

**HUMAN RIGHTS VIOLATIONS OF WOMEN IN  
CONFLICT SITUATIONS: A CASE STUDY OF  
AFGHAN REFUGEE WOMEN**

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## CERTIFICATE

Certified that the dissertation titled, "HUMAN RIGHTS VIOLATIONS OF WOMEN IN CONFLICT SITUATIONS: A CASE STUDY OF AFGHAN REFUGEE WOMEN" submitted by RUBINA JASANI in partial fulfillment for the award of the degree of MASTER OF PHILOSOPHY is her original work. This dissertation has not been submitted for any other degree to this University or to another University to the best of our knowledge.

We recommend that this dissertation be placed before the examiner for evaluation.

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es

*Dedicated  
To  
My Father  
With Love...*

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## PREFACE

The focus of my research is to engender the analysis of conflict and its aftermath with special reference to the refugee experiences of women from a human rights perspective. The Afghan conflict and the subsequent refugee movements of Pakistan and India are taken as a case study.

There is a clear shift in the nature of conflict in the post cold war - from the traditional warfare to the military interests between nation states to defend their territorial integrity and independence to the new war or the intra-state conflicts where the state is only one among the other players.

Each conflict affects women in profoundly different ways. In each situation - the political, ethnic, or class position plays a critical role in determining the impact of conflict on women and their roles within conflicts. They are gendered as mothers, as soldiers, as militants and caretakers. On the one hand, they suffer from conflict in many ways including dying, experiencing sexual abuse, losing loved ones, homes and communities. On the other hand, women's struggle to survive without men forces them to take on roles and responsibilities traditionally assigned to as 'male'.

Conflicts create refugees and women and children make up 80 per cent of the refugee population. Their numerical dominance itself calls for a critical interrogation. More important however is the fact that gender represents a useful category through which to analyse the refugee experiences and the phenomenon of dislocation. The term gender will be used to refer to the construction of femininity and masculinity. It is not within the scope of this research to show the basis of this difference.

Gender based approach therefore, enables to critically examine the essentials of refugee experiences in a much more micro perspectives. Gender as a unit of analysis allows us to contrast the lives of men and women within the context of conflict and conflict induced refugee experiences. It illustrates that women experience the destruction in a far greater and unique way. This research recognizes the problematic nature of the concept of gender. Just like other categories it is unstable because identity itself is unstable and constructed from a combination of other macro identities.

The area of this study is the Afghan conflict and the human rights violations of these women in the conflict. It aims looking at not only the violation of their rights in the country of origin but also in two theatres of refugee hosts of South Asia (India and Pakistan). The Afghan conflict and their refugee experiences make an interesting area of study because both Afghanistan and Pakistan (where majority of these refugees have sought refuge), present cases of classic patriarchy. Here women have to struggle for rights vis-à-vis the religious fundamentalist *fatwas* and have to face all the atrocities which a conflict brings in the form of violations of the most basic rights. Fundamentalism uses women's bodies as a battlefield in its struggle to appropriate institutional power. This conflict also has a distinction of being an inter-state conflict', which after the withdrawal of the Soviet forces became an intra-state conflict and still remains unresolved.

The study of human rights of women in the context of South Asia becomes all the more important because none of the South Asian states has ratified the 1951 convention and the 1967 protocol relating to the status of refugees. Thus the refugees of this region are not entitled to the protection guaranteed under these instruments. Nor do any of these states have a national legislation to deal with refugees. These refugees also do not have a

regional convention on refugees like the Organisation of African Union (OAU), which guarantees minimum rights to these refugees. The question then arises is what about the basic rights of stateless people who are not a party to the refugee convention. Women under such circumstances become all the more vulnerable to the violation of their basic rights. Thus, a human rights approach to the protection of refugees is about the fundamental entitlements of all human beings to live in dignity. Though the scope of the concept of human rights is not universally agreed upon, when we speak about human rights, we mean not only civil and political rights, rather our emphasis is more on the second generation of rights which are basic for survival- right to food, education, employment, healthcare, etc. Moreover, international human rights is one of the few concepts which speak about the need for transnational activism and concerns about the lives of people globally.

One also has to realise that refugees are created because human rights are violated in the home country and the guarantee of the bare minimum becomes essential. Thus, for these *de facto* refugees who are denied rights and freedoms, depending upon the political will in the country of asylum and the social norms of the society, it becomes important to ask the question what are their fundamental entitlement under the law.

This research seeks to answer the following questions:

1. Do women in conflicts enjoy basic human rights? If so, which institutions guarantee them?
2. Do women, especially in a feudal society and a fundamentalist state experience the aftermath of conflict more acutely? If so, why and how?

3. Whether the social, cultural, political context of the countries where these women are seeking refugee have an impact upon the violation of their rights?
4. Does the right to preserve one's religious practices take precedence over human rights norms? If so, is the very concept of universal rights inappropriate in a multi-cultural world in which values and practices differ from place to place?
5. Can legislation protect women from culturally sanctioned discrimination and abuse?

This study is divided into five chapters:

Chapter I will examine theoretically at women in conflict. It makes an attempt to show the inter-linkages between conflict, women and human rights violations. It will also look at the basic rights, which should be guaranteed to women under the human rights law, humanitarian law and Refugee Law.

Chapter II will analyse all the three stages of the Afghan conflict and look at the treatment of women in these phases of the conflict.

Chapter III will look into the violations of women's rights in the country of refuge (India & Pakistan). It will also analyse the respective governments official policy towards the treatment of refugees and also the role that UNHCR has played in the management of refugees.

Chapter IV will discuss the role the NGO's and the UN organisations have played in the area of women's rights.

Conclusion, would attempt to arrive at some broader generalizations on the basis of the specific case studies about the women in conflict and rights of refugee women.



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Rubina Jasani

## LIST OF ABBREVIATIONS

AAA	American Aid to Afghanistan
ACBAR	Agency Co-ordination Body for Afghan Refugees
AFRANE	Afghan French Solidarity Organisation
AIC	Afghan Ismaili Centre
AWC	Afghan Women's Council
BIA	Bureau International de Afghanistan
CCA	Co-operation Centre for Afghanistan
CEDAW	Convention for Elimination of Discrimination Against Women
DOAW	Democratic Organization of Afghan Women
DRA	Democratic Republic of Afghanistan
DPVPV	Department for the Promotion of Virtue and Prevention of Vice
IAM	International Assistance Mission
ICRC	International Committee for Red Cross
ICCPR	International Convention for Civil and Political Rights
KWC	Kabul Women's Council
MSF	Medicin Sans Frontiere
MM	Medicine du Mundo
NGO	Non-Governmental Organisation
PILSARC	Public Interest Legal Support And Research Centre

POP	People Oriented Planning
RAWA	Revolutionary Association of Women of Afghanistan
SAHRDC	South Asia Human Rights Documentation Centre
SFA	Strategic Framework Approach
SA	Subsistence Allowance
UNHCR	United Nations High Commissioner for Refugees
UNESCO	United Nations, Educational, Social and Cultural Organisation
UNDP	United Nations Development Programme
VHAI	Voluntary Health Association of India
WHO	World Health Organisation
WFP	World Food Programme

## CHAPTER I

### CONFLICT, WOMEN AND HUMAN RIGHTS VIOLATIONS: AN ANALYTICAL FRAMEWORK

This chapter aims at looking into the engendering of conflict and its aftermath from a human rights perspective. It aims at showing the inter-linkages between conflict, women and human rights violations assuming the transnational applicability of the concept of human rights both in wartime and peace. The chapter also examines the issues related to violation of the basic rights of women in situations of conflict.

Throughout the 1980s, the feminist scholars revisited conflicts in the history, to study their causes and outcomes as well as the ways in which they were fought. Their findings revealed that although conflict had always been classified as genderless it is in fact, one of the most gendered activities. This new scholarship shows that how the deliberate omission of women except as nurses, long suffering wives, mothers, sisters and camp followers has allowed an ungendered domain to persist.<sup>1</sup> Although, the stories of the World War II did include woman, they were regarded as mere substitutes for men. They rallied for the national cause and they filled in for the heroes lost in war. The approach of looking at women as individuals in their own capacity was absent. Moreover, the literature that appeared on women and war was theoretical, political and above all, western despite claims to universality. Thus the need for engendering conflicts in the east arises.

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<sup>1</sup> Mirriam Crooke and Roshni Chaterjee (eds.), *Blood into Ink: South Asian and Middle Eastern Women Write War* (Colorado, West View Press, 1997), p.2.

The decade following the cold war has brought about a major change in the nature of conflict- the inter-state nature of conflict has become intra-state. Before getting into the dynamics of the changing nature of conflict, it becomes important to understand what is implied by conflict.

According to the Encyclopaedia of Social Sciences, "A conflict may be defined as a struggle over values or claims of states, power and scarce resources, in which the aims of the conflicting parties are not only to get desired values but also to neutralize, injure and eliminate their rivals. Such conflicts may take place between individuals and collectivities."<sup>2</sup> Anthony de Reuck says that "Conflict is said to arise when parties (however defined and organised), perceive that they possess naturally incompatible goals".<sup>3</sup> A conflict could thus be said to be produced by a clash of cultures, disharmony of center interests, disparity of perception all of which results in the ability of the parties to accept separately and together the environment, they live in.

There are likely to be two sets of issues involved in the conflict. What change shall occur and at whose expense. Conflict can be precipitated, intensified or resolved by changes in the environment, or changes in the attributes of the participants in the conflict or through modification of the capabilities of the parties. The seriousness of a conflict may be assessed in several, not corresponding ways: by distance between the values and goals of the contenders, by the quality and quantity of the means mobilised and by the consequences of their application. Harm inflicted by a large amount of violence is used as a criteria of determining serious conflict.

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<sup>2</sup> Richard A. Falk, "Conflict of Laws" in *International Encyclopaedia of Social Sciences* (London, Macmillan, 1982), vol.3, p. 247.

<sup>3</sup> Anthony de Reuck, "The Logic of Conflict: Its Origin, Development and Resolution" in Michael Banks (ed.) *Conflict in World Society* (Brighton, Wheatsheaf Books, 1984), p.96.

Generally speaking conflicts can be classified into international and internal. International conflicts are those between two or more recognised nation whereas Armed conflict is defined as the clash of 'armed forces between a recognised government and an armed insurgency.<sup>4</sup> Conflicts can further be classified into minor armed conflict intermediate armed conflict, war and major armed conflict. Minor armed conflict is the one where at least 25 battle-related deaths take place per year and fewer than 1,000 battle related deaths during the course of the conflict, Intermediate armed conflict-accumulated total of 1,000 deaths per year, but fewer than 1000 deaths. War-where at least 1,000 battle related deaths take place. And major armed conflict-this includes the most severe level of conflict i.e., intermediate armed conflict and war.<sup>5</sup> The various conflicts in the past cold war era could be classified on the basis of the categories provided above.

With regard to the Afghanistan conflict also, this stands true because during the cold war, this conflict was an international conflict between USSR and Afghanistan and in the post Cold War period it become an internal one, though with clandestine external support.

In the post cold war era, a shift has been observed in the nature of conflict, from the traditional warfare between two nation states to protect their territorial integrity and independence, to the new wars or the intra-state conflict where the state is one among the many other players in the conflict including ethnic groups, guerrilla groups, ethnic armies and mercenaries. In the period between 1989-1998, 12 out of 10 wars were

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<sup>4</sup> Margareta Sollenberg, Peter Wallensteen and Andres Jato, "Major Armed Conflicts" in *SIPRI Year Book* (Solna), 1999, p.19.

<sup>5</sup> Peter Wallensteen and Margareta Sollenberg, "Armed Conflict 1989-1998", *Journal of Peace Research* (London), vol.86, no.5 (1999), p.605.

domestic ones with the highest member in Asia followed by Africa and Europe.

Samuel Huntington has argued that world politics is entering into a new phase in which war of politics and ideology have yielded to a war of cultures. This paradigmatic shift Huntington argues owes much to the multi-civilizational character of global politics. He also argues that the extension of Western values as 'Universal' has provoked reactions including religious fundamentalism in many Islamic societies.

Secondly, conflicts tended to be concerned only with violence, its escalation and termination. That is changing to take into account the wider concept of conflict and understand its structural causes by drawing upon the conceptualizations in anthropology, sociology and psychology.

Thirdly, the changing nature of warfare especially its devolution implies that it happens in the middle of human communities. An estimated 90% of the victims of contemporary civil wars and internal conflicts are civilians. Women and children constitute majority of such casualties.<sup>6</sup>

Fourthly, there have been flagrant and consistent violations of human rights and no respect for International human rights law, humanitarian law and refugee law.

Fifthly, cross border affiliations are provided -neighbouring states provide sanctity as well as arms and training to guerillas.

Sixthly, most of conflicts are identity struggles where granting devolution of power or territorial autonomy would end the crisis. Finally, the post cold war conflicts take place in the third world, Muller argues that there have been no wars among the 44 wealthiest countries only exception

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<sup>6</sup> Robert Higham , *Civil Wars in Twentieth Century* (New York, Routledge,1999), p.64.

was Germany in 1939. He observes that when countries improve their standard of living, because of Industrialization etc. they find the prospect of war decreasingly attractive because they have more to lose.<sup>7</sup>

### **Women in Conflict: Common Facets**

Women are the worst hit by conflict. The escalation of violence in a conflict creates threats to physical integrity and thus results in forced migration. This results in the creations of refugees and internally displaced persons. More than four fifth of he war refugees are women who suffer additional and sexualized violence during their flight. By the end of 1992, more than 46 million had lost their homes and 36 million of these were women and girls.<sup>8</sup> The numerical dominance itself calls for a critical interrogation. More important however, is the fact that gender represents a useful category through which to analyse the refugee experiences and the phenomenon of dislocation. It is important to recognise that refugees are not a uniform category of people. They are divided along cultural, linguistic, ethnic, political and religious lines, to cite but a few differentiating factors.

Gender represents such a category. The term gender will be used to refer to the construction of differences between men and women and the ideas of 'femininity' and 'masculinity'. Gender serves to fragment or at least problematise categories which would otherwise essentialise the experiences of conflict and its aftermath. Gender as a unit of analysis allows us to contrast the lives of men and women within the context of conflict and its

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<sup>7</sup> Julie Mertus, *War's Offensive on Women: The Humanitarian Challenge in Bosnia, Kosovo and Afghanistan*, (Connecticut, Kumarian Press, 2000),p.64.

<sup>8</sup> Charles Keagley, Eugene R. Wittkopk, *World Politics: Trends and Transformation*, (London, Macmillan, 1989), p.339.



aftermath. It illustrates that women experience conflict and the dislocation of refugeehood in a different and unique way.

This study does recognise the problematic nature of the concept of gender. Just like other categories it is unstable because, identity itself is unstable and constructed from a combination of other (macro) identities. This means that refugee women are not merely women but possess other identities that relate to race, class, ethnicity and religion. These other identities may divide women more than they are united by their common gender. Despite the limitation of a gendered analysis (a limitation that is inevitable in any conceptual framework), gender clearly represents a useful method to analyse and understand dislocation in the context of conflict and refugee experience.

The feminist scholarship on this issue has gone beyond the simplistic gender dichotomies that 'men make war and women make peace': There is a growing recognition that claiming inherent differences between women and men contradict the real actions of men and women. History has demonstrated that many men resist war through refusal to participate, draft evasions and outright protests. On the other hand, women express their citizenship or even nationalism by proudly sending their men to war or directly joining the ranks of militants in insurgency situations. Still, there is something different - each conflict affects women in different ways than men. In each situation, the political, economic and social impact of conflict on men and women differ greatly. Their location and identity be it political, ethnic or class plays a critical role in determining the impact of conflict on women and their roles within conflicts.

