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**Harmful Traditional Practices  
in Three Countries of South Asia:**

**culture, human rights and violence against women**

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## I. INTRODUCTION

This study documents and analyses the manner in which harmful traditional and cultural practices contribute to violence against women in the three South Asian countries of Nepal, Bangladesh and Sri Lanka.<sup>1</sup>

The study uses a human rights framework to determine whether traditional and cultural practices are harmful and constitute violence against women. The universality and indivisibility of women's human rights and the norm of equality and non-discrimination as set out in international human rights standards provide the basis for identifying those practices which can be described as both harmful and contributing to violence against women.

These human rights standards consider violence against women as a phenomenon that infringes on a range of women's human rights, including through gender-based discrimination. Harmful traditional practices that contribute to violence against women are thus closely linked with the concept of gender-based discrimination and cannot be separated from it in documentation and study. The interventions and policies to address these harmful traditional practices, however, can vary according to the extent to which they infringe on women's human rights and the significance and impact of that infringement.

Each country study describes the incidence of violence against women perpetrated through generally accepted customs, traditions and practices in that country and analyzes the broader implications of such practices in infringing on women's human rights. The paper discusses factors that reinforce or undermine these practices and makes recommendations for interventions to respond to the situation and work towards eliminating the practices.

### **A. Harmful traditional and cultural practices as violence against women**

International as well as regional and national responses to the phenomenon of violence against women have helped to focus on a problem that was largely unrecognized for many centuries. The 2006 United Nations Secretary-General's in-depth study on all forms of violence against women based on General

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Assembly resolution 58/185 in particular highlighted the global incidence of the problem and its negative impact on development and peace. Traditional and cultural practices that contribute to violence against women therefore must be perceived today as harmful. They can no longer be explained, justified and legitimized on the argument of respect for cultural diversity or that they are immemorial customs that are a positive influence in society.

Yet cultural relativist approaches to violence against women are in fact adopted by scholars and women activists. The right to enjoy one's own culture and respect for cultural diversity are used as arguments to challenge the universality of human rights norms. The very use of the phrase "harmful traditional and cultural" practices sometimes provokes a defensive reaction in gender advocates from developing countries in the South, who argue that there is an exclusive negative focus on southern cultures and traditions only. This has prevented wider partnerships and solidarity efforts, especially among women's movements in the North and South, to eliminate those practices on the basis that they constitute violence and infringement of women's human rights. The notion of family privacy and the traditional view that non-State actors in the family and the community are not responsible for infringement of women's human rights under international, regional and national standards has also reinforced cultural relativist approaches. In this environment, new developments in national and international human rights law have provided an important values framework for identifying customs, traditions and practices that are harmful and contribute to violence against women. A human rights approach reinforces the universality and applicability of common standards to determine violence against women across cultures and the relevance of both civil and political and socio-economic rights in developing interventions.

The human rights approach also underscores a reality that surfaces in this study. Culture, customs and traditions are never static in any society. They are transformed by many influences and value systems. Human rights norms can therefore impact and help to reinforce aspects of culture and tradition that are positive, undermining those that contribute to violence against women and infringement of their human rights. The transformative nature of culture indeed suggests that values and norms on human rights can be internalized in different societies in the same manner as have other values been internalized over a period of time to become what are described as "traditional cultural practices". Recognizing that human rights norms must be internalized if they are to be implemented only means that cultural ethos should be transformed by initiatives that help to harmonize these values.

## **B. International law and standard-setting**

Early international initiatives on harmful traditional practices focused on the practice of female genital mutilation and other practices that impacted adversely on the health of women and children. The World Health Organization thus took this agenda on board from the early 1960s. The Inter-African Committee on Traditional Practices Affecting the Health of Women and Children was formed in the late 1970s in order to encourage governments to eliminate these practices. The Commission on Human Rights and Sub-Commission on Prevention of Discrimination and Protection of Minorities gave priority to the issue in the 1980s, and in 1985-1986 a Working Group on Harmful Traditional Practices Affecting the Health of Women and Children was appointed by the Sub-Commission with the Commission's approval. By a resolution of 1988, the Commission on Human Rights requested the Sub-Commission to report on measures to be taken to eliminate these practices. The Sub-Commission then appointed a member, Ms. Halima Warzazi, as Special Rapporteur to study and report on the problem. Regional conferences were held, and a national plan of action developed in 1994 at a regional conference in Sri Lanka was adopted by the Sub-Commission. At the Sub-Commission's request, the Special Rapporteur continued her work, studying the issue and monitoring implementation of the plan.

A focus on the harmfulness of traditional cultural practices exclusively from the perspective of women's and children's health is seen in the initial international human rights norms on the subject. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) of 1979 adopted a universal rather than relativist approach to culture and custom. Governments which were States Parties to the Convention were obliged to "modify or abolish customs and practices which constitute discrimination against women" (article 2(f)). This was reinforced by the State's obligation under the Convention "to modify social and cultural patterns of conduct of men and women, with a view to eliminating ... customary and other practices" conducive to discrimination against women (article 5(a)). However, the 1990 general recommendation No. 14 of the Committee on the Elimination of Discrimination against Women, intended to interpret Convention standards, refers to the studies of Ms. Warzazi, the Special Rapporteur, and the Working Group and focuses primarily on the elimination of female genital mutilation and cultural practices that are harmful to the health of women and children. The 1989 Convention on the Rights of the Child (CRC) recognizes in a specific provision that a child of a "minority or indigenous" community has a right to enjoy his or her own culture" (article 30). However, achievement of the child's rights to the "highest attainable standard of health" requires States Parties to "seek effective and appropriate measures to abolish traditional practices prejudicial to the health of children" (article 24(1); article 24(3)).

The development of an agenda on the elimination of violence against women has radically changed international standards on harmful traditional and cultural practices from the original limited perspective of harm to health.

One of the earliest documented initiatives on violence against women is general recommendation No. 12 of the Committee on the Elimination of Discrimination against Women. At its 8<sup>th</sup> Session in 1989, the Committee adopted a general recommendation on violence against women, interpreting articles 2, 5 (referred to above), 11 (employment) 12 (health) and 16 (equality in family relations) as creating the obligation of States Parties to protect women from violence. Violence against women was recognized as an infringement of women's rights to equality and freedom from discrimination in all the specific areas referred to. This general recommendation identified violence against women as a common phenomenon that infringed on the human rights of women all over the world. It recognized that violence against women impacted to deprive women not only of their right to health but of other rights, such as to employment and equality in the family, reinforcing the indivisibility and universality of human rights under international law.

This broad interpretation of violence against women as an infringement of human rights was strengthened by general recommendation No. 19, adopted at the 11<sup>th</sup> Session of the Committee on the Elimination of Discrimination against Women in 1992. The Committee clarified that violence against women could be described as gender-based violence since it was linked closely with discrimination perpetrated against women through social attitudes and practices based on the biological differences between men and women. Violence against women was also perceived as infringing on women's rights under both general norms of international law and the specific norms of the Convention on the Elimination of All Forms of Discrimination against Women. Consequently, violence against women was analyzed in terms of the infringement of a comprehensive range of human rights: the right to life, the right not to be subject to torture or to cruel and inhuman treatment, the right to equal protection in times of international or internal armed conflict, the right to equality in the family, the right to equal protection of the law, the right to liberty and security of person, the right to the highest standard of health and the right to just and favorable conditions of work. General recommendation No. 19 also clarified that violence against women could be perpetrated by or on behalf of the State as well as non-State actors, including organizations. This general recommendation also recognized the responsibility of the State for private acts when they failed to act with due diligence to prevent private violations or investigate and punish such acts. Compensation for such acts was considered a responsibility of the State.

General recommendation 19 specifically referred to traditional practices that constituted violence against women. Domestic (family) violence and abuse, forced marriage, dowry killing, acid attacks and female circumcision are specifically identified as acts of violence against women. Some practices especially harmful to health are mentioned: dietary restrictions on pregnant women, son preference and female circumcision or genital mutilation. Honour killings are not specifically referred to but their inclusion is implicit in the definition of violence against women, since general recommendation 19 identifies “legislation removing the defense of honour in regard to the assault or murder of a female family member” as a necessary intervention to eliminate family violence.

The recognition of harmful traditional practices as infringing on women’s human rights, including to equality, was reinforced by the United Nations Declaration on the Elimination of Violence against Women (1993), adopted after the World Conference on Human Rights in Vienna identified violence against women as an infringement of human rights.

The United Nations Declaration on Violence against Women is not a multilateral treaty such as the Convention on the Elimination of All Forms of Discrimination against Women. However, its provisions have been cited in national jurisprudence and the Concluding Comments of the Committee on the Elimination of Discrimination against Women and other treaty bodies in interpreting international human rights. The Declaration affirms the interpretation of violence against women in the Convention’s general recommendation 19 by recognizing this conduct as an infringement of women’s human rights and a manifestation of “historically unequal power relations between men and women” (preamble, para. 6).

The definition of violence against women in the Declaration is narrower than general recommendation 19 since it is described specifically as “gender based violence that results in or is likely to result in physical, sexual or psychological harm or suffering to women” (article 1). The Declaration also does not include some rights specifically mentioned in general recommendation 19 of the Committee on the Elimination of Discrimination against Women. Thus the Declaration includes the right to life, the right to liberty and security of the person, the right to equal protection under the law, the right to the highest standard of health, the right to just and favourable conditions of work and the right not to be subjected to torture or other inhuman or degrading treatment. However, the Declaration refers broadly to the general right to equality and freedom from all forms of discrimination. It therefore includes the right of equal protection in times of armed conflict or natural disaster, even though this right is not referred to

specifically. Though the equal right to education is not referred to in either document, it is implicit in both. The denial of this right would thus constitute violence against women. The liability of non-State actors is recognized, and violence in private life is included within the definition. Family and dowry violence and traditional practices harmful to women, including genital mutilation, are included in the definition of violence against women. The universal nature of the norms is underlined in a provision which clarifies that “customs and traditions” cannot be used by States to avoid their obligation to eliminate violence against women.

The Convention on the Elimination of All Forms of Discrimination against Women and the Declaration on Violence against Women have thus combined to develop international law which now clarifies that traditional and cultural practices perpetrated by the State or in family life and the community constitute violence against women and an infringement of universal and indivisible human rights. The connection between violence against women, gender discrimination and harmful traditional practices has been developed further by the General Comments of treaty bodies and subsequent general recommendation of the Committee on the Elimination of Discrimination against Women.

The Universal Declaration of Human Rights and the two International Covenants on Civil and Political Rights and Economic, Social and Cultural Rights together constitute the International Bill of Rights and set the core human rights standards in international law. These covenants are considered treaties that apply to ratifying States Parties, while some provisions of the Universal Declaration of Human Rights are now considered *ius cogens*, or customary international law that applies globally even in the absence of treaty ratification.

The provision in the International Covenants on Civil and Political Rights and Economic, Social and Cultural Rights on the right to freedom from torture or cruel inhuman degrading treatment (article 5) has been expanded and interpreted further by a specific treaty, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984). Torture and inhuman degrading treatment traditionally could only be action perpetrated by the State. However, the State’s obligation of due diligence to prevent violence against women has been interpreted more recently to create liability for torture by non-State actors with the “acquiesce” or inaction or complicity of the State. The treaty Committee therefore recognizes as torture female genital mutilation and other acts of violence, including domestic violence, caused by private actors when there is evidence of State inaction, complicity or acquiescence. Concluding observations of the treaty Committee on Nepal have thus referred to domestic violence as torture. Even when the International Covenants on Civil and Political Rights and Economic,

Social and Cultural Rights and the Convention have not been ratified, the right to freedom from torture may be claimed as a human right under *ius cogens* or customary international law.

Article 2 of the Convention on the Rights of the Child, which is almost universally ratified, recognizes the norm of gender equality. The Convention on the Elimination of All Forms of Discrimination against Women, which elaborates the standard of equality, has been widely ratified. It can be argued that the right to gender-based equality in the Universal Declaration of Human Rights (article 2), which is specifically mentioned in the two Covenants (articles 3 of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights), is also a part of customary law. This legal position has not gained acceptance, in part because countries that have ratified the two Conventions have entered reservations to core articles on the grounds of culture, thus diluting the basic standard of gender equality.

There is a certain tension between the standards in international law on torture and equality in light of the specific recognition of a right to culture in the Universal Declaration of Human Rights (article 22), the International Covenant on Civil and Political Rights (article 27) and the International Covenant on Economic, Social and Cultural Rights (article 15). Nevertheless, the recognition of the right to freedom from torture as customary law or *ius cogens* and the increasing recognition of gender equality as a core norm has meant that later interpretations of these standards attempt to resolve the conflict.

The International Covenants on Civil and Political Rights and Economic, Social and Cultural Rights Committees' General Comments demonstrate that traditional cultural practices that conflict with human rights relating to equality and torture constitute violations of international law. For instance, General Comment No. 19 of the International Covenants on Civil and Political Rights Committee on article 23 on the family advocates equality between spouses and steps required to prevent "abuses", such as child marriage and denial of inheritance rights. This interpretation is reinforced by General Comment No. 28 on the Covenant's article 3, which adopts a similar approach to many "traditional customary practices", such as female infanticide, immolation of widows, dowry deaths, genital mutilation, forced prostitution, dress restrictions, marital power of husbands and restrictions on property rights and crimes of honour. General Comment No. 16 of the International Covenant on Economic, Social and Cultural Rights Committee is described as a General Comment on the equal right of employment and enjoyment of all economic, social and cultural rights by men and women under article 3. However, paragraph 27 refers to a right to protection from practices that promote child marriage or marriage by proxy or coercion, unequal marital and inheritance rights and gender-based violence. States Parties are also required to

actively address customary practices which discriminate against women in access to food and nutrition and to prohibit female genital mutilation. States Parties are expected to overcome institutional barriers such as those based on cultural traditions which restrict women from participating in cultural life and science education and scientific research. This emphasizes that women must be allowed to “negotiate” culture in harmony with human rights rather than be compelled to suffer culturally legitimized discrimination. These interpretations of treaty law by the treaty bodies therefore challenge a relativist approach to the right to culture. They emphasize that the right to culture cannot dilute the right to freedom from violence and all aspects of gender-based discrimination.

The recent general recommendations Nos. 24 and 25 of the Committee on the Elimination of Discrimination against Women which interpret article 12 (health) and article 4 (temporary special measures) underline this approach to cultural practices. The Committee’s general recommendation No. 24 emphasizes that the earlier general recommendations No.19 on violence against women and No. 21 on equality in family relations clarify that traditional customary practices shall not undermine women’s rights to freedom from violence and equal treatment in the family and are closely linked with the realization of the right to the highest standards of health. General recommendation No. 24 also emphasizes that some cultural and traditional practices such as female genital mutilation infringe the right to health and create a high risk of death and disability. Traditional practices that promote female genital mutilation, marital rape and polygamy are recognized as customs which expose girls and women to the risk of contracting HIV/AIDS and sexually transmitted diseases. The most recent general recommendation No. 25 on article 4 interprets the concept of substantive equality and measures to advance it. States Parties are required to adopt temporary special measures to accelerate, modify and eliminate cultural practices and stereotypical attitude and behaviour that discriminate against and disadvantage women.

International human rights law has therefore been developed in the last decades in a manner which prevents the argument of culture and tradition from undermining the rights to equality and freedom from violence. The right to culture is interpreted such that it must be harmonized with these standards and not manipulated to legitimize discrimination and violence. The connection between violence and gender-based discrimination has been reinforced by the work of several human rights treaty bodies.

This approach to culture has also been adopted in a regional instrument of comparative interest to Asia, the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa. This document addresses the elimination of “all forms of discrimination and harmful practices”, making

a clear connection between them. Consequently, article 2 requires States Parties to combat discrimination against women, incorporate the norm of equality in the Constitution and legislation and ensure effective implementation. They are required to prohibit discrimination, particularly those harmful practices which endanger the health and well-being of women. The introduction of the concept of the “well-being of women” incorporates an approach that sees traditional practices as harmful when they discriminate and legitimize violence against women.

The African Protocol has been influenced by the current interpretations of the Convention on the Elimination of All Forms of Discrimination against Women and the Declaration on Violence against Women, but it also has innovative aspects. Article 2 commits States Parties to the “elimination of harmful cultural and traditional practices and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes”. Article 5 is even broader and imposes a responsibility to “condemn all forms of harmful practices which negatively affect the human rights of women and which are contrary to recognised international standards”. The idea that women must actively participate in the formation of culture so that they can live in a positive cultural context is clarified in article 17. This is a new ideology in human rights standard-setting which challenges the cultural relativist views on non-transformative static cultures in non-Western societies. Cultural relativism invariably fails to address the pressure on women to accept negative cultural traditions in order to obtain other benefits such as social status, economic support and acceptance in male dominated communities.

Some States Parties in Asia that have not ratified the international instruments discussed nevertheless accept the Beijing Platform for Action as “soft” international law and have undertaken an obligation to harmonize their national laws, policies and programmes with it. The strategic objectives and actions in the Beijing Platform for Action refer to the human rights of women. Paragraph 224 refers specifically to violence against women resulting from cultural practices and commitments to combat, prohibit and eliminate them. Governments are called upon to take urgent action to eliminate violence against women that infringes human rights and results from harmful traditional or customary practices and cultural prejudices. Female genital mutilation is specifically mentioned. The section in the Beijing Platform for Action on the girl child refers to the elimination of female genital mutilation, son preference which results in female infanticide and pre-natal sex selection, early and child marriage, violence against women, sexual exploitation and abuse, discrimination in food allocation and other practices related to health and well-being. A specific strategic objective is the elimination of negative cultural attitudes towards and practices against girls.

### **C. Religion and cultural practices: the interface**

This study does not include practices which are recognized as part of religious doctrine, such as polygamy and unilateral repudiation of a wife in Islam. However, practices identified as religious beliefs are sometimes in fact cultural traditions within countries that have no connection with religious dogma. Thus the institution of dowry recognized in Muslim communities in Bangladesh and Sri Lanka is not an aspect of Islamic religious law. Islamic law recognizes the concept of *mahar*, which is a gift by the bridegroom to the bride. This is the very reverse of a dowry gift from the bride's parents to the groom. Similarly, pollution practices harmful to women can be popularly associated with religious tradition in Hinduism and Buddhism in Nepal and Sri Lanka although they are not part of religious ideology. Such practices, which indicate an interface between religion and culture, have been documented in this study.

