



National Library
of Canada

Acquisitions and
Bibliographic Services Branch

395 Wellington Street
Ottawa, Ontario
K1A 0N4

Bibliothèque nationale
du Canada

Direction des acquisitions et
des services bibliographiques

395, rue Wellington
Ottawa (Ontario)
K1A 0N4

50-10-100-0000-0

50-10-100-0000-0

NOTICE

The quality of this microform is heavily dependent upon the quality of the original thesis submitted for microfilming. Every effort has been made to ensure the highest quality of reproduction possible.

If pages are missing, contact the university which granted the degree.

Some pages may have indistinct print especially if the original pages were typed with a poor typewriter ribbon or if the university sent us an inferior photocopy.

Reproduction in full or in part of this microform is governed by the Canadian Copyright Act, R.S.C. 1970, c. C-30, and subsequent amendments.

AVIS

La qualité de cette microforme dépend grandement de la qualité de la thèse soumise au microfilmage. Nous avons tout fait pour assurer une qualité supérieure de reproduction.

S'il manque des pages, veuillez communiquer avec l'université qui a conféré le grade.

La qualité d'impression de certaines pages peut laisser à désirer, surtout si les pages originales ont été dactylographiées à l'aide d'un ruban usé ou si l'université nous a fait parvenir une photocopie de qualité inférieure.

La reproduction, même partielle, de cette microforme est soumise à la Loi canadienne sur le droit d'auteur, SRC 1970, c. C-30, et ses amendements subséquents.

Canada

**INTERNATIONAL PERSPECTIVES
ON
VIOLENCE AGAINST WOMEN**

*Dissertation Submitted to
the School of Graduate Studies and Research
in Partial Fulfilment of the Requirements*

For the Degree of

Master in Laws

By

Satinder Cheema

Supervised By:

PROFESSOR SANDA RODGERS

Faculty of Law
University of Ottawa

1993

© Satinder Cheema, Ottawa, Canada, 1993



National Library
of Canada

Acquisitions and
Bibliographic Services Branch

395 Wellington Street
Ottawa, Ontario
K1A 0N4

Bibliothèque nationale
du Canada

Direction des acquisitions et
des services bibliographiques

395, rue Wellington
Ottawa (Ontario)
K1A 0N4

Author's Acknowledgement

Author's Acknowledgement

The author has granted an irrevocable non-exclusive licence allowing the National Library of Canada to reproduce, loan, distribute or sell copies of his/her thesis by any means and in any form or format, making this thesis available to interested persons.

L'auteur a accordé une licence irrévocable et non exclusive permettant à la Bibliothèque nationale du Canada de reproduire, prêter, distribuer ou vendre des copies de sa thèse de quelque manière et sous quelque forme que ce soit pour mettre des exemplaires de cette thèse à la disposition des personnes intéressées.

The author retains ownership of the copyright in his/her thesis. Neither the thesis nor substantial extracts from it may be printed or otherwise reproduced without his/her permission.

L'auteur conserve la propriété du droit d'auteur qui protège sa thèse. Ni la thèse ni des extraits substantiels de celle-ci ne doivent être imprimés ou autrement reproduits sans son autorisation.

ISBN 0-315-89609-4

Canada



UNIVERSITÉ D'OTTAWA
UNIVERSITY OF OTTAWA

Table of Contents

Abstract	i
Acknowledgements	ii
Dedication	iii
1. Introduction	1
2. Historical Background	13
3. Forms, Functions and Impacts of Violence	23
4. Violence Against Women in Detention	46
a. Police Violence Against Women in India	54
b. Custodial Rape	65
c. Police Complicity in Violence Against Women in India	82
5. Police and Violence Against Women: the North American Experience	101
6. Conclusion	123
Bibliography	132
Table of Cases	150

ABSTRACT

This dissertation traces through history the manner in which women around the globe have been forced into subordination to man. In this context, it looks at the role played by the patriarchal system in women's subjugation and violence against women. It identifies the different faces of violence against women around the world and focuses on the various forms of violence against women. The dissertation then presents a global review of violence against women in detention and analyses the abusive use of this power by agencies of the state. To reflect how this power, lacking in accountability and deterrent force, can result in a mockery of the whole concept of justice, the dissertation reviews violence against women who are directly under the control of police - the primary law enforcement agency of the state. The dissertation uses examples from the Indian sub-continent to show how the attitude of police in developing countries has, instead of controlling the violence, promoted violence against women and the impact of this attitude on the society. The dissertation analyses the general attitude of police towards violence against women; the victims' perception of the police, and the police perception of abused women on the issues of family violence. It observes that elimination of violence against women cannot be achieved through law reform alone. Proper enforcement of such reformatory measures, accountability of the enforcers and condemnation of enforcers when they fail to do what is expected of them are equally important to eliminate violence against women. The dissertation concludes with the argument that under the present structure of society violence against women cannot be eliminated until the attitude of women towards their own selves is changed as well as that of men in general and police in particular, which directly affects the attitude of men towards women.

ACKNOWLEDGEMENTS

Many people helped me during the course of this dissertation. It would be difficult to name them all. However, I would like to specifically express my deep sense of gratitude to Professor Sanda Rodgers who read many versions of this work and guided me throughout the course of this dissertation. Her invaluable and timely advice/suggestions went a long way in the completion of this dissertation.

I would also like to thank Professor Jennie Abell for her guidance in the initial drafts of this dissertation and Professor Ruth Sullivan for her continuous and unfailing inspiration during the course of this work.

Finally, I would like to thank Sylvie LeBlanc, Nicole Laplante and Francine Daoust at the Graduate Studies in Law for their help and support in all matters since I enrolled in this program.

DEDICATED TO

THE MEMORY OF MY LATE MOTHER

AND

MY FATHER

1. Introduction

Culturally sanctioned views of women and of women's role are embodied in legal, economic, and financial discrimination against women through social institutions and processes. These views are pervasive in the fields of health, welfare, education, science, the military, and the subject of this paper - the police - especially in context of the Indian sub-continent with some references to Canada and the United States of America. There is a range of mediating mechanisms through which a consensual control of women by men is reproduced; at the ideological level there is a string of beliefs about both the sanctity of the family and the inherent nature of women which are drawn on to justify women's subordination to men. The use of violence presumes a loss of, or an indifference to, a more resilient¹ strategy: compliance through consensus. Violence and its threat are ugly and crude means of securing control or dominance and hence, less effective in the long run.²

¹ A male domination on grounds of cultural or religious beliefs or a belief that family must be headed by a male. In case of disagreement it is expected that friends or members from extended family intervene to resolve the issue by persuading the woman to come to the terms of her spouse.

² In some wife battering cases, after a prolonged period of abuse, the victim sometimes reacts in a violent manner. This reaction can be attributed to many reasons. There have been cases where the victim believed that if she did not kill her abuser, her abuser would kill her. A victim of wife abuse, Jean Miller, told the court of years of abuse and stated, "I Killed him because he was going to kill me." Hence violence generally ends up in more violence and total loss of control. *The Ottawa Citizen* (16 October 1992) E1. See also: *The Ottawa Citizen* (October 21, 1992) C1 and *Lavallee v. The Queen* (1990) 55 C.C.C (3d) 97 (SCC). For a general discussion on this aspect see, Angela Brown, *When Battered Women Kill* (New York: Collier Macmillan Publishers, 1987).

I strongly believe that violence against women is most prevalent in those societies where the patriarchal attitudes are buried deep down in the roots of society and enforce the idea that a man in a hierarchical order is above woman, hence superior. This order gives more power to dominate, manipulate and control women, whom men consider to be inferior to them. To maintain this dominance and control over women men resort to many stratagems based on ideology, culture and the most crude of them all - violence. Patriarchy is one of several, but the most common, element which perpetuates violence against women. I believe that the creation, continuation, and circulation of patriarchy has also led to the fabrication, preservation, and turbination of violence against women.

In pursuance of the above dissertation, I also demonstrate through some examples from history that the issue of violence against women has been obscured for centuries in many countries. One of the issues I examine is the origin of violence and the role patriarchal culture has played to place men in a superior position and woman in an inferior one. In amplification of the above contention, I also draw examples from different countries and cultures, such as India, Pakistan, Iran, Thailand, Bangladesh and other eastern countries on one hand, and the United Kingdom, the United States of America, Canada and France, on the other. These examples depict how the presence of patriarchal and hierarchical attitudes continue to deprive women of their equal rights to men in the so called "civilised" and "modern" world. Similarly, this patriarchal structure and these attitudes have played a substantial role in the subjugation and subordination of women,

particularly in India. I also demonstrate that this is the case in other similarly structured societies as well. Another most notable fact is how violence against women has been and to quite an extent, is being condoned and shielded in the garb of culture, religion, and tradition which have for ages nourished the patriarchal structure of society by vesting all power in the male.

Encompassing cultural, economic, religious³ and social⁴ differences, the reality is that our "global village" has the sad privilege of being highly patriarchal and therefore perpetuates violence against women. Rape, beatings, incest, illegal abortion, forced prostitution,⁵ the lack and prevention of contraception,⁶ the links between violence and poverty,⁷ torture, mental cruelty, militarism, sex tourism, female infanticide⁸, traditional customs harmful to women (early marriage, force feeding, sexual mutilation), devaluation,

³ Kumari Ranjana, *Female Sexuality and Bodily Functions in Hindu Religion*, (New Delhi, India Centre for Social Research).

⁴ Promila Dandvate, R. Kumari & J. Verghese, *Widows, Abandoned and Destitute Women in India*, (New Delhi, India: Radiant Publishers, 1989).

⁵ "Blatant Abuse of Women in Pak" *The Sunday Tribune* (28 June 1992).

⁶ Zimbabwe, "The "Mussasa Project" in the African Women Organization", (June 1990) *Linking Women's Global Struggles to End Violence* at 34.

⁷ D. Finkeker, R. Gelles, & G. Hotaling, *The Dark Side of Families*, (Beverly Hills, CA: Sage Publication, 1983) at 20-21.

⁸ O. G. Stapleton, "Prohibiting Amniocentesis in India: A Solution to the Problem of Female Infanticide or a Problem to the Solution of Parental Deignoisies" (1990) 14 *ILSA Journal of International Law* at 23-43. See also, D. Riches, "The Net Silk Eskimo: A Special Case of Selective Female Infanticide", (1974) 13 *Ethnology* 351 at 361.

traffic in women⁹, dowry¹⁰ and "sati murders"¹¹ are different forms of violence against women. This is the melancholy of over half the human beings on this planet, just because they are women!

This level of violence is very discouraging especially when we consider the scope of the task, the lack of resources, the lack of recognition of this abhorrent kind of violence and its multiple forms. Violence is sometimes so visible as to be nauseating and at times so insidious that it puts us in doubt of having been abused. It is indeed wearying and revolting, to see the internalisation of subordination by women to the point of doing violence to themselves in order to be accepted in this so called developed world. Self-inflicted sexual mutilations and polygamy are clear manifestations of this kind of violence, so are anorexia and bulimia. Skin whitening and darkening¹² as well as the necessity to

⁹ R. Hazari, "Sita and Prostitution", (September 1986) vol. 1:9 The Lawyers Collective.

¹⁰ It is an ancient custom in India for a bride's family to give dowry to the groom and his family since Hindu law entitles women to fewer property rights than men, the practise of giving dowry is an attempt to redress inequity by providing women with a share of the family property and thereby affording them an opportunity to make a material contribution to their marriage. In modern India, however, the system had degenerated into a commercial transaction. The husband and his family commonly makes new demands for dowry from the bride and her parents for years after the marriage. When the bride's family fails to satisfy these demands, the bride often becomes subject to physical and mental abuse. In a horrific number of cases, these brutal forces result in either the wife's suicide or her murder at the hands of her husband, and/or his relatives. K. Ramjana, "Brides are Not for Burning: Dowry Victims in India", *Manushi* (1989) at 104; M. Kishwar, "Dowry Deaths: The Real Murderers", *Express Magazine*, *Indian Express*, (April 9, 1989).

¹¹ P. Thomas, *Indian Women Through the Ages*, (New York: Asia Publishing Co., 1964); See also E. Thompson, *A Historical and Philosophical Inquiry into the Hindu Rite of Widow Burning* (London, UK: Allen & Unwin, 1928); S. K. Dorothy, *Women to Burn: Sutte as a Normative Institution*.

¹² N. Wolf, *The Beauty Myth* (Mississauga, Ont.: Random House Canada, 1990).

adopt an undesired sexual orientation¹³ and to undergo multiple pregnancies are some other examples.

Identification of violence against women as being deplorable is of recent origin. Until very recently, violence against women was viewed as a normal and accepted feature in most of the patriarchal societies.¹⁴ It is necessary to describe all forms of violence because of the diversity of this problem and also to give recognition to the patterns of this violence, since it changes its forms and faces, under the influence of different cultures, religions and the form of societal structure.

I further argue that such violence on women not only causes physical injuries but also leads to severe psychological damages which may be more grave than the former, especially in cases of spousal beating, rape, and incest. The outcome of such violence is drastic. Sometimes it generates more violence. Until now women's fear of violence has formed the focus of all analysis, but their experience of it has been ignored - at least by the state whether overtly or covertly.

¹³ A. Rich, "Compulsory Hetro-sexuality and Lesbian Existence" in A. Snitow, *Powers of Desire* (New York: Monthly Review Press, 1984).

¹⁴ See *infra*, notes 16-17 and accompanying text.

In my view, one of the reasons for such indifferent attitudes is the desire to preserve pecuniary benefits generated, for example, by the flesh trade in India and Pakistan and the sex-industry in Thailand. Such indifference is inevitable when the result of change is feared to be unfavourable to patriarchal dominance. Though the state is fully aware of the "crimes" of its law enforcement institutions, it prefers to ignore their existence. As long as these institutions achieve the results desired by the State, the manner such results are achieved is not important to the State. For example, army bases are famous for promoting prostitution and leaving illegitimate children behind. But, the government chooses to ignore this. Preparations for war, international adoptions, male order brides, and slave trading are other examples of the deliberate indifference of the state and its official bodies.

I contend that the reasons for these kinds of indifference is the approval of engrained patriarchal attitudes, for example, in the cases of wife battering which have not been seen and treated as crime in the criminal justice system especially in India, North America, and the United Kingdom. I observe that many efforts made to eliminate violence against women globally have proved partly ineffective since they fail to address underlying patriarchal attitudes with regard to women and children. I also feel that the delegation of subsequent power to men in the already established patriarchal and hierarchical structure of society, where women stand at the bottom of the ladder, enhances

the gap between men in general, including policemen and the oppressed group which is undoubtedly women.

This excessive power in the hands of the police force, whose existing power is supplemented by that of enforcement of law, absolute and unchecked, sometimes leads to abuse of power at times for the State (e.g. violence by security forces) and at others for their own indulgence (e.g. police violence, police sexual violence).

More frightening is the pattern whereby each time the legislature realizes its ineffectiveness in curbing criminals in particular and lawlessness in general, it simply arms the State with more power. Such arbitrary exercise of power leads to a mockery of the basic concepts of justice. This also creates an imbalance of power between those who have power and those who do not. When law enforcers have low accountability coupled with an evergrowing and consolidating power, their control over the individual's access to justice is alarming. Much lawlessness and obstruction to justice comes through acts of commission and omission by the police and other custodians of law whose vested interests are enhanced by the growing power in their hands.

If law is meant for the realization of justice, women must interrogate whether such 'law' or 'justice' is based on the basic principles of justice which are that no person should be a judge in his/her own cause and that every one must have the opportunity to

be heard and tried by a fair and impartial tribunal. But, is it the case? If it is, what do we do when those assigned to administer justice become its worst offenders? How can the law alone protect women when the enforcers of law themselves, in their own pre-conceived notions encourage the infliction of violence and sub-ordination of women?

Ultimately, due to the reason that women are powerless, they are the most vulnerable members of the society and this makes them the largest conglomeration of victims in the society. The arbitrary use of power allocated to the State can easily overlook the rights of people, particularly the powerless and voiceless. I argue that arming the State with more power will not resolve the oppression or violence against women or provide women with the power to protect themselves. While recognising that there are other issues with respect to violence against women, this dissertation primarily focuses on this particular issue concerning the balance of power among men, women, and the State. Other issues formerly discussed provide a basis for better understanding violence against women. I also believe that these issues are interrelated and interdependent.

The analysis of all the above issues leads to the query what should be the response of legal reformers towards regulating state power and abuse, especially with a focus on gender needs? I do not pretend to have ready answers for all the problems faced by women. The multiplicity of issues and the enormity of the ongoing debate and its

consequences make it impossible to capture the entire horizon of issues regarding violence against women in a single dissertation. However, I do believe that it is not enough to promise implementation unless the law recognizes the onus of making the guardians of the law such as the police, armed forces and security personnel, accountable. Legislative amendments are one option. But again one must question the intent and purpose behind such amendments. One must recall that even prior to the operation of law *per se*, men's dominance over women was accomplished both socially and economically. That being so we must ask what, in gender terms, is the state's yardstick for accountability? How is it that male power inevitably becomes state power? The answers to these questions are important before women get caught between seeking more power for the state on behalf of women and finding themselves having bestowed more unchecked power on the state.¹⁵

Against this backdrop, this thesis argues that total elimination of violence against women in any form is feasible only by changing the basic structure of the society. This basic structure of society varies from country to country depending upon the cultural and historical background. Current efforts to eliminate violence against women have generally resulted in law reforms. But such reforms will not be helpful until the reform is tailored to the particular oppressed group of society and the implementation of law such as to

¹⁵ See Catharine A. MacKinnon, *Toward a Feminism Theory of the State*, (1989) pp. 161-163. See generally chapter 8, "The Liberal State".

effectively allow men and women to equally share the same platform. As a preliminary step to achieve this the role of the law enforcing agency - police, must be thoroughly revised. The current efforts for universal elimination of violence against women must undergo change.

As the basic structure in any society cannot be changed without understanding the reasons for its present shape, chapter one of this thesis focuses on the history and manner in which women around the globe have been forced into subordination to men. In this context, it also looks at the role played by the patriarchal system in women's subjugation and violence against them. This chapter also sheds light on how the various forms of violence against women have been, and to quite an extent are being, excused and made immune from attack in the raiment of culture, religion and tradition which have aided the patriarchal structure of society by vesting sole power in the male for centuries.

Having looked into the evolutionary history of most of the present day societies, chapter two provides the analyses of the different faces of violence against women around the world. In this part, the paper focuses on the various forms of violence against women such as that of rape, sexual harassment, wife abuse/assault, infanticide, incest, child abuse, and prostitution. This chapter also attempts to delineate the hidden purpose for which these forms of violence are resorted to by men and their impact on women.

Since the power to control all forms of violence vests in the state chapter three presents a global review of violence against women in detention and analyses the abusive use of this power by agencies of the state. To reflect how this power lacking in accountability and deterrent force can result in a mockery of the whole concept of justice, the chapter goes on to present a review of violence against those women who are directly under the control of police - the primary law enforcement agency of the state. Custodial rape, one of the most common forms of such violence, is dealt with in detail in this chapter. By using examples from the Indian sub-continent the chapter shows how the attitude of police in developing countries has, instead of controlling the violence, promoted violence against women and the impact of this attitude on the society. The chapter also shows that in these countries the police is not only notorious for raping women in their custody but also that their general attitude towards violence against women is one of indifference. Incidents of dowry death, Sati, are clear examples where the killer gets away after committing the crime with the help of police. The police sees nothing wrong in letting this happen. In fact, in their advisory position they often tell women that they have to live in sub-ordination and if their husbands are violent from time to time there is nothing wrong with it. Even more depressing is when the girl's parents also acquiesce in this attitude. The chapter concludes with the observation that elimination of violence against women cannot be achieved through law reform alone. Proper enforcement of such reformative measures, accountability of the enforcers, and condemnation of enforcers when

they fail to do what is expected of them are equally important to eliminate violence against women.

Unlike India, in the United States of America and Canada, the role and attitude of the police and the concept of wife battering are well defined through the efforts of feminists and women groups. These groups have also made the judiciary conscious of it. Consequently, the criminal justice system in the United States of America and Canada has made it possible to bring action against police if they fail to respond appropriately. That leads to the query which response of police is appropriate and who determines it. In this context the discretionary powers of the police are questionable. Chapter four analyses the general attitude of police towards violence against women; the victim's perception of police; and the police perception of abused women on the issue of family violence - wife battering specifically. In those cases of wife abuse where arrest has been made mandatory by statutes, the police generally fail to arrest the perpetrators. This reinforces the attitude that wife abuse is not a crime. It is yet to be seen whether the police complies with the law reforms or if the criminal justice system will seriously treat wife abuse as a criminal offense.

Finding support from the postulates and opinions of experts who argue that under the present structure of society violence against women cannot be eliminated until there is a general awareness of the rights among women; that this awareness in the society can

lead to more accountability from men and the police in any country, the Chapter concludes with the argument that under the present structure of society violence against women cannot be eliminated until the attitude of women towards their own selves, that of men in general and police in particular, which in direct proportion affects the attitude of men towards women, is changed.

2. Historical Background

Secrecy has camouflaged the issue of violence against women for centuries in many countries. It is only recently that we have begun to speak out on this issue, on the origins of this violence and the role patriarchal culture has played over the centuries to place men in a superior position and women in an inferior, degraded, subordinate and object-like position.

In the early days of the present wave of feminism, terms such as "patriarchy" and "male supremacy" were adopted to describe societies characterised by male dominance and female subordination.¹⁶ This domination and subordination were seen to be located in socially constructed relations through which men maintain power over women and children. It is also used to define any kind of group organization in which males hold the dominant power and determine what part females shall and shall not play, and in which capabilities assigned to women are relegated generally to the mystical and excluded from the practical and political realms.¹⁷ As hetero-sexuality became identified as a system of social relations rather than simply sexual practice, other terms emerged. For example, "hetero-reality" is used to describe the world view that women exist always in relation to

¹⁶ J. Liddle & R. Joshi *Daughter of Independence: Gender, Caste and Class in India* (United Kingdom: Zed Book Ltd, 1986) at 51.

¹⁷ A. Rich, *On Lies, Secrets and Silence Selected Prose 1966-78* (New York: W. W. Norton and Co., 1979) at 78.

men. Hetro-reality is grounded in a wide range of effective, social, political, and economic relations that make up hetro-relations between men and women. In Britain, "hetro-patriarchy" is beginning to be used to signify a system of social relations based on male dominance, or supremacy, in which men's structured relationship to women underpins all the systems of exploitation. We live in a violent society, in which the function of violence is the subjection of women and promoting the traditional image of woman as the property of men. This domestic cruelty breeds cruelty on a world-wide scale. This dissertation attempts to explore the treatment abused women receive. It argues that this treatment is always mediated through experience with men, those who abuse, and those who make up part of the state.

A historical analysis of the status and position of women in India establishes a pattern of mistreatment of women beginning with a gradual subjugation in the ancient period to the indescribable cruel and inhuman treatment during middle ages. In many other countries, particularly those of the orient which share great many similarities of culture, woman do not live by law alone. They live by law created and dictated to them by men. At the same time, many influences touch upon a person's life; including inherited traditions which have such a strong hold that at times changes for the better seem impossible to achieve.¹⁸

¹⁸ Liddle & Joshi, *supra*, note 16, at 89.

Anthropologists and historians differ as to how and why the subjugation of women began. For example, some put it to the origin of fire which tied woman to the hearth, others to the institution of monogamy in marriage and yet others to the protection needed by women from foreign invaders.¹⁹ In my view, the subjugation of women in India is linked to the patriarchal system under which the woman has to leave her family and live with the husband's family. The customs of dowry and sati are related to the maintenance of the same patriarchal system. Believes like oblation offered to the dead ancestors are only valid if they are offered by the son and the necessity of having sons whether as fighters for the family or as a legitimate heir to the property or as support for old age devalued the daughters²⁰ and led to female infanticide.²¹

¹⁹ The period between the 7th and 12th centuries, that is the period between the decline of Buddhism and the spread of Islam in India, is the darkest for women in India. Child marriage, prohibition of widow remarriage, practice of Sati by which a woman after her husband's death threw herself on pyre were some of the products of this period. The practice of *Sati* arose from another practice known as *Jawhar*. As a result of muslim invasion, thousands of Hindu, specially Rajput women, died by this rite by throwing themselves into burning flames to save themselves from falling into the hands of the invaders. Without exploring into the merits or demerits of these practices, it is apparent that even at that time the soldiers were ruthless towards women related to enemies. One wonders, is it really different in present "modern" times? (It must be noted that even at that time the practice of "Sati" was not always voluntary. It was a forced act.)

²⁰ Kapila Hingorani, "Woman and the Law", *LAWASIA* (A. S. 29 to May 1, 1986) at 202.

²¹ Dr. Sushila Mehta in her book *Revolution and the Status of Women in India* (New Delhi: Metropolitan, 1982) at 50 -51 states that

the new born innocent girls were put to death through many different stratagems. When the child was born opium pill was given or "Bhang" (Marihuana) and tobacco were given causing slow death. Otherwise the naval string was placed on in her mouth thereby causing suffocation and death. Some times the mother's breast was smeared with poisonous drugs called "dhatura" preparations. As the infant sucked mother's milk she also drank poison. Another method of killing a girl was by digging a big hole in the earth and filling it with milk and drowning the infant. In Punjab the newly born girl was placed in a "ghada" or water pot and buried alive in the ground. Sometimes mothers starved the infant to death!

Women in India are not the only ones to have suffered at the hands of culture and traditional roles.²² A survey undertaken in 1986 regarding the traditional roles of men and women in decision-making in six countries²³ showed that in Japan and the Philippines traditional attitudes which prevailed strongly reinforced women's subordination.²⁴ Another country where the woman is the victim of tradition is Korea. In Korea female virtue has consisted of three forms of obedience: (1) in her youth to her father; (2) after marriage, to her husband; and (3) in old age, to her son. Thus, a woman was characterized as virtuous if she lived her entire life as defined and dependant upon man.²⁵ The position of women in Thailand from 1238 A.D. to 1782 A.D. was similar. Since 1782 to 1982, there have been many changes and some improvements but not to the

²² In Roman Law women were completely dependent on men. As an unmarried girl she was under the perpetual tutelage of her father during his life, and after his death of her agnates by blood or adoption, when married, she and her whole property passed into the power and possession of her husband. In fact, she herself was treated as a property by her husband, and had no more right than a purchased slave. At certain stages of the Roman Law a husband was given a right to kill his wife in the case of adultery, and even if she had tasted wine or stolen the key of the cellar. The Romans did not allow women to exercise any civil or public office. In fact, a woman could not even be a witness or a curator; she could not adopt nor could she be adopted; she could not be a surety or a tutor. Like her sisters elsewhere in many parts of the world, she had no personal property independent of her husband; she could not make a will nor enter into a contract. Kapila Hingorani, "Women and the Law" (1986) LAWASIA 202 at 208.

In Greece the position of woman was no better. "In Europe during the middle ages, squires and noblemen beat their wives as regularly as they beat their serfs. The peasants faithfully followed their lords' examples. The Church sanctioned the subjection of women to their husbands "in everything". Priests advised abused wives to win their husbands' goodwill through increased devotion and obedience. A husband's displeasure was best dispelled by the woman's meek submissiveness." *Ibid.* at 208

In the sixteenth century, Russian women were considered honourable only when they lived at home and never went out. The wise men of China said, "Listen to your wife's advice but act against it." *Ibid.* at 209.

²³ Japan, Philippines, United States of America, Sweden, Federal Republic of Germany, and United Kingdom.

²⁴ M. Kubota, "Japan, Women and Law", LAWASIA (Apr. 29 to May 1, 1986) at 153.

²⁵ *Ibid.* Dr. T. L. Director, Korea Legal Aid Centre for Family Relations, Seoul, Korea at 133.

extent that women are yet placed on equal footing with men.²⁶ All these facts reflect a singular structure - patriarchy.

Under the Islamic criminal Justice system of Iran if a muslim man wilfully murders a muslim women, he can be sentenced to retribution but the victim's guardian must first pay the murderer's family compensation. This is because

"Iranian law views males to usually be breadwinner of the family. The family of the deceased (which is woman in the case) must pay family of the executed perpetrator the equivalent of one half of *Diyya*²⁷ that would have been paid to them had he been killed and had they been entitled to *Diyya* for his death."²⁸

This clearly shows that in Iran the value of a woman's life is less important than that of a man since women are not considered to be the bread winner for the family. If a wife commits adultery the husband is entitled to kill her and her lover. The freedom from punishment has also been extended to husbands who murder women who have merely been accused of adultery.²⁹

²⁶ Winolisiki, *Women and the Law in Thailand*, at 130-132.

²⁷ Compensation (damages) for crimes against the person (murder, homicide, maiming, serious bodily harm) for which retaliation or compensation is due.

²⁸ M. Cherif Bassiouni (eds), *The Islamic Criminal Justice System* (New York: Oceana Publications Inc., 1982) at 207.

²⁹ *MMF v. Secretary of State for the Home Department* TH/9515/85 (5216) at 12.

In the fifteenth and sixteenth century, contrary to the popular belief, the persecuted witch was often an attractive girl and not an "old hag" partly because of envy, and partly because of the fact that the male saw nothing wrong with the male domination, and thereby acquiesce to the victimization of any women who dared to defy their conventions.³⁰

According to English common law and practice from 1351 to 1828 A.D., a woman accused of killing her husband was liable to be indicted not for wilful murder but for the aggravated offence of "petit treason"³¹ and was publicly executed by burning if convicted. Whereas the husband killing his wife was indicted for murder and not petit treason. Further, if a son killed his father he was punished for petit treason but there was no evidence that if a son killed his mother he was convicted of the same offence.³² The position of married women in eighteenth century also reflected women's unequal position in marriage and subordinate status. Until 1874, the law prescribed the "rule of thumb".

³⁰ B. Rowland, "The Quiet Anti-feminist", (1983) 4 *Canadian Woman Studies* at 77.