Women participate in different capacities in situations of conflict - they are gendered as mothers, soldiers, as militants and as caretakers. Women in conflict raise conceptual issues regarding women's status, of

universalization and diversity vulnerability and empowerment of role change in insurgencies and wars.<sup>9</sup> On the one hand, they suffer from conflict in many ways including dying, experiencing sexual abuse, torture losing young ones, homes and communities. On the other hand, women struggle to survive without the support of men. Armed conflicts force women to take on roles and responsibilities traditionally assigned to males. These increased opportunities at the local level during conflicts are however, temporary and do not translate into peace building and peace making at the national and international level during post conflict stages.<sup>10</sup>

The process of engendering of conflict becomes important not only for the sake of justice and intellectual integrity but a gendered analysis of conflict will help to provide a more sophisticated understanding of conflict which would assist in conflict assessment and conflict resolution. It also enables us to assess the chances of success of a community's survival strategy and of post conflict recovery not least because such a focus helps to reveal the links between public and private spheres. This process of gendering also becomes important because it enables in recording the experiences and vulnerabilities of women which are different than those of the men and which would otherwise go unrecorded . It also enables in recording how gender biased human rights law, humanitarian law and the refugee law have been. It also brings to the surface the changing roles of women ie. not only as victims of conflict but also agents bringing about positive change also.

The engendering of a discipline on a theoretical level means effective integration of gender aware analysis. Drawing upon their experience of

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<sup>9</sup> Jennifer Turpin, "Many Faces: Women Confronting War" in Louis Ann Lorrentzen and Jennifer Turpin (eds.), *Women and War Reader* (New York and London, New York University Press, 1998), p.4.

<sup>10</sup> Selvy Thiruchandran, *Women, Narration and Nation* (New Delhi, Vikas Publishers, 1999), p.6.

gender and development studies, Pankhurst Pearce has sought to identify some milestones in this engendering process albeit with a caveat that 'these do not seem to be unsuitable on unilinear and an area or discipline does not of course change uniformly across its range. These are as follows:

- (a) an initial level which begins to fill in the absences and make women visible through work typically titled 'women and .... And 'women in ... studies.
- (b) Widespread removal of male bias in data collection and analysis. This term is useful as a means of emphasizing the academic and intellectual inadequacy of a discipline which systematically distorts its area of study by looking at it only through a male only lens. This agenda is promoted on grounds of equity but also in-order to obtain a more accurately focussed picture of the world. Also, the stereotypes of passive victims of armed conflict are interrogated and there is an attempt to understand their role as actors and active participants in conflict.
- (c) The study of gender relations becomes more predominant than analysing the situation of women and men separately
- (d) A comprehensive rethinking of the disciplines theoretical constructs to take gender into account without privileging women as a social category. The key characteristic of this stage is that the activity becomes widespread and the outcome comprehensive.

- (e) A stage where it becomes a part of the mainstream of the discipline, (i.e. a normal unexceptional activity) to ask: what difference does gender make her.<sup>11</sup>

In understanding the conflict, even the first level of engendering i.e. making women visible among male dominated accounts of conflict is very important. Women and men have very different experiences of conflict but it is almost always the male experiences that dominate the written narratives, the outsider's analysis and the mechanism of intervention. Women's experiences are either under on misrepresented even when they play combative roles. Although, a sophisticated feminist literature exists on the role of women in wars, albeit more limited, with regard to wars in the South and even the roles and implications of changing gender relation. But this is rarely done in the context of violence in conflict.

It is important to examine many faces of women confronting conflict. The distinct impact that conflict has on women due to their gender and the various ways in which women respond. Many people assume that women are unlikely to die in wars since so few women serve in the armed forces worldwide. But women as civilians are more likely to be killed in wars than as soldiers. Women are affected by war in the following ways:

**(i) Women as Direct Casualties**

Wars impact upon women has changed with the development of increasing efficient war making technologies that make war and militarism more and more deadly. The past century has witnessed the killing of about 104 million people in wars - more than quarter of all war dead recorded

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<sup>11</sup> Asha Hans, "Tracing Women's and Children's Inclusion in the Refugee Regime", RMMRU, Paper Presented at *Regional Conference on Women and Children in Refugee and Refugee like Situations in South Asia*, 12-13 November 1999.

since the year 1500. Most people killed in wars are civilians.<sup>12</sup> The advent of high altitude bombs and a strategy of total war in practice has ended the distinction between combatants and civilian as targets of war. While 50 per cent of the Second World War's, casualties were civilian in 1980 the figure rose to 80% and by 1990 it was a staggering 90per cent.<sup>13</sup>

Besides looking at conflicts through the lens of gender, an attempt should also be made to study the global intersection between gender and class, race, nation and ethnicity. Women may be more or less vulnerable to the effects of war and militarization depending upon their home society, economic status and their racial ethnic identity. Women in developing countries are most likely to experience conflicts and most likely to be driven from their homelands.

#### (ii) Women as War Refugees

Women are likely to be uprooted by War. Wars and conflicts cause forced migration and displaced people internally. More than four fifth of the war refugees are women. In addition to the loss of Identity, death, violence and injury, struggle for survival etc, these women and young girls are exposed to additional and sexualized violence. The risk factor is being a woman itself. In a survey conducted by Refugee Women in Development (RefWID) a non profit agency based in Washington DC', asking to identify issues of primary concern to themselves and their families, they responded by expressing concern for their physical and legal protection. For the first

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<sup>12</sup> Dona Pankhurst and Jenny Pearce, "Engendering the Analysis of Conflict: A Southern Perspective" in Haley Afshar (ed.), *Women and Empowerment: Illustrations from the Third World*, (London, Verso, 1999), p.156.

<sup>13</sup> Jennifer Turpin, *op.cit.*, n.9, p.3.

time they recognized and addressed politically the issue of sexual harassment as a human rights issue.<sup>14</sup>

Refugee women also serve as their children's sole caretaker, as many of them are widows or separated from their spouses and their extended family. They have to seek food and safety not only for themselves, but also for their children, who also need healthcare, housing and education. Refugee women in exile are often the supporters of an extended family network, playing a central women role yet still lacking decision making powers in their societies.

### **(iii) War time Sexual Violence Against Women**

Women in conflict situations are vulnerable to sexual violence. The UNHCR cites sexual attacks on women and girls by camp guards as a major problem. Even those women and girls stationed in camps and refugee settlements as well in new societies of residence frequently suffer sexual abuse, abduction and forced prostitution. History has demonstrated the link between war and control of women's sexuality and reproduction through rape, sexual harassment and militarized protection.

#### **(a) Rape**

Rape has been overlooked in history as the by product of war. Military history rarely refers to rape and military tribunals either charge or sanction it. This is true even where rape and forced prostitution are mass or systematic in both the theatres of the second world war. It is even true when the open, mass and systematic rape has been thought to shock the conscience of the world, such as in the rape of Nanking or the rape of an

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<sup>14</sup> Sima Wali, "Human Rights for Refugee and Displaced Women" in Julie Peters and Andrea Wolpers (eds.), *Women's Rights Human Rights: International Feminist Perspective* (New York and London, Routledge, 1999), p.337.

estimated 2,00,000 Bengali women, during theatres of Independence from Pakistan.<sup>15</sup> The question today is whether rape is recent times - war in former Yugoslavia, Bosnia, Herzogovina Afghanistan, Kosovo, Peru, Liberia and Burma will disappear into history or at best survive as an exceptional case.

Here it needs to be mentioned that being young and pretty has very little to do with being a victim of wartime rape. There are numerous examples of very old women being brutally raped and murdered. These women who have limited mobility and live alone are especially vulnerable to attack by soldiers.

The torture of political prisoners is also gendered. Women imprisoned for their political activities are commonly raped by multiple rapists.<sup>16</sup> In the former Yugoslavia, thousands of Muslim women have been forced into camps and raped by Serbian soldiers. Muslim and Croat soldiers have also committed mass rapes. Rape has also been used as weapon for ethnic cleansing, using attacks on women to humiliate and attempt to exterminate another ethnic group.

Even the UN peacekeeping force the multilateral forces sent to protect civilian human rights in war-torn areas have committed rape and sexual abuse against women and young girls. Such cases have been documented in Mozambique Somalia, Cambodia, and other regions.<sup>17</sup> This suggests that those trained to fight wars are not best suited to protect human rights of women and children and that sexual violence is endemic to military culture.

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<sup>15</sup> Jennifer Turpin ,op.cit., n.9, p.6

<sup>16</sup> Simawali, op.cit., , n.14, p.337.

<sup>17</sup> Rhonda Capelon, "Surfacing Gender: Reconceptualizing Crimes Against Women Times of War" in Lois Ann Lorrentzen and Jenniffer Turpin (eds.), *Women and War Reader* (London and New York, New York University Press, 1998), n.9, p.63.

## (b) Prostitution

Wartime prostitution may be either physically forced or economically coerced. During World War II, the Japanese military set up brothels in Eastern and Southern Asia forcing between 1,00,000 and 400,000 women into prostitution. Cynthia Enloe has pointed out that prostitution relies not only on the sex worker and the client it rather involves a whole host of characters mainly men who contribute to the creation and maintenance of prostitution around any military base in the world.<sup>18</sup> The prostitutes are often young girls endeavouring to support the families or women who need to support their children. The girls who are orphaned by war may be sold into domestic and sexual slavery. The societies especially in a fundamentalist states where women are valued for their virginity, these girls may be permanent outcasts, left in poverty.

## (iv) War Time Domestic Violence

While battering is most common in most societies in peace time, recent research also indicates that battering also increases in war time. This suggests a link between gendered violence at micro and macro level and calls for an inquiry into gender dynamics of power from the household to the international arena. Among the findings of research conducted through a Belgrade agency for domestic violence are the following: on increase in the number of sons who commit violence against their mothers in wartime, an increase in the number of assaults involving weapons, an increase in alcohol consumption among men rethinking from combat and a link

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<sup>18</sup> *ibid.*, p.5.



between economic decline, especially refugee status and wife battering and rape.<sup>19</sup>

Several reasons have been given as to why wartime conditions would lead to women battering and rape within the household. These are - in wartime there is an influence of weapons into societies and those weapons are not controlled or not limited to battlefield use. Research from both criminology and security studies demonstrates that the presence of weapons increases both the likelihood and the lethality of violence. Second, former soldier or soldiers who have contact with their families have been affected by the experiences in the combat. They tend to get frustrated, nervous, intolerant and aggressive.<sup>20</sup> All these factors along with a cultural acceptance of violence against women even at peacetime, put women at greater risk.

#### **(v) Loss of Family**

Loss of family members inflicts suffering on women and men alike but women seem to be affected more because of their family role. Women may lose husbands and sons on the battlefield and they may lose their girls and young children - as civilian casualties and witness their suffering as victims of assault and rape. As the primary caregivers to children in most societies women arguably suffer the loss of their children in gender specific ways. Although the relationship of motherhood to women's stance in war is debated, women in many different historical and cultural contexts have argued that a mother's suffering is unique. Losing husband and son may not only mean emotional loss but also lost economic support and

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<sup>19</sup> *ibid.*, p. 84.

<sup>20</sup> Cynthia Enloe, *The Morning After: Sexual Politics at the End of the Cold War* (Berkeley, University of California Press, 1993), p.28.

social legitimacy. In some societies, women with no male family member lose all rights to protection, employment benefits and guarantee of security.

#### **(vi) Loss of Work, Community and Social Structure**

Those women who are permitted to work outside their homes may lose their jobs when war destroys the economic infrastructure with total war as the strategy of contemporary militancies. Companies, hospitals, office buildings, agricultural fields, civilian communities all become targets. Destruction of the economy, whether industrial or agricultural, affects women in different ways because of their caretaking roles in the family and community. In conditions of food scarcity, women are more likely than men to give their food so that children can eat. Women's caretaking roles become increasingly burdensome as they struggle to feed their children in adverse conditions created by war and to nurse wounded survivors when hospitals, medicines and clean water are scarce.

#### **(vii) Conflict, Environmental, Destruction and Women**

In addition to destroying social and economic infrastructure, war destroys the natural environment. This has devastating effects for women especially due to their role as food providers and caretakers. In most of the world, women grow food, for example, in Africa women produce 80 per cent of it.<sup>21</sup> Women also gather fuel and prepare their meals. When war destroys the vegetation, these tasks become difficult if not impossible.

Thus women in situation of war and conflicts are affected in different ways and have reacted differently. The intensity of the suffering varies from circumstances. Women's class, status, race, ethnicity, sexuality

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<sup>21</sup> Vandana Shiva, *Staying Alive* (New Delhi, Vikas, 1988), p.39.

and nationality affect their experiences. But the bottom line becomes clear that women are the worst hit in any type of conflict.

### **Women's Response to Conflict**

Women have reacted in different ways to conflicts. They have many a times broken the stereotype image of being Pacifists and joined the wars as soldiers. For eg. the Chinese communists in the 1930's and 1940's, the African National Congress in South Africa, in Vietnam in 1960's and 70's, Elsalvador in 1980's, Srilanka in civil strife etc. But once the conflict comes to an end these women have been observed taking up traditional roles. Women in combat have mostly been given feminine roles like nurses in military units etc. Women have also played a role in sending and supporting conflict. Women and girls have also urged their husbands and boy friends to join the conflict. Mothers have been appealed to sacrifice their sons. Women have also created by producing more children to replenish the male population lost in the war. Women in some states such as Croatia in the Former Yugoslavia have outlawed about on in war time.<sup>22</sup> Women have reacted by mourning and resisting war. They have developed national organisations as well as transnational groups such as Women's International League for Peace. (WILFP) World Women Parliamentarian's for Peace (WWPPF) and the International Feminist Network (IFN).<sup>23</sup>

### **Human Rights Approach to Conflict: A Need**

A human rights approach to the study of conflict becomes important because gross violations of human rights take place in the country of origin, refugees are created only because of these violations. In a state of

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<sup>22</sup> Jeniffer Turpin, *op.cit.*, n.9, p.4.

<sup>23</sup> *ibid.*, p.5.

emergency, the national law of the state stands suspended, institutions collapse and thus people cannot take recourse to systems for redressal of social justice which would otherwise be accessible to people in a non conflict situation. And hence International law has to intervene. Secondly, the enjoyment of rights by individuals is related to the citizenship of a state, the question then arises what about the minimum rights of the stateless people? Don't they deserve the bare minimum?.

International human rights provides basic normative structure where such a traumatized lot can take recourse to because international human rights are transnational in nature. Moreover, gender related features may influence access to remedies. Legal provisions and cultural norms may constrain a woman from reporting sexual violence or from receiving the assistance needed. Thus a human rights approach to the engendering of conflict to about the fundamental entitlements of all women to live in. A human rights approaches one of the few concepts which speaks about international activism and concerns about the life of the people globally. Despite the fact that both humanitarian law and refugee law are supposed to deal with situations of conflict and the subsequent refugee experiences, the human rights standards are those that subsume both the humanitarian and refugee law.

### **Human Rights: Some Perspectives**

One has to understand what is meant by human rights? Why is it important to address human rights of women separately? When is a right said to be violated? What are the basic international instruments which guarantee human rights of women? etc.

Human rights are those moral rights which are owed to each man or woman by every man or woman solely for reasons of being human. Human

rights are distinguished from other moral rights in possessing universality, individuality, paramountcy, practiceability and enforceability.<sup>24</sup> There are the fundamental entitlements which every individual should enjoy by virtue of he being a human being. It is the notion that human beings have a right because they are human beings and not because they are the citizens a state A or B. The United Nation Universal Declaration of Human rights declares ‘all human beings are born free and equal in dignity and rights’.