There are situations where a cultural practice that is positive (e.g. adoption of children among Muslims or widow remarriage in Nepal) is undermined by the State through legislation or the courts. For instance, married Sri Lankan Muslim women can, together with their husbands, adopt children. However, a Supreme Court decision has interpreted a Statute on adoption so as to deny the right of Muslims to confer equal inheritance rights on adopted children (*Ghouse v Ghouse* 1988). The decision has converted a positive practice into one that denies women the right to adopt a child as a full member of the family. In Sri Lanka, State land policies on allocation of housing after the Tsunami disaster have at times tended to ignore the fact that Muslim women in the Eastern Province acquired ownership of the family home by inheritance or gift according to local custom. The formal law of Sri Lanka does not recognize this customary practice in the Eastern Province. Similarly, until amended recently, the Country Code in Nepal prohibited widow remarriage, even when customary norms did not consider remarriage to a sister-in-law as incest.

The modification of tradition by social and regulatory forces demonstrates that custom, culture and tradition are capable of both negative and positive transformation. Popular religious beliefs often emerge as a negative force in supporting pollution practices harmful to women. On the other hand, religious ideology and regulatory systems that undermine cultural practices have a negative impact in preventing the practice of adoption by Muslims in Sri Lanka or widow remarriage in Nepal. Both experiences suggest that the interface between religion and custom should be addressed by women, with a view to deconstructing these phenomena and harmonizing them with the ideology of human rights.

## **II. HARMFUL TRADITIONAL PRACTICES: IMPACT ON WOMEN AND GIRLS IN BANGLADESH**

### **A. Introduction**

The traditions and customs of Bangladesh, which became an independent country in 1972, have been influenced by its origin as East Bengal in India. While East Bengal had a Muslim majority population, it had close cultural links with West Bengal and with many facets of the social mores of Hindu India, resulting in a fusion of Bengali culture and Islamic beliefs. Muslim and Hindu traditions continued to have social acceptance even after the incorporation of East Bengal in the new independent Pakistan nation in 1947.

Kabeer (1991) has argued that the cultural alienation of this eastern state in Pakistan from the strong Islamic ethos and policies of the central Government was one factor that triggered the war of independence and the emergence of independent Bangladesh. Kabeer has also stated that while the nuances of secularism in the new administration were overtaken by the efforts of successive Governments from the mid 1970s to establish an Islamic State, a residuum of moderate Islamic influences and flexibility survived. Governments also tended to be sensitive to the impact of the International Decade of Women on negative gender specific social norms. However, there is concern that the influence of strident Islamic countries in recent decades has created a “grassroots religious (Islamic) consciousness” that operates as a countervailing force in social reforms (Kabeer, 1991).

In consonance with the liberal outlook of the first post independence Government, the Constitution of Bangladesh upholds the principle of the equality of men and women and prohibits discrimination against women. Laws have been introduced to protect the legal rights of women and to prevent violence against women. For instance, provision has been made for punishment for actions and practices such as giving and taking dowry, abduction of women, dowry related violence and trafficking of girls and women. Child marriage (under the age of 18 for women) has been made a punishable offence. It appears from the ensuing discussion of harmful traditional and cultural practices that affect women that these laws are not enforced in a context in which traditions and customary procedures continue to determine behaviour and action.

## **B. Son preference**

Son preference is explicitly expressed by parents and families in many countries, but perhaps its most visible manifestation is seen in the majority of countries in South Asia. Although it is not an Islamic practice, in Bangladesh, with its admixture of an 83 per cent Muslim and 16 per cent Hindu population and patrilineal society, the continuity of the male line tends to be of crucial importance. In consonance with patriarchal norms the son was perceived to be the breadwinner, the future head of the family and the supporter of parents in their old age. Additionally, in a country in which one-third of the population were below the national poverty line and 36 per cent received an income of less than one US\$ per day, and a dowry system exerting economic pressures on families, sons were valued as economic assets and daughters as liabilities.

In a recent survey of 850 families (PHREB,2006), 93 per cent of parents preferred a son as a blessing to families and the country and 96 per cent felt that the birth of a daughter would be a “problem” to the family and the State. Pregnant mothers were reported to seek medicine from Imams to have a son and it was expected that a baby daughter would receive differential treatment as a “burden”.

Son preference encourages the girl child to be treated as unwanted, often resulting in disadvantage and neglect. While abortion is illegal, menstrual regulation is permitted up to 10 weeks, although free State services are limited and there is evidence of clandestine and unsafe induced abortions reflected in the numbers of women admitted to hospitals for abortion related complaints (Centre for Reproductive Rights, 2004). Seventy per cent of deaths during pregnancy have been attributed to complications caused by induced abortion, which in itself is a form of violence (Hayward, 2000). As the sex ratio in 1997 was 105.7 in favour of males, it has been suggested that prenatal sex selection could be a motivation for induced abortion by traditional methods. In the case of unmarried women, premarital sexual activities could pressure them to resort to abortion in the context of the value attached to virginity at the time of marriage.

Female infanticide does not appear to be widespread. It must be noted that infanticide is prohibited in Islam and therefore would be contrary to Islamic values. There are, however, some reported cases of fathers killing newborn baby girls and throwing acid on female infants (PHREB, 2006). It has been conjectured, too, that selective abortion of female foetuses based on the results of modern technological services such as amniocentesis and sonography have tended to replace female infanticide (Ganatra and Bart Johnston, 2002).

There is clear evidence that preferential treatment accorded to boys inevitably disadvantages girls. In some families, women are reported to stop breastfeeding girls and wean them early so as to be able to try for a male child, thereby depriving girls of essential nutrients; girls are compelled to eat whatever food is left over, with this gender difference in access to food reflected in the higher levels of under nutrition and malnutrition among girls; and girls are reported to have less access to health services, including immunization. The PHREB (2006) survey also found that some girls committed suicide as they were not treated “as human beings” and that eleven such suicides took place between November 2005 and October 2006 in the city of Chittagong. Up until recent proactive education policy measures were implemented in Bangladesh, girls were denied access to education and were not enrolled in schools, or they continued to drop out at an earlier age than boys (Warzazi, 1994). Recent policies have impacted to improve the situation but lack of access to and dropouts of girls from school continue to be problems (Coomaraswamy, 2002).

### **C. Marriage-related practices**

#### **1. Early or child marriage**

The legal minimum age of marriage in Bangladesh is 18 years for women. The widespread socially accepted practice of early or child marriage is clearly a violation of the rights of the child and a harmful traditional practice.

Although the lack of a proper system of birth and marriage registration precludes accuracy in the compilation of data, all statistics indicate a similar trend of early marriage. The Demographic and Health Survey (in 1996/97) found that 5 per cent of the 10-14 age group and 48 per cent of the 15-19 age group were married. The median age of marriage was 15.3 years with wide urban-rural differentials of 19 and 15 years, respectively. The United Nations Population Fund (UNFPA) recorded in 1998 that 7 per cent of girls were married by the age of 12, 47.8 per cent by 15 years, and 73.8 per cent by 18 years. The World Health Organization (WHO) reported in 2000 that 14.1 per cent of girls had given birth by the age of 15 years, and 48.0 per cent by 18 years. It has been noted, too, that 46 per cent of those married in the 10-14 age group and 33 per cent in the 15-19 age group had never used contraceptives, so that family size was large and births closely spaced (Pathfinder International, 2006).

The reason for acceptance of the norm of early marriage was two-fold. There was cultural and perceived religious justification by families on the basis of the value placed on virginity at the time of marriage. Families felt that early marriage foreclosed the possibilities of sexual contact that would tarnish the family honour. A husband and his family would find it easier to control a child or adolescent and thereby sustain the pattern of unequal power relations within the family. Additionally, there was poverty, as giving daughters in marriage as early as possible left fewer mouths in the family to feed, and husbands were likely to pay a higher bride price or demand a smaller dowry for a young girl.

The consequences of early marriage were clearly detrimental to girls. Primarily, it robbed them of their childhood and turned them into “adults” prematurely. They faced the trauma of relationships with older men at a very young age, unable to negotiate safe sex and being vulnerable to domestic violence. The most deleterious effect was on their health, as frequent short-spaced pregnancies exacerbated by nutritional taboos at childbirth during their growing years had an adverse impact culminating even in death. Their quality of life was affected by being taken out of school to be given in marriage. In recent years, education policies such as the provision of stipends enabled the majority of girls in Bangladesh to have access to primary education, and many had the opportunity of entering secondary schools. However, early marriage prevented them from completing secondary education and enhancing their prospects of occupational mobility.

## **2. Forced marriage**

Forced marriages were often corollaries of early marriages, although young women were also vulnerable to such pressures as emotional blackmail and threats of assault. Some families forced girls to marry to protect cultural expectations that eschew “unsuitable relationships” and to safeguard the family honour. Families forced victims of rape to marry the perpetrators to protect the honour of the girls as they were perceived to be subsequently unmarriageable. There have also been instances of girls sold by economically deprived parents to suitors. At the same time, girls whose families have rejected marriage proposals were kidnapped or raped by suitors and their families, and such forced marriages could end in murder. The practice of forced marriage has spilled over to immigrant families in western countries resulting in implementation of legal measures and the establishment of a forced marriage desk in the Foreign Ministry of the United Kingdom, where there are around 300 cases a year (UK Forum, 2000). According to Muslim tradition, it was acceptable that consent to the marriage was given by the guardian and not the bride, in any age group. In recent years, increasing awareness of the negative and harmful consequences of early marriage, whether arranged or forced, has led to action to prevent such marriages.

### **Child marriage in Bangladesh**

On July 13, 2007, 50 young girls took to the streets of Sathkira to protest the marriage of their 13 year-old classmate, Habiba Sultana. These savvy girls not only marched for Sultana, they also filed a formal police complaint which resulted in Sultana's father, who had betrothed his young daughter to a 23 year-old neighbour, signing a document preventing him from allowing Habiba to marry until she turns 18.

*Source: Daily Star, quoted in The Ranting Taint, September 2007.*

Pathfinder International, an international non-governmental organization, implemented a project from 2003 to 2006 in five subdistricts of the poorest district to address the problem of early marriage. It aimed to produce concrete results such as increasing the enrolment of girls in schools and the number of girls delaying marriage. The project had three components: (i) providing stipends for girls in the last three grades of primary school and in the first grade of secondary school; (ii) an advocacy programme to explain the benefits of education and delaying marriage to officials and communities, implemented in collaboration with a local non-governmental organization, Swanirvar; (iii) and supporting paramedical training for three classes of girls in a training institute (Pathfinder International, 2006).

### **3. Dowry**

As in other Muslim societies in Bangladesh, the traditional custom of payment of bride price by a groom's family at marriage was observed until the 1960s. Since then, a transformation has taken place in the spread of the dowry system as a customary practice, proliferating from the upper and middle classes to low-income families, particularly after 1980. Traditionally, too, the dowry was provided by the bride's family to ensure her future well-being, but increasingly the process of giving and receiving a dowry has become a commercial transaction which negates the personhood of a woman and creates hardship for parents (Huda, 2006).

It has been said that from the time a daughter is born, parents are concerned with the problem of providing a dowry and that the dowry has become the most important problem facing families. Families that cannot afford to provide substantial dowries are said to be forcing daughters to marry elderly men, married men or illiterate young men to reduce dowry payments (Hayward, 2000).

These developments have taken place notwithstanding the introduction of legislation prohibiting the giving or receiving of dowries and punishments for non-compliance as well as for violence against women related to dowry agreements. While dowry deaths have not been reported on the same horrendous scale as in India, it appears that forms of violence such as forced starvation and suicide, defacement and murder by burning have surfaced on the scene in recent years (Bates, 2004; Brandt & Kaplan, 1995/96). In fact, it has been reported that dowry related violence has increased in recent years, with the number of cases rising from 98 in 1997 to 287 in 2002. Between January to June 2005, 197 cases of physical and sexual violence and 124 cases of murder were reported (Akter, 2006).

#### **4. Re-marriage of widows**

The lives of widows are not endangered by the practice of sati, but re-marriage is forbidden in families of the Hindu minority by tradition.

#### **D. Caste**

The hierarchic caste system prevails among the Hindu minority in Bangladesh with its attendant discrimination and social exclusion of “lower castes” and “untouchables”. Research evidence is not available, but its concentration in the lowest levels of the occupational structure, limited mobility and social interaction, exclusion from schools, and the vulnerability of women to violence such as rape are examples of the denial of human rights.

#### **E. Dress codes**

Bangladesh has not imposed dress codes on women, but with increasing Islamic consciousness in recent decades, two forms of dress are considered necessary by some women for appearing in public, the chador or scarf, which covers the hair, forehead and neck, and the *burqua*, which covers women from head to toe, leaving a small space over the eyes or using a mesh cloth to cover the eyes. There is no denial of rights if women exercise their choice to use these forms of dress and are not forced under threats of punishments to do so. The rationale for these dress codes is claimed to be to protect women from violence by men and to facilitate the practice of chastity, while women have claimed, too, that they have a liberating effect.

## **F. Purdah**

The practice of *purdah*, or seclusion in the household and exclusion from public places, is said to be a religious tradition from puberty in Muslim families and a cultural practice in some Hindu villages after marriage. The basis of *purdah* is the belief that the vulnerability of women to “strange” men can jeopardize men’s honour so that women must be subordinated to this and confined to the house, thereby restricting their right to spatial mobility. *Purdah* is not practiced generally in poor families, in which women engage in livelihoods for family survival. It is practiced in affluent homes and considered a status to which the upwardly mobile aspire (Mandelbaun, 1988). Dress codes for Muslim women are often linked to the idea of seclusion of women.

## **G. Bonded labour**

Historically, slavery, or bonded labour, has been a regular feature across generations in many countries and in different ages. Families or individuals have been bonded to work for employers as a social obligation under informal agreements. “Debt bondage” is an extension of this system whereby advances given by employers force men, women or children in families to work towards the endless task of repayment. Women and girls in bonded labour are known to be more vulnerable to physical and sexual assault in a patriarchal and feudal society. However, there is no sex-disaggregated data and little information available in Bangladesh regarding the nature and extent of bonded labour in the country. A survey in 2003 by the Bangladesh Bureau of Statistics found that 4.2 per cent of 1,504 establishments in the informal sector engaged in the bonded labour of children, employed to settle advances given by employers. Such bonded labour was found in agriculture and in artisan and repair services. There were instances of families working as a unit to pay off debts.

Such exploitative activities denied victims freedom of movement and the opportunity to change their employment, confined them to low wage drudgery and exacerbated the constraints that women face in achieving upward occupational mobility. They have now become a focus of attention that ensures specification of a minimum age of employment under the International Labour Organization’s Convention 138, prohibition of the worst forms of child labour under the organization’s Convention 182 and protection of workers’ rights and human rights.

## **H. Gender-based violence as traditional and cultural practices**

### **1. Honour killing**

Honour killing is a traditional practice that originated over 2000 years ago and was carried out in many countries. Currently, it is widespread chiefly in Muslim countries and is perceived almost as a religious rite, although it predates Islam. Women are killed brutally by brothers, fathers, uncles, husbands or other male and even female relatives on the grounds that their actual or perceived behaviour has undermined the authority of men and tarnished the family honour. Such behaviour could be illicit relationships, extra marital affairs, speaking to unrelated men, desiring to choose one's spouse or marrying a man of one's choice, refusal to accept a forced marriage, divorcing an abusive husband, loss of virginity or bringing shame on the family by being raped, all actions which threaten men's control of women's behaviour and sexuality. Despite the availability of legal measures to punish these acts of violence, killers are rarely punished and may, in fact, be treated by the community as heroes who have defended the honour of their families, while women are denied their right to life.

There is no official record of these honour killings in Muslim families in Bangladesh, but there are reports that such killings do take place, although not widely, (Becker, 2004) and that girls or women are poisoned by family members or driven to commit suicide.

### **2. Acid attacks**

Bangladesh has its own form of femicide or disfigurement and bodily injury by "acid throwing", which is reported to be a practice of relatively recent origin and is found predominantly in Bangladesh and Pakistan.

In preference to the use of weapons of murder, burning and scarring with acid is used to punish women for a range of actions from their rejection of marriage proposals and the dishonour of rape to delayed preparation of a meal and a land dispute. An example of the reaction of a disappointed suitor or lover is given below.

## **Acid throwing**

At 16, Nurunnahar was a beautiful young woman with a bright future. But

“in 1995, a young boy of my village told me he was in love with me. He got angry when I refused him. One night, the boy, along with ten of his friends, stormed into our house and threw acid at my face. It was so painful. I felt as if my face was on fire. I underwent treatment for seven months. It shattered my dreams.

Six of the accused 11 men were acquitted by the court. Two were sentenced to death, but they are planning to appeal to the High Court. I don't know what will ultimately happen, but the acquitted persons are now threatening to kill me.”

*Source: Forms of Gender-based Violence and their Consequences, Women's Feature Service. From UNFPA, Populi, March 1999.*

The Bangladesh Women's Legal Centre reported that police recorded 174 similar incidents from April to December 1999. Ten of the victims were under ten years of age and 79 were between 11 and 20 years of age. In 1997, investigations had been conducted into 46 incidents: 21 rejected offers of marriage, 4 dowry defaults, three land disputes, five conjugal conflicts and 13 other incidents (UNFPA, Populi, 1999). It was reported also that around 2,200 women were disfigured each year in acid attacks by jealous or estranged men. From 1996 to 1998, acid attacks were said to have increased fourfold from 47 to over 200 (UNICEF, 2000).

Increasing concern over the plight of victims of acid violence has led to the organization of awareness-raising programmes, support for recovery and reintegration and combating acid violence. The Government has created a fund to assist distressed and oppressed women and children, including victims of acid attacks. In 1999, the Acid Survivors Foundation was formed by a coalition of non-governmental organizations, donors and acid survivors. In 2000, a database was created, information kits on acid violence prepared and investigation cells established in police offices in 16 police districts (Coomaraswamy, 2002).