³¹ Murder of a husband by his wife, or of a master by a servant, or of a religious superior by a religious inferior. Ruth Campbell, "Sentence of Death by Burning for Women", (1984) 5 *Journal of Legal History* at 44-59. Campbell discusses among others the cases of Catherine Hayer, Mary Jawson, Ann Williams, and Margery Beddingfield. John Beattie in his detailed study and criminal prosecution in 18th century Surrey and Sussex, discusses petit treason in relation to the cases of three women accused of murdering their husband (two of whom were convicted and burned publicly) See J.M. Beattie, *Crime and the Courts in England 1660-1800* (Princeton: Princeton Univ. Press, 1986) at 100-101.

³² S. A. M. Gavigan, "Petit Treason in Eighteenth Century England: Women's Inequality Before the Law" (1989-90) 3 *Canadian Journal of Woman and Law* 335 at 374.

It openly allowed a husband to "chastise" his wife with a whip or a stick so long as it was not wider than his thumb.³³

The history of "incest" can be traced back in England, to around, the eighteenth century. The law against incest (by men) was first introduced in England and Wales in 1908 after considerable pressure for two decades. It was primarily seen as the problem of the working class. The image of child sexual abuse of 1885 was that of the helpless victim sold as a "five pound virgin" to satisfy the jaded lust of rich aristocrats. Around the same time child prostitution was exposed in London by the "Maiden Tribute of Modern Babylon". Social purity campaigners joined by feminists and other socialists and free thinkers resulted in a quarter of a million persons demonstrating in Hyde park. Their demand was to raise the consent age from thirteen years to sixteen years. Accordingly, "child abuse" has been termed variably from time to time. The concept of "battered child" emerged from the medical profession in the United States in 1961.³⁴

Mental and physical cruelty was only accepted as a ground of divorce in Canada in 1968.³⁵ Even today, in England the role of women in the family is idealised. Women

³³ M. D. A. Freeman, *Legal Ideologies, Patriarchal Precedents and Domestic Violence in State Law and the Family: Critical Perspectives* (London: Tavistock, 1984).

³⁴ M. McIntosh, "Family Secrets as Panic Drama, (1988) 28 *Feminist Review*.

³⁵ *Male Violence in Relationships and the Justice System*, (New Brunswick: Advisory Council on the Status of Woman, Dec. 1989).

are expected to depend upon men and their work is seen as non-productive,³⁶ particularly the work of house wives. Women are not welcome in every field of work. There are work-places pre-determined for women by men, where women are expected to work. They are poorly paid, their education tends to be oriented towards the skill of fulfilling the expectation of the men and this education makes them totally dependant on men (be it as father, husband, son, common-law spouse, boyfriend) not only for economic reasons but also psychologically. The laws in Britain relating to national insurance, pensions, supplementary benefit, sickness and unemployment benefit, family income supplement and income tax are all based on stereotypical sex classification that impute a dependent role to women. For over sixty years the judiciary in England strongly denied that women were persons. Accordingly they were denied voting rights, right to higher education and other rights. The judges even accepted the absurd argument that "women were persons for the purposes of legal disabilities but non persons for the purpose of legal rights".³⁷

In France, at the end of World War II, as soon as the Nazis left, howling mobs dragged terrified young women from their homes and made them sit on a platform in the market place. There they roughly seized the heads of these young women and plucked or shaved off all their hair while the crowd of onlookers jeered and applauded. The crime

³⁶ Lord Denning, *The Due Process Law*, (London: Butterworths, 1960); *The Equality of Women*, (Liverpool: Liverpool University Press).

³⁷ *Ibid.*

of these young women was that they had been friendly with the enemy soldiers. Women, especially young pretty women, are still the target of group animosity.

The above mentioned examples show that the patriarchal structure has placed all the power in the male for centuries. The existence of such structure till today has continued to do so. It is very recent that we have started identifying and acknowledging different facets of violence against women. To achieve the goal of eliminating violence against women it is important to identify such violence in any form whatsoever its purpose and the impact it causes on the woman's life.

3. Form, Functions and Impacts of Violence

Violence against women has many forms. For the purpose of analysis, violence can generally be categorised in two kinds of violence: public and family. Public violence includes offenses such as rape, custodial rape,³⁸ sexual harassment,³⁹ media exploitation, pornography,⁴⁰ unequal rights, commercial exploitation, forceful prostitution, women trafficking etc. Family violence or domestic violence includes offenses such as incest, rape within wedlock, wife battering⁴¹ etc.

There are many reasons why violence should not be categorised as "family" or "public". Such classification decreases the meaning of violence for law enforcers. For example, when the police refuse to arrest a man who has committed an assault because the victim is his wife, the state redefines a criminal assault as "domestic" violence, thereby changing an otherwise criminal act into non-criminal behaviour. The state creates a special category of violence that is immune from the norms of criminal law. The non-arrest

³⁸ The term "custodial rape" is used in India and Pakistan in relation to rape committed by police.

³⁹ C. A. MacKinnon, *Sexual Harassment of Working Women* (New Haven: Yale University Press, 1979); C. Backhouse & L. Cohan, *The Secret Oppression: Sexual Harassment of Working Women* (Toronto: Macmillan of Canada, 1978); R. J. Cook, "International Human Rights Law Concerning Women: Case Notes and Comments" (1990) *Vand. J. Transnat'l L.* 815.

⁴⁰ R. Jennifer, *Pornography and its Effects: A Survey of a Recent Literature* (Toronto: Ontario Status of Women Council, 1980).

⁴¹ C. Guberman & M. Wolfe, *Violence Against Women and Children; "No Safe Place"* (Toronto: Women's Press, 1985) at 9-159.

policy is not simply an omission or failure to act, but is an act itself - a reinterpretation and social construction of behaviour that transforms a crime into a non-criminal "family problem".

Another reason why such categorization should not be done is that it has affected women negatively and also excluded them from that protection and attention which a victim of public violence or violence in general would have received.⁴²

Various forms of violence have been perpetuated against women in a patriarchal society. Each such form has been designed to advance some function advantageous to keep intact the hierarchical superiority of men. The impact of such violence on women for long had been ignored. The relationship of form, function and impact is a closely knit study and any discussion or analysis on any one of these cannot be completed independent of the others. The following discussion shows this relationship using various examples.

Violence against women has been used to perform a number of "functions" in almost all patriarchal societies such as enforcement of male privilege;⁴³ male access to women's services and resources; recreation for men; enforcement of the system of

⁴² This is effectively demonstrated by means of cases and other examples in Indian and North American context in Chapter three and four of this dissertation.

⁴³ Examples of this enforcement are (1) rape within wedlock and (2) forced sexual practices.

inequality and exploitation upon which such society and economy is based. There are endless examples of such functions of violence against women. Barbara Robert has compiled some statistics upon the percentage of violence against women in Canada. What is petrifying about this statistical compilation is the increase in the percentage of such crimes. The study stated, "eighty nine percent of victims said the rape had altered their lives in a major way" (so does all other forms of violence). The Canadian Advisory Council estimates that sixty two percent of all victims are physically injured.

On sexual harassment, a form of recently publicized violence against women, McKinnon comments, "sexual harassment is a social way to maintain the other in a position of inferiority".⁴⁴ A survey in the United States shows that between fifty to ninety percent of women workers are harassed; and of these, forty eight percent have been compelled to quit their jobs because of sexual harassment.

Rosette Côté takes a closer look at the cultural programming of sexes that underlies the concept of love, attitudinal masculinity and other actions associated with men. Men by default were given the role of "head of the family" and coupled with it came all of the authority and power that goes with such a role. What is the link between the love potential of men and sexual harassment? Men have been conditioned to verify

⁴⁴ C.A. MacKinnon, *supra*, note 39.

their masculinity, their weapons of seduction, their powers of ownership. At the same time, women learn to be attractive, passive, and always ready to answer to the needs of others. Côté has also deliberated on enormity of the harassment which is not restricted to the work place, but also is a cause of personal trauma to a school girl.⁴⁵

The terms "family violence" and "domestic violence" are analogous to each other. They are further sub-defined in terms like "spousal battering", "wife abuse", "wife battering", "wife assault". The term "assault" includes any act which constitutes a threat to women's physical integrity. It is not limited to battering and includes assault with weapons.⁴⁶ "Wife abuse" is generally defined as a man's use of physical force against his intimate, cohabiting partner.⁴⁷ Wife abuse consists not only of physical and sexual abuse, but also comprehends emotional abuse which encompasses verbal denigration and humiliation. Psychological abuse also includes acts of terrorism like threats, destruction

⁴⁵ Rossette Côté, "Le Harcelement Sexual où les Grenaces de la virilite" *Le Harcelement Sexual ou les Petits Violence Quotidiennes* (1983) 4 *Canadian Women Studies* at 10-13.

⁴⁶ More than 90 million African women and girls and victims of female circumcision or other forms of genital mutilation. (World Health Organization report); *Linking Women's Global Struggles to End Violence*, (Ottawa: Match International Centre, June 1990) at 9; and "He said he Teach me Lesson" at p. 19 and 21. Also see: Eugenie Aw (Ottawa Conference Centre, March 9, 1991) - *Violence Against Women: A Development and Human Rights Issue* at p. 25. See also: K. B. Miller "Female Circumcision: Challenges to the Practice as a Human Rights Violation" (1985) 8 *Harv. Women's L.J.* 155. Also note that genital mutilation is a common assault in South Africa.

⁴⁷ Bogard, "Feminist Perspectives on Wife Abuse: An Introduction", in *Feminist Perspectives on Wife Abuse* at 12. See also: Finesmith, "Police Response to Battered Women: A Critique and Proposals for Reform" (1983) 14 *Seton Hall L. Rev.*, pp. 74, 76; Note, "The Inadequate Police Protection of Battered Wives: Can a City and Its Police Be Held Liable Under the Equal Protection Clause?" (1986) 14 *Fordham U.L.J.*, pp. 417, 418.

of pets and property.⁴⁸ It also comprises economic abuse which means withholding economic resources leaving the woman penniless regardless of the worth of assets and income husbands possess or earn.

It is difficult to choose any particular term for spousal battering because it includes wife or co-habiter which means that victim may be a male spouse. The terms "spousal assault" and "domestic violence" fail to import the notion that it is women alone who are being beaten by men. I also find the word "wife" prefixed to "battering" and "assault" problematic for the reason that it might convey the message that only married women are abused. I have not been able to come up with any other term which on the face of it conveys the message that the victim was the legally married woman or a common law wife or a girl friend. For the purpose of this dissertation I have preferred to use the term "wife abuse" to "wife assault" because the latter does not include non-physical injuries. Some women report of the greater damage caused by emotional, psychological and economic stress as far more prolonged than apparent physical damage. Our bodies may heal relatively quickly, "other" injuries may last longer. A victim may feel anxiety and fear for years.⁴⁹

⁴⁸ Lerman, "Mediation of Wife Abuse Cases: The Adverse Impact of Informal Dispute Resolution on Women" (1984) 7 Harv. Women's LJ., p. 62.

⁴⁹ B. Roberts, "All our lives: Sexual Assault & Other Normal Activities", (1983), 4 Canadian Women Studies.

Since emotional and psychological abuse is difficult to prove, the concentration therefore has primarily been in the field of physical abuse.⁵⁰ Acquiring accurate figures on the occurrence of wife abuse is extremely difficult. In a study conducted in 1980, it was found that one of every ten women in Canada were battered by their husbands.⁵¹ A more recent study of metropolitan Toronto suggests that the figures are actually close to one in four.⁵² In the United States 2,880 women are beaten every day or 1,051,200 every year. It also discovered that twenty-eight percent of women in North America experience a violent act during their marriage.⁵³ Further, almost half of all wife abuse incidents result in physical injuries.⁵⁴ Spousal homicide figures show that wives were 3.3 times as likely to be killed by their husbands as husbands were by their wives; and that wives accounted for sixty-two percent of all female homicide victims.⁵⁵ Wife abuse

⁵⁰ F. Stairs & L. Pope, "No Place Like Home: Assaulted Migrant Women Claim to Refugee Status and Landings on Humanitarian and Compassionate Grounds" (1990) 6 *Journal of Law and Social Policy*.

⁵¹ L. Macleod with P. Codieux, *Wife Battering in Canada: The Vicious Circle*, (Canadian Advisory Council on the Status of Women, 1980) at 21. *See also* Guberman & Wolfe, *supra*, note 41, at 44.

⁵² M. Smith, "The Incidence and Prevalence of Women Abuse in Toronto" (1987) 2 *Violence and Victims in M. Randall*, "The Politics of Women Abuse: Understanding the Issues" (1990) *Education Wife Assault* at 1.

⁵³ W. Stacey & A. Shupe, *The Family Secret: Domestic Violence in America* (Boston: Beacon, 1983) at 2.

⁵⁴ P. Jenson, *Spousal Abuse in Metropolitan Toronto: Research Report on the Response of the Criminal Justice System* (Toronto: Metro Toronto Advisory Committee on Spousal Abuse, 1989) at 39 as cited in *Wife Assault: The Health Issues, Fact-sheet* (Toronto: Ontario Women's Directorate).

⁵⁵ Ministry of Supply and Services Canada, Statistics Canada, Canadians Centre for Justice Statistics, *Homicide in Canada 1987: A Statistical Perspective* (Ottawa: 1988) at 59, cited in "Wife Assault: The Health Issue".

also cuts across class, race, ethnic and religious lines.⁵⁶ Although some researchers have found correlations between poverty and assault⁵⁷ it may be that women with fewer resources more frequently seek the help of public agencies where they will more readily come to the attention of researchers.⁵⁸

The figures on wife abuse in the international context may vary. Even methods and definitions may vary but researchers have agreed upon one point that the wives are the most common victim of spousal assault in all countries. Although women are occasionally violent towards men, the incidence outside of self defence is very small.⁵⁹ A recent Hatty, Ontario case reported that an "abusive husband" who strangled his wife in a "domestic dispute" was given a two year sentence for manslaughter. "He said he was trying to fend off a knife attack from his wife when he strangled her to death with one hand..."⁶⁰ Six out of every ten Tanzanian women have experienced physical abuse from

⁵⁶ B. N. Pressman, *Family Violence: Origins and Treatment* (Guelph: Children's Aid Society of the city of Guelph and the county of Wellington, 1984) at 11-15; Del Martin, *Battered Wives* (New York: Simon & Schuster, 1976) at 54.

⁵⁷ P. Thomas, *supra*, note 11.

⁵⁸ Del Martin, "A Letter From a Battered Wife", *Battered Wife* (1983) at 54.

⁵⁹ D. E. H. Russell, *Rape in Marriage* (Bloomington: Indiana University Press, 1990), ch. 8; D.G. Saunders, "Wife Abuse, Husband Abuse or Mutual combat?" in K. Gillo & M. Bograd eds., *Feminist Perspective on Wife Abuse*, (Newbury Park, CA: Sage Publications, 1988) at 90.

⁶⁰ K. Marron, *The (Toronto) Globe and Mail* (8 August 1990) A7.

their partner.⁶¹ According to a report of the World Watch Institute, fifty percent of married women are regularly battered by their partners in Bangkok and Thailand.

In Mexico, a woman is raped every nine minutes.⁶² More than half of the Nicaraguan women beaten by their partners had been beaten for more than a year before laying charges. One woman had been beaten systematically for 32 years⁶³ !! According to the statistics produced by the United States Department of Justice, every fifteen seconds, a woman is beaten in the country; and eight out of ten aboriginal women in Canada get beaten by their partners.⁶⁴ This intensity and degree of violence leave women feeling lethal and soul destroying subordination, the loss of dignity, control and safety.⁶⁵ The impact is enlarged by the operation of such abuse on her friends and relatives and to the society as a whole. Some researchers also argue that men and women who experience and witness violent family relationships as children are more likely to have a violent adult relationship.⁶⁶ When a parent abuses a child, or a child witnesses

⁶¹ Violence Against Women in Dar-es-salaam; A case study of three districts: Tanzania Media Womens Association, 1989.

⁶² Double Jarnada, Nov. 1987.

⁶³ Oficina Legal Para la Mujer de Nicaragua, 1986.

⁶⁴ Breaking Free: A Proposal for Change to Aboriginal Family Violence (The Ontario Native Women's Association).

⁶⁵ M. Endghl, "The Silent Crime and the Beginning of Change" (1983) 14 Canadian Women Studies.

⁶⁶ J. Stets, *Domestic Violence and Control* (1988), pp 4-5. See generally, A. Miller, *The Drama of Gifted Child; The Search for the True Self* (1981).

abuse, that child is more likely as an adult to recreate an abusive relationship, either as a victim or as an offender.⁶⁷

Recent research has shown that child abuse does not necessarily pass from one generation to another. But, people working with abused children often find a history of violence in their families.⁶⁸ The premature introduction to sexual activity through non-consensual relationship can have a long lasting impact on the growth and development of the child and on his/her maturity to adulthood. On the basis of experience alone, she/he is ill equipped to assess the potential dangers of an adult-child relationship.⁶⁹ It has been discovered that illnesses such as multiple personality and eating disorders are caused by initial traumatic happenings.⁷⁰ It has also been observed that such abused persons find it very hard to trust other females/males. A negative self-image and feelings of inadequacy are coupled with an exaggerated sense of personal responsibility. It creates women who remain passive and victimized; it creates men who sexually abuse children

⁶⁷ *Ibid.* at 5. See also: L. Walker, *The Battered Women Syndrome* (1984) pp. 18-22. (co-relation of adult domestic violence, for both battered women and batterers, includes presence of battering in the family as children). Also note that there is some ongoing controversy especially over the effect of the violence witnessed by a woman in her childhood.

⁶⁸ F. Sugar & L. Fox, "Aboriginal Women in Prison" (1990) 2 *The Womanist* 7.

⁶⁹ C. W. SocaRides, "Adult-Child Pairs: Psychoanalytic Findings" (1991) 19 *The Journal of Psychohistory* 185.

⁷⁰ S. L. Bloom, "The National Dilemma: Can we Heal Ourselves?" (1992) *The Journal of Psychohistory* 289.

and who relate to women and children from within a framework of authoritarian abuse.⁷¹ If the child has been a victim of some sexual violence, it is imperative that she talk about it. In being able to talk about it, she, her family, and subsequent generations can be helped. It also depends on family atmosphere whether an abused child may feel confident to express herself to the parent. It is important that the abused child feels that there are people with whom she can share, who will be supportive, and who will not condemn her for what had happened.⁷²

Many women analysts, such as Bonaparte, Jacobson, Greenacre and Reich⁷³ were able to empathize with their female patients and admit the reality of their memories of incestuous abuse. Another analyst, Robert Fliess, after a lifetime of psychoanalytic experience in the removal of amnesia from early memories, found real sexual molestation of his patients at the core of their problem and concluded that "no one is ever sick by his fantasies: only traumatic memories in repression can cause the neurosis".⁷⁴

⁷¹ S. Redmond, "Sexual Abuse, Family Violence in a Patriarchal Culture: A Challenge to Our Way of Living", (The Church Council on Justice and Corrections & The Canadian Council on Social Development, Ottawa). See also: "To a Safer Place" - A Powerful Story of Incest Survival, Reconciliation and Hope produced by the National Film Board.

⁷² J. Golden, "Incest... Its Time to Talk About It"; "The Best Kept Secrets" The Film is available in Canada from Mebius International

⁷³ M. Bonaparte, *Female Sexuality* (New York: International University Press, 1953); P. Greenacre, *Trauma, Growth and Personality* (New York, International University Press, 1950); A. Reich, *Analysis of a Case of Brother-Sister Incest* (New York, International University Press, 1973) pp. 288-311.

⁷⁴ R. Fliess, *Symbol, Dream, and Psychosis* (New York: International Universities Press, 1973) at 212.

Statistical studies on the incidence of child sexual molestation in the United States go back to 1929, but at that time, the public was accustomed to disbelieving children and did not give much attention to it. In 1976, based on a study by the American Health Association (AHA), there were approximately 7,000 incidents of child abuse. These incidents rose to 113,000 in 1985. It was not until the late 1970s and early 1980s when careful studies began to be reported with samples large enough to warrant careful statistical analysis.⁷⁵

"AWAKE", a project programmed and conducted at Harvard's Children Hospital in Brooklyn, Massachusetts, has established a significant statistical link between child abuse and women abuse. Battered woman who are mothers are six times more likely than non-battered women to have an abused child - with the abuse inflicted sometimes by the women, but much more commonly by their male partners.⁷⁶

Infanticide has a long history. The persistence of this practice into the latter part of the 20th century may have to do with some of the cultural and economic realities that appear to have been associated with the killing of infants in the past: the wish to destroy illegitimate offspring, the belief in ritual sacrifice, the desire to destroy defective babies,

⁷⁵ L. Demause, "The Universality of Incest" (1991) 19 *The Journal of Psycho-history* at 133; See also: D. N. Sonovan, "Darkness Invisible" pp. 165-182.

⁷⁶ Michele Lang, "Professionals, Activists, Crows: The Family Violence Program at Boston University School of Medicine", (Notes from the Field) (1991) 14 *Harvard Women's Law Journal*.

and the need to control population growth. For example, in some cultures, the last born in a set of twin or triplets may be killed if the mother is feared to be unable to care for the child; in others, if a mother dies in child birth, her child may be buried alive with her.⁷⁷ A grim reminder of the relation between infanticide and economics is the practice reported in Thailand of buying a baby from unknown parents, killing the child and using the body to smuggle heroin.⁷⁸

The fundamental hypothesis implicit in a feminist critique of criminal justice is that the most dangerous people in society are those who abuse women and children. Lorene Clark has suggested that violence against women and children should be the central concern of the criminal justice system.⁷⁹ Physical, sexual and emotional abuse of women should be seen as a serious social problem resulting in cross generational perpetuation of violence. It should be recognised that this problem cannot be eliminated by incarceration of the offender but must be dealt with by providing a broader and more integrated mandate to the social service delivery system. Emphasis should be both on victim/survivor and perpetrators.

⁷⁷ L. Pintak, "Ken Messerman, US Missionary in War - torn Rhodesia" *People Magazine* (June 1979), p. 33.

⁷⁸ "Trafficking in Death", (1979) 103 *Far Eastern Economic Review* 5.

⁷⁹ Lorene M. G. Clark, "Feminist Perspectives on Violence Against Women and Children: Psychological, Social Service, and Criminal Justice Concerns) (1989-90) 3 *Canadian Journal of Women and the Law* at 420-431.

In Canada, for the past fifteen years women's groups have sensitized the public and pressed government authorities to criminalize domestic violence. Womens' groups have created shelters and transition houses to protect women and their children and to help them break the cycle of domestic violence. In 1985-86, more than 230 women's shelters served 172,592 women and children.⁸⁰ These shelters offer a free, safe place for women and their children, provide general counselling, and attempt to find alternatives in abusive situations. Their inability to carry out their work is hampered by inadequate and sporadic funding.⁸¹

Some of the solutions offered by feminists are that there should be research on integration of services, the needs of the victims of violence must be met and there should be secure, adequate and permanent funding for facilities such as transition houses for battered women and children and services for sexual assault victims. Related services offered by these and other groups must also receive adequate funding to serve the needs they identify. Some Asian feminists have also asserted that these voluntary organisations must not depend for funding upon government because government or state might take control or manipulate the objectives of the organization for its own gains. Until women in all societies throughout the world are adequately protected against all forms of violence

⁸⁰ "Review of the Situation of Canadian Women" prepared by National Action Committee on the Status of Women (February 1991).

⁸¹ *Ibid.* at 15.

and an atmosphere created wherein all administrative, executive, and judicial systems treat women from all sects of life with equal fairness, the true concept of equality will continue to be absent in the treatment accorded to women.

Indian population statistics reveal one of the world's lowest ratio of women to men: approximately 92.9 women to 100 men.⁸² This ratio, as recorded by successive censuses, is shown to be steadily declining. The main cause of this trend is the abnormally high mortality rate of both female children and women. The female to male life expectancy ratio in India is the fifth lowest in the world.⁸³ The birth of a male child in India calls for celebration, while the birth of female child is perceived by the family as being detrimental to their future economic security. Modern discoveries in reproductive technology has made it possible for these perceptions to have fatal effect even before the female child is born. After the advent of amniocentesis technology in 1985, in India, a survey showed that at one clinic in Bombay out of 8,000 foetuses aborted, 7,999 were female!! For those who cannot afford expensive screening techniques, a multitude of more primitive, but equally effective, methods for female infanticide continue to be utilised. The effects of this ancient practice are exemplified by the family of a prominent politician from the province of Rajasthan (India), in which a single female birth has not been

⁸² Stark Kristof, "Data on Women: A Hundred Million are Missing" *N.Y. Times* (5 November 1991) C1.

⁸³ Other countries with similar lower ratios are Nepal, Bhutan, Bangladesh, and Pakistan. UNICEF "The State of the World's Children", 1990 at 88-89.

recorded for forty years.⁸⁴ In the absence of any official figures one can easily imagine the number of female foetuses which would have been aborted cumulatively in all such clinics. In face of meagre legislative attempts to ban such practices, it has spread its influences through out Northern India.⁸⁵ The reasons attributed to large scale female infanticides are embedded in cultural and social evils, such as dowry, limited job opportunities and consequential low generation of income by women.⁸⁶

Similarly in a report issued by the Ahmedabad Women's Action Group (India), an estimate of 1,000 women are burned alive each year in dowry related incidents in the State of Gujrat.⁸⁷ One can anticipate the horror of the cumulative total of such deaths if statistics are taken for all the twenty five states of India. Even more recently, the Home Minister of India, Mufti Mohammed Sayeed, informed the Parliament that an average of more than ten women *per day* died in India during the year 1990 for failing to bring adequate dowry to their marriages.⁸⁸

⁸⁴ B. Crossette, "India Studying 'Accidental' Deaths of Hindu Wives", *N.Y. Times* (15 January 1989) at 10.

⁸⁵ Y. Matsui, *Women's Asia*, (London: Zed Book Ltd., 1989) ch. 5, at 88.

⁸⁶ In India, women are often considered to be financial strain and burden on the family and structure of the society.

⁸⁷ B. Crossette, "India: Studying "Accidental" Deaths of Hindu Wives" *New York Times* (January 15, 1989) 10. See also: L. Heise, "The Global War Against Women" *Washington Post*, (April 9, 1989) B1.

⁸⁸ "Dowry Deaths" *Wall Street Journal* (August 24, 1990) 8.

In January 1990, "The Economist" reported that over two hundred million people were being held in slavery. They were traded across international borders and the majority of them were women and children heading for the sex industry.⁸⁹ Some of these victims were being traded in developing countries inter se. But, the majority of them were found to be heading to developed countries. The circumstances of poverty in developing countries, often brought about by structural adjustments or other policies imposed on developing countries by international financial institutions, coerce people into situations where they otherwise may not choose. There is a demand for slaves in the international market. There are also people willing to act as procurers for this market, and there are those forced by circumstances beyond their control to choose survival by becoming victims of the traffic. Those responsible for prostitution have enormous resources and traffic brings them billions of dollars.⁹⁰ There have been numerous international conventions concerning the traffic since the late nineteenth century, but they

⁸⁹ Many Bangladeshi women have been and are brought to Pakistan. Similarly, many Nepalese women are illegally smuggled into India. The purpose of such illegal transportation is usually to force these women into the trade of prostitution.

⁹⁰ P. K. S. Madhavan in "Tomorrow Man" (The Meeting of Experts on "The Exploitation of the Child") November 12-13, 1984 at Singapore and The Conference on Child Labour and Prostitution held from Feb. 21-23, 1986, Kuala Lumpur. Three case studies, firstly, where a Nepali girl 8 years of age was kidnapped and sold in Bombay (India) to be used by six to eight customers per day; doctor from the Indian Health Organization reported that she had three kinds of tuberculosis and three kinds of venereal diseases; in other case where two girls aged ten to eleven were reported having sexual intercourse with elderly man for economic consideration had been received by mother. In Statesman (Calcutta, India) dated 1 February 1985, a case was reported in which a fourteen year old girl killed her parents because her father sexually abused her, while her mother watched. She originally wanted to commit suicide, but later shot her parents instead; in another case a girl was brought from the village by a distant relative and was sexually abused by her house master. The girl, refusing to cope up with it, went back. Her relative, fearing loss of personal reputation, and spread the rumour that she was having an illicit relationship with her master. As a result, her parents refused to take her back. This unfortunate girl finally ended up in a brothel pushed into the trade of prostitution. See also, Y. Matsui, *supra*, note 85, ch. 7, at 90.

have been ineffective since they fail to address underlying patriarchal attitudes with regard to women and children.⁹¹

Trafficking fulfils the requirements of the international sex industry, domestic servants, mail-order brides, and international adoptions. The sex industry can also include those enslaved within their country of origin to serve the foreign demand (sex-tourism in Thailand or foreign military in the Philippines, for example) because the effect is that foreign exchange is earned through their services.

In 1983, the Sri Lankan Government appointed an enquiry committee on "social problems connected with tourism". This committee reported that tourist hotels, guest houses, and private homes are being used in organised operations to sell young girls and boys for the purpose of prostitution. The report also noted that Sri Lanka is being projected in Western Europe as a resort for homosexuals. Recently some official concern with regard to these problem of tourism and child prostitution have been felt. The immigration officials have been reported to have deported a number of tourists because of their involvement in homosexual activities with children.⁹² Among others, there is

⁹¹ These attitudes include the notion of ownership of women and children; the idea that the sexuality of women and children may be a commodity exchanged between men; violence against women and children; and the basic superiority of men over women and children.