Milne has a problem with the Universal Declaration because, according to him, it poses a paradoxical situation, wherein it values to be a statement of human rights irrespective of the particular social and political order but, on the other hand, goes on to enumerate a detailed list of rights which presupposes the values and institutions of a certain kind of social order, viz. liberal democratic. Milne suggests a solution to the paradox by scrapping the Universal Declaration of Human Rights and to substitute a detailed list of seven basic rights which all men owe to their fellows – to life, to respect for one’s dignity as a person, to be dealt with honesty, to have one’s interest fairly considered, to be free from arbitrary coercion and interference and to have one distress relieved.<sup>25</sup>

Though Milne’s argument cannot be totally disregarded, and the rights enumerated by him are the most basic rights, one cannot ignore the sanctity of the United Nations and the applicability and enforceability mechanisms associated with the United Nations.

The concept of human rights emerged from the much earlier conception of natural law which was a derivative element in the medieval Christian doctrine of natural law. Natural rights were the moral expectation

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<sup>24</sup> L.J. Macfarlane, *The Theory and Practice of Human Rights* (London, Templesmith, 1985), p.3.

<sup>25</sup> *ibid.*, pp. 4 and 5.

that men had, that others should behave towards them in accordance with the requirements of natural law. Hugo Grotius who is considered to be a father of International Law gave a new direction to the concept by producing a strong theory of natural rights as a foundation of political discourse and political understanding, instead of a major derivative of natural law.

It becomes important to clarify that though human rights are rights of individuals, they are first and foremost rights against society rather than rights against other individuals. Since it is the society's responsibility to ensure that rights concerned are given legal force and upheld against all bodies within the community. In modern times, the responsibility lies with the government.

### **Women and International Human Rights Law**

The international human rights law has not been applied effectively to redress the grievances, the disadvantages and injustice experienced by women. In this sense the respect for human rights fails to be effective. The global Feminist Movement has tried to grapple with the idea of the rights of women. The problem is that issues concerning the rights of women are considered to be issues within the private domain of an individual and therefore ones which cannot be intervened by the state. Secondly, in the third world context women's rights are looked at as an alien product of Western enlightenment. One cannot ignore the influence of Western Enlightenment on third world Feminism, but what is important is the recognition that the rights of women have a universal applicability and hence one cannot guarantee it in one society and discard it in the other. Thirdly, when one looks at the international instruments related to human rights one finds a strong gender bias where most of the laws are not only formulated by men but also interpreted by them. The founding theorists of

international law were all male and did not recognize the political nature of private life. In addition, to all this state was the primary sovereign actor in International law. Interventions in the activities of the nation state were absolutely unacceptable until a few years ago. This sovereignty assured that the community 'private life located within the jurisdiction of the nation state were secluded from scrutiny.'<sup>26</sup>

What becomes important here is to realize the fact that instead of discarding issues of violation of rights as personal and cultural it becomes important to realize that it is profoundly political. The victim is chosen because of their gender. As Louis Hees rightly states. 'This is not random violence .. the risk factor of being a female'. It results from the structural situations of power and domination between men and women in society. Violence against women is central to maintaining those political relations at home, at work and in all public spheres. Female subordination runs so deep that it is viewed as inevitable or natural rather than a politically constructed reality maintained by patriarchal interests, ideology and institutions.

The physical territory of this political struggle over what constitutes women's human rights is women's bodies.<sup>27</sup> The physical abuse of women is a reminder of this territorial domination. This failure to see the oppression of women as political results in the exclusion of sex discrimination and violence against women from the human rights agenda. The physical abuse is accompanied by other forms of human rights abuse such as slavery (forced prostitution), sexual terrorism (rape), imprisonment (confinement at home) and torture (systematic battery). This raises once

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<sup>26</sup> Belgrade Study Circle (ed.), *The Politics of Human Rights* (London, Verso Publisher, 1999), p.236.

<sup>27</sup> Hillary Charlesworth, "What are Women's International Human Rights" in Rebecca Cook (ed.), *Women, Rights in International Law* (Philadelphia, Philadelphia University Press), 1995, p.59.

again the question of state responsibility for protecting women's human rights.

Here it becomes important to understand what is implied by International human rights of women. According to Hillary Charlesworth, at one level it refers to those international instruments that deal specifically with women, at another level it implies the discrimination based upon sex which are found in the UN charter, the UDHR, and in general human rights treaties including the International Covenant on Civil and Political rights, the International Covenant on Social Economic and Cultural rights (ICESCR). The CEDAW or Women's Convention defines discrimination as

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'any distinction, exclusion or restriction made on the basis of sex which has the purpose or the effect of impairing or nullifying the recognition of, enjoyment or exercise by women, irrespective of their marital status on the basis of equality of men and women, of human rights and fundamental freedom in the political, social, cultural civil or any other field.<sup>28</sup>



Here it becomes important to comment that the emphasis is on non discrimination and not an empowerment. The yardstick here is the basic difference between man and woman. While non discrimination constitutes an important component of international law it is not an adequate category to address the subordination of women.

Noureen Burrow sees the definition of women's rights as the mean to move beyond the limitation of non discrimination focus of on women's international human rights law. She identifies rights associated with reproductive rights and children as central to the category of International Human Rights law. She identifies rights associated with reproductive rights

<sup>28</sup> UN, *Convention of Elimination of Discrimination Against Women*, 2000 (DPI/993/RPV 2/WOM-99), p.1.

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and children as central to the category of International human right. Other potential minimum include the right to a minimum wage for work within the home or in the subsistence farming and the right to literacy. It basically means addressing all rights to address the disadvantages women face.<sup>29</sup> Another strategy to address the subordinate position of women is to understand it as the product of domination of women by men-inequality as sexual in nature. The most famous exponent of this concept is Mac Kinnon. She argues that the common failing of theories associating equality with equal treatment is that they implicitly accept a male yardstick women are either the same or are different from the male noun. Mac Kinnon views social relations between men and women as organised so 'that men may dominate and women must submit'. The law she says keeps women out and down by preserving a hierarchical system based on gender.

Mac Kinon describes an alternative legal analysis of inequality for which the central question always is whether the policy or practice in question integrally contributes to the maintenance of an underclass or a deprived position because of gender status. The law should support freedom from systematic subordination because of sex rather than freedom to be treated with regard to sex. It basically involves looking at that what we have been trained not to see (identifying the invisible). Mac Kinon argues that the Feminist project in law is to legitimize the real injuries women suffer in order to make them unacceptable. In this way, gender relations can be slowly transformed. Using Mac Kinnon's analysis other Feminist lawyers have described discrimination in institutions such as the work place where practices are more often compatible with culturally defined male life partners than female ones.

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<sup>29</sup> Rebecca Cook, "Women's International Human Rights Law: The Way Forward" in Rebecca Cook (ed.), *Women's Rights in International Law* (Philadelphia, Philadelphia nUniversity Press, 1995), p. 11-12.

## **What Constitutes Discrimination Against Women?**

The understanding of what are human rights of women is incomplete without an understanding of what constitutes discrimination against women. Though this understanding varies from state to state, depending upon the cultural underpinning of that particular state, the legal obligation to eliminate all forms of discrimination against women is a fundamental tenet of International Human Rights Law. Sex is a prohibited ground of discrimination in the UDHR, ICCPR, ICESCR and the three regional human rights conventions viz. the European Convention, the American Convention and the African Convention on human and peoples rights.

There are two approaches to clarify what constitutes discrimination against women in international human rights law. One is through the development of general comments or general recommendations by the committees established under the different human rights conventions.<sup>30</sup> The first approach is the 'similarity and difference' approach. based upon the liberal theory of Feminism which attempts to realize the equal treatment guaranteed by existing law and thereby discounts the intrinsic differences between men and women. This theory views difference as discrimination. But it has to be realized that not every differentiation of treatment constitutes discrimination. This approach is again objected on the count that it constitutes a male standard of equality and renders women as copies of their male counterparts. In this model, women are forced to believe that either they are same as men and therefore should be treated the same, or that they are different and therefore should be accorded special treatment. The model does not allow any questioning of about the ways in which laws, cultures or religious traditions have maintained the disadvantages of

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<sup>30</sup> *ibid.*, p.13.

women on the extent to which institutions are male defined and built upon male conceptions of challenges and harms.

The other approach to determine discrimination against women is put forward by Kathleen Mahoney. According to her, the understanding of discrimination against women evolves from insights, perspectives and empirical information on how women are subordinated by different legal, social and religious traditions. Standards for determining such discrimination must be developed accordingly.

As Mahoney explained:

"Systematic discrimination or inequality of conditions, the most damaging form of discrimination cannot be addressed via the rule based sameness of treatment approach. Indeed, the use of this model makes systematic disadvantage invisible. By structuring equality around the male comparator the assumption is made that equality exists and from time to time, individuals will be discriminated against. The persistent disadvantage women suffer across the board because of societal biases observed.<sup>31</sup>

The question then becomes can international human rights law support and deliver substantive equality?". She endorses the fact that international human rights law can if a test of discrimination is adopted that is based on powerlessness, inclusion and disadvantage rather than Sameness and difference.

When it comes to situations of conflict, the understanding of discrimination should integrate both these approaches of similarities and differences and also deprivation. While the difference based approach serves the purpose of showing how women will suffer more from a human rights violations than men will. The approach based on deprivation will enable us in understanding the subordination women face because of the

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<sup>31</sup> *ibid.*, p.14.

respective social cultural and religious traditions. Thus while analyzing the human rights violations in conflict situations one has to integrate both the approaches.

### **Cultural Relativism v/s Universalism Debate**

This is a major paradox which women in the third world especially in a fundamentalist state have to face and that is of the tension between universality and cultural relativism. The notion of universal application are undermined by the demands for priority accorded to diverse cultural and religious tradition. Despite the fact that almost 165 states are a party to the women's convention,<sup>32</sup> it is one of the human rights instruments with the most reservation,<sup>33</sup> wherein if the law clashes with the religious and cultural values of a particular society, the personal law of that particular group supersedes the universalist claim of that particular law. This is true especially in relation to Islamic states. Here it becomes important to understand the political nature of this religious reservation. The versions of Islamic laws vary dramatically in terms of their treatment of women and are subject to revision and abrogation.<sup>34</sup> CEDAW reservations involving Islam need to be seen as the product of skewed political processes that give men a monopoly of power and include input from precisely that segment of the population that will be most affected by the non-compliance of the CEDAW. Some of the countries like Pakistan, Afghanistan, Iran, Kuwait, Algeria are the most egregious violators of religious freedom in the world.

The other dilemma facing those who wish to close the gap between cultural relativism and international human rights in what is often termed

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<sup>32</sup> Christine Chinkin, "Cultural Relativism and International Law" in Courtney Howland (ed.), *Religious Fundamentalism and Human Rights of Women* (London, Macmillan, 1999), p.55.

<sup>33</sup> Jennifer Turpin, *op.cit.*, n.9, p.14.

<sup>34</sup> *ibid.*, p.56.

as Law vs Anthropology debate.<sup>35</sup> Although many lawyers view cultural practices as violating specific international norms and therefore request governments to outlaw the practice and criminalize the offense, anthropologists are more wary of passing a judgement. Even practices like sati and female genital mutilation have their defenders. Who say that these practices are community rituals and aberrations involving joy and affection.

The dynamics of this universality vs cultural relativist debate needs to be addressed. Art 5 of CEDAW imposes a positive duty on state parties to transform culture, value systems etc. State parties that sign CEDAW must argue to change their cultural practices so that they conform with these international standards. This is one of the reasons why many states make reservations to art 5. since they donot wish to make the concession that their cultural norms must conform to universal human rights.

We are of the opinion that culture is not a static, unchanging, identifiable body of information against which human rights may be measured for compatibility and applicability. Rather cultures is a series of constantly contested and negotiated social protects whose meaning are influenced by the power and status of their interpreters and participants. Furthermore, culture is only a constituent of the complex web of power relationship that circumscribe our existence. As Arif Pirlik notes. 'A critical reading of culture, one that exposes it as an ideological operation crucial to the establishment of hegemony requires that we view it not merely as an attribute of totalities, but as an activity that is bound up with the operation

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<sup>35</sup> Ann Elizabeth Mayer, "Religious Reservations to the Convention on the Elimination of All Forms of Discrimination Against Women: What do They Really Mean?" in Courtney Howland (ed.), *Religious Fundamentalism and Human Rights of Women* (London, Macmillan, 1999), p.106.

of social relations that expresses contradiction as much as it does cohesion.<sup>36</sup>

### **Understanding the Legal Framework**

The understanding of the legal framework, which relates to women in conflict is very important because only when one understands the legal framework one can address the lacunae at the implementation level. Violations of the human rights during both international and national conflicts falls under the International humanitarian law. But an understanding of International humanitarian law is incomplete without an understanding of human rights law and refugee law. An understanding of all the three is undertaken along with a critique of the same to show why it is important to go beyond these three laws and think about women in conflict more seriously.

### **Treatment of Gender Under Humanitarian law**

Humanitarian law is the body of the international legal treaties in the practice of the state that regulates hostilities in situations of armed conflicts.<sup>37</sup> Armed conflict is the preferred legal term rather than the term war because humanitarian law applies irrespective of whether there has been a formal declaration of war. Different sets of rules apply depending upon whether a conflict is internal i.e civil war or international. The principle sources of the humanitarian law are the four Geneva Convention of 1949 and the two protocols of 1977.

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<sup>36</sup> Arati Rao, "The Politics of Gender and Culture in International Human Rights Discourse" in Julie Peters and Andrea Wolpers (eds.), *Women's Rights Human Rights: International Feminist Perspective* (New York and London, Routledge, 1999), p.326.

<sup>37</sup> Julie Mertus, op.cit., n.7, p.79.

Some of the relevant provisions of the Geneva Convention that deal with gender based violence are:

- (a) Geneva Convention IV related to the protection of civilian person, Art 27 'women shall be specially protected against any attack on their honour, in particular against rape, forced prostitution or any other form of indecent assault.
- (b) Additional Protocol II of 1977 Art 76 (1) Women shall be the object of special respect and shall be protected in particular against rape, forced prostitution and any other form of indecent assault.
- (c) Additional Protocol II of 1977, Art 4 (2), (e) prohibits outrages upon personal dignity in particular against humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault'.
- (d) The statutes of the War Crime Tribunal for the former Yugoslavia and Rwanda specifically include rape in its list of crimes against humanity.<sup>38</sup>

It is important to mention art 3 which is common to all the Geneva Conventions and which applies to internal conflicts. According to article 3, all parties to the conflict, are required to treat 'humanely' all persons taking no active part in hostilities. Adverse distinctions in treatment based on race, colour, religion or faith, sex, birth or wealth or any other similar criteria are prohibited. Art 3 also prohibits the following acts. Violence to life and person in particular murder of all kinds, mutilations, cruel treatment and torture taking of hostages, outrages upon personal dignity, in particular humiliating and degrading treatments.

Despite the fact that there are provision which deal with gender based discrimination in the 1949 convention and the protocol. These rules do not come under the category of grave breaches. Only grave breaches are

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<sup>38</sup> *ibid.*, p.80.

subject to action and hence just having a rule in writing is not enough. My major argument is that all this is gendered in the sense that rules dealing with women are regarded as less important than others and their infringement is not taken seriously.<sup>39</sup> Secondly, the protection of women from sexual violence are couched in terms of their honour dignity etc. In reality, a woman's honour is a concept constructed by men for their own purposes – it has little to do with women's perception of sexual violence. Thirdly, what is more striking is the fact that these provisions protect women in terms of their relationships with others, such as when pregnant or as mother's and not as individuals in their own right.

### **Women Under the International Refugee Law**

The other branch of humanitarian law that emerged after World War II is called the Refugee Law. In 1950, the UN General Assembly established the United Nation's, High Commissioner for Refugees.<sup>40</sup> (UNHCR), to address the post-war refugee crisis in Europe. The UNHCR focussed on transnational movement of people's across borders in all regions. One of the main debates on gender based violence and abuse is whether a person facing such treatment is qualified as a refugee under the terms of 1951 Convention and its Protocol.