### **3. Fatwa**

A *fatwa* is a punishment meted out to women by the *shalish*, or local body of male leaders, which makes rules for behavior in the community which it seeks to justify by Islamic religious traditions and by Imams based on their personal interpretation of Islam. Punishments are for behaviour such as

extramarital love affairs or defiance, and take the form of stoning, caning, burning by throwing kerosene over the body or burning at the stake.

In this case, the lawyer was able to secure a penalty for the killers.

### **A Fatwa**

Married Nurjahan of Faridpur village developed love relationships with one Farid of neighbouring village and they both left their home and were untraceable. Nurjahan's husband filed a case following which Nurjahan was found and brought back to the village. The influential parents and uncles kept Nurjahan confined for 12 days. The verdict of the shalish was to spill "kerosin" oil upon Nurjahan's body and burn her alive. The verdict was carried out at dead of night.

*Source: Quoted from lawyer Sigma Huda's case in Hayward Ruth Finney (2000), Breaking the Earthenware Jar, UNICEF Regional Office, Kathmandu, p. 277.*

Siddiqi (1998) refers to the "growing culture of fatwa" in Bangladesh, which he argues is a response to non-governmental organization activities to promote the empowerment of women by opponents who wished to strengthen Islamic values and respect Islamic traditions. It appears, therefore, that religion is manipulated to promote social values and behaviour and that such practices tended to overshadow the legal system and the judiciary.

## **4. Female genital mutilation**

Female genital mutilation as well as male circumcision are customary traditions associated with cultural or religious beliefs from the mists of antiquity and have been recorded in different countries in ancient and medieval history. They are being practiced widely in contemporary societies – chiefly in South and South-East Muslim Asia and Africa – at all ages, from a day-old infant to young children, adolescents and adults. Research on this issue in Bangladesh is scarce, but in view of the resistance of cultural practices to legal measures to prevent them and to punish perpetrators, it is perceived that even some forms of female genital mutilation may be surviving within the privacy of families and communities.

Female genital mutilation is the surgical removal of parts or entire sensitive female genital organs. It is claimed to be necessary to promote cleanliness and to reduce sexual desires and thereby ensure virginity until marriage, and is sometimes viewed as a rite of passage ceremony. It is, in fact, a technique to

control female sexuality. There are at least four types of the practice of varying degrees of complexity, from (i) circumcision and (ii) excision or clitoridectomy, to severe, intensive operations of (iii) infibulation and (iv) introcision. These operations are chiefly performed at the request of families by women who are often traditional birth attendants, paid in cash and kind, and who are absolved from all consequences, even death. An operation is reported to take 10 to 20 minutes and is conducted without local anesthesia using tools such as pieces of glass and fingernails, although the process is said to be becoming medicalized in urban communities in more developed countries (Warzazi, 1994).

The consequences of female genital mutilation on girls and women have been widely discussed. Those most visible are the impacts on health, including excessive hemorrhaging and infections caused by the use of unsafe instruments, resulting even in death, the longer-term life threatening effects of obstetric complications and deinfibulation and reinfibulation at childbirth, as well as infertility. There are also reports of psychological problems such as nightmares. Inevitably, the practice represents a denial of basic rights in the face of non-enforcement of laws. Increasingly, there is concern at the international level, and countries with immigrants from areas where there is widespread acceptance of this cultural practice are enacting legislation to prevent its occurrence.

## **5. Incest**

Incest is considered a harmful practice as it tends to be culturally tolerated within some families in all countries, including Bangladesh (Coomaraswamy, 2002), and to violate the rights of girl children to a life free from abuse. Perpetrators are fathers, brothers, uncles and grandfathers or other male relatives closely connected with the families of the girl victims of such sexual abuse. Incest extends from sexual fondling to rape, and its effects are psychological, physical, including the impact of childbirth at an early age, as well as in the form of lost childhood with its entitlements such as access to education. It appears that the practice is shrouded in family privacy for fear of adverse economic and social consequences.

### **I. Causes and consequences of harmful traditional and cultural practices**

It is interesting to note that the confluence of Bengali Hindu traditions and Islamic values and practices since pre-independence years has reduced the intensity of some violence prone traditions in many Muslim societies such as female genital mutilation and honour killing. At the same time, it has introduced negative cultural practices such as the dowry system, which is a strong feature of Hindu society.

Among the harmful traditional practices that have an adverse impact on women, son preference is a pervasive bias against the girl child and has its roots in unequal gender relations. Gender inequalities are also reflected in marriage practices, including the shift from bride price to dowry as a transaction of women as if they were commodities, acceptance of a guardian's agreement to the marriage of a girl "in absentia", and unilateral divorce.

A strong focus on virginity is the basis for families' propensity to arrange early or child marriages for their daughters, prevent premarital sexual activity, adopt protective dress codes and practice different degrees of female genital mutilation. Juxtaposed with the perceived need to control female sexuality in order to preserve family honour and men's honour, these cultural imperatives promote the practice of *purdah* and honour killings. Acid killings and *fatwas* by community or religious leaders are the most visible manifestations of gender inequality and control of female behaviour in Bangladesh.

While these traditional and cultural beliefs are held across all socio-economic strata, low-income families additionally face economic pressures to practice early marriage so as to reduce their dependency burden as well as the quantum of dowry demanded by a prospective groom's family. The practice of bonded labour, too, thrives on the subservience of hapless families trapped in poverty.

As a consequence of families and individuals conforming to such practices, girls and women are disadvantaged from conception through the life cycle and denied their human rights and equality of treatment. Son preference could result in sex-selective abortion of girls and female infanticide. It was seen that there were instances of women denied the right to life through murder by burning or acid or being driven to suicide, or who were vulnerable to sexual abuse, health hazards in childhood and at childbirth, and indignity as a result of cultural practices that legitimized violence and harassment in pursuit of controlling their behaviour in order to safeguard perceptions of family or male honour.

Gender differences in participation in education and in indicators of health status in Bangladesh also underscore the negative consequences of traditional gender roles and related attitudes. From the stage of weaning through childhood and adolescence, girls and women in families with limited supplies are apt to be discriminated against in food allocation, with adverse implications for their nutritional and health status. Although in recent years the State has introduced affirmative action policies on free education and provided financial incentives to enable more girls to enroll in schools, girls in some areas – particularly in families with minimal resources – are constrained to "drop out" of school before

completing secondary or even primary education, as preference is given to investing in the education of sons. Unequal access to skills development programmes disadvantage women in the labour market and reinforce the concentration of women workers in the lowest levels of the employment structure.

Laws are in place to prevent the giving and taking of dowry, to punish acts of violence associated with traditional practices and to increase girls' access to education. It appears, however, that customary practices rooted deeply in belief in the subordination of women and the need to protect their virginity and safeguard family and male honour are so firmly entrenched that the enforcement of these laws becomes virtually impracticable. The underlying issues are therefore (i) cultural resistance to law enforcement, (ii) the dissonance of universal human rights and cultural relativism, and (iii) the distancing of the private domain from public life and scrutiny.

### **III. HARMFUL TRADITIONAL PRACTICES: IMPACT ON WOMEN AND GIRLS IN NEPAL**

#### **A. Introduction**

Nepal has been an independent kingdom for around 1,500 years and has never been ruled by a foreign power. Its absolute monarchy was converted into a constitutional monarchy in 1990, but following the Maoist uprising that began in 1996, the present King attempted unsuccessfully in 2002 to revert to absolute power, thus exacerbating political instability.

Per capita national income is just US\$ 230 and 42 per cent of the population is reported to live below the national poverty line, with 37.7 per cent earning less than one US dollar a day. The population is mainly Hindu (86 per cent) with Buddhist and Muslim minorities. The "Indo- Aryan" ethnic groups live in the south of the country and share much of the culture of North India, while those in the North belong to the more egalitarian Tibeto-Burman culture (Niraula and Philip, 1996). It is reported that there are 61 indigenous groups speaking 125 languages or dialects. Overall, the dominant influence is Indian but strong vestiges of other ethnic and tribal cultures prevail.

## **B. Son preference**

As in most societies, particularly in Asia, son preference is an entrenched value in Nepal. Families are said to have recourse to religious rituals such as prayers and fasting and to herbal medicines, as well as currently to the sophisticated technologies of sonograms and amniocentesis to decide on sex selective abortion, to ensure that the family name is preserved through the male line. Sons must be available for religious funeral rites in Nepal's patriarchal social system. Only male descendants can inherit the throne (Constitution, 1990).

Although the sex ratio of 105 at birth in favour of boys has not received much attention nor been perceived as a critical issue, as it is in India, Leone et al (2003) point out that their research indicates that the sex ratio at the last birth for women who have completed their families is 146 in favour of boys, revealing a wide gender disparity. They conclude that stopping behaviour in childbirth through use of contraceptives or other methods is dependent on the birth of at least one son, thereby reflecting a strong son preference. An earlier study (Karki, 1988) also found that preference for sons determined family size. Most families in his study sample (90 per cent) wanted at least one son and the preferred sex composition of a family was two sons and a daughter.

The consequences of a strong son preference could extend to the denial of girls' right to life or their vulnerability to discriminatory practices in the environment in which they live. The Women's Rehabilitation Centre (WOREC) (1998) and the World Health Organization (WHO) (2000) have stated that Nepal has a long history of induced abortion, although abortion has been legal since 2002 and even now is permitted to only 12 weeks after conception. Traditional birth attendants are said to perform abortions using unhygienic methods, including the use of unsterilized knives, blades stone and soap, thus endangering the lives of girls and women. The increasing acceptance of a small family norm creates pressure in a culture of son preference to opt for the survival of male children while it is claimed that suicide is preferred to female foeticide or infanticide.

At the same time, abortion is not necessarily an outcome of son preference but is also a strategy to ensure virginity before marriage, which is a cherished value according to Hindu traditions, and to safeguard family honour. There is inadequate evidence to ascertain the relative strength of these pressures on families.

## C. Marriage-related traditional practices

### 1. Early or child marriage

Child marriage is perceived to be an established practice of generations in Nepal. Both religious and cultural traditions have favoured the marriage of daughters from even less than ten years of age or very early after menarche (first menstrual bleeding), while husbands could be much older. The incidence of such marriages varied, with a high rate in the Terai region in the south and greater flexibility among those of Tibeto-Burman origins, as seen by the fact that the mean age of marriage was 15 years in the Terai and 18 years in the hill and mountain districts and the Kathmandu Valley (Dhital, 2007).

Quantitative data, however, is apt to be somewhat inconsistent. The World Health Organization (2000) reported that 3.2 per cent were married by the age of 15 years and 36.0 per cent by 18 years. The Centre for Reproductive Rights (2004) has stated that 7 per cent of the girls were married by the age of 10 years, 40 per cent by 15 years, and 60 per cent by 18 years. The United Nations Children's Fund (UNICEF), as reported in Dhital (2007), stated that 40 per cent were married by the age of 15 years.

The legal minimum age of marriage in Nepal is 18 years for females and 21 years for males. It has been argued that it is difficult to counter old traditions in a country with a relatively high level of illiteracy and low education status. Apart from tradition, there is economic pressure on large families to reduce their burden of dependents and the incentive of lesser dowries demanded for younger girls. It has also been suggested in these studies that penalties prescribed by laws were too light and not properly enforced, while social acceptance prevented complaints to law enforcement agencies.

#### **Child marriage**

Besides, because of its tremendous religious and cultural values it wins the concern and goodwill of not only relatives but also the community and society as a whole. People in the society would rather protect a case than report it to the police. A police officer at the Kalikasthan Police Station in Rasua District, famous for the high rate of child marriage, says "We cannot take action unless a formal complaint is lodged at the police station. And we never get a single complaint".

*Source: Dhital Rupa, "Child Marriage in Nepal",  
[www.cwin.org.np/resources/issues/child\\_marriage.htm](http://www.cwin.org.np/resources/issues/child_marriage.htm) (2007).*

Among the consequences of early marriage are health risks caused by the stress of too many – and too closely spaced – pregnancies virtually in childhood, such as obstructed deliveries and other birth complications, delivery related death, under developed babies, and denial of the right to education and normal child development patterns. It is argued, too, that the practice of early or child marriage facilitates the trafficking of young girls for forced marriages.

Forced marriages have been noted to be a traditional response to various imperatives, such as the need to promote cultural and religious values, prevent what are perceived to be unsuitable relationships, control female behaviour and sexuality and protect family honour. Girls and women are apt to be kidnapped and forced into marriage if proposals were rejected, and victims of rape forced to marry perpetrators to save their honour. Sales of girls and women into marriage, too, are not uncommon.

## **2. Dowry**

The giving and taking of dowry as a wedding ritual is said to have become a cultural practice around the mid-nineteenth century (Hayward, 2000) and became accepted widely in recent decades as the Marriage Act, Provision 6 of the Civil Code, which permits payment of a dowry if it is a custom in the community. It has been argued that the dowry system developed initially among high caste, affluent families and that a substantial dowry is perceived as a symbol of high socio-economic status. Even tribes which did not subscribe to this tradition are reported to have adopted the practice, but the most extreme form of the dowry system is reported to be in the Terai in the south, bordering India.

## **Dowry system in the Terai**

There (in the Terai) the bridegroom demands the dowry price, locally called 'tilak'. The tilak money demanded by the groom's family can be a hefty sum and might not correspond to the economic position of the bride's family, thereby making the marriage of daughters a heavy burden on the girl's parents.

The tilak is adjusted according to the education, qualifications and social standing of the boy. The higher the qualifications, the higher the price he demands in marriage. This compels the parents to marry off their daughters as soon as possible with anybody, without considering if he is eligible or not. Keeping an unmarried daughter at home can be a continuous source of worry for the parent because her marriage becomes more complicated and expensive as she grows older. A younger girl, on the other hand, can get a groom who will be comparatively younger and less qualified, thus demanding less tilak money. .... The Maithili speaking people in the Terai have the highest rate of child marriage, with 95.6% girls getting married before the age of 16. The main reason behind this is the widely prevalent dowry system.

Because of the dowry price the parents have to pay in their daughter's marriage, other expenses for daughters like sending them to school might not even be considered as it will be a case of double expense.

*Source: Dhital, Rupa, "The Dowry System", [www.cwin.org.np/resources/issues/child](http://www.cwin.org.np/resources/issues/child).*

The disadvantaged situation of girls victimized by the dowry system and their loss of personal identity and human rights and access to opportunities for advancement are clearly spelled out in the implications outlined below. It is further contended that dowry demands and inability to meet these demands have resulted in abandonment, divorce, suicide of girls and women, domestic violence and death (Hayward, 2000; Pradhan – Malla, 2006).

### **3. Widow re-marriage**

The prohibition of re-marriage for widows is said to have been strictly enforced by Brahmin tradition by 1000 AD, chiefly because brides had to be virgins at the time of their marriage. Associated with this tradition was the practice of *sati*, or compulsory suicide of widows by burning on their spouse's funeral pyre. In Nepal, however, at the end of the nineteenth century, the reigning King had forbidden widows with children to follow the traditional practice and commit *sati*. Since then, the practice has varied. For instance, widows were not forced to commit suicide but they could not marry and could only be concubines. Or they could get married but could not have a ceremony, as such ceremonies are restricted to first wives, or they could marry but their children must remain with the deceased husband's family. An interesting practice was that Newar girls in the Kathmandu region were married at the age of five to nine years to the bel fruit to preclude them from being categorized as widows when their husbands died so that they were free to remarry (Adam, 1936). Re-marriage to a sister-in-law is also permitted by custom, although it was prohibited until recently by the Country Code, 1963 (FWLD, 2006).

Although *sati* was thus virtually forbidden and remarriage was permitted in some areas, particularly in the hill and mountain districts where Indian cultural influences were less prevalent, widows tended to have low status and it was reported that there were around 30 to 40 incidents of *sati* as recently as in 1970.

## **D. Caste-based discrimination**

### **1. Social discrimination**

In traditional Hindu practice, which spread from India to its neighbouring countries, castes based on the division of labour or occupations were rigidly demarcated in the social structure. The hierarchy of castes extended from the high caste, Brahmins and Chethris, downwards to the untouchables, such as the Dalits, at the bottom of the structure. Tibeto-Burman ethnic groups, such as Newars and others, and tribes who lived in hilly and mountainous terrain had a more flexible social structure, particularly pertaining to marriage, divorce and widows. Nevertheless, with the conquest of the Kathmandu Valley and other areas by Pritihvi Narayan Shah in 1768, Brahmin cultural influences overshadowed indigenous customs, and castes and tribes tended to coalesce (Adam, 1936).

Discrimination based on cultural occupational boundaries had a devastating effect on women and men in “lower” castes. Although the social practice of untouchability pertaining to Dalit women was abolished by the Country Code of Nepal in 1963, social exclusion in terms of denial of access to basic services, education, health and remunerative employment as well as to social interaction with “higher” castes perpetuated their poverty status and deprived them of human rights and human dignity.

Women were more disadvantaged than men as they were vulnerable to sexual abuse by “upper” caste men, were married off early to protect them from their advances, or were raped and forced into prostitution. The hapless situation of women is reflected in the impact of the traditional practices of different castes on their quality of life.

## **2. Badis**

One of the most disadvantaged groups is the Badis, who migrated from India around five centuries ago and became a nomadic caste group in western Nepal. The further descent of their women into forced prostitution is described below.

It has been said that the activities of sex workers in Nepal were extended when the Rana rulers were overthrown in 1951 and fled to India, taking their concubines with them. As they aged, they were sold to brothels in India, beginning a lucrative sex trade which has flourished since the 1960s based on the recruitment or abduction of these Nepali sex workers to meet the demand in brothels in different regions in India (SAP, 2001).

Caste has therefore determined the contours of the lives of Badis, depriving them of opportunities for upward socio-economic mobility and channeling them to commercial sex work with its attendant hardships and perpetuation of discrimination.