⁹² *Ceylon Daily News* (16 Oct. '85); The 27 Oct. 1985 edition of the same daily suggested that the proposed legislation is now before a steering committee "set up to combat boy prostitution" which is worried about the enactment of controls.

another form of child prostitution, child-marriage. In Baluchistan and in the North West Frontier Provinces of Pakistan, minor girls are sold to be married. Similarly, some tribes in India also sell their minor daughters for economic consideration.⁹³ Many human rights organisations have also called for an end to trafficking of Bangladesh girls being smuggled into Pakistan and forced into domestic service or prostitution.⁹⁴

Since the 1980s, feminist women have also been emerging in Asian countries.⁹⁵

⁹³ M. A. Mannan, "The Reluctant Bride: Eleven Year-old Ameena's marriage to a Sixty Year Old Arab Hit the Headlines, But Such Unions are Far From Rare in Hyderabad's Old City, *Indian Express* (18 August 1991). See also: Shailaja Neelakantan, "After Ameena, it is Fatima" *Indian Express* (20 June 1992).

⁹⁴ "Blatant Abuse of Women in Pak" *The Sunday Tribune* (28 June 1992).

⁹⁵ In Philippines, the women movement, GABRIELA, was founded in 1984. The objective of this organization is to deal with issues such as prostitution, migration, and promote the interest of workers and rural women. In Pakistan, educated women who felt threatened by the intensifying discrimination against women in the Islamization policy formed the Women's Action Forum (WAF) (Khawar Mumtaz & Farida Shaheed (eds.) "WAF: Its Growth and Impact" in *Women of Pakistan Two Steps Forward, One Step Back?* (United Kingdom: Zed Books Limited, 1987) at 77, 123-137. Appendix 4 of this contains the Charter of Womens' Action Forum (at 183.) whose objects have been to demonstrate and criticize rape and adultery laws under *Hudood* ordinance. [Briefly summarized, the *Hudood* Ordinances penalize theft, drunkenness, fornication, adultery, rape and defamation. They require the testimony of four male Muslim witnesses to impose maximum punishment for rape, adultery and fornication. In adultery, fornication and rape cases for married persons, the maximum punishment is stoning to death; for unmarried persons, it is 100 lashes in a public place. Women's testimony was excluded, which had the effect not only of protecting men accused of rape from maximum punishments (which in any case are considered cruel and inhuman under international law), but also of disfavouing women who were, in the absence of four male Muslim witnesses to the act of penetration, unable to prove rape. This made women victims susceptible to charges that, rather than having been raped, they had committed the crimes of adultery or fornication. The Law of Evidence similarly relegates women to inferior legal status and, in some circumstances, renders the testimony of women equal to only half that of men. In addition, under the *Qisas* and *Diyat* laws proposed at the time, compensation for the death of female victim was half that of man. On the other hand, a woman charged with murder could receive the same punishment as a man. See also: "Pakistan - The Simorgh collective" (Match International)]. WAF is a conscious raising (by conscious raising, WAF means creating awareness; Primarily among women: (a) of their existing rights and rights which are their due: (b) their equal rights in society and contribution to it: (c) of the legal, economic, racial, cultural, and familial discrimination against women) group aimed at enabling women to fight for their rights. It is also a lobby cum pressure group committed to protecting and promoting the rights of women by countering all forms of oppression. It is non-hierarchical, non governmental and nonpolitical and it seeks to bring together individuals and organisations on a common platform for women's rights. In South Korea, the major feminist group since the 1980s is Women for Equality and Peace, challenging the patriarchy that victimizes women, as well as the government's economic growth policy (in the 1970s, the rapid economic growth as the "Miracle of the Han River"

They all have mainly two objects: liberation from political and economic oppression and at the same time liberation from sexual discrimination based on "patriarchy". In other words, national liberation movements and social structure changes are combined with women's liberation. Numerous women's liberation groups are being organised throughout India dealing with a variety of issues such as rape, dowry, child-marriage, prostitution, slum-women, landless peasant women, minority women and so on.

Militarisation has disastrous social, economic and ecological consequences, and the majority of the victims of "militarism" are women and children all over the world. It is a well known fact that during war 80% of victims are civilians. As women constitute the majority of the civilian population, the number of dead, maimed, poisoned, permanently handicapped, burned, displaced, homeless, jobless women in these wars is very high and when mothers are killed they leave countless orphans. Preparing for war has many disastrous consequences for women and children in third world countries. In Africa, arms build up imposed on the population under the pretext of national security and defence is undertaken at the expense of a much needed infra-structure for civilian development, security and survival of the population and especially for women whose urgent needs are

was promoted by exploited women as a cheap labour, based on their sex role as determined by Confucian patriarchy). Similar movements have taken place in Taiwan and Hongkong where in 1982, women in Taipei formed a group and began to publish a newsletter, "Awakenings", for the purpose of consciousness raising. In Malaysia, the Women's Aid Organization (WAO) was formed in 1982, and a shelter was opened in a private house in Kuala Lumpur, the capital city; women who suffer violence at the hands of their husband can take refuge there. Voice of women, a group formed in Sri Lanka in 1978, in Asia's first feminist women's group and its strategies were based on the principals advancing causes and seeking equal and respectable status of women in society.

food, water, and health care to prevent hunger, disease and premature death. The Iran-Iraq war and the Lebanese conflict are striking examples of the nasty effects of war on women.⁹⁶ There is a very close link between military bases and the degradation and destruction of woman.⁹⁷

Woman are transformed into instruments of pleasure and sadism at the disposition of the warriors. Forced prostitution and rape are practices that are tolerated and often officially sanctioned. During the military occupation of Iceland by the French army, women were driven out of their homes by the military operations and forced into prostitution to survive. A local newspaper, "N'Dyanena" described the situation from a male and militarist point of view as follows: "The capital of Iceland has become a vast pleasure house where 3,000 soldiers of the operation "mamta" take their turn to enjoy the well deserved."⁹⁸ Further, it has been reported that hundreds of women during the Vietnam war were kept underground in day time, and at night, they were brought out by helicopter to the theatre of war for the soldiers' use. However, in the countryside prostitution was not the order of the day. Collective rape and public rape before

⁹⁶ According to the World Health Organization, in the region of the third world where the mortality of women in child birth is highest, 500,000 women die each year leaving 100,000 orphans because they lack pre-natal and post-natal care.

⁹⁷ Sister Mary Solidad Prepinan of the "Third World Movement Against the Exploitation of Women" has denounced the geopolitics of prostitution around military bases. In Philippines the sub-naval base and the Clark air base are responsible for the outrageous degradation of women, the spread of venereal diseases and the highest level of GI babies in the world. These children are abandoned by their fathers. Many of them are consequences of rape.

⁹⁸ S. Vincent, (November 1988) 68 *Put Journal* at 10-11.

assassination were. In Vietnam, by the end of the American occupation, 100,000 strong at one point, there remained 400,000 prostitutes in Saigon and thousands of GI children.⁹⁹

In Honduras, children 12-15 years old are sold to bordellos for the local and American soldiers. Anyone who dare denounce this slave market would be eliminated by the police, the military in the para-military forces. Similarly, in Goose Bay Labrador, the Innu people do not like the military from the United States of America, Germany, and England taking advantage of their daughters. In addition, low level flying at very high speeds is dangerous and causes health problems such as increased miscarriages, chromosome breaks resulting in birth defects, increased heart diseases, leukaemia, cataracts, migraines, headaches, depression chronic insomnia, loss of memory etc.¹⁰⁰ Similar kinds of damage is being done by U.S. and French military while doing nuclear testing in the pacific islands in complete disregard for the lives of the native populations. Among others in the tragedies of war is that it uproots the population, creating some million refugees, the majority of them women and children.

⁹⁹ K. Gough, "The War Against Women: Prostitution in Vietnam"; See also: Matsui, *supra*, note 85, ch. 5, at 72-74.

¹⁰⁰ "Innu Women look for support: NATO base threatens lifestyle" *Pandora* March 1987.

The destruction of generations of women by wars, famines, diseases, and sexual enslavement is not due to acts of God or nature. They are the very deliberate choice of people in power who refuse to share resources but who want to maintain the very unequal distribution of resources through the armies and police at their service.

Thus, the different forms of violence are used to meet different ends in a patriarchal society linked in one way or the other to secure control over women. Violence is not only about securing control but also about the abuse of existing power. The existence of such violence has grave impact upon women. It also poses serious threats to the population ratio in the world. To control and ultimately eliminate violence against women it is first necessary that the law does not merely exist on books but is implemented effectively. Second, the implementing agencies must be made accountable for their acts. There must be a basic realization that women's rights must not be compromised by violence. The State must not support the very social attitudes of patriarchy that violence against women is accepted and understated for various reasons. By no means violence against women should be resumed. States must make it expressly clear that violence against women will not be tolerated. The only way this can be done, in my view, is that firstly States must account for their own acts and that of their agents. The judiciary must act independently to make this happen and, most of all, women must be a part of that process. A state and its agencies are designed to protect its subjects. When a state starts inflicting violence what justice a victim can expect? Does the judiciary comes into play to deal with the

situation? and if it does, then is it really free of the existing patriarchal attitudes? The chapter following indicates how states inflict violence on women globally, specifically in India. I will also examine the issues of state violence on women, the role of the judiciary, and the attitude of the courts and the police.

4. Violence Against Women in Detention

Violence against women, in any way, should not be exonerable. To make things worse, if states start ignoring, abetting, or inflicting such violence, directly or indirectly, through the institution of police and other similar forces, the situation becomes more aggravated and intensified because these are the institutions which are designed to protect and safeguard the well being of its subjects. In many countries, specifically in the Indian sub-continent, government, police and the military use rape and sexual abuse to coerce, humiliate, punish, and intimidate women.¹⁰¹ Reports from Amnesty International on human rights violations against women such as those on sexual abuses are proof of the fact that such violence not only takes place in India but also in many other countries.¹⁰² Amnesty also contends that sexual abuse of women, which includes sexual contact falling short of rape, including verbal humiliation, threats of violent attacks, or forced acts intended to degrade women, is carried out by governments to suppress political dissent among the entire populace. A recent European Community report concluded that rape is an organised and deliberate campaign. For example, some Serbs captured by muslim

¹⁰¹ Agra Jan Sangarsh Sahyog Samiti, "Sangarsh Vahini's Struggle in Agra", (November-December 1982) Manushi 189.

¹⁰² A recent letter addressed to the President of Uganda informed that "since the insurgency began in northern Uganda in 1986, troops have committed serious human rights violation as the search for rebels in the villages. In April 1991, eleven women were reported to have been raped by soldiers while they were held for three days for identity checks at Bwobo in Gulu district of the country. The high incidents of "Acquired Immune Deficiency Syndrome" (AIDS) in Uganda compounds the severity of rape", and it was further addressed that women should be protected and those responsible for the crime must be brought to justice.

forces in Bosnia say that they were ordered to rape and murder.¹⁰³ Bennett comments that:

rape is an effective instrument of war - an act that demoralizes and humiliates the enemy, defiles his property, and deters him from propagating his own people through the bodies of the violated female, and hence asset in crushing people. Rape and its concomitant, forced prostitution, also offer sexual bonuses for victorious troops.¹⁰⁴

Other examples of this kind of violence include Somalia's Hargesia Central Prison where soldiers were permitted to enter the women's prison to fondle women or make other sexual advances,¹⁰⁵ while Palestinian women in Israeli occupied territories have reported being threatened with physical violence and rape during interrogation.¹⁰⁶ Another illustration is found in Myanmar, formerly Burma, where government authorities have used rape as a punitive measure during the government's efforts to suppress the local population. When government soldiers saw an eleven year old girl and her twenty-two year old aunt attempting to return home after an officially declared curfew, both were

¹⁰³ Catherine Bennett, "Is There a Potential Rapist Hiding in Every Man" *The Ottawa Citizen* (January 31, 1991) at B5.

¹⁰⁴ *Ibid.*

¹⁰⁵ *Women in the Front Lines, Human Rights Violations Against Women*, Amnesty International Report at 22 (March 1991) AI INDEX: ACT 77/01/91.

¹⁰⁶ *Ibid.* at 23. Countries such as Peru, Israel and Somalia are not singled out as lone entities committing human rights violations against women. They are but a few among a list of many. Amnesty reports that in the United States of America, the conditions which existed at the Lexington Federal Prison High Security Unit included prolonged isolation, humiliating strip searches and restrictions were detrimental to the prisoners' physical and mental health and were oppressive conditions deliberately imposed by the authorities. *Ibid.* at 29. Amnesty also reports that the strip searches of women held in Armagh Prison in Northern Ireland were carried out with the deliberate intention of degrading or humiliating the women prisoners, rather than solely for security purposes. *Ibid.* at 24.

repeatedly raped. The eleven year old was reportedly raped twice by the unit commander and then by seven soldiers taking turns.¹⁰⁷

Amnesty International has received numerous reports of woman being tortured while in police custody in Turkey,¹⁰⁸ including a pregnant woman detainee¹⁰⁹ punched in the stomach by police officers, an elderly woman raped in front of her family by armed soldiers and a young girl detained and sexually humiliated by government officials.¹¹⁰ International law obliges governments to protect all men, women and children from torture and ill treatment,¹¹¹ and requires that allegations of torture be promptly and impartially investigated; but proves to be ineffective in the absence of sanctions to eliminate violence against women. Not only international law but also the national laws of most of the countries do prescribe and offer some kind of protection. But the question is that are the

¹⁰⁷ *Ibid.* at 20.

¹⁰⁸ "Focus: Amnesty International" (February 1991) at 3.

¹⁰⁹ Nevruz Turkdogan was treasurer of the Womens' Association for Democracy in Turkey. While distributing a journal in Ankara on 15 September 1990, she and her husband were detained by police, in spite of the knowledge that she was two and a half month pregnant. she was beaten severely and consequently miscarried on 19 September when she was taken to the hospital. On 20 September, she was unconditionally released by Ankara State security court. In another case, Embarcament Talebould Husein, a radio announcer in Lauyoune in the western Sahara, was taken from her home by plain clothes police officers in September 1979 and has not been seen since. She left behind a thirteen year old daughter. *See also:* J. Hay, "Rape and Torture by the State: Amnesty Report Details Routine Outrages Against Women", *The Ottawa Citizen* (6 February 1992) A1.

¹¹⁰ *The Globe and Mail*, Monday, March 18, 1991.

¹¹¹ Some examples of specific conventions intended to prevent torture and other cruel or inhuman treatment or punishment are Declaration Regarding article 21 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Declaration Against Article 22 of the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment; European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment; Inter-American Convention to Prevent and Punish Torture.

laws are followed and interpreted for the relief and benefit of the victim or whether they are laws made by powerful persons to cover and justify their own inhumanities in the name of the state or otherwise. In fact, I argue that women who are political activists, community organisers, or human rights workers and who have been working to get some justice and power for those powerless victims are the immediate target of violence by police and security forces because the women are strong.¹¹² These (State) powerful people cannot bear to let go or even share some of the power with those who are powerless. As a result these courageous women activists who try to put an end to violence are themselves faced with verbal and physical humiliation at the hands of soldiers and policemen as a punishment for their political and social convictions.¹¹³

Women may be the direct target of political oppression for their own actions,¹¹⁴ but often they and their children are in the front-line simply because they are related to

¹¹² In a recent case reported by Punjab Human Rights Organization (Chandigarh, India), a woman whose husband "disappeared" from police custody, took upon herself the political cause which her husband was promoting. She gained popularity among the local masses. Realizing the growing importance of the women in the locality, the local police abducted her teenaged daughters and raped them in police custody. She was able to get them out of custody only at the cost of her own submission to the police authorities and an unwritten agreement that she, in future, would not indulge in any political activities. In spite of the wide propaganda which this incident received, no action has been taken against any of the police officials involved.

¹¹³ *Ibid.* Angela Catellanos, "Rights and Wrongs in Columbia" *Indian Express* (21 September 1992).

¹¹⁴ Moma India Mfeketo attended the 1985 International Women's Congress and the Federation of South African Women. Her international prominence, however, did not protect her when she returned home: she spent nine months in detention without charge or trial in 1987 and was again detained for several months in 1988 and 1989. "Focus" Amnesty International, February 1991 at 6.

people considered enemies of the state.¹¹⁵ A wife is tortured by interrogators to force her husband to confess. A mother is shot dead by soldiers simply because her son was suspected of political activities. A daughter is threatened with death by government agents because she asks about her "disappeared" father. In Sri Lanka, a sixteen year old girl was taken into police custody and interrogated about the political activities of her brother. She was assaulted by the police and forced to watch while the police tortured one of her brothers.¹¹⁶ These are some of the examples where women were the target of violence simply because they were related to people wanted by the state. Perhaps also there is a thin line between enforcing, asserting or performing certain acts on behalf of the state, or for the individuals own indulgence.

Under the existing Penal Code in India, the police are given ample powers to deal with offenses against the State. These include every description of war waged against the State, whether by insurrection or invasion. Yet, despite these existing powers and safeguards conceived to protect the State and the well being of its citizens, in situations where the State has lost legitimacy under the existing provisions of law, it will inevitably have greater recourse to more tyrannical laws. That means enhanced police powers or,

¹¹⁵ In Central America, Guatemalan women, whose husbands have disappeared - the Euphemism for Imprisonment or murdered by agents of the State have repeatedly alleged that government compensation is granted only if widow attributes her husbands death to opposition guerilla forces or agrees to stop pursue investigation into her husband's death or disappearance. *The Globe and Mail*, November 18, 1991.

¹¹⁶ *Ibid.* at 14.

worse still, the armed forces. The army has over time been given greater power to intervene in civil affairs under special enactments. The most notorious example of this is the *Terrorist and Disruptive Activities (Prevention) Act, 1985* (TADA). TADA's worst victims have been women.¹¹⁷ In India, in the last few years, the Government has been resorting to the army more frequently to deal with civilian insurgency. By definition, the army exists to defend the nation's borders and is not trained to restrain itself to the use of minimum force. It is trained to brutalize at large, i.e. to shoot, arrest, interrogate, abuse. *The Armed Forces (Special Powers) Act, 1958* gives the armed forces vast, unfettered powers and has virtually enabled the armed forces to impose military rule in many parts of the North-East. The Act contains sweeping powers that allow the most junior officer of the armed forces to arrest without warrant, detain, seize, raid or even shoot a person on mere suspicion.¹¹⁸ The Government has justified the Act as a counter-insurgency measure. The Act also grants the security forces immunity from prosecution. Just as in times of war, when the army is brought in with impunity to deal with civil insurgency, sexual abuse of women is taken as an inevitable consequence of

¹¹⁷ In 1985, a series of bomb explosions took place in New Delhi, India killing a number of innocent people. Ostensibly, it was this incident which led the government to introduce TADA (*The Terrorist and Disruptive Activities (Prevention) Act, 1985*). According to PUDR (People's Union for Democratic Rights) had given the vast record of violations and abuses. It has been asserted that the TADA's worst victims are women. In practice under the Act persons are detained for long period of time without any specific charge. Male members of many families are thus quietly whisked off by the police: who are not bound to reveal the whereabouts of the arrested person. Since TADA trials are not time bound, the family has no way of knowing when the arrested person will return. The psychological and economic trauma suffered by women in the family adds greater burden to their lives. (There is no economic or any kind of help or compensation is provided to women by government.) Not only this, but also investigating police often molest and rape the woman as a terror tactic. And the sheer existence of TADA has given police an absolute sense of power and non-accountability.

¹¹⁸ *Indian Armed Forces (Special Power), 1958* para 3.

army rule. The experience of women in the North-East confirms this. In several northeastern states, and Jammu and Kashmir there is a pattern of rape of women by the army and paramilitary forces for perceived support for armed insurgents. In such cases, rape often occurs during counter-insurgency operations and gang-rape is frequently reported. In August 1990, a report compiled by the Government of India found that

Rape by the security forces is repeatedly reported in Tripura state and they usually occur during counter insurgency operations and gang rapes of tribal women by members of the police forces and soldiers are frequently reported.¹¹⁹

¹¹⁹ 1992, Amnesty International - India Campaign, "Appeal - Custodial Rape in Tripura and the North East." In July 1987, during a combing operation termed "operation Bluestar", an effort to recover arms from local insurgents, wide-scale human rights abuses were reported. Among these were repeated sexual abuses of the local women by the "Assam Rifles" officers. Those women particularly vulnerable were those whom the security forces described as having relatives in the National Socialist Council of Nagaland (NSCN). One victim of rape was a seventeen year old woman. Her evidence was placed on affidavit before the court of the Chief Judicial Magistrate. The woman's husband was suspected by the "Assam Rifles" to be an NSCN member. In her statement, she recollects how the Captain of the "Assam Rifles" at Lakhmai, where she was attending school, had summoned her. She was questioned as to the whereabouts of her brother and as to whether or not he had visited her. When she denied knowing anything, she was accused of lying and the Captain threatened that she would be "tied up and tortured". She was ordered to report daily to the Captain, which she did, from the 13 to 27 of July. Then on August 15, 1987 she was again interrogated by the Commanding Officer stationed there. He repeated questions as to the whereabouts of her brother, which she replied she did not know. In her statement she describes how she was not allowed to leave the room this time:

"He told the jawan (soldier) to leave the room and I followed the jawan to the door. Just after the jawan crossed the door the Commanding Officer closed the door and would not let me leave the room, and got hold of me very rudely. I shivered at the sight of his cold-blooded anger. I struggled to free myself from his hand. He pulled off the shawl I was wearing and continued pulling at my clothes while keeping me under suffocating grip. I screamed and shouted for help but no one came to my rescue. The Commanding Officer in full military dress pulled out pistol and threatened to shoot me if I screamed. He then pulled my hair and pinched my cheeks so hard and finally I was overpowered and the commanding Officer raped me. I was most horrifying moment of my life and very painful."

Naina Kapur & Jasjit Purewal, "State Violence, Law and Gender Justice" (1990) *Third World Legal Studies* 133 at 146.

The list of these gross violence against women is endless. Analysis of the above mentioned cases reveals the hopelessness and vulnerability of women when they are in state detention. Non-accountability for acts of security forces and the police is absolute under the special powers provision and subjecting them to justice is a task next to impossible.

A society must always facilitate a sound understanding of the relationship between the state and the individual including police, state security forces, and the political and dominant classes themselves. As individuals, they have no better rights than other individuals in the state. It is the strong belief here that law enforcement agents must function humanely first before they function as instruments of power in the state. This can only be done when the State gives more priority to individual rights (in particular, under these circumstances, to those of women) *vis-a-vis* their own interests and ambition to conquer over those who do not agree with the State. Certainly there are more civilized ways to deal with disagreements than sacrificing women all around the world. It is not enough to promise implementation unless law recognizes the onus of making the guardians of the law such as the police, armed forces and security forces accountable. Even the most liberal criminal law ends up working against women. When it comes to interpreting laws, even progressive ones, the result is the same because the entire ethos is male: created, enforced, and implemented by men. Short of strict punitive action by government against

police and other custodians of law guilty of violations and atrocities against the people, access to justice, especially for women, continues to be an illusion.

a. Police Violence Against Women in India

Police violence is not unique to India or any one country in particular. However, police violence against women is more prevalent in the Indian sub-continent than elsewhere. How openly and to what extent such violence against women permeates the society in these countries is remarkable. It is amazing how violence against women in general is committed in the name of culture and religion; how men justify it; how police justify it *for men*; how the state provides opportunities and justifications for police violence; and how the judiciary further reasons and condones it.

In this chapter I will argue that in India and other countries of the Indian sub-continent rape or sexual assault do not even fall within a category of crime. In these countries, despite the fact that rape has been criminalized in the substantive law¹²⁰, I

¹²⁰ Section 375 of the Indian Penal Code defines "Rape" and section 376 prescribes the punishment for this. The sections state:

375. **Rape** 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 of 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 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.

376. **Punishment of Rape** (1) Whoever, except in the cases provided for by sub-section (2), commits rape shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine unless the woman raped is his own wife and is not under twelve years of age, in which case, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both:

Provided that the court may, for adequate and special reasons to be mentioned in the judgement, impose a sentence of imprisonment for a term of less than seven years.

(2) Whoever,

- (a) Being a police officer commits rape
 - (i) within the limits of the police station to which he is appointed; or
 - (ii) in the premises of any station house whether or not situated in the police station to which he is appointed; or
 - (iii) on a woman in his custody or in the custody of a police officer subordinate to him; or
- (b) being a public servant, takes advantage of his official position and commits rape on a woman in his custody as such public servant or in the custody of public servant subordinate to him; or
- (c) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women's or children's institution takes advantage of his official position and commits rape on any inmate of such jail, remand home, place or institution; or
- (d) being on the management or on the staff of a hospital, takes advantage of his official position and commits rape on a woman in that hospital; or
- (e) commits rape on a woman knowing her to be pregnant; or
- (f) commits rape on a woman when she is under twelve years of age; or
- (g) commits gang rape,

shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable to fine:

Provided that the court may, for adequate and special reasons to be mentioned in the judgement, impose a sentence of imprisonment of either description for a term of less than ten years.

Explanation 1. Where a woman is raped by one or more in a group of persons acting in furtherance of their common intention, each of the persons shall be deemed to have committed gang rape within the meaning of this sub-

argue that the custodians of law generally do not categorize it as crime and resist applying the substantive law. Even when they do enforce the criminal code provisions they often apply an interpretation which is acceptable to them and in conformity with *their* views about women and their role in society. Experience has shown that the use of police discretion has frequently violated and infringes the rights of individual and especially the people who are powerless. D.J. Bell, commenting on the parameters of police discretion, claims that "society should maintain a constant vigil on any government agency that decrees the necessity and claims the experts to utilize deadly force, but abandon women and children to abuse, mutilation, rape, torture, and death under the facade of police discretion".¹²¹ This contradiction lies at the heart of the policing of public and private order and further discriminates on the basis of gender. Their insensitivity towards this issue is obvious by the examples stated in this chapter.

In 1980 the Inspector-General of Police of the State of Rajasthan advised his officers always to keep in mind the dictum: "Policemen must refrain from committing

section.

Explanation 2. "Women's or children's institution" means an institution, whether called an orphanage or a home for neglected women or children or a widow's home or by any other name, which is established and maintained for the reception and care of women or children.

Explanation 3. "Hospital" means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of person during convalescence or of person requiring medical attention or rehabilitation.

¹²¹ Bell, D.J., (1985) "The Police Response to Domestic Violence: A Multiyear Study" *Police Studies* at 309.

rapes while the State Assembly is in session."¹²² Such a statement clearly indicates that the State or the senior police officials have full knowledge that policemen do commit crimes against women. Their decision to control crimes by policemen is not backed by their genuine concern to protect women. It is more dependant on how such commission or omission would affect their political standing or status. In an interview with Prafulla Chandra Rathod, (1988), the then Director General of Police of the State of Orissa (India), relating to an incident of abduction and rape of a schoolgirl in broad daylight in full view of hundreds of passive onlookers, the following exchange took place:

Interviewer (I): In any case, the rape of ...is a severe indictment of the law and order situation in Orissa. No crime could be more dastardly.

D.G.: Rape is not a manifestation of crime. It does not reflect the crime position. Neither do rapes reflect the law and order position.

I: What you are saying is that the number of rapes in any given area is no index of the crime position or the law and order situation of that area.

D.G.: Yes. Rape is not an indicator of either the crime position or the law and order situation. There is no nexus between rape and law and order. The number of rapes is not inter-linked with the crime position of the area. By crime, we mean professional crime. Like theft, murder, dacoities, communal riots. If we use this yardstick, rape is not a crime. The motive of gain is not present in rape. I am giving you a professional's view.

I: Let me project a hypothetical scenario. a given area has a very high incidence of rape but there are no thefts, murders for gain and dacoities. Would you describe the area as crime-free?

¹²² Government of India, Ministry of Welfare, National Commission for Schedule Castes and Schedules Tribes, *A Study on Cases of Custodial Rape Committed on Scheduled Caste and Scheduled Tribe Women by Police Personnel* (1988). [hereinafter Govt. of India Report].

D.G.: Yes. There may be a high incidence of rape but the area is certainly not crime-prone. I would definitely describe it as free from crime.¹²³

The comments of the Director General are particularly disturbing since they clearly exhibit his view that any violence against women is excluded from the definition of "crime". The interview clearly depicts how insensitive is the police force towards violence against women. The definition of crime and crimes like rape does not come under the concept of crime according to policemen - especially when they are policing themselves. If rape is no crime then perhaps wife killing, battering and violence like sexual harassment can never come any closer to definition of crime. There are many reasons for such insensitivity and indifference towards violence against women. In this thesis I relate this indifference and attitudes to the orientation and hierarchical structuring of patriarchal culture which places men above women, and policemen above men in general. This unchallenged power leads to unchallengeable atrocities.¹²⁴

In July 1988 one incident involved a twenty six year old school teacher named Kalpana Sumathi. She was found half naked, unconscious and bleeding near the police station in Thally, a small town in the province of Tamil Nadu. When her husband found her missing for sixteen hours, he went to the police station and expressed his inability to

¹²³ A.N.M. Abdi, "Crime Most Foul", *Illustrated Weekly of India*, (26 July 1987) at 26-29.

¹²⁴ Practical applicability of such an attitude of the police force in India can be seen from the cases discussed subsequently. See notes 147 to 179 and accompanying text.

trace her. Upon regaining consciousness the victim alleged that she had been abducted by a police employee and then gang-raped by four other police officers. She sustained serious injuries during the rape and stated that most of her injuries were sustained while trying to resist the rape. Many of her injuries were caused by a sharp instrument -- she had several deep cuts on the head, one of her ear lobes was partially severed and her hands were very seriously injured; they appeared to have been slashed repeatedly and she now has very limited use of her hands.¹²⁵

On 21 June 1990, a group of drunken policemen from Tuljapur police station tried to rape Parvati Rusankote who was five months pregnant and on the intervention by her brother they both were taken to the police station where she was molested and her brother was beaten to death. She later described her experience in the following words:

Some of the seven policemen tied Namdeo (her brother) to a table and began whipping him with their belts and hurting with their lathis (wooden truncheons). Meanwhile, the rest caught hold of me. One of them gripped my hair and ripped apart my blouse, while another disrobed me and stood on my thighs. Kakde (the sub-inspector) tried to push me into an inner room, but I held on with my strength. They kept abusing me and also kicked me in stomach.¹²⁶

¹²⁵ 1992, "India Campaign Appeal" Amnesty International at 9.

