," op. cit.

¹¹⁵ Joint United Nations Programme on HIV/AIDS (UNAIDS)/World Health Organization (WHO) *Report on the Global Epidemic*, Geneva, Switzerland: 1998.

¹¹⁶ Lawyers Collective, "Creation of an Enabling and Gender-Just Legal Environment as a Prevention Strategy for HIV AIDS among Women in India," op. cit.

¹¹⁷ The World Bank Group, "Improving Women's Health in India," 1996, available at [Hwww.worldbank.org/html/extdr/hnp/population/iwhindia.htm#services](http://www.worldbank.org/html/extdr/hnp/population/iwhindia.htm#services)

¹¹⁸ The World Bank Group, "Improving Women's Health in India," 1996, op. cit.

services. Because of cultural constraints, women are not encouraged to consult male health providers. Yet unsuitable accommodations in rural areas, cultural restrictions on women working away from their families, and the need to seek employment near their husbands all act to suppress the number of female health care providers in rural areas.

The World Bank has also reported that women have less access to health care than men.

Data on use of health services show that despite higher morbidity, women receive less health care than males. A smaller proportion of female illnesses are treated; treatment is lower quality, received late, and more frequently ineffective. Higher proportions of patients are male. There is "under utilization" of facilities meant specifically for women, such as antenatal care and delivery services.

[...] The health services available for women are described, along with "supply side" impediments to women's access. Among these, the most important are the difficulties faced by the main "peripheral" female worker, the Auxiliary Nurse Midwife (ANM) or Multi-Purpose Worker Female (MPWF). Problems of training, deployment, supply, and social habit prevent ANMs, as well as Trained Dais and Anganwadi Workers, the village based health care workers, from reaching women in their homes. Support and supervision must be improved if women's health issues are to be addressed. The most important intervention aimed directly at women's health would be a program to shore up local health-service workers.¹¹⁹

Similarly UNDP reports,

Health services are in need of major reforms. Existing facilities in the health sector are not being used by people because of low quality, irregular attendance of medical staff, inadequate equipment, and poor maintenance and upkeep. Most private medical practitioners in rural areas are untrained and unqualified. Lack of decentralisation has frequently led to a mismatch between local needs and the health services on offer, and to low accountability of services and higher inefficiency. A substantial proportion of the specialist posts in community health centres are vacant rendering many of them useless as first referral units. At the same time, the ratio of qualified doctors to para-medical and nursing personnel is lop-sided in India. There are severe imbalances in India between public and private health care; and within public health care between preventive and curative services; between primary, secondary and tertiary health care services; and between salary expenses and other recurrent expenditures.¹²⁰

¹¹⁹ World Bank, "Indian Women: Their Health and Economic Productivity," World Bank Discussion Papers No. 109, Washington D.C 1990, available at [Hwww.worldbank.org/gender/projects_programs/esw109.htm](http://www.worldbank.org/gender/projects_programs/esw109.htm)H

¹²⁰ UNDP, "India: The Road to Human Development," June 1997, available at [Hhttp://www.undp.org.in/report/IDF97/idfeduhl.htm](http://www.undp.org.in/report/IDF97/idfeduhl.htm)H

5.5 Trafficking

India is a transit and a point of destination for trafficked women. There is also internal trafficking from the rural, and poor areas to the cities. It is reported that 40,000 tribal women, mainly from Orissa and Bihar, have been trafficked.¹²¹ The UN Special Rapporteur on Violence Against Women highlighted that even though the government took some positive measures to curb the problem, lack of sufficient political will and corruption among the law enforcement officials made the measures ineffective.

The Special Rapporteur reiterates that unless that message is received by the average cop who works in the red light areas and other trafficking routes that corruption will not be tolerated, there will be impunity for traffickers and the rights of women and children will be abused.

Also as noted earlier, despite the Supreme Court having given very clear direction that trafficking is a major violation of women's fundamental rights, at the lower levels of the judiciary the picture is again mixed. Some judges in Maharashtra and West Bengal have been very active. In February 1996, the Maharashtra High Court, acting on a newspaper article, intervened and rescued 469 girls, many of whom were Nepalis. Critics have called some of these judges publicity seekers but in actual fact, they have done a great deal to further the quality of life in India with regard to fundamental rights. At the same time the Special Rapporteur heard of cases in which judges have been insensitive, sometimes even sending the victims to jail, and of long confinement in government homes pending a hearing of their cases.¹²²

The US Department of State report on Trafficking in Persons placed India, along with 51 others, on Tier Two as it "does not yet fully comply with minimum standards for the elimination of trafficking; however, is making significant efforts to do so." The report indicated the prevalence of trafficking in women, implying that women who have to support themselves are at high risk of being trafficked. The report states,

Internal trafficking of women and children for purposes of sexual exploitation, domestic servitude, bonded labor, and indentured servitude is widespread. In addition to being trafficked domestically, Indian women and children are trafficked to the Middle East and the West for purposes of forced labor and sexual exploitation. Bangladeshi and Nepalese women and children are trafficked to India, and transit through India en route to Pakistan and the Middle East, for purposes of sexual exploitation, domestic servitude, and forced labor. Many of the children trafficked in or through India are less than eighteen years of age. [...] Investigations and prosecutions of traffickers are rare, but

¹²¹ Special Rapporteur on Violence Against Women, "Report on Mission to Bangladesh, Nepal and India on the issue of trafficking, 28 October-15 November 2000," Commission on Human Rights, Fifty-seventh session, E/CN.4/2001/73/Add/2, 6 February 2001.

¹²² Special Rapporteur on Violence Against Women, "Report on Mission to Bangladesh, Nepal and India on the issue of trafficking, 28 October-15 November 2000," op. cit, p. 33

*increasing. India has numerous federal laws criminalizing trafficking and child labor; however, there is a lack of laws establishing federal jurisdiction over inter-state crimes. Police efforts to investigate trafficking across state borders are further encumbered by a lack of coordination among state police departments. The Immoral Traffic (Prevention) Act (ITPA) prohibits trafficking in persons (including children), criminalizes sexual exploitation, and provides enhanced penalties for offences involving minors. During investigations, police frequently do not utilize all provisions of the ITPA and as a result may minimize potential criminal penalties against traffickers and brothel owners for exploiting minors. Although the government has successfully prosecuted and sentenced some traffickers and brothel owners to prison, severely backlogged courts and local corruption render most prosecutorial efforts ineffective. The National Human Rights Commission (NHRC) developed anti-trafficking manuals for use in training the judiciary, the police, and medical practitioners. There is evidence of low-level law enforcement involvement in facilitating the movement of trafficking victims and accepting bribes. The government does not adequately monitor its borders.*¹²³

The United Nations Development Fund for Women (UNIFEM) reported that in South Asia, impoverished women and children, unmarried, divorced, separated, and widowed women, and minority groups are vulnerable to trafficking.¹²⁴ The USAID/UNIFEM Anti-Trafficking Programme also recognises that economically deprived women in India are particularly vulnerable to trafficking.

*Trafficking of persons is not a new phenomenon in Asia, but there is evidence of new forms, routes, and sources. Traffickers target the most powerless and vulnerable groups of society, usually poor and uneducated women and children. A large percentage of victims are trafficked into prostitution, while others are subjected to domestic servitude, forced marriage, begging, illegal adoption, and other forms of exploitation. Poverty, corruption, and discrimination against girls and women contribute to a regional environment where trafficking flourishes.*¹²⁵

¹²³ US Department of State, (2002), Office to Monitor and Combat Trafficking in Persons, *Trafficking in Persons Report*, available at www.state.gov/g/tip/rls/tiprpt/2002/10680.htm

¹²⁴ UNIFEM, South Asia Regional Anti-Trafficking Program, available at <http://www.unifemantitrafficking.org/main.html>

¹²⁵ USAID India, "Preventing Trafficking of Women and Children in India," available at <http://www.usaid.gov/in/aboutusaid/projects/antitrafficking.htm>

6. Case law

6.1 UK

Balvir Kaur and SSHD UKIAT03387 2 August 2002

In this successful appeal, the term “Fallen women” was used by an immigration appeal adjudicator to describe a “social group” within the context of the landmark decision in Shah and Islam. Women who have committed adultery have been identified as a particular social group in the light of the social cultural and religious mores in rural India.