## **Badis**

It is believed that the origin of this caste starts back in the fourteenth century. At that time, the Thakuri Kings of western Nepal used to keep them as the Rajnartaki (Royal Dancers) for entertainment. Gradually the forthcoming generation of these dancers were made concubines and later formed a community. Operating as a nomad community they used to move from place to place to entertain people with dancing and singing and were paid for their performances....Apart from a few illegal relationships with feudal and powerful people they did not practice prostitution....

In the early days there was no access to the means of entertainment like radio... for the middle class people in the districts. Therefore Badi people used to earn their livelihood by dancing and singing on social occasions such as ceremonies and fairs... As the modern electronic goods of entertainment reached the towns and districts...the Badis were displaced from their traditional occupations and they did not have alternative means of income to support their families.

The negative consequence of this socio-economic change has been the adoption of prostitution as the occupation of the Badi people. Moreover due to isolation and nomadic practice they were deprived of education and skills development opportunities... and were forced to go into prostitution...The women of the Badi community are permitted by their husband and family members to continue with the profession of prostitution...The majority of Badi prostitutes are not able to get married.

*Source: South Asia Partnership, 2001, Commercial Sex Exploitation of Children.*

### **3. Pledging/dedicating to gods or temples**

#### *(a) Deuki/Devaki*

Traditional religious and cultural practices of all castes are observed to use girls and young women as agents in a process that distorts their development and stultifies their lives. As in the case of the Devadasis in India, families of the “high” Chethri caste in Nepal pledge daughters or other young girls to deities in temples seeking a favourable response to their prayers at the expense of condemning these Deukis or Devakis, as they are known, to servitude.

### **Deukis / Devakis**

In the Far West, there is a place called Baitadi. There are women there that we call Devakis. These girls are offered to temples by relatives who want their prayers to come true. So they promise the goddess of the temple that in order to have their prayers answered they will give their daughter to the temple as an offering. It started a couple of hundred years ago... They would provide for their daughters in these temples, but later what happened is that people used to promise to give a girl to the temple. So they would buy girls from poor villagers and leave them in the temple as an offering.

Now people buy and give girls to temples for any reason: winning elections, buying land, anything. And these girls once they are given to temples, cannot marry because there is a superstition that misfortune will fall on whoever will marry this girl. And nobody provides for them, so they have to turn to prostitution for money. Ninety percent become prostitutes..... They have children from sexual encounters, and their daughters are called Devis. The mother is so poor, and so, if someone wants to buy the daughter to give to the temple, she sells her.

*Source: Kiran Tewar, quoted in Hayward (2000), Breaking the Earthenware Jar, p. 92.*

Deukis and Devis cannot marry and they end up as mistresses, “kept wives” or prostitutes, condemned to illicit relationships. The Children’s Act has forbidden the practice and imposed a penalty of five years’ imprisonment for offenders, but enforcement has been weak and it was reported that there were around 17,000 girls pledged as Devakis in 1992 (Children in South Asia, 1998).

### *(b) Jhuma*

A similar cultural practice is observed among the Sherpas, a Tibeto-Burman ethnic group living in the north of the country. A baby girl is offered as a gift to god and is called a Jhuma. Her role is to perform religious functions and engage in daily work for the monastery throughout her life. She, too, is not allowed to marry but it appears that men seek sexual relations with Jhumas (SAP, 2001). Once again, physical and cultural bondage are the lot of girls and women in caste and ethnic groups with entrenched traditional values.

## **E. Bonded labour**

Among “lower” castes and minorities in Nepal there is also the customary practice of families bonded, sometimes for generations, by employers or feudal masters for the use of their labour under an informal contract or promise. A variation is “debt bondage”, where compulsory labour is required by individuals or members of families, including women and children, to repay loans obtained at exorbitant rates of interest. Labour bondage is virtually a form of slavery where families and individuals are denied freedom of movement to other occupations even if wages are unacceptably low. Their low status not only denies them their rights but also reinforces their social exclusion.

A form of bonded labour known as the Kamaiya system operates in the Terai in the south, where members of the Tharu caste are bought and sold and debts are transferred from one landlord to another in a setting that is reminiscent of slave markets. The male Kamaiya is expected to work with a woman who is engaged in domestic labour or in assisting in agricultural activities, while children are also expected to contribute their labour. In the western hills and eastern plains of Nepal, “low” castes, many of whom are Dalits, are in agriculture bonded labour under the Haliya system. Families are also bonded under the Haruwa system. In 1999, the Informal Sector Services Centre estimated that there were 260,000 in agricultural bonded labour, reduced to 200,000 in 2002, and 20,000 Kamaiya families in five districts in 2002 (Child Workers in South Asia, 2007).

The International Labour Organization’s Convention 182 identifies bonded labour as a “worst form of child labour” (below 18 years) and the South Asian Association for Regional Cooperation (SAARC) has set a target of eliminating child labour by 2010. There is no sex-disaggregated data, but bonded labour survives, making female bonded labour more vulnerable to exploitation, physical assault and rape in a patriarchal and feudal society.

## **F. Living Goddess/Kanya Kumari**

The tradition of Kumari pratha is said to have been an ancient cultural practice, and veneration of a living Kumari (virgin) in Nepal dates back to the 17<sup>th</sup> century. Kumaris are reported to be worshipped in several cities throughout Nepal, but the most venerated is the Royal Kumari of Kathmandu (the capital), who lives in a palace in the centre of the city.

A girl who has not yet reached menarche (puberty) is selected from the Shakya community of the Newar caste to be the Kumari. She returns to her normal status upon puberty, as the goddess who is believed to live in her body vacates it at that time. The selection is very rigorous. Only a girl in excellent health, having the thirty-two physical perfections attributed to a goddess, with signs of fearlessness and serenity is chosen for the position. During a Hindu festival on the Kalratri (black night) she goes through a ritual where she must not show any fear, when the covered heads of 101 buffaloes sacrificed to the goddess, Kal, are revealed to her.

Once selected, she is exposed to a period of training and ritual cleansing and installed in her palace, or Kumari Ghar, with her attendants. Her life as a Kumari has little semblance to a normal childhood. She is considered to be invested with power to bring good fortune to those who visit her and see her. The King kisses her feet, leading dignitaries and officials receive her blessing, crowds gather in the courtyard to receive a glance from her and she is carried around the city in a palanquin once a year.

There is no information available on the impact of this experience on the girls who have held the position but it is clear that they lead very restrictive lives. They lose their childhood and are denied the rights delineated in the Convention on the Rights of the Child. In the past, they were denied any education but in recent years their education is undertaken by private tutors, although it is reported that Kumaris in small cities are now permitted to attend schools and participate in everyday school life. The end of her “divinity” is necessarily unplanned and therefore abrupt, and return to normal life after she has been divested of her status would require major adjustments. She receives a State pension each month so that her material needs are met.

The popular belief was that a man who marries a Kumari is destined to die early and there was speculation that girls who have been Kumaris are deprived of marriage and motherhood. Recent evidence has challenged this perception, as the information from the post Kumari life of these girls has shown that, excepting the last few, some still young Kumaris since the 1920s have been married and have had two to six children.

## **G. Witches**

Witch hunting and witch burning based on superstition and belief in evil spirits have been known in most societies world wide for centuries, and women branded as witches have been subjected to torture and death. In Nepal, too, women, generally elderly women or widows of lower social status have been

branded as witches and been victims of violence, as reflected in the banning of harassment and ordeals of witches in the Law Code of 1854. Gellner (1994), in his study based in the Kathmandu Valley, has described the presence of healers, who are men claimed to possess divinity, mediums, who are women through whom divinity was articulated as, for instance, through the Living Goddess or Kumari, and witches, who were women blamed by healers, mediums and the general population for harmful activities or witchcraft. They were accused of causing misfortunes by magical means or even by looking at people or the food they ate or possessing women who then were guilty of bizarre actions. Women, particularly “low caste” women, were considered to be morally weak and needed to be controlled by men, so that combating witches was a concern for healers. Often, actions against witches were based on suspicion and prejudice rather than factual incidents.

### “Witches”

Her mother got ill, dying slowly over a year. The mother ascribed her illness to the witches enlisted by her daughter-in-law, because the doctor’s treatment was doing no good and because a healer or medium she consulted said ‘Someone who comes to your house and sits near you may have harmed you.’ This confirmed her suspicion that a neighbour who came regularly to watch their television set was a witch. Finally she was taken to Vellore in South India where the doctors found that she had cancer, not the TB for which her doctor had been treating her, but it was too late.

*Source: David N. Gellner (1994), Priests, Healers, Mediums and Witches: The Context of Possession in the Kathmandu Valley, Nepal. Man, New Series Vol. 29 No.1 Mar. 1994, p. 36.*

On the other hand, it has been argued also that witchcraft was a rebellion by women against their subordinate status and the many restrictions imposed on them to compensate for their lack of power and status.

## H. Cultural perceptions of pollution

The importance attached in traditional and cultural beliefs to the purity of women was not limited to the protection of virginity. It also extended to perceptions of pollution associated with the physiological menstruation functions of a woman’s body, creating a range of restrictions on her physical mobility that limited her space for action.

The Women's Rehabilitation Centre study (1998) of women's reproductive health problems in four regions spells out some of these cultural practices. As in many Asian societies, Nepali girls at menarche tend to be isolated in a dark room or, as reported, even in cow sheds, and not permitted to be seen by males, including male members of the family, or to be exposed to sunlight even in urban households.

Socio-cultural practices were imposed during the regular period of menstruation, as girls and women were considered to be impure at this time each month and were not permitted, particularly in Brahmi and Chethri families, to participate in religious or social ceremonies. Explicit instructions were given to: (i) not pray/worship God; (ii) not attend social occasions and religious festivals; (iii) maintain physical isolation for the first three to four days of the period; (iv) not fetch drinking water or cook food for the family; (v) not drink milk or eat milk products; and (vi) not touch milking cattle, fruit trees and male members of the family and community. According to the *chaupadi* practice, women must live in cow sheds outside their homes during and after childbirth. The transposition of these "rules" to the contemporary environment in which women live in consonance with tradition would clearly be unrealistic and impractical.

### **I. Gender-based violence as traditional and cultural practices**

There is no evidence in Nepal of such forms of gender-based violence as honour killings or acid killings. In a country in which the caste system is rigid and the dowry system widely accepted, there is some dowry-related violence, but not on the scale seen in India.

However, incest is a form of gender-based violence. In Nepal, incest is prohibited by law as a crime for which imprisonment is theoretically imposed with sentences varying according to the degree of the relationship of the perpetrator with the victim (SAP, 2001).

Nevertheless, the law's impact is limited, as it appears to be allowed if permitted by customary practice and is culturally tolerated as a family issue. Perpetrators are always male members of the family, most commonly the father. The immediate trauma for girls, their abrupt transition to unexpected motherhood with the resultant health risks, disruption of their education, and the scars that have a long-term impact are all clearly violations of the rights of the child.

## **J. Causes and consequences of harmful traditional and cultural practices**

The harmful practices that have been discussed are the outcomes of the interface of two broad traditions and cultures, the Indian Hindu traditions that have been transposed from the Indo-Gangetic plains through southern Nepal and the more egalitarian Tibeto-Burman culture that has influenced the ethnic groups in the north and in the Kathmandu Valley. The latter has moderated the rigidity of Brahmanic traditions on some issues, but has been overwhelmed by other aspects.

Son preference and early marriage are features of Nepali society, but female foeticide and infanticide are much less visible. The dowry system as practiced in Hindu society has replaced the more flexible marriage practices that had prevailed and is pervasive in contemporary Nepal, but dowry deaths appear to be less horrendous, *sati* was banned over a hundred years ago and there appears to be some flexibility regarding widow re-marriage. The caste system became a permanent feature, incorporating indigenous ethnic groups and tribes and reproducing some of the most harmful practices such as violating the rights of girls and women and consigning them to perpetual subordination and social exclusion as seen in the lives of the Badis, Deukis and Jhumas in the different caste groups. The tradition of the Living Goddess is a manifestation of a milder indigenous cultural practice. Honour killings and other similar forms of violence have not obtruded the cultural scenario.

The reason for the perpetuation of these practices, despite the intervention of legislation to prohibit some of them, is the strength of the traditional and cultural beliefs that underpin them. In the case of the poor and socially depressed, economic deprivation further limits their options. The overarching factor is the inbuilt belief in gender inequality and the subordination of women.

Son preference is the result of the traditional gender roles ascribed to men such as responsibility for the economic support of parents and families, preserving the family name and performing religious funeral rites. Early marriage was favoured for girls to ensure culturally valued virginity before marriage through control of female behaviour and sexuality, thereby safeguarding family honour. Widow re-marriage, too, was discouraged if not prohibited based on the same belief that brides need to be virgins. The cultural concepts of purity and pollution imposed limits to the physical and social mobility of girls and women during menstruation.

The occupational divisions in the caste system were overlaid by socio-cultural hierarchies cum discriminatory practices. Socio-cultural transactions evolved into different forms, such as the

transformation of the traditional dowry system into a process of commercial bargaining, the purchasing and offering of girls to temples for personal favours and their subsequent descent into prostitution, and the customary practice of bonded labour and virtual slavery. The economic burdens of the poor and the consequent need to reduce the quantity of dowry compelled them to arrange early marriages for their daughters.

The consequences of adhering to these practices have been the reinforcement of gender inequalities and the violation of the rights of girls and women that are underscored in international instruments, such as the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women, and in the Constitution. Son preference has the potential to deny girls the right to life from conception, although the available evidence of sex selective abortions is not as strong as in India and incest is tolerated within a façade of family privacy. It has, however, clearly resulted in discrimination against girls and women in the allocation of food within the family and in access to education, as reflected in health, nutrition and education indicators. Compounding this gender-based discrimination is the impact of concepts of virginity and purity and consequent early marriage on the health of young girls, including child-bearing before maturity, frequent pregnancies and attendant risks of birth complications. Girls are taken out of school to be given in marriage and are denied the opportunity to acquire the knowledge and skills required for meaningful adulthood.

Girls and women in poverty groups and in “low or untouchable castes” are especially vulnerable to the negative impact of traditional and cultural practices. The social exclusion to which they are subjected denies them human dignity as well as access to opportunities to achieve upward socio-economic mobility. The abuse of human rights is seen clearly in the relegation of groups of girls and women described earlier to lives of sexual servitude for livelihood and to bonded labour tantamount to slavery.

Strategies to eliminate harmful practices therefore need to be attuned to issues that surface from the prevailing amalgam of cultures. These cultures and their traditions have not been static and have incorporated positive and negative changes; they can therefore be transformed and based on a universalistic framework of human rights which transcends cultural perspectives that negate these rights.

## **IV. HARMFUL TRADITIONAL AND CULTURAL PRACTICES: IMPACT ON WOMEN AND GIRLS IN SRI LANKA**

### **A. Introduction**

Sri Lanka is a multi-ethnic, multi-religious country with diverse legal systems applicable to different communities. However, centuries of Western colonial rule and visionary education and health policies have had both negative and positive impacts on social transformation. This study of harmful traditional practices reflects those transformations, demonstrating that old values can be changed through newer influences. It is also clear that the more liberal values of Buddhism have had a positive impact in undermining – though not eliminating – discrimination against Sri Lankan women based on their sex. A combination of liberal Buddhist values and visionary social policies have provided more space for the advancement of women and higher social indicators in core areas of education, health and life expectancy than in all other countries of South Asia. This situation is reflected in the comparatively limited extent to which harmful traditional practices affect the lives of women.

### **B. Methodology**

Though the study was to rely primarily on secondary sources in order to obtain insights into present prevalent cultural practices, the writer was able to conduct a series of focus group discussions with women representing different ethnic and religious groups as well as to meet women from upper income groups to clarify views and to obtain personal opinions on particular issues relating to harmful traditional practices. Eight group discussions were conducted covering women in Western, North Central and Central Provinces. Contact was made with three leading non-governmental organizations, namely, Women In Need (WIN), Sri Lanka Family Planning Association (SLFPA) and SOS Children's Villages (Sri Lanka), and a leading hospital for women to obtain views of medical, legal and social work professionals on cases of violence against women and children and harmful traditional and cultural practices. Health professionals have in recent years advocated in public health awareness programmes for changes in cultural practices deemed undesirable for the health of women and children in areas such as nutrition. They have also been involved in campaigns to prevent and respond to violence against women. Some lawyers and social workers have also addressed violence against women in their programmes.

Valuable observations on caste were obtained from a visit to a secondary school in Western Province which catered to children of a particular caste considered low in the Sri Lankan caste hierarchy. The 49 children in this particular school were affected by a number of disadvantages, poverty, absence of the mother, issues of legitimacy and deprivation of higher education. However, these families were seen to be co-existing with the rest of the community and sharing basic values related to the ritual customs and obligations researched and documented in this study.

In the absence of any extensive research in Sri Lanka on current harmful traditional and cultural practices, and with available literature providing mainly observations on practices during the period the particular study was conducted, this study provided an opportunity to update knowledge and to re-examine the significance of specific traditions and practices which are harmful to women and girls and constitute violence against women. Though the final observations may still be regarded as tentative, it is hoped that the study will contribute to an understanding of the influence of tradition on the lives of women and children and the extent to which they are harmful as measured in terms of the existing international standards on human rights and violence against women.

## **C. Harmful traditional and cultural practices**

### **1. Life cycle rituals**

Rites of passage form an integral component of cultural systems and have a long history in Sri Lanka among all of the diverse communities. The rituals associated with menarche have been described in a number of Sri Lankan studies, mainly covering society in medieval Ceylon (Ariyapala, 1956; Peiris, 1956; Tillakaratne, 1986). More recent work discusses these practices in contemporary society (CENWOR, 1993; Risseouw, 1980).

Tillakaratne, writing on menarche rituals in the Sinhala community, states “[i]n the case of girls, puberty appears to have been regarded as an event which marked the commencement of a new life period and in the celebration of it, the Sinhalese were most scrupulous. The first menstrual ceremony of a Sinhalese girl was usually called *Kotahalu Mangala*” (Tillakaratne, 1986: 54). It is an important celebration preceded by a period of seclusion until the first ritual bath taken at an auspicious time decided by an astrologer. It continues to be celebrated today as a special event in a girl’s life among many families of all social classes.

