Chapter 3

Situation Analysis of Women’s Status in Pakistan and Bangladesh

A good starting point for a situational analysis would be to first look at the international commitments regarding women (Annex-C), to which both countries are signatories, and the constitutional guarantees/rights and legal safeguards for women in Pakistan and Bangladesh (Annex A).

We begin by discussing the development indicators that the UN and its different organs have set as measures for gauging human development and human security. In discussing these indices, we gather important information about the status of women; however, we contend that these indicators are unable to capture the reality of women’s lives in these countries, where the threat of direct violence emanates from the systems and policies in place in them.

In presenting a situation analysis of women’s status in Pakistan and Bangladesh, this chapter touches upon the three major dimensions/parts of the human security framework; that is, human development, human rights and critical security concerns for women in these two countries. In doing so, it aims to analyse women’s relationship with security from two major interconnected standpoints:

1. Women’s security as ensured/threatened by the state.
2. Women’s security as threatened by cultural norms/traditions at the family and community levels.

Women’s security vis-à-vis the state, and cultural norms/traditions practiced at the community and family levels intersect with one another in tangible and intangible ways. In analysing women’s relationship with the state, this chapter focuses on constitutional guarantees/rights, legal safeguards, policies and, international commitments regarding women. Largely connected to the public sphere, the realisation of many of these rights depends upon a supportive environment both in the public and private spheres of women and men. Women’s security at the family and
community levels includes forms of violence in which either the family is the sole perpetrator but has tacit support of the community, e.g. in the case of domestic violence, or honour killings, or, where the community provides tacit approval to crimes such as acid attacks and fatwas (religious edicts) circumscribing women's mobility and freedom. Furthermore, where attitudes spring from deep-seated biases resulting from misogynist traditions and thinking absorbed from within the institution of the family, the mosque, the school or other community institutions for socialisation, anti-women attitudes can be seen in detailed judgments of courts, in the manner in which the media covers violence against women, or police provide protection to survivors of violence. Thus, it is difficult to distinguish clearly between the threats from the institutions of the state whether the police or the judiciary (as in the case of trafficking) or threats from the family and the community as there is a deep nexus among all these institutions that ensure that women remain subordinate.

The following section begins by looking at the relationship of women and development after the 1970s when women emerged as a separate category within the post-World War II development paradigm; the next section looks at the state's ambivalent and dual relationship with women whereby it protects as well as exposes women to insecurity by providing guarantees through international instruments, the constitution and other policy-making bodies that women are adequately protected while simultaneously inscribing discriminatory legislation such as the citizenship act, personal laws pertaining to marriage and inheritance, as well as legislation regarding violent crimes such as rape. The third section looks at the intersections of state and culture/traditions that work at the behest of patriarchy to reinforce women's insecurity. In this section we examine specific cases of honour killings, acid attacks, male bias in judiciary and other public sector institutions.

3.1 WOMEN AND INTERNATIONAL DEVELOPMENT
This section examines the processes of women's inclusion and exclusion from development indices. Despite criticism from different schools within the development debate, the male-centeredness of development has not been challenged. We have discussed in the first chapter the absence of a women-centred approach in most development indices as well as the extreme limitations of the indices that claim to be women-centred. The subsections that follow demonstrate how Pakistanis and
Bangladeshis are placed within the larger discourse of development that is generally averse to the inclusion of women in its categories and how usually women become 'add-ons' after the indices are critiqued by women's groups and policymakers.

3.1.1 Rankings According to Human Development Indices

Human Development Reports of UNDP and Mahbub ul Haq Development Centre have constructed several composite indices to measure different aspects of human development. Following are the rankings of Pakistan and Bangladesh according to some of these indices.

The Human Development Index (HDI)

The Human Development Index has been constructed every year since 1990. It measures average achievements in basic human development (that is, life expectancy, education and per capita income) in one index and produces a ranking of countries. The indicators used in HDI are: Life expectancy at birth; adult literacy rate; combined enrolment ratio; and adjusted per capita income in US$. As discussed in Chapter 1, the HDI does not take into account women's position in society, even as it tries to provide a picture of levels of deprivation of a majority of people.

<table>
<thead>
<tr>
<th>HDI ranking, 1998</th>
<th>135 Pakistan</th>
<th>146 Bangladesh</th>
</tr>
</thead>
</table>

The Gender-Related Development Index (GDI)

The gender-related development index (Table 3.1) and the gender empowerment measure were introduced in the Human Development Report 1995, and are composite measures reflecting gender inequalities in human development. The GDI measures achievements in the same dimensions and uses the same variables as the HDI does, but takes account of inequality in human development. However, as discussed earlier, the inequalities that women face are multi-faceted and not all of them are 'measurable.' In any case, we cannot account for the millions of

<table>
<thead>
<tr>
<th>GDI ranking 1998</th>
<th>115 Pakistan</th>
<th>121 Bangladesh</th>
</tr>
</thead>
</table>

2 Ibid.
‘missing women’ who were not born in South Asia due to sex selective abortions or who died due to inadequate access to health care and food during the initial years of their life on the basis of the existing statistics.

Table 3.1: Gender-related Development Index

<table>
<thead>
<tr>
<th>Rank Value</th>
<th>Female</th>
<th>Male</th>
<th>Female</th>
<th>Male</th>
<th>Female</th>
<th>Male</th>
<th>Female</th>
<th>Male</th>
</tr>
</thead>
<tbody>
<tr>
<td>Medium human development</td>
<td>135 Pakistan</td>
<td>115</td>
<td>0.489</td>
<td>65.6</td>
<td>63.3</td>
<td>28.9</td>
<td>58.0</td>
<td>28</td>
</tr>
<tr>
<td></td>
<td>1997</td>
<td>1998</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Low human development</td>
<td>146 Bangladesh</td>
<td>121</td>
<td>0.441</td>
<td>58.7</td>
<td>58.6</td>
<td>28.6</td>
<td>51.1</td>
<td>30</td>
</tr>
<tr>
<td></td>
<td>1998</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Notes: aData refer to the latest available year.

Gender Empowerment Measure (GEM)

First introduced in the Human Development Report by UNDP in 1995, the Gender Empowerment Measure captures gender inequality in key areas of economic and political participation and decision-making. GEM focuses on women’s opportunities rather than their capabilities and was calculated for 70 countries till the end of the twentieth century. Countries ranking high in this index are those that have strengthened the basic capabilities of women and have provided opportunities for them to participate in economic and political life, whereas countries with low GEM values are those where opportunities for women are constrained. These measures take into account women’s political representation on the basis of their percentage in governance structures, which is problematic if there are quotas, while women’s economic empowerment is misrepresented because the report only looks at employment rates. The Table 3.2, based on figures available till February 2000, shows the GEM ranking for Bangladesh only due to the suspension of Parliament in Pakistan at the time of this data. It is pertinent to note here that Pakistan’s position has gone up drastically after an increase in women’s quota in the Parliament in the last

elections. However, such anomalies make GEM an inappropriate tool for measuring women’s empowerment as it is incapable of representing the true picture and situation of women in their countries.

**Table 3.2: Gender Empowerment Measure**

<table>
<thead>
<tr>
<th>HDI rank</th>
<th>Gender empowerment measure (GEM)</th>
<th>Seats in parliament held by women (as % of total)</th>
<th>Female administrators and managers (as % of total)</th>
<th>Female professional and technical workers (as % of total)</th>
<th>Women’s GDP per capita (PPP US$)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Medium human development</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>135 Pakistan</td>
<td>-</td>
<td>-</td>
<td>8.0</td>
<td>25.1</td>
<td>-</td>
</tr>
<tr>
<td><strong>Low human development</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>146 Bangladesh</td>
<td>67</td>
<td>0.305</td>
<td>9.1</td>
<td>4.9</td>
<td>34.7</td>
</tr>
</tbody>
</table>


Notes: aData are as of 29 February 2000. (A value of 0 was converted to 0.001 for purposes of calculating the GEM).

**Human Poverty Index (HPI)**

UNDP introduced another concept of ‘human poverty’ in its Human Development Report 1997, and formulated a composite measure for it. While the HDI measures average achievements in basic dimensions of human development, the HPI measures deprivations in those dimensions.4 The Human Poverty Index brings together deprivation in four basic human capabilities dimensions of human life — a long and healthy life, knowledge, economic provisioning and social inclusion. HPI-1 measures human poverty for developing countries whereas HPI-2 measures it for the industrialised countries (Table 3.3). Although the dimensions of deprivation are the same for both developing and industrialised countries, the indicators to measure them differ. The indicators for developing countries are: the percentage of people born today not expected to survive to age 40, deprivation in knowledge because of adult illiteracy and deprivation in economic provisioning caused by the percentage of people lacking access to health services and safe water and the percentage of children under five who are moderately or severely underweight. Indicators used for measuring human poverty in industrialised countries are: the percentage of people born today not

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Table 3.3: HPI-1: Human Poverty in Developing Countries

<table>
<thead>
<tr>
<th>HDI rank</th>
<th>Human poverty index (HPI-1) 1998</th>
<th>People not expected to survive to</th>
<th>Adult literacy rate†</th>
<th>Population without access</th>
<th>Share of income or consumption</th>
<th>Population below income poverty line (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Rank Value (%)</td>
<td>People not expected to</td>
<td>To safe water†</td>
<td>To health services†</td>
<td>To sanitation</td>
<td>Underweight children</td>
</tr>
<tr>
<td></td>
<td></td>
<td>survive to age 40 †</td>
<td>(%)</td>
<td>(%)</td>
<td>(%)</td>
<td>under five† (%)</td>
</tr>
<tr>
<td>Medium human development</td>
<td>135 Pakistan</td>
<td>68</td>
<td>40.1</td>
<td>14.3</td>
<td>56.0</td>
<td>21</td>
</tr>
<tr>
<td>Low human development</td>
<td>146 Bangladesh</td>
<td>70</td>
<td>43.6</td>
<td>20.8</td>
<td>59.9</td>
<td>5</td>
</tr>
</tbody>
</table>


Notes: † Denotes indicators used to calculate the human poverty index (HPI – 1).

* Data refer to the probability at birth of not surviving to age 40, times 100.

* Data refer to the most recent year available during the period specified in the column heading.
expected to survive to age 60, deprivation in knowledge calculated on the basis of the adult functional illiteracy rate, deprivation in economic provisioning by the incidence of income poverty and deprivation in social inclusion caused by long-term unemployment.\(^5\) Once again, we find that there is no gender desegregation of data.

The Table 3.4 presents data relating to the percentages of the labour force, participation in economic activities and employment challenges/ discrimination with regard to gender.

**Table 3.4: Some Indicators of Female Participation in Economic Activity and Employment in Pakistan and Bangladesh, 1995-2001\(^a\)**

<table>
<thead>
<tr>
<th></th>
<th>Female economic activity rate(^b)</th>
<th>Female % of labour force</th>
<th>Female % of total Employment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pakistan</td>
<td>15.4</td>
<td>29.0</td>
<td>14.0</td>
</tr>
<tr>
<td>Bangladesh</td>
<td>57.2</td>
<td>42.4</td>
<td>37.5</td>
</tr>
</tbody>
</table>


Note: Col. 1 refers to % of total women of age 15 and over; Col. 2 refers to women labour force as % of total labour force; Col. 3 refers to female employment as % of total employment.\(^a\)Latest available year.\(^b\)Data sources for South Asian countries and regions are different.

**Gender Discrimination in Employment**

The Tables 3.5–3.8 indicate where women are placed in the employment data generated by the two countries. It should be noted that the definitions for ‘productive work’ contested by so many WID and GAD specialists continues to be ignored. In fact, there are many women who question the division of labour into productive and reproductive categories as they believe that all labour is productive. The division of labour into productive and reproductive categories only serves to place decreased value on reproductive labour that includes child bearing, child rearing and the care economy. There, now, exist methods of measuring these activities in monetary terms by placing value on these. Especially, in the aftermath of structural adjustment policies whereby women have become responsible for much of the care economy,
previously the responsibility of the state, increasingly more women are demanding that women’s labour be re-defined and enter national statistics in a manner that will reflect women’s actual contribution.

**Table 3.5: Female and Male Unemployment Rates in Selected South Asian Countries, 1990-2000**

<table>
<thead>
<tr>
<th>Country</th>
<th>Female</th>
<th>Male</th>
<th>F/M ratio</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pakistan</td>
<td>14.9</td>
<td>4.2</td>
<td>3.5</td>
</tr>
<tr>
<td>Bangladesh</td>
<td>2.3</td>
<td>2.7</td>
<td>0.9</td>
</tr>
</tbody>
</table>


Note: Data calculated as a percentage of total unemployed for the relevant group for the ages 10 and above. aLatest available year. bIn 1990s.

**Table 3.6: Unemployment by Educational Levels in Bangladesh, 1995-1996**

<table>
<thead>
<tr>
<th>Level</th>
<th>Male</th>
<th>Female</th>
</tr>
</thead>
<tbody>
<tr>
<td>No education</td>
<td>0.6</td>
<td>0.7</td>
</tr>
<tr>
<td>Class I-X</td>
<td>2.9</td>
<td>3.3</td>
</tr>
<tr>
<td>Secondary School Certification</td>
<td>9.7</td>
<td>12.9</td>
</tr>
<tr>
<td>Higher Secondary School</td>
<td>8.4</td>
<td>15.2</td>
</tr>
</tbody>
</table>


**Table 3.7: Unemployment by Educational Levels in Pakistan, 1999-2000**

<table>
<thead>
<tr>
<th>Level</th>
<th>Male</th>
<th>Female</th>
</tr>
</thead>
<tbody>
<tr>
<td>Illiterate</td>
<td>4.6</td>
<td>15.1</td>
</tr>
<tr>
<td>&lt; Primary</td>
<td>7.4</td>
<td>13.9</td>
</tr>
<tr>
<td>&lt; Matric</td>
<td>7.6</td>
<td>33.7</td>
</tr>
<tr>
<td>&lt; Inter</td>
<td>7.7</td>
<td>27.0</td>
</tr>
<tr>
<td>&lt; BA</td>
<td>7.3</td>
<td>22.6</td>
</tr>
<tr>
<td>BA</td>
<td>5.4</td>
<td>13.7</td>
</tr>
<tr>
<td>Master</td>
<td>6.1</td>
<td>14.4</td>
</tr>
</tbody>
</table>

Table 3.8: Employment by Sectors in South Asia (age 10+), 1980–1999

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Agriculture</td>
<td>Industry</td>
<td>Services</td>
</tr>
<tr>
<td><strong>Pakistan</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Male</td>
<td>48.4</td>
<td>20.6</td>
<td>31.0</td>
</tr>
<tr>
<td>Female</td>
<td>72.2</td>
<td>14.1</td>
<td>13.5</td>
</tr>
<tr>
<td><strong>Bangladesh</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Male</td>
<td>54.2</td>
<td>15.6</td>
<td>25.6</td>
</tr>
<tr>
<td>Female</td>
<td>84.9</td>
<td>8.8</td>
<td>2.1</td>
</tr>
</tbody>
</table>


Note: *Latest available year. Persons not classified are not included in the tables.

The above statistics only cover the formal sector and do not provide any account for the informal sector, which is growing at a much faster pace than the formal one. The informal sector is also the biggest employer of women and is also known for being exploitative and unfair in terms of wage rates and working conditions. The gendered ideology of work ensures that women are paid less for the same amount of work (Table 3.9 and 3.10).

Table 3.9: Women in South Asian Economy, 2001

<table>
<thead>
<tr>
<th></th>
<th>Bangladesh</th>
<th>Pakistan</th>
</tr>
</thead>
<tbody>
<tr>
<td>Female economic activity rate</td>
<td></td>
<td></td>
</tr>
<tr>
<td>As % of women</td>
<td>66.4</td>
<td>35.8</td>
</tr>
<tr>
<td>As % of male economic activity rate</td>
<td>76.0</td>
<td>43.0</td>
</tr>
<tr>
<td>Employment by economic activity (%)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Agriculture Female/Male</td>
<td>78/54</td>
<td>66/41</td>
</tr>
<tr>
<td>Industry Female/Male</td>
<td>8/11</td>
<td>11/20</td>
</tr>
<tr>
<td>Services Female/Male</td>
<td>11/34</td>
<td>23/39</td>
</tr>
<tr>
<td>Gender Empowerment Measure (GEM)</td>
<td>0.218</td>
<td>0.414</td>
</tr>
<tr>
<td>Seats in parliament held by women (%)</td>
<td>2.0</td>
<td>20.6</td>
</tr>
<tr>
<td>Female legislators, senior officials and managers (%)</td>
<td>8.0</td>
<td>9.0</td>
</tr>
<tr>
<td>Female professionals and technical workers (%)</td>
<td>25.0</td>
<td>26.0</td>
</tr>
<tr>
<td>Ratio of estimated Female/Male earned income</td>
<td>0.56</td>
<td>0.32</td>
</tr>
<tr>
<td>Gender-related development Index (GDI)</td>
<td>0.495</td>
<td>0.469</td>
</tr>
</tbody>
</table>

Table 3.10: Economically Active Population in Agriculture

<table>
<thead>
<tr>
<th></th>
<th>1980</th>
<th>1990</th>
<th>2000</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Male</td>
<td>Female</td>
<td>Male</td>
</tr>
<tr>
<td>Bangladesh</td>
<td>16,298</td>
<td>13,886</td>
<td>18,729</td>
</tr>
<tr>
<td>Pakistan</td>
<td>12,888</td>
<td>5,932</td>
<td>13,861</td>
</tr>
</tbody>
</table>

Source: Human Development in South Asia 2002: Agriculture and Rural Development.