¹²⁶ *Ibid.* at 40.

The situation is not any different in Pakistan. The United States Department of State reports with regard to violence against women in police custody in Pakistan that:

women in police custody or who go to police station to file a report or inquire after a detainee are reportedly coerced by police to offer sexual favours in exchange for release; other women are simply raped. Police accused of abuse are seldom punished; they are generally released on bail or quietly transferred to another district.¹²⁷

Despite these alarming reports police officials have done little to address the problem of custodial violence against women, as Deputy General of Police in Punjab (Pakistan) has acknowledged by stating that "there *could* be the odd case of woman illegally confined in police station" and dismissed the rest of the report as "over blown" and "exaggeration".¹²⁸

Rape and ill-treatment of women by the police, however, is widespread throughout the country. The frequency with which such violence is reported in the media and the desensitization of the media can be felt in this 1988 newspaper headline, which reads: "Another Mass Rape by Bihar Cops". In September 1989 the Rajasthan state government admitted that the police had been involved in over 50 rape cases in the past few years.

¹²⁷ US Department of State, *Country Reports on Human Rights Practices for 1991* (1992) at 1550-1551.

¹²⁸ Asia Watch, *Double Jeopardy & Police Abuse of Women in Pakistan* [hereinafter "Double Jeopardy"] (United States: A Publication of Women Rights Project & Asia Watch, 1992) at 70.

According to the Delhi police, 14 cases of rape were reported involving 20 police officers at 12 police stations in the six-week period 1 January to 11 February 1990.

Between 1979 and 1981 the National Police Commission published a study of the mechanisms available to bring complaints of misconduct against the police.¹²⁹ One of its recommendations was that prompt judicial enquires should be mandatory into all cases of alleged rape of woman in police custody and "death or grievous hurt caused while in police custody". Such inquiries, however, even when instituted, do not necessarily lead to the prosecution of the police officers responsible. This form of violence has grave traumatic mental, physical, and emotional consequences on the victim, including social repercussions, problems of obtaining compensation and rehabilitation. Amnesty International reports that many women in India have died in police custody. Moti Birua, a 25 year old tribal women, died in police custody when on 10 December 1988 police took her for questioning about the murder of her boy-friend. According to villagers present at that time when police brought her along to search her house, they abused her physically and verbally threatened her with sexual violence. The same night she died. When the village headman went to file the "First Information Report", a requirement

¹²⁹ Amnesty International (United Kingdom), AI Index: ASA 20/16/92, "India: Torture, Rape and Deaths in Custody - Responsibility of the Medical Profession", pp. 4-5.

under the *Indian Criminal Procedure Code, 1973*,¹³⁰ he was threatened and forced by the police to leave the police station.¹³¹

The epidemic of unpunished police violence against women in custody reflects the discriminatory behaviour towards women by the police and demonstrates their ability to police themselves and resultantly women's inability to access the justice system.

Arbitrary arrest of a women by police is quite common in India and Pakistan. The arbitrariness and high handedness of the police starts from day one - in fact, from the moment a woman is arrested.¹³² The substantive law in India requires that when a

¹³⁰ Section 154 of the *Indian Criminal Procedure Code, 1973* deals with information in cognizable cases and provides:

- (1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.
- (2) A copy of the information as recorded under sub-section (1) shall be given forthwith, free of cost, to the informant.
- (3) Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in subsection (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such police officer shall have all the powers of an officer in charge of the police station in relation to that offence.

¹³¹ 1992, Amnesty International, "India Campaign - The Rape and Death in Custody of Moti Birua - Adivasi" at p. 36.

¹³² See: Susan Abraham, "Twelve Days in a Lockup and Forty Three Days in Chandrapur Jail" (1986) 36 *Manushi* pp. 9-12. The article presents the experiences of the author who was falsely and arbitrarily arrested by the police in India.

woman is "searched" or arrested she *must* be escorted by a policewoman.¹³³ However, the police more often than not fail to act in accordance with these provisions and act arbitrarily according to their mood, choice and will. In India, women are also recruited in the police force and one might think that these women would be able to show their empathy more towards woman detainees and their needs. However, research shows that such police-woman are themselves in such small numbers that they themselves have to deal with harassment by their male counterparts.¹³⁴ Another factor which renders policewomen in India helpless to ameliorate the condition of women detainees is the policy adopted by the police force. These policewomen are often left to petty powerless positions. This reinforces the necessity of having an equal ratio of men and women in the police forces. Also noticeable is the fact that most of the women detainees are put in a lock-up for petty charges or on framed allegations and are unable to get released because

¹³³ Section 51(2) of the Indian *Criminal Procedure Code* provides:

Whenever it is necessary to cause a female to be searched, the search shall be made by another female with strict regard to decency.

Proviso to Section 47(2) provides:

Provided that, if any such place is an apartment in the actual occupancy of a female (not being the person to be arrested) who, according to custom, does not appear in public, such person or police officer shall, before entering such apartment, give notice to such female that she is at liberty to withdraw, and shall afford her every reasonable facility for withdrawing and may then break open the apartment and enter it.

Section 53(2) provides:

Whenever the person of a female is to be examined under this section, the examination shall be made only by, or under the supervision of, a female registered medical practitioner.

¹³⁴ S.K. Ghosh, *Women in Policing*, (New Delhi: Light & Life Publishers, 1981), ch. 5, pp. 91-111.

of their inability to pay the statutory amount of bail.¹³⁵ Some of these are arrested on hearsay charges - never investigated by the police and continually detained without being produced in a court of law.¹³⁶ Illiterate women in police custody are victims of exploitation by police due to their ignorance of their rights.¹³⁷ Literate women in police custody are harassed for her arguments arising from the awareness of her rights.¹³⁸

All these examples also indicate that it is the poorer section of the society who attract more police attention than the rich. They are the section who are more vulnerable and become readily exposed to police abuse because of lack of economic power to resist police power. It has also been suggested by various women's groups and complainants that in the majority of these cases the outcome of the complaint remains unknown. This is due to a lack of willingness on the part of those who hold state power to and also to provide veil to the acts of those accused, since they form part of the infrastructure

¹³⁵ *Ibid.*

¹³⁶ *Ibid.*

¹³⁷ Even in Pakistan, the vast majority of female prisoners are poor and illiterate. Because of lack of awareness of their basic rights to due process and equal justice they become victims of police abuse. They are not even in a situation to secure services or advise of a counsel. Most of them do not even know what are the charges against them. For some a counsel is arranged but they never get to meet them; *See also*: "Double Jeopardy", *supra*, note 128, p. 43-44.

¹³⁸ Susan Abraham, *supra*, note 132. According to the law of the land, no undertrial can be assigned manual work. But, the police seldom observe this and are routinely assigned jobs like cleaning rice to be served to the prisoners, cleaning of barracks, filling water tanks etc. which are supposed to be done by other policemen specifically employed and paid for these very purposes.

complained off. Women are also accused of being accomplices in their own abduction, despite the illogic of the claim.¹³⁹

b. Custodial Rape

Custodial rape is the offence which may be unique to Indian sub-continent. I do not suggest that this kind of crime does not occur in other countries. But its frequency in the Indian sub-continent has been alarming. Due to the regularity of the commission of such an offence it had to be specifically dealt with in the Indian Penal Code.¹⁴⁰ Custodial rape differs in many respects from rape in general. The social power that men have over women is intensified with the legally sanctioned authority and power of policemen. Rape is also an instrument of political repression in some situations. Even the limited support mechanism¹⁴¹ that usually exists for women becomes less effective when the rapist is a policeman. The intimidative power of the police, especially over poor

¹³⁹ In one reported case, a 18-year-old girl was allegedly abducted by a bus driver who was picked up by police after a complaint was filed by her father. The girl was recovered at the time of arrest, but rather than returning her to her family the police arrested her as an accomplice to her own abduction. The Karachi based Lawyer's for Human Rights and Legal Aid, reported that subsequently the police requested 10,000 rupees from a victim's parents in exchange for their daughter's release. "Response of the Judiciary", *Double Jeopardy, supra*, note 128, at 64.

¹⁴⁰ *supra*, note 120. "Some members of the judiciary, particularly at its higher levels, have recognized the epidemic of police violence against women and tried to curb it." *Double Jeopardy, Ibid.*

¹⁴¹ The supportive mechanisms normally available to a victim of rape or sexual assault are: filing of a First Information Report (FIR); undergo medical examination to corroborate her account of the incident; and give her own testimony in the court. However, each of these has to be availed through the police. An FIR has to be filed with the police; medical examination has to be done by a doctor recommended by the police. There also exists the possibility of threatening the girl victim that if she does give testimony against the suggestions of the police she will suffer worse consequences in addition to social repercussions.

people, enables them to isolate the woman. The greater the isolation, the lesser are the chances of resistance - a fact used as evidence of "consent" later in court.¹⁴² Rape is the only offence where the complicity of the victim becomes a relevant consideration in trial and punishment.¹⁴³ The evidence in custodial rape cases is more prone to

¹⁴² In a 1983 case, the Federal *Shariat* Court reduced a rape conviction to one of fornication on the grounds that "since no violence was found on her body, it could be reasonable to infer that she was a willing party to sexual intercourse (142 PLD 1983 FSC 117 Ubaidullah). In 1987, the Federal *Shariat* Court overturned a lower court's conviction of rape on the grounds that medical examiners "did not observe any injury on the thighs, legs, elbows, arms, knees, face, back and buttocks of the victim," and held that "she was bound to sustain injuries...as she was supposed to put up resistance (PLD 1987 FSC 11). Although victims such as the 94 pound girl raped by Iqbal may have no chance of fending off an attacker, Pakistani judges seem to require that they resist and also suffer visible physical injury if they wish to defend themselves against charge of consensual sex.

¹⁴³ Rape is both socially and legally deemed a crime. At the same time, socially and judicially the victim is deemed an accomplice to the crime. The contradiction between formal condemnation of rape and simultaneous belief in the complicity of the victim arises from social attitudes towards female sexuality and chastity. Female chastity is valued and is to be protected. Hence the condemnation of assault on a woman's chastity. But rape means that chastity is "lost irrevocably". This loss, no matter how involuntary, is nevertheless viewed as a moral and social transgression of desired ideals of inviolate female chastity. The raped woman thus becomes simultaneously victim and transgressor. The sense of moral outrage against rape, seemingly centred around the offence and the offender, becomes inexorably and inherently a judgement on the woman. Rape becomes a social stigma, a sign of her fallen status, her shame. Formally the injured party, the woman becomes in essence, the principal offender.

The presumption of consent is of course the basis of all defence arguments. Unless the victim exhibits a mauled body, her own, as evidence of physical coercion, or of the offender, as evidence of resistance, preferably both, she is *deemed* to be complicit. Evidence of her complicity may range from trivial circumstantial evidence to medical reports. Whatever the variations on the theme, the basic premise is that by being "in the company of" the offender she invited sexual act. As though a woman can fathom the intentions of a offender from every gesture, word, action prior to the rape, and as if, even if she could, she has complete control over her circumstances. In Indian society, where so little autonomy and volition is granted to women, it is an exercise in sheer hypocrisy to suddenly expect her to be in command of the situation. Particularly when, as in most cases, the offender combines disarming friendliness and reassurances with coercion and threats. Yet the women is routinely treated as a accomplice in the offence against her.

manipulation and prosecution is apt to be half-hearted.¹⁴⁴ Thus, custodial rape is an aggravated form of rape.

If the power of the uniformed policeman, especially over poor and marginal sections of the population is all pervasive, it is doubly so in the case of women. Police can and routinely do threaten women with harm to herself or to her dear ones. If per chance she happens to be single, there is always the *Immoral Traffic (Prevention) Act* at hand.¹⁴⁵ The social consequences of being charged under this Act would be sufficient to cow the woman. The reason why most of the rape victims do not lodge a complaint is because not only has the woman lost her chastity in the process, but also to have the tenacity to go public by lodging a complaint risks both social chastisement and ostracism. Acceptance by husbands and their families, and marriage in the case of women and girls is a problem. The legal system negates the very principle that governs it. The law just

¹⁴⁴ In many such cases the prosecution deliberately will not pose questions in their cross-examination which could unambiguously show that the victim had in fact been raped. In 1989, in one of the cases the Supreme Court of India observed that

"merely because the doctor found that the vagina admitted one finger with difficulty, it cannot be inferred that there was no penetration as the muscles must have contracted by then. The accused, a robust man had penetrated the vagina for otherwise there would not have been so much of bleeding. Surprisingly no question was put to Dr. Kapila [defence witness] to solicit her opinion in this behalf."

1987 Cr.L.J. 971 (S); AIR 1987 SC 1080.

¹⁴⁵ Under this Act the police frames charges on the woman to the effect that she did not possess "good" character and was practising prostitution and thus the target of this Act.

remains a mute articulation and coded regulation of the duplicity of social attitudes towards women.

Another reason why people do not bring complaints against the police is because of the fear of police retaliation. The victim of rape is also often the subject of disgrace in her local community. Delays in reporting are therefore common, as the woman decides that must she go through the painful process of examination and publicity to get redress and compensation from the court. Only a few cases of custodial rape reach the trial stage. If they do it is after years of delay in the courts.

Cases of custodial rape, by their inherent nature, are more difficult to prove. Courts often find the delay in lodging the complaint a ground to doubt the testimony of the victim.¹⁴⁶ The court fails to understand the underlying factors of such a delay. In procedural semantics the court loses sight of the time it takes for a woman to muster enough strength and support to forge ahead with registration of the case. Registration of the case, and its trial, are riddled with the uncertainties of Indian society.

Sometimes the courts are not concerned with these difficulties for the woman. In fact, the Supreme Court of India in the case of *Bharwada Bhoginibhai Hirjibhai v. State*

¹⁴⁶ The High Court of Madhya Pradesh (India), in Shamimbanu's case and the Supreme Court of India in Suman Rani's case dismissed the testimony of the victim on this ground.

*of Gujrat*¹⁴⁷ elaborately enumerated such difficulties in the "Indian setting". It held that "discrepancies which do not go to the root of the matter and shake the basic version of the witnesses therefore cannot be annexed with undue importance".¹⁴⁸ This is more so when the all important "probabilities-factor" echoes in favour of the version narrated by the witness because:

- (1) By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen;
- (2) Ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties therefore cannot be expected to be attuned to absorb the details;
- (3) The powers of observation differ from person to person. What one may notice another may not. An object or movement might emboss its image on one person's mind whereas it might go unnoticed on the part of another;
- (4) By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can

¹⁴⁷ 3 SCR 280 1983. In this case the accused was a government servant employed at the Government secretariat in the province of Gujrat. He was married and had a daughter approximately 10 years old. On September 7, 1975 the two victims came to the house of the accused to meet his daughter who happened to be their friend. The accused induced them to enter his house by creating an impression that she was at home. Once they were inside, the accused closed the door, undressed himself in the presence of both the girls, and exposed himself. He was accused of forcing the two girls to an indecent act. One of the girls started crying and fled from there. The other however could not escape. She was pushed into a cot, and was made to undress. The accused sexually assaulted her. The medical examination disclosed that there was evidence to show that an attempt to rape had been made a few days back. The Sessions Court and the High Court held that the accused was guilty of sexual misbehaviour; assaulting with intent to outrage the modesty of the two girls. However, the courts with regard to the more serious charge of rape on one of the girls held that what was established by evidence was an offence of attempt to commit rape and not rape.

¹⁴⁸ *Ibid.*

only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape recorder;

- (5) In regard to exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guess work on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the "time sense" of individuals which varies from person to person;
- (6) Ordinarily a witness cannot be expected to recall accurately the sequence of events which take place in rapid succession or in a short time span. A witness is liable to get confused, or mixed up, when interrogated later on;
- (7) A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross examination made by counsel and out of nervousness mix up facts; get confused regarding sequence of events, or fill up details from imagination on the spur of the moment. The subconscious mind of the witness sometimes so operates on account of the fear of looking foolish, or being disbelieved, though the witness is giving a truthful and honest account of the occurrence witnessed by him - Perhaps its is a sort of a psychological defence mechanism activated on the spur of the moment.

In cases of custodial rape, medical examination is done by police doctors or other government doctors. Corroborative evidence that reaches the trial court must survive these inherent deficiencies.¹⁴⁹ In the case of *Bharwada Bhoginibhai Hirjibhai v. State of*

¹⁴⁹ In India, much value is place on corroborative medical evidence. Semen, blood group, marks of resistance and injury, proof of penetration, tags of granular tissues in the vagina, and interpretations drawn on the evidence based on the principles of medical jurisprudence are all part of the corroborative medical evidence.

*Gujrat*¹⁵⁰ the Supreme Court quoting from its earlier decision of *Rameshwar v. State of Rajasthan* observed that

Corroboration is not the *sine-quo-non* for a conviction in a rape case. In the India setting, refusal to act on the testimony of a victim of sexual assault in the absence of corroboration as a rule, is adding insult to injury. Viewing the evidence of the girl or the women who complains of rape or sexual molestation with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion, is to justify the charge of male chauvinism in a male dominated society.

But these kinds of observation are very rarely applied in practice. Also to be noted in these circumstances is the fact that it is not the victim or her lawyer, but the prosecuting counsel who conduct the case. And these prosecuting counsel are notoriously close to the police, especially at the level of session court, which is the trial court in India. In reality, it is difficult practically to obtain those standards of medical evidence that have been set out in the substantive law.¹⁵¹ What happens in most of these cases is that the victim instinctively sets about to clean herself and remove any signs of sexual intercourse or struggle.¹⁵² Further, it is very unreasonable to expect such a victim to rush from the scene of crime, even when she is free and in a condition to go, to the police station to record the First Information Report (FIR)¹⁵³ because of traumatic mental and physical

¹⁵⁰ *supra*, note 147.

¹⁵¹ *Ibid.*

¹⁵² It is also worth noting, that most of the victims of custodial rape are poor and illiterate. They do not have any knowledge of their rights or the legalities of the situation.

¹⁵³ See *supra*, notes 130, 145, 146 and accompanying text.

abuse/injury. Moreover, even if in one isolated case this happens, and the police decide to conduct the medical examination immediately, in vast parts of the country facilities for such an examination are non-existent. To be of any use statutorily, the examination *has* to be conducted within twelve hours. In some cases inspite of all standards of medical evidence having been met, the courts often find the same inconclusive. Another major drawback is that in cases of police misconduct the enquiry is conducted by their own personnel or department. This substantially reduces the hope for an independent and impartial investigation.¹⁵⁴

Maid servants,¹⁵⁵ widows with young children, political activists or their relatives, tribals and *dalits*,¹⁵⁶ migrant labour in metropolitan cities -these are some of the women who have been victims of custodial rape. To be particularly noted are the cases of *dalits* and *adivasi* women.¹⁵⁷ In 1987 and 1988 the National Commission for Scheduled

¹⁵⁴ Amnesty International, "Women's Action - Punjab", undated document (source: Human Rights Documentation Centre, University of Ottawa, Ottawa, Ontario, Canada).

¹⁵⁵ "Manushi: A Journal about Women and Society", Vol. 44 (1988) at 29. See also: Rabia Bhuiyan, *Aspects of Violence Against Women* (Bangladesh: Institute of Democratic Rights, 1988) at 27-28

¹⁵⁶ A literal translation of the word *dalit* is "the oppressed", but the term "dalit" has become a positive, assertive expression of pride in untouchable heritage and a rejection of oppression. Because "dalit" deliberately refers to all forms of social and economic oppression it can be and often is, extended by untouchable writers and activists to other suppressed people - tribal, religious minority, women, the economically oppressed of all classes. For further discussion see 24 Barbara R. Joshi (eds.) *Untouchable! Voices of the Dalit Liberation Movement* (United Kingdom: The Bath Press, 1986) at 3-4.

¹⁵⁷ These women's husband are often, purposefully, taken into custody by the police on allegation of suspects of some criminal activity. When these women learn of their husband's arrest, they go to the police station to have them freed. At this time they become so vulnerable and the police unfailingly takes the advantage of the vulnerability by making them pay the cost of their innocent husband's freedom by raping them.

Castes and Scheduled Tribes¹⁵⁸ carried out a study on cases of custodial rape committed on scheduled caste and scheduled tribe women by police personnel. This report, recording the views of police officers, found

that the police officers, by and large, were of the opinion that the incidents of rape committed on the scheduled caste/scheduled tribe women by the police personnel are rare.¹⁵⁹

However, according to a recent article in a national daily, this view is far from accurate.

According to the article:

Many social welfare organizations have pointed out that most rape victims are unable to register their complaints as the policemen themselves are more often than not parties to the crime. Indeed, while constables constitute the largest group of culprits, India leads the world in custodial rape. According to one organization, there are 5,000 rape cases annually in Bihar; the figure may not be accurate but it is probably not too far out either.¹⁶⁰

The Commission's report clearly found that the practice of sexual violence by police on women largely affected women belonging to the poor economic segment of

¹⁵⁸ These are the group of the people as such notified by the President of India under Article 366(25) of the Constitution. Such notification is done in pursuance of Article 16(4) of the Constitution of India which provides that

Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.

Two conditions which are necessary to attract this clause are that (1) the people under the class must be backward socially *and* educationally; and (2) they are not adequately represented in the services under the State.

¹⁵⁹ Govt. of India Report, *supra*, note 122.

¹⁶⁰ "Women and the Law", *Sunday Statesman* (23 July 1989).

society. Another report recorded fourteen cases of rape in police custody in Delhi alone between 1988 and 1989; most of the victims belonged to a migrant labour population.¹⁶¹ Despite the facts on State abuse, policemen defy statistics, using arguments based on their own obscure deductions. According to the National Commission's report, "some of the officers also opined that in a one-to-one situation it is very difficult for a policeman to rape a woman without her consent."¹⁶² Needless to say, it is difficult to imagine a more opportune situation for rape.

However, it must be noted that the judiciary in India has interpreted and condoned violence against women in those cases that did manage to reach the courts. It is submitted that the courts, as presently set up, share and promote the patriarchal and hierarchal structure of society. In *Mathura's* case, a sixteen year old tribal girl was raped by two policemen while in custody. The Session's court acquitted the policemen on the ground that the girl had eloped with her boyfriend and was presumably used to habitual sexual intercourse.¹⁶³ The High Court, however, held them guilty. On Appeal to the Supreme Court of India, these policemen were acquitted, affirming the decision of the trial court. In response, women demanded an amendment to the rape laws. In cause and consequence,

¹⁶¹ People's Union for Democratic Rights, *Custodial Rape*, (1990).

¹⁶² Govt. of India Report, *supra*, note 122.

¹⁶³ Under section 155(4) of the *Indian Evidence Act*, it is permissible to question the character of the victim as a defence.

this crime typifies the hazards of mobility for all women, and if the onus of proving lack of consent was to be on victims, there is very little chance of the victim getting any justice. The pressure by media, women's group and members of political parties resulted into bringing the issue before the Law Commission.¹⁶⁴ In 1983 the laws were amended. An important clause which was added by the amendment stated that the minimum punishment for custodial rape was increased to ten years and the onus of proof in all such

¹⁶⁴ *Indian Express*, 17 June 1992, at p. 9.

cases was shifted to the policemen involved.¹⁶⁵ Despite the amendment, the character of the victim has been questioned in subsequent cases.

In 1989, the case of *Premchand v. State of Haryana*,¹⁶⁶ before the Supreme Court

¹⁶⁵ S. 114-A *Indian Evidence Act* which provides:

Presumption as to absence of consent in certain prosecutions of rape: "In a prosecution for rape under clause (a) or clause (b) or clause (c) or clause (d) or clause (e) or clause (g) of sub-section (2) of section 376 of the *Indian Penal Code*, where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and she states in her evidence before the Court that she did not consent, the Court shall presume that she did not consent."

Section 376 of the *Indian Penal Code* prescribes the punishment for the crime of rape. Sub-section (2) of this states:

Whoever,

- (a) Being a police officer commits rape
 - (i) within the limits of the police station to which he is appointed; or
 - (ii) in the premises of any station house whether or not situated in the police station to which he is appointed; or
 - (iii) on a woman in his custody or in the custody of a police officer subordinate to him; or
- (b) being a public servant, takes advantage of his official position and commits rape on a woman in his custody as such public servant or in the custody of public servant subordinate to him; or
- (c) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women's or children's institution takes advantage of his official position and commits rape on any inmate of such jail, remand home, place or institution; or
- (d) being on the management or on the staff of a hospital, takes advantage of his official position and commits rape on a woman in that hospital; or
- (e) commits rape on a woman knowing her to be pregnant; or
- (f) commits rape on a woman when she is under twelve years of age; or
- (g) commits gang rape,

shall be punished

¹⁶⁶ 1989 Cr. L.J. 1246 (SC); AIR 1984 SC 937. In this case, the appellant, along with one Ravi Shankar, was tried on the accusations that Ravi Shankar committed rape on the prosecutrix Suman Rani on two occasions. Later on 31 May 1984 Ravi Shankar abducted Suman Rani and took her to Jammu via Bhiwani. On arrival at Bhiwani bus station the two appellants, who were police officials posted there, took Suman Rani and Ravi Shankar to a police post and put them in different rooms. They raped Suman Rani one after another. Thereafter, the appellant Prem Chand took Ravi Shankar and the victim girl to the railway station and left them there. The Trial Court found the

of India, created a crisis for the women's movement and the issue of violence with a decision concerning rape in police custody.¹⁶⁷ The trial and high court upheld the law by convicting the accused and awarding a ten-year mandatory minimum sentence for raping a village girl while in police custody. The Sessions judge in this case categorically stated that "all said and done, even a girl of easy virtue is also entitled to all the protection of law"¹⁶⁸ and rejected the arguments based on the alleged immoral character of the victim.¹⁶⁹ On appeal before the Supreme Court, the court relied on the defence counsel's argument and reduced the sentence of the lower court by five years.¹⁷⁰ The court did this by looking into the "conduct of the girl and observed that village girls were

two police officials guilty and sentenced them to undergo rigorous imprisonment for a period of ten years. Ravi Shankar was convicted and sentenced to undergo rigorous imprisonment for seven years. The trial judge observed that "there is no reason for awarding less than the minimum sentence prescribed".

On appeal to the High Court, Ravi Shankar was acquitted on the ground that the prosecution had not successfully proved that the prosecutrix Suman Rani was below the years of age and that "she was a willing party; going around with Ravi Shankar; and had been having sex with him of her free will." However, the High Court sustained the conviction and sentence imposed upon the two police officials.

¹⁶⁷ "Custodial Rape" is rape by police, a gang rape, rape in jail, hospitals or institution. The mandatory minimum punishment for custodial rape is ten years.

¹⁶⁸ *Ibid.*

¹⁶⁹ The character of the victim can be questioned under the *Indian Evidence Act* (IEA) (s.155(4)). The new amendment, s. 114-A of the IEA, implicitly assumes that the moral character of the victim is not a relevant consideration. But, the government did not rescind the earlier objectionable clause, despite the recommendation of the Law Commission in its 84th report.

¹⁷⁰ The defence argued that the victim Suman Rani was a woman of questionable character and easy virtue with lewd and lascivious behaviour and as such her version is not worthy of acceptance. After considerable debate on the merits of the case, the argument was confined only with regard to the quantum of sentence. After meticulously examining the entire matter, the Supreme Court came to the conclusion that "the proviso to section 376(2), I.P.C. *supra*, note 120, could be invoked having regard to the *peculiar* facts and circumstances of the case coupled with the conduct of the victim and the mandatory sentence provided under the penal provision is not called for." (The italics are mine).

"women of easy virtue - of low and lascivious character." A joint forum of fourteen women's organisations filed a review petition. In response the Court clarified that by the phrase "the conduct of the girl" the Supreme Court was not referring to the moral character of the victim, but to the fact of delay on the part of the victim in filing the complaint.¹⁷¹ The review petition was rejected. The Supreme Court failed to understand that neither the girl's, nor women's, morals were in question here. Neither did they try to look into why the delay occurred, although there could have been many reasons such of those discussed in the case of *Bharwada Bhoginibhai Hirjibhai v. State of Gujrat*.¹⁷²

The absurdity of this reasoning is obvious. By its very nature, custodial rape is a serious atrocity against women because it is carried out by custodians of the law itself. Instead, questions about a woman's "virtue" or even her understandable fear in reporting

¹⁷¹ The Supreme Court observed that:

We have neither characterised the victim, Suman Rani as a woman of questionable character and easy virtue nor made any reference to her character or reputation in any part of our judgment but used the expression "conduct" in the lexicographical meaning for the limited purpose of showing as to how Suman Rani had behaved or conducted herself in not telling any one for about five days about the sexual assault perpetrated on her till she was examined on 28 March 1984 by the Sub-Inspector of Police in connection with the complaint given by Ram Lal on 22 March 1984 against Ravi Shankar. In this connection, we make it further clear that we have not used the word 'conduct' with reference to the character or reputation of the victim - Suman Rani.

In its concluding paragraph the court further observed that:

We have not expressed any view in our judgement that character, reputation or status of a raped victim is a relevant factor for consideration by the Court while awarding the sentence to a rapist.

¹⁷² *supra*, note 147.

a rape committed by police to the police were allowed to override the offense and nullify the act of rape itself. As a test case, it clearly showed how a male bias permeates even the most progressive efforts to provide protection. Despite liberal reforms seemingly created for the benefit of women, the actual implementation of the laws continues to limit their utility and effect. Thus, in this case the Supreme Court cited very tenuous and specious arguments for decreasing the sentence on the policemen to half the minimum prescribed punishment of ten years imprisonment.