Given that protection under these agreements is linked to refugee status the extension of protection to include gender based violence and abuse, however constructive appear to leave displaced and otherwise imperilled women without comparable protection. Nonetheless, arguments favouring a more inclusive interpretation of refugees have had an impact

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<sup>39</sup> Judith Gardham, "Women and the Law of Armed Conflict: The Human Rights Remedy", *International and Comparative Law Quarterly*(London), vol.46, no.2(1997), p.56.

<sup>40</sup> Julie Mertus, *op.cit.*, no.7, p.81.



upon the treatment of all women in conflict and on broader issues pertaining to gender.

The main stumbling block to recognition of gender based violence has been identification of a recognised 'persecution group' under the Refugee Convention.<sup>41</sup> Advocates of women refugees have made three types of arguments in this regard. (a) states should classify gender cases under one of the existing categories of the refugee definition (for example, religious persecution or persecution based on political opinion), (2) Women who face a certain kind of persecution for failing to abide by social norms should be deemed 'another social group' or (3) gender should be explicitly included as a ground for persecution.<sup>42</sup>

The UNHCR handbook on procedures makes no specific reference to women. In defining 'social group', UNHCR states only that a particular social group normally comprises persons of similar backgrounds, habits social status and that mere membership in a social group is not enough to substantiate a claim for refugee status.<sup>43</sup> The handbook does not set forth specific criteria indicating what would substantiate such a claim. The handbook also notes that there is no universally accepted definition of persecution.

James Hathaway, one of the advocates for women refugees has pointed out that secure and systematic discrimination against women of a sufficiently significant degree may amount to persecution against women

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<sup>41</sup> *ibid.*, p.83.

<sup>42</sup> A.B. Johnson, "The International Protection of Women, Refugees - A Summary of Principal Problems and Issues", *International Journal of Refugee Law* (London), vol.9. no.4 (1989), p.24.

<sup>43</sup> Nasreen Mahmud, "Crimes Against Honour: Women", *International Refugee Law* (London), vol.9, no.4 (1996), p.15.

thereby validating a claim for refugee status.<sup>44</sup> In such circumstances, women are completely left out of the power structure of their home country and are unable to vindicate their human rights at home.

In 1985, the Executive Committee of the UNHCR, left the recognition of gender based persecution up to the states themselves.<sup>45</sup> In 1988, the Executive Committee, issued its second report on refugee women in which it advocated the inclusion of refugee women in the development of its guidelines specifically pertaining to refugee women. The policy on refugee women was adopted in 1990. Through a series of organizational goals, policy objectives etc. The UNHCR Executive Committee adapted its policy on refugee women which was a major step.

In 1991, the UNHCR adopted, the guidelines for the protection of refugee women. These guidelines provide a comprehensive frame of reference to the issue of protection. The guidelines establish procedures and practices for field workers and other personnel to sensitize the asylum process to the experience of women refugees, including education of administrators and judges, specific training on gender issues for translators and interviewers, and increased hiring of women in all aspects of asylum determination.<sup>46</sup>

The guidelines also suggest changing the design and location of refugee camps to provide greater physical security, reducing the use of closed facilities or detention centers and ensuring women's direct access to food and other services. While the guidelines have no formal status, they are to direct the parties of UNHCR and as implementing partners. These

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<sup>44</sup> Julie Mertus, *op. cit.*, n.7, p.84.

<sup>45</sup> UNHCR, *Sexual Violence Against Women: Guidelines on Prevention and Response* (Geneva, UNHCR, 1995).

<sup>46</sup> Julie Mertus, *op.cit.*, n.7, p.86.

assessment mentions only superficially or omits completely issues which are considered essential in UNHCR's current programming for women. These issues include sexual violence, physical protection, gender based persecution, legal awareness, training, reproductive health, and female genital mutilation.

The UNHCR guidelines for the protection of refugee women were augmented and refined in 1995 with the adoption of the UNHCR Report on Sexual Violence Against Women: Guidelines on Prevention and Response'. This report defines sexual violence among refugees, outlines preventative measures for standing such violence, offers practical guidelines on responding to incidents and summarizes legal aspects with respect to violence. The most striking feature of these guidelines is the organizing of inter-agency meetings between UNHCR, other related organisations and governmental officials and the refugees themselves to develop a plan to of action to prevent sexual violence. These provisions along with the guidelines for the protection of Refugee women, if systematically implemented hold great potential to prevent sexual violence. Because of the growing awareness at the International agency level were developments in the Canadian and American jurisprudence reflecting gender specific differences in forms and patterns of discrimination.<sup>47</sup>

To the extent that these provisions are applied to internally displaced women and other women in conflict situations, the guidelines have profound potential. The unanswered question lies in their implementation and extension beyond those who fall within the definition of refugee to others in need of such as internally displaced and war imperilled women.

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<sup>47</sup> *ibid.*, p.86.

## **Human Rights Law and Women**

The Human Rights Law consists of various declarations drafted at different points of time under the UN. These Human Rights instruments complement and strengthen and to some men exceed the protection derived from the norms from the norms of the Geneva Convention and other humanitarian instruments oriented towards conflicts. The three major instruments of the United Nations are: the Universal Declaration OF Human Rights (UDHR), International Covenant or Civil and Political Rights (ICCPR), and the Women's Convention (CEDAW).

### **Universal Declaration of Human Rights (UDHR, 1948)**

This declaration is regarded as a landmark in the history of the United Nations. This declaration not only constitutes an authoritarian interpretation of the charter delegations but also a binding instrument in its own right representing the consensus of the international community on human rights which each of tits members must respect, promote and observe. The practice of the United Nations promotes this obligation. It is important to bear in mind that the declaration makes no distinction between times of peace and time of war. It sets forth the rights and freedoms which it proclaims as belonging to 'everyone' to all' and formulates prohibition by the phrase that 'none' shall be subjected to acts of which the declaration disapproves.<sup>48</sup> The declaration proclaims that the universal and effective recognition of rights and freedoms shall be served.

The preamble of the Declaration makes it clear that the member nations of the UN were quite conscious of the fact that 'recognition of inherent dignity and of equal and inalienable rights of all members of the

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<sup>48</sup> Mantaz Djmohia, *Dignity and Honour of Women's Basic and Fundamental Human Rights*, (The Hague and London, Nijhoff Publishers, 1982), p.79.

human family is the foundation of freedom, justice in the world. They have therefore pledged themselves to achieve in co-operation with the United Nations the promotion of universal respect for an observance of human rights and fundamental freedoms.

Some of the Relevant provisions of the Declaration are:

Art.1: 'All human beings are born free and equal in dignity and rights'.

Art 3. 'Everyone has a right to life, liberty and security of the person'.

Art.5 No one shall be subject to torture or to cruel inhuman or degrading treatment or punishment.

Art.12. 'No one shall be subjected to arbitrary interference's with his privacy.. nor to attacks upon his honour and reputation, everyone has the right to the protection of the law against such interference or talk.'<sup>49</sup>

The language of the articles mentioned above guarantees equality in rights of human beings. The articles uses the word 'shall' thereby prohibiting inhumane and degrading treatment and attack upon their honor.

The right guaranteed under such declaration are absolute. It may be mentioned here that the only limitation imposed upon the exercise of such rights is Article 29 (2) which reads.

'In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for purposes of securing due recognition and respect for the rights and freedoms of other and of meeting the just requirements of morality public order and the general welfare in a democratic state'.

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<sup>49</sup> "Universal Declaration of Human Rights Bulletin" in *International Humanitarian Law and Refugee Law* (New Delhi), vol.3, no.2, 1989,p.288-294.

On the basis of this article it might be argued that a state of emergency might justify certain temporary limitations, on the exercise of some of the human rights proclaimed in the declaration. One thing is certain that even in an emergency it is difficult to envisage invasion on the right to dignity which is one of the most fundamental human rights. Though the declaration does not specify clearly as to which of the fundamental rights cannot be abrogated even in emergency, yet the nature of the limitation or derogation from the right under the declaration can be ascertained with the help of the language of art 4(2) of the International Covenant on Civil and Political Rights (ICCPR). The purpose of Article 29(2) of the Declaration and Art 21(2) ICCPR is to make some of the human rights guaranteed absolutely inviolable.

#### **International Covenant on Civil and Political Rights: (ICCPR 1976)**

Recognition of inherent dignity and of equal and inalienable rights of all members of the human family is further endorsed in the International Covenant on Civil and Political rights.

The important provisions of the Covenant are Art 7. & 17.

Art 7 Provides:

' No one shall be subjected to torture or to cruel, inhumane or degrading treatment or punishment'

Art17

(1).' No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondences, nor to unlawful attacks on his honour and dignity.

(2) Everyone has the right to the protection of the law against such interference or attacks.<sup>50</sup>

Rape being an attack upon honor of women is clearly an act prohibited by Art 7 and 17 of the Covenant. The state parties to the covenant are obligated to ensure protection against cruel, inhuman or degrading treatment and alteration on the honour of the person.

Art 4 of the covenant provides for those rights which should be provided to women in case of national emergency.<sup>51</sup>

Art 4 of the covenant provided:

'In times of public emergency, which threaten the life of the nation and the evidence of which is officially proclaimed, the state parties to the present covenant may take measures derogating from their obligation under the present covenant to the extent strictly required by the exigencies of the situation provided that such measures are not in consonance with their obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion and social origin'.

However, some of the rights are considered by the covenant to be essential that no derogation from them may be made even in time of public emergency. These rights are:

- (1) the Right to life (Art 6),
- (2) the Right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment (Art.7).
- (3) the prohibition of slavery and servitude (Art 8, para 12).

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<sup>50</sup> Op.cit., no.50, p.87.

<sup>51</sup> "International Covenant on Civil and Political Rights Bulletin" in *International Humanitarian Law and Refugee Law* (New Delhi), pp.310-315.

- (4) The prohibition of imprisonment merely on the grounds of inability of fulfill a contractual obligation (Art 16).
- (5) The right of everyone to recognition as a person before the law (Art. 16).
- (6) Freedom of thought, conscience and religion (Art 18).<sup>52</sup>

Under art 4 (2), it is stated explicitly that there can be no derogation from art 7. Which prohibits torture on cruel treatment'. Under these provisions the failure of the state to protect women from rape during emergencies would amount to a violation of Article 7 of the Covenant. The guarantees provided under art 4 are absolute and wider in scope.

#### Convention for the Elimination of Discrimination Against Women (CEDAW)

Though this convention does not provide special rights for women in conflict situations. The principles embodied in this convention apply both in peace time and in war. By committing to the convention states commit themselves to undertake a series of measures to end discrimination against women in all its forms including:

- to incorporate the principle of equality of men and women in their legal system, abolish all discriminatory laws and adopt appropriate ones prohibiting discrimination against women.
- To establish tribunals and other public institutions to ensure the effective protection of women against discrimination.
- To ensure elimination of all acts of discrimination against women by persons, organisations and enterprises.<sup>53</sup>

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<sup>52</sup> *ibid.*, p.309.

<sup>53</sup> *op.cit.*, no. 30, p.1.



This convention provides the basis for realising equality between women and men through ensuring women's equal access to, and equal opportunities in, political and public life - including the right to vote and to stand for elections as well as education, health and employment. State parties agree to take all appropriate measures, so that women can enjoy all their human rights and fundamental freedoms.

The convention is the only human rights treaty which affirms the reproductive rights of women and targets culture and tradition as influential forces shaping gender roles and family relations. It affirms women's right to acquire, change on return their nationality and nationality of their children. State parties also agree to take appropriate measure against all forms of traffic in women and exploitation of women.

The Committee on the Elimination of Discrimination Against Women is the monitoring body of the Women's Convention. The committee is composed of twenty three experts serving in their personal capacities. Their main task is to consider state compliance with the convention, largely through the review of the periodic country report.

But the major problem with human rights law is that it has systematically excluded the experiences of women. The core of this critique points out to the inherent masculinism of much thinking about international human rights. Essentially, men have been the measure and the standard for establishing appropriate, fair and reasonable behaviour. Moreover, issues of women rights are considered to be less important and women have been considered as second class citizens.

International human rights law, humanitarian law and refugee law as it has evolved over the centuries and particularly in the period since World War II offers a framework for policies and practices related to gender in

humanitarian crisis. Though the International Human Rights framework has been criticized at various points in its capacity of being supplementary to national law, with whom the primary responsibility for implementation of binding international interest rests. One cannot also ignore Ashish Nandy's challenge to the rights discourse, which is the best articulated response to modern statehood which through the use of law, attempts to ensure equality.<sup>54</sup> It is important to examine his argument to recognize the type of ideological barriers that nations of the south face when they talk about women's rights as human rights.

The speeches and pamphlets of religious and ethnic dignitaries are self evident in their rejection of the west, including rights in what may be considered the orientalist trap. But Nandy is more sophisticated articulator of an activist state intervening to impose a mode of equality based on the values of the universal declaration of human rights. According to his argument, the root of the crisis is between the traditions of Indian civil society and the colonial inheritance of the modern nation state run on Weberian Laws, with the bureaucracy and market being the central organizing features.

The competition among political parties, the struggle for state resources and the supremacy of state power are what Nandy points as the main reasons for what Atut Kohli calls, 'the crisis of governability'. Nandy is not opposed to the substance of human rights, which he feels is the root of popular culture, and the humanistic face of civil society. However, he is totally opposed to the mechanism employed for its enforcement - the law and the paternalistic state. He argues instead for strengthening human rights values in civil society.

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<sup>54</sup> Radhika Coomaraswamy, "To Bellow like a Cow: Women, Ethnicity and the Discourse of Rights" in Rebecca Cook (ed.), *Human Rights in International Law* (Philadelphia, Philadelphia University Press, 1995), p.42.

Nandy's point of view has been criticized as a romanticized view of the Indian past and Indian popular culture. The rigors of the caste system or sex based oppression cannot be laid down at the doorstep of colonial India. Nandy is correct in one sense that unless these human rights values take root in civil society and unless civil institutions and non-governmental organisation (NGO's) take of the course then women's rights as human rights will have no economic in the social institutions concerned.<sup>55</sup>

Where Nandy is wrong is that the law is not only an empty call but also a catalyst for mobilization. Even if the future lies in civil society, there have to be standards by which one can hold individuals and states accountable. In addition, in some rare instances, the courts are also galvanized into action. In such a context this artificial separation into civil society where the popular will resides and the state where the legal and bureaucratic will resides may create more problems in the realization of women's rights. It is only a combination of the two, coming together at a particular historical moment that results in change, creativity and social action. After enactment, forces in civil society have to act as watch dogs to ensure that the society is necessary for creating the condition for law to be relevant. It is also useful in ensuring that the law is enforced. But, at the same time, it has to be recognised that without law, any human rights activist will only be tilting at windmills.

Thus one cannot discard the value of universality of human rights. This chapter proceeds on the basis that using an international forum can sometimes help to bring about change. While not attempting to argue that all claims that women might wish to advance can be accommodated within the 'human rights framework' or even within that of the specialized instrument and bodies dealing with women's rights, the operating premise

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<sup>55</sup> *ibid.*, p.55.

of this chapter is that rights framework and the internationalization of a claim as a human right claim may provide some assistance in pursuing one's goals. One realizes the difficulties from the experiences of activists in pursuing a rights based litigation strategy at the national level but this chapter advocates an essentially instrumentalist approach to deployment of international human rights law and procedures. Here it also needs to be clarified that more emphasis is given to violations that can be described as gender specific and how both mainstream and gender specific mechanisms can be used.