In most South Asian countries, women are active participants in the agricultural sector and are involved in all operations pertaining to livestock management, crop production, such as sowing, transplanting, weeding and harvesting, as well as post-harvest operations like threshing, winnowing, drying, grinding, husking and storage. In addition, they are also responsible for fetching and managing water and fuel, cooking, cleaning, maintaining the house and taking care of the young and old. But despite such active involvement and the heavy load of responsibilities assigned to women in the agricultural sector, the figures mentioned in the Table 3.9 and 3.10 are extremely deceptive and leave no doubt about the underreporting of statistics.

Table 3.11: Distribution of Labour Force by Status of Employment (% of distribution of the labour force, each sex, 1990-1997)

<table>
<thead>
<tr>
<th></th>
<th>Wage and salaried workers</th>
<th>Self-employed Workers</th>
<th>Contributing family workers</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Women</td>
<td>Men</td>
<td>Women</td>
</tr>
<tr>
<td>Bangladesh</td>
<td>9</td>
<td>15</td>
<td>8</td>
</tr>
<tr>
<td>Pakistan</td>
<td>25</td>
<td>35</td>
<td>14</td>
</tr>
</tbody>
</table>

Source: Human Development in South Asia 2002: Agriculture and Rural Development.

In South Asia, the role of women in agriculture is consistently expanding but statistics do not reflect this changing trend. There are three main reasons for increased female labour force participation rates in agriculture (Table 3.11). These are: rising poverty, which leads to increased male migration from rural to urban areas and abroad for better opportunities; increase in smaller land holdings which lead to engaging female family members to cultivate the land and fulfil labour requirements, and; new technological trends, which has set an informal pattern of men using machines and women being involved in more labour-intensive jobs.8

8 Ibid, p.111.
Ignoring the ugly reality of the feminisation of poverty with women comprising seventy percent of the total poor, the structural/systematic dearth of employment opportunities for women, can best be explained as caused by the indifference of the society which adds to women’s misery and increases their insecurity even more.

3.2 WOMEN AND THE STATE

In this section, we examine the relationship between women and the state. We begin by looking at the international conventions and commitments that the two states have made on behalf of women. This is followed by a discussion of the constitutional guarantees that the states of Bangladesh and Pakistan promise women. Finally, we look at discriminatory laws that target women and help perpetuate violence against women at different levels, including the family, the community and the state.

3.2.1 International Commitments

We connect these with the indices developed by multilateral agencies that take into account different indicators to assess the human development levels of the countries and the social, economic and political status of individuals (discussed above).

There are essentially six instruments that define the United Nations framework for human rights, namely International Covenant on Economic, Social and Cultural Rights (CESCR), International Covenant on Civil and Political Rights (CCPR), Convention on Elimination of Racial Discrimination (CERD), Convention Against Torture (CAT), Convention for the Elimination of all Forms of Discrimination Against Women (CEDAW), and Convention on the Rights of the Child (CRC). Of these Pakistan has ratified only three: CERD (in 1969), CRC (in 1990) and CEDAW (in 1996), whereas Bangladesh has signed all six instruments.9

Some more International Treaties particularly relating to women include: the SAARC Convention on Trafficking in Girls and Women; Convention on the Political Rights of Women; and the UN Convention against Transnational Organised Crime. (See Annex-B for more information on both the countries’ positions, declarations and reservations on these treaties).

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9 I.A. Rehman, Ratify the Covenants of 1966.
3.2.2 Constitutional Guarantees

A constitution embodies the spirit, hopes, aspirations, expectations and desires of the people. This sacred document sets forth a way of life, ensures rights of people and guarantees good governance. All constitutions guarantee some fundamental rights to citizens, women as well as men; however, the freedoms guaranteed can be curtailed by the government on the grounds of the sovereignty or integrity of the country, maintenance of public order and public morality. The presently enforced constitutions of both countries, Pakistan-1973 and Bangladesh-1972 (Annex-A) have significant human rights content in them. In addition to the human rights concepts, there are fundamental rights of citizens and special provisions for women.

In both constitutions, several provisions in the Preambles, the chapters on Fundamental Rights and those on Principles of Policy underline the principles of equal rights and equal treatment of all citizens/persons, without any distinction, including on the basis of sex. There are Articles that call upon the States to eliminate all forms of exploitation; provide for the right of individuals to enjoy the protection of law and to be treated in accordance with the law; prohibit the States from enacting any law or policy, in conflict with Fundamental Rights; and state that any existing law or practice, inconsistent with or in derogation of fundamental rights, shall be void. The principle of non-discrimination based on gender is mentioned in Articles of both constitutions that ensure equality before the law and equal protection of the law and state that there shall be no discrimination on the basis of sex alone. The Constitutions also provide for equal access to public places and equality of employment in the public and private sectors; prohibit trafficking of human beings as well as prostitution; make special provisions for the representation of women in local governments; and direct the States to take appropriate measures to enable women to participate in all spheres of national life and community activities. In addition to the protective provisions, the Constitutions also enjoin the States to take positive measures, by way of affirmative action, for enhancing the status of women. There are articles in both the constitutions that direct the States to protect the marriage, the family, the mother and the child; make provisions for securing just and humane conditions of work and ensuring that children and women are not employed in vocations unsuited to their age or sex, ensure maternity benefits for women in employment; and provide for the reservation of seats for women in the legislatures.
Despite all these impressive provisions and legal safeguards, which emphasise the principle of equality, women’s situation in both countries is far from being equal to men. Women experience varying degrees of discrimination in society and at home, with respect to their social, legal, economic and political rights, for example in health and nutrition, education, acknowledgement and compensation for work, inheritance, representation at local and national levels and dispensation of justice. There are contradictions between women’s legal status on the books and their legal status in actual practice. Shehla Zia observes that where the constitution or the laws accord women a high or equal status, social norms and customs make their constitutional and statutory rights seem like a mockery which is evident from the most common examples of socially accepted practices such as forced marriages, restrictions on their right to work or educate themselves, denial of inheritance of property and lack of control over their earnings.¹⁰

In the Constitutions of Pakistan and Bangladesh, the inadequacy of legal protections and safeguards or the loopholes within some laws also result in discrimination against women. Both constitutions guarantee equal rights for men and women in the public sphere but they do not extend equality provisions into the private sphere, where religious laws are recognised. This gets problematic because some of the Personal/Family laws, which are based on religious laws, have discriminatory provisions against women. A report of the Bangladesh National Women's Lawyers Association (BNWLA) states that a dual legal system operates in Bangladesh. The constitution and state laws provide for the recognition of laws made by Parliament and of Personal or Family laws based on religious laws and deal with family matters. The country is comprised of an overwhelmingly large Muslim population, as well as Hindu, Christian, Buddhist and other ethnic minorities. People belonging to different religions or communities are governed by the respective Personal Laws of their own religion, which hinders the implementation of equality. Where religious laws contradict a civil statute, the latter prevails. However, this is only in theory because in practice this does not occur. There are many contradictions in the two sources of laws, especially with regard to personal law — marriage, divorce, custody of children and inheritance.¹¹

Banglapaedia, “When ratifying the UN CEDAW, the Bangladesh government had reservation regarding the provisions related to equal rights within the family. This is a sharp departure from the commitment made by the government to establish gender equality. The civil laws are supposed to maintain non-discrimination between men and women. But some of these laws are openly discriminatory against women.”12

Another report of BNWLA examining women and personal laws notes that personal laws are not uniform as they are dependent on religious and social value systems; while male dominance is entrenched in culture, personal laws have reinforced age-old patriarchy and hindered women’s enjoyment of equal rights under the law. It further states that equal rights in the personal sphere have not been explicitly proclaimed in the constitution and as a result women’s status in the personal sphere has been left ambiguous.13 The report also notes that personal laws limit a citizen’s rights within his or her religious and social community. As a result women’s scope to achieve equal rights as men, or even women of a different community, has been curtailed. Furthermore, because personal law influences all other aspects of a person’s life, the status quo discourages women’s personal capacities and encourages continued gender disparity and discrimination.14

The multiplicity of laws and the way they affect women is a serious concern for women and human rights activists in Pakistan because the situation becomes even more complex when it goes beyond personal laws. In the given scenario, although reforms are suggested in family laws, the struggle of the women’s movement/activists is more focused in pressuring the Government to first do away with other retrogressive and highly discriminatory laws, which are far more damaging than the failings and loopholes of the family laws.

With reference to Pakistan, Shehla Zia notes that the Fundamental Rights, guaranteed under the 1973 Constitution, have remained suspended through the larger part of its existence, and even while in force, the provisions guaranteeing no discrimination become meaningless in view of other laws, interpretations and actions. She further adds that while discriminatory laws and inadequate legal safeguards create grave problems for women, the problem is further compounded by the confusion


14 Ibid, p.38.
created by the different types of law prevalent in the country —
British-made laws, traditional and customary laws, religious injunctions, and
the so-called 'Islamic laws.' While this multiplicity of laws creates problems
for the entire population, argues Zia, women suffer particularly since, in
most cases, the most negative interpretations of the laws seem to be
applied to them.\[15\]

It is only recently that women's labour in the household has come to
be recognised as work in Pakistan and Bangladesh, although it remains
unpaid and women's labour is seldom considered 'productive' labour. As
such, it is not included in any estimates of national income. The
constitutions in Bangladesh and Pakistan guarantee non-discrimination in
existing labour laws in the industrial sector; however, women workers
do not receive any protection from these laws. Preferential recruitment
of unmarried women and extension of the probation of workers beyond
the statutory period deprives many workers of their legal legitimate
rights (Banglapaedia, volume 10, page 3). Similarly, the rapid increase
of women workers in the informal sectors in Bangladesh and Pakistan
has not been able to turn state attention in Pakistan or Bangladesh
toward the enactment of any legislation that would protect their
rights.

The most discriminatory laws up-to-date, asserts Zia, have been the
so-called 'Islamic' laws. The Qanoon-e-Shahadat (or the Law of
Evidence) has clearly violated women's constitutional rights as equal
citizens before the law by reducing the value of her evidence to half that
of a man's in all matters relating to 'future and financial transactions,'
and discounting it altogether if there is no male witness. Zia adds that
the Hudood Ordinances (covering the offences of rape, adultery, theft
etc.) have gone a step further. Under them, for an accused to get the
maximum punishment of Hadd (or the Quranic punishment), the
testimony of women has been ousted altogether and only the evidence
of adult Muslim male witnesses is accepted.\[16\] (For a detailed discussion
on the subject, see the section on discriminatory laws in Pakistan).

Another obvious example of discrimination in both constitutions lies
in the Citizenship Act, which makes provision for the foreign wife of a
Pakistani or Bengali man to apply for citizenship, but makes no such

\[15\] Shehla Zia, op.cit. p.28.
\[16\] Ibid p.29.
provision for the foreign husband of a Pakistani or Bengali woman. This anomaly is discussed in greater detail in the following section.

3.2.3 Legally Sanctioned Discrimination

An array of feminist literature\(^\text{17}\) lays bare patriarchal biases in laws and questions the conceptual basis of justice emanating from the field of law, still a male and a capitalist preserve that upholds male superiority and protects class interests. Women, if taken as a class, are disadvantaged legally due to the public-private divide. MacKinnon, for instance, makes the point forcefully that until sex inequality is tackled legally, women will continue to be murdered, raped, trafficked, harassed in public spaces etc. In her recent book (2006), she questions whether the Universal Declaration of Human Rights, which talks about the rights of a 'person,' really applies to women, for even after fifty years women suffer the same discrimination at the hands of the state and its' institutions internationally that they did before the Declaration. Adopting a similar argument, we demonstrate in the following subsection that women's status is far from equal in Bangladesh and Pakistan, both in reality and in law. The legal systems in both countries have been modified to make women systematically disadvantaged and unequal in the sphere of rights. The discrepancy arising out of the gap/contradiction between the constitutional guarantees of equality of persons and the personal/family laws (in the private sphere), which contain discriminatory provisions against women, remains a matter of concern and a subject of debate for women activists in Pakistan as well as Bangladesh.

This section is divided into two subsections, that is, specific discriminatory laws and biased judicial attitudes.

**Discriminatory Laws**

**The Citizenship Act 1951**: This Act applies to both Pakistan and Bangladesh. Women's groups and human rights activists in both countries have been criticising discriminatory provisions of the Citizenship Act 1951. According to *Banglapaedia* "this act encroaches upon a woman's right to enjoy the same legal status as that of a man."\(^\text{18}\) In case a woman marries a man of another religion, she can be confined under 'safe

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18 Khaleda Salahuddin, “Women's Legal Status of Women” in *Banglapaedia*, vol. 11, Dhaka: Asiatic Society of Bangladesh, p. 3.
custody\textsuperscript{19} thereby, implying that she is not capable of making an informed decision and her citizenship rights where marriage is concerned are not equal to those of men. The Report of the Commission of Inquiry for Women (1997) in Pakistan, after examining the discriminatory provisions in the Act, also suggested appropriate changes in it. Reiterating the recommendation of the Commission of Inquiry (COI), the National Commission on the Status of Women in its first annual report to the government, after reviewing the Citizenship Act 1951, pointed to the language used, which it observed, is not gender-neutral and appears to discriminate on the basis of sex. Such discrimination is obvious in some sections of the Act, in particular, in Sections 4 and 10. These provisions have resulted in many complications and caused hardships to couples, as also to children begotten of marriages of Pakistani women with foreign nationals.\textsuperscript{20}

The report states:

The discrimination in the law is contrary to the provisions of our Constitution, in particular, Article 25, providing for “equality of citizens” and Article 2-A, guaranteeing “equality of status, of opportunity and before law.” Such provisions are also contrary to the principles of the (international) Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) 1979, which Pakistan has ratified, thereby obligating the state to remove all types/forms of gender discrimination from its laws/practices/policies. The reform of the law is necessary as “citizenship” forms the basis for nationality, conferring upon citizens the enjoyment of important legal/fundamental rights/freedoms. Indeed, the Citizenship Act as a whole requires to be reviewed with a view to doing-away with several of its obsolete provisions and so as to make the law in accordance with present-day requirements. Meanwhile, however, Sections 4 and 10 may be examined to address the genuine grievances of female citizens of Pakistan and so as to put an end to gender-discrimination therein.

Section 4 provides for the right of citizenship on the basis of birth. It states that every person born in Pakistan shall be a citizen by birth except one whose father enjoys immunity from the legal process as accorded to an envoy of a foreign state or is an enemy alien. The relevant provisions read:

Section 4: Citizenship by birth — Every person born in Pakistan after the commencement of this Act shall be a citizen of Pakistan by birth:

Provided that a person shall not be such a citizen by virtue of this section if at the time of his birth—

1. His father possesses such immunity from suit and legal process as is accorded to an envoy of an external sovereign possessor accredited in Pakistan and is not a citizen of Pakistan; or


\textsuperscript{20} http://www.ncsw.gov.pk/
2. His father is an enemy alien and the birth occurs in a place other than under occupation by the enemy.

This section apparently does not have any negative connotations for female citizens of Pakistan; however, the language sounds discriminatory, in as much as it does not countenance a woman to be an envoy, or for that matter, an enemy alien. By implication, it would mean that children begotten of female foreign envoys or female enemy aliens are entitled to Pakistan citizenship. But that hardly can be construed to have been the intent of the legislature. Accordingly, the section needs to be suitably amended to make it gender-sensitive. The word 'father' in the text should therefore be substituted by the word 'parent'. The amended provisions shall read:

Section 4: Citizenship by birth — Every person born in Pakistan after the commencement of this Act shall be a citizen of Pakistan by birth:

Provided that a person shall not be such a citizen by virtue of this section if at the time of his (referring to both girl and boy) birth—

1. His parent possesses such immunity from suit and legal process as is accorded to an envoy of an external sovereign power accredited in Pakistan and is not a citizen of Pakistan; or

2. His parent is an enemy alien and the birth occurs in a place other than under occupation by the enemy.

Similarly, Section 10 also discriminates on the basis of sex. The relevant clauses read:

Section 10. Married women.

1. Any woman who by reason of her marriage to a British subject before the first day of January 1949, has acquired the status of a British subject shall, if her husband becomes a citizen of Pakistan, be a citizen of Pakistan.

2. Subject to the provisions of sub-section (1) and sub-section (4) a woman who has been married to a citizen of Pakistan or to a person who but for his death would have been a citizen of Pakistan under Sections 3, 4 or 5 shall be entitled, on making applications therefore to the Federal Government in the prescribed manner, and, if she is an alien, on obtaining a certificate of domicile and taking the oath of allegiance in the form set out in the Schedule to this Act, to be registered as a citizen of Pakistan whether or not she has completed twenty-one years of her age and is of full capacity.

3. Subject as aforesaid, a women who has been married to a person who, but for his death, could have been a citizen of Pakistan under the provisions of sub-section (1) of section 6 (whether he migrated as provided in that sub-section or is deemed under the proviso to Section 7 to have so migrated), shall be entitled as provided in sub-section (2) subject further, if she is an alien, to her obtaining the certificate and taking the oath therein mentioned.
women married to foreign husbands would be entitled to receive Pakistani citizenship. However, the husbands would not have the right to claim Pakistani citizenship in contradistinction to foreign wives of Pakistani men who were/are eligible for such citizenship.21 Thus discrimination continues to be exercised legally even when the government was attempting to address and remove it.