Almost a year later, the Supreme Court stated in the case of *State of Maharashtra v. Chandraprakash Kewalchand Jain*¹⁷³ [hereinafter *Shamimbanu* case] that "when a person in uniform commits such a serious crime of rape on a young girl in her late teens, there is no room for sympathy or pity. The punishment must in such cases be

¹⁷³ 1990 Cr. L.J. 889 S.C. In this case, the victim Shamimbanu fled with her boyfriend to get married in another city. After getting married they returned to their home city and rented a room in a local lodge. To ensure privacy of their return they had registered under false names. The same night during a routine police check-up on production of their marriage certificate the policemen discovered their true identity. Next night, around 2:30 a.m., two policemen went to their hotel room and interrogated them again about their relationship. They insisted that they accompany them to the police station. On reaching the police station they were separated and put in different cells. The boyfriend was subjected to beatings and Shamimbanu was sexually harassed and slapped for refusing to the demands of sleeping with her. The parents of the two were called and asked if they wanted to take them back. The parents refused. The policeman then recorded a false complaint against the husband and sent the victim to an hotel. The accused policeman then raped the victim twice in that room.

The trial court found the accused guilty and convicted him under section 376 of the Indian Penal Code. The accused appealed to the High Court which acquitted the accused on the grounds that the version of the victim was full of contradictions and was not corroborated by medical evidence. The High Court further stated that the victim's medical examination was negative and did not show any marks of violence as had been alleged by her.

The Supreme Court reversed the acquittal.

exemplary".¹⁷⁴ While commenting upon the reasoning of the High Court that the testimony of the victim was contradictory and not corroborative, the Supreme Court referred to its earlier observations in *Bharwada Bhoginibhai's* case.¹⁷⁵ However, a review of case law shows that in actual practice the punishment awarded or confirmed in both cases is the same, only five years imprisonment and less than the prescribed minimum (7 years in case of rape, 10 years in case of custodial rape) provided the court is satisfied that there exists "adequate and special reasons" to do so.¹⁷⁶ What those adequate and special reasons are is left to the will and wisdom of the judges. The only condition imposed on them is that they must record their reasons in the judgement. These cases exemplify the inadequacies for women of a man made law, subject to male interpretation, and taking into account very little of the reality of women's experience.¹⁷⁷

Fundamental questions like how women's experience of violence from men is to be interpreted; what services women need; how does a particular service, the police, deal

¹⁷⁴ *Ibid.*

¹⁷⁵ See *supra*, notes 147-154 and accompanying text.

¹⁷⁶ *supra*, note 170 and accompanying text.

¹⁷⁷ Naina Kapur, "Women's Initiative, India: Violence Against Women: A Development and Human Rights Issue", Ottawa; The Canadian International Development Agency (CIDA), "Women in Development Directorate: Match International Centre", March 9, 1991 at 8. Further refer, *State of Haryana v. Premchand & Others*, review petition (criminal) nos 241-242/1989 in Cr. Appeal nos. 544-545 of 1986. Suman Rani Rape Case: Orders on Review Petition, "Legal Perspectives" Documentation File No. 15 (Legal Resources for Social Action), Chengalpattu, Tamil Nadu (India). See also, Y. Matsui, *supra*, note 85, ch. 6 at 84-87.

with the women's needs; how are violent men to be controlled; and how police power and abuse can be controlled remain to be answered.

Even if one accepts that legislation such as the 1983 amendment¹⁷⁸ is "progressive," women must question the purpose or value of such legislation when it can be interpreted against their interest. Before women begin to view the "liberal" state as the primary source of their betterment they must recall that, even prior to the operation of law, men's dominance over women was accomplished both socially and economically. That being so, we must ask what, in gender terms, is the state's yardstick for accountability? How is it that male power inevitably becomes state power? The answers to these questions are important lest women get caught seeking more power for the State on behalf of women and finding that power remains unchecked.¹⁷⁹

¹⁷⁸ *Supra*, note 165.

¹⁷⁹ See Catharine A. MacKinnon, *Towards a Feminism Theory of the State*, pp. 161-163.

c. Police Complicity in Violence Against Women in India

The fear of public violence results in the belief that home is the safest place. This discourages women from getting involved in social, political or even employment opportunities. They become more dependant on individual men for protection from men generally. This dependence on individual men together with women's resultant isolation makes it all the easier for these men to assault or abuse women in the privacy of their own homes. They can do this with the knowledge that it is difficult for women to retaliate or get redress, since such behaviour is supported in the dominant male culture.¹⁸⁰

In India wife burning, like many other acts of violence, occurs with the tacit consent of society. Since it incurs public disapproval, it is generally perpetrated behind closed doors. The woman's husband and in-laws invariably claim that the death was a regrettable suicide or accident, and that they could not save her despite all possible attempts on their part. In most of the wife murder cases, the husband and the in-laws of the woman try to defame the victim wife after her death by publicising that she was a woman with mental incapacities and suicidal tendencies or bad character traits.

¹⁸⁰ It should also be noted that the *Indian Penal Code* does not in any provision make cruelty a crime in general. It only recognizes cruelty as a crime when it takes the form and colour of "dowry deaths" or as a ground for divorce under the *Hindu Marriage Act, 1976*.

The term "dowry death" and "dowry murder" originated during the decade of 1977-88 when investigation by women's organisations began to reveal that many of the deaths of married women which had for years been camouflaged by the police as accidents or suicides were actually murders or induced suicides preceded by prolonged physical and mental torture at the hands of husbands and in-laws. Instead of describing them as wife murders or induced suicides, women's organisations and the media began to call them dowry deaths. The reasons for doing so were that firstly while other forms of torture are borne by women alone, dowry demands are a form of harassment which parents share. It is the woman's father who has to "adjust" to the demands. Secondly, if a woman is thrown out of her house and her parents can show that it was due to dowry demand,¹⁸¹ they can get back what they have already given in terms of dowry to their daughter. Thirdly, in their narrative to the police or a social worker or in their petition to the court, the woman and her family are compelled to highlight dowry demands and to downplay other demands because "dowry demands" are perhaps the only form of harassment that will be condemned even by the police. In my view this is because this is a crime which is committed against not only women but also their fathers who have to suffer the economic set back. Probably this is sympathy by one man to another. Society and its

¹⁸¹ The husband and his family commonly makes new demands for dowry from the bride and her parents for years after the marriage. These demands generally range from cash to simple consumer goods such as scooters and televisions. When the bride's family fails to satisfy these demands, the bride often becomes subject to physical and mental abuse. In a *horrific* number of cases, these brutal social forces result in either the wife's "suicide" or her murder at the hands of her husband and/or his relatives.

officials are yet to agree that wife beating is equally wrong and needs to be taken seriously.

Police complicity in the Indian sub-continent is an important issue in cases of violence against women. In the discussion following, I will argue that in patriarchal culture policemen are less sympathetic to women's suffering and whatever little conscience they might have is subdued by bribes from the killers.

The issue of dowry deaths has acquired great visibility in recent years. This focus obscures more fundamental and insidious evils. The real killer is not dowry and rapacious in-laws alone, but also the overwhelming pressure to keep marriage going at all costs despite the humiliations and suffering that a women has to go through. This is a process in which the woman's own family connives under the influence of the strong patriarchal attitudes of society.

Dowry deaths have been portrayed by national and international media as a species of crime unique to India. In fact, they have much in common with violence against women throughout the world. Wife abuse is wide spread even in those societies where dowry is not practised.¹⁸² The reason why more wives end up dead in India in

¹⁸² For a comparative discussion of wife battering in Canada, U.S.A. and India see *infra*, chapter 4.

comparison to the United States of America or Canada is that an average North-American woman is not likely to feel as pressured to "adjust" to a violent marriage as her counterpart in India. A divorced woman in India faces greater social and economic challenges than the woman in the west. Greater stigma attaches to the divorced woman in India.

Despite recent law reform¹⁸³ to lower the incidence of dowry deaths, fewer than five percent of dowry death cases ever result in a conviction.¹⁸⁴ Police play a role in

¹⁸³ *The Dowry Prohibition Act, 1984* was amended in 1986 with the intention of making the law more stringent and, therefore, more effective by raising the minimum punishment for taking or abetting to take dowry to imprisonment for five years and a fine of Rs. 15,000. Further, "dowry death" was created as a new offense under the *Indian Penal Code* [IPC] s. 304-B and IPC s. 498-A created an offense of cruelty.

Section 304-B provides:

- (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.
- (2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.

Section 498-A provides:

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 purposes 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.

¹⁸⁴ "India: Till Death Do Us Part" *Time* (special issue), Fall 1990, at 39.

the cover-up and do whatever they can to prevent these cases being charged and taken to court. Women's rights groups report that intimidation of witnesses, police indifference and official collusion also pose obstacles to law enforcement in dowry cases.¹⁸⁵ These groups argue that poorly paid local police officials and other government bureaucrats, largely male, tacitly accept the traditional customs surrounding the dowry system. The vicious circle then continues and the low conviction rate of these crimes increasingly discourages witnesses from coming forward to testify.

Some policemen have admitted that their fellow officers have been known to have helped the accused to cover-up dowry death cases by feigning suicide or accident.¹⁸⁶ Allegations have included the failure of the police to conduct in-depth investigations into dowry death cases, the under-utilization of forensic specialists in such investigations and the official concealment of critical evidence in a large percentage of cases.¹⁸⁷ Forensic and physical evidence is particularly pertinent in cases when the deaths occur within the confines of the home and other clues have been destroyed in fire. They often provide the only reliable means of refuting spurious claims by the husband and his family of accidental death or suicide. According to one officer from the Union Public Service

¹⁸⁵ Barbara Crossette, "India Studying 'Accidental Deaths of Hindu Wives'", *New York Times*, January 15, 1989 (foreign desk) part 1 at 10, col. 1.

¹⁸⁶ R. Kakkar, "India: 'Dowry Death' Victims Get No Justice, *Inter Press Service*, August 6, 1990.

¹⁸⁷ L. Heise, "A World of Abuse" *San Francisco Chronicle*, July 2, 1989 at 11.

Commission, 95% of registered deaths end in acquittals because of corrupt police and medical officers who tamper with evidence.¹⁸⁸ This was confirmed by a retired judge, H.V. Baxi, who reported that

the Court may order police to make a fuller report, but that report will be produced by the same individual who manipulated the investigation in the first place. The Report they turn in will be equally false. Until you have an honest system of criminal investigation, there is little that any citizen can do.¹⁸⁹

Similarly, the Supreme Court of India identified corruption as a major barrier to implementing the law in the *Lichhamadevi* case.¹⁹⁰ The court found several disturbing factors in the process that led to the accused's arrest, determining that the investigation did not proceed properly and there appeared to be "soft pedalling of the whole case".¹⁹¹

¹⁸⁸ US Department of State, *Country Reports on Human Rights*, 1990 at 1395.

¹⁸⁹ F.M. Bordewich, *Atlantic Monthly*, July 1986, vol. 258 at 21.

¹⁹⁰ *Lichhamadevi v. State of Rajasthan*, (1988) 4 SCC 456, AIR SC 1785. See also *Surinder Kumar v. State (Delhi Administration)*, (1987) 1 SCC 467, AIR 1987 SC 692.

¹⁹¹ *Ibid.* In *Lichhamadevi v. State of Rajasthan* the mother-in-law of Pushpa, the deceased, was accused of pouring kerosene over the deceased victim and setting her on fire. There was evidence to indicate that relations between the two women had become strained due to discord over unmet dowry demands. After constant harassment, Pushpa returned to her parents' home in order to avoid further abuse. Sometimes later, she was induced to return to her husband.

On the morning of her death, only days after her return, it was reported that Pushpa was struck on the head with a pan by the accused, who then angrily stated that she felt like burning her daughter-in-law alive. Later that night, neighbours saw flames coming from the house and rushed inside to find the doors to the kitchen fastened from the outside with an iron chair. Inside the kitchen they found Pushpa inflamed and, after being refused assistance by Pushpa's husband and mother-in-law, they rushed the deceased to the hospital themselves. The doctors advised the family that Pushpa required a blood transfusion. The mother-in-law, however, told her son not to arrange one. Before her death, Pushpa was able to tell her doctor, her father and some neighbours that it was, in fact, the accused who had set her on fire. The postmortem report confirmed her story.

The trial court acquitted the accused, but this verdict was reversed by the High Court. The conviction was then upheld by the Supreme Court which deemed the death to be murder on the strength of the facts.

In this case, the court noted that during the investigation, the accused herself stated that her eldest son may have burnt the deceased. The son was also seen by the neighbours behind the kitchen and running down the stairs at the same time that the deceased was burning to death. The police, however, failed to prosecute him. Also, the court found that the husband of the deceased acted as a silent spectator during the entire incident and did not even help to take his wife to the hospital. Nor would he make arrangements for the blood transfusion recommended by the doctor when his wife was struggling for her life. The court held that "his tacit understanding with those who have perpetrated the crime is so apparent that it could not have been ignored."¹⁹² Nonetheless, the police failed to bring charges against him. The court observed that "the indifferent attitude of the investigating agency should be deprecated."¹⁹³

The Court recognized the seminal role of the investigating agency in the implementation of justice in the following words:

It is not enough if the legal order with sanctions alone moves forward for the protection of women and preservation of societal values. The criminal justice system must equally respond to the needs and notions of the society. The investigating agency must display a live concern and sharpen their wits. They must penetrate into every dark corner and collect all the evidence. The

¹⁹² *Ibid.*

¹⁹³ *Ibid.*

Court must also display greater sensitivity to criminality and avoid "soft justice."¹⁹⁴

The police in India are known for their indifference in those cases where the offender is a politically or economically powerful person. The extent of influence of these factors can be judged from the fact that when the daughter-in-law of the chief minister of Haryana (India) was found to be killed by a gun-shot through the neck, she was hurriedly cremated and no formal investigation has ever taken place despite the furore raised by media and different women's groups.¹⁹⁵ Such acts on the part of the police, which has been entrusted with the task of enforcing the law *uniformly* without any discrimination, frustrate the legislative scheme of equality amongst all classes and genders.

Broad traditional prejudices operate in India to reinforce and perpetuate the commission of dowry deaths while the customarily low status held by women in Indian patriarchal hierarchy is the central part of the problem. Women are literally being killed for petty consumer goods. The mere existence of amended laws designed to protect the rights of women does not in itself fulfil the state's obligation. The state must also guarantee that these laws are effectively and equally carried out in practice regardless of gender, class, race, or religion. The reality is, however, the heinous dowry crimes against

¹⁹⁴ *Stree Atyachar Virodhi Parishad v. Dilip Nathumal Chordia*, (1989) 1 SCC 715 at 723.

¹⁹⁵ Women's International Network News (WIN) eds. Fran P. Hoskin vol. 15:2, Spring 1989, at 54.

Indian women regularly go unreported, uninvestigated, and unprosecuted. The state must insure that law enforcing and protecting agencies such as police have a check on the exercise of their powers and are made accountable for their actions.

Thousands of women are burned alive in their own homes in many parts of India by various means. Out of these, the 'sati'¹⁹⁶ form of killing a house-wife is significantly different in its social and cultural resonance. In a culture where a woman is considered a burden, easily dispensable and replaceable, it is rare that a woman is "honoured" in her death (sati).¹⁹⁷ The "sati" cult in its present day form is primarily the product of a phony religiosity that is the accompaniment of newfound prosperity, harnessed by political leaders for their own vested interests. It is submitted that most probably the concept of "sati" re-emerged from the greed of the in-laws to prevent the widow from succeeding to the share of her deceased husband. The "voluntary sati" was created by this situation. A widow was forced to commit sati or become a prostitute. The young women did not have the courage as well as desire to live in the family after her husband's death where they would be treated as slaves, beasts of burden or as sexual objects to be exploited.

¹⁹⁶ *supra*, note 19.

¹⁹⁷ One of such myths or tradition among "Rajputs", the local high caste people, is that a woman that burns on the pyre of her dead husband and dies in the service of her religion becomes a venerable goddess and an ideal for all other women in that community. It is this myth that compels a widow to commit or be committed to "sati".

The recent case of "sati" in the province of Rajasthan made people aware of the existence of the extreme violence, both mental and physical, committed on widows in their homes. The role of the police in this case cannot go unnoticed. In the village of Deorala, (Rajasthan, India) where the last incident of "sati" took place, the police continue to live up to its own traditions.¹⁹⁸ The whole village had become a police camp. Police actively obstructed journalists and anti-sati campaigners from investigating the case. The act could not be determined to be either murder or suicide because of the police effort to shield the incident. The ostensible reason for the police being there was to implement the ordinance which forbids the glorification of sati.¹⁹⁹ But, the police are often inspired to enforce law according to their personal values rather than those of the legislature. They made no attempt at all to give effect to the ordinance. They were quite as involved in the worship as other villagers. One policeman was seen reminding people to take off their shoes when approaching the site of the incidents and others cheerfully advising them to attend the daily evening religious celebration.

When social factors get mingled with religion, new conflicts arise. The Sati temples in Rajasthan and the recent cold-blooded murder of Roop Kanwar as Sati provide classic examples. Political considerations have added another dimension. If political consideration

¹⁹⁸ Madhu Kishwar & Ruth Vanita, "The Burning of Roop Kanwar" (1987) 42-43 *Manushi*, pp. 15-25.

¹⁹⁹ In most cases of murder of women, women are accused of bad character or characterised as mentally sick. This is the only form of murder where women is respected as a goddess; characterised as a symbol of purity by enticing the women to kill herself or forced to kill herself. The Deorala incident, *ibid*, is a clear example of this.

blunted the law while Roop Kanwar was being reduced to ashes, the same considerations recently deprived muslim women of India from ameliorating their condition further. The result is that law or no law, women continue to suffer.

As far as violence against women is concerned, the major differences between the situation in developed and developing countries is that in developing countries, unless the situation becomes grave,²⁰⁰ the criminal justice system does not recognize the offence of "wife battering" and the use of existing laws to protect the women from these kinds of abuses. Even when existing laws are resorted to, they are seldom implemented successfully. In this regard, there is another difference. In developed countries, the judicial system at least provides remedies to make the implementation agencies accountable. If the police fail to provide adequate protection, the victim can occasionally successfully sue the police for negligence. In developing countries this is seldom possible. It often can be seen that the judicial system, instead of providing relief to the victim, takes on the role of a coverup for any kind of police inaction or brutality by either invoking immunity by virtue of some legal provision, or on the basis of some technicality. It is not a rarity to come across cases where the courts have simply turned a blind eye to some loophole in the existing law, or created one where none existed in the first place.

²⁰⁰ Examples of situations when the police considers a situation "grave" are when the fact that a women has been killed because of dowry becomes public knowledge; or when the fact that a woman has (forcedly) committed "sati" etc.

In 1983 a special Cell for crimes against women was created in New Delhi to deal with violence against women more effectively.²⁰¹ In October 1986, a standing order detailing the Cell's special area of functioning was passed. Every police-station was required to inform the Cell of all cases of crime against women registered by them. Discretion was given to the Cell police officers to investigate any case it wanted and the police-stations were directed to hand over all documents related to the proceedings to the Cell to avoid duplication of work. Another purpose of this standing order was to keep statistics of the incidence of crime against women. However, this step also created uncertainty as to whether the Cell had primarily a supervisory or an independent investigative role.

When the Cell²⁰² was first started in 1983, the total complaints received by it were 873. In 1986, the number rose to 3108 and was expected to cross the 4000 mark in 1987. To an unknown observer, the figures might seem to indicate a growing success and popularity of the Cell. In 1989, a committee was constituted to look into the Cell's functioning. A note sent by the home department of the Delhi Police to the police officers of the Cell carried a list of weaknesses in the Cell as pointed out by some of the women's organisations. Most of these organisations criticised the police for being "indifferent",

²⁰¹ Abha Thapalyal, Ruth Vanita & Prabha Rani, "Can Police Reform Husbands? - the Crimes Against Women Cell, Delhi" (1987) 40 *Manushi: A Journal About Women and Society*, pp. 12-18.

²⁰² For the description, role and authority of the Cell see *supra*, note 201 and accompanying text.

"rude", "lethargic" and the Cell for lacking "teeth". The report also indicated that in the first nine months of 1990 alone, 4759 cases of harassment and dowry were brought before the Cell. Of these, 2,295 (44.82%) were filed; 1,007 (21.16%) ended in compromise, 396 cases (recorded under s. 498A & 496)²⁰³ reached the stage of hearing, and 613 cases were still pending enquiry.²⁰⁴ But, given the fact that the population of Delhi and surrounding areas is more than eight million, it is clear that the Cell is not perceived by women as an obvious answer to their problems. Compared against the actual number of crimes against women, these figures seem to represent only a minute proportion. Furthermore, the follow-up in the cases which are dealt with by the Cell is very irregular or sporadic.

²⁰³ Section 496 of the *Indian Penal Code* states:

Marriage ceremony fraudulently gone through without lawful marriage: Whoever, dishonestly or with a fraudulent intention, goes through the ceremony of being married, knowing that he is not thereby lawfully married, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Section 498-A of the *Indian Penal Code* states:

Husband or relative of husband of woman subjecting her to cruelty: 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 purposes of this section, "cruelty" means-

- (a) any wilful 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.

²⁰⁴ Mrinal Pande, "Whatever Happened to Kamala?" *Indian Express*, (17 June 1992) at 9.

This special Cell, instead of providing solutions, only added to the existing complaints!! Many women started approaching the Cell directly without going to the local police station at all. The Cell became more of a counselling and mediating body than a check on the police-stations about their handling of cases and crimes against women. The cases which the Cell chose to investigate were primarily of those who somehow came to know of its existence and approached it. True benefit would have been reaped had the police officers of the Cell been trained to deal with problems concerning women. Because of lack of training, the officers only re-enforced the already prevalent patriarchal attitudes and structure. Their reasoning to the complainant women was that the women were at fault and hence the violence was called for.²⁰⁵ Stith has also provided an interesting hypothesis on examining police perceptions of their work role and individual attitudes, and personal stress and its impact on action and response to domestic violence.²⁰⁶ In one

²⁰⁵ In an interview with police officers in Australia relation to domestic incidents indicated that several problematic attitudes and behaviours in connection with female partner assault. Firstly, they tend to divide community into "deserving victims" and "hopeless families". The former was defined where the female either attempted or intended to leave their violent partner, and latter as those were dependent on government for assistant. These families usually lived in housing estates to the west Sydney. Hanmer, *infra*, note 210, at 94

Within these categories, police often attributed responsibility to the women for the violence or displayed disrespect for her position. Police reaction, to one complaint made by a woman that her husband was drinking heavily and threatened to kill her was interpreted by the police as that "she must had been stirring him up" and in another incident were a woman lowered a jeans and lifted her top to show the police officers her bruises, when she had previously been told that the police would not arrest without visible sign of injury, the police officer declined to arrest the accused claiming the women was exaggerating. However, he commented, "not bad legs, though!". *Ibid.*

²⁰⁶ Stith argues that, while police officers have a unique opportunity to assist victims and to intervene in the cycle of violence, in most cases this opportunity is thrown away, Stith tested seven hypotheses:

1. Whether police officers with violence and conflicts in their own marriage respond more negatively.
2. Whether police officers who approve of men controlling women respond more negatively.

instance a women police officer was observed while recording a woman's complaint who was showing her bruises and saying that her husband frequently beat her. The officer asked why he did so. She replied, "Just like that - without any reason". The officer persisted, "There must be some reason." After a few repetitions of this conversation the victim woman finally gave in and said that the latest beating was triggered by her not having washed the clothes "on time". The officer triumphantly explained, "I knew there had to be a reason."

Most of the interviewed officers of the Cell admitted that it was not unusual for them to admonish and advise the women complainants in parental tones (in conformity with the local custom). One complainant was told, "A man does beat his wife. That happens from time to time." Another officer was quoted saying,

After marriage, the woman has to mold herself according to the atmosphere of her husband's family. It is unrealistic for her to expect the atmosphere

-
3. Whether police officers who are more sexist respond more negatively.
 4. Whether police officers who report more stress in their lives respond more negatively.
 5. Whether police officers with more stress in their marriage respond more negatively.
 6. Whether younger and more educated officers respond less negatively in sum.
 7. Whether 'The Police officer's response to victims of domestic violence is predicted from his age, education, reported level of stressful life events and mental stress, his attitudes towards mental violence and his use of violent tactics in his own marriage.'

Stith, S.N. (1986) "The Relationship Between the Male Police Officers Response to Victims of Domestic Violence and the Personal and Family Experiences - Papers Presented to the World Congress on Victimology, Florida, U.S.A."

to be like that of her own family. It is easier to change one self than to change so many other people in her in-laws' house...If a mother or father interferes in the married daughter's affairs, it is difficult for her to adjust.

A review of the records of the Cell brings out certain typical attitudes which have sustained traditionally sanctioned violence against women. A member of the family of a man accused of harassing his wife for dowry was quoted as saying, "A girl who puts the welfare of her own parents above the welfare of her in-laws cannot live in the in-laws' house. My own wife tried to act "funny" a couple of times but I "put" her in place."

Interestingly, most of the male officers including "Assistant Commissioners of Police" who work in the cell were of the opinion that if a man could financially support his wife and did not want her to retain her job, she should give it up in the interests of family harmony and the welfare of the children. In other words, the officers shared with most of the complainant's and respondent's families the view that women's place in the family should be subordinate to man's, and that so long as she was not treated with extreme violence or cruelty and is financially provided for, she has no serious cause for complaint. This view also confirms that man, by keeping all the economic power with himself, finds himself in control of everything.

The views expressed by these officers, who are at the helm of affairs, are an anathema to the power exercised by the State and turns out to be an imposition on the women's lived experience that the beatings are reasoned, called for, and an instrument of subjugation. It only ends up making her feel more guilty. The implication of state's subjugation for a women is that because she did something wrong she deserved a beating. Since the "reasons" adduced by a wife batterer are no more than a pretext, to search for such reasons is to assume that this kind of violence is reasoned and can be stopped if the reasons are removed. The Cell actually persuaded many wives to give up their demands and return to their husbands *on his terms*. There is no way the Cell can compel an unwilling husband to take his wife back if he absolutely refuses to do so.

The unconcerned and inconsiderate attitude of the police officials working in this area is brought out in several stages of the proceedings. For example, when an uneducated woman comes to the Cell hoping that it might do something to improve her situation, typically the police officer after listening to her complaint questions, "Do you want to take action against him?" Except for the word "against", the question is termed in the vernacular language. The uneducated aggrieved woman, unable to understand, can think of no other solution but to leave the matter in the sole discretion of the questioning officer. Thus, when women victims of violence come looking for help, there are many

factors which work against her expectation of help.²⁰⁷ Police dealing with the woman complainant also have many assumptions that affect their perception of the complainant.²⁰⁸ In my view the lowest and most common denominator for violence against women in most cultures is patriarchy. I shall establish this through some North American cases and research which have established that police beliefs and agreement with patriarchal and hierarchical structure has maneuvered their attitude towards violence against women considerably - especially in situations involving family violence and wife abuse.

In India, the police does not take cognizance of family violence until it reaches extremes like dowry death or Sati murder. The criminal justice system there is yet to recognize and deal with family violence at its stage of inception. Unlike North America, the concepts of wife abuse and wife battering in India are still not identifiable as crime by the criminal justice system. Feminists in Canada and the United States of America have managed to force the police and criminal justice system there to take cognizance of instances of family violence. The United States' mandatory arrest policy in cases of wife

²⁰⁷ Choice of having her husband charged or put in jail is arrested by her economic dependency at the hands of the abuser. She and her children are totally dependent on the abuser for their livelihood and there is no other social help or benefit to which she may have access. Another impediment is illiteracy. Most of the time they do not understand that what are or what could be the implications. According to Mrs. Kanwaljit Deol, who headed the Cell for a long period, "when a woman comes to the Cell and says her husband beats her, she does not want us to lock him up. She wants the man to be advised, to be warned, to be threatened."

²⁰⁸ See *infra*, notes 221 to 225 and accompanying text.

battering is one such result of feminist efforts.²⁰⁹ Whether the police in these countries (where the judicial system makes it possible to make police or state accountable in cases of non performance) does actually follow these laws or continue entertaining their gender biased attitudes in the sphere of discretionary power remains to be seen. In the chapter following I argue that despite the presence of substantive laws to make the agency of police accountable in these countries the perception and attitude of policemen in these countries towards violence against women has not undergone a drastic change.

²⁰⁹ It is yet to be seen how effective this substantive law proves to be in the absence of unwilling law enforcement agencies.

5. Police and Violence Against Women: the North American Experience

Violence against women is a specific example of a more general failure in effective response to interpersonal crime by the police. Research on violence against women quickly reveals the ways in which women's lives are controlled by the threat or reality of men's violence.²¹⁰

In this chapter I shall demonstrate that a more progressive set-up and criminal justice system (such as North American) still remains ineffective and non-workable for the women victim of violence in general and especially that of family violence. The reasons for this are similar to those shared by other patriarchal societies which have a similar hierarchial social order giving women and the violence against them low priority. I argue that unless there is a balance of power among men and women and the hierarchical structure of society is removed, law can never be equal for everyone, especially for women.

A study by the solicitor general of Canada estimated that of every 1,000 violent incidents against women, 86 are reported to police, and of those 49 result in an arrest warrant and 2 in court proceedings. It concluded that approximately 2 cases out of 10,000

²¹⁰ J. Hanmer, J. Radford, & E. A. Stanko, *Women, Policing, and Male Violence: International Perspectives* (London: Routledge, 1989) at 3.

are seen by the courts.²¹¹ One reason why the number of the charges filed against violence against women is very low is because the police are not willing to accept the testimony of the female victim.²¹² For example, in cases where prostitutes are victims of rape, police tend to believe that getting raped is a part of the job of a prostitute. Two women who were assaulted when they left a lesbian bar in Vancouver did not go to the police because they had been denigrated and humiliated by the police.²¹³

In many cases, immigrant women are afraid of being deported and therefore very hesitant to involve any external agency in their problems.²¹⁴ Black women do not report cases of sexual assault because they are afraid of being further harassed and abused by the police. Aboriginal women are often distrustful of the criminal justice system and explain battering in terms of the displacement of all aboriginal people from their traditional life style.²¹⁵ For battered women with disabilities, community services may simply be unavailable.

²¹¹ Solicitor-General of Canada, "The Criminal Justice System: Response to Wife Assault", at 63.