## CHAPTER II

### HUMAN RIGHTS VIOLATIONS OF WOMEN IN THE COUNTRY OF ORIGIN (AFGHANISTAN)

This chapter aims at looking at the Afghan conflict and the violation of the rights of women in this conflict. But the understanding of a conflict is incomplete without the understanding of the distinct social, ethnic, cultural and economic characteristics of the state. This chapter is divided into three parts - the first part will discuss the nature of the state and the role of women therein. The second will look into earlier attempts at modernization. The third part will assess the conflict and its impact on women.

Afghanistan is a landlocked country in Central Asia bounded by Pakistan, Iran, Turkmenistan, Uzbekistan, Tajikistan and China. The population of Afghanistan is approximately 15-20.<sup>1</sup> million. Its extreme ethnic heterogeneity, its linguistic, religious, kin-based and regional groupings along with its regional and international position has continuously impacted upon local politics and fragmented the population of Afghanistan.

Ethnicity remains a crucial issue in Afghanistan. The dominant ethnic group in Afghanistan are the Pashtuns who speak Pashto and are located in the southern part of the country, circling the Hazara area of Central Afghanistan. The second largest group is that of the Tajiks whose language, Dari/Farsi is the lingua franca of Afghanistan.<sup>2</sup> These two groups

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1. William Maley (ed.), *Fundamentalism Reborn: Afghanistan and Taliban*, (London, Hurst and Company, 1998), p.4.

2. Peter Marsden, *The Taliban, War, Religion and the New World Order*, (London, Karachi, Oxford University Press, Zed, 1998), p.5.

adhere to Sunni Islam. There are still others called Uzbeks and Turkmen in the north who are related to others of the same ethnic affiliation in Central Asia.

There are other smaller groups called the Aimaq, Baluch, Farsiwan, Nuristani, Qizilbash and Hazaras. Farsiwan and Nuristani, Qizilbash and Hazaras are Shia Muslims, but some among them belong to the Ismaili sect and a smaller number are Sunni.<sup>3</sup>

### **Society, Polity and Economy**

The basis of the social structure was the '*qaum*' (communal group) and Qabila (tribe).<sup>4</sup> Their social life revolves around the communal groups and the tribe. These social and political affiliations based on primordial ties have been structural impediments to nation-building and economic development. In this social structure, which may be termed tribal feudalism-ethnic, religious and tribal divisions have impeded class formation, maintained provincial patterns of local independence and hostility towards the central government and perpetuated the use of violence in place of political negotiations. Afghanistan's rugged physical environment serves to isolate communities and create micro-environments, which may lead different kin based groups within the same tribe and ethnic groups to use different modes of production.

Another important factor in the Afghan history has been the rural urban divide. According to Oliver Roy 'there are two Afghanistan's 'first there is the town (*Shahr*), the place of innovation, this is the natural

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3 Magnus & Naby, *Afghanistan: Mullah, Marx & Mujahidin*,(London, Harper Collins, )1998, p.8

4 Valentine Mogadham, *Modernizing Women: Gender and 43 in the Middle East*,(Colorado, Lynne Reinner, 1993), p. 208.

environment of the civil servant, the teachers, the soldier and the communists, all intellectuals and bear heads, held to be unbelievers and arrogant and secondly the province (*atraf*), the home of religion, tradition and values'.<sup>5</sup> Almost 85% of the population is in the rural areas and political power has been monopolized by a minority of urban elite<sup>6</sup> The game of politics is bound up with the state and it holds little significance for peasants. Who get news about what is happening in the town when they switch on the radio in search of music. The state exists at the periphery of society.

In the countryside the politics revolves around the struggle for local pre-eminence carried on by the Khans.<sup>7</sup> They strive to enlarge their patronage, to be deferred to as judges in local disputes and thus increase their wealth and extend family connections. The existence of a weak state in a pre-dominantly patriarchal and tribal society has had adverse implications for reform and development, as well as for advancement of women. Since 1920's the Afghan state has defined and institutionalized a non-tribal body called the *Loya Jirga* (Great Council) as the highest representative body of the Afghan state.

Thus, Afghanistan is a prototypical weak state,<sup>8</sup> in so much as the central authorities have been unable to realize their goals mainly in regulating social relations and using resources in a determined way. They have not been able to promote a feeling of nationalism because concepts like nation states and national identity are absent from much of the

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5 Oliver Roy, *Islam and Resistance in Afghanistan*, (London and New York, Cambridge University Press, 1986), p. 10.

6 Niloufar Pourzand, "Female Education and Citizenship in Afghanistan: A Turbulent Relationship" in *Women, Citizenship and Difference*, Davies and Pnina Werbner (eds.) (London, Zed Books, 1999), p.90.

7 Oliver Roy, op. cit., n. 5, p. 12.

8 Valentine Moghadom, op.cit., n. 4, p. 211.

population. Nationalism has been promoted primarily by the modernizing elites since the nineteenth century.<sup>9</sup>

The economy is based exclusively on subsistence agriculture with irrigated wheat as the major crop. Rainfed wheat and barley are grown on more marginal land. Before 1978, agricultural pastoralism comprised 60% of domestic production and employed 2/3<sup>rd</sup> of the labour. About 2.5 million people lived by nomadic pastoralism.<sup>10</sup> Almost 90% of the cultivable land was used for food grains to be sold by cultivators or sold in the domestic market. More than two thirds of the area sown in grain was devoted to wheat. Agriculture produced raw material like cotton for industry. Dried and fresh fruit was another major product both for domestic consumption and export. The scarcest agricultural resource was water and not land. Out of 12% land available for irrigation only half is cultivated.<sup>11</sup>

Land ownership is a favoured way of converting temporary income into secure wealth. More liquid forms of wealth are animals, precious metals (including jewellery and cash). Debt is unavoidable at certain points of time- marriage, a family crisis, a major investment, etc. during which families need money. Landowners, shopkeepers and some nomads charge interest as high as 50% despite strict prohibitions in the Quran against usury.<sup>12</sup>

### **Role of Religion**

The influence of Islam on Afghanistan cannot be underestimated. Aside from some tens of thousands of Hindus and Sikhs, plus a small

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9 *ibid*, p. 212.

10 Barnett-Rubbin, *The Fragmentation of Afghanistan: State Formation and Collapse in the International System*, (New Haven and London, Yale University Press 1995), p. 32.

11 *ibid*. p.33.

12 *ibid*. p. 34.



number of Armenian Christians and Jews in the major cities, all the people of Afghanistan are Muslims. They make up 99% of the population.<sup>13</sup> About 85% of the Muslims are Sunnis of the Hanafi school. The rest including the Hazaras, Qizilbash and some Farsiwan are Imami Shias like the dominant Shia sect in Iran. Some Hazaras are Ismailis. According to Barnett Rubbin, 'The Islam of Afghanistan is part of an entire civilization. Besides the classical heritage of the Quran, the civilization encompasses the poetry of Persia, the military feats of the Timurids, the Uzbeks and Mughals, the re-interpreted philosophy of the Greeks, whose heritage the Muslims kept alive when it was forgotten in Western Europe and all the arts of miniature painting, carpet weaving, architecture, jewellery, calligraphy of the Indo-Persian Islamic world.'<sup>14</sup>

Most of the analysts conclude that Afghan Islam is a unique combination of practices from the Shariah and the tribal customs, particularly Pashtunwali, the traditional code of the Pashtuns, who constitute about half the population. On certain issues Pashtunwali and Islam disagree. For example, the absence of inheritance rights for women is contrary to Islamic law, but is integral to the complex web of the tribal exchange system. Contrary to the Islamic ban on usury, there has been widespread usury, a practice that has kept rural households in perpetual indebtedness. In his study about reform in the family laws in Afghanistan, Kamali explains 'the link between Islam and tribalism stems from the fact that 'Islam itself was revealed in a tribal society'.<sup>15</sup> It is true that Islam challenged many of the traditions of the Arabs, yet Islam nevertheless left untouched many aspects of the prevailing tribal traditions. Tribalism

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13 *ibid.* p. 38

14 *ibid.*, p. 39.

15 Valentine, Mogadham, *op. cit.*, n.4, p.215.

therefore, survived under Islam and tribal customs continued to exist sometimes violating the laws of Islam itself

### **Women's Status in Afghanistan**

Given the ethnic, social political and economic structure, the understanding of women, their status, their role in the society becomes of utmost importance. Afghanistan is a case of 'Classic Patriarchy' as Kandiyoti calls it.<sup>16</sup> It is a patrilineal society where sons inherit the father's property and continue to work in it. Women do not have a right to inheritance which is contrary of the Quranic injunctions. Polygamy is allowed in Islam, provided a man can maintain all three wives and treat them equally. It was not a regular feature in Afghanistan because it was considered to be a luxury which only the moneyed class could afford because of the tradition of bride price (*Walwar*),<sup>17</sup> which the groom had to pay to the bride's father, which again was contrary to the principle of Islam because, Islam permits (*mahr*), which is a stipulated amount for the bride's social security which the groom pays in case a divorce takes place but this tradition was inverted in Afghanistan. Thus, daughters too act as an important political and economic resource because marriage agreements symbolize and cement alliances and because daughters' marriages bring a considerable bride price. Educated women in the cities did contribute to the family income.

The traditional view of individual gender-based sex roles in Afghanistan has developed within the structure of marriage and family. The most important duty of a man is to support and protect his family. His

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16 Deniz Kandiyoti, "Bargaining with Patriarchy", *Gender and Society*, vol. 3, September 1998, p.274-290.

17 Grant M. Farr and John G. Merriam (eds), *Afghan Resistance: The Politics of Survival*, (London and Boulder, West View Press, 1987), p. 105.

honour requires him to protect those things collectively known as '*namus*' - *Zan, Zar* and *Zamin* (Women, gold and land).<sup>18</sup> Thus men see women as an extension of their property and repository of their honour. Any sign of sexual misconduct, should knowledge of it become public could call for punishment ranging from social ostracism to death.

The social customs through which men control women are *pardah* (segregation and seclusion of women) and *Chadri* (veiling - *hijab* in Arabic); the extent of such practices varied according to ethnic group, social class and location.<sup>19</sup>

Men also exercised control over women in two crucial ways; by controlling marriage and property and by barring land ownership for women (contrary to Islamic law). Marriage has been a way of ending feuds, cementing a political alliance between families or increasing a family's prestige. Women are given for a bride price or in compensation to maintain a 'status hierarchy' among households. Marriages are normally decided at a very young age. The children do not have a say in it. The peculiar characteristic of an Afghan marriage is the marriage between first relatives. The marriage ceremonies are extremely extravagant.

Kamali sums up matrimonial problems in the following way.

“Extravagant marriage ceremonies and the payment of a huge bride price are included in the issues which have remained unresolved despite legislative efforts during the last sixty years. In a country where the per capita income is barely \$ 150, a marriage can cost anything upto \$20,000 or more. Marriage as a result has become the privilege of the wealthy which not only leads to intolerable discrimination against the poor but also seriously undermines the human dignity of women. Extravagant ceremonies also weaken the financial status of the family and tend to exacerbate poverty. They increase the dependence of the adults on

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18 Barnett Rubin, *op. cit.*, n. 10, p. 35.

19 *ibid.* p. 36

the family resources, thereby weakening their position regarding the exercise of their right of consent in marriage and their freedom of choice for a life partner. These excesses often bring about a wide disparity of age between the spouses and lead to resentment and frustration on the part of the married couple. And finally such extravagant practices contribute to the continuation of the tradition bound society and impede healthy social change.”<sup>20</sup>

This is one of the major reasons why all the modernizers spoke so much about marriage and all the practices associated with it rather than other aspects of the women's lives.

Afghan rural and poor women work extraordinarily hard, but their ability to contribute substantially to household survival or the family income takes place within a patriarchal context of women's subordination and intra-household inequality. In such a context, a woman's labour power is controlled and allocated by someone else, the products of her labour are managed by others and she receives no remuneration for the work performed. Among pastoralists also, women perform most of the tasks involved in transforming animal products (mainly milk and wool) into items of use. Among some nomads, they do much of the work required in the process of annual migration.

It is mandatory for all women to marry and they gain respect only through their sons and later in life acquire power as mother-in-law. In contemporary Muslim patriarchal societies, control over women is considered necessary in part because women are regarded as potential sources of *fitna*, that is disorder.<sup>21</sup> These and other patriarchal societies are characterized by an adverse sex ratio, low female literacy and educational attainment, high fertility rates, high maternal mortality rates and low female labour force participation in the formal sector.

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<sup>20</sup> Valentine Mogadham, *op. cit.*, n.4, p.238.

<sup>21</sup> *ibid.* p. 37.

With regard to education, also, outside the big cities the traditional attitude prevailed that schooling is of no value to girls and may even damage their morals. The first UNESCO mission to Afghanistan reported that to date only 3000 girls go to school in Afghanistan-probably less than one out of 200.<sup>22</sup> But towards the 1970s, Afghanistan listed a hike in enrollment in schools of boys and girls at different levels. In 1970, in Afghanistan, with its estimated population between 10 and 16 million, a total of 96,585 girls attended school constituting approximately 13.4 per cent of the country's pupils.<sup>23</sup> But it has to be mentioned that the enrollment of girls is higher in primary and secondary schools and most of them are formed to discontinue once they reach puberty.

Legally, the constitution of 1964 guaranteed equal rights to all Afghans without specific reference to women. This approach provided a basis for modernizing women's place in society, but its cautious wording offered no overt grounds for resistance. Thus the absence of any document legally endorsing the equality of both the sexes clearly has again worked to their disadvantage.

But women's role was not limited to solitary hard work. Although they could not participate in the public life of the mosque and village council, women had other way of participating in both religion and politics. Among Pashtuns women would encourage and shame men into defending *namus*. This capacity emerges at important historic junctures. The most famous such heroine is Malalai, who prevented a tribal army from retreating before the British at Miawand in 1880 and urged them to victory

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22 Louis Dupree & Linette Albert (eds), *Afghanistan in the 1970's*. (New York and Washington, Praeger Publishers, 1986), p. 158.

23 *ibid.* p. 158.

by bearing her veil aloft as a banner and shouting a famous Pashto couplet asking the men to get martyred in the battlefield.

The Afghan-Soviet war produced its own Malalai, the sixteen year old Nahid who was shot dead by a Soviet helicopter gunship while heading a student demonstration in February 1980. There are also reports in the 1980's that women resented male control of their sexuality. Bosen reports that women have rebelled, pursuing extramarital affairs and covering up one another's activities. But these are exceptions and go down in history and cannot be taken as indicators showing positive changes in the lives of women.<sup>24</sup>

Thus, though there are exceptions, the issue of women's rights in Afghanistan has been curtailed by two structural factors (i) patriarchal nature of gender and social relations deeply embedded in a tribal community and (ii) the existence of a weak state which has been unable to fully implement modernizing programmes. Though the social status of women in Afghanistan was not very good, it was more a part of the tribal culture and traditions of the society at that particular point of time. Religion was not used as tool for taking away their basic liberties. The women enjoyed considerable liberties and access to work and move depending upon which area (rural/urban), class, and ethnic groups they belonged to. Thus, despite the fact that the state was patriarchal, fragmented and tribal, the liberties of women were not curtailed in the name of religion. The state was much more tolerant

### **Early Reforms Concerning Women**

Though Afghanistan has a long history, the emergence of Afghanistan can be traced to 1747 when Ahmad Shah Durrani, a Pashtun

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<sup>24</sup> Valentine Moghadam, *op. cit.*, n. 238.

leader extended his influence over Afghanistan including its non-Pashtun areas. Abdul Rahman (1880-1901) another Pashtun leader expanded his jurisdiction to areas such as Hazarat and Nuristan.<sup>25</sup> He contributed immensely to Afghanistan's status as a nation state building up an army and state bureaucracy. He abolished a longstanding customary law that bound a wife not only to her husband, but his entire family as well. He also stressed the importance of registration of marriage (*sabt*) this was done to regulate the number of marriage. He also modified a law pertaining to child marriage, permitting a girl who had been given in marriage before she had reached puberty to refuse or accept her marriage ties when she attained full age. Still another law allowed women to sue their husbands for alimony on divorce in cases involving cruelty or non-support.<sup>26</sup>

King Habibullah, Abdul Rahman's son ruled from 1901 to 1919 and is known for his intensive modernizing efforts. He established the first western inspired secular schools for boys and declared education obligatory for all boys. He also attempted to set a limit to the expenses incurred during marriage. In 1922, he placed a ceiling on the amount that could be spent on marriage which varied according to class one belonged to. He also abolished the practice of keeping concubines and female slaves which was a trend in the upper class.