**Suppression of Violence against Women and Children Act (2000):**

This Act replaced the Oppression of Women and Children (Special Provisions) Act of 1995, which was an amended version of an earlier Act from 1993. Although all acts were/are concerned with issues of trafficking and sex work, the 2000 Act was intended to make prosecutions more effective and also make compensation for the victims from the trafficker possible. According to the Bangladesh National Women’s Lawyers’ Association, the lack of statistical data and information about trafficking cases makes it difficult to comment on the effectiveness of the Act. Additionally, the fact that traffickers are difficult to catch and have powerful backing discourage victims and their families from approaching the police and courts as they have little confidence in these institutions. Further, sometimes the traffickers are from the same community or family therefore, there is pressure upon the victim not to seek legal recourse.22 Thus, the fact that this Act has been promulgated has limited utility for the victims of trafficking and sex work.

According to Amena Mohsin,23 this Act serves to demonstrate the patriarchal values espoused by the state in that under Section 31 women and children can be placed in safe custody if sessions and district courts, constituting tribunals, consider it necessary for the protection of the particular women or children. Such ‘protection,’ Mohsin argues, goes against the victim who is sent to jail (even though the law forbids this) as there are no specific places for safe custody. Thus women who have been raped, or married men of their choice, or been rescued from traffickers or from brothels, or victims of domestic violence may, together with those who might be ‘lost or mentally unbalanced children,’ be sent into safe custody. Similarly, examining Section 13 of the Act, which states that the rapist would bear

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23 Amena Mohsin, “Globalization, Hegemony and the State in Bangladesh,” op.cit.
It is obvious that the law permits the foreign wife of a Pakistani husband to acquire Pakistan citizenship, but alternatively, the same right is not available to the foreign husband of a Pakistani wife. This provision, thus, also suffers from gender discrimination, and hence requires amendment. Accordingly, in sub-sections (2) and (3), the words 'woman' and 'women' may be substituted by the words 'person' and 'persons'. The amended provision shall read:

Section 10. Married couple — (1) Any woman who by reason of her marriage to a British subject before the first day of January 1949 has acquired the status of a British subject shall, if her husband becomes a citizen of Pakistan, be a citizen of Pakistan. (2) Subject to the provisions of sub-section (1) and sub-section (4) a person who has been married to a citizen of Pakistan or to a person who but for his/her death would have been a citizen of Pakistan under Section 3, 4 or 5 shall be entitled, on making applications therefore to the Federal Government in the prescribed manner, and, if he/she is an alien, on obtaining a certificate of domicile and taking the oath of allegiance in the form set out in the Schedule to this Act, to be registered as a citizen of Pakistan whether or not he or she has completed twenty-one years of age and is of full capacity.

Subject as aforesaid, a women who has been married to a person who, but for his death, could have been a citizen of Pakistan under the provisions of sub-section (1) of section 6 (whether he migrated as provided in that sub-section or is deemed under the proviso to section 7 to have so migrated) shall be entitled as provided in sub-section (2) subject further, if he or she is an alien, to his or her obtaining the certificate and taking the oath therein mentioned.

It may be pointed out that in 2000 an important amendment was made to Section 5 of the said Act, whereby children born of wedlock between Pakistani females and foreign husbands were made entitled to acquire citizenship by descent. Earlier, only children of Pakistani fathers could claim such a right. The above amendments therefore are essential, and when carried out, shall go a long way in addressing the concerns of women and reform the law with a view to removing gender-discrimination.

With reference to the Citizenship Act 1951, the National Commission on the Status of Women recommended the following:

Section 4: Every occurrence of the words "his" and "father" be replaced with "his or her" and "either person" respectively.

Section 5: Every occurrence of the word "father" be replaced by "parent".

Section 8: Every occurrence of the words "father" and "father's father" be replaced with "parents" and "parent's parents" respectively.

Section 10: Every occurrence of the words "woman" and "women" be replaced with the words "person" and "persons" respectively.

On April 21, 2000 President Musharraf promulgated an amendment to the 1951 Citizenship Act by declaring that children born to Pakistani
responsibility of a child born out of pregnancy, Mohsin questions the ability of the rapist to do so when he would be serving his sentence in jail. Furthermore, the responsibility of proving rape (i.e., sexual intercourse without consent or through forced consent under threat of death or hurt) has been placed upon the victim, which makes attaining justice difficult. Mohsin concludes that the legal system and the state, even when they are trying to protect women's interests, end up making women more vulnerable as they do not use gendered lenses to understand the ways in which the justice system works against women in its conceptualisation and in prescribing the process of implementation.

**Hudood Ordinance (1979):** The Hudood Ordinances of 1979 were introduced during the martial law period of General Zia ul Haq under the pretext and garb of Islamisation. Women's rights and human rights groups have opposed these laws from the very beginning as they are clearly perceived by them as being a politically expedient measure on the part of the then martial law regime for justifying its unlawful continuance in power. Termed as the most oppressive and discriminatory laws regarding women, Hudood Ordinances have been criticised on many grounds, such as: (i) being clearly discriminatory and causing grave injustice to women and minorities; (ii) violative of the basic principles of justice, equality and human rights; (iii) badly constructed laws; (iv) not being in accordance with Islamic injunctions; and (v) being in gross violation of the Constitution, which categorically declares that there shall be no discrimination on the basis of sex alone, and further states that all citizens are equal under the law and are entitled to equal protection of the law.24

The Hudood Ordinances deal with four types of offences, while the fifth part pertains to the punishment to be administered for these offences:

i. The offences against property: Enforcement of Hudood Ordinance deals with the crimes of theft and armed robbery.

ii. The Offence of Zina: Enforcement of Hudood Ordinance deals with the offences of rape, abduction, adultery and fornication.

iii. The Offence of Qazf: Enforcement of Hudood Ordinance relates to a false accusation of zina (adultery and fornication).

iv. The Prohibition Order: Enforcement of Hadd deals with the manufacture, possession and use of intoxicants (alcohol and narcotics).

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v. The Execution of Punishment of Whipping Ordinance prescribes the mode of whipping for those convicted under the Hudood Ordinances.\textsuperscript{25}

The Hudood Ordinances prescribe two forms of punishment. Hadd literally means the 'limit' and has been defined as punishment ordained by the \textit{Holy Quran} and Sunnah. Tazir literally means 'to punish' and includes any punishment other than hadd. Hadd punishments are fixed, leaving no room for flexibility or discretion on the part of the judge, whereas Tazir is given when the offence is considered proved but does not fulfil all the requirements relating to the imposition of hadd.\textsuperscript{26} Women mainly suffer due to the Tazir penalty introduced by the laws but this does not mean that they escape the serious threat posed to them by the hadd penalty. Although the hadd penalty has never been executed, the courts have passed sentences of hadd on a number of occasions; it is therefore, strongly believed that as long as the hadd penalties exist on the statute books, the danger of their execution remains.

Some Hadd Punishments are:

<table>
<thead>
<tr>
<th>Offence</th>
<th>Punishment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Zina by adult married Muslim</td>
<td>Stoning to Death</td>
</tr>
<tr>
<td>Zina by adult non-Muslim or adult single Muslim</td>
<td>100 lashes</td>
</tr>
<tr>
<td>Rape by adult married Muslim</td>
<td>Stoning to death</td>
</tr>
<tr>
<td>Rape by adult non-Muslim or adult single Muslim</td>
<td>100 lashes plus any other punishment</td>
</tr>
<tr>
<td>Drinking of intoxicating liquor by adult Muslim</td>
<td>including death</td>
</tr>
<tr>
<td>Theft from an enclosed space of goods of more than a specified value</td>
<td>80 lashes</td>
</tr>
<tr>
<td></td>
<td>Amputation of the right hand (1st offence),</td>
</tr>
<tr>
<td></td>
<td>Amputation of the left foot (2nd offence), etc.</td>
</tr>
</tbody>
</table>

The Zina Ordinance has the most discriminatory, harmful and serious implications for women. The harmful aspects of this particular ordinance are detailed below to show how it affects women.\textsuperscript{27}

- The Hudood laws are discriminatory since they (a) exclude the testimony of female witnesses altogether for awarding the hadd punishment, and (b) exclude the testimony of non-Muslims for awarding the hadd punishment, if the accused is a Muslim.

\textsuperscript{25} Ibid.
\textsuperscript{26} Ibid.
\textsuperscript{27} Material obtained from Aurat Publication and Information Service Foundation.
Excluding the testimony of valid witnesses defeats the very purpose of law and can result in the most absurd situations:

- If a Muslim man rapes a Muslim woman in the presence of any number of Muslim women, the rapist cannot be given the hadd punishment because female testimony against a Muslim accused is excluded. The victim's own testimony is not acceptable for the imposition of hadd because of her sex.

- If a Christian woman is raped by a Muslim male in the presence of any number of Christian men and women, the rapist cannot be given the hadd penalty, since the testimony of non-Muslims against a Muslim accused is not acceptable.

The Zina Ordinance has linked with rape and adultery, although adultery is an act of consent, while rape is a crime of violence. This biased approach, typical in a patriarchal society, is reflected in the presidential address on the occasion of the introduction of the Hudood laws by the reference to 'all forms of adultery, whether the offence is committed with or without the consent of the parties.' Thus rape is treated as 'a form of adultery', even though it is without the consent of the woman being violated.

This attitude is further reflected in the law, whereby the Quranic evidentiary requirement of four adult Muslim male witnesses for proof of adultery (the most commonly accepted interpretation) has also been made applicable to rape. Thus an Islamic provision, which was meant to protect women from frivolous allegations of adultery, has been used to deny them justice if they are raped.

The extension of this evidentiary requirement to the crime of rape also ensures that no rapist can ever receive the hadd penalty since it is highly unlikely, in fact virtually impossible, that a woman would get raped in the presence of four adult Muslim male witnesses of good character.

The Hudood laws have removed previous legal protections given to children and made them punishable for offences under the law. Earlier laws, recognising the mental immaturity of children, protected very young children from any punishment and made older children liable only if it was established that the child was mature enough to understand the crime committed. A child under 14, if subjected to sexual intercourse, was presumed to have been raped, since consent of a young child was considered
immaterial. Now children, regardless of age, can be convicted of rape or adultery. And, consent of a child to sexual intercourse can be used both as a defence against charges of rape as well as the basis for charging the child with the crime of zina!

- Though the Hudood laws make a distinction between punishments for adults and non-adults, they have also simultaneously redefined adulthood. A female is considered an adult at 16 or puberty. And puberty has been interpreted as physical maturity (i.e. the age of menstruation) rather than mental maturity. Thus a girl is considered an adult if she has reached the stage of menstruation, even if she is only 9 or 10 years old, and can be given the harsher adult penalty under the law. What is ironic is that a girl child, who will never at any age be considered a valid witness for awarding the hadd penalty even if she herself is the victim of rape, is considered an adult for the purpose of fixing criminal responsibility and maximum punishment. Girls of 12 and 13 have been imprisoned and received the penalty of imprisonment and lashes (as *tazir* punishment) for zina under the Zina Ordinance.

- Under previous law, rape of a minor wife (under 12 years) was punishable by transportation for life or up to 10 years imprisonment. The Hudood laws do not recognise rape of a minor wife as an offence and have removed the protection given to minor girls.

- The law makes a distinction between 'attempt' to rape and 'preparation' to rape, the latter carrying a much lighter penalty of a maximum of 2 years. In practice, this has resulted in minimal sentences for would-be rapists.

- Under the Zina Ordinance, cases of rape have also often been converted to cases of adultery. Where biases against women are rampant (e.g. the attitudes of the police generally presuming that women who report rape are 'bad' or 'shameless' women), and the woman is burdened with 'proving her innocence', the risks for women reporting rape are manifold. Thus pregnancy or delay in filing a report of rape can be treated as admission of guilt. Not being able to produce witnesses or 'prove' rape can be taken as indication of consent. And medical testimony, which establishes that sexual intercourse has taken place, can be used as proof against a woman if she is unable to prove that she did not consent to the act. In a society where there is already extreme
reluctance to report rape because of social stigma and dishonour, women are further threatened by the law itself. The entire premise and practice of the law has reversed the maxim of ‘innocent until proven guilty’.

- The Hudood laws have put victims of rape in a no-win situation. If the victim reports the matter and is unable to establish her case, she can be charged with zina. But if she does not report the matter, and gets pregnant, she will still be charged with zina, and the fact that her not reporting will be viewed as an indication of consent.

- Under cover of ‘Hudood’, the real danger to women has been the introduction of the tazir penalty for adultery. While no hadd penalty has so far been executed in Pakistan, thousands of women have been threatened, victimised, charged, jailed and punished under tazir.

- The Zina Ordinance has particularly affected women. It is estimated that about 70 to 80 per cent of all women in jails are there under charges of zina. A former Chief Justice of the Supreme Court, when questioned about this, felt this was not a major issue since 90 percent got acquitted eventually. This brings up a number of justice issues. Is there not something drastically wrong with a law whereby 90 per cent of the women prosecuted are behind bars unjustifiably? Is imprisonment for long periods not itself a denial of justice? Moreover, in a society like ours, if a woman has been charged for adultery and has been in jail, what is her future or that of her children even if she is eventually acquitted?

- The Zina Ordinance has hit the poor particularly. Almost all the cases of adultery have involved women from the lower-income groups. Considering that the Hudood Ordinances were meant to protect the weak and the poor, this is an ironical twist, which is the result of the 'bad' law itself.

- Men blatantly use these laws to control and punish women in their own families. Investigations have shown that a large proportion of women in jail on charges of zina have been put there by their own fathers, brothers and husbands. Girls, who wish to marry of their own choice or refuse to marry according to paternal wishes, wives who wish to separate, women who refuse to go into prostitution, are being penalised for daring to exercise
their right of choice. The law, therefore, has been a perfect tool in the hands of those who want to exploit women or deny them their legitimate rights.

A women's organisation\(^{28}\) in Pakistan has published brief reports of a few cases under the Hudood Ordinances, which clearly spell out the consequences of this unjust law.

**Judicial Attitudes**

**Rape Converted to Zina:** Fifteen-year old Jehan Mina alleged rape, but was awarded hadd for zina by the trial court. Jehan Mina, whose father had died and mother remarried, had been left in the care of her maternal grandfather. She was sent away to take care of the household chores for her ailing aunt. After some months she returned to her maternal uncle's house and it was discovered that she was pregnant. She told her uncle she had been raped by her aunt's husband and son, and he filed a report with the police alleging rape. During the trial, Jehan Mina narrated that her aunt had given her a beating for charging the accused, and that her grandfather had wanted her to be handed over to be killed. Jehan Mina's version was disbelieved; the accused led no defence and were acquitted. Jehan Mina's unexplained state of pregnancy was taken as an automatic confession of zina and she was convicted and sentenced to suffer 100 stripes.

In appeal, the Federal Shariat Court (FSC) held that the two accused had been correctly acquitted, but Jehan Mina was found guilty of zina, and according to the FSC '... the basis of her conviction is her unexplained pregnancy coupled with the fact that she is not a married girl ... she has also not explained as to what induced her to keep quiet for such a long time in spite of having had the full and complete opportunity of complaining to her nearest relations ...' The attitude of her 'nearest relations' after she did complain was completely ignored by the FSC. Jehan Mina's sentence was changed to tazir of 3 years rigorous imprisonment and 10 stripes. (PLD 1983 FSC 183)

**Minors and Incestuous Rape:** Noreen Anjum, age 9, was allegedly raped by her father. Her mother had died a few years earlier, and Noreen Anjum and her brother Asad lived with their father. According to the complaint, Noreen made breakfast for her father who dragged her in the room, locked the door and raped her. After being allowed to

\(^{28}\) Cited in Aurat Publication and Information Service Foundation Newsletter, Issue Nos. 2 & 3.
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leave the room, Noreen was weeping. As soon as her father left, Noreen narrated the incident to her brother. Both of them then went and told their maternal uncle, and he reported the matter. Noreen was medically examined. She was bleeding profusely and had clearly been raped within the last 1.2 hours.

The trial court convicted the rapist father and sentenced him to maximum punishment. On appeal, the FSC ordered a re-trial. The trial court again awarded him maximum punishment. On appeal to the FSC, the accused was acquitted due to minor discrepancies, though both minor children stuck to their version on the main occurrence. On being asked why the minors would depose against their father and how the victim had received her injuries, the FSC held that since they were minors, their maternal uncles could have swayed them to depose against their father. They suggested that perhaps one of the aunts of the victim could have purposely injured the accused to involve the father in a case of incest. There was absolutely no evidence of this on record. The FSC was simply convinced that it is not possible for a father to abuse his own child. Their appeal to the Supreme Court was also set aside. (Criminal Appeal No. 288/L of 1988)

"Preparation" not "Attempt": Shaukat was charged with attempt to rape a 14-year old girl. However he was given the lesser punishment for 'preparation to rape' since it was held that 'removal of the shalwar and a biting kiss on the cheek' did not amount to 'attempt to rape.' (PLD 1982 FSC 179)

Yaseen sexually assaulted twelve-year old Sardaran. She screamed during the assault and received multiple abrasions in the struggle. Before she could be raped, her father heard her screams and saved her. The FSC held the act as preparation, not attempt. (PLD 1983 FSC 53)

"Absolute resistance": Sohail Iqbal was accused of rape. The victim's medical report showed injuries. The mother of the girl testified to hearing her daughter's shrieks. Yet the courts doubted whether 'absolute' resistance was made and converted the sentence to zina (adultery). (PLD 1983 FSC 541).