Usefully, the tribunal also found the woman could not live in another part of India because she would be destitute, without accommodation, without housing and with no one to turn to.

The appeal was allowed but the tribunal described the circumstances as “exceptional”.

Her case was that she had committed adultery while in the UK resulting in the birth of her child, Karan. She is from a simple rural background. If she returned to her home area she would be ostracised by the community, and more to the point, would be at risk from her father and family members. She would not be able to look to the Indian authorities for protection as they rarely involved themselves in domestic disputes and, in any event, her position would be aggravated by the fact the police would be even less inclined to protect her because her husband was a suspected terrorist. Although India is a very large country, it would not be possible to expect her to relocate because she would be returned to a situation where she would be destitute. Both she and her son would suffer unduly.

The tribunal accepted the adjudicator’s findings that the political background of her husband was not a relevant factor due to a change of circumstances in India but accepted there were considerable risks to the woman if she were returned. She was ill educated and from a rural background where traditional values are at their strongest. She would be ostracised by her husband’s family and probably by her own family. The tribunal accepted objective evidence on the perceived role of women and their relationships with their husbands and were satisfied there was a real risk that she would face reprisals from her husband.

On the issue of state protection the Secretary of State for the Home Department submitted that the Indian criminal courts were open to all and would provide protection. In general terms the Tribunal accepted this but looking at the specific situation faced by the woman in a rural area of the Punjab noted that wife beating was a problem, there was domestic violence in the context of dowry disputes, police were reluctant to intervene in family disputes and crime may be ignored if the perpetrators were influential.

Objective evidence considered included reports from Dr Purna Sen from the London School of Economics; an opinion from Professor Patricia Jeffrey from

the Department of Sociology at the University of Edinburgh; and a letter from Southall Black Sisters.¹²⁶

6.2 United States

The following three cases are examples of successful claims for asylum by Indian women in the United States.

Case 1

As customary in Indian culture, the applicant's family arranged her marriage. After their engagement, his family started asking her family for money and demanded expensive wedding arrangements. She found letters from his parents stating that she was not good enough for him, implying that she did not bring his family enough dowry. Her husband became verbally abusive, echoing the same sentiments, and later became sexually and physically abusive. When she became pregnant, the abuse escalated. He kicked her in the stomach, threw tea and coffee in her face, hit her with his hands, shoved her and pulled her hair. He and his family continued to demand money from her family.

The applicant suffered a miscarriage due to her husband's abuse. The couple came to the United States for work, but she returned to India for the birth of her second child. He eventually threatened to take the children away from her if she did not immediately join him in the US.

In the U.S., he did not allow her to call or write her parents, except to ask for money. He continued to beat and whip her. When his parents came to the U.S. to visit, all three of them emotionally and physically abused the applicant. She was unable to seek medical care for her many injuries because he would not let her out of the house. Once, he dragged her out of the house, forcing her to leave the children home alone. The police were notified and she and her husband were charged with child neglect. The applicant eventually felt she could no longer take the abuse, so she fled her home, went to the police and secured a restraining order. His parents soon left for India and he followed.

In India his family is threatening her parents with bodily harm, spreading rumors about her and vowing to avenge the "dishonor" she has brought on them. Her divorce is now final.

Asylum Grounds

Social group; political opinion

Legal Theory

Persecution and well-founded fear of persecution on account of her membership in the particular social group of Indian women whose families have practiced dowry custom, and who are victims of domestic violence, torture, abuse, and burnings because of dowry extortion by the husband and/or his family, and who by fighting against this, fail to conform to the subservient role that the Indian culture imposes on them. Persecution and well-founded fear of persecution on account of her political opinion that women should not have to put up with

¹²⁶ Balvir Kaur and SSHD UKIAT03387 2 August 2002, summarised by RWRP

continuing severe domestic violence and abuse based on dowry extortion, as shown by her obtaining restraining orders against her husband and in-laws.

Procedural History

Hearing before Asylum Officer Philip Weintraub, 7/96. Referred to INS HQ for review. Asylum granted, 9/99.

Case 2

The applicant's husband is a martial arts instructor. He has trained numerous police forces and military personnel and security forces, and he was a personal security officer to several high-ranking Indian government officials.

The applicant met her husband when she gave him English lessons. One day, before class, he raped her. After, he insisted that she marry him. With nowhere else to turn, and fearful that no one would marry her knowing that she had been raped and was no longer a virgin, she agreed to marry him.

He began beating her and raping her repeatedly immediately after their marriage. He told her that any time she decided to "show spirit" he would abuse her more. At one point, her husband attempted to burn her alive in a faked kitchen accident. The applicant went to the police, but they did nothing because of her husband's ties to high-level government officials, and because he was a well-known public figure. In desperation, she attempted suicide.

The applicant became pregnant and gave birth to their son. Her husband's rapes and beatings resulted in three miscarriages.

After a decade of abuse, she tried to leave her husband. His connections to the police, however, made this impossible. Her husband, in addition to raping and beating her, threatened to take their son from her, and eventually kidnapped her son with the help of his students.

Asylum Grounds

Social group

Legal Theory

Well-founded fear of persecution on account of membership in a social group of Indian women who are the wives of former high-ranking military officials who continue to have ties to the government and subject their wives to severe domestic violence.

Procedural History

Affirmative asylum application granted, 1999.

Decision Level

Case 3

The applicant is from a wealthy Brahmin family. In 1987 her family arranged for her to marry a man from a poorer family. Immediately after their marriage, her husband began to abuse her verbally and physically. He would accuse her of flirting with other men and of having affairs, shouting at her, calling her vulgar and cruel names, and hitting her. When she became pregnant with their son, her husband continued

to abuse her physically and verbally. He also threatened to hurt her family.

After the birth of her son by caesarian-section, her doctor told her to abstain from sex. Her husband forced her to have sex anyway, shouting and cursing at her when she resisted, and sexually humiliating her. Her doctor told her that her blood pressure was dangerously high. When she became pregnant again, her doctor told her to be careful because of the complications during her previous pregnancy. Her husband ignored these instructions and ordered her to perform rigorous work. When she would object, he would punch her. One day he became enraged and kicked her in her abdomen. He left her on the floor bleeding. She miscarried the baby. While recovering from her miscarriage, her husband continued to rape her. When she became pregnant again, his abusive behaviour resulted in an emergency C-section. She nearly died from the complications. While she was recovering he continued his pattern of daily physical, sexual, and verbal abuse. At one point, in desperation, she attempted to commit suicide.

Her husband became a powerful government official with ties to organized crime. He used his position to threaten and harass her family. Eventually, he threw her out of the house for having gone to the doctor without his permission. When he ordered her to come home she refused. He told her parents that if they ever tried to contact her two sons that he would kill them and that he would never give them up. He threatened to kill her, her brother, and her parents. He also threatened to have raped by thugs.

Eventually, fearful that her refusal to go back to her husband would endanger her family, she returned to her husband. His abuses continued. At one point he threatened to pour sulphuric acid on her face so that she could not go out in public. He also abused their two sons physically and verbally.

The applicant's husband's work brought the applicant, her husband, and their two sons to the United States. He continued his pattern of extreme abuse. Eventually, the applicant managed to get custody of the children and a restraining order against her husband.

Asylum Grounds

Social group

Legal Theory

Well-founded fear of persecution based on membership in a social group of Hindu women who have suffered extensive persecution from their husbands who believe that Hindu women are inferior to men.