King Amanullah (1919-1921) is known as 'the Great Reformer'. He had the task of convincing the religious establishment that modern education and Islam were not incompatible and that the new schools he built did not threaten the sanctity or spiritual message of Islamic Afghanistan. He was influenced by his father-in-law Mohammad Tarzi

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25 Louis Dupree & Linette Albert, op.cit., n. 21, p. 13.

26 *ibid.*, p. 12.

who is Afghanistan's best-known intellectual of the twentieth century.<sup>27</sup> He believed that Islamic countries had to modernize while maintaining their independence and integrity. He introduced the decree of 1920, (*Farman -e- Elghai-i-Ghulami*) which put an end to the practice of keeping concubines (*suratis*) by giving the upper class a choice between officially marrying them or freeing them unconditionally. The new Family Law of 1921 abolished forced child marriage and the payment of bridal money. It also established restrictions on child marriage and inter-marriages between close kin were outlawed as contrary to Islamic principles which financially ruined families. He also started a bi-weekly paper and forum for the young Afghans and also appealed for compulsory education of all children including girls. According to Gregorian, he was the first person to take a stand on feminism dedicating a series of articles to famous women in history that described the many capacities of women.<sup>28</sup> In the fall of 1924, Afghan girls were given the right to choose their husbands, a measure that incensed traditionalists.

Amanullah's general programme to improve the position of women was promoted by his wife Soraya, who founded the first women's magazine-*Ershad-e-Niswan*.<sup>29</sup> In 1928, during the final months of his rule, Amanullah made a frontal attack on the institution of *purdah* or veiling and seclusion which hid half the Afghan nation. Because of his efforts and the personal example of queen Soraya, some 100 Afghan women had publicly discarded the veil by 1928.<sup>30</sup> A group of female students was also sent to Turkey for higher education and the Association for the Protection

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27 Valentine Moghadam, op.cit., n.4, p. 217.

28 Valentine Moghadam, "Nationalist Agendas and Women's Rights: Conflict in Afghanistan in the Twentieth Century", in Louis A. West (ed), *Feminist Nationalism*, (New York, Routledge, 1997), p.78.

29 Valentine Moghadom, op.cit., n.4, p. 220.

30 *ibid.* p. 222.



Women's Rights (*Anjoman-i-Hemayat-i-Niswan*) was established to fight domestic justice and take up a role in public life.<sup>31</sup>

The first organised resistance against Ammanullah's reforms was directed at a controversial administrative code, the *Nizam-Nameh*.<sup>32</sup> The cause of the Mullahs was taken up by Mangal tribe of the Khost region and soon assumed dangerous proportions. As the political situation deteriorated, Amannullah was compelled to cancel most of his social reforms and suspend his controversial administrative measures. But in the end all these concessions were to no avail. The rebels attacked Kabul and Amanullah left Afghanistan.

Not until 1950's were reforms attempted again. The 1949 Marriage law of 1971 was a further attempt to prohibit the practice of Walwar and banned other ostentatious life-cycle ceremonies. It prohibited many of the expensive aspects of birth, circumcision, marriage and burial rituals, but was difficult to enforce. The marriage law of 1971 was a further attempt to curb the indebtedness arising from the costs of marriage which are; a burden for Afghan society as a whole. The civil law of 1977 abolished child marriage and set sixteen as the age for majority of the girls for marriage, removing the right of parents and guardian to wed a girl (for a bride price) at the onset of puberty as was customary. But, in the absence of any specified sanctions for violations the law remained weak and was ignored. Moreover, the law left the husband's right to unilateral divorce basically untouched.

Here it needs to be mentioned that most of the reforms introduced were in the area of marriage because marriage was an institution which was

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31 *ibid.* p. 218.

32 *ibid.* p. 219.

extremely extravagant and was responsible for most of the social, political and economic ills of the people and downgraded women in the social milieu.

Marriage was a transaction between households and integral part of property relations and exchange system, an indicator of status. So unless the practice of bride price, extravagant expenses on marriage etc. were set right the modernisers could not think of proceeding with any further reforms.

The historical background presented above suggests the enormous difficulties faced by the Afghan modernizers. The Afghan state was too weak to implement reforms or undertake modernization in an effective way and was confronted by strong religious and tribal forces seeking to prevent any changes whatsoever, particularly in their power.

### **Overview of the Conflict**

Afghanistan has been the location of wars for many centuries, but the first notable conflict of the last century was the third Anglo-Afghan war in 1919.<sup>33</sup> Under the leadership of Amanullah, the Afghans defended their country from the British who wanted to make Afghanistan a colony. Although successful in maintaining the sovereignty of Afghanistan, Amanullah did not succeed in implementing or bringing about the reforms he introduced and due to opposition from religious conservatives had to face downfall. Subsequent leaders who took control during the country's, ensuing period of unrest allowed the more cultural and less religious practices such as the use of veil for women to be re-established.

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33 Niloufar Pourzand, *op.cit.*, n.6, p. 90.

During the 1930's Zahir Shah succeeded the throne and his cousin Mohammad Daoud Khan became his Prime Minister.<sup>34</sup> Continuing into the 1940's they sought to develop the country and attracted Soviet US funding in the post World War II period. Without adequate consideration about the needs of the Afghan peoples, the US and Soviet funded modernization projects often failed.<sup>35</sup> Ultimately the more educated and urban Afghans became increasingly influenced by the Soviet advisers. In contrast, rural Afghans were upset by the attempts to change their traditional practices, Daoud's attempts to allow females into schools, were fiercely opposed by the conservative religious and tribal leaders. Ultimately, Daoud, who had been fired seized control of Afghanistan and declared himself the President of the New Republic. Afghanistan became a weak 'rentier state' or allocation state with aid in the form of development programmes coming from all sides. From 1958 to 1968 and again in 1970's the state financed over 40 percent of its expenditure from 'revenue directly coming from abroad including both foreign aid and sales of natural gas to USSR.'<sup>36</sup>

There have been three main phases of the Afghan conflict so far: (i) the Soviet invasion of Afghanistan in 1979 and the ensuing anti-Soviet resistance, (ii) the signing of the Geneva accord and the Soviet withdrawal from the country, leading to Mujaheedin assumption of power and the intra Mujaheedin power struggle and (iii) Taliban takeover of Kabul in 1996 and the ongoing rivalry with the Northern Alliance (the forces opposed to Taliban).

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<sup>34</sup> Niloufar Pourzand, *op.cit.*, n.6, p. 90.

<sup>35</sup> Julie Mertus, *Wars Offensive on Women: The Humanitarian Challenge in Bosnia, Kosovo and Afghanistan*, (Connecticut, Kumarian Press, 2000), p. 54.

<sup>36</sup> Barnett Rubbin, *op.cit.*, n.10, p. 65.

## The 1978 Saur Revolution

During Daoud's Presidency, the People's Democratic Party of Afghanistan (PDPA) led the great revolution murdering Daoud and taking control of the country. Ignoring Amanullah's earlier attempts to introduce rapid reforms, the PDPA took measures to create a ceiling on land holding, reduce rural indebtedness, limit bride price and set a minimum age for marriage. A mass literacy programme for the people of both sexes, young and old was embarked upon as part of the secular education programme. Its social demands included guarantees of the right to work, equal treatment of women, a forty two hour week, paid sick and maternity leave and a ban on child labour.

The PDPA's use of force in bringing the changes to fruition combined with a brutal disregard for societal and religious sensibilities resulted in a massive backlash from the rural including those elements in whose interest the PDPA felt it was acting.<sup>37</sup> The anger of the population found an appropriate outlet in the unifying call for a Jihad. One area after another exploded into violence against the regime and the government forces were called upon to respond with even greater violence. Large scale desertions from the army followed.

The Soviet Union had taken advantage of the PDPA's assumption of power by engaging over more deeply in Afghanistan, on the economic, political and military fronts.<sup>38</sup> In December 1978, an agreement was signed empowering the Kabul government to call on to Moscow for direct military assistance if need arose. Internal power struggles within the PDPA leadership led to the overthrow and subsequent assassination of President

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<sup>37</sup> Peter Manderson, *op.cit.*, n.2, p. 25.

<sup>38</sup> *ibid.*, p. 27.

Nur Mohammad Taraki in September 1979.<sup>39</sup> and his replacement by President Hafizullah Amin. But Amin demonstrated an independence from Moscow's bidding that made the Soviet's anxious for their future interests in Afghanistan.

The Soviets invaded Afghanistan towards the end of 1979. There are various explanations about why they did so, but evidence suggests that Moscow's historical fear of encirclement from the south was the dominant factor. Indications that the US might have ambitions to establish a military presence there if conditions allowed combined with a growing rapprochement between Washington and Peking to create an acute sense of paranoia in the Soviet Union.<sup>40</sup> The Soviet invasion resulted in the death of President Amin. He was replaced by a relatively moderate member of the PDPA, Babrak Karmal.

The Soviet intervention had killed nearly a million of the country's, 15-17 million people, had driven more than 5 million refugees to neighbouring countries and had displaced 2-3 million more within the country's borders.<sup>41</sup> It also led to a cold war regional conflict, when the Soviets realised that their desired policy was not bearing positive fruits. On February 8, 1988, Gorbachev publicly announced that Soviet troops would withdraw from Afghanistan within ten months from the effective date of an UN sponsored agreement.

### **The PDPA and Women's Rights**

Invoking the Amanullah experience, the PDPA envisaged a national democratic government to liberate Afghanistan from backwardness.

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<sup>39</sup> *ibid.* p. 26.

<sup>40</sup> Valentine Moghadam, *op.cit.*, n.3, p. 225.

<sup>41</sup> *ibid.*, p. 226.

On the eve of the Saur revolution Afghanistan was amongst the poorest countries of the world with low life expectancy (forty years for women and forty two years for men). It was one of the few countries in the world with a higher life expectancy for men than for women. This may be explained by widespread cruelty towards women. The fertility rate, the infant mortality, after five mortality are also high. The estimated fertility rate was seven births per woman. The infant mortality rate was about 190 of 1,000 live birth.<sup>42</sup> - that is almost one in every five children. Children died from infections malnourishment and poor hygiene. There was only one doctor for every 3000 people, with medical facilities available only in the capital and a number of urban centres. Fifty percent of the children died before the age of five.<sup>43</sup> In 1979, some 80% had not received any formal schooling, whereas religious education in Quranic schools held in the mosques was widespread. About 30% of the male population above five years of age was estimated to be literate compared to only about 4% of the female population.<sup>44</sup>

In 1965, the year PDPA was formed six women activists formed the Democratic Organisation of Afghan Women (DOAW). The main objective of the DOAW was to eliminate illiteracy; forced marriages and the bride price. From its inception, the DOAW encountered hostility from Mullahs and other conservative elements. As a result of the activities of the DOAW and the PDPA, women won the right to vote and in the 1970's four women from the DOAW were elected to the Parliament. In the years before the Saur revolution, the DOAW managed to win the legal right of women to study abroad. Another achievement was the winning the right of women to

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<sup>42</sup> *ibid.*, p. 226.

<sup>43</sup> *ibid.*, p. 226.

<sup>44</sup> *ibid.*, p. 227.

work outside the home, previously the privilege of some women from elite families.

Among the most remarkable and influential of the DOAW activists was Anahita Ratebzad. In the 1980s, she studied nursing in the United States, then returned to Kabul as director and instructor of nursing at the Women's hospital. Ratebzad ran as a member of its teaching staff upon graduation in 1963.

Among the reforms introduced after the Saur Revolution, three decrees Numbers 6, 7 and 8, were the main planks of the programme for social action.<sup>45</sup> Decree No. 6 was intended to put an end to the system of land mortgage and indebtedness, No.7 was designed to stop the payment of bride price and give women more freedom of choice in marriage. No.8 consisted of rules and regulations for the confiscation and redistribution of land. The three decrees were complementary especially No. 6 and 7. Decree No. 7 was the most controversial because it was meant to fundamentally change the institution of marriage and bring about equality between both the sexes.

Since Art. 7 was the most crucial in changing the status of women, a detailed understanding of the same is important.

Art.1 'No one shall engage a girl or give her in marriage in exchange for cash on commodities.'

Art.2 'No one shall compel the bridegroom or his parents to give holiday presents to the girl or her family.'

Art. 3. 'The girl or her guardian shall not take cash commodities in the name of dower in excess of ten dirhams. (*Arabic Coinage*) according to Shariah, which is not more

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<sup>45</sup> *ibid.*, p. 229.

than 300 afs (about US \$10) on the basis of the bank rate of silver.'

Art 4. 'Engagements and marriages shall take place with the full consent of the parties involves.'<sup>46</sup>

Thus Art 7 aimed at fundamentally changing the status of women.

Along with the promulgation of this decree, the PDPA also embarked upon an aggressive literacy campaign led by the DOAW, whose task was to educate women, bring them out of seclusion and initiate social program. Literacy programmes were expanded with the aim of supplying all adult citizens with basic reading and writing skills. Within a year 600 new schools were established by August 1979. The PDPA's rationale for pursuing the rural literacy campaign was that all previous reformers had made literacy a matter of choice, male guardians had chosen not to allow their females to be educated and thus 99% of all Afghan women were illiterate.

Thus, after the Amannulah experiment, this was one of the bold steps aimed at the rapid transformation of a patriarchal society and decentralised power structure based on tribal and landlord authority. The emphasis on women's rights on the part of the PDPA reflects (i) The party's socialist-Marxist ideology. (ii) its modernization and egalitarian outlook, (iii) its social base and origins-urban middle class professionals educated in the United States, USSR, India and Western and Eastern Europe and (iiii) the position of women within the PDPA especially Anahita Ratebzad. Thus, the Saur Revolution was not a Socialist revolution which was inconceivable in a tribal feudal society but a national democratic revolution. President Taraki himself made it clear when he took over and

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<sup>46</sup> *ibid.*, p. 220.



said that the new regime was reformist, constructive and tolerant of Islam.<sup>47</sup>

There was universal resistance to the new marriage regulations, coupled with compulsory education for girls, raised the threat of women refusing to obey and submit to family (male) authority. Believing that women should not gather at public gatherings, villagers refused to attend literacy classes. In response to the decree of July 1978 on agrarian reforms, which reduced and concealed all rural debts prior to 1984 and forbade lenders to collect usury in future. Many angry lenders, hundred debtors who refused to pay. PDPA cadre resorted to different forms of persuasion including physical force, to make the villages return to the literacy classes. Often PDPA cadres were manhandled or murdered in villages. In the summer of 1978, refugees began pouring into Pakistan citing the powerful implementation of literacy program among the women as the major reason.<sup>48</sup> In Kandahar three literacy volunteers from the women organisation were killed as symbols of the unwanted revolution. Nancy Dupree reports that two men killed all the women in their family to prevent them from 'dishonor' which would come in the form of freedom movement, work, education, etc.<sup>49</sup>

The content of decree no. 7 and the coercion of women into education was perceived by some as unbearable interference in domestic life. The prohibition on bride price also prevented the traditional transactions and received the economy of many households that had counted on bride price as convertible capital for the future. These kinds of sentiments against the reform are taken by many observers as the main

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<sup>47</sup> *ibid.*, p. 232.