Incest and Innocence: Zahoor Ahmed was accused of incest. He filed for bail on the grounds of being over 60 and suffering from ill health. Both contentions were disproved medically. The court nevertheless granted him bail since he had a "white beard and looked innocent." (1982 P.Cr.LJ. 1202)
Double Victimisation: In another case, the court concluded by suggesting legislative reforms in penal law where women could be punished if their conduct was seen as inviting. "Such women sometimes tempt men," they wrote. (PLD 1982 FSC 157)

The report of the Inquiry of the Commission for Women (1997) clearly stated that the Hudood Ordinance must be repealed as it discriminates against women and is in conflict with their fundamental rights but no action has been taken so far. Another Committee was set up in June 2002 by the National Commission on the Status of Women to review the controversial Hudood Ordinances of 1979. This committee consisted of retired judges, scholars, representative of the non-Muslim minority, lawyers from civil society, scholars from Shia and Sunni fiqah and some members of the commission who had a legal background. After conducting an in-depth study of these laws, eleven (11) out of fifteen (15) members recommended that the Hudood Ordinance should be repealed while only two (2) members recommended that these should be retreated but amended with a view to removing the defective parts of it, whereas one (1) member chose not to express any definite opinion and maintained that recommendations of Committee should be given effect to.

The Special Committee thus reported that the Members of the Committee were unanimous in arriving at the conclusion that the Hudood Laws as enforced are full of lacunae and anomalies and the enforcement of these had brought about injustice rather than justice, which is the main purpose of enforcement of Islamic Law. Consequently, by a majority the Special Committee recommended that all four Hudood Ordinances (1979) should be repealed and the original Law with regard to offences mentioned in these Ordinances be restored. However, in order to give due consideration to those members in minority who recommended amendment to the Ordinances rather than repealing it altogether, the special Committee suggested that if after repealing as recommended by the Committee, Hudood Laws are required to be enforced, the draft of it should be first widely circulated with a view to seeking opinions of various sections of population and then these should be placed before the parliament for a full-fledged debate.  

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29 Presentation by Justice Majida Razvi on the Laws Affecting the Rights of Women in Pakistan: with specific reference to Hudood Laws.
3.3 WOMEN AND VIOLENCE: THE INTERSECTIONS OF STATE, FAMILY, CULTURE AND PATRIARCHY

This section examines the complex connections between violence against women and the collusion of state structures and customs with the continuation and in some instances strengthening of such violence. The first part provides an overview of women's status and discusses how the social sectors perpetuate structural inequalities. It discusses the social costs of violence against women (although one would argue that these 'costs' under-represent the traumas and emotional hardships women face and that there is no way of placing monetary value on these costs even though in countries like Sweden the economic costs are beginning to be calculated), and the specific issues arising in Bangladesh and Pakistan with regard to violence. In the context of Bangladesh, we focus on acid attacks and misogynist fatwas, and the attempts by the government in Bangladesh to prevent such incidents of violence and illegal fatwas and the perpetrators' ability to get away with such crimes. In the context of Pakistan, it discusses various customs that threaten women's lives such as the impunity of honour killings, rape and gang-rape as well as other customs that treat women as commodities of exchange and where women's agency is literally gagged and repressed.

This section also discusses sensitive issues such as trafficking and discriminatory laws that are not connected with customary practices but include the collusion of community and the personnel manning state institutions on the one hand and the masculinist biases within state institutions on the other. The latter is especially the case with the judiciary in Pakistan and Bangladesh where judgments reflect the male biases of the judges and the system. This section also highlights the manner in which these institutions silence women, whether through social coercion, direct intervention or by remaining silent themselves over injustices and by upholding as well as perpetrating an unjust system.

3.3.1 Critical Issues of Women's Security

Gender inequalities, denial and abuse of human rights, commodification and objectification of women, inflicting violence of different sorts, discriminatory laws, and harmful customs and traditional practices are critical issues facing women all over the world and posing threatening security concerns for them. However, according to UNICEF, South Asia is known to be the most gender insensitive region in the world because
of the manifestations of gender-based violence of the worst kind.\textsuperscript{30} Hayward defines gender violence as "any act of commission or omission by individuals or the state, in private or public life, which brings harm, suffering or threat to girls and women, and reflects systematic discrimination-including harmful traditional practices and denial of human rights because of gender."\textsuperscript{31}

Gender discrimination is widespread in Pakistan and Bangladesh alike and leads to women's insecurities in all spheres and at all levels, as indicated by official statistics on health, nutrition, education, employment, and political participation. There are structural inequalities and discrimination against women. "Structural violence" as elaborated by Johan Galtung, the Norwegian peace researcher, is "the endemic violence which exists in the inequalities of societal structures," i.e., where gross power imbalances within a system impair people's life chances as manifested in systemic discrimination — sexual, racial, religious, linguistic, economic, caste, etc.\textsuperscript{32}

Reports on women in Pakistan and Bangladesh indicate that women's status is not homogenous because of the interconnection of gender with other forms of exclusion in society. The Asian Development Bank (ADB) reports that there is considerable diversity in the status of women in both countries across classes, regions, and the rural/urban divide due to uneven socioeconomic development and the impact of tribal, feudal, and capitalist social formations on women's lives. However, women's situation vis-à-vis men, is one of systemic subordination, determined by the forces of patriarchy across classes, regions, and the rural/urban divide. Low investment in women's human capital, negative social biases, and cultural practices; the concept of honour linked with women's sexuality; restrictions on women's mobility; and the compliance of patriarchal norms by women and men, become the basis for gender discrimination and disparities in all spheres of life.\textsuperscript{33}

The ADB country reports on Pakistan and Bangladesh further expound that women lack social value and status because of negation of their roles as producers and providers in all social roles. The preference for sons due to their productive role dictates the allocation of household resources in their favour. Male members of the family are

\textsuperscript{30} UNICEF, A Reference Kit on Violence against Women and Girls in South Asia.
\textsuperscript{31} Ibid.
\textsuperscript{32} http://www.lawresearch.com.
\textsuperscript{33} http://www.adb.org/Documents/Books/Country_Briefing_Papers.
given better education and are equipped with skills to compete for resources in the public arena, while female members are imparted domestic skills to be good mothers and wives. Lack of skills, limited opportunities in the job market, and social and cultural restrictions limit women’s chances to compete for resources in the public arena. This situation has led to the social and economic dependency of women that becomes the basis for male power over women in all social relationships. However, the spread of patriarchy is not even. The nature and degree of women’s oppression/subordination vary across classes, regions, and the rural/urban divide. Patriarchal structures are relatively stronger in rural and tribal settings where local customs establish male authority and power over women’s lives. Women are exchanged, sold, and bought in marriages. They are given limited opportunities to create choices for themselves in order to change their lives. The most powerful aspect of social and cultural context however, is the internalisation of patriarchal norms by men and women. In learning to be a woman in society, women internalise the patriarchal ideology and play an instrumental role in transferring and recreating gender ideology through the process of socialisation of their children.34 This is where Butalia's paradigm of silence, discussed in the first chapter, becomes relevant. Women learn to be silent over excesses and teach silence to the next generation in the name of honour and self-preservation. In addition, society punishes women if they attempt to raise their voices beyond an acceptable limit.

The social construction of gender establishes male authority and power over women, and provides the basis for gender-based violence in society. Therefore, women’s security cannot be separated from the broader issue of patriarchy, which translates into women’s insecurities in all spheres of life and makes them structurally disempowered, excluded and subjugated due to unequal power relationships. Structural inequalities and issues of poverty, development and globalisation, have deep linkages with women’s security because they all play a role in violence against women, be it, economic violence, political violence, cultural violence or physical violence.

In 1993, the United Nations offered the first official definition of violence when the General Assembly adopted the Declaration on the Elimination of Violence against Women. Article 1 of this declaration states: “Any act of gender-based violence that results in, or is likely to

34 Ibid.
result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivations of liberty, whether occurring in public or private life.” Article 2 of the United Nations Declaration on the Elimination of Violence against Women stresses that the definition of violence against women should encompass, but not be limited, to acts of physical, sexual and psychological violence in the family and the community. The UN Report on Women in 1995 says that the most pervasive sort of violence reported from all regions of the world is abuse by a husband or a partner. Today, violence against women includes the abortion of unborn girls, female infanticide as well as the perception that violence against women by husband and family members is normal and natural.

Govind Kelkar maintains that the gender-based violence have personal and social effects. In support of his argument, she quotes recent studies in India and other countries where the cost of violence have been estimated to include economic loss increased by the individual in cases of absence from paid work, lost productivity, expenses related to physical and mental health, etc. He further categorises the costs of gender-based violence into direct costs, non-monetary costs and, economic multiplier effects. Direct costs involve the value of goods and services in treating and preventing violence; non-monetary costs include increased illness, mortality, abuse and depression while economic multiplier effects are the value of goods and services not produced when violence leads to increased absenteeism and decreased

35 Physical violence comprises use of physical force or weapons in attacks that injure or harm a woman, including beating, kicking, pulling hair, biting, acid throwing, burning, attacks with weapons and objects and murder.

36 Sexual violence comprises actions that force a person to engage in sexual acts against her (or his) will, without her consent; it includes economically coerced sex, date rape (including administering drugs to women), marital rape, gang rape, incest, forced pregnancy and trafficking in the sex industry. Generally, sexual violence is also considered to include coerced non-penetrative sexual activity as well as sexual harassment.

37 Psychological violence includes threats of harm, physical or sexual violence and abandonment, intimidation, humiliation, insults and constant criticism, accusations, attribution of blame, ignoring, giving insufficient attention or ridiculing the victim’s needs, controlling what the victim can and cannot do, withholding basic needs (such as food, shelter and medical care) and deprivation of liberty.

39 Ibid, p.11.
41 Ibid., p. 14.
productivity when women are employed outside the home or face loss of job. 42

The “Violence against Women Report (2003)” of Bangladesh National Women's Lawyers' Association (BNWLA) describes violence against women as more than physical, sexual, economic and emotional abuse and states that it is also about living in a climate of fear, misery, loss, mistrust, humiliation and despair. These abuses are experienced in the context of additional oppressions based on race, ethnicity, age, sexual orientation, gender identity, type of labour being performed, level of education, class position, disability, or immigration/refugee status. 43

Although violence against women is a universal phenomenon, the extent and forms of violence differ from one society to another. Considering the enormous dimensions of issues relating to women’s security in Bangladesh and Pakistan, and realising our inability to capture and discuss all of them, this section aims to focus only on some striking and distinct dimensions of violence against women in the two countries. Therefore, discriminatory laws, and harmful customs and traditional practices are discussed in the context of Pakistan, fatwas affecting women’s lives, and acid attacks are discussed in the context of Bangladesh, whereas trafficking is discussed as a common security threat for women in both countries.

It is noteworthy that in almost all the cases that we discuss below, the family, the community and the state play ambivalent contradictory roles (discussed earlier on in the context of the Suppression of Violence Against Women Act of 2000 in Bangladesh). While these institutions are commonly perceived to be the providers of security to women, it is these very institutions that ‘punish’ women for what is considered ‘errant’ behaviour; thus they are the perpetrators as well as protectors. For example, women pay for punishment meted out to them by the family with their life for what are called honour killings, or physical disfigurement resulting from acid attacks, or other forms of domestic violence. They suffer by being given in exchange to settle enmities or by being sold into sexual slavery by being trafficked. In all contexts, the family, the community and ultimately the state are complicit. The issue

43 Salma Ali (ed.), op.cit., p.3.
of women’s silence becomes critical at such junctures as the social (familial, community or national) interests demand their silence. Often, women who speak out against brutalities are either told to be silent or silenced. In addition, sometimes state representatives prefer to be silent. For example, when Taslima Nasreen highlighted women and minorities’ sexual harassment, she was threatened by the Mullahs in her country; eventually she had to leave the country. When women are raped in Pakistan, they have been advised to pray to God for justice, not seek it actively through the courts. Mukhtaran Mai became a symbol of resistance who has been harshly treated by the government for speaking out and giving the country a bad name internationally by bringing the issue of her rape into the international public domain. Fears have been expressed in the national assembly that Mukhtaran Mai has become a role model for young girls, thereby, sending out the message of silence over speaking out. Similarly, in cases of women’s trafficking, embassy officials do not like to ‘own up’ their women, preferring to be silent about their identity and discouraging them from returning.

**Domestic Violence**

Domestic violence is often naturalised and physically violent acts such as beating, slapping or kicking are considered the right of the husband or father/guardian to perpetrate for punishing errant women. Many believe that the roots lie in the idea that women are the property of males and they can exercise any form of control over them. In Pakistan, the issue of domestic violence came to the fore when in the year 2000 the Minister for Women’s Development announced that the government would help with prosecution of domestic violence; in the same year the Commission of Inquiry on the Status of Women also established a subcommittee to look into domestic violence. Similarly, in 2001 the Women’s Ministry announced “zero tolerance’ for domestic violence and a survey of women encountering different forms of domestic violence. The survey was never made a public document as many policy makers found it unacceptable in documenting marital rape. However, Amnesty International, quoting

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44 In a similar incident, a group of demonstrators protesting rape of a Christian girl from Narowal were rounded up by the police in the summer of 2004 because the King of Brunei was to begin his visit and the banners protesting rape amounted to washing dirty linen in public; therefore, an official of the interior ministry decided to remove the protesters and their banners from the public arena, lest the King of Brunei ask what the protest was about.

a report of the Punjab Women's Development and Social Welfare Department states that, “42 percent women accepted violence as part of their fate, while over 33 percent felt too helpless to stand up to it; only 19 percent protested; and only 4 percent took any action against it. The perpetrators of such violence were male relatives (53 percent), husbands (32 percent, followed by other women (13 percent) and other relatives (2 percent).” The report also quotes the survey as saying that only 5 percent of rape and honour killing cases are reported. In Pakistan, the proposal to legislate against domestic violence in the Punjab Assembly was defeated in 2005 as most male parliamentarians thought this would bring complete pandemonium in the family. The idea of marital rape continues to be anathema to most legislators in South Asia and unless domestic violence acquires particularly brutal forms, and is reported in the press or elicits the attention of government ministers or the president, there is widespread tolerance for it in South Asia. Burn cases are often the result of domestic violence but seldom are perpetrators brought to justice.

In Bangladesh, the Dowry Act of 1980 was aimed at preventing domestic violence as most such violence was seen to stem from dowry disputes. However, according to Amnesty International, quoting the US State Department’s country report, “vigilantism against women for perceived moral transgressions occurs, and may include humiliating painful punishments, such as whipping. Rejected suitors, angry husbands or those seeking revenge sometimes throw acid on a woman’s face.” A detailed discussion of acid attacks follows; however, domestic violence is not restricted to acid attacks and much of it goes unreported.

**Acid Attacks**

One of the cruelest forms of violence is an acid attack and Bangladesh has the highest worldwide incidence of it, reports BNWLA. It is further expounded that the flinging of acid on the bodies and faces of women became a common means of taking revenge by rejected suitors in the 1980s and peaked in recent years. Nowhere in the world have acid

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46 Ibid.

47 See for instance, the coverage in the press of the case of Zainab Noor whose husband, an imam at a mosque, mutilated her body in the most grotesque manner on charges of suspicion and was released from jail when a commercial company paid 'qisas' (compensation money) to the jail authorities. Although the release has been appealed against in the Supreme Court, the perpetrator is free and none of the compensation money has reached the survivor who is living in extreme hardship due to her inability to meet medical expenses after her kidneys and intestines were permanently damaged.
attacks been used as a violence mechanism the way they have in Bangladesh, states a report on such violence.\(^{48}\) Observing the highest numbers of this crime to be taking place in Bangladesh, another Bangladeshi organisation, Acid Survivors Foundation (ASF) reports that there are cases of acid throwing in other countries but these are isolated incidents, and nowhere near the number of attacks that occur in Bangladesh.\(^{49}\)

Detailing what happens when acid is thrown on a person, ASF, an organisation that specifically deals with acid violence points out that the results are horrific. Nitric or Sulphuric Acid has a catastrophic effect on the human flesh. It causes the skin tissue to melt, often exposing the bones below the flesh, sometimes even dissolving the bone. When acid attacks the eyes, it damages these vital organs permanently. Many acid attack survivors have lost the use of one or both eyes. The victim is traumatised physically, psychologically and socially.\(^{50}\)

An acid attack would dramatically change one's life. Most survivors of an acid attack are forced to give up their education, their occupation and other important activities in their lives, notes ASF. This is because recovering from the trauma takes up most of their time and because the disfigurement they have to bear debilitates and handicaps them in every conceivable way. The scars left by acid are not just skin deep — victims are most often faced with social isolation and ostracisation that further damages their self-esteem, and self-confidence and seriously undermines their professional and personal future. Women who have survived acid attacks have great difficulty in finding work and if unmarried, as many victims tend to be, they have very little chance of ever getting married, which in a country like Bangladesh is socially isolating.\(^{51}\)

According to BNWLA's documentation for 2001, the number of acid attacks on women was 187. However, sources in the Acid Survivors Foundation confirmed that during the same reporting year, a total of 303 women received acid attacks and most of them got their faces seriously burnt and deformed. According to another human rights organisation in Bangladesh, however the number of acid attacks in 2001 was 569.\(^{52}\) In 2002, there were 264 reported acts of acid violence.

\(^{49}\) [http://www.acidsurvivors.org/index_home.htm](http://www.acidsurvivors.org/index_home.htm).
\(^{50}\) Ibid.
\(^{51}\) Ibid.
reports BNWLA, whereas, in the year 2003, a total of 339 incidents of acid attack were recorded where 410 persons were injured; among them 257 were women, 125 men and 28 children. Available statistics suggest that on an average 30 people, mostly young girls, are victims of acid throwing every month.

The increasing magnitude of this problem can be illustrated from the Table 3.12 prepared by Acid Survivors Foundation (ASF).