Procedural History

Affirmative asylum application granted, 11/00¹²⁷

¹²⁷ Summaries from website of Centre for Gender and Refugee Studies (CGRS), University of California, Hwww.uchastings.edu/cgrsH

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Appendix A

Home Office Country Assessment April 2002

WOMEN

5.30 According to the March 1991 census, out of a population of 846 million, 407 million are female and 439 million are male. [1] There are differences between the lives of rural women (some 75% of the total) and urban women. Literacy rates vary across the country, and the caste system as well as economic circumstances have an impact on the position of women. Scheduled caste women face double discrimination because of their gender and caste. Poverty has a disproportionate effect on women.

5.31 Women generally occupy a lower social status than men as a result of Hindu tradition. There is a preference for male children, and parents often give nutritional and health care priority to boys. There is also the practice of aborting female fetuses and female infanticide, of which there are reportedly 10,000 cases a year.

5.32 Marriage is considered a social necessity for women of all religions and regions in India. Most marriages are still arranged. In the south, intra-village or intra-family marriages are encouraged in order to strengthen family networks, while in the north, marriage is encouraged outside the community to expand the family network. As a result women in the north have little contact with their natal families. The system whereby a daughter leaves her home to live with her husband's family is characterised by the subordination of the bride to men and older women, and the bride is expected to be submissive.

5.33 The Child Marriage Restraint (Amendment) Act 1976 makes 18 the minimum age of marriage for women, but enforcement is uneven. Child marriages are said to be common, particularly in rural areas.

5.34 The personal status laws of the religious communities govern matters such as marriage, divorce and property. The Hindu Marriage Act 1955 gives the parties the right to dissolve the marriage according to their custom. Under the Indian Divorce Act 1869, a Christian woman may petition the court for divorce on one or more of several grounds, including bigamy and rape. [4e] In 1997 the Mumbai High Court recognized abuse alone as sufficient grounds for a Christian woman to obtain a divorce. Under Islamic law, a Muslim husband may divorce his wife spontaneously and unilaterally; there is no such provision for women. [2] The Dissolution of Muslim Marriages Act 1939 permits a woman to apply to the courts on her own for a divorce decree. The divorce law applying to secular marriages is included in the Special Marriage Act 1954 and provides for divorce by mutual consent as well as by petition to the court.

5.35 Despite these legal provisions, divorce is socially unacceptable for women. A divorced woman may be ostracised by her community and even her family. Divorce may not be an option for many women because of their economic dependence on their husbands.

Right to hold property & land

5.36 The Hindu Succession Act provides equal inheritance rights for Hindu women, but married daughters seldom are given a share in parental property. Islamic law recognizes a woman's right of inheritance but specifies that a daughter's share only should be one-half that of a son.

5.37 Under many tribal land systems, notably in Bihar, tribal women do not have the right to own land. Other laws relating to the ownership of assets and land accord women little control over land use, retention, or sale. However, several exceptions exist, as in Ladakh and Meghalaya, where women may have several husbands and control the family inheritance.

Violence against Women

5.38 Violence against women has increased in recent years. Wife beating is a problem which cuts across all castes, classes, religions and education levels. [4e] A report published in 1999 in the Journal of the American Medical Association found that 46% of husbands interviewed abused their wives either physically or sexually. The data came from more than 6,000 men who were interviewed over a period of two years in Uttar Pradesh.

5.39 There is also domestic violence in the context of dowry disputes. In the typical dowry dispute, a groom's family members harass a new wife whom they believe has not provided a sufficient dowry. This harassment sometimes ends in the woman's death, which family members often try to portray as a suicide or kitchen accident. Although most dowry deaths

involve lower and middle-class families, the phenomenon crosses both caste and religious lines. Under the Penal Code, courts must presume that the husband or the wife's in-laws are responsible for every unnatural death of a woman in the first 7 years of marriage--provided that harassment is proven. In such cases, police procedures require that an officer of deputy superintendent rank or above conduct the investigation and that a team of two or more doctors perform the postmortem procedures. While the legislation introduced by the government is seen as a serious effort to end dowry deaths, lack of adequate enforcement is a major problem. According to human rights monitors, in practice police do not follow procedures consistently.

5.40 Research suggests that a significant percentage of kerosene attacks also are due to domestic violence.

5.41 Women are vulnerable to attack and rape while in custody. However, the U.S. Department of State Report on Human Rights in 2001 states that limits placed on the arrest, search, and police custody of women appear effectively to limit the frequency of rape in custody, half that of a son.

5.37 Under many tribal land systems, notably in Bihar, tribal women do not have the right to own land. Other laws relating to the ownership of assets and land accord women little control over land use, retention, or sale. However, several exceptions exist, as in Ladakh and Meghalaya, where women may have several husbands and control the family inheritance.

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5.40 Research suggests that a significant percentage of kerosene attacks also are due to domestic violence.

5.41 Women are vulnerable to attack and rape while in custody. However, the U.S. Department of State Report on Human Rights in 2001 states that limits placed on the arrest, search, and police custody of women appear effectively to limit the frequency of rape in custody, although it admits that this does occur on occasion. [2] Amnesty International has expressed concern about the lack of official determination to bring the perpetrators of custodial crimes to justice.

5.42 Numerous laws exist to protect women's rights, including the Equal Remuneration Act, the Prevention of Immoral Traffic Act, the Sati (Widow Burning) Prevention Act, and the Dowry Prohibition Act.¹²⁸

¹²⁸ UK Home Office Country Information and Policy Unit (April 2002), *Country Assessment, India*, op. cit.

Appendix B

The Protection from Domestic Violence Bill, 2002

A BILL to protect the rights of women who are victims of violence of any kind occurring within the family and to provide for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Fifty-third Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. Short title, extent and commencement.-(1) This Act may be called the Protection from Domestic Violence Act, 2002.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. Definitions.-In this Act, unless the context otherwise requires,—

(a) “aggrieved person” means any woman who is or has been a relative of the respondent and who alleges to have been subjected to act of domestic violence by the respondent;

(b) “domestic violence” has the same meaning assigned to it as in section 4;

(c) “Magistrate” means the Judicial Magistrate of the first class or the Metropolitan Magistrate, as the case may be, exercising jurisdiction under the Code of Criminal Procedure, 1973 (2 of 1974) in the area where the aggrieved person resides;

(d) “monetary relief” means compensation which a Magistrate may order at any stage during the hearing of application seeking a protection order, to meet the expenses incurred and losses suffered by the aggrieved person as a result of the domestic violence;

(e) “notification” means a notification published in the Official Gazette;

(f) “prescribed” means prescribed by rules made under this Act;

(g) “Protection Officer” means an officer appointed by the State Government under section 5;

(h) “protection order” means an order made under section 14;

(i) “relative” includes any person related by blood, marriage or adoption and living with the respondent;

(j) “respondent” means any person who is or has been a relative of the aggrieved person and against whom the aggrieved person has sought monetary relief or has made an application for protection order to the Magistrate or to the Protection Officer, as the case may be; and

(k) “service provider” means any voluntary association registered under the Companies Act, 1956 or any other law for the time being in force with the objective of protecting the rights and interests of women by any means including legal aid, medical, financial or other assistance.

3. Act not in derogation of any other law.-The provisions of this Act shall be in addition to, and not in derogation of the provisions of any other law, for the time being in force.

CHAPTER II

DOMESTIC VIOLENCE

4. Domestic violence.-(1) For the purposes of this Act, any conduct of the respondent shall constitute domestic violence if he,—

(a) habitually assaults or makes the life of the aggrieved person miserable by cruelty of conduct even if such conduct does not amount to physical ill-treatment; or

(b) forces the aggrieved person to lead an immoral life; or

(c) otherwise injures or harms the aggrieved person.