²¹² In the investigation of rape complaints, aspects of "her" moral character weighed heavy. According to the founding of expert, credibility was established by assessing firstly her way of life; secondly, her respectability and her criminal record and in another study police defined "black people with woolly hair" as suspicious.

²¹³ *The Globe and Mail* (29 January, 1992) A5.

²¹⁴ Immigrant women are usually sponsored by their husbands and are totally dependant upon their husband for economic support and often believe that their right to remain in the country is contingent with their relationship with their husband.

²¹⁵ Carol La Praire, *Family Violence in Rural Northern Communities: A Proposal for Research and Programme Development* prepared for the Research Division, Solicitor General Canada, Ottawa, 1983, at 12.

In order to analyze police indifference and insensitivity towards women victims in family violence and its cause, it is important to consider the formal rules of substantive law which govern the decisions of chief constable, and the rules that govern officers in frontline police work; i.e. those about arrest and charge decisions. Statutory interpretation of these rules has permitted a wide discretion in the exercise of police powers.²¹⁶ The substantive law and the discretion of chief police officers and individuals officers has contributed to a policing profile that has focused on street crime and public order and treated domestic violence as "domestic". I argue that police indifference and insensitivity along-with the stereotypical discriminatory beliefs still exclude women victims of public/street violence from the equal protection of law.²¹⁷

²¹⁶ Experts have given two arguments for police attitudes: firstly, that officers discretion in decision making can be influenced by training, 'designing out' stereo-typical attitudes, and secondly, that police response to formal rules which are not very convincing. Its been alleged in the United States of America that in-spite of the amended legislation on arrest policies, police still resist arresting.

²¹⁷ Action around rape had a different starting point. From the beginning rape called into question the criminal laws, its administration and the nature of police intervention. Rape, with its implications of stranger attack was seen as a criminal law matter, although the advisability of reporting to the police was hotly contested by women providing service to sexually assaulted women and girls. The disbelief and lack of sympathy shown to woman by the police and the humiliation experienced in court led rape crisis workers to provide a full description of what might happen if the offence was reported while leaving the decision to the woman concerned. In one of the cases, a women complained that "she, the victim of brutal rape, had been treated by the judicial system, and by the Royal Canadian Mounted Police (RCMP) in particular, as a criminal.

In this case, an Inuit women from Iqaluit (Northwest territories), moved to British Columbia after being beaten and raped. Later, her attacker was arrested and charged. She was subpoenaed to return to Iqaluit to give evidence against the accused. However, she was informed by her common law husband that the RCMP in Iqaluit had advised him that her presence was not required. The court issued a warrant and she was subsequently arrested and detained in British Columbia for four nights before being transported in *handcuffs* to Yellowknife where she remained in jail for fifth night. From here she was to be flown to Iqaluit the following morning. But, the officer escorting her overslept and they missed the plane. This resulted in prolongation of the journey and another night for the woman in jail. In Iqaluit, the RCMP transported her to the court house in the same vehicle as her attacker. They were separated only by a wire mesh barrier. Later, she had to spend yet another night in jail when it was learned that her attacker pleaded guilty.

Experience has shown that the use of police discretion here frequently violates and infringes the rights of individuals and especially the people who are powerless. D.J. Bell commenting on the parameters of police discretion, claims that "society should maintain a constant vigil on any government agency that decrees the necessity and claims the expertise to utilize deadly force, but abandons women and children to abuse, mutilation, rape, torture, and death under the facade of police discretion."²¹⁸ The contradiction lies at the heart of the policing of public and private order and further discriminates on a gender basis. In spousal disputes, police response is styled by the offender's attitudes to the police and by police perception of the complaint.²¹⁹ In one decided case the court

The RCMP then arranged for her to fly back to Vancouver where she arrived late at night under the impression that the RCMP must have arranged transportation from the airport to her house. They had not. A member of the RCMP escorted her to a bus stop near the airport. She was required to transfer part-way through the trip and wait at a semi-rural bus stop for a lengthy period of time late at night.

In the case of *Jane Doe v. Metropolitan (Police) of Toronto* ((1990) 40 OAC 161, 74 O.R. (2d) 225, 72 D.L.R. (4th) 580) the plaintiff was the victim of sexual assault by a serial rapist. She brought the action against the Board of Commissioners of Police for the municipality of Metropolitan Toronto, for not protecting her and for their decision of not to warn her and other women similarly situated of their potential danger for reasons which include the belief that such warning "would have caused hysteria on the part of the women and would have alerted the suspect to flee and not engage in further criminal activity." They chose, or at least adopted a policy not to warn her because of their stereotypical and discriminatory belief that as a women, she and others like her would become hysterical and "scare-off" the attacker. As a result, she was turned into "bait", without her knowledge or consent. The plaintiff further argued that if a man would have been in her place he would have been warned or perhaps given the choice of whether or not to expose himself to the danger of helping to catch the criminal. The plaintiff alleged that she was denied that choice because she was a women and further stated that "targets of sexual assault and rape are overwhelmingly women while the perpetrators are overwhelmingly men."

²¹⁸ Bell, D.J., (1985) "The Police Response to Domestic Violence: A Multiyear Study" *Police Studies* at 309.

²¹⁹ Susan, S.M. Edwards, "Policing 'Domestic' Violence: Women, the Law and the State" (London: Sage Publications, 1989) at 97-107. Some officers referred to the practical limits to the use of arrest in domestic cases in the following terms:

We arrested him, got to court, he got weighed off in court and the next day he's back living in the house. You think what's the bloody point". *Ibid*, at 104.

After an argument...the husband who has struck his wife has in my opinion lost control of himself by hitting her. The wife is protected by the law but it is seldom practical to arrest the husband.

observed that "in cases of violence against women, what is sought by the victim is not the abolition of police discretion, but an order to compel the police to exercise their discretion in each "particular situation" and not to automatically decline to make an arrest solely because the assaulter and his victims are married to each other."²²⁰

Specifically in the case of wife battering, the victim is often reluctant to report the crime. A recent empirical study designed to summarize and clarify the available data on criminal justice intervention indicates that only six percent of all wife assaults are reported to the police.²²¹ A significant factor in the low report rate is that frequently the victim feels that the police will not adequately protect her if she does report the assault.²²² Even when the police arrive and succeed in quieting the batterer, the abuse is merely postponed until the police leaves.²²³ Police officers typically avoid arresting the abuser

Ibid, at 104.

Normally, it is when the husband and wife are estranged and the husband has broken in, in some way. If they were living together I would only arrest where there was a GBH or danger of the violence continuing or getting worse. *Ibid*, at 105.

²²⁰ *Bruno v. Codd* 90 Misc.2d 1047, 1049, 396 N.Y.S. 2d 974, 977 (Supp. Ct. 1977) rev'd in part, appeal dismissed in part, 64 A.D. 2d 582, 407 N.Y.S.2d 165 (1978), aff'd 47 N.Y.2d 582, 393 N.E.2d 976, 419 N.Y.S.2d 901 (1979).

²²¹ Dutton, "The Criminal Justice Response to Wife Assault" (1987) 11 *Law and Human Behaviour* 189 at 190. The author, a member of the psychology department at the university of British Columbia, reviewed a number of published studies of the criminal justice response to wife assault which had been concluded over past fifteen years, in order to assess the "winnowing" process whereby aggregate numbers of wife assault are diminished by attrition through the process of reporting, detection, arrest, and conviction".

²²² L. Walker, "Psychological Impact of the Criminalization of Domestic Violence on Victims" (1985) *Victimology* at 206.

²²³ Walker, *ibid*.

and often adhere to a "non-arrest policy".²²⁴ Police arrest policy has been a matter of dispute among experts.²²⁵ In their response to cases of wife assault, the only protection police offer a battered women is a temporary lull in the violence. This explanation is further corroborated by a 1982 Report of the United States Commission on Civil Rights,²²⁶ which found, "the police stand at the entrance to the justice system, and their actions often prevent or discourage battered woman from pursuing criminal remedies against their abusers."²²⁷ The reason for this reluctance to arrest a wife abuser is

²²⁴ "Battered Women and the Equal Protection Clause: Will the Constitution Help Them When the Police Won't?" [hereinafter Battered Women](1986) 95 Yale Law Journal 788 at 789.

In Britain, research indicated that only 9 out of 43 forces have any policy on spousal violence: and those 9 are advisory rather than mandatory. (Bourlet, A, (1988) "Police Intervention in Marital Violence", University of Kent, M.Phil. Dissertation) Policing in the absence of policy (or a policy of maximum discretion) facilitates the making of individual judgements, often based on erroneous stereotypes and police may under the circumstances over-enforce or under-enforce the law. For example, when an officer is called upon to use discretion in marital violence cases, his or her perception of seriousness, culpability, motivation, and intent varies in accordance with the particular prevailing conceptions of likely suspect and credible victims.

The reports calling for major changes in police policies and practices have lead to little practical change in virtually all policing areas in Britain. The attitude of police in The Netherlands is the same as in Britain, especially towards "domestic violence". Women who turned to the police for assistance felt that they were not taken seriously and they were put off by the police while their abusive husband or lover got away with it undisturbed.

²²⁵ In a study comparing various methods of police response in domestic cases, the Minneapolis Domestic violence experiment found that arrest was the most effective of three standard methods police used to reduce domestic violence. (Sherman & Berk, "The Minneapolis Domestic Violence Experiment", POLICE ROUND REP., April 1984 at 6) There has been little agreement concerning whether the police should use an arrest policy or non-arrest policy when the victim is an intimate partner of the abuser. Brown (Brown, M.B., (1985) "Two Ways and Multiways Frequency Labels - Measure of Association and the Longlinear Model" in *BNDP Statistical Software*, ed, W.J. Dixon, pp. 538-47, (Berkeley, CA: University of California Press)) argued that when wives as compared to other domestic violence victims, are victims of spouse abuse, the police tends not to take any official actions, such as arrest. On the other hand, Bell suggests that when the victim is the wife or intimate partner of the abuser, police officers are more likely to arrest the perpetrator. (The aim of this study was to explore the patterns of interaction between victims of marital violence and the police and to assess the predictability and impacts/effects of victims' demographic, economic, and situational characteristics on their decisions to call the police.)

²²⁶ US Commission on Civil Rights, under the Rule of Thumb: Battered Woman and the Administration of Justice (1982).

²²⁷ *Ibid.* at 91.

possibly because of general attitudes of gender discrimination,²²⁸ or more specific attitudes concerning man's rights to batter. Others, who do not necessarily condone wife battering, believe a man has the right to be free from interference in his own home and to rule it as he pleases.²²⁹ Police officers have given numerous explanations for their failure to invoke the criminal law in cases of wife abuse. The most widely cited rationalization for the lack of adequate legal response to marital violence cases is the institutionalized belief in the private nature of wife abuse and the belief that intrusion undermines preservation of the family.²³⁰

²²⁸ In many cases, police receive several calls for help before the violence reaches a homicidal level. In fifty percent of all the homicide between domestic partners in Kansas city, Missouri, for instance, police had been called to the house five or more times prior to the killing. (*Comment*, "Mandatory Arrest for Domestic Violence" 11 *Harvard Women's L.J.* 213, 215-16 n. 18 (1988)) Similarly, 50% of the murders in Newport News Virginia involved family members. "In half of those cases" the police had previously responded to complaints of domestic violence. (Lang, "How to Stop Crime the Brainy Way", *U.S. News & World Rep.*, July 21, 1986, at 55, 55) Police reluctance to intervene can mean death, kidnapping, rape or torture for the victim.

Many women in the homicide group have made repeated unsuccessful calls to the police for protection and assistance. The same system that failed to protect them in the partner's violence immediately arrested them when they (the wives) responded in their own self-defense. (Angela Browne, *When Battered Women Kill* (New York: The Free Press, 1987) ch. 9 at 159) In some cases, police and others attempted to tell the woman that what "must have happened" at the scene confusing them more. *Ibid.* Some women also see the male officer as threatening and powerful, and out of fear often say what they think the interrogators want to hear. These abused women, who deserve some empathy and consideration, face another abuse in the hands of the system, especially the police - which is the major law enforcement agency. Experience shows that these women feel that they are "presumed guilty until proven otherwise". The police, when treating women who are mothers, are also responsible for being insensitive to the needs of young children. The child on being forcibly separated from the mother, has to undergo a lot of psychological stress. *Ibid.* at 160-162. See also: S. Scmechter, *Women and Male Violence* (1982) at 157-161.

²²⁹ "Battered Women", *supra*, note 224, at 790.

²³⁰ Hanmer quoting the view of the association of chief police officers of England, Wales and Northern Ireland, explained their position in the following words:

"Whilst such problems take up considerable police time during say, twelve months, in the majority of cases the role of the police is a negative one. We are, after all, dealing with persons "bound in marriage", and it is important, for a host of reasons, to maintain the unity of the spouses. Precipitated action by the police could aggravate the position to such an extent as to create a worse situation than the one they were summoned to deal with. The "lesser of two evils" principle is

According to Suzanne E. Hatty, police beliefs concerning women's response to violence are largely derived from ideas about its production.²³¹ Again, police beliefs hinge on the degree of role conformity exhibited by the female partner. Police understand a woman's decision to call the police to be motivated by the following:

1. the woman's desire for revenge on the male partner;²³²
2. a wish to manipulate either the partner or the police;²³³
3. a need for immediate cessation of the violence coupled with an unpredictable or inconsistent attitude towards the abuser; and
4. a pronounced reliance on external authority to solve individual problems.²³⁴

often a good guideline in these situations, and went on to say *every effort should be made to reunite the family.*"

Hanmer opines that though this may seem a simple case of concern for the institution of marriage overriding the legal rights of one of the marriage partners, embedded within this response is an understanding of the status, and thereby the individual and social power, of women. J. Hanmer, *supra*, note 210 at 91.

²³¹ Suzanne E. Hatty, "Policing and Male Violence in Australia" in J. Hanmer, J. Radford, & E. A. Stanko, *Women, Policing, and Male Violence: International Perspectives* (London: Routledge, 1989) at 82.

²³² Another officer quotes:

"Most times they want us to do everything - arrest, charge, draw and quarter him. The next day, it's a different story. They're hostile towards us because they've made up with their spouse. *They only used us to get even. It hardens you against the women.*" *Ibid.*

²³³ Some of the comments made by the police officers were:

"A lot of them (wives) are hysterics. Some are purely malicious. Some use the police *as a tool against their husbands.*" *Ibid.*

²³⁴ On this an officer said:

I've realised that there are certain types - the 'schemers' - whom I detest. They use the police to get back at their husbands. *They're too weak to do anything about the situations themselves.* *Ibid.*

Police interpret a woman's decision to remain in a relationship according to a fixed cluster of beliefs which include traditional devotion to the ideal of wife and mother, a lack of intelligence, a lack of psychological strength, masochism, and psychopathology. Obviously, most of these beliefs can be characterized as misogynist.²³⁵ It has been noticed that an officer is more likely to make an arrest when there is a direct threat to his/her safety; when a felony has been committed; when a weapon is present; and when there is a perceived likelihood of further violence.²³⁶

Police views on their inability to help battered women leads to a dead end. Moreover, police officers often believe that arrest will not ultimately result in conviction or sanctions.²³⁷ The only real solution according to one police chief is for the women

²³⁵ "I now see women as stupid. They cop the beating but don't want us to gaol him."; "Often they're just dumb, or perhaps weak character, a character you can't respect in any way"; "My experience with domestic violence has led me to form certain opinions about women. I believe that they're basically masochistic, and that's why they stay through the brutality and violence"; "Women only stay in these situation because they're mad, insane. Also, I'm convinced that they get a lot of pleasure out of the violence. Perhaps it turns them on." *Ibid.*

²³⁶ Dolon, R., Hendricks, J., & Meagher, M.S., "Police Practices and Attitudes Towards Domestic Violence", (1986) 14 *Journal of Police Science and Administration*, pp. 187-192.

²³⁷ "Double Jeopardy", *supra*, note 128, at 92. Another reason for reluctance of police according to one police chief was "that the police officer answering a "domestic dispute" call has only a few minutes to decide whether to lay charges and whether the incident warrants further investigation, and further states that this decision is not always easy that a police officer who lays charges without sufficient proof could be later sued for bringing false charges and in case the arrest does not result into conviction, their action would not serve any purpose; even if the assaulter is brought to the court and is imprisoned, when released he will seek revenge.

to leave her partner.²³⁸ However, the suggestion of the police chief fails to meet the practicality.²³⁹

²³⁸ New Brunswick Advisory Council on the Status of Woman: Male Violence in Relationship and the Justice System (December 1989).

²³⁹ Many women who want to leave and are among friends, neighbours, and possibly even families are not identified as abused women. Secondly, the lack of the knowledge of the fact that there are other women who share the same experience prevents the victim from coming out into the open. They are afraid that other people would not understand or would think less of them if they attempted to explain their problem to them. A third reason why it is not easy for the women to leave their partners is because after years of self-blaming they lose the courage to do so. Fourthly, it has been statistically proven that abandonment does not prove to be effective. Brown has opined that divorce or separation does not end the violence. Women often suffer more serious abuse after separation. According to these experts the batterer may be most dangerous during this period. (Angela Brown, *When Battered Women Kill* (New York: Collier Macmillan Publishers, 1987)).

One report observes, "The facts about male abusers are only being uncovered as the feminist work proceeds. For instance, it has only become clear in the last few years that a wife leaving an abuser may well be facing 18 months of increased danger of retaliation from him. The judicial system is unable and unwilling so far to deal with their potential abuse." *Gender Equality in the Justice System: The Justice System's Response to Violence Against Women* (2: 1992) ch. 7, p. 4.

According to Mona Brown, when a woman tries to get out of the relationship permanently, her spouse may become more violent to regain control of the situation". Mona Brown, "Gender Equality in the Courts and Criminal Law, in "A Study by the Manitoba Association of Women and the Law (MAWL)", March 1991, at ch. 4, p. 4.

Violence may also be used to prevent a woman from leaving the relationship. (Charles Patric Ewing, *Battered Women Who Kill, Psychological Self Defence as Legal Justification* (Lexington: D.C. Health & Co., 1987), p. 13). Other research shows that wife assault may be more prevalent in rural and isolated areas, but less likely to be reported to the police because of the strong value the community places on maintaining the relationship. Linda MacLeod, *Battered But Not Beaten*, at 22.

Disturbingly, the lack of coordinated medical and legal intervention occurs during the period of greatest need for a person seeking to escape violence. As Walker explains, "it is at the third stage - the aftermath of an acute episode of violence that a victim of domestic violence is most likely to try to escape - an attempt that can result in her murder by the abuser. Lenore E. Walker, *The Battered Woman* (1979), ch. 39, p. 63.

Del Martin agrees with this, and observes that "more women are murdered by their abusers while attempting to flee them than at any other time." (Del Martin, *supra*, note 58 at 77.) A conservative estimate is that one out of every four women seeking divorce has been physically abused by her husband. (Lenore E. Walker, *The Battered Woman Syndrome*, (1979), pp. 19-20; David B. Chandler, "Violence, Fear and Communication: The Variable Impact of Domestic Violence on Mediation" (1990) *Mediation Quarterly*, at 331, 339-40) In homicide groups, the victims had left or attempted to leave their violent partners before the lethal incident occurred.

The assumption that leaving the husband would solve the problem could be true where the woman leaves her husband after a second or third incident. But, after they have lived with their partner for a long time a number of factors make it hard to leave: the severity of violence resulting fear of retaliation and further facts like having children, holding property together, knowledge of one another's routine, families, place of employment (See *Hynson*

The most difficult question police and battered women's advocates face is how police should respond if a battered woman does not ask the police to arrest her husband, or if she asks the police not to arrest her husband.²⁴⁰

In an unusual coalescence of research findings, feminists pressure and policing policy, a tougher stance is taken to mean "arrest", and the effect of an arrest is to deter present and future violence between intimates. The notion of deterrence which is central

case 864 F. 2d: "The next day, she was shot and killed at work by Gandy (her husband)" "Trends in the Law: Unequal Protection - Do the Police Ignore the Violence?" *ABA Journal* (1 March 1989) at 102) and having developed mutual friends. It becomes extremely difficult for an abused woman to go into long term hiding. This leads to the question: Why should the women leave when the assailant gets to live in the house and is guilty of breaking the law? The question becomes all the more pertinent when the women, for no fault of hers, is forced to move temporarily in a shelter home (most of the shelter homes provide maximum accommodation for up to six weeks) and find solutions to the questions of support, placement of children. If the abused woman leaves the children, the husband may not let her have them and may get her charged for desertion. If she does take them, she fears the disruption of their normal lives and the risks that any retaliation violence may involve them and that if the father gets visitation rights she will be forced to face the abuser. To make matters worse for her, if she is working, it is expected that she will not let her personal life reflect in her ability to work. If she is not working she is then forced to find a means of sustenance for her and her children. To sum, it turns out a no win situation and a situation more abusive through no fault of her.

²⁴⁰ During the course of research, I was not able to come across any statistical figures disclosing how frequently either of these situations occur. It seems more likely that a battered woman would ask the police not to arrest her batterer when someone other than the woman herself has called the police (e.g. neighbour), but it is also possible when the victim herself has contacted the police.

One reason a battered woman will not want her husband arrested is fear - fear that her husband will follow through on his threats and beat her again, even more viciously, because she had him arrested. On a policy level, some battered women's advocates argue that the burden should be on the state, and not the victim, to decide to arrest anyone acting in violation of criminal laws. (This relieves the battered woman from feeling that she sent her husband to jail, and properly bases the arrest decision on the batterer's criminal behaviour. A firm arrest policy whenever there is probable cause, regardless of the battered woman's expressed feelings, might decrease the likelihood of further battering once the battering man is released.) Others, however, believe that the battered woman has the best knowledge of how to deal with her own danger and how the batterer is likely to respond to arrest, and thus that she should have control over the arrest decision. In Seattle, battered women have input in choosing which of a variety of options will be most helpful in dealing with their batterer, and will best achieve their safety. When a battered woman contacts the police, she receives a letter from the city attorney's office inviting her to discuss with an advocate the type of sentence, she feels the defendant would benefit from, e.g. alcohol or batterer's counselling, a no-contact order, payment of bills she has incurred as a result of the incident, or jail time. (See: "Reducing Case Attrition: Working With Battered Women - 4 Response to Violence" in 3 (1981) *The Family* at 5, 5-9)

to the studies of police behaviour throughout many countries also rests on these premises.²⁴¹ Arrest has a variety of meanings to police. It is the assertion of a legal solution in the restoration of what is construed to be a violation of a private 'order', yet policing, as Reiner proposes, is at its very core concerned with public order maintenance.²⁴² For practical purposes, the distinction maintained between private and public violence by law makers and enforcers deprives the battered woman the equal protection of law.²⁴³

In the United States of America, all the States have passed laws criminalizing domestic violence²⁴⁴ and made it possible to introduce mandatory arrest laws.²⁴⁵ But, in spite of these mandatory laws police have generally resisted enforcing these laws formally or informally. Departmental policies often reinforce the idea that domestic violence is a low priority in law enforcement efforts. Actions have been brought against police departments for failure to enforce these laws and actions have also been brought against cities and municipalities for drawing policies which reflect unequal protection

²⁴¹ Gree, 1986; Burris and Jaffe, 1983; Sherman and Berk, 1984; Berk and Newton, 1985.

²⁴² Hanmer, *supra*, note 210, at 50-51.

²⁴³ Despite the fact that in most of the countries, though the basic Constitution does state about their right to life, and freedom on equal basis, very differentiation of women relating to domestic and hence not as important as public violence nullifies the very purpose of such legislative intention in the embodied in the Constitution.

²⁴⁴ See generally, Lenman, "A Model State Act, 1984: Remedies for Domestic Abuse" (1986) 21 *Harvard Journal of Legislation* 61, 62 n. 84. listing recent enactments providing remedies to victims of domestic violence.

²⁴⁵ Humphrey's J.C. and Humphreys, W.O (1985) "Mandatory Arrest: A Means of Primary and Secondary Prevention of Abuse of Female Partners" 10 *Victimology*, pp. 267-80.

before law hence denying the aggrieved a constitutional right.²⁴⁶ The policies which reinforce the belief that women must be submissive to men in the home and send the message that women who do not please their spouse "deserve" to be abused was held to be discriminatory in *Mississippi University for Women v. Hogan*.²⁴⁷ The Supreme Court held that discriminating practices based on "traditional, often inaccurate assumptions about the proper roles of men and women" would be found invalid.²⁴⁸ The Court declared that

care must be taken in ascertaining whether the statutory objective (here, the policy decision not to intervene in domestic assaults) itself reflects archaic and stereotypic notions. Thus, if the statutory objective is to exclude...members of one gender because they are presumed... to be innately inferior, the objective itself is illegitimate.²⁴⁹

²⁴⁶ *Hynson v. City of Chester*, Legal Department 864 F.2d at 1003 (3rd Cir. 1988) (vacating order denying summary judgement on equal protection claims and remanding for further proceedings); *Watson v. City of Kansas*, 857 F.2d at 698 (10th Cir. 1988) (reversing order granting summary judgement to City and police officers on equal protection claim and remanding to district court) The Third Circuit noted this trend in *Hynson v. City of Chester*, Legal Department 864 F.2d 1026, 1027, 1030 (3d Cir. 1988) (citing *Watson v. City of Kansas City, Kan.*, 857 F.2d 690 (10th Cir. 1988); *Balistri v. Pacifica Police Department*, 855 F.2d 1421 (9th Cir. 1988) (original opinion), amended and superseded, 901 F.2d 696 (9th Cir. 1990); *Dudosh v. City of Allentown*, 665 F.Supp. 381 (E.D. Pa), reh'g denied sub-nom., *Dudosh v. Warg*, 668 F.Supp. 944 (E.D. Pa. 1987), vacated and rem'd, *Dudosh v. City of Allentown*, 853 F.2d 917 (unpublished opinion 3d Cir.), cert. denied, *Dudosh v. Warg*, 488 U.S. 942 (1988), reh'g granted in part, *Dudosh v. City of Allentown*, 722 F.Supp. 1233 (E.D. Pa. 1989); *Thurman v. City of Torrington*, 595 F.Supp. 1521 (D.Conn. 1984)).

²⁴⁷ 458 U.S. 718 c 1982.

²⁴⁸ *Ibid* at 726.

²⁴⁹ *Ibid*.

In many places, municipal policies of police non-intervention in domestic assault often rest on "traditional and inaccurate assumptions"²⁵⁰ which are based on patriarchy.

In *Personal Administrator v. Feeney*²⁵¹ the standard laid down by the Supreme Court requires first an adverse impact on women, and second that the law or policy was motivated by an animus against women.²⁵² When state action discriminates based on a facially neutral classification, courts require proof of discriminatory intent,²⁵³ and not simply proof of disproportionate impact on a group, before they will apply heightened or strict scrutiny.²⁵⁴ This Supreme Court decision further elaborated the meaning of the intent standard, and narrowed the circumstances in which intent can be found. The Court held that the foreseeability of a highly disproportionate discriminatory impact was insufficient to prove that the law was passed with discriminatory intent. Rather, to prove

²⁵⁰ *Ibid.*

²⁵¹ 442 U.S. 256 (1979). In this case, Massachusetts instituted a system of preferential hiring for veterans for state civil service jobs. Helen Feeney, an unsuccessful female job applicant, claimed that discriminatory intent could be inferred from the fact that the veterans preference was adopted with full foreknowledge that it would greatly disadvantage women, because over 98% of the veterans were men. Because the Court found that the law was adopted for the permissible purpose of aiding veterans, rather than for the impermissible purpose of discriminating against women, the statute was upheld.

The minuscule number of female veterans in the United States is the result of open gender discrimination within the armed forces that prohibits women from combat duty. The Supreme Court refused to consider this discrimination within the armed forces as relevant to Helen Feeney's case, however. Nor did the Court consider the less blatant discriminatory notions that might have inhered in the legislature's decision to provide an advantage to veterans, e.g., a desire to honour veterans because they embody the highest goals of masculinity.

²⁵² *Ibid* at 274.

²⁵³ *Ibid.* at 276. See also: *Washington v. Davis* 426 U.S. 229, 239 (1976).

²⁵⁴ *Ibid.* at 279.

intent, the plaintiff must show that "the decision-maker ... selected or reaffirmed a particular course of action at least in part "because of," not merely "in spite of," its adverse effects upon an identifiable group."²⁵⁵

The language of *Feeney* implies that an unconstitutional discriminatory purpose must show a *purpose to harm* a protected group. Evidence demonstrating that police officers do not arrest in domestic violence cases because they believe it is acceptable for men to batter their wives would demonstrate a purpose to harm women, and would be evidence that the non-arrest policy was selected "at least in part 'because of'... its adverse effects" on women. It is submitted, that it is, however, not clear from *Feeney*, that such a purpose to harm requires an invidious or malicious intent to allow women to be battered. Discriminatory intent should also be found if it can be shown that the police's seemingly benign support for the privacy of the family is actually premised on the belief that men should be in charge of the home. Acting upon such a stereotypic view of sex roles directly harms women, and thus should be interpreted to indicate discriminatory intent.²⁵⁶

²⁵⁵ *Ibid.* at 279. The Court noted, however:

This is not to say that the inevitability or foreseeability of consequences of a neutral rule has no bearing upon the existence of discriminatory intent. Certainly, when the adverse consequences of a law upon an identifiable group are ... inevitable ... a strong inference that the adverse effects were desired can reasonably be drawn. But... an inference is a working tool, not a synonym for proof.

Ibid. at 279

²⁵⁶ Amy Eppler, "Battered Women and the Equal Protection Clause: Will the Constitution Help Them When the Police Won't" ((1986) 95 *The Yale Law Journal*, 788 at 798.