Table 3.12: Acid Attack Statistics (May, 1999-October 2004)

<table>
<thead>
<tr>
<th>Period</th>
<th>Incidents number</th>
<th>Number of persons attacked</th>
<th>Persons Treated</th>
</tr>
</thead>
<tbody>
<tr>
<td>May-Dec. 1999</td>
<td>115</td>
<td>80 23 36 139</td>
<td>69</td>
</tr>
<tr>
<td>Jan-Dec. 2000</td>
<td>172</td>
<td>114 39 73 226</td>
<td>104</td>
</tr>
<tr>
<td>Jan-Dec. 2001</td>
<td>250</td>
<td>138 94 111 343</td>
<td>216</td>
</tr>
<tr>
<td>Jan-Dec. 2002</td>
<td>366</td>
<td>221 139 124 484</td>
<td>269</td>
</tr>
<tr>
<td>Jan-Dec. 2003</td>
<td>335</td>
<td>204 117 89 410</td>
<td>206</td>
</tr>
<tr>
<td>Jan-Oct. 2004</td>
<td>230</td>
<td>153 59 69 281</td>
<td>143</td>
</tr>
<tr>
<td>Total</td>
<td>1482</td>
<td>910 471 502 1883</td>
<td>1007</td>
</tr>
</tbody>
</table>


Note: *Acid Attack record (Attack recorded from ASF inauguration: May, 1999).

Analysing the horrendous increase of acid violence and making connections of it with the changes taking place in the Bangladeshi society, Badruddoza writes that acid throwing increased about 7 years ago and coincided with a new thrust by women in Bangladesh to assert their rights. Women’s condition was uplifted as a result of the micro-credit programme, which helped them attain self respect and independence and gave them the courage to refuse to be a commodity in the hands of the male members of the family. Thus it may be reasoned that acid throwing is a tragic by-product of a gender revolution.

Major reasons discovered for acid throwing attacks include refusal of marriage offers, rejection of male advances, dowry disputes, political disputes and even a delayed meal. It has been observed that majority of the victims of acid attacks are young women falling in the age group

of 10 to 20 years and the perpetrators are either jealous boyfriends, spurned suitors, neighbourhood stalkers and, sometimes, angry husbands in search of more dowry or a permission to enter a polygamous marriage. Unfortunately, the crime rampantly occurs in rural and less developed areas of the country and in small towns, states BNWLA, and the inability to afford proper medical treatment and plastic surgery means that the women are scarred for life unless they find a patron who will donate for their operation.

The Table 3.13 prepared by the Acid Survivors Foundation that illustrates the reasons given for Acid Attacks in 2004.

<table>
<thead>
<tr>
<th>Reasons of Attack</th>
<th>Number Attacked</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dowry</td>
<td>12 (14)</td>
<td>5% (5%)</td>
</tr>
<tr>
<td>Family dispute</td>
<td>21 (41)</td>
<td>8% (13%)</td>
</tr>
<tr>
<td>Land Dispute</td>
<td>83 (89)</td>
<td>32% (29%)</td>
</tr>
<tr>
<td>Refusal of Romantic Relationship/ Marriage/Sex</td>
<td>33 (26)</td>
<td>13% (8%)</td>
</tr>
<tr>
<td>Present at scene</td>
<td>34 (24)</td>
<td>13% (8%)</td>
</tr>
<tr>
<td>Marital dispute</td>
<td>13 (18)</td>
<td>5% (6%)</td>
</tr>
<tr>
<td>Political reason</td>
<td>3 (17)</td>
<td>1% (5%)</td>
</tr>
<tr>
<td>Others</td>
<td>24 (34)</td>
<td>9% (11%)</td>
</tr>
<tr>
<td>Not known</td>
<td>33 (48)</td>
<td>13% (15%)</td>
</tr>
<tr>
<td>Total</td>
<td>256 (311)</td>
<td>100% (100%)</td>
</tr>
</tbody>
</table>


Reports suggest that acid attacks were originally used primarily against women but now men are also being targeted. Nevertheless, the ratio is tilted strikingly against women. According to the Acid Survivors' Foundation, nearly 80 percent of acid attack victims are female of whom more than 40 percent are under the age of 18.57 Their report also reveals that land disputes account for 27% of acid attacks, followed by 18% for family disputes, 10% for refusal of sex, 8% for refusal of romantic relationship, 5% for dowry conflicts, 4% for marital disputes, 3% for refusal of marriage proposal, 2% for political enmity, and the remaining 23% for unknown reasons.

The following case studies illustrate different reasons for acid attacks.

**Case Study-1**

Bikash of the village Nayanpur in Sadar Upazila fell in love with Arpana Biswas, a student of class ten of the same village. One day, Bikash made a proposal of marriage to her. When Arpana rejected the proposal, he grew furious, and recruited his friend Lusha Adhikar to help him get revenge. On June 8, 2002, Bikash, aided by Lusha, entered the bedroom of Arpana and threw acid on her. The acid burnt her entire body, but because she was rushed to medical care, she managed to survive the attack. Arpana’s father filed a case with Kotwali Thana accusing Bikash and Lusha. Police have arrested Lusha, but Bikash is still absconding.

**Case Study-2**

Sonali, the victim, was only 22 days old when she, her mother Khadija, age 20 years and her father Nur Islam were all attacked by acid while sleeping on the night of 29th November 2002. Her father, Nur Islam had a disagreement and enmity with a neighbour and he was targeted but as they were sleeping in the same bed, they were all affected. The unfortunate incident destroyed little Sonali's future and her mother was also severely injured. They were admitted immediately to the local hospital and within 48 hours they were brought by the ASF to be admitted into Dhaka Medical College Hospital. Sonali’s head, neck, face, eye, and ears were severely burnt. Her eyelids were destroyed. As a result her eyes became prone to loss of eyesight. She has undergone several operations to fix her eyelids, lips, nose and neck. Dr. Ronald W. Hiles, an eminent visiting British plastic surgeon, operated on the eyelids of Sonali twice; now she can see a little but she needs follow up operations after 6 months. Khadija, her mother, also underwent several operations. Khadija lost one eye and also has deformities in the mouth. Her scalp, face and neck healed but she needs more operations to correct the deformity of her mouth. Both of them get adequate nursing care and counselling services at Jibon Tara after being discharged from DMCH. ASF is following up their needs and provides required support.

**Case Study-3**

On 19 August 2002, Bilkis Begum was attacked with acid by Zaber Ali and her cousin for her refusal to have an affair and marry him. Her face, eyes, right ear, hand and various parts of her body were seriously burnt. A case was filed against the accused persons on 20 August 2002. ASF produced medical certificate and prepared witnesses for giving statement in the court. In partnership with BRAC, ASF also followed up this case with the public prosecutors to ensure that proper and efficient legal procedures were maintained in this case. On 23 July 2003, the Acid Crime Control Tribunal passed life sentences on the accused persons.
Case Study- 4

Anita Bala, her husband and two children were living in Panchagar district. Her husband had a land-related dispute with a neighbour. Anita was very vocal in protecting her husband. For this reason, on 17 February 2003 she was attacked with acid. She was severely burnt and lost sight of one eye. After being treated at the Acid Survivors Foundation, Anita went back home but faced serious financial crisis, as her husband was unable to go back to the field due to the land dispute. The social Registration Unit of the ASF provided her with rickshaw-vans so that she could earn a respectable living along with her husband.

Case Study-5

Bina Akhter from Hazaribagh, a suburb in Dhaka, was 16 years old and was a student of class 10 in 1996. She and her mother lived with Bina's aunt's (mother's sister) family, in Lalbagh, a lower middle class neighbourhood, in old Dhaka. Bina's uncle was a small businessman who was unemployed at the time. Bina's aunt and uncle had one daughter, Mukti, who was very beautiful. A local goon named Masum proposed to Mukti, but was rejected by Mukti's father. After the rejection, Masum threatened them. One night when Bina, her mother, and Mukti were asleep, Masum and some of his friends entered their bedroom. They were about to pour acid on Mukti, when Bina woke up and tried to stop them. During the struggle, the acid was poured on Bina instead. She started screaming. Hearing her screams, Bina's uncle came into the room. Masum and his friends beat him unconscious. Bina and her uncle were rushed to the Dhaka Medical College Hospital (DMCH) that night. Although drops of acid fell on Mukti and Bina's mother they were not seriously injured. At that time, the family could not afford to pay for the extensive surgery, which Bina needed to repair her damaged face. Subsequently she had eight operations. Her uncle had to sell almost everything he owned to pay for medicine, bandages and blood.

Taking note of the growing incidence of such attacks, the Government of Bangladesh restricted the sale of acid but failed to control this crime because sulphuric acid is the commonest acid used as it is widely used in battery repair shops and the tannery industry.

In response to the epidemic of acid violence in Bangladesh, Parliament passed the Acid Crime Prevention Act of 2002 and the Acid Control Act of 2002. The first law aimed at improving punishment of criminals and the second at controlling the accessibility of acid. These tough new laws have included the death penalty as the maximum punishment for offenders and have provided a strong legal recourse to acid attack victims.\(^{58}\)

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**Government Initiatives for Acid Crime**

**a. Acid Crime Prevention Act**

Acid throwing cases will be held in special tribunals.
- Top priority for speedy trials.
- No bail for acid criminals.
- Capital punishment and 1 lakh taka fine if acid injury causes death, loss of eye sight, loss of hearing, or damage to face, breasts, or sexual organs.
- Maximum 14 years and Tk 50,000 fine for burns to any other body parts.
- Between 3-14 years prison with Tk 50,000 fine for attempted acid throwing.
- Maximum 7 years for filing a false case.

**b. Acid Control Act, 2002**

- Government will license production and import of acid.
- Deputy commissioners will license transportation, stocking, and selling of acid. Maximum 5 years imprisonment for violation of license agreements.
- Between 3-10 years imprisonment for unauthorised production, import, transport, stocking, and selling of acid.
- Maximum 15 years for unauthorised possession of acid production equipment.
- Maximum of 5 years for anybody who aids in unauthorised acid production. Maximum 15 years for any abettor of acid crimes.

**c. One Stop Crisis Centre (OCC)**

The OCC at the Dhaka Medical College Hospital (also subsequently at the Rajshahi Medical College Hospital) was established in 2001 to provide victims of violent attacks immediate medical care, counselling, crime reporting, and legal advice. The OCC is based on the concept of “integrated and coordinated teamwork of multi-sectoral and inter-agency network for the management of survivors of violence against women and children.” The OCC is mainly operated by the government but functions in cooperation...
with reputable NGOs including Bangladesh National Women Lawyers Association, Naripokkho, and the Acid Survivors Foundation.

The physical setup of the OCC includes an eight-bed ward where patients are admitted, an area for doctors, police officers, and computer programmers, a forensic examination room, and a counselling room. The OCC staff includes 3 medical officers, 2 police sub-inspectors, 4 senior staff nurses, 1 computer programmer, 2 police constables, and 3 cleaners and/or peons.

The establishment of OCC has been a groundbreaking development and has made it much easier for survivors to seek help. The coordinated and comprehensive services provided by OCC make medical care and legal aid accessible even to very poor and disadvantaged survivors.69

ASF observes that after the introduction of two new acid-related laws by the Ministry of Law, Justice and Parliamentary Affairs in 2002, case conviction rates have been increasing. It is also important to mention that in 2003 the average time for completion of a case at the lower court took 6 months whereas it took 3 to 4 years in the past. However, the number of successful prosecutions is still unsatisfactory compared to the number of crimes, as the ratio now stands roughly at 1:9.60

Non-governmental and human rights organisations in Bangladesh have been playing an important role in assisting their government in helping the victims of acid burns. One such organisation is Bangladesh Human Rights Commission (BHRC), which gives psychological support to the victim and her family, takes up the matter with the police, provides initial medical treatment by local doctors, and ultimately brings the victim to Dhaka where they have a hospital to treat such patients with the help of Surgeons, Plastic Surgeons, Ophthalmologist and other relevant specialists. Aside from medical aid, BHRC also gives legal assistance to victims.61

Fatwas

As discussed previously, through its belief systems the community also exacerbates violence. In the context of fatwas (explained below), the

60 http://www.acidsurvivors.org/index_home.htm, op.cit.
61 Badruddoza, op.cit.
religious clergy believe that they can pass their misogynist edicts. With the help of the community, they can obtain the moral authority to implement them. Thus, the community is involved in the maintenance and perpetuation of an unjust order against women. In this regard, the War of Terror that has categorised the whole of the “Islamic world” as the enemy has helped to crystallise the power of the Mullahs against what they perceive to be western, anti-Islam incursions into private spaces. Therefore, a Muslim identity, maintained through the chastity of women and cultural imposition of Islam upon them has become a pressing agenda.

In Islamic jurisprudence, a *fatwa* is “an opinion on a point of law rendered by a mufti (legal expert) in response to a question submitted to him by a private individual or by a *qazi* (religious judge, magistrate).” In simpler terms, a fatwa in Islamic legal parlance refers to a clarification of an ambiguous judicial point or an opinion by a jurist trained in Islamic law. It is a religious edict based on Islamic principles pronounced by a religious scholar. Since it is a clarification or opinion, a fatwa is not legally binding, although a *qazi* may take *fatwas* into consideration when taking a legal decision. This means that an individual may seek a fatwa for clarification of a complicated issue, but he or she is not in any way bound to accept it, and is free to seek a second opinion. In Bangladesh, however, half-educated mullahs use the *fatwa* to exploit vulnerable members of society, reports BNWLA. Rural clerics, through the mode of an informal justice system, punish women for so-called “anti-social” or “immoral activities.” Although these punishments are not legal per se, because the rural clerics exert considerable autonomy and power in rural areas, punishments are generally carried out against helpless women.

Shehabuddin traces the history of *fatwas* and notes that in contrast to the past, when prominent religious leaders in south Asia issued *fatwas* to justify different positions vis-à-vis British colonial authority, western education, or “modernity,” recent *fatwas* have been used to invoke Islamic law and the government to regulate the social, economic, and political behaviour of poor village women. Furthermore, these *fatwas* are often issued by men who lack the authority to mete out such

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63 Ibid.
judgments and sentences, and who by the standards of Islamic jurisprudence, are not qualified to do so.\textsuperscript{65}

BNWLA notes that the notion of \textit{fatwa} has been totally misconceived in Bangladesh and has been abruptly used by half-educated mullahs who are actually not Islamic scholars. This has been the case with most incidents of \textit{fatwas} during the last few decades. In Bangladesh today, considered from a strict Islamic point of view, the practice of \textit{fatwa} is being misused. It is an instrument of exploitation and is targeted against the most vulnerable members of society to achieve social, political and economic advantages.\textsuperscript{66}

\textit{Fatwas} in Bangladesh are pronounced on many issues but the most dominant reasons include the following:\textsuperscript{67}

- Oral divorce pronounced by a woman or her husband;
- Having premarital sex with boyfriend or a male partner;
- Premarital or early pregnancy (which might be of proof that the lady had sex before her marriage; or, after marriage, when a women gives the husband scope to believe that she had sex with somebody else);
- Allegations by husband or in-laws or anybody of illicit or immoral sexual relationship (with anybody other than the husband, which in this society is seen as immoral);
- Demanding justice for rape by a victim or her family — which means that the religious clerics in rural society don't think it just for a woman to seek justice in case she has been raped. To them (and also to a considerable number of ordinary people), it is not the rapist's fault (let alone crime) but the woman's adulterous or unchaste attitude, which provoked the “man/men” to violate her.

\textit{Fatwas} in Bangladesh have also been issued by several national and religious leaders accusing Nongovernmental Organisations (NGOs) of converting girls and women to Christianity and expressing objections to women's increasing access to credit, employment, and educational opportunities outside the home. Villagers in various parts of the country have at times set fire to NGO schools imparting basic literacy to women and have chopped down mulberry trees planted by women

\textsuperscript{65} Elora Shehabuddin, op.cit.
\textsuperscript{67} Ibid, p.51.
with the assistance of NGOs. During elections, women in certain districts have been prevented from going to polls following fatwas issued against them that declare that it is inappropriate for women to vote.\textsuperscript{68}

\begin{center}
\textbf{Case Study-1}
\end{center}

A fatwa was issued declaring that schools run by NGOs were inculcating rural Muslim children with Christian values and ideas. The mullahs\textsuperscript{69} in the fatwa claimed that this type of education made the girls shameless, too knowledgeable about their own bodies, too informed of "un-Islamic" legal rights, and irreverent toward religious authority. Following the fatwa, about twenty-five BRAC schools were set on fire, and many parents withdrew their children, especially daughters, from the schools.


\begin{center}
\textbf{Case Study-2}
\end{center}

After a fatwa declaring that mulberry trees were anti-Islamic and that village women who looked after them were no longer Muslims, local mullahs and other village men in Nandail chopped down hundreds of thousands of takas worth of trees in early 1994. BRAC estimates that approximately 180000 mulberry trees were destroyed nationwide in accordance with such fatwas, affecting the livelihood of seven hundred female guards.


\begin{center}
\textbf{Case Study-3}
\end{center}

Thirty-seven years old Nojimon Begum was working for BRAC as a guard on a road in Bogra where six hundred trees had been planted. In exchange, she received three kilograms (about six and a half pounds) of wheat a day. One day her husband, to whom she was married for eighteen years, came to see her while she was working and informed her that he was divorcing her. He said to her: "You have gone onto the road, you greet everyone, and you spend the whole day there. You have no honour; you go and chat with men, and take loans from them. You have no need of a husband." Because Nojimon worked on the main road, local mullahs issued a fatwa that Ansar should divorce her.

Source: "Contesting the Illicit: Gender and the politics of Fatwas in Bangladesh" in SIGNS (2002).

\textsuperscript{68} Elora Shehabuddin, op.cit.