Writing on the life cycle rites of Tamils in Sri Lanka, Pfaffenberger states,

“[a] girl’s first menses is said to be a very embarrassing and trying occasion for her. When she discovers that she has started to menstruate, she must go immediately to her mother and confess the news. Were she to delay, the result could be disaster for her and for her family. It is thought that, should a low caste person notice the stains before the girl announces them, a life time affliction will result: poverty, childlessness, widowhood at an early age and constant adultery will be her certain fate” (Pfaffenberger, 1982: 200).

It is also accompanied by a celebration of the event with family and friends, after a period of seclusion.

The rituals associated with menarche in the Jaffna Peninsula among the Tamils, as observed by a European researcher (Skjøsberg, 1982: 48), suggest that it was not a happy event for the girl. “Menstruation is troublesome enough by itself, all the more so in a society where you are considered unclean because of it, and have no means to stem the flow of blood except old rags that must be discreetly washed by the well.” According to Hindu traditions, menstruating women were furthermore not permitted to enter places of worship or to participate in *poojas* (religious ceremonies).

Current traditional practices associated with puberty in both these communities are seclusion of the young girl for a specified period, accompanied by food taboos. The menstruating girl is secluded until such time that her menstruation is complete, and she is reintroduced to society with a ritual bath at an auspicious time given by an astrologer. Seclusion in a particular place within the house is considered important to protect the girl from the sight of males, who are considered a threat to her sexuality and, in the case of the Sinhala community, from demons who are known to hanker after menstrual blood (Ariyapala, 1968).

The food taboos upheld by the Sinhalese community are, once again, adhered to due to the fear of demons. Oily food is considered to be preferred by the demons, and a menstruating girl becomes doubly vulnerable to evil influences by eating fried and oily foods. Among the Tamils, a girl is given food considered to be “cooling”, since blood was “hot”, and if she were to eat anything deemed “hot”, she would become very ill (Pfaffenberger, 1982). Views obtained from Muslim women confirmed the tradition of seclusion, but not on account of the need for protection from demons. Muslim girls were also kept away from the men, but with little or no ceremonial trappings accompanying the event. There were also no food taboos.

The motive for seclusion is further associated with the need to safeguard a girl’s chastity, a symbolic celebration of her new status as a woman ready for sexual relations and the conception of a child. The

inception of menarche was the signal to make girls as well as the community aware of their new status. Seclusion, rituals, and finally the celebration of the event marked the commencement of womanhood.

A question arises as to whether seclusion was a traumatic experience for girls, one which was raised at the group discussions. Women in the older age groups, recalling their own experiences during the group discussions, unanimously agreed that they accepted the rituals as being performed for their well-being and as such had an obligation to abide by the restrictions imposed on them, which they knew were temporary. They had looked forward to the celebrations and had enjoyed the extra attention and gifts bestowed on them. Now, as mothers, they would continue with the traditions. Rituals were important to give status to their daughters and to convey to them the expectations of their reproductive role.

With regard to the food taboos, there is little or no evidence to indicate that dietary restrictions at the time of menarche affect the health or nutritional status of girls as compared to boys. It is only a general belief that withholding proteins and fats are not good for the future health of the child (CENWOR, 1982). Though such restrictions were common among the Sinhalese, both Muslim and Tamil families gave girls a more nutritious diet including eggs and fats. However, longitudinal studies on dietary intake during adolescence and adulthood are not available. The only significant finding is that poor nutritional status of mothers during pregnancy results in low birth babies. The cause of mothers' poor nutritional status is never connected to dietary restrictions during menarche, but rather to factors associated with poverty and ignorance.

While practices associated with puberty reflect stereotypical values concerning a girl's reproductive role, brief seclusion and food taboos do not seem, in and of themselves, to be harmful gender-based discrimination, degrading cultural practices or violence against women.

## **2. The virginity test**

The virginity test is a custom prevalent among many people in the Sinhala community across all social classes. The test entails the showing of blood by a bride upon the first act of intercourse as proof of her virginity. The mother-in-law plays the key role in the examination of a white cloth placed on the bed used by the newlyweds on their wedding night. If there is blood on the cloth when it is examined the next morning, the girl has passed the "test" of virginity. If she does not pass, she is publicly humiliated at the celebration that is held when she comes home to the residence of her in-laws. She could even face the anger of in-laws. The "test" has been described as an unreliable and unscientific test of virginity and

as a “bridal nightmare”. Research conducted in the 1980s established that it was a current practice in the Sinhala community (Basnayake, 1989).

The virginity test has been traced to the influence of patriarchal and Christian values perpetuated by successive colonial administrators. According to Tillakaratne, Robert Knox, an Englishman writing on Sinhala society in the upcountry region of the island, states that the Sinhalese were not so concerned about the premarital chastity of their wives (Tillakaratne, 1986; Knox, 1989). Consensual divorce and remarriage were common. Monogamy became the only legally recognized marriage form during the British period, which witnessed the emergence of the social norm of virginity prior to marriage. Sexual relations were legally and socially permitted between husband and wife, and premarital sex disapproved of. These values seem to provide a rationale for the virginity test today.

A 2001 Centre for Women’s Research study on the gender dimensions of the impact of macroeconomic reforms on women workers in the garment and textile industries found that virginity had wide acceptance among women both as a value and practice (Jayaweera and Sanmugam, 2001). A majority of the women working in the Free Trade Zone (FTZ) as well as those working in rural industries have undergone the test passively, without awareness of its implications for women’s subordination. The reasons mentioned were that the test was necessary to ensure security and respect for women by ensuring conformity to societal norms on chastity. Premarital sex and abortion among garment workers in the Zone in the Katunayake area is common. Consensual premarital sex takes place today, but there is a social perception that virginity is important.

When the issue was raised with the women’s groups in the focus group discussions in this study, it was perceived as a sensitive one, since sexual preferences were considered to be a private matter. Hence the questions raised were general and focused on the prevalence of the virginity test and respondents’ opinion on its impact, i.e. whether or not it is harmful. The women interviewed in the current study were not troubled regarding the medical validity of this custom as a test of virginity and did not express concern with having to face such a test. The researcher interpreted this confidence as a result of their knowledge that they were indeed virgins. However, they had not taken into consideration the fact that they might not bleed at first intercourse. The feedback was that they all “passed” the test and therefore had not experienced the wrath of their in-laws or faced humiliation at the “homecoming”, the celebration that takes place when newlyweds come to the bridegroom’s family home. They had heard of some dramatic scenes being enacted on the return of a bride who could not prove her virginity. They said they were not aware of recent incidents of violence as a result of this practice. However, both legal

and medical professionals interviewed were of the view that the effects of the virginity test are insidious, and a number of women from all social groups present themselves at counseling centres as a result of the psychological trauma associated with the test. They said that the practice can also lead to marital breakdown. Reference was additionally made to a reported case of a dispute challenging the legitimacy of a child. The husband had referred to the girl's failing the test as proof of premarital sex and pregnancy before the marriage (Wijesundere v Wijeykoon (1990)). Dr. Sriyani Basnayake, who undertook the first research in this area, maintained that the virginity test is a problem for women in a personal communication with the researcher. Prospective brides seek counseling services to address and overcome their anxieties.

A recent comprehensive study on virginity argues that there is a certain degree of control over sexual relations between young men and women through the virginity test (Subasinghe, 2000). In her study, 100 per cent of the males stated that the fear of losing virginity controls the sexual behaviour of women, and that they respect their reluctance to have premarital sex. She argues that the value attached to female virginity also helps to a certain degree to control the spread of sexually transmitted diseases among young, unmarried females as well as the prevention of unwanted pregnancies. Neither the researchers nor the male respondents in the study raised the issue of why only the females are subject to the "test", while young men in all communities and social groups enjoy a high degree of sexual freedom.

Changing values concerning family life have no doubt influenced beliefs and practices of the virginity test. The practice itself shows that culture is not static. It was alien to "traditional" Sinhala marriage values in a pre-colonial period and absorbed into the Sinhala traditions in the colonial period because of colonial family values. It may be assumed that rapid social changes as well as factors such as better education and employment opportunities for women, increased mobility and promotion of women's rights will contribute to the erosion of a practice that is degrading and constitutes discrimination and violence against women. There has been no sustained public campaign against the virginity test, though an occasional newspaper article or lecture by health professionals or social workers has highlighted the negative implications of the test on women.

### **3. Female circumcision**

Traditions associated with menarche and values regarding chastity are shared among all major ethnic communities in Sri Lanka. The practice of female circumcision, however, is exclusive to the Muslim community, even though it is not a practice associated with Islam. There is no secondary data or

information on the practice in Sri Lanka, but anecdotal evidence from individual women of the Muslim community suggests that this is a current practice and one which has been in existence for a long period of time. The source of information on the subject in this study was a group of Muslim women who participated in the focus group discussion in the Western Province as well as three key informants from upper social class families. They all agreed to provide information on the practice, which is prevalent today.

It is apparent that a form of genital incision is practiced on infant girls four to five weeks after birth on the rationale of circumcision. The practice involves making a tiny incision on some part of the female genital area and is performed by a traditional midwife or female elder to draw blood. Though the women confirmed that their daughters were subject to this ritual, none of those interviewed had participated in the ritual itself nor witnessed the procedure. They said that they felt obliged to follow the custom, even though it distressed them to even talk about the ritual. One mother cried when she spoke about it carried out on her infant daughter.

The researchers were unable to find a source to elaborate on the ritual. The women interviewed said that the cries of pain arising from the procedure were suppressed by placing a cloth knot with sugar on the tongue of the infant. They said that the mother could not witness the ritual but had the task of pacifying the baby and later cleaning and bathing the child. They believed the practice was a ritual purification, and a symbolic act to integrate the baby into the community. There was no evidence of mutilation of the vagina.

There is also anecdotal evidence of a similar practice in a sect known as the Borah Muslim community in Sri Lanka. Female circumcision is said to be practiced in this community on teenage girls, though there was a reluctance to describe the practice. It is said that on marriage, a medical certificate from a doctor is required by in-laws to indicate that a girl has been “circumcised”. Families that can afford private medical services and do not follow the practice are said to obtain such a certificate without adhering to the practice. It is apparent that some form of female circumcision is practiced among Muslims in Sri Lanka in the privacy of their homes and hidden from the wider community.

Female circumcision in any form can be identified as a harmful traditional practice that must be prohibited by law. The fact that this is a very closely guarded social practice, considered a private family matter within the Muslim community, indicates that it has no religious or public legitimacy in the community. As the practice is hidden and occurs on a single occasion in a woman’s life, it is unlikely

that it will ever surface as domestic violence under the Prevention of Domestic Violence Act (2005). It is essential that a public awareness campaign be conducted to identify the practice as domestic violence, criminal conduct and a harmful practice, so as to encourage its total elimination in the Muslim community. The ritual as it is practiced within the Muslim community today amounts to the infringement of the rights of both women and children.

#### **4. Son preference**

Field studies on parental sex preferences in Sri Lanka revealed that society professes preference for sons. A Centre for Women's Research (CENWOR) study (1993) found that this preference was strongest in the Muslim community, a representative sample selected from a predominantly Muslim village in Western Province. Among the Tamils in the Jaffna Peninsula, boys were more valued than girls, and preference is given to the male child in family ceremonies such as the first rice meal and shaving of the head. The first rice meal of a boy takes place at six months of age, while for a girl it is at seven months of age. The rationale for this is that a boy will grow to be a man and should receive food early. A girl is considered to grow up to serve the man and she cannot reach further than womanhood (Skjønberg, 1982). Among the Sinhalese and Tamil respondents, parents felt it was important to have sons, with the expectation of being provided for in old age by a wage earner. The girl child was recognized for her caring role but was known to leave home on marriage.

However, son preference is not reflected in behaviour which involves denying girls and women life chances and access to health, education and employment. The research of the Centre for Women's Research carried out in 1993 on the girl child supports the view that after the birth of a female child there was no discrimination in parental behaviour relating to health care, feeding and education. The study revealed that when food was scarce in the household the mother sacrificed her share. The conclusion of the same study was "[u]nlike in other countries in South Asia, discrimination against the girl child is not an overt problem in Sri Lanka. There were no clear preferences for boys in health care or child rearing practices. The girl child was never considered a liability. No girl child had died of neglect or just because they were born girls" (CENWOR, 1993: 205; Jayaweera and Sanmugam, 2001).

The desire for a male child in Sri Lanka has also not led to practices such as aborting female foetuses or to female infanticide. This reflects the impact of Buddhist values and long decades of progressive social policies, especially on health and education.

The Committee on the Elimination of Discrimination against Women, in its Concluding Comment on Sri Lanka's periodic report (2002), stated that stereotypical attitudes prevented further progress on gender equality. The high incidence of domestic and sexual violence, including marital rape, is also related to patriarchal social values on male behaviour. However, it must be noted that son preference and patriarchy in Sri Lanka do not manifest in specific institutionalized harmful traditional practices that constitute violence against women such as denial of nutrition, dowry violence, early marriage or acid attacks.

## **5. Early marriage**

Sri Lanka's visionary social policies giving non-fee levying access to education to all from primary to tertiary level, accessible community health services and registration of births and marriages have impacted to virtually eliminate early marriage (UNICEF Innocenti Research Centre, 2001). Early marriage has only continued in the Muslim community. Muslim women's groups, supported by liberal Muslim men, have lobbied unsuccessfully for changes in the law, but sensitivity to religious sentiments has led to reluctance to bring in legislation setting a minimum age of marriage for children.

The present Muslim law only requires the *Quazi*, or judge of a Muslim personal law court, to give his consent to the marriage of a girl under 12 years of age. An effort to change the law for Muslims in 1995, when a minimum age of 18 years was set for all communities, was not successful. The criminal law makes sexual intercourse with a child bride below 16 years of age punishable as rape, but it has never been implemented to prosecute a male Muslim. Though other Muslim countries in South Asia prohibit child marriages, including Bangladesh, there is a lack of political will to resist pressure from conservative Muslim lobbies that consider a change to be interference with Muslim religious law. Colonial legislation on adoption and wills does not conform with Islamic law, and Muslims have absorbed the custom of adopting children and disposing of their property by will. There has been no effort to prevent these practices. However, respect for religious ideology has been used as an argument to resist changes to the law permitting early marriage.

In recent years, displacement and conflict have brought to the surface the problem of early marriage in the East, as well as in the North Central Province in areas bordering the conflict zones. Early marriages in non-Muslim communities in these areas are solemnized with the complicity of parents and corrupt marriage registrars who falsify records to indicate that a girl is above the age of marriage. Premarital sex

with teenage girls resulting in teenage pregnancy has also resulted in some women's groups advocating for lowering the age of marriage (Goonesekere, 2004 ii).

## 6. Dowry

Dowry in non-Muslim communities in Sri Lanka was a gift traditionally given to a daughter by her parents on the occasion of her marriage. This custom still prevails in the Sinhala and Tamil communities. Dowry as a gift to the woman is also reinforced in both the personal law of these communities and modern jurisprudence on family law. Dowry was not a traditional practice among Muslims since brides received *mahar*, or the bridegroom's marriage gift to the bride under Islamic religious law. Dowry thus has both social and legal legitimacy in Sri Lanka. It is openly referred to in marriage advertisements in the popular press (Goonesekere, 1995; 2000).

There is anecdotal evidence that dowry has over time become transformed into a marriage gift to the man in all communities. The family of the bridegroom demands a dowry for the man, often engaging in hard bargaining to obtain the maximum. In Muslim communities, the dowry given to the bridegroom has become more important than the *mahar* given to the bride; the *mahar* is now a token payment. The practice of dowry in its manifestation undervalues women and commercializes the marriage transaction. The fact that a woman is employed or is a professional may lead to a reduction in the quantity of dowry, but does not eliminate requests for dowry in arranged marriages of all communities.

There is also some evidence of harassment and acts of violence against women for non-payment of dowry, leading to a breakdown of spousal relationships and conflict with extended family (Goonesekere and Guneratne, 1998). The interviews at a counseling centre in Colombo revealed that a majority of marital problems resulting in emotional trauma for the woman were related to issues arising from dowry payments. The focus group discussions at the rural setting, however, revealed that domestic violence was more a result of alcoholism than of dowry issues.

The current male-centred focus on the giving of dowry in Sri Lanka suggests that a negative transformation has taken place, making dowry a harmful "traditional" practice that should be eliminated through prohibitionist laws and public awareness campaigns. Sri Lanka's more favourable environment on women's rights due to Buddhist values and progressive social policies has prevented extreme forms of violence, but current evidence indicates that it is time to adopt new laws and policies.

## **7. Incest**

Traditional Sinhala customary law and Islamic personal law recognized incest taboos of marriage. Colonial marriage statutes applicable to Sinhalese and Tamils and the upcountry Kandyan Sinhalese from an early date identified incest taboos of marriage and considered marriage within the prohibited relationships void in law. However, following early English law, incest was a minor criminal offense under the marriage statutes. It was only in 1995 that an amendment to the Penal Code made incest a grave crime.

The amendment was a response to evidence of a high incidence of incest in the country involving sexual abuse of daughters by fathers and grandfathers. Family breakdown and Middle East migration of mothers were identified as causes of incestuous sexual abuse (Hayley, 1923; Goonesekere, 2000; and Goonesekere and Guneratne, 1998). More recent research and anecdotal evidence indicates that incest between fathers or grandfathers and daughters is common in some areas of the country. While it does not have social legitimacy, it is obviously a hidden phenomenon and only occasionally brought to courts. There is increased public awareness that incest is a criminal offense, but also reluctance to seek justice on behalf of the aggrieved party because of the shame associated with such relationships (Silva, Herath and Athukorala, 2002).

The Marriage and Divorce Commission (1959) recorded evidence from respondents supportive of the incest taboos of the marriage laws. Some even wanted the taboos extended to relationships not included but accepted in Sinhala custom, i.e. marriage between cousins who are children of two brothers or two sisters. The acceptance of incest in some communities and the reluctance to react against it by reporting it as a form of abuse can indicate a transformation of values or a permissive attitude to incest that has its roots in an earlier local tradition that was in conflict with general laws and customs in the country prohibiting incest. Since the law prohibiting incest is now in place, further research on the phenomenon as well as other interventions are required to ensure that the legal and human rights standards are implemented.