(2) Nothing contained in clause (c) of sub-section (1) shall amount to domestic violence if the pursuit of course of conduct by the respondent was reasonable for his own protection or for the protection of his or another’s property.

CHAPTER III

PROTECTION OFFICER

5. Appointment of Protection Officer.-(1) The State Government shall, by notification in the Official Gazette, appoint such number of Protection Officers in each district as it may consider necessary and shall notify the area or areas within which a Protection Officer shall exercise his powers and perform his duties under this Act.

(2) The Protection Officer shall possess such qualifications as may be prescribed.

(3) The terms and conditions of service of the Protection Officer and other officers and employees shall be such as may be prescribed.

6. Duties of Protection Officer.-(1) Where the Protection Officer, after enquiry, believes either *suo motu* or on the basis of information received from any person under sub-section (1) of section 8 that action should be taken, it shall be his duty to—

- (a) inform the aggrieved person of right to apply for protection order under section 9;
- (b) inform about a service provider in the area where the aggrieved person resides so that she may seek support and help from such service provider;
- (c) inform the aggrieved person of her entitlement to legal services under the Legal Services Authorities Act, 1987 (39 of 1987);
- (d) perform such other duties as may be prescribed or as may be ordered to be performed by the Magistrate.

(2) It shall also be the duty of the Protection Officer to entertain any request or application made or presented to him under the provisions of this Act by the aggrieved person or by any other person on behalf of the aggrieved person.

(3) The Protection Officer on receipt of an application under sub-section (2) shall, where so desired by the aggrieved person, endeavour to assist the aggrieved person and the respondent in an independent and impartial manner to reach an amicable settlement of the grievance under this Act.

(4) If no such settlement as stated in sub-section (3) is arrived at, the Protection Officer shall file an application to the Magistrate under this Act if so desired by the aggrieved person.

7. Powers of Protection Officer.-(1) A Protection Officer within the local limits for which he is appointed shall exercise such powers as may be conferred on him by or under this Act.

(2) A Protection Officer may take assistance of any person while exercising his powers or discharging his duties under this Act.

(3) A Protection Officer authorised to discharge functions under this Act shall be deemed to be a Civil Court for the purposes of holding enquiries under this Act.

8. Information to Protection Officer and exclusion of liability.-(1) Any person who has reason to believe that an act of domestic violence has been, is being, or is likely to be committed, may give information to the Protection Officer.

(2) No liability, civil or criminal, shall be incurred by any person for information given in good faith for the purpose of sub-section (1).

CHAPTER IV

PROCEDURE FOR OBTAINING PROTECTION ORDER

9. Application to Magistrate.-(1) The aggrieved person who is a victim of domestic violence, or any other person on her behalf, or the Protection Officer, may present an application to the Magistrate for seeking relief under section 14.

(2) The application under sub-section (1) may contain particulars in such form as may be prescribed or as near thereto as possible.

(3) The Magistrate shall fix first date of hearing which shall not exceed fifteen days from the date of the receipt of the application by the Magistrate for consideration of the application.

10. Service of notice.-(1) Notice of the date fixed under section 9 shall be given by the Magistrate to the Protection Officer, who shall get it served by such means as may be prescribed on the respondent, and on any other person, as directed by the Magistrate.

(2) A declaration in such form as may be prescribed, of the Protection Officer regarding service of notice shall be the proof that such notice was served upon the respondent and on any other person as directed by the Magistrate unless the contrary is proved.

11. Counselling.-(1) The Magistrate at any stage of the proceedings under this Act may direct the respondent or the aggrieved person, either singly or jointly, to undergo mandatory counselling with any service provider.

(2) Where the Magistrate has issued any direction under sub-section (1), he shall fix the next date of hearing of the case within a period not exceeding two months.

12. Assistance of welfare expert.-In any proceedings under this Act, the Magistrate may secure the services of such person, preferably a woman where available, whether related to parties or not, including a person engaged in promoting family welfare as he thinks fit, for the purpose of assisting him in discharging his functions.

13. Proceedings to be held *in camera*.-The proceedings may be held *in camera*, if the Magistrate considers that the circumstances of the case so warrant, and shall be so held if either party so desires.

14. Passing of protection order.-(1) The Magistrate, after giving opportunity of being heard to the parties to the application, and after being satisfied that the aggrieved person is being subjected to domestic violence,—

- (a) may pass the protection order by directing the respondent to,—
- (i) refrain from committing any act of domestic violence; or
 - (ii) pay such monetary relief as the Magistrate deems just, and specify the period in the protection order within which the amount of such monetary relief is to be paid by the respondent to the person aggrieved; or
- (b) pass such other direction as may be considered necessary.

(2) Subject to section 11, every endeavour shall be made by the Magistrate hearing the application under this Act to dispose it of within three months from the date of filing of the application.

(3) All evidence in any proceeding under this Act shall be taken in the presence of the respondent, or, when a personal attendance of the respondent is dispensed with, in the presence of his pleader, and shall be recorded in the manner prescribed for summons-cases in the Code of Criminal Procedure, 1973 (2 of 1974):

Provided that if the Magistrate is satisfied that the respondent is wilfully avoiding service of notice, or wilfully neglecting to attend the Court, the Magistrate may proceed to hear and determine the case *ex parte*.

(4) A copy of the protection order shall be forwarded to the Protection Officer and parties to the application.

(5) Where the Magistrate is satisfied that circumstances stated in the application presented under section 9 are such so as to justify the immediate intervention of the Magistrate to restrain the respondent from committing domestic violence, the Magistrate may issue an interim protection order directing the respondent to restrain from engaging in any act of domestic violence, and the Magistrate may further require the respondent to show cause as to why he should not be ordered to execute a bond, with or without sureties, for maintaining domestic peace for such period as the Magistrate thinks fit.

15. Duration and alteration of protection order.-(1) A protection order made under section 14 shall be in force in the first instance for such period as the Magistrate may fix but not exceeding two years.

(2) The protection order, for reasons to be recorded in writing, may be altered, modified, varied or revoked, on an application either by the aggrieved person or the respondent provided that the Magistrate is satisfied that there is a change in the circumstances that requires such alteration, modification, variation or revocation, as the case may be.

CHAPTER V

MISCELLANEOUS

16. Appeal.-There shall lie an appeal to the Court of Session within thirty days from the date on which the order made by the Magistrate is served on the aggrieved person or the respondent, as the case may be.

17. Protection Officer to be public servant.-Every Protection Officer, when acting or purporting to act under this Act, shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (45 of 1860).

18. Penalty for breach of protection order by the respondent.-A breach of protection order, or of the interim protection order, by the respondent shall be an offence and shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to rupees twenty thousand, or with both.

19. Penalty for not discharging duties by Protection Officer.-If any Protection Officer fails or refuses to discharge his duties as directed by the Magistrate in the protection order without any sufficient cause, he shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to rupees twenty thousand, or with both.

20. Cognizance of offence committed by Protection Officer.-No prosecution or other legal proceeding shall lie against the Protection Officer unless a complaint is filed with the previous sanction of the State Government or an officer authorised by it in this behalf.

21. Protection of action taken in good faith.-No suit, prosecution or other legal proceedings shall lie against the Protection Officer for any damage caused or likely to be caused by anything which is in good faith done or intended to be done under this Act or any rule made thereunder.

22. Power to make rules.-(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (a) qualifications, terms and conditions of service for the appointment of Protection Officers, other officers and employees and their duties under section 5;
- (b) duties of the Protection Officer under section 6;
- (c) prescribing the form in which the application may be presented under sub-section (2) of section 9;
- (d) the form and manner in which notice may be served on the respondent and other persons by the Protection Officer under section 10; and
- (e) any other matter in connection with or in relation to this Act.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

STATEMENT OF OBJECTS AND REASONS

Domestic violence is undoubtedly a human rights issue and serious deterrent to development. The Vienna Accord of 1994 and the Beijing Platform of Action (1995) both have acknowledged this. The United Nations Committee on CEDAW (Convention on Elimination of All Forms of Discrimination Against Women) in its general recommendation No. XII (1989) has recommended that State parties should act to protect women against violence of any kind especially that occurring within the family.

