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Transnationalization of Crime against Asian Indian Women

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Abstract

The uniqueness of crime against women of India is its disguise as sociocultural practices. People, including women, believe these practices are for their well being and for that of society. These practices are so deeply intermingled with the sociocultural lifestyles that, in spite of a plethora of corrective legislation, to date not a single ill practice demeaning women has been eradicated. Rather, in emerging situations under globalization, these practices are taking new forms leading to new consequences for women of Indian origin living across the horizons. This paper reviews the circumstances and proposes solutions to eradicate these unjust practices by making a major paradigm shift in the social system and reconstructing social reality to empower women by using life course perspective.

Keywords/Terms: Bride-Burning, Child - marriage , Dowry , Feticide, Infanticide, Purity of fair sex, Restricted movement

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The United Nations Declaration on the Elimination of Violence against Women, have defined violence against women as, —...any act of gender based violence that results in, or is likely to result in, physical, sexual, or psychological harm or suffering to women. An act of violence also includes the threat of such acts, and coercion or arbitrary deprivation of liberty, whether occurring in public or in private life (UN declaration 1993). When considering the lives of women of India in light of this internationally accepted definition of criminal violence, it becomes evident that deep rooted in the culture, violence against women prevails in the form of cultural practices at every stage of their lives. Evidently, the Indian nation is making great strides on economic and technological fronts, but the repression of the fair sex continues unabated in the form of ritualistic practices and strict social codes. Age old practices like female feticide, infanticide, virginity as a sign of purity, restricted movements, child- marriage, denial of right in ancestral property and dowry are all pervasive. Even the cruel practices of honor- killing, devdasi and sati systems have not banished entirely from the

society. The feudal past, cultural practices, and socioeconomic religious factors have not only allowed the de facto discrimination to continue, but have retarded the process of eradication of discriminatory practices against women under formal law. Legal provisions against such demeaning customs have, in fact, —brushed under the carpet all aforementioned ill practices rather than eliminating them.

The Indian Constitution and formal law are based on the paradigm of equality, liberty, dignity, fraternity, and social justice without discrimination on the basis of caste, class, creed, religion, or sex. Not only this, criminal law treats women separately to ensure their social upliftment. From time to time laws have been rewritten and amended to stop discrimination and enhance the status of women. Constitutional Articles 14, 15(1), 15(3), 16, 21, 39(a), 39(b), 42 and 51(a) (e) grant equality, dignity, status, and equal opportunity. Social legislation like The Widow Remarriage Act, 1856; Indian Divorce Act, 1956; The Dowry Prohibition Act, 1961(1983); The Child Marriage Restraint Act, 1979; Commission of Sati (Prevention) Act, 1987; Anti- domestic Violence Act, 2001; Sex determination, 2004 and many more have been approved to curb discrimination against women. But, in spite of massive efforts and a plethora of legislation, neither the status of women nor violence against them has stopped or been changed significantly. All these measures by and large remain on paper but in practice the crimes against women continue (Sethi 1976, Kaur 2002). In the transitional phase of neoliberalization, violence against women emerges as they move from

—behind the scene roles to more visible, structured, and public personas. Like their counterparts in the West, Indian women do not remain unaffected by negative effects of modernization, industrialization, and globalization. But unlike many women of the world, Indian women bear total blame for being victimized as prescribed in the cultural codes of conduct. When an Indian woman steps from the confines of her home, she opens new channels of exploitation that increase her chances of victimization. When she faces sexual harassment or even assault while working and studying in pursuit of a career, it is deemed her due for having left a secure home life. Such actual codes of conduct, community evaluations, and sanctions are applied to all women of Indian origin living anywhere in the world.

Various studies on Asian Indian communities abroad show members have remained segregated from the broader Western culture and society. Over the years they have formed tightly knit groups with strong community cultures based on sociocultural values brought from India many years ago. Although members of Asian Indian communities have been living outside India for more than a hundred years, their behavior patterns can best be explained and understood in the context of broader Indian cultural values rather than Western cultural values. (O'Hare & Felt, 1991; Durvasula & Mylvaganam, 1994). Scholars who have researched Asian communities have identified practices prevalent among them as based on strong patriarchal values existing in India. The ideology of segregating women is so strong that from an early age, girls are distanced from men and boys with their movements and expectations restricted. The family structure is patriarchal, extended, interdependent, and deeply rooted in Indian culture (Segal, 1998; Gill 2002; Kaur 2013). The traditional culture requires collective values and strict adherence to clearly defined gender roles. Such values are often contrary to the cultural norms of mainstream American society where values related to

individualism are more likely to be stressed and inculcated in children. Consequently, Asian Indian women who have been born and raised as residents of the United States experience value conflict related to gender role expectations and decision making. At times, these conflicting situations lead to serious confrontations. Parents desire adherence to Asian Indian cultural values, while children often feel more connected to the Western culture in which they have been brought up. Parents use various means to force children, particularly girls, to abide by community cultural values. They do not hesitate to use harsh measures such as jeopardizing international status and connections to bring about adherence to cultural codes of conduct.