## **8. Abortion**

Awareness of contraception in Sri Lanka is almost universal, with 99.2 per cent of married women in the reproductive age group knowing at least one method (Sri Lanka, Department of Census and Statistics, 1983). Two decades have elapsed since the survey and key informants in the health sector maintain that

the situation has not changed. Accessibility to contraception has increased, with new marketing strategies now targeting unmarried men and women. Even a morning after pill is freely available for purchase in drugstores.

As the law stands, however, abortion is illegal unless a pregnancy is terminated in good faith for the specific purpose of “saving the life of the mother”. An effort to permit termination for incest, rape and severe foetal abnormality by law reform was rejected in 1995 (Goonesekere and Guneratne, 1998). To date, there are no records of such legal abortions using the exception provided. However, hospitals maintain records of women admitted to hospital as a result of complications arising from illegal abortion. The most frequent complications of an incomplete abortion are pelvic infection, haemorrhage and shock. The women do not divulge the reasons for the attempted abortion, but it is likely that traditional abortifacients have been used.

There is a high degree of awareness of the availability of procedures for illegal abortions in private clinics. A recent police raid on such a facility in the city of Colombo has created a certain degree of caution among clients. Though clandestine, unsafe procedures, too, are widely available (World Health Organization, 2001). There are women who have the resources to access services in clandestine private facilities. Medical or hospital statistics were not available in two leading State hospitals in Colombo, since admission is on the basis of an incomplete abortion from natural causes. However, in a recent study researchers estimated 150,000 to 170,000 annual induced abortions in Sri Lanka. The statistics have been derived using daily average attendance in known abortion clinics, making some allowance for those performed by private hospitals and practitioners (De Silva, Dayananda and Perera, 2006).

Induced abortion is practiced by low-income women mainly when a family is unable to provide for another child or where there has been contraceptive failure. Abortions are also due to social stigma arising from single parent status, pregnancy of a widow or the shame associated with the birth of a baby when the eldest child in a family was well into adulthood. At the group discussions it was revealed that traditional abortifacients involved inserting twigs into the cervix or drinking traditional toxic potions which are known to cause intense vomiting and abortion. However, these abortifacients seem to be used less often than before.

The failure to respond to the high incidence of abortion by changes in the law was referred to in the Concluding Comments of the Committee on the Elimination of Discrimination against Women on Sri

Lanka's periodic reports 2002. Illegal abortion exposes low-income women to the health risks of unsafe abortions through the use of customary or traditional abortifacients.

## **9. Caste discrimination**

A caste system establishing a hierarchy in social status is a mechanism of oppression. It is based on the subordination of persons of low caste to those considered of high caste. A caste is ascribed at birth, and caste status is determined by the traditional occupation of one's ancestors. Occupations considered "polluting" are ranked at the bottom of the hierarchy, while those considered "pure" are at the top end of the hierarchy. In Sri Lanka, though the caste system entails differential association in a person's critical life and events such as marriage, it has not impacted in the delivery of key services such as education, health, water, sanitation and employment. There is no evidence from the field or secondary sources of open gender-based discrimination and caste-based violence against women in contemporary Sri Lanka. Furthermore, in Sri Lanka there is no official categorization of any social group as belonging to an outcaste. Caste discrimination, if practiced today, can be challenged under the Prevention of Social Disabilities Act (1957) or as an infringement of the constitutional guarantees on equality (article 12).

Access to education has been the key factor in social mobility and, in more recent times, accumulation of wealth. Education and money have become more important in social ranking regardless of what may be the beliefs on caste and occupational ranking. Inter-caste "love marriages" between people who have met socially or in educational institutions or employment are common, though caste conformity is a priority in marriages arranged through family, marriage brokers or, more recently, press advertisements. Even in the Jaffna peninsula, where caste traditions are considered to be more rigid, open and organized confrontations between those of high and low castes are rare (Skjønberg, 1982).

Despite this, there is some evidence that caste-based discrimination is having an impact on access to education. While undertaking this study, the researcher located a school in Western Province, approximately 150 kilometers from the capital city of Colombo, where only children of the Drummer caste, considered "low" in the caste hierarchy, were students. There were 49 students and nine teachers, of which one was serving as the school principal. The school was established in the late 1950s to cater to the educational needs of several villages in the area. Over time, the school had experienced a depletion of numbers and by the late 1970s came to be regarded as catering exclusively to children of the Drummer caste. The parents of other castes had access to better schools in the area, while the low-income parents of the present students seemed to passively accept the poor educational facility. These

parents, many of whom were poor and struggling for a livelihood, were grateful for the availability of the school, whereas the national secondary school curriculum was available to all children.

The children were seen to be happy and content with the facility. Drumming, their traditional caste occupation, was a component of the aesthetic studies syllabus and they were already developing talent as good drummers. There was a teacher from the drummer caste, and no discrimination was obvious in the educational activities conducted by the school. Nevertheless, the children were seen to be discriminated against when seeking admission to a neighbouring school for higher secondary education, which had resulted in a fair proportion – estimated at around 50 per cent – dropping out of school at Grade 8. No remedial action has apparently been taken by the education authorities.

This information conforms with a study of caste and poverty in Sinhalese society in 2005. The researcher states that, in a village where low caste (originally and historically known as the only “untouchable”, the Rodi, caste) lived, families interacted in relative harmony with other castes. However, caste-based prejudices were experienced when trying to access good educational facilities for children of the Rodi caste (Jubbar, 2005). The Rodi women regarded the school system in the area as discriminatory towards their children and said teachers were partial to the children of higher caste. At times, the high caste students harassed the Rodi children, which on occasion led to poor attendance and dropping out of school. The deprivation of education to children, and girls in particular, in terms of universal free education as provided in Sri Lanka amounts to discrimination and a denial of life chances and should be addressed.

## **V. NATIONAL RESPONSES TO HARMFUL TRADITIONAL AND CULTURAL PRACTICES IN THE THREE COUNTRIES**

As the elimination of harmful traditional and cultural practices is a complex problem, an effective response requires a range of interventions at the national level. This section considers national responses in the three countries as well as opportunities for national intervention

### **A. National constitutions and legislation**

International human rights standards contemplate using the legal system in response to the problem. Constitutions and laws in the countries studied reflect inconsistencies, undermining some practices by

prohibiting them, reinforcing others by actively recognizing them, or failing to intervene to prevent them.

## **1. Constitutional norms**

The Constitutions of Nepal, Bangladesh and Sri Lanka recognize the norm of substantive equity and the right to non-discrimination on the grounds of sex. Affirmative action, or temporary special measures, must be introduced to realize gender equality. Some of the basic international human rights standards relevant for preventing and challenging harmful traditional practices that constitute violence against women are also recognized in these Constitutions. They all include a procedure for enforcing these rights against the State.

The Constitutions of all three countries recognize the right to freedom of conscience and religion and the right to profess and manifest religion. While this right is unqualified in Nepal, in Sri Lanka and Bangladesh, echoing international norms, the manifestation of religion can be restricted on grounds of maintaining “public order, morality and health”. Sri Lanka’s and Nepal’s Constitutions also recognize cultural rights, but these rights are subject in Sri Lanka to limitations in the interest of “justice and public order”. Consequently, harmful traditional and cultural practices that are justified by reference to religion and/or culture may be challenged on this ground. The recent 2005 Prevention of Domestic Violence Act in Sri Lanka, as well as the proposed domestic violence legislation in Bangladesh and Nepal, apply to all communities in these plural societies. The Sri Lankan legislation, for instance, passed through Parliament without any challenge on the ground that it infringed constitutional guarantees on the right to freedom of religion, or cultural rights.

The duty of the State under the Constitutions of all three countries to realize gender equality by introducing affirmative action or temporary special measures to accelerate equality provides a basis for harmonizing the norms of the Convention on the Elimination of Discrimination against Women and imposing restrictions on harmful traditional practices to ensure that women are protected from gender-based violence. While son preference infringes on the general norms of equality, gender-based violence and other practices come within the scope of several rights protected by the Constitutions.

The constitutional right to freedom from torture and inhuman degrading treatment in Sri Lanka and the right to life in the Constitution of Bangladesh provide an important opportunity to use human rights

guarantees to undermine harmful traditional and cultural practices. Recent judgments in the Supreme Court of Sri Lanka also recognize a constitutional guarantee on the right to life.

Nepal's Constitution does not recognize these particular rights. We shall see how the Supreme Court has intervened in cases of violence against women through interpretation of the right to equality.

All countries distinguish between civil and political rights enforceable in the courts and non-enforceable directive principles of State policy. Aspects such as health and education come within the scope of non-enforceable State policy rather than enforceable legal rights. The emerging jurisprudence in the courts of South Asia favours recognition of rights to education and health as enforceable rights. Moreover, specific provisions in the Constitutions of Nepal and Bangladesh contain guarantees relating to the prevention of forced labour and trafficking. These constitutional provisions, too, can be used to promote interventions on eliminating harmful traditional practices connected with forced labour and sexual exploitation.

The manner in which constitutional norms have been used to challenge harmful traditional practices and promote change will be discussed later in dealing with litigation as a response at the national level. In recent years, the concept of State acquiescence or inaction has been recognized by the courts in Nepal and Sri Lanka, enabling fundamental rights to be enforced in respect of private or non-State action. This is especially important in the area of violence caused by harmful cultural and traditional practices, since these invariably involve acts committed by private individuals in the family or community.

We shall see that the scope of judicial review varies in each of the countries studied. The power of judicial review is most limited in Sri Lanka, where past legislation cannot be scrutinized by the Supreme Court for infringement of constitutional rights. Inevitably, enforcement of fundamental rights poses different challenges in the three countries. Nevertheless, the constitutionally guaranteed right to equality and freedom from gender-based discrimination, combined with the other specific guarantees on fundamental rights, provide a supportive legal environment for challenging these customs and promoting change.

## **2. Legislation**

Legislation sometimes reinforces harmful traditional practices. For instance, Sri Lankan legislation based on customary law was transformed in the colonial period to entrenched discrimination against

women in personal or customary laws in areas such as inheritance. Nepal's Country Code, until recently reformed by amendments and a law on gender equality (2007), incorporated discriminatory customs. However, specific laws have sometimes been introduced to prevent or undermine some harmful traditional practices. Nepal's recently enacted law on gender equality consolidates and brings into one statute changes to several discriminatory laws.

*(a) Legislation reinforcing son preference*

Son preference is documented in all three countries. Sri Lanka's experience indicates that it does not necessarily contribute to discrimination in the form of denial of life chances for women, whereas it has had this impact in Nepal and Bangladesh. However, son preference reinforces negative stereotypical values regarding women and promotes domestic violence in the family in all three countries. It is legitimized by laws on inheritance that give preference to male heirs.

Son preference manifested in extremely violent practices that encourage female foeticide and infanticide, have an intergenerational impact on women and also manipulate women to commit these criminal acts of violence against girl children. Though the incidence of female infanticide and foeticide is high in India, this particular form of violence is not prevalent in Nepal and Sri Lanka. The Bangladesh study has recorded some incidents of female infanticide, but the information on female foeticide is based on an analysis of sex ratios which could also reflect other factors of neglect. This suggests that, though a male child is preferred in the patriarchal families in these countries, there is no custom or practice of rejecting female children. Buddhism and Islam appear to have impacted positively to create a cultural environment which does not endorse female foeticide or infanticide. There is some recognition of the need for girl children in the family. Social policies on health and education in Sri Lanka and Bangladesh, and the life chances available to girl children, have created recognition of their contribution to family welfare.

However, laws and customs in Nepal and Sri Lanka that specifically discriminate against women in the area of inheritance and perpetuate the male breadwinner/head of household concept reinforce customary social attitudes of son preference. They violate the constitutional guarantees on equality as well as international human right norms applicable in these countries.

Sri Lanka has not introduced necessary reforms to eliminate the discriminatory inheritance and property ownership laws that apply to women governed by the Hill Country Sinhala (Kandyan) personal laws or the Tesawalamai law applicable to Tamil communities in Northern Province. The discriminatory

provisions were in fact introduced in the British period of colonial rule, and also reflect the Roman Dutch law concept of the marital power of husbands. The Muslim personal law contains the discriminatory aspects of Islamic inheritance law. These discriminatory inheritance laws continue to be perceived by politicians, policymakers and some influential ethnic and religious groups as “traditional” customary laws that cannot be changed. Efforts to reform customary personal law in the mid 1980s did not succeed due to objections from a Muslim lobby that resisted change to Muslim personal law. The current environment of ethnic conflict has not been conducive to law reform, which invariably becomes linked to ethnic identity politics.

A key Sri Lankan statute enacted during the British colonial period, the Land Development Ordinance (1935), is used by the Government in allocating and distributing State land to individuals. This legislation enshrines the English law concept of primogeniture, or preference for males in any category of heirs, in the event of death of a grantee. After years of unsuccessful lobbying to reform this British colonial statute, women’s groups raised the issue in their shadow report when Sri Lanka reported to the Committee on the Elimination of Discrimination against Women in 2002. The Committee’s Concluding Comment on the need to reform this colonial legislation has generated some interest and proposals to change the law are being considered by the Government. Nepal has introduced important legislation repealing the discriminatory provisions in its customary inheritance law through recent amendments to the Country Code and the enactment of the law on gender equality (2007).

*(b) Harmful traditional practices and family law*

*(1) Early and forced marriages*

Early and forced marriage practices prevent girls’ access to education, negatively impact on their health and have an intergenerational effect on women. They also encourage women to perpetrate this type of violence against girls. Legislation in all of these countries specify minimum ages of marriage as 18 years for girls, reflecting a policy commitment to eliminate early marriage. However, experience in these countries suggests that the laws cannot be enforced in the absence of supportive social policies such as compulsory education regulations and procedures for birth registration. The incidence of early and forced marriage is high in Nepal and Bangladesh, where improved access to education and birth registration are still not comprehensive and coverage is very limited. In Sri Lanka, a much smaller country, education policies from the 1940s that gave girls access to education and an established and accessible system of birth and marriage registration have ensured that child marriage has been virtually eliminated.

However, years of conflict and displacement in Sri Lanka and the resulting disruption in girls' education have contributed to a new phenomenon of early marriage among girls below the minimum age of 18 years. Marriage registrars and parents now collude to register the marriage of underage girls. Sri Lanka's State schools are in general co-educational. In recent years, there is evidence of a growing problem of adolescent sexuality amidst an environment where children are exposed through the media to a new culture of sexuality. The incidences of teenage pregnancy and prosecution of boys for statutory rape for sex with underage girls have surfaced calls to lower the age of sexual consent and permit early marriage. Women's groups have resisted these efforts, perceiving a change in the law on the age of marriage and statutory rape as a retrogressive initiative. They have argued that school education programmes should build awareness of reproductive health and responsible sexual behaviour and interpersonal relationships in the school and family. Some school principals have responded positively to this suggestion, but conservative lobbies in Sri Lanka have successfully prevented the incorporation of such programmes in State schools.

Restraining early marriage primarily through legislative prohibitions without the necessary social policies and systems in place to enforce compulsory education and birth registration has proved impossible in both Bangladesh and Nepal. Sri Lanka's success in eliminating child marriage now runs the risk of being undermined in conflict-affected areas. Adolescent sexuality needs to be addressed through new sex education programmes in schools and a public campaign to raise the awareness of a new generation about the rationales for prohibiting early marriage. Ironically, "culture" is often used today to prevent such campaigns. However, the recent public campaign of health authorities in Sri Lanka on HIV/AIDS awareness has provided an entry point for sex education in schools and public awareness-raising on responsible sexual behaviour.

## *(2) Widows: discriminatory cultural practices*

The low status of widows in Sri Lanka is reflected in the personal law of the Kandyan Sinhala community. Legislation introduced in the colonial period, the Kandyan Law Ordinance (1938), which modified a positive cultural tradition of non-discrimination against widows, denied them inheritance rights to their husbands' property. This legislation is supportive of social customs in some parts of the country that perceive widows as "unlucky".

There has been no effort to reverse these trends through legislation to reform discriminatory provisions on widows' rights in inheritance laws. Since the discriminatory personal law was passed before the new

Constitution (1978) was introduced, it cannot be challenged in the courts for violation of the Constitution's guarantee of gender equality.

There are no prohibitions on widow remarriage in Sri Lanka. However, State laws reinforce widows' marginalized social status in the area of pensions. Thus, widows of public servants, including members of the armed forces, lose the pension benefits they obtained through their deceased spouse upon remarriage. Similarly, under the Land Development Ordinance (1935), an individual who acquires a life interest in State lands granted to a deceased spouse loses that interest at remarriage. These provisions apply to widowers, too, and to such extent are gender neutral. However, they impact differently on widows, reinforcing negative social attitudes towards them and operating as constraints to their right to remarry and begin a new life. There is anecdotal evidence of intra-family violence against war widows who receive special benefits from the State. Since more men than women are grantees of State land, the limitation on a surviving spouse's life interest, consequent to remarriage, affects more widows than widowers. The incidence of widowhood is also higher due to death of men in armed conflict. However, the number of widowers has risen since the tsunami disaster, as many women died in the affected regions. Existing legal provisions will thus also place constraints on widower remarriage in situations where pension benefits or the right to State land is lost upon remarriage. Reform of these laws is necessary to prevent indirect impact on the remarriage of both women and men who have lost a spouse.

Discrimination against widows in inheritance and remarriage has been removed in Nepal through reform of the Country Code and enactment of the law on gender equality. Such reform is a necessary intervention to set norms which undermine existing discriminatory cultural traditions and reinforce positive customs on widow remarriage. Reforms in Nepal were stimulated by judicial decisions given in court cases when activists challenged some of the discriminatory provisions of the Country Code. However, these have been ad hoc or piecemeal, as widow discrimination remains in other areas; for instance, discrimination persists with regard to widows' ability to claim family allowances and gratuity after the death of a husband who was a public servant.