<sup>48</sup> *ibid.*, p. 233.

<sup>49</sup> *ibid.*, p. 532.

reason for early resistance. The resistance was in the form of the spread of the Jihad movement supported by Pakistan, which was ruled by Zia-ul-Haq who was opposed to the Leftist government next door. Thus Mujahudin continued their attacks encouraged by Pakistan US and Saudi-Arabia.

Because of the rise of the Islamic resistance in Pakistan, the PDPA slowed down its reforms. The DOAW was renamed All Afghan Women's Council (AWC) in 1986.<sup>50</sup> It became less radical and more of a service organisation providing social and legal assistance to poor Afghan women. The PDPA's emphasis on the women's question subsided in favour of a concerted effort at national reconciliation. In the constitution of 1988, PDPA members and the activists from the women's council tried to retain an article stipulating that all Afghan citizens - male and females have equal rights and obligations before the law.

Despite the slowing down of reforms and the resistance faced by the PDPA and the DOAW the revolution did have an impact upon the women. Mark Urban, a political journalist and one of the few writers on Afghanistan observed that “one genuine achievement of the revolution has been the emancipation of women, of mainly urban women”. He continued, “there is no doubt that thousands of women are committed to the regime as their prominent participation in the Revolutionary Defence group militias shows”.<sup>51</sup> Eye witnesses stated that militant militia women played a key role in defending the besieged town of Urugun in 1983. Four of the seven militia commanders appointed to the Revolutionary council in January 1986 were women.

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<sup>50</sup> *ibid.*, p. 234.

<sup>51</sup> *ibid.*, p.536.

Throughout the 1980's activist women continued to be engaged in formal politics. They continued to participate in different ranks of the party and the government, although there were no women in the council of Ministers. The *Loya Jirga* included women delegates and in 1989, the National Assembly had seven female members. In 1989, women were occupying prominent positions. One exceptional example is of Mrs. Ruhafza Kamyar who was an alternate member of the central committee of the PDPA, she was a working class grandmother and model worker at the Kabul construction plant, where she did electric wiring and supervised male workers.

There were women employees in all government agencies and social organisations. Ariana Airlines employed female as well as male staff. There were female radio announcers and the evening news was read by one female and one male announcer. The female announcer was neither veiled nor wearing a head scarf. There were women technician and reporters working for radio and television stations, as well as newspapers and magazines. Women workers were present in the binding section of a printing house in Kabul, in the page-setting section of the higher and vocational educational press house. Like their male counterparts, these women were members of the Central Trade Union. There were women soldiers and officers in the regular armed forces as well as in militia and women's' self defence. There were women in security, intelligence and the police agencies. There were women veterinarians also-an occupation which is usually off-limits to women in a Muslim country. As a concession to the traditionalist elements, schools were gender segregated above the primary level and middle school and primary school girls could only be taught by female teachers. In offices and other workplaces there was no segregation. Nor were females divided into male and female sections.

Thus, the Saur revolution did give women an opportunity to come out in the open and participate with men, but it had an impact only upon people in the urban areas and could not penetrate much to the rural areas. The inability of the PDPA cadres to mobilize people at the grassroots and with the strict tribal code prevalent in the villages and seeing reforms as an intrusion into their values and ways of life could be one of the explanations. One also cannot ignore the fact that despite modernization, during the revolution, armed fighters on all sides raped, abducted and trafficked in women.

### **The Mujahedin Regime and Women**

The Mujahedin or the Resistance fighters took over power from the Soviets in 1992.<sup>52</sup> Once they came to power the Mujahedin factions began fighting one another. But the representatives of all the political groups agreed on the question of women. Since these were the people who had gone into exile because of the secular policies of the PDPA, these groups of people were extremely conservative in nature. Thus the very first order to the new government was that women should wear veils. A journalist wrote from Kabul in early May 1992,

‘The most visible sign of change on the street, apart from the guns was the utter disappearance of women in western clothes. They used to be a common sight. Now women cover up from ankle to throat or hide their hair or else use the burqah. Many women are frightened to leave their homes. At the telephone office 80% of the males reported for duty on Saturday and only 20% of the females.’<sup>53</sup>

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<sup>52</sup> *ibid.*, p.29.

<sup>53</sup> Barnett R. Rubbin, “Women and Pipelines: Afghanistan Proxy Wars”, *International Affairs*, 13, Oxford (1997) p. 284.

Gradually women's right to full participation in social economic, cultural and political life of the country was drastically curtailed. In August 1995, the Govt. of President Rabbani barred a delegation of 12 women from attending the fourth world conference on women saying that the issues discussed were against the Islamic principles.<sup>54</sup> But nonetheless women continued to study outside their homes.

Prime Minister Hekmatyar announced a series of measures to curb the liberties of women. He issued new regulations about proper dress code for women.<sup>55</sup> Tragic as it may seem, the nominal leader of a country whose capital city had been demolished by rockets (largely his own) and which had the lowest literacy rates and highest rates of both infant and maternal mortality in the world, chose to focus his energy on women's clothes. This incident illustrates the importance of control over women as a highly charged symbol of social and political legitimacy.

During the Mujahedin rule some armed groups targeted women from ethnic minorities, they regard as enemies. The testimony given by a 40 year old woman who came to Peshawar proves the same. She said that the forces of Hisb-e-Islami came looking only for Pashtun people and would not kill non-pashtuns.<sup>56</sup> She also, reported rape of young women and abduction of a woman whose body was found some days later in the city.<sup>57</sup>

Women were often treated as spoils of war. Many women were raped by armed guards during the 1992-95 period. Rape of women by armed guards appeared to be condoned by leaders as a method of

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<sup>54</sup> *ibid.*, p.256.

<sup>55</sup> *ibid.*, p.288.

<sup>56</sup> *ibid.*, p.256.

<sup>57</sup> Javed Anand and Teesta Setelvad, "Hell on Earth", *Communalism Combat*, November 1998, vol. 6, n. 48, p. 9.

intimidating vanquished populations and of rewarding soldiers. In March 1994 a 15 year old girl was repeatedly raped in her house in Kabul's Chelstotton after armed guards entered the house and killed her father for allowing her to go to school. "They shot my father right in front of me. He was a shopkeeper. It was nine o'clock at night. They came to our house and told him they had orders to kill him because they allowed me to go to school. The Mujahedin had already stopped me from going to school, but that was not enough. They then came and killed my father. I cannot describe what they did to me after that...."<sup>58</sup>

Several Afghan women reportedly committed suicide to avoid such a fate. In one case, a father who saw Mujahedin guards coming for his daughter killed her before she could be taken away.<sup>59</sup> Scores of Afghan women were abducted by Mujahedin groups and commanders and then used for several purposes or sold into prostitution. An elderly couple described how their 19-year-old daughter had been killed in front of them in March 1994 because she refused to go with armed guards.<sup>60</sup> Another woman told Amnesty International that her 13-year-old niece was abducted by the armed guard of a warring commander in late 1993. They said their commander wanted her. They took her away, she was resisting and screaming but they dragged her away. "We were frightened that we all would be killed". They would kill any girl who refused to go with them.<sup>61</sup>

At the same time, in certain parts of the country women were prevented from exercising some of their fundamental rights-including the right to association, freedom of expression and employment by Mujahedin

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<sup>58</sup> Amnesty International, *Women in Afghanistan: a Human Rights Catastrophe*, 1995, p. 4.

<sup>59</sup> Amnesty International, *Women in Afghanistan: Pawns in Men's Power Struggle*, November 1999, p. 3.

<sup>60</sup> *ibid.*, p.5.

<sup>61</sup> Javed Anand & Teesta Setelvad, *op.cit.*, n.58, p.12.

who considered such activities to be un-Islamic. Mujahedin guards were reported to have stopped women from working outside their homes, and from attending health and family planning courses organised by non governmental agencies. Educated women working in the field of education and welfare were repeatedly threatened by Mujahedin groups.

However, given the unorganized structure of Mujahedin groups and the internal bickering that made up the interim government after the collapse of the communist government in 1992, the application and enforcement of restriction on women was unsystematic and inconsistent. In Kabul for instance, despite the intermittent pronouncements by the interim political authorities restricting women's rights, women continued to play a significant part in public life, working in government departments and health and education sectors. There were misunderstandings within the ruling coalition itself over the restriction imposed on women. For example, when Hekmatyar announced regulations with regard to a strict dress code, Massoud criticized him on the ground that the Prime Minister had not consulted the government. Thus the lack of co-ordination among coalition partners along with the lack of a vision about the future of events to follow allowed this to happen.

Here it needs to be mentioned that the point of departure for the Islamist is not the everyday experience of Islam interpreted in a cultural form, but a political insight for many of them, as is the case with the Mujahudeen, the return to religion has been brought through their experience in politics and not as a result of their religious belief.

### **The Taliban Takeover**

The violent stalemate created by the Mujahedin became unstable when Pakistan seized on the opportunity to arm and fund a new movement:

the Taliban or the organization of Islamic students, who were Afghans raised in exile and trained in ultra-conservative Madrassas in Pakistan. This movement galvanized the resentment of the Pashtun tribes against the corruption of the former Mujahedeen leaders and the domination of the government by the non-pashtuns.

For Pakistan, the Taliban was meant to provide a means to the re-establish Pashtun predominance in Afghanistan, ensuring that ethnic Pashtuns on both sides of the border would not focus their nationalist aspirations on Pakistan. Secondly, and equally important was Taliban's ability to provide security for trade and potentially oil and gas pipelines that would link newly independent states of Central Asia to the international market through Pakistan rather than Iran.<sup>62</sup>

The movement is Sunni Muslim in its interpretation of Islam and therefore cannot embrace the Shias of Central Afghanistan or the Ismailis of the North East. The absolute leader of the Taliban movement is Mullah Mohammad Omar, who has been given the supreme religious title of *Amir-ul-Mummenin* (leading the faithful). He presides over the Kandahar Shura which has authority over the other Shuras in other Taliban controlled areas. Decision making within the Taliban is reported to be by consensus. Thus there is a tendency for more conservative elements to prevail.

The Taliban captured Kandahar from the Mujahedeen forces in 1994. In 1996, they overran the capital, Kabul. The capture of Kabul has brought a new entity known as the Department for the Promotion of Virtue and Prevention of Vice into prominence (DPVPV).<sup>63</sup> This department is headed by Maulvi Qamaluddin who prefers to call this cell the Department of

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<sup>62</sup> Barnett Rubbin, *op.cit.*, n.55, p. 288.

<sup>63</sup> Ahmad Rashid, *Taliban Islam, Oil and the New Great Game in Central Asia*, London, I.B.T. Taurus & Co., 2000, p. 105.



religious affairs. This department is modelled on a similar government organisation in Saudi Arabia and it has recruited thousands of young men, many of them with only a minimum Madrassa education from Pakistan. These religious police have played a major role in informing the Taliban policies on the urban population. Mullah Qamaluddin denied women the right to work, (the only exception was the medical profession), and to move out of their residences. They also could not seek education. No Afghan woman could share the same transport with foreigners or sit in the same car. They were also forbidden high heels, and fashionable clothes; nor could they use make-up. They strictly had to follow the burqah. Thus their basic rights were all curtailed.

While sweeping across three-quarters of Afghanistan, the Taliban did not face serious resistance. Today they hold the majority of Afghanistan's 32 provinces. Most of the former warlords have surrendered or fled to neighbouring countries. Numbering around 60,000, the Taliban are the largest army in Afghanistan as compared to General Dostum's 50,000 and Ahmad Shah Massoud's 20,000 soldiers.<sup>64</sup>

The speed with which the Taliban broke on the Afghan political scene stemmed from several factors, none of them military. After the fall of Najibullah, various Afghan regions fell under the sway of different groups. There was total chaos and anarchy. In a deeply religious culture, the Taliban's own religious prestige, and the simplicity of their objective – to disarm all warring factions and to implement Islamic law, coupled with their position as religious students and strong endorsement by the Ulema heightened their appeal to the war-weary Afghans.

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<sup>64</sup> *ibid.*, p.106.

The takeover of the Taliban in Afghanistan largely reflected political alignments in Pakistan. The Mujahedin had been supported by the Jammāt-i-Islami under the leadership of Zia-ul-Haq. After the death of Zia-ul-Haq, Benazir Bhutto took over the leadership of Pakistan, and along with the interior Minister Naserullah Babar switched their support from Hekmatyar to the Taliban-mediated party, the Jamiat-ul-Ulema-i-Islam (JUI). The JUI was extremely conservative, and opposed to the Jamaat's brand of Islam. Instead, they favoured a more traditional type dominated by tribal Mullahs.

Thus, the Taliban had little experience in running a government, nor did they see this as a priority when they seized power. They tended to focus single-mindedly on military campaigns, on the eradication of corruption and on the achievement of law and order. Their single point agenda was the establishment of an Islamic state based on the shariah. The understanding of the shariah, of course, differed from Ulema to Ulema.

### **The Taliban and Women**

Since the takeover of Kabul by the Taliban Islamic Movement, the issue of women's rights has been raised time and again by both the Taliban and the international community. Each stands steadfast on the foundations of fundamental principles guaranteeing women a well-defined place in society, yet they stand poles apart. The divide lies in the complex realm of defining roles and determining appropriate means by which these roles may be realized. In the Taliban movement great stress is placed on the creation of an environment where the chasteness and the dignity of women may once again be sacrosanct.

There are four main elements of their policy: a ban on the employment of women except in the health sector, a temporary halt to

formal female education pending the drawing-up of an appropriate curriculum, the imposition of a strict dress code on women and men requiring women to wear 'burqahs' and men to wear beards, unstyled hair, turbans and shalwar khameez, and finally, the introduction of strict controls on the movement of women outside the home so that women are always strictly separated from male strangers or are escorted by male relatives (*Mahrammat*). As an extension of these restrictions, women's bath-houses, the only place women could wash in hot water, were closed down in Kabul and Herat. Health care workers expect an increase in gynaecological infections and scabies as a result. The greatest risk comes from uterine infection after childbirth, a major cause of maternal mortality. Young children who formerly accompanied their mothers to the bath houses now are also exposed to much greater risk from respiratory diseases. Disobedience of these and other Taliban orders have caused large-scale mass killings, flogging, amputations, etc..

Women are permitted to work only in the health sector. But according to a recent decree, women were not being allowed by the Taliban to work in the health sector for any international aid agency.<sup>65</sup> Because of these restrictions, all the educated professionals have preferred to migrate to other places. This has caused enormous shortage of women health workers. An incident which is quite touching in this context is that of a woman who came to Kabul hospital with burns over 80% of her body. An official of the Taliban fundamentalist group now ruling most of Afghanistan prohibited the doctor from undressing her. The reason he gave for this was that many Taliban die on the battlefield. The woman thus died untreated. The state run radio *Shariah* announced that doctors working in the hospitals were ordered to deny treatment to women not accompanied by

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<sup>65</sup> Amnesty International, op.cit., *Women in Afghanistan*: n.61, p. 7.

a male relative. Women have also been discouraged from attending training programmes, even those run by various NGO's for midwives and nurses.

The greatest impact of the ban on female employment has been on the education sector. Both boys and girls schools have had to be closed down. The girls schools were closed down because they were not allowed to seek education. The boys schools were closed down because women were no longer allowed to work and the majority of the school teachers were women. Within three months of the capture of Kabul the Taliban closed 63 schools in the city affecting 103,00 girls, 148,00 boys and 11,200 teachers, of whom 7,800 were women.<sup>66</sup> By December 1998, UNICEF reported that the country's educational system was in a state of total collapse with nine in ten girls and two in three boys not enrolled in school.