The willingness of police to ignore both battering men's criminal behaviour and battered women's pleas for help demonstrates police intent to allow women to be harmed by men. Such respect for male rule is a stereotype which harms women, and provides evidence of the police's discriminatory intent.²⁵⁷

When the police refuse to arrest a man who has committed an assault because the victim is his wife, the state re-defines a criminal assault as "domestic violence," thereby changing an otherwise criminal act into non-criminal behaviour. The state creates a special category of violence that is immune from the norms of criminal law. The non-arrest policy is not simply an omission or failure to act, but is an act itself - a reinterpretation and social construction of behaviour that transforms a crime into a non-criminal "family problem."

An approach that favours arrest sends a strong message to the batterer that such violence will not be tolerated by the community. In communities non-arrest policy and statistics such as those used by the plaintiff in *Watson v. City of Kansas City*²⁵⁸ may create an inference that the City knew of and accepted a wide spread pattern of police

²⁵⁷ *Ibid.* at 278-80.

²⁵⁸ 857 F. 2d 690-695 (10 Cir. 1988). The plaintiff in *Watson* was the wife of a police officer whose superiors refused to discipline him, even after she complained of abuse. They refused to arrest him even when she formally filed charges against him.

refusal to provide protective services to abused women.²⁵⁹ The plaintiff in *Watson* also offered evidence that police training for domestic violence situations was orientated toward mediation, with arrest as a last resort.²⁶⁰ The 9th Circuit also has ruled in *Balistreri v. Pacifica Police Department*²⁶¹ that an abused women who was told by the police that she "deserved" her husband's beatings is entitled to a trial on the question whether official indifference to her problem is an equal protection violation. In *Alesia Hynson's* case,²⁶² her domestic problems were far more severe than beatings. She was shot to death by her boyfriend less than a day after advising the police that he was threatening her and had tried to break into her house. The landmark case of *Thurman v. City of Torrington*²⁶³ is a clear example of police failure to provide protection to plaintiff.²⁶⁴ In this case the Torrington police ignored the plaintiffs reports of threats and assault over an eight month period, refused to arrest Charles Thurman even after watching him assault his ex-wife,

²⁵⁹ *Ibid.* The plaintiff offered evidence that the domestic assault arrest rate in Kansas City was 16%, while the non-domestic arrest rate was 31%.

²⁶⁰ *Ibid.* at 696.

²⁶¹ 855 F. 2d 1421-22 (1988).

²⁶² *Hynson*, 864 F.2d at

²⁶³ 595 F. Supp. 1521. (D. Conn. 1984)

²⁶⁴ On June 10, 1983, after eight month of harassment and attempted assault, Charles Thurman appeared at the residence at which Tracy Thurman was staying and demanded to speak with her. After Tracy called the police, Charles began to stab her in the chest, neck, and throat. A police officer arrived around twenty-five minutes later, and in the officer's presence dropped the bloody knife and kicked Tracy in the head and then ran inside and returned with his son, when he dropped the son on top of his wounded ex-wife. He kicked the victim in the head once more. Three more police officers arrived at the same time, but made no effort to take Charles into custody despite of his continued threats towards Tracy. He was not arrested until he advance towards her again while she was lying on stretcher. *Ibid.* 1525-26.

refused to accept complaints, and refused to conduct an investigation. The plaintiff and her son brought an action against the city and its police department, alleging their constitutional rights to equal protection of laws was violated by the non-performance or mal-performance of official duties by the police. The United States District Court found that these facts established a pattern of "deliberate indifference" on the part of the police department to the complaints of the plaintiff and its duty to protect her.

The willingness of the police to take serious actions directly affects the victim's perception of her ability to escape from the violence.²⁶⁵ By arresting the assailant, the victim feels that the society values her.²⁶⁶

The analyses of the American case law indicates that police officers typically avoid arresting the abuser and adhere to a non-arrest policy. Another police method is attempting to counsel both parties.²⁶⁷ Mediation is a method of dispute resolution widely used by police in responding to domestic calls. At one time it was promoted as a "sensitive" method of handling intra-family disputes. However, when the violence or

²⁶⁵ Eppler, "Battered Women and the Equal Protection Clause: Will Constitution Help Them When the Police Won't?" (1986) 95 Yale Law Journal 788 at 808-809 n. 84.

²⁶⁶ According to one author, if the society views domestic violence as a public matter rather than a private matter, the police will arrest the abuser, and victims will believe they have the power to stop the abuse by calling the police. *Comment, supra*, note 228, at 223-224.

²⁶⁷ Fields, "Wife Beating: Issues of Public Policy" pp. 222, 251-52 (United States Comm'n on Civil Rights ed. 1978) (statement of Marjory Fields).

the threat of it is part of a dispute, most experts believe that mediation is an ineffective and inappropriate response.²⁶⁸

Feminists in the United States of America and Canada have been highly critical about the attitudes of police, courts, and judges regarding violence against women. Especially in the case of wife batterings the courts appear to indicate that although the abuse is a crime, the batterer does not deserve harsh criminal punishments.²⁶⁹ The justification is that "under the influence of alcohol, abusive men are not solely responsible for violent acts - there must be some provocation from the woman partner side to outrageous abuse"²⁷⁰. In Jordan's case,²⁷¹ both the judge and jury saw the assault as a crime which demanded conviction and incarceration, but believed that within the

²⁶⁸ Mediation at the time of the attack is ineffective because it pre-supposes that the two parties are equal. In a abuse situation, the victim is weaker and powerless and it also gives abuser a weak message. Moreover, mediation is inappropriate because it requires the powerless victim to share in the blame of the attack by equally making her responsible for what he has done and that she is equally liable to try and fix what *he* has done. ("Gender Equality in the Justice System", *A Report of the Law Society of British Columbia Vol. 2*, (Gender Bias Committee, 1992), ch. 7, p. 45.)

Also, temporarily calming down the assailant (like sending the assailant away from house for several hours) does not stop subsequent abuse and also in the cases where woman is already divorced as in the case of *Hynson* (*supra*, note 246) and *Thurman* (*ibid*) cases or in process of getting divorce this method has no use and in the cases where they are still in the relationship by telling the victim to "give him another chance", in my view would be drastic.

²⁶⁹ See *People v. Thompson* 160 Cal. App. 3d 220, 206; Cal. Repr. 516 (1984).

²⁷⁰ *Ibid*.

²⁷¹ *Commonwealth v. Jordan* 397 Mass. 489, 492, N. E. 2d 344 (1986). In this case the defendant kept the victim bound for twelve hours. At one point, when she urinated on the floor, the defendant wiped the urine from the floor with a rag, and put into the victim's mouth, and tapped the victim's mouth shut.

criminal justice system, wife abuse should not be treated as a serious criminal offence.²⁷²

I regretfully submit that until the attitudes of law administrators, which reinforce patriarchal attitudes changes it will be impossible to achieve equal protection of law and elimination of violence against women through law reforms alone. There has to be social reform as well. Law enforcing agencies should not give crime against women low priority. In fact it should get more attention because for centuries women's subjugation had been accepted and accorded no priority. This has resulted in long subjugation of women.

A study conducted upon the victims of family violence indicated that contact with a policewoman resulted in a more favourable experience than contact with a policeman. However, while policewomen were more able to calm a situation than the subjects had anticipated, they did not automatically take the woman's side in an argument between cohabitants. Women have increasingly been hired as police officers, and placed in line situations previously considered "for men only". Empirical research has generally suggested that police-women are as capable as men are in performing all the duties

²⁷² United States Commission on Civil Rights, "Under the Rule of Thumb: Battered Woman on the Administration of Justice" (1982) at 4.

associated with patrol.²⁷³ But, it must be noticed that the ratio of policewoman to policemen is still considerably low.²⁷⁴

Further, it has been argued that police-women would be a valuable asset to the department and the community because they would precipitate less violence and improve community relations. Theoretically, police-women would be more effective in handling problems reported by females and would tend to receive more co-operation and assistance from citizens when they request help in dealing with disturbances.²⁷⁵ In spouse abuse situation, Greenworld suggests that female complainants would benefit from a more sympathetic approach.²⁷⁶ Research, however, has suggested that many policewomen try to gain acceptance into the male world of policing by becoming less feminine. These same policewomen emphasize the "macho" nature of police work and suppress their own natural conscientious behaviour in the fear that if they do not do so, it would, to their own disadvantage, differentiate them from their male colleagues.²⁷⁷

²⁷³ Bloch, P. & Anderson, D., *Police Women on Patrol* (Washington D.C.: Police Foundation, 1974)

²⁷⁴ Hanmer, *supra*, note 210.

²⁷⁵ Sherman, C.A., "Psychological View of Women in Policing", (1973) *Journal of Police Science & Administration*, pp. 1, 383-394.

²⁷⁶ Greenworld, J., "Aggression as a Component of Police Citizen Transaction - Differences Between Male and Female Police Officers", Ph.D dissertation, City University of New York, 1976.

²⁷⁷ Martin, S., "Police-women and Police-women; Occupational Role Dilemmas and Choice of Female Officers" 7 (1979) *Journal of Police Science and Administration*, pp. 314-323. However, according to the survey, when questioned about the police response, 70% of the selected shelter-home residents described it as having been at least little helpful and 60% indicated that they would like at least one policewoman to respond to future calls for assistance. Kennedy, Daniel B. & Homant, Robert J., "Attitudes of Abused Woman Towards Male and Female Police

These are some of the reasons why a feminist inspired campaign for an all womens' police force to control male violence, without compromising women's independence, was appropriated by the patriarchal state. It has also been suggested that the proportion of women to men in police should be balanced and they should also be in managerial position as well as in positions where the response to the cases for assistance for women because, while women are supervised and controlled by men, it will be difficult for women officers to behave any differently from their male colleagues.²⁷⁸

Officers", (1983) 10 Criminal Justice and Behaviour, 391 at 402.

²⁷⁸ *Ibid.* at 23, 189.

6. Conclusion

The discussion in the chapters of this dissertation shows that women have long been subjected to violence and systematically deprived of power in all patriarchal societies. The patriarchal structure of the society is reluctant to discuss this element of itself. For this reason, it is important to open the discussion of these issues to all members of society. Unless this is done women will find it hard to express their views and the historic subjugation and violence will continue. Power has been usurped by men through a patriarchal society and legal system designed to promote only their interests. Women have been deprived and power used to abuse them. This is the situation both in societies which claim to provide accountability and in those which lack it.

The history of most of the patriarchal cultures in different countries clearly shows that violence against women was an accepted and normal feature of those societies. The powerless status of women in these societies has made them the largest group of victims of violence for centuries. Enactment of new and reformatory legislation has served a limited purpose because the enforcers, instead of understanding the plight of victims, showed greater understanding towards the perpetrators.

Recent research, movements by feminist groups and women activists have identified the different forms of violence against women. But for their efforts, these would have

continued to be hidden under the garb of cultural, religious and ideological beliefs. Until recently men treated women like any other chattel and used/abused them for pleasure and profit.

Many steps have been taken around the world to address this issue of violence against women. Most common of these was giving more rights to women. This has been of limited help in improving the situation because this approach fails to address underlying patriarchal attitudes. This is one reason why feminists have critiqued liberal legalism which mediates male dominance by adopting the male point of view in law at the same time it enforces this view on society.

The male point of view of law has further damaged women by granting more power to male dominated agencies such as the police and, to make it worse, made these powers discretionary. This has led to further abuse of women. This kind of abusive power is more evident in situations of insurgency and army rule.

No law guarantees that women will forever remain the social unequal of men. It has not been necessary. Law granting gender equality is of little effect in an unequal society. Before one can be equal legally, one must be equal socially. So long as power enforced by law reflects and corresponds - in form and in substance - to power enforced by men over women in society, law is objective, appears principled, becomes just the way

things are. So long as men dominate women effectively enough in society without the support of positive law, nothing constitutional can be done about it.

Total elimination of violence against women in any form is feasible only by changing the basic structure of the society. This basic structure of society varies from country to country depending upon the cultural and historical background. Current efforts to eliminate violence against women have generally resulted in law reforms. But, such reforms will not be helpful until the reform is tailored to the particular oppressed group of society and the implementation of law such as to effectively allow men and women to equally share the same platform. As a preliminary step to achieve this the role of the law enforcing agency - police, must be thoroughly revised. The current efforts for universal elimination of violence against women must undergo change.

The basic structure in any society cannot be changed without understanding the reasons for its present shape. The history and manner in which women around the globe have been forced into subordination to men has been examined in Chapter one. In this context, we also looked at the role played by the patriarchal system in women's subjugation and violence against them. That chapter also shed light on how the various forms of violence against women have been, and to quite an extent are being excused and exempted from control under the raiment of culture, religion and tradition which have aided the patriarchal structure of society by vesting sole power in the male for centuries.

The purpose of this discussion was to underline the need to pluralise the terms and to talk of "violence". It is possible to trace links between different types of levels of violence, but these links are often complex. We cannot understand these linkages without constantly reminding ourselves that we are dealing with construction of patriarchal culture leading to social hierarchies. These linkages have to be reproduced in a context of power inequality, whether that inequality be expressed in gender or class terms.

An analysis which locates men's violence as the fundamental form of social control of women in patriarchal society demonstrates that, in the absence of any fundamental change in the power relations between men and women, the problem addressed will not be resolved by minor reforms in policing or law reform. So long as the state remains committed to enforcing existing power relations only marginal reforms - such as the curbing of the excesses of misogyny - are winnable, and then only with a struggle. Given the energy required and the uncertainty that any gains can be secured through reform, it is perhaps more useful to look to alternative strategies.

In Chapter two I analyzed the different faces of violence against women around the world. In this relation, the paper focused on the various forms of violence against women such as that of rape, sexual harassment, wife abuse/assault, infanticide, incest, child abuse, and prostitution. This chapter also attempted to delineate the hidden purpose for which these forms of violence are resorted to by men and their impact on women.

As seen in Chapter three the power to control all forms of violence vests in the state. In that chapter we also saw a global review of violence against women in detention and the analysis of the abusive use of this power by agencies of the state. To reflect how this power and want of accountability and deterrent forces can result in a mockery of the whole concept of justice, the chapter presented a review of violence against those women who are directly under the control of police - the primary law enforcement agency of the state. Custodial rape, one of the most common forms of such violence, was dealt with in detail in this chapter. By using examples from the Indian sub-continent the chapter showed how the attitude of police in developing countries has, instead of controlling the violence, promoted violence against women and reviewed the impact of this attitude on the society. We also saw that in these countries the police are not only notorious for raping women in their custody but also that their general attitude towards violence against women is one of indifference. Incidents of dowry death, Sati, are clear examples where the killer gets away after committing the crime with the help of police. The police see nothing wrong in letting this happen. In fact, in their advisory position they often tell women that they have to live in sub-ordination and if their husbands are violent from time to time there is nothing wrong with it. Even more depressing is when the girl's parents also acquiesce on this attitude. Elimination of violence against women cannot be achieved through law reform alone. Proper enforcement of such reformative measures and accountability of the enforcers and condemnation of enforcers when they fail to do what is expected of them, are equally important to eliminate violence against women.

Unlike in India, in the United States of America and in Canada the role and attitude of police and the concept of wife battering is well defined through the efforts of feminists and women's groups. These groups have also made the judiciary conscious of these issues. Consequently, the criminal justice system in the United States of America and Canada has made it possible to bring action against police if they fail to respond appropriately. One wonders which response of police is appropriate and who determines appropriateness. In this context the discretionary powers of police are questionable. Chapter four analyzed the general attitude of police towards violence against women, the victim's perception of police, and the police perception of abused women on the issue of family violence - wife battering specifically. We saw that even in those cases of wife abuse where arrest has been made mandatory the police generally still fail to arrest the perpetrators. This reinforces the attitude that wife abuse is not a crime. It is yet to be seen whether the police will comply with the law reform or if the criminal justice system will seriously treat wife abuse as a criminal offense.

Policing men's violence against women is located within the structures of patriarchy. If policing is to provide protection it can only do so in a limited way in social systems that are founded on men's use of violence. If we are searching for a protection that allows women some control in their lives, some right to decide their own futures, then it is necessary to alter the terms of the debate from a consideration of current shifts in police policy or discussions of police accountability. It is imperative to include wider

social questions about the effect on the police of gendered power relations in societies dominated by the interests and concerns of men, and how these can be altered, in order that a truly fair, and therefore helpful service can be offered to all women.

As discussed in this dissertation, in the present structure of society, violence against women cannot be eliminated until there is a general awareness of the rights of women. This awareness in society can lead to more accountability from men and the police in any country. I believe that under the present structure of society violence against women cannot be eliminated until the attitude of women towards themselves, that of men in general and police in particular, which in direct proportion affects the attitude of men towards women, is changed.

Police action cannot by itself stem the tide of violence against women. It can, however, stop perpetuating and reproducing it. To do so would require breaking its links with other aspects of social life that maintain and perpetuate women's subordination. Police protection within the context of male domination does not and cannot promise women autonomy. We know that the sweeping changes in legislation concerning rape and sexual assault, with for instance the law protecting women from cross-examination about their prior sexual histories, known as rape shield laws, have not revolutionized the legal stance towards women.

Some women have, on their own initiative, sought out discussion with the police about police practices and have participated in developing training programs for policing in battering situations. While doing so, it is important that feminists are sensitive to police practice in multi-racial and multi-ethnic contexts and actively confront the use of militaristic tactics in policing. These practices may limit women's use of the police in times of crisis. But we are naive to believe that changing police practice is just a problem of training. While "training" is supposed to address and confront these entrenched images of women, the context of police practice - the internal organizational structure that provides the day-to-day rewards, assessments, and criticisms of police practice - remains essentially intact. So does its masculinist stance. Change within the internal structure of policing means actively confronting the stranglehold of the frustrations of rank-and-file police. It is not enough to promote legislative change, write and institute policy directing "serious" treatment of battering, promote presumptive arrest policies, and "train" police to be more attentive to crimes of sexual and physical assault of women. The police hierarchy must be sensitive to the concerns and the resistance of rank-and-file police. Until these supervisors find some way of incorporating their own past understanding of day-to-day policing into means of instituting practice, not much will change on the lower level.

I end with the quote of Andrea Dworkin:

"One can always be excited *about* ideas without changing at all. One can think *about* ideas, talk about ideas, without changing at all, people are willing to think about many things. What people refuse to do, or resist doing, is to change the way they think.²⁷⁹

²⁷⁹ Andrea Dworkin, *Right Wing Women* (New York: Perigee Books, 1983); "Complicity: An Introduction to Andrea Dworkin, "Abortion", Chapter 3, *Right Wing Women*" in Catharine A. MacKinnon, "Law and Inequality" (1983) 1 *A Journal of Theory and Practice* 89 at 95.

Bibliography

Books

Backhouse, C. & Cohan, L., *The Secret Oppression: Sexual Harassment of Working Women* (Toronto, Macmillan of Canada, 1978).

Beattie, J. M., *Crime and the Courts in England 1660-1800* (Princeton: Princeton Univ. Press, 1986).

Bonaparte, M., *Female Sexuality* (New York: International University Press, 1953).

Dandvate, P., Kumari, R., & Verghese, J., *Widows, Abandoned and Destitute Women in India*, (New Delhi, India: Radiant Publishers, 1989).

Del Martin, *Battered Wives* (New York: Simon & Schuster, 1976).

Denning, L., *The Due Process Law*, (London: Butterworths, 1960).

Dorothy, S. K., *Women to Burn: Suttee as a Normative Institution*.

Finkeker, D., Gelles, R., & Hotaling, G., *The Dark Side of Families*, (Beverly Hills, CA: Sage Publication, 1983).

Fleiss, R., *Symbol, Dream, and Psychosis* (New York: International Universities Press, 1973).

Freeman, M. D. A., *Legal Ideologies, Patriarchal Precedents and Domestic Violence in State Law and the Family: Critical Perspectives* (London: Tavistock, 1984).

Gelles, R. J. & Cornell, C. P., *International Perspectives on Family Violence* (Toronto: Lexington Books, 1983).

Greenacre, P., *Trauma, Growth and Personality* (New York, International University Press, 1950).

Guberman, C. & Wolfe, M., *No Safe Place: Violence Against Women and Children* (Toronto: Women's Press, 1985).

Hanmer, J., Radford, J., & Stanko, E. A., *Women, Policing, and Male Violence: International Perspectives* (London: Routledge, 1989).

Jennifer, R., *Pornography and its Effects: A Survey of a Recent Literature* (Toronto: Ontario Status of Women Council, 1980).

Jenson, P., *Spousal Abuse in Metropolitan Toronto: Research Report on the Response of the Criminal Justice System* (Toronto: Metro Toronto Advisory Committee on Spousal Abuse, 1989) as cited in *Wife Assault: The Health Issues, Factsheet* (Toronto: Ontario Women's Directorate).

Liddle, J. & Joshi, R. *Daughter of Independence: Gender, Caste and Class in India* (United Kingdom: Zed Book Ltd, 1986).

MacKinnon, C. A., *Sexual Harassment of Working Women* (New Haven: Yale University Press, 1979).

Male Violence in Relationships and the Justice System, (New Brunswick: Advisory Council on the Status of Woman, Dec. 1989).

Matsui, Y., *Women's Asia*, (London: Zed Book Ltd., 1989).

Pressman, B. N., *Family Violence: Origins and Treatment* (Guelph: Children's Aid Society of the city of Guelph and the county of Wellington, 1984).

Ranjana, K., *Female Sexuality and Bodily Functions in Hindu Religion*, (New Delhi, India Centre for Social Research).

Redmond, S., *Sexual Abuse, Family Violence in a Patriarchal Culture: A Challenge to Our Way of Living*, (The Church Council on Justice and Corrections & The Canadian Council on Social Development, Ottawa).

Reich, A., *Analysis of a Case of Brother-Sister Incest* (New York, International University Press, 1973).

Rich, A., "Compulsory Hetro-sexuality and Lesbian Existence" in A. Snitow, *Powers of Desire* (New York: Monthly Review Press, 1984).

Rich, A., *On Lies, Secrets and Silence Selected Prose 1966-78* (New York: W. W. Norton and Co., 1979).

Russell, D. E. H., *Rape in Marriage* (Bloomington: Indiana University Press, 1990), ch. 8.

Saunders, D. G., "Wife Abuse, Husband Abuse or Mutual combat?" in K. Gillo & M. Bograd eds., *Feminist Perspective on Wife Abuse*, (Newbury Park, CA: Sage Publications, 1988).

Stacey, W. & Shupe, A., *The Family Secret: Domestic Violence in America* (Boston: Beacon, 1983).

Macleod, L. & Codieux, P., *Wife Battering in Canada: The Vicious Circle*, (Canadian Advisory Council on the Status of Women, 1980).

The Equality of Women, (Liverpool: Liverpool University Press).

Thomas, P., *Indian Women Through the Ages*, (New York: Asia Publishing Co., 1964).

Thompson, E., *A Historical and Philosophical Inquiry into the Hindu Rite of Widow Burning* (London, UK: Allen & Unwin, 1928).

Wolf, N., *The Beauty Myth* (Mississauga, Ont.: Random House Canada, 1990).

Articles

Abell, Jennie "Women, Violence, and the Criminal Law: It's the Fundamentals of Being a Lawyer that are at Stake Here." (1992) 17 Queen's Law Journal, pp. 147-173.

Addis, Elisabetta "Women's Liberation and the Law on Sexual Violence: the Italian Feminist Debate" (1989) 19 Socialist Review, pp. 105-128.

Ahluwalia, Seema, "Family Violence and the Women's Movement: The Conceptual Politics of Struggle" (1991) 10 Canadian Journal of Family Law, pp. 179-181.

Archer, Naomi Hilton, "Battered Women and the Legal System: Past, Present and Future" (1989) 13 Law and Psychology Review, pp. 145-163.

Barrett, Margaret B. "Representing the Abused Spouse in Domestic Violence Cases" (1992) 4 Divorce Litigation, pp. 65-76.

"Battered Women and the Equal Protection Clause: Will the Constitution Help Them When the Police Won't?" (1986) 95 Yale Law Journal 788.

Beck, Lisa R. "Protecting Battered Women: a Proposal for Comprehensive Domestic Violence Legislation in New York" (1987) 15 Fordham Urban Law Journal, pp. 999-1048.

Besseney, Ilona M. "Visitation in the Domestic Violence Context: Problems and Recommendations" (1989) 14 Vermont Law Review, pp. 57-78.

Binder, Renee L. "Women Clinicians and Patient Assaults" (1991) 19 The Bulletin of the American Academy of Psychiatry and the Law, pp. 291-296.

Blackman, Julie "Potential Uses for Expert Testimony: Ideas Toward the Representation of Battered Women Who Kill" (1987) 9 Women's Rights Law Reporter, pp. 227-238.

- Blackman, Julie "Emerging Images of Severely Battered Women and the Criminal Justice System" (1990) 8 Behavioral Sciences & the Law, pp. 121-130.
- Bloom, S. L., "The National Delimma: Can we Heal Ourselves?" (1992) The Journal of Psychohistory 289.
- Bowker, Lee H. "Police Services to Battered Women: Bad or Not So Bad?" (1982) 9 Criminal Justice and Behavior, pp. 476-494.
- Bowker, Lee H., "Police Services to Battered Women: Bad or Not so Bad?" (1982) 9 Criminal Justice and Behavior, pp. 476-494.
- Braverman, Mara "Battered women: Special Clients With Special Needs" (1981) 8 Barrister, pp. 10-15
- Breiting, Vibeke B., Staugaard, Karin Helweg-Larsen Helle & Aalund, Ole et al. "Injuries Due to Deliberate Violence in Areas of Denmark v. Violence Against Women and Children" (1989) 41 Forensic Science International, pp. 285-294.
- Brown, Linda R. Insalaco "The Admissibility of Expert Testimony on the Subject of Battered Women" (1980) 4 Criminal Justice Journal, pp. pp. 161-179.
- Brown, Gary Richard "Battered Women and the Temporary Restraining Order" (1988) 10 Women's Rights Law Reporter, pp. 261-267.
- Brustin, Stacy "Emerge From the Dark: a Grass-Roots Program Teaches the First Step Toward Fighting Violence Toward Women" (1989) 17 Student Lawyer, pp. 46-50.
- Bumiller, Kristine "Rape as a Legal Symbol: an Essay on Sexual Violence and Racism"(1987) 42 University of Miami Law Review, pp. 75-91.
- Bumiller, Kristin "Fallen Angels: the Representation of Violence Against Women in Legal Culture" (1990) 18 International Journal of the Sociology of the Law, pp. 125-142.
- Buser, Paul J. "The Battered Women's Syndrome; Tort Liability Makes it Essential to Separate Myths from Reality" (1992) 78 ABA Journal, p. 68.
- Cahn, Naomi R, "Civil Images of Battered Women: the Impact of Domestic Violence on Child Custody Decisions" (1991) 44 Vanderbilt Law Review, pp. 1041-1097.
- Callery, Mona "In the Best Interest of the Children: a Battered Woman's Story" (1990) 13 Harvard Women's Law Journal, pp. 383-390.

Campbell, R., "Sentence of Death by Burning for Women", (1984) 5 *Journal of Legal History*, pp. 44-59.

Chang, Dae H. "Violence Against Women in the Family: A National and International Perspective" (1987) 11 *International Journal of Comparative and Applied Criminal Justice*, pp. 153-157.

Chua, Bebe "Injunction - Exclusion of One Party from the Family Home - Parties Living Together But Not Married - Man Having Drink Problem and Using Violence on Woman - Woman and Child Leaving Family Home and Staying in a Women's Refuge in Overcrowded Conditions - Application for Ouster Injunction" (1985) 15 *Family Law Review*, pp. 31-32.

Clark, Lorene M. G. "Feminist Perspectives on Violence Against Women and Children: Psychological, Social Service, and Criminal Justice Concerns. (1989) 3 *Canadian Journal of Women and the Law*, pp. 420-431.

Clark, Lorene M. G. "Wife Battery and Determinations of Custody and Access: a Comparison of U.S. and Canadian Findings - Special Issue Commemorating the Royal Commission Report on the Status of Women in Canada" (199) 22 *Ottawa Law Review*, pp. 691-724.

Clark, L. M. G., "Feminist Perspectives on Violence Against Women and Children: Psychological, Social Service, and Criminal Justice Concerns) (1989-90) 3 *Canadian Journal of Women and the Law*, pp. 420-431.

Cook, R. J., "International Human Rights Law Concerning Women: Case Notes and Comments" (1990) *Vand. J. Transnat'l L.* 815.

Cooper, Margo "Duties and Enforcement Mechanisms for the Rights of Battered Women" (1982) 16 *Suffolk University Law Review*, pp. 937-982.

Côté, R., "Le Harcelement Sexual où les Grenaces de la virilite" *Le Harcelement Sexual ou les Petits Violence Quotidiennes*" (1983) 4 *Canadian Women Studies*.

Court, Andy "She Knew the System Would Fail Her" (1992) 14 *American Lawyer*, pp. 110-113.

Court, Andy "She Knew the System Would Fail Her - Ann Kotel, Who Was Murdered by Her Former Boyfriend Kenneth Maher" (1992) *American Lawyer* pp. 110-112.

Cracknell, Sarah "Women, Policing and Male Violence: International Perspectives" (1990) *Criminal Law Review*, pp. 139-140.

D'Amico, Robert A. "Civil Remedies and the Domestic Abuse Victim: Does Current Rhode Island Law Provide Sufficient Relief?" (1991) 25 *Suffolk University Law Review*, pp. 389-420.

Davies, Iyla, "Sentencing Aboriginal Offenders - Custom of Disciplining Women and Children" (1987) 11 Criminal Law Journal, pp. 55-56.

Demaue, L., "The Universality of Incest" (1991) 19 The Journal of Psycho-history 133.

Dutton, Don "Traumatic Bonding: The Development of Emotional Attachments in Battered Women and Other Relationships of Intermittent Abuse" (1981) 6 Victimology, pp. 139-155.

Eaton, Sarah & Hyman, Ariella "The Domestic Violence Component of the New York Task Force Report on Women in the Courts: An Evaluation and Assessment of New York City Courts" (1992) 19 Fordham Urban Law Journal, pp. 391-534.