2. The phenomenon of domestic violence is widely prevalent but has remained largely invisible in the public domain. Presently, where a woman is visited with cruelty by her husband or his relatives is an offence under section 498A of the Indian Penal Code, 1860. The civil law does not address this phenomenon in its entirety.

3. With a view to providing a remedy under the civil law which is intended to preserve the family and at the same time provide protection to victims of domestic violence, legislation is being proposed.

The main features as contained in the Bill are as follows:—

- (i) it is being provided that any conduct of relative of the victim, which subjects her to habitual assault, or makes her life miserable, or injures or harms, or forces her to lead an immoral life would constitute domestic violence;
- (ii) the Judicial Magistrate of the first class or the Metropolitan Magistrate may take the cognizance of domestic violence and pass a protection order requiring the relative of the woman to refrain from committing an act of domestic violence, or pay monetary relief which is deemed fit in the circumstances or pass any other direction as the Magistrate may consider just;
- (iii) the Magistrate may even require as an interim and urgent measure from the relative of the woman to execute a bond, with or without sureties, for maintaining domestic peace;
- (iv) the violation by the relative of the order made by the Magistrate would constitute an offence punishable with imprisonment up to one year, or with fine, or with both;
- (v) it is being proposed to set up an institution of Protection Officer to help the victim of domestic violence in making application to the Magistrate and in availing of her other legal rights;
- (vi) a provision is being made for the appointment of Protection Officers by State Governments and they shall possess such qualifications as may be prescribed by the Central Government; and
- (vii) Protection Officer shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code, 1860, and if he fails or refuses to discharge the duties as directed by the Magistrate, his act shall amount to an offence punishable with imprisonment up to one year, or with fine, or with both.

4. The Bill seeks to achieve the above objects.

NEW DELHI; MURLI MANOHAR JOSHI.

The 14th February, 2002.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clauses (2) and (3) of clause 5 seek to confer power on the Central Government to make rules for prescribing qualification, terms and conditions of service of the Protection Officer and other officers subordinate to him. Clause 6 prescribes duties of Protection Officer in addition

to the duties which the Central Government can impose on them by virtue of powers conferred by sub-clause (1) of the said clause. Sub-clause (2) of clause 9 confers power on the Central Government to make rules for prescribing the form in which the application may be presented by the aggrieved person to the Magistrate. Sub-clauses (1) and (2) of clause 10, confer power on the Central Government to make rules regarding service of notice on respondent. Clause 22, *inter alia*, confers power on the Central Government to make rules for carrying out the purposes of the Bill, and for any other matter in connection or in relation to the Bill.

2. The matter in respect of which provision may be made in the rules are generally matters of procedure and detail. The delegation of legislative power, is therefore, of a normal character.

FINANCIAL MEMORANDUM

The provisions of the Protection from Domestic Violence Bill, 2002 will be enforced through the existing machinery of the States and the Union territories. It is not envisaged to create any new post at any level. Therefore, no expenditure is involved from the Consolidated Fund of India.¹²⁹

¹²⁹ Protection from Domestic Violence Bill, 2002, available at [Hhttp://indiacode.nic.in/H](http://indiacode.nic.in/H)

ALBANIA

Appendix C: Update February 2003

1.1 Political background

Rule of law

A report published in April 2002 by the European Commission, which is considering Albania's ability to eventually become a member of the European Union, is critical of many aspects of Albania's administration including the rule of law:

Overall, respect for and implementation of the rule of law in Albania is weak. The Albanian law enforcement bodies will need time and hard work to be able to guarantee consistent implementation and enforcement of the law in accordance with international standards. Fraud, corruption and organised crime continue to be serious threats to the stability and progress of the country. The judiciary, a central element in ensuring the rule of law, suffers from serious deficiencies and is undermined by corruption.¹

The report also contains commentary on human rights, the protection of minorities and the economic situation.

1.4.1 Trafficking

The 2002 Annual Report of the International Helsinki Federation for Human Rights (IHF) noted on Albania:

Officially, the issue of trafficking in human beings became one of the central issues in the work of the Albanian Government and the civil society. During the past two years the Ministry of Public Order, in particular, has undertaken efforts to combat this problem. A Regional Centre for Anti-Trafficking was set up in Vlora in 2001, the police arrested some traffickers and increased human resources were invested in this field. In addition, legislation regarding this issue was improved.

At the same time, a report by Save the Children noted that 60% of Albanian trafficking victims were minors. Trafficking rings preyed upon Albanian women and children, operating with impunity throughout the country and evading border controls. In 2001 the Albanian Government continued to treat trafficking victims as criminals: far more criminal charges were brought against victims of trafficking, who were prosecuted for prostitution, than against traffickers. The Government failed to provide even minimal assistance to victims or to support witness protection programmes.

¹ Commission of the European Communities (2002), *Albania: Stabilisation and Association Report*, [COM(2002) 163], Brussels, Commission Staff Working Paper, 4 April 2002, p 4, available at http://europa.eu.int/comm/external_relations/see/sap/com02_339.pdf

The AHC² undertook some investigations with IHF representatives and other NGOs dealing with trafficking in people. For example, the IHF and the AHC took action on behalf of five Romanian and Moldovan female victims of trafficking who had been held in custody for over six months and charged with prostitution and illegally crossing the border. The AHC and the IHF sent an open letter to the general prosecutor calling for the immediate release of the women.⁸

Civil society played an important role in addressing the issue of trafficking in human beings, making the public more aware of the issue and taking measures to support the victims. In cooperation with some international organizations, Albanian NGOs set up a shelter for victims of trafficking and offered them help in returning to their home countries if they wished to do so.³

5.4 Health services

The International Helsinki Federation report noted above describes violations of patients' human rights in health facilities:

Patients' Rights

From January to March, the AHC carried out a project on the "Human Rights Situation in Health Institutions of Public Services." This consisted of monitoring missions to several psychiatric, paediatric and obstetric-gynaecologic hospitals in the cities of Tirana, Shkoder, Vlore, Elbasan, Lushnje, Durrës, Korce and Fier. The missions focused on the living conditions of the patients, the sanitary standards, the treatment of patients, and the influence of corruption.

The activities were mainly based on complaints filed by individuals who believed that their basic rights in the field of health care had been violated, as well as media reports on such cases.

The AHC concluded that, although some improvements had taken place in hospitals, numerous remaining problems led to violations of the patients' human rights: physical conditions were inadequate, sanitary conditions were sub-standard, and heating and illumination were insufficient. Further, there was a lack of space for patients and their rooms were not adequately equipped. The quality and quantity of food was poor, patients did not have proper clothing, and the institutions suffered from a shortage of various equipment and medicines. Some doctors handled their patients inappropriately and many took bribes for their services.

There were problems in maintaining working discipline, and family members had to take on tasks that were actually those of the staff.

Complaints by patients or their family members were often ignored and in the area of psycho-social rehabilitation there were many problems.

² Albanian Helsinki Committee

³ International Helsinki Federation for Human Rights (2002), *Human Rights in the OSCE Region: The Balkans, the Caucasus, Europe, Central Asia and North America* 28 May 2002, available at <http://www.ihf-hr.org/reports/AR2002/Word%20format/Albania.doc>

The AHF submitted a report with recommendations to the responsible authorities.⁴

⁴ International Helsinki Federation for Human Rights (2002), op. cit.