\textsuperscript{69} Mullah is a largely pejorative term used to refer to the local religious zealot and self-proclaimed authority on Islam. Mullah is to be distinguished from the term Moulana, which means a scholar.
In many cases, there appears to be a financial motive involved. Fatwas can be a source of income for the local clergy, known as fatwabaz (in fatwa business), who justify their deeds in the name of religion. According to a newspaper report, ten women in Bogra were informed that because of their involvement with NGOs and by accepting loans, they had become “automatically” divorced from their husbands.71 Performing marriage ceremonies is an important source of income for the mullah, points out Miarul, a Bangladeshi NGO worker who explains that many of these “suddenly divorced couples” come to them seeking to be remarried and that an imam earns about fifty takas per ceremony in the process.72 Another source reported that in 1994 fifty such marriages were performed in just a few months, where before each such ceremony, the wife was caned several times and then “reconverted” into a Muslim.73

Tania Amir (2002) writes that the clergy and the Mahajan class felt threatened and upset in response to the silent revolution that was bringing about changes in the social life of rural Bangladesh (such as women using bicycles for work), thus they fought back by systematic violence against women by way of fatwa and attacks on NGOs and their workers. She further expounds that almost always persecution and fatwas have been given against women, subjecting them to inhuman, cruel, and degrading treatment in the name of Islam by way of a

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70 Purdah, literally means a curtain. It refers to a range of behaviors designed to maintain a barrier between women and all men other than close kin. It may involve covering one’s body, head, and face; never leaving one’s home; or simply walking only on paths not frequented by men.

71 Quoted in Elora Shehabuddin, op.cit. p.1020.

72 Ibid.

73 Ibid.
‘Shalish’ (village mediation). However, these are not true mediations at all; rather, they are imposition by the clergy of a pre-historic form of punishment, contrary to existing laws, and imposed arbitrarily in the name of Islam. A compilation of fatwas reported in newspapers revealed that over 98% of fatwas are directed against women, or against developmental activities whether undertaken by the State or NGOs engaged in the process of empowerment of women and poverty alleviation, indicating that the fatwabazs are not only “anti-women” but also “anti-development,” and confirming that the fatwas have been used as a systematic tool of violence and repression against women.74

Fatwa-instigated violence manifests itself in many forms of punishment such as lashes/whipping, social boycott, physical torture, and even stoning. The well-known legal NGO Ain o Salish Kendra reports that fatwa-instigated violence is directed mostly against impoverished rural women in Bangladesh where members of the rural elite charge women with adultery and issue fatwas that they be whipped or stoned.75

Case Study-5

In the north-eastern district of Sylhet in Bangladesh, a twenty-two year old woman called Nurjahan was dragged out of her home by her hair to be punished for adultery. Nurjahan’s first marriage had ended in divorce some time ago and she had recently married Mutalib. After having confirmed that Nurjahan was indeed divorced from her first husband and thus free to marry Mutalib, the local imam, Maulana Mannan, performed the marriage ceremony. As is common in rural Bangladesh, neither the divorce nor the marriages were formally registered; consequently, there was no documented proof of either action. Not long after, some people in the village began to protest that Nurjahan had not obtained a proper divorce from her first husband and therefore could not be married to Mutalib; they accused the couple of living in sin. A “salish,”76 convened under the leadership of Mannan himself and comprising several members of the local elite pronounced that Nurjahan’s marriage to Mutalib was not in accordance with Islamic law and hence invalid. The ‘salish’ issued a fatwa declaring that Nurjahan and Mutalib should both be punished for engaging in unlawful sex. On that cold morning, Nurjahan and her husband were forced to stand in a waist-deep pit in the ground and then each was pelted with 101 stones; Nurjahan’s elderly parents were given fifty lashes each. Later that day, Nurjahan killed herself by drinking agricultural pesticide.

Source: “Contesting the Illicit: Gender and the Politics of Fatwas in Bangladesh” in SIGNS (2002).

75 Elora Shehabuddin, op. cit. p.1012.
76 A ‘salish’ is a traditional village arbitration council, usually presided over by local social and religious notables.
In late 2000, a woman named Shahida, a village woman at Naogaon district in northern Bangladesh, fell victim to a salish verdict and was forced to commit suicide.\footnote{Dilawar Jahid, op.cit} Wide publicity of the incident led to the High Court verdict declaring the dispensing of fatwas illegal on January 1, 2001 by judges Rabbani and Sultana, the country’s first woman judge. The judgment declared: “Fatwa means legal opinion which means legal opinion of a lawful person or authority. The legal system in Bangladesh empowers only the courts to decide all questions relating to legal opinion on the Muslim and other laws in force.”

The judgement against fatwas led to a showdown between the pro-fatwa clerics and anti-fatwa, pro-NGO Nagorik Andolon (Citizen’s Movement). The pro-fatwa clerics declared the NGOs to be the number-one enemy of Islam and Bangladesh and blamed the Awami League government for appointing judges allegedly biased against Islam, whereas the pro-NGO and anti-fatwa Nagorik Andolon asked the Government to ban all religiously motivated political parties.

Dilawar Jahid writes that the Jamaat-i-Islami, several Islamic groups and hundreds of ulamas condemned the judgment as un-Islamic and branded the judges as murtads (apostates). Maulana Fazlul Karim, the influential pir (Sufi) of Charmonai and chief of the Movement for the Islamic Constitution (who is avowedly opposed to the Jamaat and female leadership), also condemned the judgment. Mufti Amini threatened to launch a “Taliban-style Revolution” in Bangladesh to tackle the “enemies of Islam.” Islamic zealots went on a rampage at Brahmanbaria, Chittagong and certain other places, chanting anti-Government and pro-Taliban slogans: “Amra Sabai Taliban, Bangla Habe Afghan” (We are all Taliban and will turn Bangladesh into another Afghanistan). Although most liberal-democrats favoured the anti-fatwa judgment, the Government, apprehensive of a backlash, was thinking in terms of reviewing the judgment.\footnote{Ibid.} A few weeks later, the Appellate court stayed the High Court’s ruling against fatwas.

**Customs and Traditional Practices**

South Asia is a region where customs dominate practices and women are the worst sufferers. Below, we discuss honour killings, vani and swara as examples of customs threatening women’s security in Pakistan. These crimes against women are perpetrated by the family as
well as the community and continue to grow and receive public attention due to dual attitudes emanating from state structures (e.g., backlash from male legislators against the honour killings bill and some progressive judgments upholding women’s rights from the judiciary) and women’s and human rights activists. The crimes we discuss here constitute a part of domestic violence as well as relate to its naturalisation through customs and traditions.

**Honour Killings**

“Honour” killings of women, known as *karo kari* in Sindh, *siyah kari* in Balochistan and *tora* in the NWFP, can be defined as acts of murder in which “a woman is killed for her actual or perceived immoral behaviour.” It is further expounded that such “immoral behaviour” may take the form of marital infidelity, refusing to submit to an arranged marriage, demanding a divorce, flirting with or receiving phone calls from men, or “allowing herself” to be raped.

SDPI’s report on honour killings further elaborates on the concept and states: “Honour killings are premised on the assumption that the woman has destroyed the honour of her family, for example by marrying someone without the consent of the family, or by seeking a divorce from an abusive husband or worse still if she is suspected of adultery when in fact she has been raped.” The report further expounds that honour killings are also used as get-rich quick schemes, since the men accused of the illicit relationship have the choice of being killed or paying the woman’s family a specified amount. In such scenarios, women face obstacles and discrimination at all levels of society, ranging from verbal abuse from the community or tribal members, to gender bias at the judiciary level. As more and more cases have been publicised, there has been a great push to end such unjust customs. However, despite the role of human rights activists, journalists and the latest government endeavour to treat honour killings as wilful murder, and some improvement in judgments compared to the past, the number of cases has risen dramatically.

The phenomenon of “honour killings” is a global one but it is more pronounced in Muslim countries despite the fact that there is no sanction for such killings in Islamic religion or law. Stephanie Nebehay

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80 Ibid.
points out that such killings have been reported in Bangladesh, Britain, Brazil, Ecuador, Egypt, India, Israel, Italy, Jordan, Pakistan, Morocco, Sweden, Turkey, Uganda, Afghanistan, Iraq and Iran.\(^{82}\)

Khattak, Ahmed and Habib also note that the widespread view and mistaken association of honour killings with the non-western, mostly Islamic world is now being strongly challenged and debated by different scholars who trace back history in different geographical contexts to uncover the nexus between patriarchy and honour and record the genesis of honour killings. She argues that it is wrong to associate only non-western Muslim or tribal societies with honour killings and writes that there is a long list of places like Africa, the Middle East, Asia, Europe, Latin America and Australia where a patriarchal structure is maintained that sanctions control over women's bodies, hence providing the basis for honour killing to take place.\(^{83}\)

Pakistan, however, is probably the one country where honour killings are most pervasive. Estimating the scale of the phenomenon is made more difficult not only by the problems of data collection in predominantly rural countries, but by the extent to which community members and political authorities collaborate in covering up atrocities, reports Gendercide.\(^{84}\) According to Yasmeen Hassan, author of *The Haven Becomes Hell: A Study of Domestic Violence in Pakistan,* “The concepts of women as property and honour are so deeply entrenched in the social, political and economic fabric of Pakistan that the government, for the most part, ignores the daily occurrences of women being killed and maimed by their families.” (Hassan, *The Fate of Pakistani Women*) Frequently, women murdered in “honour” killings are recorded as having committed suicide or died in accidents.\(^{85}\)

According to Rabia Ali (2001), in Pakistan, the origins of honour killings can be traced to the pre-Islamic era when tribes migrated from Balochistan into upper Sindh and southern Punjab. The intensity of the practice was dependent on the relative influence of the Baloch tribes vis-à-vis other tribes in the area; the greater the holding over the area, the more frequent honour killings became.

Rabia Ali suggests that honour killings have been carried out since the emergence of patriarchal social structures across Europe and Asia,

\(^{82}\) Quoted in “Honor Killings of Women,” www.gendercide.org.


\(^{85}\) Quoted in www.gendercide.org.
where the honour of the family and community became associated with the sexuality of its women. The control of the sources of production such as land and livestock and sources of reproduction became crucial, that is to say, women were perceived to be fundamental to the survival of agrarian and tribal societies. In order to establish the paternity of offspring, ensure the maintenance of lineage, and the rights to ownership of property, the regulation of a woman's sexuality and the safeguarding of her chastity were imperative. Essentially, then, the worth of a community vested in its land and its women and notions of shame and honour came to be linked to these possessions: men would kill to protect their land and they would kill to protect their women. And they would kill the women if the strict code governing sexual relationships was violated. The custom of honour killings thus emerged as a central element in the code that regulated social relations in these 'primary' societies, and, to a greater or lesser extent it is still practiced in different parts of the world. Historical and anthropological studies identify the killing of women as a means of restoring male honour and reinforcing patriarchal structures, and suggest that this has been the norm for centuries in agrarian societies such as China and India, in the tribal Arab Middle East, Southern Europe and Latin American countries. She also notes that the connection between women, adultery, property and murder did not exclude Anglo-Saxons: English Common Law once perceived women as chattel and, therefore, defined adultery as a crime against property. French Law too at one point considered it an offence against honour. Even today, when adultery is no longer a crime in countries like Britain and Australia, men who kill their wives are able to rely on the excuse of sexual provocation to plead mitigating circumstances in their defence.

As part of a larger investigation into honour killings, a Pakistani NGO Shirkatgah has been compiling case studies of individual incidents in Sindh where the customary practice of honour killings, known as karo kari, is still widespread. To get some sense of what happens on a given day, given below are a few case studies compiled by Shirkatgah. 86

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Case Study-1

Nargis was 25. It was 2 in the afternoon. Shakoor, her husband, had asked her to prepare a meal for a guest. He had invited Suleman, from the same village, to eat with him. Shakoor and Suleman's families had a dispute over a pocket of land. The local wadero said the villagers later, had made mischief and incited Shakoor against Suleman. So on that afternoon, on the pretext of sharing a meal with him, his brothers brought Suleman home and shot him outside the house. Nargis was making tea and roti. She heard the gunshots and ran to the door. She started to scream. “No, no, don't kill him! He's innocent!” She wept. Other villagers came running, too. Her husband was shouting: “I have killed him; he was karo with my wife”. She was crying. She ran back into the house. Shakoor followed her; he had an axe in his hand. She grabbed a copy of the Qur'an from the shelf, held it to her breast, pleaded with her husband, begged him not to kill her, and said she was blameless, but he hacked her to death. He had married her only a month earlier. There's the FIR, filed at the nearest police station, and the post-mortem report. There was a razinama, or reconciliation arranged by the wadero, and Shakoor was freed by the police. Nargis and Suleman are dead. The wadero said Shakoor and his brothers should pay Suleman's family Rs. 15,000 for gouging out his eyes and cutting off his nose.

Case Study-2

Iffat Bibi was 25. She had a son. Her husband’s name was Mokarram Ali. One day, he accused her of having an affair with his cousin, Haider, threw her out and sent her back to her father's house. Some months later, he changed his mind. He'd made a mistake, he said. He declared his wife was 'achhi' or clean. He wanted her back but her father refused. The father had found another man who was willing to pay more money for his daughter. Mokarram Ali could have his wife back for Rs. 150,000 but he did not have that kind of money. “You called her kari with your cousin' said the father. "Get your cousin to pay me compensation.” Ajirga was held. All the men were there but Iffat Bibi was not. She was never asked what she wanted for herself. The wadero decided that Haider would hand over his own fiancé to Iffat Bibi's brother as compensation. Thus another woman's fate was decided. All the men were satisfied, except Haider. Mokarram Ali was now permitted to visit his wife in her father's home. She got pregnant again. Her brother still wanted Haider's woman, promised as compensation to his family. Haider refused. Iffat Bibi's husband had retracted his accusation and taken her back. If she was not kari, how he could be karo, he asked. To get Haider's fiancé in compensation, the brother would have to kill his sister as kari. Iffat Bibi was sitting in her father's courtyard nursing her child when her brother hacked her to death with an axe. We do not know what happened to the child.
Case Study-3

Rahmatay was 12 years old. Her father had promised her in marriage to Naveed in exchange for Naveed's sister as a wife for his son. But the men in the two families subsequently got embroiled in a bitter dispute. Naveed and his brothers wanted revenge, perhaps land or money. Naveed informed Rahmatay's father that he was coming the next day to marry his daughter. The father could not refuse: Rahmatay had already been bartered away for another woman. So the child was dressed in bridal pink, and readied for her wedding. The village mullah balked at performing the nikah because the girl was too young. Naveed put a gun to his head. Rahmatay was married and taken away. That very night, her 'wedding' night, Naveed pumped five bullets into her young body and killed her. She had confessed to being kari with her cousin, he said, and so she deserved to die.

Case Study-4

Zainab, 40, had been married to her husband Ghulam Mustafa for twenty-two years. Her father had given her to Ghulam Mustafa in exchange for the latter's sister as a wife for him. Zainab was different. She had been to school, and after she raised her six children, she decided to get a job; she had been working for three years as a Lady Health Visitor at a primary health centre in the small town of Kot Mithan. Then her daughter Rabia decided to marry a man of her own choice, Sajawal Abro, and this raised a storm of opposition in her family. Her mother supported her and, in the end, helped her marry Sajawal. Zainab's husband, father and brother took the matter to court where they claimed that Sajawal Abro had kidnapped Rabia. Zainab testified in court against her family and on her daughter's behalf. On returning home her husband shot and killed her. He claimed that he had 'found' her with one, Abid Abro, and killed her as kari. Zainab's father supported her husband's accusation. Abid Abro and his family claimed he'd been away in Larkana for three days prior to the killing. The whole town knows they said that Zainab had been killed as kari because Abid Abro, who was the head of the Abro clan, had supported Sajawal's marriage to her daughter Rabia. Zainab was dead and received a kari's burial: there was no ritual bathing or funeral prayer—she was buried in a hole in the ground with no stone to mark the grave or remember her by. She was a kari, said her father, and karis do not deserve any better. But Zainab's three sons believe their mother was innocent and their father murdered her. They went to the spot where she was buried, prepared a grave for her and covered it with flowers.

Swar

Swar is a centuries old custom of Pashtoons, which today in its much distorted form is practiced in the semi-autonomous tribal societies of Pakistan and Afghanistan. The genesis of this custom is obscure but
different sources confirm that it developed as a gesture of goodwill to end blood feuds. The word *swara* in Persian means a woman riding on a horse or any other animal used for travelling.\(^7\) The Pashto dictionary “Pukhto Qamoos” defines *swara* as the female rider who figuratively refers to the girl given in revenge for a murder or in case of kidnapping of a woman, which is generally called the one given away in a feudal condition.\(^8\)

The rationale behind the custom of *swara* was to send a woman to the enemy camp. This symbolised asking for truce and burying the hatchet. As per genuine Pashtoon traditions that hold honourable treatment of the woman coming to the enemy camp, the woman was sent back on the horse with gifts and a *chaddar/dupatta*, signifying that a woman’s honour has remained intact.\(^9\) It seems the purpose of the custom of *swara* was to initiate peace and to put an end to rivalry by the tribe to whom the woman belonged.\(^10\) Thus taking into account the historical perspective of this custom, it implies a woman belonging to the guilty rival being sent back to the aggrieved rival’s house who treated this woman honourably to make the other tribe realise its errors. It is also clear from oral history that women in *swara* are not retained as hostages but are rather returned honourably with a dupatta/chaddar and other gifts.

In traditional terminology, *swara* refers to a girl given over to the aggrieved family as compensation for blood. However, *swara* as practiced today is extremely derogatory to women as it violates their human rights and makes them into a mere commodity by giving them over to the victim party for reconciliation in case of rivalry, murder or abduction. Explaining the procedure of *swara*, Khan writes: “when murder or kidnapping of a girl comes up before a jirga for a solution, the jirga indicts the offender and announces punishment. In a murder case, punishments are either revenge i.e. blood for blood or blood money or *swara*. The nearest virgin girl daughter, sister, etc. of the offender is given over to the aggrieved family.”\(^11\) Khan further states that since it is a forced marriage between the enemies, there is no wedding ceremony. The girl is made to ride a donkey, pony or horse and a third


\(^8\) Ibid.