### *(3) Dowry*

Dowry has been referred to in all three studies as a practice that promotes domestic violence. According to customary law and traditions in both Sri Lanka and Nepal, dowry is considered a gift of movables to a daughter upon marriage, representing compensation for loss of a share in the parental property when a couple relocates to the husband's residence. In agricultural communities, property was invariably shared on the basis of contribution to the family economy.

As observed in the present studies, changing economic relations in communities have led to the extreme commercialization of dowry gifts in all three countries. Dowry has now become a trade-off and bargain at the time of marriage, with marriage gifts given to the husband or his family rather than the wife. Domestic violence often follows a refusal or failure to bring what is considered an “adequate” dowry into the marriage. Islam recognizes the concept of *mahar*, or payment by the husband to the wife, transforming the concept of bride price in Arab customary law whereby the bridegroom purchased the bride by payments to her father or family. Yet dowry in the transformed sense known to Sri Lanka and Nepal now takes the more popular form of a “gift” upon marriage among the Muslims in both Sri Lanka and Bangladesh.

However, only Bangladesh has introduced legislation prohibiting the giving and receipt of dowry. Nepal’s Social Practice Reform Act (1976) imposes penalties of confiscation and fines for acceptance of gifts by the bride or groom’s side. There is no general legislation on prohibiting dowry in Nepal or Sri Lanka. The failure to effectively implement the prohibition in Bangladesh indicates that law enforcement is weak.

Although anti-dowry legislation by itself is inadequate without supporting legislation to empower women economically and also protect them from violence, it must be introduced to set normative standards and prohibit the commercialization and undervaluing of women inherent in the practice. Experience indicates that effective enforcement will be strengthened by other laws that give women access to property rights, education and employment. Domestic violence legislation enacted in 2005 in Sri Lanka, and proposed in Bangladesh and Nepal, will also help to respond to the general problem of intra-family violence connected with the giving and receipt of dowry.

*(c) Honour crimes*

Crimes against women in defense of a lover’s or male family member’s honour perpetrated by the community or by family members are not covered specifically by legislation in Nepal or Sri Lanka. They must be prosecuted as crimes under the general criminal law on homicide, rape or criminal assault. The defense of grave and sudden provocation in penal codes can sometimes be used to minimize the gravity of such offenses in Bangladesh and Sri Lanka, permitting the accused to be charged with a lesser crime.

Women activists in Pakistan have lobbied – recently successfully – for some legislation to prohibit this institutionalized form of violence against women perpetrated through the socially and culturally legitimized practice of honour crimes. Such legislation has not been proposed in any of the three countries of this study. Legislation has been enacted or proposed in response to the general problem of domestic violence and the specific type of violence against women in Bangladesh of acid throwing to cause death or serious disfigurement. There is a clear need to review the defense of grave and sudden provocation in all countries to prevent it from being used to provide impunity or to reduce the offence when honour crimes take place. Sri Lanka has already introduced an act on domestic violence. Proposed legislation on the subject in Nepal and Bangladesh should address this type of violence.

*(d) Domestic violence*

The studies reveal that different types of intra-family or domestic violence are legitimized by culture, customs and tradition. Sexual abuse and incest; genital mutilation, described as female circumcision with a mild type of genital cutting among Muslim communities in Sri Lanka; and marital rape are encouraged by some social attitudes, despite the infringement of women's human rights. It is clear that sexual violence in the family increases the risks women face in contracting HIV/AIDS from a spouse or partner.

Although considered a low prevalence country, Sri Lanka has engaged in a vigorous public campaign on HIV/AIDS. While the recent domestic violence legislation was not enacted in response to this problem, it now provides a basis for addressing violence, including sexual abuse in the family. A broad generic definition of domestic violence in the Act means that a range of acts is covered by the legislation. However, the main definition of domestic violence cross references with offences in the Penal Code. Amendments to this Penal Code, originally based on British colonial law, were introduced in 1995, including severe penalties for rape and other sexual offences as well as making incest a grave crime. Yet abortion is a criminal offence except to save the life of the mother, even in the event of rape or incest. Efforts to change the law in 1995 failed, and the Committee on the Elimination of Discrimination against Women referred to this anomaly in its Concluding Comments on the last periodic report in 2002. A range of forms of domestic violence still remains outside the scope of the Penal Code, and women's groups in Sri Lanka have been advocating for reforms to address these gaps in the law.

Thus, genital mutilation is not specifically prohibited by law in Sri Lanka but can be prosecuted as a crime of hurt or grievous hurt. Marital rape is also not recognized as an offence unless the spouses are separated according to a court order or a man has sex with a child bride below 16 years of age. The latter

provision applies only to Muslims, since underage marriages are illegal and void and cannot be solemnized according to religion or custom in other Sri Lankan communities. The domestic violence legislation in Sri Lanka does not criminalize these acts of violence but only provides for certain procedures to obtain a restraining order or other remedies when domestic violence takes place.

It is therefore important that some of the practices identified as intra-family violence such as marital rape, forced pregnancy due to incest or rape and female genital mutilation are specifically brought within the category of criminal offences in the Penal Code, as they constitute grave crimes against personal security and bodily integrity. Other practices that involve intra-family violence, such as virginity testing referred to in the Sri Lanka study, need not come under the Penal Code but are within the new definition of domestic violence. There is a need to “out” these practices and create public awareness that they constitute inhuman and degrading treatment of women and girls and to expose the perpetrators to proceedings under the act on domestic violence.

Nepal and Bangladesh have proposed domestic violence legislation, under which incest and marital rape can become criminal offences. Recent law reforms in Nepal have recognized rape as a violent crime and legalized abortion in cases of rape or incest. Although a discriminatory provision providing for lesser punishment for the rape of a prostitute has also been repealed as well as gang rape criminalized by the reform, responding to violence in the community, marital rape was not made a criminal offence. We shall refer later to the Supreme Court decision in Nepal which interpreted the constitutional guarantee of equality to recognize marital rape in domestic violence as an infringement of women’s right to bodily security. Any type of sexual abuse has been considered by Nepal’s Supreme Court as violence and an infringement of the right to equality. The court has ordered the Government to introduce legislation on both marital rape and sexual abuse and harassment, thus breaking the public/private divide with regard to intra-family violence.

*(e) Harmful cultural and traditional practices in the community*

*(1) Dedication of girls to temples and “The Living Goddess”*

The harmful traditional practice of dedicating girls to temples and forcing them into prostitution, as well as the “Living Goddess” practice, are not prohibited by general legislation in Nepal even though they can result in the denial of child rights and social exclusion, sometimes leading girls into a life of prostitution. The Children’s Act (1992) has a prohibition against the practice of dedicating girls to temples but does not refer to the “Living Goddess” custom. A Supreme Court decision has recognized

the right to citizenship of children belonging to women of the Badi caste, but there is no legislation to support this.

*(2) Pollution practices/caste taboos*

The recent Supreme Court decision in Nepal on the *chaupadi* practice interpreted the constitutional guarantee on equality to reject the custom as inhuman degrading treatment. However, legislation has not in general prohibited exclusion on the ground of pollution customs, or caste. Constitutional guarantees can now be used to challenge these practices in Nepal and Sri Lanka, or – if they occur – in Bangladesh. Sri Lanka also has a Prevention of Social Disabilities Act (1957) which prohibits denial of access to public places on the grounds of caste. Discrimination based on caste in private has not been prohibited in Sri Lanka and is encouraged and legitimized by the manner in which caste is openly mentioned as a special qualification in marriage advertisements in the press.

*(3) Identifying women as witches*

This practice emerges in the Nepal study. As a result of public interest litigation, the Supreme Court of Nepal has issued a directive to the State to introduce a law and to create community awareness on the criminality of any acts of violence perpetrated against women accused of being witches.

*(4) Fatwas: decrees of customary/religious tribunals*

Local tribunals in Bangladesh which claim to be religious bodies pronounce “decrees” that impose punishments such as stoning, whipping or boycott when convicting women of illicit sexual relations. These decrees are illegal according to the criminal justice system. Local tribunals that consider breaches of the peace (*shalish*) sometimes also perpetrate violence that is contrary to the criminal justice system. However, there has been no legislative effort in Bangladesh to prevent these bodies from exercising such powers. They claim to operate as religious bodies and there has been a lack of political will to intervene. This is a clear instance where the interface between culture, customs and religion makes legislative reform more difficult.

## **B. Social policies and partnerships**

Since the Constitutions of each of these countries do not recognize enforceable social and economic rights, policies on basic needs have been introduced in an ad hoc and discretionary manner.

Sri Lanka's post-independence social policies on providing access to health and education as well as a procedure for birth registration have impacted to achieve positive social indicators for women and children, including girls. As girl children and women have life chances, their value in the family is recognized even within a social ethos of son preference. The country's success in eliminating the type of harmful customs and traditions common in both Nepal and Bangladesh, despite the prevalence of income poverty, can be traced to these social policies. Child labour has been eliminated in the formal sector of employment, while there is a very low incidence of child marriage.

Sri Lanka also experienced a long period of British colonial rule, which reinforced patriarchal family and community values and undermined positive social values in areas such as marriage, divorce and inheritance. However, other customary practices such as polygamy in non-Muslim communities were undermined by colonial legal and social policies supportive of monogamy. Consequently, law and social custom now recognize that a polygamous relationship among non-Muslims is considered non-legal cohabitation that does not create legal rights and responsibilities between men and women. Polygamy is legal only for the Muslim community, as an aspect of its religion, rather than custom-based personal law, but is rarely practiced. Bigamy for non-Muslims is a criminal offense and this law is strictly enforced.

Neither women's and girls' access to education nor economic opportunities for women have eliminated the type of harmful traditional practices documented in the Sri Lanka study. Since most of these practices occur within the family, the domestic violence legislation may impact as a preventive measure. It can create a normative framework of values against domestic violence and prevent impunity for such conduct. Displacement due to the conflict and the tsunami natural disaster have disrupted service delivery in health care and education in some affected areas and also contributed to domestic violence and a new phenomenon of early marriage. Resumption of these services and resettlement are critical to protect women and girls in these communities from harmful practices.

Both Nepal and Bangladesh continue to have unacceptable social indicators on health and education for women and girls, despite some innovative policies – especially in Bangladesh – to address the male/female gap in access to education. Programmes on micro-credit have increased economic opportunities for women, particularly in Bangladesh and Sri Lanka. Much more needs to be done in all three countries to improve women's access to education, health and economic opportunities.

Gender-based discrimination and denial of life chances expose women to greater risk of domestic violence and reinforce some harmful practices that promote violence. Proactive social policies have not eliminated domestic violence or harmful traditional practices in Sri Lanka. Nevertheless, they have created an environment more conducive to protecting women's human rights. They have also facilitated the implementation of legislation to discourage and prohibit harmful practices that constitute violence against women.

All three countries have established nodal State institutions to deal with women's affairs in the form of women's ministries, government departments and/or national or women's commissions. These agencies have worked together with women's groups on law reform, livelihood support and legal literacy programmes to advance gender equality. However, they invariably lack adequate resources and have responded in a fractured rather than holistic manner. In recent years, eliminating violence against women has received priority in State and non-governmental organization programmes and resulted in efforts to respond to harmful traditional practices in the family such as dowry, sexual abuse and violence, including acid throwing in Bangladesh. Yet eliminating all harmful traditional and customary practices as a goal in itself has not been prioritized because of the perception that it is a politically sensitive issue. Interest in and commitment to eliminating violence against women can be critical in eliminating some of the worst harmful traditional and cultural practices in all countries.

Bangladesh has developed a concept of "one stop crisis centres" within hospitals that can respond to family and community violence against women. Sri Lanka has set up special units for women and children in police stations and crisis centres which provide a range of services in Colombo and a few other metropolitan areas. Non-governmental women's groups cooperate and work with Government in providing services at these centres. Due to limited resources, there is a serious problem of expanding their coverage, prejudicing the sustainability of these programmes and their impact on the problem.

State agencies and women's groups have collaborated on awareness-raising programmes on the general issue of violence against women, using multimedia as well as targeted programmes for social workers, law enforcement agencies and professionals. These campaigns and programmes have given greater visibility to the issue of violence against women and encouraged legal reforms to address domestic violence and strengthen criminal justice systems. However, the programmes have not been specifically focused on the prevention and elimination of harmful traditional and cultural practices. Coverage of the existing programmes is also limited. Many people are not aware of law reform or policy changes that are meant to prevent or eliminate violence against women.

### **Best practices in social policies in Bangladesh, Sri Lanka and Nepal**

<b>Bangladesh:</b>	One stop crisis centres in hospitals Micro-credit programmes for women Free education for girls up to Grade 8 Appointment of more women teachers in schools
<b>Sri Lanka:</b>	One stop crime crisis centres in hospitals with Women in Need, a non-governmental organization Compulsory education regulations Access to free health Police units for women and children Regular radio broadcasts and films on national TV on violence against women
<b>Nepal:</b>	Production Credit for Rural Women programme Free legal aid for women in some districts Formulation and implementation of 150 temporary special measures to accelerate gender equality

The corporate sector has become an emerging partner with Government and women's groups in both Bangladesh and Sri Lanka, addressing issues of sexual abuse, child labour and greater livelihood opportunities for women. Some reputed banks and firms provide financial resources for interventions in these areas as an aspect of corporate responsibility. It is, however, a measured response, and private partners have not taken on board what are perceived as controversial areas linked to harmful traditional and cultural practices.

Professional associations are very strong and established in Sri Lanka, and medical personnel are often involved in public health awareness programmes, at times including violence against women. However, they have not become a resource in addressing this particular issue. Medical professionals and lawyers, who should be natural partners to combat the problem, have not become involved in campaigning to eliminate harmful traditional and cultural practices in Sri Lanka. Some lawyers have undertaken cause lawyering in Bangladesh, but eliminating harmful traditional practices has not been a priority. On the other hand, women lawyers in Nepal have engaged in cause lawyering on these practices. They have contributed to transforming the jurisprudence on gender equality and helped to focus on the importance of initiating law reform. This trend is not apparent in Sri Lanka or Bangladesh, where women's issues have not been integrated into cause lawyering on human rights in general, and especially in this area.

The experience of all three countries suggests that legislation to prohibit cultural practices (e.g. dowry) is ineffective unless such general legislation is combined with policy interventions to eliminate gender-based discrimination in access to services and economic resources and provide general protection from domestic and other forms of violence. Creating awareness of the harmful nature of these practices and legal literacy in communities are very important. Improved access to justice and resources for law enforcement are also critical to prevent impunity and an environment of legitimacy for such practices. There is an urgent need to obtain the support of both men and women lawyers and doctors in campaigns against harmful practices in all three countries. The issue of harmful traditional and cultural practices must receive specific priority and be incorporated into programmes on violence against women.

### **C. Law enforcement and litigation on harmful traditional and cultural practices**

Ineffective implementation of existing laws is often due to the absence of supportive social and support systems that empower women. However, failure to implement legislation creates a culture of impunity which legitimizes harmful traditional practices that constitute violence against women.

Law enforcement requires adequate resources to investigate acts of violence as well as accessible swift procedures for filing cases in courts. These cases should lead to prosecution by the State in addition to relief and compensation for victims.

All three countries face common problems with regard to weak law enforcement due to several factors. In situations where law and order has been disrupted or broken down due to conflict, natural disaster or political unrest, the law enforcement authorities do not have adequate resources to investigate and prosecute what are perceived as “private” cases involving violence against women. These cases are not given priority by the police. In this context, legislation such as the Prevention of Oppression against Women and Children Act (2004) in Bangladesh and the Prevention of Domestic Violence Act (2005) in Sri Lanka encourage women’s groups to monitor such cases, campaign for resources and create pressure for effective legal responses to these crimes as a community concern. While impact may be limited in terms of the actual number of cases that have come to court, the intervention of these groups and media publicity give visibility to the issue, making the public aware of the violations and the illegality of such conduct.

Prosecution of cases of sexual and domestic violence against women and children over the last few years has built awareness and greater recognition of the problem and encouraged filing of complaints.

State agencies have worked to strengthen law enforcement, and civil society organizations and women's groups have conducted awareness-raising campaigns and training for law enforcement officials on violence against women. Some harmful and discriminatory traditional practices such as early marriage, domestic and dowry violence, incest, honour crimes and acid throwing surface regularly in courts. Others, such as cases on inheritance, rarely surface; when they do, women may find that State law has modified a positive customary law that had given her rights.

#### **Discrimination in inheritance and litigation**

A widow who returned to her family home and cared for her aged father and her brother's children was denied inheritance rights in the father's property by the Supreme Court on the basis of a provision in a colonial statute (the Kandyan Law Ordinance 1938) that modified customary law and deprived widows and divorcees of their inheritance rights under customary law.

*Jayasinghe v Kiribindu (Sri Lanka) (1997) 2 Sri. L.R.1.*

Effective campaigning on gender-based violence and discrimination against women can contribute to greater awareness and willingness to use the legal system when these practices are prohibited by law. Such campaigns can have a deterring/preventive impact. They can encourage complaints and initiatives to change laws and policies, address gaps in legal controls and help to develop effective responses.

In this context, the enforcement of fundamental rights through public interest litigation has become an important strategy to give visibility to and challenge discrimination and violence. Women's groups and activists may have legal status, or *locus standi*, to bring such application as issues of public concern, even without identifying a victim, according to traditional legal procedures.

Several cases filed in the Supreme Court of Nepal as public interest litigation by women's groups have challenged customary laws which endorse son preference and discriminate against women with regard to inheritance of property, marital rape and widows' rights. Nepal follows a monist approach to treaties, and the Convention on the Elimination of All Forms of Discrimination against Women is directly applicable in the legal system and the courts. Litigation thus creates an opportunity for the Supreme Court to draw Government attention to the need to harmonize national law with human rights standards,

including those in the Convention and the Constitution. Amendments to Nepal's Country Code on inheritance and widows' rights have already been enacted in line with Supreme Court decisions, and the law on gender equality (2007) was also enacted in conformity with court decisions.