Home Office Country Assessment October 2002

WOMEN

6.48 Violence against women and spousal abuse remained serious problems in 2001. In the country's traditionally male-dominated society, cultural acceptance and lax police response resulted in most abuse going unreported. Rape is punishable by law, as is spousal rape; however, in practice, spousal rape is not reported or prosecuted. The concepts of spousal rape and sexual harassment are not well established, and consequently, such acts are often not considered crimes by the authorities or the public. The State Committee on Women and Children is the primary government agency that addresses the status of women but it is under-funded and lacks political influence. A non-governmental organisation maintains a shelter in Tirana for abused women, but the facility can hold only a few victims at a time. The same organisation also operates a hot line which women and girls can call for advice and counselling. **[5d]**

6.49 Women are not excluded, by law or in practice, from any occupation; however, they are not well represented at the highest levels of their fields. The Labour Code makes mandatory equal pay for equal work; however, this provision was not fully implemented. **[5d]**

6.50 Many men, especially those from the northeastern part of the country, still follow the traditional code known as the "Kanun," in which women are considered and treated as chattel. Under the kanun, a woman's duty is to serve her husband, and to be subordinate to him in all matters. The kanun has contributed significantly to attitudes in the region espousing the subordination of women. The Kanun "Law," which is not recognised by the Albanian government, also states that it is acceptable to kidnap young women for brides. This practice continues in some areas of the northeast. **[5d][15a]**

(Please also see paragraph's 6.115-6.124 on Blood Feuds)

6.51 Trafficking in women and girls for the purpose of sexual exploitation is a serious problem. **[5d]**

(Please also see paragraph's 6.86-6.98 Women trafficked for sexual exploitation)⁵

⁵ Country Information and Policy Unit (2002), *Country Assessment, Albania, Section 6B: Human Rights, Specific Groups: Women*, Home Office, Immigration and Nationality Directorate, available at <http://www.ind.homeoffice.gov.uk/default.asp?PageId=3326H>

CHINA (People's Republic of)

Appendix C: Update February 2003

3. Domestic violence and the law

The law remains inadequate with regard to domestic violence, there still being no single national law addressing the issue. Amendments to the Marriage Law made in 2001 still failed adequately to provide sufficient legal remedies, according to this news reports from December 2002:

Legal experts in China have produced a draft of proposed legislation on strengthening the power of the law to combat domestic violence.

"We will urge some deputies to the National People's Congress (NPC) to lodge the proposal next spring," said Chen Mingxia, deputy director of the Chinese Marriage Law Institute under the China Law Society.

The NPC is the nation's top legislative body and convenes every March in Beijing to decide the vital issues affecting the country. The draft is likely to get onto the legislative agenda of the NPC and its standing committee if over 30 NPC deputies sign it.

"We hope the draft will serve as a complement to current legislation and offer more practical protection to victims of domestic violence, against both women and men," said Li Mingshun, associate professor of the Law Department of China Women's College, and one of those involved in preparing the draft.

A survey conducted by the All-China Women's Federation this year reveals that domestic violence occurs in 30 percent of China's 270 million families. In 90 percent of the cases the victims are women.

China's Constitution, Criminal Code and other civil legislations, including the Inheritance Law, all contain provisions to deal with violence in the home.

However, the idea of laws specifically to address domestic violence were not introduced until last year's amendment to the Marriage Law. The amendment to the Marriage Law stipulates that domestic violence is prohibited and its victims will be entitled to sue for compensation in any divorce action.

"It is a great advance to include the investigation of domestic violence by communities, public security departments and the judicial bodies," Li said.

However, he contended that the amendment does not offer a clear definition of domestic violence nor procedures to stop it.

The draft defines domestic violence as physical, emotional, mental, sexual infringement or the infringement of the property of family members, including a spouse, ex-spouse, parents and children. The draft states that domestic violence shall be understood to encompass, but not limited to, the following:

Physical violence or constraint of personal freedom;

- *Insult, deprecation or other harm to sexual integrity and sexual behavior that is harmful to human dignity;*
- *Insult, slander, harassment and acts that infringe privacy, freedom, human dignity or personal safety;*
- *Destruction of property and actions of depriving of, reducing or hampering the victim from having financial resources;*
- *Illegally identifying the sex of a fetus and forced abortion. (A preference for a male child among some husbands and families has led to female fetuses being aborted.)¹*

3.4 Local regulations

The newspaper China Daily reported in August 2002:

The provinces of Sichuan in Southwest China, Liaoning in Northeast China, Shaanxi and Qinghai in Northwest China, Jiangsu in East China and the municipalities of Tianjin in North China and Chongqing in Southwest China have enacted detailed regulations against domestic violence.

Yet it remains one of the most serious problems facing women and children in the country. Recent statistics reveal that some 20 percent of Chinese families are still troubled by different forms of home violence, according to a Xinhua News Agency report.

But it is nonetheless still unusual to find victims turning to the law to bring an end to violence in their homes.

According to another survey covering the entire country, only 17.8 percent of the victims of family violence turn to legal agencies for help and only 16.5 percent of those known to practice violence are punished.²

¹ China Daily, December 3 2002, *NPC Urged to Toughen Laws on Abuse*, reported on China Internet Information Centre, Hwww.china.org.cnH

² China Daily, August 9 2002, *Local Laws Adopted to Tackle Domestic Violence*, reported on China Internet Information Centre, Hwww.china.org.cnH

6. Case law

6.1 Canada

The following claimant in Canada was granted refugee status as there was found to be no state protection available and no internal flight alternative:

CRDD VA1-01882, Kemsley, August 16, 2002.

The claimant feared physical and psychological abuse at the hands of her former husband, who suffered from illness. He had a history of abusing and harassing the claimant and had threatened to kill her. The claimant was found to have a well-founded fear of persecution on the basis of gender. She provided credible evidence of her unsuccessful attempts to obtain police protection. The unwillingness of the police to intervene and protect women in domestic disputes in China was confirmed in country documentation. State protection was not available to the claimant. It would be difficult for her to relocate in China, and her ex-husband would likely track her down and continue to abuse and harass her. She had no internal flight alternative (IFA).³

Home Office Country Assessment October 2002

WOMEN

6.B.108. Article 48 of the 1982 Constitution states that "Women in the PRC enjoy equal rights with men in all spheres of life, political, economic, cultural and social, including family life. The state protects the rights and interests of women, applies the principle of equal pay for equal work for men and women alike and trains and selects cadres from among women." The Communist regime has consistently articulated the ideal of gender equality and has enacted a series of laws to protect women's rights. However, the persistence of traditional views on the position of women, the government's family planning policies (see below, Family Planning Policies) and the preference for sons, and the economic reform programme (see paragraph 3.18) are obstacles to the effective application of these laws.[3c]

6.B.109. Deeply entrenched social habits and customs that mitigate against gender equality are the major cause of the continuing violence against women in China, especially in the rural areas. The roots of this discrimination against women lie in Chinese philosophy, religion and popular culture. The social organisation of rural society, which views women as temporary residents in their natal families until they move to their husband's residence, is also a significant factor. Domestic abuse reportedly is more frequent in rural areas. Women in urban areas are usually more educated and tend to have a better understanding of their rights, although there is no national spousal abuse law. Some localities (eg. Hunan province) have passed legislation to address the problem.[3c][2d] The central authorities have pledged to tackle injustices in rural areas, particularly in the fight against domestic violence and in trafficking of women. [4ek] New economic pressures have fuelled early retirement amongst female workforce. The economic downturn has seen an increased domestic violence, coercion into prostitution, and a marked difference between men and women in suicide figures. [4ba]

Abduction

6.B.110. The abduction and sale of women is on the rise in China. These practices, which occurred in traditional Chinese society, have seen a resurgence as a result of the economic reform programme which has loosened strict communist moral controls at the same time that it has unleashed the profit motive; the growing shortage of women; and the increase in cost of betrothal gifts. Chinese authorities have consistently condemned the practise of the abduction and sale of women. In 1991 tougher penalties were enacted, imposing sentences of between 10