Thus, crime against Asian Indian women living in India and abroad cannot be disassociated and must be discussed in the context of the deep rooted patriarchal values of the Indian culture. These social practices and behavior expectations sharply shape personalities and aspirations for women of Asian Indian origin and put them in situations and circumstances peculiar to them. Narrations below explain some of the unique situations, experiences, and pathways of women born as Asian Indian.

Issue of right to be born and right to survive

India and China along with Pakistan, Bangladesh, Taiwan, South Korea, Indonesia, Vietnam and Caucasus, account for nearly half of the world's population. How to protect a girl child's right to be born and right to survive in India and China are currently matters of serious global concern. Changes in the biological norm in these two countries can lead to an imbalance of the sex ratio and related consequences for the entire world. Due to the increasing disparity between sexes, i.e. 120 boys for every 100 girls in India as against global birth ratio of 105 boys for every 100 girls, has forced the government of India to impose legal bans on female feticide and infanticide by making them criminal offences. But in reality, these age old practices continue including cold blooded murder of newborn females. These —hush-hushll affairs remain unreported crimes while the majority of culprits go unprosecuted. This undoubtedly contributes to the decline in women to men ratio and disappearance of women from society—35 million in just one year of 2001.

Research conducted by a leading newspaper reveals how the practice of feticide has traveled outside India where those of Indian origin can take advantage of their international status to continue the practice. Though a legal ban exists on sex determination of fetuses in India, people of Indian origin living in United States, Canada, England and other countries, can obtain sex determination tests in their country of residence where fetus ultrasounds are legal. They can then return to India and obtain legal abortions of the undesired sex. (The Tribune, —Test Abroad, Abort Here—NRI r e t u r n s to abort female fetus after getting the test done abroad.ll 04/13/2009) While there is no reliable scientific data regarding the actual number of female feticides perpetrated in a year, studies show concern about the rising popularity of the prenatal sex selection technologies with possible intent of killing female fetuses (Menon 2009; Green 2011).

Available statistics suggest that of the approximate 12 million Asian Indian girls who annually survive the right to birth, 1.5 million do not live to see their first birthday; and only 9 million live until their 15th. Studies point out that, on average, baby boys are breast fed for longer periods than girls; consequently, girls develop poor resistance to diseases and suffer more from diarrhea, fever, and respiratory infections due to malnutrition. A new born baby girl may be killed by an expert midwife or a female relative who will stuff her mouth with cloth, strangle her neck, or compress her mouth or nose to snuff out the life. In some cases a requisite dose of opium will be administered. The child may be left connected to her mother's placenta to bleed to death gradually; or she may be drowned in a tub during her first bath after birth.

Shockingly, despite the best medical efforts to reduce the female mortality rate and to increase life expectancy, the ratio of women to men has continued to decline. The number of females per 1,000 males was 972 in 1931; 950 in 1951; 933 in 1981; 929 in 1991; and 906 in 2009. This numerical discrepancy is commonly attributed in large part to feticide, based on gender selection (Menon 2009), and to infanticide.

Issue of social violence against adolescent and young Asian-Indian women

Once a woman overcomes the challenges of right to be born and right to survive, she faces threats to life and growth throughout her adolescence and young life in such customs as child marriage, denial of right to ancestral property, forced marriage, fraud marriages, serial marriages, dowry, bride burning and honor killing.

The concept of sexual purity of women until marriage is so deeply rooted in Indian culture that most parents want to marry their daughters as early as possible. In spite of the Child Marriage Act of 1975 which stipulates a girl must be 18 years or older for marriage, in many parts of the country parents force daughters into wedlock at much younger ages with no consideration of the girl's wishes or desires. According to a 2007 UN Report(2007), even today, 3 million of the 4.5 million annual marriages in India involve girls age 15 to 19.

Conformity to societal norms is regarded as representation of the dignity family and community. The culture dictates that men and women cannot marry without parental and societal approval all of which depend upon economic, social, caste, religious, regional, and racial factors. Women are designated as carriers of social values and family honor while men have much greater latitude to engage in deviant behavior. If a girl wants to marry someone of her own choice, her actions are considered contrary to social norms and values. The media has highlighted many cases of killing of couples to protect the social honor inside and as well as outside the country (Some of the most popular cases highlighted are: —Mother, Son Found Guilty of Honor Killing,|| The Tribune, 07/28/2007; —Jassi's Widower Acquitted of All Charges,|| The Tribune, 04/27, 2008).