Cases filed by women activists and lawyers in Nepal challenging physical and other forms of abuse to women accused of being witches and the degrading pollution custom, *chaupadi* (see the box below on this issue), resulted in decisions of the Supreme Court calling upon the Government to ban these practices by legislation and develop other interventions to prevent them. These cases in Nepal are landmark judgments, demonstrating how the fundamental rights provisions of the Constitution can be used to prohibit such practices and also make the State accountable for eliminating them through other interventions such as awareness-raising and social policies.

Similar litigation has not been filed in Bangladesh or Sri Lanka. Public interest litigation is only just beginning to be developed in Sri Lanka, since the requirement of standing in fundamental rights litigation requires the victim to make the application. Moreover, the Constitution does not permit judicial review of past laws, including statutes that have codified customary laws. Sri Lankan women's groups have not brought such cases to court, even though fundamental rights guarantees in the Constitution on equality and torture can be used to challenge some of these practices on the basis of State inaction to prevent this type of private conduct. Women lawyers in Bangladesh have brought litigation on women's rights to court on issues of public concern, but the activism is not as strong as in Nepal.

### **Public interest litigation in Nepal**

A group of non-governmental organizations, including the Forum for Women, Law and Development, successfully filed public interest litigation (PIL) claiming that the *chaupadi* practice (requiring women to live in cowsheds during menstruation and during and after childbirth) is inhuman, degrading and discriminatory.

In May 2005 the Supreme Court of Nepal directed the Government to ban the practice (DNF v HMS Nepal Writ 330 3/061 2-5 2005).

*Source: Discriminatory Laws in Nepal and Their Impact on Women, Forum for Women, Law and Development, 2006.*

The Supreme Court of Nepal decided that women suffer inhuman treatment because of the superstitious belief in witchcraft. The court decided that this is a violation of the right to equality and equal protection of the law under the Constitution.

The Court decided that the conduct is criminal and that the Government must enact a law to punish it and conduct awareness campaigns to eliminate it (Reshma Thape v HMG Nepal, 2004).

*Source: Discriminatory Laws in Nepal and Their Impact on Women, Forum for Women, Law and Development, 2006.*

There exists in some countries a danger of discriminatory new legislation being implemented. However, this can and has been challenged, for example, in Sri Lanka under the current Constitution of 1978 at the stage when it was introduced as a new bill presented in Parliament. Public awareness-raising and the lobbying of parliamentarians prevented the bill on domestic violence (2005) from being challenged as an infringement of other guarantees on cultural rights and freedom of religion. Yet the Land Grants (Special Provisions) Act (1979) on the allocation of State land incorporated male preference in succession to such land upon death, introducing the same discriminatory provisions of the colonial Land Development Ordinance (1935). This legislation went through Parliament unchallenged even though it violated the Constitution's guarantee on gender equality. The law can no longer be challenged in the courts. There is now greater awareness among Sri Lankan women's groups on the need to monitor new legislation and scrutinize it for conformity with constitutional norms on gender equality, personal

security and freedom from violence. This can prevent the institution of further legislation which reinforces harmful traditional and cultural practices.

Women's groups in all three countries have engaged in legal literacy programmes that help to build a broader constituency of activists who understand the potential for using the legal system in response to violence against women and gender-based discrimination.

In a recent Sri Lankan case (unreported, Court of Appeal, July 2003), an appeals court acquitted a young man who had been convicted on a charge of statutory rape by a trial court for having sex with a girl under the specified age for consent (16 years) on the grounds that he had abducted and married her according to a community custom. The accused belonged to an indigenous community of people called Veddahs. The Attorney General did not appeal the decision although it was contrary to the legal principle that an underage marriage in Sri Lanka is void and has no legal effect. The decision not to appeal was based on recognition of the customs of this group and their cultural rights. The negative impact of the decision and the need to reinforce the current law which declares marriages below the minimum age to be void has been raised with the Law Commission of Sri Lanka. Enforcing the law is particularly important amidst the growing incidence of underage marriage due to displacement and conflict.

Women's groups in Sri Lanka conducted a well published and successful protest in the media and prevented legislation that would lower the age of statutory rape. Public interest litigation and activism to support effective investigation, law enforcement and legal literacy are critical to undermine a culture of legitimacy for harmful traditional practices. Nepal's example should inspire cause lawyering by women's groups in Bangladesh and Sri Lanka.

## **VI. CONCLUSIONS**

The three country studies from South Asia document a range of traditional and cultural practices that can be considered harmful and also violence against women according to international human rights standards. These standards are applicable in each of the three countries, as all are States Parties to two key treaties relevant in this area, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child. They have all also ratified the Optional

Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, committing Governments to effective implementation through an individual complaints procedure at the international level. The international human rights standards can be considered as directly incorporated in Nepal because that country adopts a monist approach to international law, facilitating the direct application of a ratified treaty. Bangladesh and Sri Lanka follow a dualist approach to treaties, which means that legislative, judicial or policy incorporation is required at the national level for treaty standards to apply. However, all of the countries have national constitutions that incorporate fundamental rights regarding gender equality and bodily security. Constitutional standards are not merely aspirational, since an enforcement procedure is also provided. Consequently, the international human rights standards can be applied in each of the three countries to identify cultural traditions which are harmful practices that must be eliminated.

Harmful traditional and cultural practices according to this definition are prevalent in all three countries. Some of these practices such as dowry and child marriage are common phenomena. Others such as dedication to temples, witchcraft or virginity testing are country-specific. Son preference is common to all of the countries and manifests in the denial of inheritance rights and/or health and education opportunities to girls and women, reinforcing negative stereotypical values that also contribute to intra-family and domestic violence. The situation in Sri Lanka is significantly different, as there are fewer harmful traditional and cultural practices that constitute violence against women. A long history of social policies on health and education has created an environment in which son preference does not extend to the denial of life chances for girls. Values regarding son preference are also rarely manifested in the phenomena of female infanticide or foeticide in any of these countries. This may reflect the impact of values derived from Buddhism and Islam which recognize male preference and patriarchy, but also emphasize the human dignity and value of women in the community. Hindu religious influences are dominant in Nepal, but the country also has a Buddhist religious tradition.

The study reaffirms a reality that is often ignored: customs and traditions are not static. Patriarchy and male preference are often combined with other influences and traditions which are positive for women. Positive cultural practices and traditions can also be undermined by State laws and policies. Transformations over time reflect internal and external influences and popular beliefs that modify even religious doctrine. The impact of patriarchal and colonial legal and social values is clear in cultural practices regarding widowhood, virginity and inheritance in Sri Lanka. Nepal's and Sri Lanka's customs reflect influences derived from both Buddhism and Hinduism, and have also been modified by legislation. Practices on dowry in Sri Lanka and Bangladesh reflect the interface between culture and

religion, and the manner in which negative social values on dowry have undermined Islamic values. Cultural practices are sometimes legitimized as religious doctrine when in fact they conflict with religious dogma.

Statute law and policy in the three countries have not directly addressed the need to eliminate harmful traditional and cultural practices. The Committee on the Elimination of Discrimination against Women has drawn attention to this in its Concluding Comments on the country reports of Sri Lanka in 2002 and of Bangladesh and Nepal in 2004. Legislative responses also vary. Legislation on dowry and acid throwing has been introduced in Bangladesh in a general response to preventing violence, rather than specifically to eliminate harmful traditional and cultural practices. Though some dowry violence has been recorded in Nepal and Sri Lanka, dowry is not prohibited. Consequently, legislative prohibition has not been used as an intervention to eliminate these practices. Laws on the minimum age of marriage have also been enacted as a response to the health and education needs of girls, rather than as an effort to eliminate a harmful practice that constitutes violence against women and girls. Discrimination in inheritance and matrimonial property rights as well as the male breadwinner/head of household concept that reinforces son preference and gender-based discrimination have not been addressed in Bangladesh. Sri Lanka has eliminated the male breadwinner/head of household concept in family support laws, but it prevails in other areas of law and State policy. Inheritance in personal laws continues to be discriminatory. The fact that Islamic law regulates this area has prevented intervention on inheritance issues in Bangladesh. The failure to introduce reforms in Sri Lanka has been due to the lack of political will to intervene with personal laws in an environment where identity politics impact on policy decisions.

Women's groups in Sri Lanka and Bangladesh have neither forged partnerships with important professionals such as men and women lawyers and doctors nor lobbied actively or effectively for change in these areas. In Nepal, by contrast, women activists and lawyers have used the device of public interest litigation to obtain favourable court decisions which challenge these practices. The Nepalese courts have used their power of judicial review to order the Government to introduce legal reform. Amendments to the Country Code which seek to eliminate some practices are a response to these court decisions. The courts and litigation have not been used effectively in Sri Lanka or Bangladesh to enforce women's rights and undermine these practices.

The experience of all three countries demonstrates that it is important to harmonize international human rights standards through legislative reform and put prohibitions in place. The gaps in legislative

regulation need to be addressed through a committed initiative on law reform. Nepal has recently enacted a law on gender equality (2007) which consolidates and brings into one enactment amendments eliminating gender discriminatory laws. This model can also be useful to the other two countries, which must eliminate discriminatory provisions in several statutes if they are to harmonize the law with constitutional and international law standards and norms. Such legislative reform on gender equality, whether piecemeal or introduced through one statute, sets normative standards and can undermine social legitimacy for harmful practices and negative stereotypical values concerning women. It can also demonstrate the transformative and changing nature of custom and tradition due to such influences as colonialism, economic transformation and manipulation of religious belief. Research which deconstructs culture and tradition and demonstrates the transformation in customs that has taken place can provide strong arguments for introducing legislative reform. Prohibitionist legislation must attempt to create a new environment conducive to the recognition of women's right to equality and freedom from violence. Domestic violence legislation enacted in Sri Lanka and proposed in Nepal and Bangladesh can become an overarching legislative framework for impacting on and eliminating a range of harmful traditional and cultural practices.

However, country experiences also show that legislative change can only impact if it is combined with effective law enforcement and social policies which help to realize the goal of gender equality and the social and economic rights of women and girls, especially in the areas of health and education. The limited range of harmful traditional practices in Sri Lanka despite social values on son preference and stereotypical attitudes towards women demonstrates how social policies on health and education for women have contributed to undermining harmful traditional practices. The high social indicators for Sri Lankan women and the greater status they have enjoyed for decades by comparison with their South Asian sisters is sometimes traced to the more liberal impact of the Buddhist religion. However, access to health and education through social policies and effective law enforcement have also had a profound impact on women's status. Farsighted social policies have significantly contributed to advancing women's status in the family and community.

The prohibition of harmful traditional practices through legislation therefore cannot impact effectively to promote change without adequate resources for effective law enforcement and improving social indicators for women. Poverty alleviation programmes and economic growth per se, without the provision to women of access to basic health, education and livelihood opportunities, can have limited impact in eliminating harmful cultural and traditional practices in the family and community that contribute to violence against women. The introduction of these policies is a challenge in these South

Asian countries given the current environment of conflict, political instability and exposure to natural disaster. However, accountable corruption-free governance that conforms to human rights norms can help ensure that national resources are used for the benefit of the community, including women.

Preventive strategies also need to be combined with victim support and public awareness-raising on women's human rights. Women's groups in all three countries have engaged in these types of programmes, especially in responses to violence against women. However, very few specific harmful traditional practices prevalent in the countries have received direct focus in such programmes.

Women's groups working on victim support have at times tended to prioritize short-term problems without appreciating the need for holistic interventions that combine law reform, resource allocation and social policies. Thus, some women's non-governmental organizations in Sri Lanka discount the importance of prohibitions on early marriage, arguing that such marriage should be permitted in a community response to victims of sexual abuse who become pregnant. Women's activism in Nepal, by contrast, has been based on an understanding of the need to realize the broader goals of gender equality and human rights.

The corporate sector has partnered with Government on some topics relevant to gender equality, though generally there has been a failure to take on issues related to eliminating harmful traditional practices. Women's ministries and nodal agencies have also focused on general issues of violence against women, women's employment and livelihood opportunities and worked with women's groups on law and policy reform. Eliminating harmful traditional practices, however, has not been a priority in their areas of work.

This study, which documents harmful traditional practices and national interventions, clarifies that eliminating such practices has not been a priority in the efforts by Governments, women's groups and nodal agencies to address gender bias and eliminate discrimination. Can and should this problem receive special focus in future initiatives? The contributors to this study believe that ethnic and religious politics in all of these countries have created an environment which is not conducive to the issue receiving special singular priority. Yet it is possible to work towards eliminating these specific practices by linking such initiatives to a broader agenda on eliminating violence against women and gender-based discrimination. That agenda itself acquires legitimacy because gender-based violence perpetuated through these practices infringes on the human rights of women guaranteed by constitutions and treaties such as the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child. The recommendations provided below recognize the need for

and the importance of giving greater and specific focus to eliminating these practices. However, this must be accomplished within the scope of the broader agenda rather than as a distinct and parallel initiative.

## **VI. RECOMMENDATIONS**

### **A. Research**

1. The absence of adequate, accessible published information pertaining to the incidence and impact of some of the less-known harmful traditional and cultural practices in these countries demonstrates the need for field-based studies on the incidence, causes and consequences of these practices as well as focus group discussions to ascertain community attitudes.
2. The current low priority placed on targeting these practices and resistance demonstrated within communities suggest that:
  - (a) There is a need for research to deconstruct harmful traditional and cultural practices and demonstrate that they have not been static, highlighting the undermining of positive customs and the negative influences that have shaped them.
  - (b) Research is needed on the implementation of current laws, interventions and programmes at the community level to provide feedback on their effectiveness in eliminating the practices targeted.
  - (c) Research must be disseminated and transformed into user-friendly publications in local languages to promote community and public awareness of the existence of harmful traditional and cultural practices that result in violence against women and infringement of women's human rights.

### **B. Law reform**

Gaps in legislation to prohibit practices that are considered harmful and encourage violence should be identified. Positive practices and traditions should also be identified and reinforced in law reform. These initiatives should be combined with advocacy for law reform. Some practices may come within the scope of domestic violence legislation. Such legislation should be enacted in Bangladesh and Nepal and expanded in Sri Lanka to cover these identified practices. Others will require specific legislation or a general gender equality statute. Adequate penalties should be introduced to punish perpetrators and have a deterrence effect. Witness protection and the capacity to obtain restraining orders to prevent acts of

violence must be prioritized in law reform. Aspects of family law which promote son preference should be identified for urgent reform in law and policy.

It is vitally important that legislative reform be combined with:

1. Programmes to disseminate information in local languages regarding specific relevant provisions in national laws prohibiting these practices, international instruments such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, the Declaration on Violence against Women, the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa, and relevant progressive legislation from countries of the region.
2. Programmes to sensitize parliamentarians, local authorities, administrators and law enforcement personnel on the negative impact of harmful practices and the importance of enforcing law and eliminating such practices and also protecting the rights of those adversely affected as well as potential victims.
3. Face-to-face conscientiousness-raising sessions with community and religious leaders, parents, educators and male and female members of community organizations on relevant laws, the universality of human rights, their link to religious values and the negative social impact of the identified harmful practices. The aim is to enlist their participation in achieving transformation of social attitudes.
4. Use of electronic media such as radio and television and information technology to disseminate information, create awareness of critical issues, challenge oppressive practices and achieve gender equality and empowerment.
5. Publicity and health campaigns on HIV/AIDS to address health professionals and para-professionals on violence against women caused through harmful traditional practices, linking advocacy on eliminating these practices to public health campaigns.
6. Obtaining the support of the corporate sector for advertising campaigns on this issue and for victim support.

### **C. Other measures**

Effective implementation of law reform should be supported by other measures:

1. Introducing and monitoring a scheme of effective compulsory registration of births, marriages and deaths.

2. Education is an important agent for the transference of knowledge and skills, socialization and social transformation, poverty reduction, promotion of gender equality and empowerment of girls and women, and building of capabilities and attitudes that can be a countervailing force in eliminating or reducing the incidence of harmful practices. Initiatives should be taken to:
  - (a) Introduce by regulations compulsory education for children up to 14 or 16 years of age, with monitoring mechanisms to ensure implementation.
  - (b) Provide special incentives in all countries (as in Sri Lanka) such as scholarships/stipends, free textbooks and subsidized transport to enable the poor to utilize available opportunities and strengthen their capacity to emerge from poverty.
  - (c) As the Sri Lanka experience has shown that access to education in itself does not necessarily empower girls and women, incorporate concepts of human rights, gender equality, reproductive rights and responsible sexual behaviour in schools, higher education and teacher education curricula in State and private institutions. Use teaching-learning experiences and the “hidden curriculum” to develop capabilities within schools and educational institutions to promote positive attitudinal change in families and communities to facilitate resistance to harmful practices.
3. Facilitate an increase in women’s access to economic empowerment by State initiatives with corporate sector collaboration and support and by promoting girls’ and women’s access to skills development programmes that will enable them to obtain remunerative employment/engage in gainful economic activities in the labour market. Priority must be given to enhancing their economic resources and economic independence and facilitating their upward occupational mobility.
4. Support the development of cause lawyering and public interest litigation and share comparative experiences from Nepal to encourage public interest litigation which challenges harmful traditional practices.
5. Increase resources for the investigation of acts of violence against women, including harmful traditional practices, prohibited by law and expand coverage of one stop crisis centres and other measures of support for women and girls who have suffered or are threatened with violence. Nodal gender agencies should provide leadership in ensuring adequate resource allocation for effective law enforcement on violence against women.
6. Integrate violence against women into judicial training and medical and legal education with priority on responses to harmful traditional practices. This is essential to develop a professional constituency of support that can strengthen activism by women’s groups working to eliminate these practices.
7. Advocacy and initiatives with all stakeholders, including the corporate sector, to include this area in existing and new programmes to prevent and eliminate violence against women.

#### **D. International and regional networking**

1. Regional experiences on law reform and one stop crisis centres and other victim-friendly interventions should be shared by the three countries.
2. As all three countries have ratified the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, efforts should be made to promote regional sharing and to strengthen national capacity to bring a test case to the courts where the law is in place and local remedies have been exhausted (e.g. non-enforcement of laws on dowry violence or early marriage).

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