³ Immigration and Refugee Board, Canada, available at http://www.irb.gc.ca/en/decisions/reflex/index_e.htm?action=article.view&id=10090H

years in prison and death for gang leaders, up to 3 years in prison for those who buy women and children, and 2-7 years in prison for government cadres who obstruct who obstruct rescue attempts. Campaigns to catch and convict those involved in the abduction of women are regularly organised.[3c][10o] In 1999, police claimed that they had rescued 23,000 women and 4,260 children who were kidnapped, broke up 8,000 kidnapping gangs, and arrested 26,000 people between 1996 and 1998.[4ag]

6.B.111. The trafficking of women, for the sex trade, and children for adoption rackets has increased in year 2000. [4km][4kp]

Marriage

6.B.112. The documentation needed to marry a foreigner is as follows: a certificate of marriageability (obtainable from the office which has physical control of his or her file); a certificate of birth; household registration book (*hukou*); health certificate (obtainable from a regional level local hospital); and a letter from the parents of the local partner giving their permission for their child to marry a foreigner (this letter should include the index fingerprint of both parents below their signature and date). [15i]

6.B.113. The marriage registration procedures are administered by the local civil affairs office (*minzhengju*). [15i]

Divorce

6.B.114. It is relatively easy for a woman to get a divorce under China's Marriage Law (1980). Women, however, may be discouraged from applying for a divorce because of the housing shortage in China. During marriage women usually live in a house belonging to their husbands' work unit. After divorce, if a woman's own unit does not assign her a house, she is forced to seek housing with family and friends.[3c]

All China Women's Federation

6.B.115. The government-sponsored All China Women's Federation (ACWF) plays a key role in promoting and safe-guarding women's rights and interests. The ACWF is a mass organisation, with branches at each government level, and has 89,000 professionals specialised in working with women. Since 1980, the ACWF has sponsored a nationwide effort to develop family planning education, including counselling services. The organisation actively protests cases in which women are discriminated against by the hiring practices of companies and factories. Women's protection committees, medical schemes, domestic abuse hotlines and emergency centres been set up in some areas.[3c][7g][4p]⁴

⁴ Country Information and Policy Unit (2002), *Country Assessment, China, Section 6B: Human Rights, Specific Groups: Women*, Home Office, Immigration and Nationality Directorate, available at <http://www.ind.homeoffice.gov.uk/default.asp?PagelD=1417H>

COLOMBIA

Appendix B: Update February 2003

1.2 Human rights practice

Amnesty International notes in its report of December 2002:

President Álvaro Uribe Vélez won the 26 May 2002 elections in large measure due to his promise to put an end to Colombia's four decade-long armed conflict. Since taking office, he has begun to introduce a series of hardline security measures encapsulated in the so-called doctrine of Democratic Security (Seguridad Democrática). However, this strategy to end the armed conflict - which, according to Amnesty International, has cost the lives of more than 60,000 people since 1985, 80% of them civilians playing no part in the hostilities - does not include a program to combat violations of human rights and international humanitarian law (IHL). This failure is all the more serious given that the vast majority of non-combat killings and "disappearances" are committed by paramilitaries operating with the support and acquiescence of the armed forces. The government has thus failed to acknowledge that security cannot be guaranteed without full respect for human rights. Rather than ensure the security of all its citizens - by shielding the civilian population from the armed conflict - the government's measures are, instead, dragging civilians further into the conflict; consolidating a wall of silence behind which violations can be committed unobserved and with impunity; and strengthening the already powerful position of paramilitary groups in the country.¹

The report goes on to detail numerous problems with the judicial system, dangers to civilians, violations of human rights standards, and legitimisation of attacks on civil society.

Human Rights Watch in a November 2002 report strongly criticises the ability of the Attorney General's Office, which is responsible for investigating and prosecuting human rights abuses, to do its work.²

4.2 The police

The Research Directorate of Canada's Immigration and Refugee Board reported in March 2002 that:

Individuals wishing to report cases of intra- or inter-family conflict, including those involving domestic violence, may do so at a family

¹ Amnesty International (2002) *Colombia - Security – at what cost? The Government's failure to confront the human rights crisis*, New York, Amnesty International, available at [Hhttp://web.amnesty.org/ai.nsf/Index/AMR231322002?OpenDocument&of=COUNTRIES\COLOMBIAH](http://web.amnesty.org/ai.nsf/Index/AMR231322002?OpenDocument&of=COUNTRIES\COLOMBIAH)

² Human Rights Watch (2002), *A Wrong Turn: The Record of the Colombian Attorney General's Office*, New York, Human Rights Watch, available at [Hhttp://hrw.org/reports/2002/colombia/colombia1102.pdfH](http://hrw.org/reports/2002/colombia/colombia1102.pdfH)

police station (comisaría de familia) (Banco de la República 2001; Instituto Colombiano de Bienestar Familiar n.d.; Fundación Gamma Idear 1999). These stations, which offer legal, psychological and medical assistance (ibid.), are located throughout the country, with 40 in the city of Bogotá (El Tiempo 6 Jan. 2002).

In a January 2002 profile of a family police station in Ciudad Bolívar, a poor district in south-western Bogotá, the newspaper El Tiempo stated that it is only one of two such stations in the capital that are open 24 hours per day (ibid.). The report added that the station, which processes an average of 100 individuals during each daytime shift, lacks its own vehicle and suffers shortages of office supplies and personnel (ibid.).³

4.4 Other support services

In the same report the Research Directorate noted that:

On 7 March 2002, Bogotá-based Radio Caracol, citing a United Nations Population Fund (UNFPA) study of sexual violence in Colombia, claimed that there was an "alarming crisis" (alarmante crisis) in the quality of assistance available to victims of such violence. Responding to the study's findings, the UNFPA announced that it would launch a project to help victims in a holistic fashion (ibid.). No additional information on this initiative could be found among the sources consulted by the Research Directorate.⁴

5.6 UNHCR guidelines on protection needs

UNHCR issued guidelines on international protection considerations for Colombian asylum-seekers and refugees in September 2002. It listed many categories of individuals who would have a well-founded fear of persecution including marginalised social groups such as drug-addicts, prostitutes, beggars, street children, and homosexuals.

It also noted that many Colombians are in need of international protection on broader grounds:

67. In the current situation, UNHCR considers Colombians, who are unable to return because of threats to life or security as a result of the indiscriminate effects of generalized violence and public disorder, to be in need of international protection. Given the rising level of violence and the country-wide presence of the guerrilla and paramilitary groups, this may apply to Colombians from any part of the country that is exposed to high levels of conflict, in dispute between various armed

³ Canadian Immigration and Refugee Board, (2002), *REFINFO Query: Colombia: Recourse available to a woman suffering abuse at the hands of a former spouse whom she had divorced several years previously (2001-March 2002)*, COL37902.E, 19 March 2002, available at [Hhttp://www.irb.gc.ca/cgi-bin/foliocgi.exe/refinfo_e/query=domestic+violence+colombia/doc/{@2802H](http://www.irb.gc.ca/cgi-bin/foliocgi.exe/refinfo_e/query=domestic+violence+colombia/doc/{@2802H)

⁴ Canadian Immigration and Refugee Board, (2002), *op. cit.*

*groups, and/or in an area in where extra-judicial killings or forced recruitment by armed organizations are reported to take place.*⁵

⁵ UNHCR (2002), *International protection considerations regarding Colombian asylum-seekers and refugees*, United Nations High Commissioner for Refugees (UNHCR) Geneva September 2002, available at www.unhcr.ch

KOSOVO

Appendix B: Update February 2003

1.2 UNMIK – mandate and progress

A recent United Nations Security Council report notes progress but still work to be done in certain areas:

19 December 2002 - A Security Council delegation has found “notable progress” in Kosovo but much work remains to be done in several areas, including the rule of law and the return of minority communities, according to a report released today at United Nations Headquarters in New York.