\(^9\) Ibid.

\(^10\) Ibid.

party drives that animal to the other side. The receiving family takes over the girl as a punishment to the enemy. In most cases, the girl suffers all her life due to this connection.\textsuperscript{92}

There are three types\textsuperscript{93} of swara:

i. One-sided swara: This is the most commonly practiced swara in which the aggressor party gives a woman to the aggrieved part. The aggrieved party in turn gives their word to the jirga that there will be no further bloodshed. The surety bond may comprise cash money or a piece of land. If the aggrieved do not abide by their word, the jirga condemns them and does not allow them to have a say in future jirga meetings.

ii. Two-sided swara: Both tribes (i.e. the aggressor and aggrieved) exchange swara to strengthen their relationship and to ensure end enmity. The aggressor also gives some piece of land, cash etc. to the aggrieved party.

iii. Three-sided swara: In this type, the aggressor party gives one woman as a swara but in addition, two more swaras, one from each side, are exchanged in order to strengthen the relationship between the hostile tribes.

According to Khan, swara is practiced in the following areas of Pakistan:\textsuperscript{94}

- \textit{Sindh}: In parts of Sindh, swara is practiced in the way that daughters are given as punishment in an agreement. The difference is that the dispute here is usually based on honour killings rather than on tribal feuds.

- \textit{Balochistan}: Swara is also practised in certain areas of Balochistan.

- \textit{Afridi Tribe}: In the Afridi Tribe, swara is one of the three methods used for settling murder cases. The killer gives one or two adult girls from his family to the family of the deceased as compensation.

- \textit{Momand Tribe}: In the Momand tribe, the custom of swara is one of the four methods used of settling a murder dispute where a woman is offered to the aggrieved party. In Zazi Mengal and

\textsuperscript{92} Ibid.
\textsuperscript{93} Ibid, p.7.
\textsuperscript{94} Ibid, pp.10-12.
other tribes, swara is offered to the family of the deceased. In addition, money is also offered along with the woman and this is known as ‘saaz.’

- **Wazir Tribes:** In the Wazir Tribe, a compromise on a murder dispute is reached in three ways: *Qisas, Diat and Swara.*

- **Ahmedzai Tribe:** In the Ahmedzai Tribe a compromise on a murder dispute is reached by fixing an amount of money as compensation which is known as ‘Narkh.’ This is done by a jirga when reconciliation is sought. If somebody is killed intentionally, the compensation to be given is for one murder, that is, two unmarried girls. Ahmedzai’s categorises their compensation deals into three: (i) *Speen Paicey* in which the jirga goes to the victim party along with a virgin girl and a lamb, which are offered to the aggrieved party. No ceremony takes place and the girl is even denied her right to dower or Mehari; (ii) *Gota Laka* where the aggrieved party selects a girl from the aggressor’s family who is then married within a period of 2 to 3 years without any Mehari; (iii) *Waranai* in which a minor girl is offered as swara. She is not given to the victim party immediately. She is a married to man from the victim’s family when she attains puberty.

Below are some cases of women who were given as swara. These interviews, except for the last case study, were conducted by Mohammad Ali Baba Khel and have been taken from his work on *swara.*

i. **Gabeen’s Story:** My name is Gabeen and I am a resident of Choona Bhatti, Peshawar. My father was a drug peddler and in his absence a man called Riaz used to visit our home. He developed illicit relations with my mother. At that time I was 12 or 13 years of age. He was an immoral person and even tried to assault me sexually. I was able to resist him, but informed my father of the whole incident. My father got infuriated and consequently killed Riaz. When a compromise was sought, I was given over as *swara* I expressed my willingness to be a *Swara,* as it would save the life of my father.

On the very first night of the wedding, when I was waiting for my husband, four young men came and gang-raped me. I was unable to identify my husband. In future this became a routine with them. A doctor was also one of the frequent visitors who used to give me some injections. He also raped me. I stayed there for about six months without *Nikha* (valid marriage).

During this period I was presented to different people including Police officials and high-ups. My parents had already shifted to Karachi. The

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people whom I was given over as Swara were also drug dealers. I was able to free myself from their clutches when the Punjab Police arrested them. I tried my level best to search for a husband who would be able to provide me an honourable life. But all my efforts ended in utter frustration. So at-last I disguised my self as a man so as to get rid of a life full of miseries. But I was arrested by police at Stadium Chowk, Peshawar and was later sent to jail. The Ansar Burni Welfare Trust bailed me out.

Now I am a totally changed person. There is no sexual desire left in me. My whole psyche has undergone a drastic change. I don't consider myself a woman any more but a man. I have no desire or any passion left in me except one i.e. to pay back the society in the same coin for the maltreatment.

ii. A Swara Incident Narrated by a Man: A government servant, whose identity has been concealed on his request, narrates his personal experience of the tradition of Swam. The incident is narrated in his own words:

It was 1958 or 1960 when an influential rogue of the village killed my maternal uncle. I was about 6 or 7 years of age at that time. Soon after the enmity started the elders of the village endeavoured for reconciliation. Thus, it was decided that the murderer's sister would be married to the son of the nephew of the deceased. My grandfather had no male progeny except my deceased maternal uncle. When I grew up, my father did not let me marry that girl because she was the daughter of our enemy. That girl is still unmarried as I was married to my first cousin.

iii. Feroze Khan's Story: I hail from district Swabi of NWFP. Eighteen years ago one of my maternal uncle's sons got killed in a feud, which resulted in our enmity with the family of the killer. However, after the relentless efforts of the elders, reconciliation was possible. It was one of the conditions for compromise that a Swara girl should be offered to our family. I was to receive the Swara girl in marriage. The girl was a minor. Only the Nikah was performed and the girl remained with her parents. After sometime, I was married somewhere else and the Swara girl (who is an adult now) still remains unmarried. She cannot marry somebody else, as she is my legal wife. Many a times I tried to free her from the manacles of this outdated and inhuman tradition by divorcing her, but every time I was presented by the threats of the ensuing bloodshed.

iv. Pir Haroon Shah's Story: Pir Haroon Shah, editor/owner of Pushto Daily Wahdat Peshawar, narrates a recent incident regarding an Afghan family residing in Hayatabad. A man had three wives and the second wife's brother developed illicit relations with the daughter of the first wife. Ultimately, the girl and the boy eloped. The elders of the family decided to kill both of them for the sake of honour. This came to the knowledge of Pir Haroon Shah, who was acquainted with some members of that family. He persuaded them not to kill the couple because they would have to face dire consequences. The guilty man was ordered to give his own sister to the
brother of his beloved in marriage. This decision was taken in December 2001. Interestingly, the boy who was to receive Swara was 20-21 years of age and his wife (The Swara lady) was 28. It is worth mentioning here that the boy was studying in England. They decided to wed, but on two conditions:

1. The girl would go to the house of the bridegroom without Nikah. Her Nikah would be effected at the bridegroom's house;

2. Both would have sexual intercourse before entering into a marriage contract.

At this the Pir Sahib persuaded them not to set such gruesome conditions, as these were inhuman. They agreed to withdraw the second condition. After marriage the boy remained here for 10 days and then went back to England. I asked him the reason for supporting such a decision. Pir Sahib replied that it was solely for the sake of saving the life of the two people. He said the young man was educated and he (pir sahib) was not sure about the fate of the girl on three grounds:

a. The lady was much older than the boy;

b. She was not chosen by the boy;

c. The boy was residing in an ultra-modern society.

v. Gulsanga's Story: Gulsangha is a native of Matani area and is about 40 years of age. Now, she resides in APWA shelter home, Hashtangri, Peshawar. Gulsanga narrates the following story. Thirteen years back I went to my aunt's home for a two-day stay. On my way home I did not notice that a boy Hamid was following me. It was about 14 hours. He did not talk to me, but my father's uncle alleged that I had talked to him. They instigated my father to avenge what they believed was a disgrace, brought upon him by Hamid. Thus, they attacked Hamid, but fortunately there was no casualty; only two animals were killed. When a compromise was sought, the jirga demanded evidence. But my father's uncle failed to produce any. Anyhow, the jirga decided that Hamid's niece would be given over as Swara to my nephew Arshad. The girl to be given over as Swara was only seven years of age. Her name was Bakhtmeena. It is pertinent to mention that Hamid was already engaged to a girl, Asia, but the jirga annulled their engagement. Bakhtmeena is still unmarried. My father does not want to ruin her life by bringing her to our home.

On the other hand, the uncle of my father threatened him by saying, "If you did not let Arshad marry her, then my abnormal son will be her husband." Gulsanga admits her relationship with a bus driver Gul Roz. He was her neighbour. "My sister-in-law came to know about that. My nephew tried to shoot me but the Badaber Police rescued me. They sent me to the APWA shelter home. I have been residing here for the last two years," she added.

Gul Roz wants reconciliation and is even willing to offer two swaras along with 2 lakh rupees. But his only condition is that he wants to marry me. I
am also willing to marry Gul Roz, but my father's uncle and my brother are against it. Though they want to receive Swaras and 2 lakh rupees, they do not want me to marry Gul Roz. I will marry none but Gul Roz.

vi. An Incident: A man committed a murder and gave over his sister to the aggrieved family. The lady was pretty and her behaviour with her husband's family was also very amiable. One day she had a quarrel with her brother-in-law. She taunted him that she was leading a happy life in his family despite the fact that she was the sister of his brother's killer. This infuriated her brother-in-law and he shot her dead. Afterwards, he was sent to the gallows.

vii. Afsheen - A 19 year Old Widow: Afsheen, 19, was just nine years old when she was married to a man four times her age in compensation for the murder committed by her father. Her father had killed someone and she had to marry a member of the victim's family as compensation under the custom of swara in Pakistan's ethnic Pashtun tribes. "This marriage has ruined my life," said Afsheen, who is now a 19-year-old widow and is languishing in a shelter for women in the north-western city of Peshawar. The young woman says her uncle now wants her to marry her brother-in-law to settle another family feud — another swara. "It is a terrible custom. It does nothing but destroy the life of a poor girl. It must be abolished," pleads Afsheen. (Khaleej Times).96

It is obvious from the description of this practice that swara is extremely derogatory and damaging for women and violates their human rights. It puts women into situations of psychological and mental torture, which traumatising for life. Swara is also against the teachings of Islam since there is no concept of a marriage where the will of the bride or bridegroom is not sought. The existence of such a custom in modern times is indeed an insult to women. The High Court of the North West Frontier Province declared Swara illegal in 2000 but the custom is still prevalent in the tribal regions where Pakistani law seldom applies and where jirgas or councils of tribal elders settle disputes the old way.97

The NWFP also proposed enactment of the Prohibition of Marriage Act 2003, to prevent swara, but the problem was that it fixed no punishment for offenders. Aside from problematic tribal and feudal patriarchal structures and mindsets of people who do not accord due respect to women and their human rights, lacunas in laws and poor implementation machinery are also responsible for the prevalence of such customs despite strict legal vigilance.

97 Ibid.
Vani

A similar custom of marrying young girls for the settlement of disputes also takes place in rural parts of central Punjab province of Pakistan where this practice is known as *vani*. Although different sources confirm the prevalence of such degrading practices of offering and accepting of women on orders of *panchayat* in many parts of rural Punjab and tribal areas in NWFP most cases go unreported, and there are no reliable statistics for how many girls are given in *vani* or *swara* every year in Pakistan.

In March 2004, The Law and Justice Commission of Pakistan proposed that all people deciding to contract a marriage for *vani* or *swara* through a *jirga* or *punchayat* should be liable to rigorous imprisonment of up to 10 years. The commission drafted this bill and sent it to the federal government to be inserted in the Pakistan Penal Code (PPC) through an act of Parliament. Zaman reports that the decision was the outcome of a detailed discussion which termed the customs of *vani* and *swara* as violative of the Universal Human Rights Declaration as well as of Articles 14, 25, 34 and 35 of the Constitution pertaining to dignity of human beings, equality of citizens, full participation of women in all spheres of national life and protection of marriage, family mother and child. He further expounds that the amendment to the PPC had been proposed upon a reference made by the President's secretariat, which cited a Nikah solemnised about 20 years ago between three daughters of a person, aged four, eight and 18 months, to three members of a rival party to settle a murder dispute at Dhar Yanowala in the NWFP. The *rukhsati* of the eldest was performed five years ago. But the youngest, now a student of MA refused to accept the marriage. The local jirga imposed a fine of Rs.300,000 on the girl's guardians for breaching the agreement.98

Women Trafficking

Trafficked women are the most insecure and vulnerable lot since they are physically, sexually and socially exploited and since they are totally at the mercy of people in charge of them.

Trafficking of women is more prevalent in South Asia due to geographical proximity and relatively porous borders of countries in this region in which India stands out being on the receiving end of the trade, opines Khalid.99 Major routes are known to exist between

Pakistan, Nepal, Bangladesh, Sri Lanka and different parts of India from where women are transported to Bombay. Besides this, trafficking also takes place in huge numbers to the Gulf States from all South Asian countries.\textsuperscript{100}

The magnitude of trafficking can be assessed through estimates obtained from various sources. At a global level, experts agree that in 2002, more than 700,000 women and children were victims of human trafficking networks worldwide.\textsuperscript{101} The US State Department's annual report on trafficking in women and children estimates that one to two million people are trafficked worldwide each year, of which 225,000 are from South Asia, with women and children comprising the overwhelming majority.\textsuperscript{102} According to another estimate, as many as 200,000 women have been trafficked to Pakistan in the last ten years. The current number is estimated at 100-150 women entering Pakistan illegally everyday. A Bengali or Burmese woman will be sold in Pakistan for US$1500-US$2500, depending on age, looks, docility and virginity. Bangladeshis are estimated to make up 80 percent and Burmese 14 percent of Karachi's undocumented immigrants. It is said that human trafficking is now the third largest trade around the world after drugs and weapons, with an annual turnover of US$7-13 billion.\textsuperscript{103}

\textit{Global March} provides useful information on statistics with regard to cross border trafficking in Pakistan and Bangladesh citing in various sources.\textsuperscript{104}

**Bangladesh**

- According to one estimate, 5,000 to 7,000 Nepalese children, mostly between the ages of 10 and 18, are drawn into this traffic to India annually. Other statistics by NGOs in the region estimate that 6,000 to 10,000 girls are trafficked annually from Nepal to India. (\textit{US Dept of State, Human Rights Report, 1999})

- On an average, 4,500 girls and children from Bangladesh are being trafficked every year to Pakistan alone. (\textit{BNWLA, Salma Ali, Country Report on Trafficking in Children and

\begin{itemize}
\item \textsuperscript{100} Ibid.
\item \textsuperscript{101} Armand Rousselet, \textit{Assessment of Human Trafficking in Pakistan}, Consultation Seminar-9 September 2003.
\item \textsuperscript{102} Massoud Ansari, "Misfortune's Child" in \textit{Newsline}, July 2003.
\item \textsuperscript{103} Reema Khalid, op.cit.
\item \textsuperscript{104} \texttt{http://www.globalmarch.org/trafficking/statistics.html.}\
\end{itemize}
the Exploitation in Prostitution, October 1998, citing a report by UNICEF and SAARC)

- 27,000 Bangladeshi women and children have been forced into prostitution in Indian brothels. (CATW Fact Book, citing “Women Forced into Indian Brothels,” CWCS, June 1998)

- More than 9,000 girls are trafficked each year from Nepal and Bangladesh into bondage in India and Pakistan, often with the acquiescence or cooperation of state officials. (CATW Fact Book, citing Amnesty International press release, 22 April 1998)

- Over the last decade, 200,000 Bangladeshi girls were lured under false circumstances and sold into the sex industries in nations including Pakistan, India and the Middle East. (CATW Fact Book, citing Tabibul Islam, “Rape of Minors Worry Parents,” IPS, 8 April 1998)

- More than 15,000 women and children are trafficked out of Bangladesh every year. (CATW Fact Book, citing The Hindu, 19 February 1998)

- Police estimate that more than 15,000 women and children are smuggled out of Bangladesh every year. (CATW Fact Book, citing “Boys, rescued in India while being smuggled to become jockeys in camel races,” www.elsiglo.com, February 1998)

- There are 200 trafficked Bangladeshi women and children in detention centres in India awaiting repatriation. (CATW Fact Book, citing The Hindu, 19 February, 1998)

- A non-governmental source reports that about 200,000 women and children have been trafficked to the Middle East in the last 20 years. (CATW Fact Book, citing CEDAW Report: Bangladesh, 1 April 1997)

- About 200 Bangladeshi women and children, who are smuggled out of the country each day, mostly end up as prostitutes. (CATW Fact Book, citing “Human smuggling from Bangladesh at alarming level,” Reuters, 26 May 1997)

- Different human rights activists and agencies estimate that 200-400 young women and children are smuggled out every month, most of them from Bangladesh to Pakistan. (CATW Fact Book, citing CEDAW Report: Bangladesh, 1 April, 1997)
- 2.7% of prostitutes in Calcutta are Bangladeshi, comprising the largest population of foreigners in the city. The majority of these females are under 18. (CATW Fact Book, citing CEDAW Report: Bangladesh, 1 April 1997)

- Between January 1990 and September 1997, there were 2,545 cases of trafficked children reported in the media in Bangladesh, of which 1,262 were boys and 1,283 were girls. During the same time period, 2,212 trafficked children were rescued. (CATW Fact Book, citing Ishrat Shamin, "Trafficking in Women and Children: A Human Rights Crisis")