According to findings of Para Teare as many as 1000 British Asian women every year are forced into marriage. Since first generation Indians abroad were attitudinally more Indian than Western, they practiced arranged marriages for quite a long while. Up to the second generation, there were not many problems in convincing children to marry someone from

within the community or someone from India. Such marriages were often arranged through parents, relatives, or the community. Third generation Asian Indians living in UK, America or anywhere outside India became more Western and less Indianite, and the idea of marrying someone unknown started losing ground. For them, marriage was not a social but an individual matter. This clash of cultural values among people of different generations has led to crimes like forced marriages, serial marriages, or fraud marriages (Kaur, 2003).

The Dowry Prohibition Act, passed in 1961(1983), has done little to curb the number of dowry deaths in the country. In 2006, there were 7,618 official reports of dowry deaths and an additional 4,504 violations of the Dowry Prohibition Act (Asian Centre of Human Rights, 2008). On one hand, parents do not want to give any share of property inheritance to a daughter since it is believed she has no rightful entitlement. On the other hand, in-laws, at the time of marriage, make increasing demands for cash and property gifts. In case parents refuse sufficient dowry to satisfy the greed of husband and in-laws, daily physical violence and battering become the fate of a newly married woman. Though physical and mental torture becomes intolerable in her marital state, she suffers in silence without liberty to step out of her in-laws' home. Ironically, she is also unwelcome in her parents' home and unable to return there. Her father and brothers fear the social stigma because they do not recognize her as a legitimate heir. After such marriage, a woman has no rights in either her parental or in-laws' homes and she is neither socially nor economically in position to seek legal help. Most women left in these circumstances have no option but to accept their situations as fate. Sadly, one woman in India succumbs to dowry related violence every 102 minutes.

Ending a relationship is stressful for women living inside as well as outside India because divorce is not an acceptable option in the Indian expatriate community. Divorce is a stigma and it is very difficult for a woman to get out of an abusive marriage, especially if it has been arranged by the parents. There is pressure to remain in an abusive relationship since divorce could jeopardize the marital eligibility of a woman's siblings, daughters and nieces in India or abroad. For most women, the choice is either an abusive relationship or no relationship at all. Thus, an Asian Indian woman has a fearful existence and perpetrators of violence are mostly her own family members who incur violence as reconfirmation of accepted behavior under cultural practices.

In the new, emerging social scenarios, an Indian woman faces additional, new threats because of sanctions attached under the old traditions and cultural practices. For example, venturing beyond the confines of home for employment increases her prospect of injury. One woman is molested every 26 minutes in India; one is raped every 54 minutes, and one kidnapped every 43 minutes. In spite of these obvious circumstances, there has been no change in social treatment or societal attitude toward female victims of sexual violence. Once a woman becomes a victim of rape, she loses societal face and status and will not be accepted back into the family, community and society. Her choice will then either be suicide or a brothel to join 400,000 child-prostitutes in the country. These codes of culture apply to all women of Indian origin who have been living and suffering for centuries in South Asian countries and are now moving out to foreign lands but shackled and burdened under the same social values.

Most scholars believe that efforts to enhance the status of women have failed because the Indian social system does not operate according to values enshrined in the Constitution; rather it is based on reverse value hypothesis when it comes to gender justice. Whenever, there is a conflict between legal values enshrined in the law and the gendered social values, the latter prevails. This dichotomy of values under the legal and social systems not only gives false hopes to women but also creates confusion in the minds of those responsible for implementation of the law and administration of society. This value ambivalence molds the legal agency officials' response in dealing with serious problems affecting women in India. It is also disconcerting for enforcers of the law and leads to lack of clear perspective, partial enforcement, incomplete implementation, and a near total collapse of justice as it relates to gender equality. Ultimately, these circumstances allow gender bias to perpetuate and flourish as sociocultural values, not only within the country but they have migrated with people of Indian origin to other countries.

Discussion and Summary

Crime against women is a global epidemic and women are not totally safe from violence in any country. However, each nationality (community) has its own gender ideology which is crystallized as community culture and reflected in the attitudes and behavior of individuals in the community. Wherever their members migrate, they find ways to practice this ideology. Thus, these gendered ideologies and behaviors reach beyond national boundaries.