The report of the Council delegation that visited Kosovo and Belgrade, Federal Republic of Yugoslavia from 14 to 17 December notes that the elections for the Kosovo Assembly in 2001 and the municipal ballot earlier this year led to the formation of the provisional institutions of self-government. Among the other achievements recognized by the team are the improvement in the rule of law, the high number of minority returnees, and the progress in preparations for the privatization of the local economy.

Nevertheless, the report points out that the progress achieved so far in Kosovo has been driven to a large extent by the international community. The delegation “has the firm impression that local ownership and commitment to these processes has been less than could have been expected,” it says, stressing the importance of the UN Interim Administration Mission in Kosovo (UNMIK) in making further efforts to involve the local institutions and political leaders in the practical formulation and implementation of political goals and strategies.¹

Concerns are also noted in the USAID and United Nations Development Programme report published in late 2002:

Political and institutional stability. *Political and institutional stability in Kosovo has improved greatly. Yet, the current processes of building democratic institutions and transferring some of the authority from UNMIK to locals in some cases is being accompanied by disagreement and tensions between local institutions and UNMIK. This is causing dissatisfaction among the Kosovan population resulting in distrust towards both parties. Other issues, which hinder the achievement of greater political and institutional stability are:*

- *Lack of an efficient mechanism aimed at harmonizing the positions of UNMIK and the Kosovo Government prior to taking important political decisions and the passing of laws.*

¹ UNMIK news release, 19 December 2002, ‘Notable progress’ in Kosovo but more needs to be done, Security Council told, available at [Hhttp://www.unmikonline.org/news.htm](http://www.unmikonline.org/news.htm)H

- *A not fully functional PISG², and its inclination to exceed its current authority, as well as perceptions of restrictive interpretation of the Constitutional Framework and Resolution 1244 by sections of UNMIK.*
- *Sluggishness of the PISG in passing of laws.*
- *Non-implementation of Kosovo Government authority in the northern part of Kosovo and some enclaves.³*

1.3.2 The situation of minorities

The USAID & UNDP report mentioned above notes continuing problems for ethnic minorities:

Interethnic relations. *Unlike the improvements in some other spheres of social and economic life in Kosovo, the relations between Albanians and Serbs, and partly those between Albanians and the Romas (Ashkalis and Egyptians), have not marked any encouraging advances. These relations are characterized by a high level of polarization between Albanians and Serbs in almost all spheres of social, political and economic life. The most obvious current problems, which cause tensions in interethnic relations, are:*

- *A lack of full human and minority rights, especially of freedom of movement of minorities throughout the entire territory of Kosovo.*
- *The slow process of return of displaced people and refugees and the disagreements on their numbers.*
- *The unclear fate of missing persons.*
- *The functioning of parallel structures of Serbia in Kosovo.*

2.1 A background to violence against women

USAID and UNDP's report notes that the incidence of rape is increasing:

Public and personal security. *During the first six months of 2002, the overall number of crimes in Kosovo has marked a decrease in comparison to the same period of 2000 and 2001, thus contributing to improvement in public and personal security in general. However, during this period some negative trends have been marked:*

- *The number of certain crimes (rape, attempted rape, assaults and burglary) has increased in comparison to the same period last year.*
- *A considerable number of serious offenses against employees of UNMIK, KFOR, KPS and individuals from the international community have been registered.⁴*

The report later states that the incidence of rape and attempted rape has increased by 19% since the same period in the previous year.⁵

² Provisional Institutions of Self-Government

³ USAID & UNDP (2002), *Early Warning Report * Kosovo * Report #1 * May-August 2002*, p 1, available at [Hhttp://www.kosovo.undp.org/Projects/EWS/EWR%20\(Maj-July\)%20English.pdf](http://www.kosovo.undp.org/Projects/EWS/EWR%20(Maj-July)%20English.pdf)

⁴ USAID & UNDP (2002), *op. cit.*, p. 2

⁵ USAID & UNDP (2002), *op. cit.*, p. 22

3.2 The law relating to domestic violence

It was noted in the first edition of this report in September 2002 that a UNMIK Regulation on the Prohibition of Domestic Violence, first proposed in November 2000, had been drafted but not yet promulgated. This is still the case as the regulation does not appear on UNMIK's Official Gazette (complete list of regulations) as at 15 January 2003.⁶

5.1.1 High unemployment and lack of social assistance

A report published in late 2002 by USAID and the United Nations Development Programme notes the continuing serious problem of high unemployment among other problems of economic and social instability:

6. High unemployment in Kosovo continues to be a very serious problem. Based on the latest research it is estimated that 61.2% of the Kosovan population represent the working age population, out of which only 42.9% are employed, and thus the unemployment rate is 57.1% [2]. Such an unemployment rate is much higher than in other countries of the region and even those also in transition. Based on the data of OECD [3], the unemployment rate in Kosovo appears to be five to ten times higher than in many other countries in transition.

....

7. The current high rate of unemployment represents a major source of dissatisfaction among the population and may have contributed significantly to a lack of trust in Kosovo's institutions. According to respondents to our opinion poll, the problem of unemployment represents the second biggest problem which is currently facing Kosovo – immediately after its unresolved status (see Table A.1 in the annex). Based on current trends, it is to be expected that this problem will worsen further in the future, especially with regard to youth.⁷

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6.66 The ethnic Albanian community is strongly patriarchal and women are expected to be subservient to men. In rural areas, women may have little ability to control their property and children. Women widowed by the war risk losing custody of their children due to an Albanian custom requiring children to be given to the deceased father's family. The widow is often returned to her own family, with her property passing to her husband's family. [2]

6.67 Rape and a high level of domestic violence are serious problems. There is severe stigma attached to rape, which affects the victim's entire family and this leads to under reporting. It is culturally acceptable for men to beat their wives and such crimes also tend to go unreported. [2]

6.68 In major towns, the presence of UNMIK and many NGOs has opened a large number of previously unavailable jobs to women. UNMIK police and the OSCE launched a campaign to recruit women for the Kosovo Police Service, where they make up 17-20% of the force. Women are also increasingly active in political and human rights organisations. Women are legally entitled to equal pay for equal work and are granted maternity leave for 1 year, with an

⁶ See UNMIK Official Gazette at [Hhttp://www.unmikonline.org/regulations/index.htm](http://www.unmikonline.org/regulations/index.htm)

⁷ USAID & UNDP (2002), *Early Warning Report * Kosovo * Report #1 * May-August 2002*, p 6, available at [Hhttp://www.kosovo.undp.org/Projects/EWS/EWR%20\(Maj-July\)%20English.pdf](http://www.kosovo.undp.org/Projects/EWS/EWR%20(Maj-July)%20English.pdf)

additional 6 months available. There is a wide range of women's initiatives run by various organisations operating in Kosovo. [2] [17b] [23a]

6.69 UNMIK has determined that one third of candidates for the central elections should be women. Through the Office of Gender Affairs, UNMIK supports women representatives who are not currently in decision-making positions to make them part of the process by which legislation and policy are reviewed. The Office of Gender Affairs is also working to address concerns that women minority groups have insufficient access to employment, education, and medical facilities because of lack of freedom of movement. [15d]

6.70 As noted above, Kosovo is a destination and transit point for trafficking of women for prostitution. [2] The sex industry in Kosovo itself has also grown considerably in the post conflict years. [43m]⁸

⁸ Country Information and Policy Unit (2002), *Country Assessment, Kosovo, Section 6B: Human Rights, Specific Groups: Women*, Home Office, Immigration and Nationality Directorate, available at <http://www.ind.homeoffice.gov.uk/default.asp?PageId=3433H>