- About 40,000 children from Bangladesh are involved in prostitution in Pakistan. Bangladeshi girls are also trafficked to India for the commercial sex trade. (ILO-IPEC, Rapid Assessment of Child Labour Situation in Bangladesh, 1996)

- One estimates that about 25 to 50 girls are trafficked out of Bangladesh every month. These girls are all taken to serve as prostitutes. (Brother Jarlath de Souza, "Trafficking in Children: Bangladesh", Child Workers in Asia, July-September 1996)

- Every day, over 50 women and children are trafficked out of Bangladesh through the land border areas. (CATW Fact Book, citing UBINIG, Trafficking in Women and Children: The Cases of Bangladesh, 1995)

- 4,800 Bangladeshi girls were trafficked to Pakistan and India. (Nishanthi Priyangika, "Child labour on the increase in Bangladesh," World Socialist Web Site, 3/11/1999, citing UNICEF Report 1994)

- More than 200,000 Bangladeshi women were trafficked between 1990 and 1997, with 6,000 children trafficked, abducted or reported missing during that time. (CATW Fact Book, citing "Women, children trafficking in Bangladesh," Kyodo News, 5 May 1998, citing report by Centre for Women and Children's, Zahiduzzaman Faruque)

- 500 Bangladeshi women are illegally transported to Pakistan every day. (CATW Fact Book, citing "Open sale of little girls at Tanbazar brothel," The Daily Star, 2 July, 1998, citing BNWLA)

- At least 200,000 women have been trafficked to Pakistan in the last 10 years. (CATW Fact Book, citing CEDAW Report: Bangladesh, 1 April, 1997)
The Indian Social Welfare Board estimates that there are 500,000 foreign prostitutes in India of which 1% are from Bangladesh. 2.7% of prostitutes in Calcutta are from Bangladesh. (CATW Fact Book, citing CEDAW Report: Bangladesh, 1 April, 1997)

30,000 Bangladeshi women are in the brothels of Calcutta, India. (CATW Fact Book, citing “Human smuggling from Bangladesh at alarming level,” Reuters, 26 May, 1997)

There are an estimated 200,000 women trafficked to Pakistan in the last 10 years, continuing at the rate of 200-400 women monthly. (CATW-Asia Pacific, Trafficking in Women and Prostitution in the Asia Pacific, 1996)

In 1994, 2,000 Bangladeshi women were working as prostitutes in 6 cities in India. (CATW-Asia Pacific, Trafficking in Women and Prostitution in the Asia Pacific, 1996)

During the past ten years an organised gang sold more than 10,000 women from Chapainababgonj to traffickers. There is a demand for Bangladeshi girls. (Trafficking in Women and Children: The Cases of Bangladesh, The Daily Sangbad, 16 August 1993)

Pakistan

Over the last decade, 200,000 Bangladeshi girls were lured under false circumstances and sold into the sex industry in nations including Pakistan, India and the Middle East. (CATW Fact Book, citing Tabibul Islam, “Rape of Minors Worry Parents,” IPS, 8 April 1998)

On an average, annually 4,500 girls and children from Bangladesh are being trafficked to Pakistan alone. (BNWLA, Salma Ali, Country Report on Trafficking in Children and Their Exploitation in Prostitution, October 1998, citing report by UNICEF and SAARC)

Different human rights activists and agencies estimate 200-400 young women and children are smuggled out every month, most of them from Bangladesh to Pakistan. (CATW Fact Book, citing CEDAW Report: Bangladesh, 1 April 1997)
Situation Analysis of Women's Status in Pakistan and Bangladesh


- 4,800 Bangladeshi girls were trafficked to Pakistan and India. (Nishanthi Priyangika, "Child labour on the increase in Bangladesh", World Socialist Web Site, 3/11/1999, citing UNICEF Report 1994)

- 500 Bangladeshi women are illegally transported into Pakistan every day. (CATW Fact Book, citing "Open sale of little girls at Tanbazar brothel," The Daily Star, 2 July 1998, citing BNWLA)

- 100-150 women are estimated to enter Pakistan illegally every day. Few ever return to their homes. (CATW Fact Book, citing "Slavery Still A Thriving Trade," IPS, 29 December 1997)

- At least 200,000 Bangladeshi women have been trafficked to Pakistan in the last 10 years. (CATW Fact Book, citing CEDAW Report: Bangladesh, 1 April 1997)

- 200,000 Bangladeshi women were trafficked to Pakistan in the last ten years, continuing at the rate of 200-400 women monthly. (CATW-Asia Pacific, Trafficking in Women and Prostitution in the Asia Pacific, 1996)

- More than 150 women were trafficked to Pakistan every day between 1991 and 1993. (CATW Fact Book, citing SANLAAP India, Indrani Sinha, "Paper on Globalization & Human Rights")

- Nepalese, Bangladeshi and Pakistani women are trafficked to India, and through India they are trafficked to Eastern Europe and Saudi Arabia. (CATW Fact Book, citing Meena Oudel, Oxfam Nepal, 18 March 1998)

- Reports indicate regular trafficking of children into Pakistan from Bangladesh, Bhutan, India, Nepal and Sri Lanka. (US Dept of Labour, Prostitution of Children, 1996)

Traffickers acquire people in a number of ways and almost always approach poverty-stricken communities or people who are the most vulnerable. Sometimes women and children are kidnapped from one country and taken forcibly to another. In other cases, victims and their families are lured with job offers. In yet other cases, victims are enticed to migrate voluntarily with false promises of well-paying jobs in foreign countries. Some women are also trapped into servitude through the promise of a lucrative marriage abroad. Victims of trafficking are often supplied to labour markets, which operate clandestinely and outside the law. Women and child workers are not only provided to the sex trade but to other over-ground sectors of the economy which exploit their extreme vulnerability to ensure that wages are kept at the barest minimum. Once lured or tricked, the traffickers’ trap hardly ever leaves a chance for people to come out of it.

The Government of Pakistan does not fully comply with the minimum standards for the elimination of trafficking; however it is making significant efforts to do so, informs the US Department of State in its Trafficking in Persons Report, released in June 2004. According to the report, Pakistan was placed on Tier 2 Watch List this year due to a failure to provide evidence of increasing efforts to combat severe forms of trafficking in persons from the previous year primarily because the administration in Pakistan do not consistently differentiate between trafficking and smuggling so that actual rates of prosecution are difficult to determine.

Rating countries on the basis of the prosecution of traffickers, protection of trafficked people and prevention of trafficking in persons, the US in its State Department Report on trafficking ranked Bangladesh as one of the most vulnerable countries of origin in human trafficking, which may face US sanctions, including the withholding of all types of aid which are not used for humanitarian or trade purposes. Explaining the tier placement of Bangladesh, the report of the US Department states that the Government of Bangladesh does not fully comply with the minimum standards for the elimination of trafficking and is not making significant efforts to do so, and therefore Bangladesh has been moved from Tier 2 to Tier 3 because it failed to make significant efforts to prosecute traffickers and address the complicity of government.

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105 Reema Khalid, op.cit.
officials in trafficking. The report further expounds that “although the government in Bangladesh did pass legislation in February 2004 to create an Anti-Corruption Commission to investigate and prosecute cases of all types of corruption. Police officials are known to facilitate trafficking of women and children, though none has ever been charged or arrested.”

The explanation for the tier placement of Bangladesh gives the impression that the loopholes of law enforcement (with reference to officials’ corruption) are specific to Bangladesh only, whereas other reports relating to Pakistan that highlight similar problems counteract such assumptions. People working on trafficking issues in Pakistan argue that Police and law enforcing agencies have failed miserably to keep an effective check on human trafficking. There are reports that people from the law enforcing agencies rather coalesce with traffickers to use it as a source for earning money. Reema Khalid writes: “For each sold woman or child, the police claim a 16-20 percent commission. Border police and other law enforcement agencies are well aware of the trafficking through entry points into Pakistan such as Lahore, Kasur, Bahawalpur, Chhor and Badin. On arrival in Pakistan, the girls are auctioned off to the highest bidder. The auctions are arranged primarily for three kinds of buyers: rich visiting Arabs, the rich local gentry and rural farmers.”

Looking at the factors responsible for trafficking in Bangladesh, Badruddoza points to the lack of any birth registration system in the country which results in the internal and external trafficking of a large number of female children, teenaged girls and women. He believes that the same reason complicates their rescue, release and repatriation.

Drawing heavily from data presented in the Trafficking in Persons Report (2003) of the US State Department, Ishrat Shamim has drawn a comparison between South Asian countries with regard to trafficking of women. The table below presents data relating to Pakistan and Bangladesh only.

108 US Department of State, op.cit.
109 Ibid.
110 Reema Khalid, op.cit.
111 Badruddoza, op.cit.
112 Ishrat Shamim is the President of the Centre for Women and Children's Studies, Bangladesh.
<table>
<thead>
<tr>
<th>Prevention Efforts</th>
<th>Protection of Trafficked Victims</th>
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<tr>
<td><strong>Pakistan</strong></td>
<td><strong>Bangladesh</strong></td>
</tr>
<tr>
<td>Pakistan is a country of origin, transit, and destination for women and children trafficked for purposes of sexual exploitation and bonded labour. Internal trafficking of women and girls from rural areas to cities for purposes of sexual exploitation and labour also occurs. Pakistan is a destination for women and children trafficked from Bangladesh, Afghanistan, Iran, and Central Asia for purposes of commercial sexual exploitation and labour. Women trafficked from East Asian countries and Bangladesh to the Middle East transit through Pakistan.</td>
<td>Bangladesh is a country of origin and transit for women and children trafficked for purposes of sexual exploitation, domestic servitude and bonded labour. Women and girls are trafficked to India, Pakistan, Bahrain, Kuwait, and the United Arab Emirates for commercial sexual exploitation and domestic work. A small number of women and girls are transited through Bangladesh from Burma to India. Internal trafficking of women and children from rural areas to the larger cities for commercial sexual exploitation and domestic work also occurs.</td>
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<td>In Pakistan, the government does not support specific anti-trafficking prevention programmes. The government supports targeted prevention programmes such as poverty alleviation, the eradication of child labour, promotion of girls' education, and women's income generation projects, aimed at eradicating the root causes of trafficking. The Federal Investigative Agency (FIA) Academy in Islamabad provides trafficking awareness training.</td>
<td>In Bangladesh two cells, one in the Bangladesh Rifles and the other in CID Police have been formed under the Ministry of Home Affairs whose functions are to identify those involved in trafficking and arrest them and promptly rescue the trafficked persons. The International Organisation for Migration (IOM) has been conducting training courses for law enforcement agencies since 2001 under the project, “Capacity Building of Law Enforcement Officials to Prevent Trafficking of Women and Children,” to improve the investigation and interview skills of officials dealing with trafficked persons.</td>
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<td>In Pakistan, the government sponsors a variety of shelters and training programmes throughout the country that provides medical treatment, limited legal representation, and vocational training. The government provides temporary residence status to foreign trafficking victims, as well as lawyers on demand. Still many victims languish in jail for months or years without having their cases heard. On the provincial and local level, the Punjab Ministry for Social Welfare collaborates with approximately 400 NGOs in providing women's shelters, orphanages, and</td>
<td>In Bangladesh, victims are not detained, jailed, or prosecuted for violations of immigration or prostitution laws. Once a victim files a civil suit or makes a criminal complaint against a trafficker, the government will prosecute the case at no cost to the victim. The government works closely with and refers victims to NGOs that provide shelter and access to legal, medical and psychological services. The government provided specialised training to its officials in assisting victims but has yet to provide training on protection and assistance</td>
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(contd.)
Pakistan | Bangladesh
---|---
rehabilitation programmes for women and children. In destination countries for Pakistani labourers, embassy officials assist those who have been trafficked or placed in abusive working conditions. | to its embassies and consulates in foreign countries that is the destination or transit country for its citizens.

Legal Framework and Prosecution of Traffickers

In Pakistan, the government passed a law in October 2002 that criminalises all aspects of trafficking, from recruitment and transporting to receiving a person. The Federal Investigative Agency (FIA) reports that 11 people have been arrested for trafficking under the new statute and prosecutions of those individuals are pending. Backlogged courts slow legal proceedings. Pakistan and Iran signed an agreement to conduct joint investigations on trafficking in persons and narcotics. The country worked with Iranian authorities on cases involving the trafficking of camel jockeys. The government is improving its ability to patrol its borders through training and equipment, but large areas of uncontrollable borders allow traffickers to bring women and children into Pakistan. Despite the establishment of a National Accountability Bureau and some noteworthy prosecutions of corruption cases, corruption remains a problem throughout Pakistan. | In Bangladesh, the Women and Children Repression Prevention Act 2000 prohibits trafficking in women and children and provides penalties of 20 years of imprisonment, life imprisonment or death sentence (Women and Children Repression Prevention Act, 2000). The government does investigate trafficking cases; however, the court system is backlogged by approximately one million cases, severely hampering its ability to bring criminal cases to closure quickly. The government has arrested and prosecuted some traffickers, and courts have handed down tough sentences. During the year, the government arrested 60 alleged traffickers and convicted 30, an increase from four last years. For those convicted, the sentences ranged from 20 years to life. Police and government officials received specialised training from international organisations and NGOs in investigating and prosecuting trafficking cases. However, corruption is widespread at lower levels of the government; police, customs, immigration officials and border guards reportedly are susceptible to bribery.

Policy Gaps in Enforcement and Prosecution

The government of Pakistan should increase training for low-level police officers, prosecutors, and judges throughout the country. Prosecution and conviction of those involved in perpetrating trafficking should increase over the next year. | Bangladesh needs to curb corruption among law enforcement officials, monitor its borders better, increase prosecutions of traffickers, and invest in more protection programmes such as increasing the shelter capacity for victims.

In the last 26 years, the Government of Pakistan has established three commissions of inquiry into the sexual exploitation of women but the growing magnitude of the problem demonstrate that successive
regimes have failed to implement the recommendations of these commissions. The last three years, however, especially since September 11, have seen significant progress made at the policy level of the Government in terms of efforts to curb trafficking in persons and smuggling of migrants. The Prevention and Control of Human Trafficking Ordinance 2002 provides legislation to prosecute traffickers and to assist the victims but if substantial progress has been made on the arrest and prosecution of traffickers, very little has been done for the victims, whether on prevention or post-trafficking assistance, argues Rousselet.

Internal trafficking is a complex phenomenon. It is not very easy to detect and control as it may take many forms. It has been observed that local customs are now extensively being used for trafficking of women. Rousselet opines that Pakistan faces the problem of trafficking through customary practices such as “walwar” or “ser paisey” (bride price) by which after getting married, a woman’s “ownership” is given to the husband’s family or “Swara” under which the custom calls for a girl to be given away in marriage to an aggrieved family as compensation for a murder perpetrated by her family. Armand further states that even if the primary intention of a family is not necessarily to sell the daughter away to traffickers, there is an exploitation of the customs by criminal husbands and gangs taking advantage of the people’s ignorance.

SPARC points out that although there are few reports on internal trafficking of women and children, Pakistan does serve as a party in this trade by being a destination point as well as a transit point for women smuggled out of neighbouring countries. The journey of these women begins at the village and town level where they are recruited by agents (usually someone well known to the victim) and then taken to a central location where girls from different areas are assembled. From there, they travel to their ultimate destination point for the final transaction.

3.4 CONCLUSION
The concept of human security is an extensive one and is grounded in the lived experiences of people, both men and women. Human security for women, can be ensured through equality in all aspects of social life:

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114 Reema Khalid, op.cit.
115 Armand Rousselet, Assessment of Human Trafficking in Pakistan, Consultation Seminar 9, September 2003.
116 Ibid.
women's increased participation in the economy; their greater access to resources such as water, food, and energy; expanded social protection policies; women's greater control over decision making within the family; a feeling of security in their physical environment — at work and at home; women's increased freedom of movement; their control over their own bodies; women's greater right to public participation; their active participation in civil society and, greater right to political participation and decision-making. The situation analysis of women's status in Pakistan and Bangladesh as discussed in this chapter gives us a direction to fill in the gaps between women's security needs to ensure development premised on the concept of human security.

The situation analysis of women demonstrates that the very structures that are to protect women and ensure their security play a vital role in making women insecure. We have traced the links between the institutions of the family, community, and the state that collude to perpetuate women's subordinate status. This is because of different strategies that either silence women or discriminate against them legally or structurally through the exercise of anti-women traditions and customs, whether in terms of access to the public sphere (e.g., mobility, employment, unequal wage, education, healthcare) or in terms of making them prisoners in the space that is meant to be the nest of security: the home, the private sphere which can turn into a site of violence the moment any woman attempts to break away from different forms of patriarchal control or if they do not abide by or live up to the expectations of their male family members. These complex factors come together to keep women from achieving their capabilities and aspirations.

Despite these overwhelming odds, women's groups have strategised to bring some relief to women. This includes pressuring the state to provide crisis centres, burn centres, shelters for women in distress, as well as initiate pro-women policies such as providing them reserved seats in the arena of political representation and government employment, introducing income generation schemes and providing easy credit to women. There is also constant pressure upon the two governments from women's groups to effectively address violence against women in the backdrop of so-called religiously sanctioned discrimination and community supported implementation of fatwas and other violent cultural practices. Overall, women's issues have been brought to the forefront and centre of national political discourse.
However, the road ahead is still long, uneven and tenuous as the resistance to change, especially when it is perceived to be to the disadvantage of men, of the capitalist system and of accepted cultural practices and norms, would continue to be difficult to surmount at different levels and in the contexts in which it is encountered.