Many researchers, Adinkrah (1999); Baker, Gregware and Cassidy (1999); Faqir (2001) and Gill (2009) have proven that cultures with strong patriarchal practices have higher rates of violence against women. India is not only a strong patriarchy but now old traditions and cultural practices are being rocked by new social forces and cultural trends. There is a coexistence or intersection of old forms and new formations. Violence against women disguised in the form of sociocultural practices continues to deceive women and society in general. The most disconcerting fact is that these crimes are not stray incidents, but built into the social value system which represses and control women throughout their lives.

To some extent, laws have attempted to deal with the conflicts of gendered practices and emerging social forces but have failed in resolving them. According to Friedman (1977), —The extent to which legal norms will be realized is not determined in the courts, administrative tribunals or legislators. Rather, it is determined by society itself, as its members agree to support the legal norms in their ordinary conduct. Those legal norms which are supported by the actual behavior are termed as laws and others are shunted off or remain in books. Individual and community commitment are required for laws to bring about changes in society and make legal provisions effective.

Edwards (2008) suggests that in accomplishing this tremendous task, our policies must give more emphasis to promoting equality among sexes than stopping discrimination against women. Similarly, Harrington (2012) suggests that international forces (United Nations) need to come forward to help eradicate cultural norms with negative tendencies toward women.

The research of Petkov and Mindevska (2012) suggests that violence against women on a transnational scale inhibits women through intimidation and fear thus restricting resources to meet their most basic human needs. Additionally, Sadat (2011) indicates that to reduce transnational crimes against women, there must be increased female participation in national and international justice delivery institutions.

Tripathi and Yadav (2004) emphasize the significance of global initiatives to combat such crimes by encouraging local initiatives in various countries of the world. A global approach is needed to confront the ever trending transnationalization of crimes against women. United Nations policy urges countries to adequately train their justice delivery personnel, provide public education and awareness to people, including women, to break the mind set. A collective social effort must be made to bring to the forefront existing natural human instincts which dictate that, upon appearance in the world, a girl child deserves equal acceptance as a boy. Failure of parents to nurture her infancy and childhood, to provide educational opportunities, and to recognize her possibilities is an injustice to humanity and a loss to all. At the same time women must come to believe in themselves and their own worth. They must strive to protect their off spring, regardless of sex, and their own psychological health while working to overcome gendered ill practices deeply entrenched in the traditional fabric of Indian society.

To bring about changes in the status of Indian women, society must first become aware and then convinced of needed changes. India presents an especially daunting task where ill practices demeaning women are part of the culture with deep rooted perceptions and practices interlined in the life styles of women and men in Indian society.

Suggestions

This paper proposes a major paradigm shift in the current Indian sociocultural system based on ‘gendered reality’ to ‘gendered neutrality’ by eradicating the deep seated sex based bias in the Indian mind set and, subsequently, in the upbringing and rearing of both sexes—especially girls. Parents must come to value daughters as they do sons and provide treatment, education, and opportunities without any disparity. Towards this end, the focus of law and legal legislations must be directed to eradicate inequality in families of orientation by insuring the girl child’s right to be born, right to survive, right of equality, and right of inheritance in parental property must be firmly established with immediate assistance available should parents deny these rights. Legal policies and legislation must provide for equality among sexes at the beginning stages of the child’s journey in the world since it is early age experiences that shape personalities. The role of law needs to be to place girls on the right lane of life course from which they can keep moving toward growth, prosperity, and progress in life. Girls rose with dependency and —male phobias will never be able to take advantage of beneficial legal provisions at later points in their lives. Without such major changes in real life situations for women inside and outside India, all efforts and actions to stop discrimination and violence in marital homes and public places will go unheeded. But the question is: Are parents ready to welcome and rear their children in gender neutral homes?

Further suggestions are enumerated below:

1. The objective of the law needs to insure equality among both sexes by breaking social perceptions and practices demeaning the importance of the girl child in family and society.
2. Schools, colleges and other educational institutions should develop gender equality curricula for boys and girls to generate awareness of the social significance of equality between sexes.
3. There is need to generate awareness among females of legal assistances and protections (like domestic act 2001 in India; VAWA 2011: U-visa & T-visa in USA) available to them inside and outside India.
4. Criminal justice professionals, inside and outside India, should be sensitized to the Indian cultural traditions and practices related to child rearing, marriage, divorce and tolerance towards discrimination among Asian women due to social conditioning.
5. Formation of a common institution involving criminal justice professionals, volunteers, academicians and government officers is needed to control internationalization of crime against women related to feticide, infanticide and fake or forced international marriages, etc.
6. More cultural, educational and professional exchange programs need to be developed to learn, educate, interact, share experiences, and solve problems in order to counter transnationalization of crime against women and to break the marriage of gender and globalization.

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