Edwards, Susan S.M. "Women, Policing and Male Violence: International Perspectives" (1990) 30 British Journal of Criminology, pp. 376-378.

Eisenberg, Alan D. & Seymour, Earl J. "Defending Battered Women: A Model Voire Dire" (1980) 16 Trial, pp. 30-33.

Endghl, M., "The Silent Crime and the Beginning of Change" (1983) 14 Canadian Women Studies.

Eppler, Amy "Battered Women and the Equal Protection Clause: Will the Constitution Help Them When the Police Won't?" (1987) 95 Yale Law Journal, pp. 788-809.

Eppler, Amy, "Battered Women and the Equal Protection Clause: Will the Constitution Help Them When the Police Won't?" (1986) 95 Yale Law Journal, pp. 788-809.

Fahnestock, Kathryn "Not in My County; Excerpts From a Report on Rural Courts and Victims of Domestic Violence" (1992) 31 Judges Journal, pp. 10-23.

Fahnestock, Kathryn "Not in My County; Excerpts from a Report on Rural Courts and Victims of Domestic Violence" (1992) 31 Judges Journal, pp. 10-13.

Feinman, Clarice, "Women Battering on the Navajo Reservation" (1992) 2 International Review of Victimology, pp. 137-146.

Ferraro, Kathleen J. "Rationalizing Violence: How Battered Women Stay" (1983) 8 Victimology, pp. 203-212.

Finesmith, Barbara K. "Police Response to Battered Women: a Critique and Proposals for Reform" (1983) 14 Seton Hall Law Review, pp. 74-109.

Finesmith, Barbara K., "Police Response to Battered Women: A Critique and Proposals for Reform" (1983) 14 Seton Hall Law Review, pp. 74-109.

Finn, Peter "Statutory Authority in the Use and Enforcement of Civil Protection Orders Against Domestic Abuse" (1989) 23 Family Law Quarterly, pp. 43-73.

Finn, Geraldine "Taking Gender into Account in the 'Theatre of Terror': Violence, Media, and the Maintenance of Male Dominance" (1989) 3 Canadian Journal of Women and the Law, pp. 375-394.

Fisher, Susan "Battered Women" (1980) 5 District Lawyer, pp. 48-54.

Ford, David A. "Prosecution as a Victim Power Resource: a Note on Empowering Women in Violent Conjugal Relationships" (1991) 25 Law & Society Review, pp. 313-334.

Frank, Cheryl "Driven to Kill: Battered Women' Strike Back" (1984) 70 ABA Journal, pp. 25-26.

Freeman, Micheal D. A. "Violence Against Women: Does the Legal System Provide Solutions or Itself Constitute the Problem?" (1980) 3 Canadian Journal of Family Law, pp. 377-401.

Freeman, Michael D. A. "Violence Against Women: Does the Legal System Provide Solutions or Itself Constitute the Problem?" (1980) 7 British Journal of Law and Society, pp. 215-241.

Fudge, Judy, "The Effect of Entrenching a Bill of Rights Upon Political Discourse: Feminist Demands and Sexual Violence in Canada" (1989) 17 International Journal of the Sociology of the Law, pp. 445-463.

Gagnaon, Andree G. "Ending Mandatory Divorce Mediation for Battered Women" (1992) 15 Harvard Women's Law Journal pp. 272-294.

Garcia, Kimberly "Provoked to Kill" (1992) 55 Texas Bar Journal, pp. 380-382.

Gavigun, S. A. M., "Petit Treason in Eighteenth Century England: Women's Inequality Before the Law" (1989-90) 3 Canadian Journal of Woman and Law 335.

Golden, Jane F "Mutual Orders of Protection in New York State Family Offense Proceedings: A Denial of "Liberty" Without Due Process of Law" (1987) 18 Columbia Human Rights Law Review, pp. 309-331.

Goolkasian, Gail "Judging Domestic Violence" (1987) 10 Harvard Women's Law Journal, pp. 275-284.

Grau, Janice L. "Restraining Order Legislation for Battered Women: A Reassessment" (1982) 16 University of San Francisco Law Review, pp. 703-741.

Griffiths, Aled "Some Battered Women in Wales: An Interactionist View of Their Legal Problems" (1981) 11 Family Law, pp. 25-29.

Hamilton, Roger "Has the House of Lords Abolished the Domestic Violence Act for Married Women?" (1984) *Legal Action*, p. S25-S27.

Hancock, Linda, "Women, Policing and Male Violence: International Perspectives" (1991) 24 *Australian and New Zealand Journal of Criminology*, pp. 260-261.

Hanmer, Jalna & Stanko, Elizabeth A "Stripping Away the Rhetoric of Protection: Violence to Women, Law and the State in Britain and the U.S.A." (1985) 13 *International Journal of the Sociology of the Law*, pp. 357-374.

Harper, Laura S. "Battered Women Suing Police for Failure to Intervene: Viable Legal Avenues" (1990) 75 *Cornell Law Review*, pp. 1393-1425.

Harper, Laura S., "Battered Women Suing Police for Failure to Intervene: Viable Legal Avenues" (1990) 75 *Cornell Law Review*, pp. 1393-1425.

Hazari, R., "Sita and Prostitution", (September 1986) vol. 1:9 *The Lawyers Collective*.

Heidensohn, Frances "Intimate Intrusions: Women's Experience of Male Violence" (1985) 25 *British Journal of Criminology*, pp. 393-394.

Hilton, N. Zoe "One in Ten: The Struggle and Disempowerment of the Battered Women's Movement" (1989) 7 *Canadian Journal of Family Law*, pp. 313-335.

Hingorani, K., "Woman and the Law", *LAWASIA* (Apr. 29 to May 1, 1986) 202.

Holden, Helen R., "Does the Legal System Batter Women? Vindicating Battered Women's Constitutional Rights to Adequate Police Protection" (1989) 21 *Arizona State Law Journal*, pp. 705-728.

Holden, Helen Rubenstein "Does the Legal System Batter Women?: Vindicating Battered Women's Constitutional Rights to Adequate Police Protection" (1989) 21 *Arizona State Law Journal*, pp. 705-728.

Hutt, Jane "Private Violence and Public Policy: The Needs of Battered Women and the Response of the Public Services" (1987) *Journal of Social Welfare Law*, pp. 271-272.

Jacobs, Caryn "Patterns of Violence: A Feminist Perspective on the Regulation of Pornography" (1984) 7 *Harvard Women's Law Journal*, pp. 5-55.

Jacobs, B. & Hazman, Laurie R. "Ex parte Proceedings in Family Law" (1990) 23 *The Maryland Bar Journal*, pp. 10-15.

Jenkins, Pamela & Davidson, Barbara "Battered Women in the Criminal Justice System: an Analysis of Gender Stereotypes" (1990) 8 Behavioral Sciences & the Law, pp. 161-170.

Jenson, M. Katherine "The Final Blow to Battered Women?" (1982) 43 Ohio State Law Journal, pp. 491-511.

Jones, Ann "When Battered Women Fight Back" (1982) 9 Barrister, pp. 12-20.

Kapur, Naina & Pureswal, Jasjit "State Violence, Law and Gender Justice" (1990 Annual) Third World Legal Studies, pp. 133-152.

Kapur, Naina & Purewal, Jasjit, "State Violence, Law and Gender Justice (India)" (1990) Annual Third World Legal Studies, pp. 133-152.

Kara, M. "Domestic Violence and Custody - To Ensure Domestic Tranquility" (1984) 14 Golden Gate University Law Review, pp. 623-638.

Kersten, Joachim "A Gender Specific Look at Patterns of Violence in Juvenile Institutions: or Are Girls Really More Difficult To Handle?" (1990) 18 International Journal of the Sociology of the Law, pp. 473-493.

Kingdom, Elizabeth "Women's Silence, Men's Violence" (1989) 17 International Journal of the Sociology of the Law, pp. 359-362.

Klien, Dorie "Violence Against Women: Some Considerations Regarding Its Causes and Its Elimination" (1981) 27 Crime and Delinquency, pp. 64-80.

Koe, Hilary, "Women, Policing and Male Violence: International Perspectives" (1990) 29 The Howard Journal of Criminal Justice, pp. 62-63.

Kohler, Rhonda L. "The Battered Woman and Tort Law: a New Approach to Fighting Domestic Violence" (1992) 25 Loyola of Los Angeles Law Review, pp. 1025-1072.

Kristal, Alene, "You've Come a Long Way, Baby: the Battered Woman's Syndrome Revisited" (1991) 9 New York Law School Journal of Human Rights, pp. 111-160.

Kubota, M., "Japan, Women and Law", LAWASIA (Apr. 29 to May 1, 1986) 153.

Law, Sylvia L "Every 18 Seconds a Woman is Beaten; What Judges Can Do in the Face of This Carnage" (1991) 30 Judges Journal, pp. 12-18.

Law, Sylvia A., "Every 18 Seconds a Woman is Beaten; What Judges Can Do in the Face of This Carnage" (1991) 30 Judges Journal pp. 12-18.

Lawrence, Pamela "Women and Male Violence" (1984) 7 Harvard Women's Law Journal, pp.

335-338.

Lerman, Lisa G. & Goldzweig, Sharon, "Protection of Battered Women: A Survey of State Legislation" (1980) 6 Women's Rights Law Reporter, pp. 271-284.

Leuteritz, Sybille Kappel a Erika "Wife Battering in the Federal Republic of Germany" (1980) 5 Victimology, pp. 225-239.

Levin, Stephanie A. "Women and Violence: Reflections on Ending the Combat Exclusion - A Symposium on Feminist Critical Legal Studies and Postmodernism)" (1992) 26 New England Law Review, pp. 805-821.

Litsky, Mathew "Explaining the Legal System's Inadequate Response to the Abuse of Women: a Lack of Coordination" (1990) New York Law School Journal of Human Rights, pp. 149-181.

Maguigan, Holly "Battered Women and Self-Defense: Myths and Misconceptions in Current Reform Proposals" (1991) 140 University of Pennsylvania Law Review, pp. 379-486.

Mahoney, Martha R. "Legal Images of Battered Women: Redefining the Issue of Separation" (1991) 90 Michigan Law Review, pp. 1-94.

Mather, Victoria Mikesell "A Scary Tale: Battered Women Who Kill Their Abusers" (1992) 18 Ohio Northern University Law Review, pp. 601-622.

Mather, Victoria Mikesell "A Scary Tale: Battered Women Who Kill Their Abusers" (1992) 18 Ohio Northern University Law Review, pp. 601-622.

McIntosh, M., "Family Secrets as Panic Drama, (1988) 28 Feminist Review.

Merwine, Connie Jean "Pennsylvania's Protection from Abuse Act: a Decade in Existence Generates Judicial Interpretation and New Changes by House Bill 2026" (1987) 91 Dickinson Law Review, pp. 805-832.

Miller, Donna "Innovative Program Development for Battered Women and Their Families" (1980) 5 Victimology, pp. 335-346.

Miller, Breenda; Downs, William R. & Gondoli, Dawn M. "Delinquency, Childhood Violence, and the Development of Alcoholism in Women. (1989) 35 Crime and Delinquency, pp. 94-108.

Miller, K. B., "Female Circumcision: Challenges to the Practice as a Human Rights Violation" (1985) 8 Harv. Women's LJ. 155.

Morgan I. Martha & Buitraga, Monica Alzate, "Constitution-Making in a Time of Cholera: Women and the 1991 Colombian Constitution" (1992) 4 Yale Journal of Law and Feminism, pp. 353-413.

Munster, Ann "Women, Policing, and Male Violence: International Perspectives" (1990) 18 Journal of Criminal Justice, pp. 187-189.

Neidig, Peter H. "Women's Shelters, Men's Collectives and Other Issues in the Field of Spouse Abuse" (1984) 9 Victimology, pp. 464-476.

Nesselbush, Donna M. "From Rule of Thumb to Rule of Law: the Evolution of the Rhode Island Legal System's Response to Domestic Violence" (1991) 25 Suffolk University Law Review, pp. 421-459.

Pahl, Jan, "Police Response to Battered Women" (1982) Social Welfare Law (Great Britain), pp. 337-343.

Pahl, Jan "Police Response to Battered Women" (1982) Journal of Social Welfare Law, pp. 337-343.

Pence, Ellen "Women's Shelters, Men's Collectives and Other Issues in the Field of Spouse Abuse" (1984) 9 Victimology, pp. 477-482.

Philbin, Austin T. "Domestic Abuse and Violence in Massachusetts: a Survey" (1990) 24 New England Law Review, pp. 713-725.

Pintak, L., "Ken Messerman, US Missionary in War - torn Rhodesia" People Magazine (June 1979) 33.

Pollard Deana, "Regulating Violent Pornography" (1990) 43 Vanderbilt Law Review, pp. 125-159.

Post, Dianne "Protecting Domestic Violence Shelters' Records" (1991) 37 Practical Lawyer, pp. 71-80.

Postell, Claudia J. "Battered Women: Understanding the Problem" (1986) 22 Trial, pp. 75-77.

Ranjana, K., "Brides are Not for Burning: Dowry Victims in India", Manushi (1989) 104.

Rawlings, Philip "Women's Silence, Men's Violence: Sexual Assault in England, 1770-1845" (1987) 18 Cambrian Law Review, p. 100.

Riches, D., "The Net Silk Eskimo: A Special Case of Selective Female Infanticide", (1974) 13 Ethnology 351.

- Roberts, B., "All our lives: Sexual Assault & Other Normal Activities", (1983), 4 Canadian Women Studies.
- Robson, Ruthann "Lavender Bruises: Intra-Lesbian Violence, Law and Lesbian Legal Theory" (1990) 20 Golden Gate University Law Review, pp. 567-591.
- Rosen, Cathryn Jo "The Excuse of Self-Defense: Correcting a Historical Accident on Behalf of Battered Women Who Kill" (1987) 36 American University Law Review, pp. 11-15.
- Rowland, B., "The Quiet Anti-feminist", (1983) 4 Canadian Woman Studies 77.
- Salamanca, Paul E. "Domestic Violence: Massachusetts Courts and the Battered Woman's Syndrome." (1989) 30 Boston College Law Review, pp. 635-643.
- Sarda-Devi, P., & Chodavaram, R., "Letters to Manushi" (June 1991) 63-64 Manushi Journal on Women and Society.
- Schafran, Lynn Hecht "Carol Stuart and the War on Women: What is the Legal Community's Response?" (1990) 75 Massachusetts Law Review, pp. 46-51.
- Schneider, Elizabeth M. "Violence Against Women and Legal Education" (1992) 26 New England Law Review, pp. 843-875.
- Schulman, Joanne "Battered Women Score Major Victories in New Jersey and Massachusetts Marital Rape Cases" (1981) 15 Clearinghouse Review, pp. 342-345.
- Schulman, Joanne "Poor Women and Family Law" (1981) 14 Clearinghouse Review, pp. 1069-1075.
- Shad, Kerry A. "Self-defense Unavailable to Battered Women Who Kill Passive Abusers - Survey of Developments in North Carolina Law" (1990) 68 North Carolina Law Review, pp. 1159-1177.
- Sheila M. Murphy, "Orders of Protection and the Battered Woman Syndrome" (1992) 23 Loyola University of Chicago Law Journal, pp. 397-406.
- Shuaib, Susan "Acting for Battered Women" (1991) 135 Solicitors Journal (Great Britain), pp. 336-338.
- Silas, Faye A. "Family Violence: Specialized Court Hears Cases" (1984) 70 ABA Journal, p. 43.
- Sloan, John J. "Women, Policing, and Male Violence: International Perspectives" (1991) 19 Journal of Criminal Justice, pp. 195-197.
- Smith, M., "The Incidence and Prevalence of Women Abuse in Toronto" (1987) 2 Violence and

Victims in M. Randall, "The Politics of Women Abuse: Understanding the Issues" (1990) Education Wife Assault.

Smith, Shayne D. "Constitutional law - the Domestic Abuse Act of 1989 - an Impermissible Expansion of Chancery Jurisdiction" (1991) University of Arkansas at Little Rock Law Journal, pp. 537-557.

Snare, Annika "Sexual Violence Against Women: A Scandinavian Perspective" (1984) 9 Victimology, pp. 195-210.

SocaRides, C. W., "Adult-Child Pairs: Psychoanalytic Findings" (1991) 19 The Journal of Psychohistory 185.

Spence, James M. "Ceremony of Commemoration December 6, 1990" (1990) 24 Law Society Gazette, pp. 257-260.

Stairs, F. & Pope, L., "No Place Like Home: Assaulted Migrant Women Claim to Refugee Status and Landings on Humanitarian and Compassionate Grounds" (1990) 6 Journal of Law and Social Policy.

Stapleton, O. G., "Prohibiting Amniocentesis in India: A Solution to the Problem of Female Infanticide or a Problem to the Solution of Parental Deignoisés" (1990) 14 ILSA Journal of International Law, pp. 23-43.

Steinman, Michael, "Lowering Recidivism Among Men Who Batter Women" (1990) 17 Journal of Police Science and Administration, pp. 124-132.

Steinman, Michael, "Lowering Recidivism Among Men Who Batter Women" (1990) 17 Journal of Police Science and Administration, pp. 124-132.

Stone, Lorene Hemphill "Shelters for Battered Women: A Temporary Escape From Danger or the First Step Toward Divorce?" (1984) 9 Victimology, pp. 284-289.

Sugar, F. & Fox, L., "Aboriginal Women in Prison" (1990) 2 The Womanist 7.

Sun, Myra & Thomas, Elizabeth "Custody Litigation on Behalf of Battered Women" (1987) 21 Clearinghouse Review, pp. 562-577.

Torgbor, Shan "Police Intervention in Domestic Violence - a Comparative View" (1989) 19 Family Law, pp. 195-198.

Torgbor, Shan, "Police Intervention in Domestic Violence - A Comparative View" (1989) 19 Family Law, pp. 195-198.

Tupman, Alisaon "Everyday Violence: How Women and Men Experience Sexual and Physical Danger" (1992) 20 *International Journal of the Sociology of the Law*, pp. 105-106.

Viau, Louise, "Droit Criminel - Proces Par Jury Et Temoignage d'expert: Une Combinaison Gagnante Pour la Femme Battue" (1990) 69 *Canadian Bar Review*, pp. 775-783.

Waldman, Geraldine "Representing the Battered Woman" (1988) 3 *Canadian Family Law Quarterly*, pp. 167-184.

Walker, Lenore E.; Thyfault, Roberta K. & Browne, Angela "Beyond the Juror's Ken: Battered Women" (1982) 7 *Vermont Law Review*, pp. 1-14.

Walker, L., "Psychological Impact of the Criminalization of Domestic Violence on Victims" (1985) *Victimology* 206.

Walter, Paula Donner "Expert Testimony and Battered Women: Conflict Among the Courts and a Proposal" (1982) 3 *Journal of Legal Medicine*, pp. 267-294.

Wangberg, Kerry G. "Reducing Case Attrition in Domestic Violence Cases: a Prosecutor's Perspective" (1991) 24 *Journal of the National District Attorneys Association*, pp. 8-12.

Wells, Celia "Women, Violence and Social Control" (1988) 15 *Journal of Law and Society*, pp. 216-219.

West, Angela "Prosecutorial Activism: Confronting Heterosexism in a Lesbian Battering Case" (1992) 15 *Harvard Women's Law Journal*, pp. 249-271.

Woods, Laurie "Litigation on Behalf of Battered Women" (1981) 7 *Women's Rights Law Reporter*, pp. 39-45.

Woods, Laurie "Family Law in 1984: Heightened Recognition of Domestic Abuse Victims, Custodial Rights and Support Obligations" (1985) 19 *Clearinghouse Review*, pp. 1027-1033.

Woods, Laurie "Challenges to Legislation Enacted on Behalf of Battered Women" (1980) 14 *Clearinghouse Review*, pp. 426-427.

Worrall, Anne "Women, Violence and Social Control" (1990) 18 *International Journal of the Sociology of the Law*, pp. 221-225.

Zoomer, Olga J. "On the Social Causes and Function of Violence Against Women" (1983) 27 *International Journal of Offender Therapy & Comparative Criminology*, pp. 173-183.

Newspapers

Arias, Maria "Lack of Housing for Domestic-Violence Victims" *New York Law Journal* (July 26, 1988) 3.

Baker-fletcher, Karen "Mercy for Tyson? Boxer's Apologists Try to Gloss Over Sexual Violence" *The Los Angeles Daily Journal* (April 2, 1992) 6.

Carmody, Cris "Woman Challenges Protection Order Fees" *Chicago Daily Law Bulletin* (May 20, 1992) 1.

Carmody, Cris, "Woman Challenges Protection Order Fees" (1992) *Chicago Daily Law Bulletin* (May 20, 1992) 1.

Committee on Domestic Violence and Incarcerated Women: New York "Panel says Battered Women May Have No Choice But Retaliation" *Criminal Justice Newsletter* (Aug 3, 1987) 6-7.

Educating Courts About Domestic Violence" *New Jersey Law Journal* (Aug. 5, 1982) 10.

Girdner, Bill "Lawyers as Monitors for Law Office Searches" *The Los Angeles Daily Journal* (April 27, 1984) 3.

Griffin, Moira K. "Free Speech v. The Smutbusters: Will Women's Porn Posse Shoot Down the First Amendment?" *The National Law Journal* (Dec 22, 1980) 15.

Hay, J., "Rape and Torture by the State: Amnesty Report Details Routine Outrages Against Women", *The Ottawa Citizen* (6 February 1992) A1.

"Intimate Intrusions: Women's Experience of Male Violence" *Solicitors Journal* (May 24, 1985) 361.

Jordan, Hallye, "Bill on Battered-Women Proof Advances" *The Los Angeles Daily Journal* (April 10, 1991) 5.

Jordan, Hallye "Senate Judiciary Holds Forums to Take Up Ideas for Date Rape Legislation" *The Los Angeles Daily Journal* (Oct 30, 1987) 2.

Judges in Massachusetts Criticized in Harassment" *The New York Times* (Nov 30, 1986) 61.

Kaberon, Seth "Why More Battered Women Find Safety in Court; Violence in the Home" *The Los Angeles Daily Journal* (April 12, 1985) 4.

Kishwar, M., "Dowry Deaths: The Real Murderers", *Express Magazine, Indian Express*, (April 9, 1989) 3.

Marron, K., *The (Toronto) Globe and Mail* (8 August 1990) A7.

Niro, Cheryl I. "The Shameful Tragedy of Our Unprotected Children: ISBA Board Gets Report of Dire Situation" *Chicago Daily Law Bulletin* (Jan. 31, 1991) p5.

"One Battered Woman's Story - Editorial" *The Los Angeles Daily Journal* (April 22, 1992) 6.

"Only a bit of Domestic Assistance to Battered Women - Editorial" *New Law Journal* (Great Britain) (August 10, 1990) 1.

Palermo, B. J. "Already Reformed in San Francisco" *California Lawyer* (9 April 1989) 32.

Pelham, Ann & Stugress, Garry "Domestic relations in Federal Court? - Violence Against Women Act" *Legal Times* (Oct 21, 1991) 7.

Private Violence and Public Policy: The Needs of Battered Women and the Response of the Public Services" *Solicitors Journal* (May 24, 1985) 361.

"Relief for Battered Wives - Editorial" *The Los Angeles Daily Journal* (Feb. 27, 1991) 6.

Sachs, Jane "Access to Court Relief Available to Victims of Domestic" *New York Law Journal* (June 1, 1987) 1.

Sherman, Rorie "Fears Expressed on Proposed Bill to Aid Women; Federal Suits Allowed" *The National Law Journal* (June 3, 1991) 3.

Spencely, Susan Ursel Robert "Violence Against Women Deserves Recognition" *Obiter Dicta* (Feb. 15, 1982) 1.

Spencer, Gary "Legislators Seek Release of Women Prisoners" *New York Law Journal* (March 5, 1991) 1.

Sullivan, Teresa, "Fundraiser Set to Maintain Attorney for Abused Women" *Chicago Daily Law Bulletin* (June 6, 1989) 2.

Wilentz Appoints Committee on Battered Women" *New Jersey Law Journal* (Oct. 29, 1981) 1.

Wisniewski, Mary "Judges Oppose Federal Spouse Abuse Bill" *Chicago Daily Law Bulletin* (Oct 4, 1991) 2.

Youngbound, Ruth "Prisoner Advises Battered Women To 'Get Out Before You Kill' Mate" *The Los Angeles Daily Journal* (Sept 3, 1984) p. 3.

Cases Referred

Balistri v. Pacificia Police Department, 855 F.2d 1421 (9th Cir. 1988).

Bharwada Bhoginibhai Hirjibhai v. State of Gujrat 3 SCR 280 1983.

Bruno v. Codd 90 Misc.2d 1047, 1049, 396 N.Y.S. 2d 974, 977 (Supp. Ct. 1977) rev'd in part, appeal dismissed in part, 64 A.D. 2d 582, 407 N.Y.S.2d 165 (1978), aff'd 47 N.Y.2d 582, 393 N.E.2d 976, 419 N.Y.S.2d 901 (1979).

Commonwealth v. Jordan 397 Mass. 489, 492, N. E. 2d 344 (1986).

Dudosh v. City of Allentown, 665 F.Supp. 381 (E.D. Pa).

Dudosh v. City of Allentown, 853 F.2d 917 (unpublished opinion 3d Cir.).

Dudosh v. City of Allentown, 722 F.Supp. 1233 (E.D. Pa. 1989).

Dudosh v. Warg, 488 U.S. 942 (1988).

Dudosh v. Warg, 668 F.Supp. 944 (E.D. Pa. 1987).

Hynson v. City of Chester, Legal Department 864 F.2d 1026, 1027, 1030 (3d Cir. 1988).

Jane Doe v. Metropolitan (Police) of Toronto ((1990) 40 OAC 161, 74 O.R. (2d) 225, 72 D.L.R. (4th) 580)

Lavallee v. The Queen (1990) 55 C.C.C (3d) 97 (SCC).

Lichhamadevi v. State of Rajasthan, (1988) 4 SCC 456, AIR SC 1785.

People v. Thompson 160 Cal. App. 3d 220, 206; Cal. Repr. 516 (1984).

Premchand v. State of Haryana 1989 Cr. L.J. 1246 (SC); AIR 1984 SC 937.

State of Haryana v. Premchand & Others, review petition (criminal) nos 241-242/1989 in Cr. Appeal nos. 544-545 of 1986.

State of Maharashtra v. Chandraprakash Kewalchand Jain (Shamimbanu case) 1990 Cr. L.J. 889 S.C.

Stree Atyachar Virodhi Parishad v. Dilip Nathumal Chordia, (1989) 1 SCC 715 at 723.

Surinder Kumar v. State (Delhi Administration), (1987) 1 SCC 467, AIR 1987 SC 692.

Thurman v. City of Torrington 595 F. Supp. 1521. (D. Conn. 1984).

Washington v. Davis 426 U.S. 229, 239 (9176).

Watson v. City of Kansas City 857 F. 2d 690-695 (10 Cir. 1988).

Table of Cases

<i>Balistri v. Pacificia Police Department</i> , 855 F.2d 1421 (9th Cir. 1988).	113, 117
<i>Bharwada Bhoginibhai Hirjibhai v. State of Gujrat</i> 3 SCR 280 1983.	68, 70, 78, 80
<i>Bruno v. Codd</i> 90 Misc.2d 1047, 1049, 396 N.Y.S. 2d 974, 977 (Supp. Ct. 1977) rev'd in part, appeal dismissed in part, 64 A.D. 2d 582, 407 N.Y.S.2d 165 (1978), aff'd 47 N.Y.2d 582, 393 N.E.2d 976, 419 N.Y.S.2d 901 (1979).	105
<i>Commonwealth v. Jordan</i> 397 Mass. 489, 492, N. E. 2d 344 (1986).	119
<i>Dudosh v. City of Allentown</i> , 665 F.Supp. 381 (E.D. Pa).	113
<i>Dudosh v. City of Allentown</i> , 853 F.2d 917 (unpublished opinion 3d Cir.).	113
<i>Dudosh v. City of Allentown</i> , 722 F.Supp. 1233 (E.D. Pa. 1989).	113
<i>Dudosh v. Warg</i> , 488 U.S. 942 (1988).	113
<i>Dudosh v. Warg</i> , 668 F.Supp. 944 (E.D. Pa. 1987).	113
<i>Hynson v. City of Chester</i> , Legal Department 864 F.2d 1026, 1027, 1030 (3d Cir. 1988).	110, 113, 117, 119
<i>Jane Doe v. Metropolitan (Police) of Toronto</i> ((1990) 40 OAC 161, 74 O.R. (2d) 225, 72 D.L.R. (4th) 580)	104
<i>Lavallee v. The Queen</i> (1990) 55 C.C.C (3d) 97 (SCC).	1
<i>Lichhamadevi v. State of Rajasthan</i> , (1988) 4 SCC 456, AIR SC 1785.	87
<i>People v. Thompson</i> 160 Cal. App. 3d 220, 206; Cal. Repr. 516 (1984).	119
<i>Premchand v. State of Haryana</i> 1989 Cr. L.J. 1246 (SC); AIR 1984 SC 937.	76
<i>State of Haryana v. Premchand & Others</i> , review petition (criminal) nos 241-242/1989 in Cr. Appeal nos. 544-545 of 1986.	80

	151
<i>State of Maharashtra v. Chandraprakash Kewalchand Jain (Shamimbanu case)</i> 1990 Cr. L.J. 889 S.C.	79
<i>Stree Atyachar Virodhi Parishad v. Dilip Nathumal Chordia</i> , (1989) 1 SCC 715 at 723.	88
<i>Surinder Kumar v. State (Delhi Administration)</i> , (1987) 1 SCC 467, AIR 1987 SC 692.	87
<i>Thurman v. City of Torrington</i> 595 F. Supp. 1521. (D. Conn. 1984).	113, 117, 119
<i>Washington v. Davis</i> 426 U.S. 229, 239 (9176).	113
<i>Watson v. City of Kansas City</i> 857 F. 2d 690-695 (10 Cir. 1988).	113, 116