Many people deemed to have defied the Taliban codes on appropriate behaviour or dress have had to endure the pain and humiliation of summary beatings in public by members of the DPVPV. Women have been lashed on the back of the legs by young Taliban guards for not being properly clothed - for showing their ankles or wearing the wrong coloured shoes. Amnesty International reported that a group of Afghan women for working for an international aid agency in Kabul were beaten and insulted in front of a crowd in May 1997, even though they had special permission from the authorities to continue working with the aid agencies.<sup>67</sup> It is an irony that although the Taliban aver that their policies on women are in place to ensure the physical protection and the dignity of women, many women cite fear of being beaten by the Taliban as their main security concern.

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<sup>66</sup> Ahmad Rashid, *op.cit.*, n.67, p. 106.

<sup>67</sup> *ibid.*, p.108.

Amnesty International also reported the case of Turpeki, who was taking her toddler to the doctor because the child suffered from diahorrea and needed medical attention. She had reached the market area when a teenaged guard noticed her. The guard called her, but Turpeki knew that if she stopped she would be beaten up for appearing in public. She was frightened that her child would die and began running. The Taliban guard aimed his Kalashnikov at her and started firing. Turpeki was hit but did not die. People intervened and took the mother and child to the doctor. Turpeki's family complained to the Taliban forces but were told that it had been the woman's fault.<sup>68</sup>

Another major impact has been the increase in the number of children in the streets. Women who were previously employed and who survived through small trade have lost a crucial source of income. Despite the extended family system, this will have seriously affected the ability of many families to survive economically. Families exclusively dependent on female earnings and without extended family support have been reduced to the margins. There are at least 50,000 women in Kabul alone who have taken up begging. In Kabul a woman when she saw a foreigner extended her hand and said "I am not a beggar, but I have no choice. I need food for my family".<sup>69</sup> The Taliban are not unusual within the Islamic world in insisting on conformity to a particular dress code. However, they are at the extreme end in the degree to which they enforce it.

The world only woke up to the Taliban's gender policies after they captured Kabul in 1996. The UN could not avoid ignoring the issue after the international media coverage of the Taliban's hanging of former President Najibullah and their treatment of women. Protest statements from

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<sup>68</sup> Amnesty International, *op.cit.*, *Women in Afghanistan* n. 61, p. 6.

<sup>69</sup> New York Times, Editorial, Nov. 6, 1997.

world leaders such as UN Secretary General Boutros Boutros Ghali, the head of UNICEF, UNESCO, UNHCR and the UN Commission Human Rights met with no Taliban response. They have only claimed that their policies are in accordance with Islamic law and Afghan culture, and thus are not open to question. The Taliban leader, Mullah Mohammad Omar has been reported as saying, “We do not accept something which somebody imposes on us under the name of human rights which is contrary to the holy Quranic law. Anybody who talks to us should be within Islam's framework. The holy Quran cannot adjust itself to the other people's requirements. People should adjust themselves to the holy Quran”<sup>70</sup>.

This argument is untenable, however as many commentators point out; Islam is not a uniform and homogenous code. Islamic law is not a given but depends crucially on human interpretation which is shaped by cultural and ethnic differences, historical contexts, as well as political policy. It is therefore a matter of some choice which interpretation individuals or authorities apply. There are many different legal systems and governments in the Islamic world. There are also many individuals, organisations and countries who have disputed the Taliban's interpretation of Islam saying that it paints a negative picture of the religion.

Moreover, whilst the Taliban for the most part maintain that the international system of human rights and Islamic values are incommensurable, they have on occasion adopted a universalist position when it has suited their interest. One such example is when the Taliban accused neighbouring Iran of forcibly returning thousands of Afghan refugees, stating that such an act was violative of the international convention on refugees.

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<sup>70</sup> Amnesty International, op.cit., *Women in Afghanistan* n. 61, p. 8.

The problem with the Taliban is that their policies in Kabul and Herat are again different from the rural areas where the population have largely been left alone to live as they wished, with minimum interference. There are also enormous differences within the ranks of the Taliban as regards gender and other issues. There is the usual spectrum from hard-line to relatively moderate that is to be found in any radical movement, although the movement has a high degree of cohesion in terms of its basic tenets. There are therefore inconsistencies in approach that render the process of interaction with the outside world particularly complex. One of the major difficulties in seeking to understand the Taliban is the enormous difficulty in ascertaining to what extent it draws on customs and practices within the Pushtun society of southern Afghanistan as opposed to the various strands of thinking within the Islamic world.

Thus, it can be concluded that though the status of women has been quite low in the fragmented patriarchal society of Afghanistan, never was it as bad and intolerant as it was in the post-Mujaheedin era, finally slipping to its nadir during the Taliban era, where women were denied their basic rights under the garb of Islam. The post-Mujaheedin era, especially the Taliban rule gave rise to fanaticism which was taken to extremes. Fundamentalism was used as a means of gaining social and political legitimacy by the men. Oppression of women became a benchmark of their Islamic radicalism. Taliban leaders openly told Ahmad Rashid, that if they gave women their freedom or the chance to go to school, they would lose the support of their rank and file, who would be disillusioned with a leadership that compromised under pressure. They also claimed that their recruits would be subverted by the possibility of sexual opportunities and thus not fight with the same zeal. There were no political conditions under which the Taliban wished to compromise. After every military defeat, they tightened their previously existing gender policies under the assumption

that harsher measures against women would sustain morale amongst the defeated soldiers. The policy of engagement of the Taliban by the UN and NGOs to moderate their policies has shown no dividends. Compromise with the world would signal a defeat, by the tacit admission that they were wrong all along. Thus, Kumari Jayawardene and Malathi de Alwis's theorization that fundamentalism uses women's bodies in order to get social and political legitimacy stands true in the Afghan case.<sup>71</sup>

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<sup>71</sup> Kumari Jayawardene and Malathi de Alwis, *Embodied Violence* (New Delhi, Kali for Women, 1979, p.56.



### CHAPTER III

## HUMAN RIGHTS VIOLATION IN THE COUNTRIES OF REFUGE (INDIA AND PAKISTAN)

The objective of this chapter is to analyse the refugee experiences of dislocation from a gendered perspective with particular reference to the Afghan refugee women in South Asia. Women together with Children make up 80 per cent of the refugee population.<sup>1</sup> Their numerical dominance alone justifies a critical interrogation Gender serves to fragment or problematise categories which would otherwise essentialise the refugee experiences. Gender as a unit of analysis allows us to contrast the lives of men and women and also illustrates that women experience the dislocation and refugeehood in a different and unique way.

Understanding the experiences of the Afghan women in the South Asian context becomes important because temperamentally both India and Pakistan, despite being parts of the same sub-continent, are different kinds of countries. While India is a secular democratic country, Pakistan is a Theocratic state where military rulers play a major political role. Secondly at the operational level, because of physical and cultural proximity the number of refugees in Pakistan are much higher than in India. The majority of the Pashtun community from Afghanistan find it easier to identify themselves with the Pathans in the NWFP and hence adjustments become simpler. Thirdly, when it comes to management of refugees, UNHCR in India has less autonomy than the one in Pakistan in the management of refugee issues.<sup>2</sup> This is because the government in India does not recognise

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<sup>1</sup> Jenniffer Turpin, "Many Faces: Women Confronting War" in Louis Ann Lorrentzen and Jennifer Turpin (eds.), *The Women and War Reader*, (New York and London, New York University Press, 1998), p.4.

<sup>2</sup> B.S. Chimni, "In International Law", *Seminar*, (NewDelhi), no.46, March 1993, p.19.

the UNHCR as a legal body, while it functions in close co-operation with the government in Pakistan, though both these cases cannot be contrasted because of the vast difference in numbers (Pakistan almost 3.2 million refugees, both official and unofficially and India only 1900).<sup>3</sup> The experiences of women in these countries provide insights into how the socio-political surroundings of the country of asylum have an impact upon the status and treatment meted out to women.

The experiences of these asylum seekers become important because none of the South Asian states are a party to the 1951 convention and the 1967. Protocol. Thus, the refugees of this region are not entitled to the protection under these instruments. South Asia does not have a regional framework on the lines of the Organisation of the African Union (OAU) nor do any of these states have a national legislation to deal with refugees. Thus, the treatment meted out to these refugees is subject to the kind of relations the refugee creating and the host country have and the geopolitical gains to be made out of giving refuge to a particular group of people. Thus it becomes important to ask the question as to what happens to those *de facto* refugees who are denied rights and freedom depending upon the political will in the country of asylum and the social norms of the society. What are their fundamental entitlements before the law? Women here are particularly vulnerable because displacement and refugeehood puts additional responsibilities upon them and the absence of legislation and legal safeguards makes their position all the more vulnerable.

It thus becomes important to seek answers to questions like what was the official policy of these two states towards these refugees? Did these states have an official policy? Were they provided with physical security, and basic amenities like food, clothing shelter, health and

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<sup>3</sup> *ibid*, p.20

education facilities? Were these women vulnerable to physical or sexual violence which is typical of any conflict situation? If so, which women were the most vulnerable? What was the policy of the UNHCR? Are the people happy with its functioning? How have the experiences of conflict and its aftermath affected them? How are these differences affecting their traditional role as silent but essential preservers of Afghan men's and family honour? Have the experiences of conflict and its aftermath brought any kind of ambivalent empowerment in their lives?

### **The Dislocated Refugee Women**

If dislocation is a natural experience brought about by changes that any evolving society undergoes, then the refugee condition represents distortion on far greater, more radical and accelerated scale. The social, psychological and economic consequences of living like a refugee are profound. Egon Kunj for example, compares the refugee condition as a state of suspension in which the refugee experiences the spiritual, spatial temporal and emotional equidistance of no man's land.<sup>4</sup>

The process of psychosocial transition into a state of refugeehood is difficult because refugees are individuals who had an identity prior to becoming refugees. This identity conflicts with the submissive and dependent state of being which refugeehood invariably confers. This is highlighted by Domanski who uses the word 'deculturalisation' and 'desocialisation'<sup>5</sup> to describe the process that refugees residing in camps undergo. The term covers things such as the loss of social status and resources through dispossession, the disruption of social relationship and the loss of social competence. Many refugees find themselves without a

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<sup>4</sup> Mc Kondjo Kapanda and Sherene Feene, "Dislocated Subjects: The Story of Women Refugees", Occasional Paper, 1998, *UNHCR*, p.2.

<sup>5</sup> *ibid* p.3

clear role and purpose in life. The knowledge and skills which had utility in their old lives often prove to be in applicable in their new life.

The infantilisation that the refugees are found to endure is a cultural and fundamentally disenfranchising experience. It begins with the transference of decision-making powers from refugees to officials, with the latter assuming the right to intrude into the private world of the former. Refugees have no chance of influencing the administrative decisions relating to their lives. This is because their knowledge and perception of their lives are viewed as limited, biased and more subjective than those of experts.

Refugee women experience displacement and dislocation in a different way to male refugees. Their gender often works to their disadvantage and this is apparent in a number of ways. The types of persecution which women are subjected to (rape, forced prostitution, genital mutilation, torture, physical violence, forced sterilization or abortion, rigorous imposition, of restrictive religious or customary practices such as wearing the veil or not being allowed in public unless in the company of a male relative) and which may compel them to flee their countries of origin are not enumerated as a ground for persecution in the international legal instruments that define refugees.

Due to intrinsic social and economic instability that the refugee conditions presents the physical and emotional safety of all the refugees is compromised. However, it is women and their dependants who are particularly vulnerable. They often face rape and other forms of sexual violence prior to, during their flight, following their arrival in countries of asylum and in some cases even during repatriation operation and re-integration phases. The potential for abuse increases considerably when women and children are separated from their families amidst the confusion

of flight. The perpetrators of violence include military personnel, bandits and private groups, other male refugees and rival ethnic groups. The abuser may be as flagrant as outright rape or abduction or as subtle as an offer of protection, documents or assistance in exchange of sexual favors.

Even residing in a camp can magnify the problems that refugee women face. The physical structure and the location of the camp can undermine the safety of refugee women and contribute to the increase of sexual violence.

Many female refugees have become the heads of their households not out of choice, but due to the loss of the male head of the family. A large number of single and widowed women are forced to enter into non-consensual relationships into asylum countries in order to obtain food security for their family. Others are found to engage in prostitution or illicit trade in drugs and alcohol to survive. This is true with many Afghan refugees both in India and Pakistan.

Refugee women with male support are also in a problematic situation. The collapse of traditional structure of patriarchy or the lack of security or stability have undermined traditional gender roles. Many men, confronting the erosion of their once domineering male identity have resorted to violent means in an attempt to re-establish their sense of worth and self. Men once the providers and bread winners of the families become perpetrators of domestic violence, beating their wives and children. In such circumstances, many refugee women are powerless and fearing social ostracisation, do not report such crimes. Fear of engaging in a legal process: on a foreign country without the benefit of a certain legal status is another factor that prevents refugee women from reporting acts of violence against them. Furthermore, domestic violence represents all the common

occurrences in the lives of women all over the world whether they are refugees or not

### **The Afghan Refugee Influx**

The Afghan refugee influx began in 1979, when the Soviets took over and the local people felt threatened by the takeover of an atheist force. By the end of 1979, more than 4 lakh refugees have fled to Pakistan and another 2 lakh to Iran.<sup>6</sup> By the end of the following year, the number had risen to 1.9 million- the largest single groups of refugees anywhere in the world. As the country developed into the last and the worst of the cold war proxy battlefields the number of refugees kept climbing.

The Afghans sought refuge not only in Pakistan but Iran, India, Russia Canada, US and some other Western European countries. Table I gives an account of the Afghan refugees by country of asylum from 1979-1999.

It is difficult to give the exact number of refugees in Pakistan. As Nancy H. Dupree puts it "No one knows how many Afghan refugees there are in Pakistan."<sup>7</sup> According to the UNHCR and USCR estimates, there are some 1.2 million refugees in Pakistan who are registered in refugee camps in Baluchistan and NWFP.<sup>8</sup> But there are more then 2 million who are staying without registration in the urban centres in Pakistan i.e. Islamabad, Rawalpindi, Karachi, Peshawar and others. These refugees reside in Refugee Tented Villages (RTV's) with almost 86 per cent in the NWFP, 11 per cent in Baluchistan,, 3 per cent in Punjab. The remaining 2 per cent are

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<sup>6</sup> Rupert Colville, *"The Biggest Caseload in the World Refugees"* (Geneva, 1997), p.4.

<sup>7</sup> *World Refugee Survey*, US Committee for Refugees( 1998), p. 124.

<sup>8</sup> Nancy H. Dupree, "The Demography of Afghan Refugees in Pakistan", in *Soviet American Relation with Pakistan, Iran and Afghanistan*, Hafiz Malick (ed.) (London, Macmillan, 1987), pp. 366-68.

Table 1

## Afghan Refugee Population by Country of Asylum, 1979-99

Year	Countries of Asylum					Total
	Pakistan	Iran	India	Russian Fed. <sup>a</sup>	Other <sup>b</sup>	
1979	402,000	100,000	-	-	-	502,000
1980	1,428,000	3,00,000	-	-	-	1,728,000
1981	2,375,000	1,500,000	2,700	-	-	3,877,700
1982	2,877,000	1,500,000	3,400	-	-	4,380,400
1983	2,873,000	1,700,000	5,300	-	-	4,578,300
1984	2,500,000	1,800,000	5,900	-	-	4,305,900
1985	2,730,000	1,880,000	5,700	-	-	4,615,700
1986	2,878,000	2,190,000	5,500	-	-	5,073,500
1987	3,156,000	2,350,000	5,200	-	-	5,511,200
1988	3,255,000	2,350,000	4,900	-	-	5,609,900
1989	3,272,000	2,350,000	8,500	-	-	5,630,500
1990	3,253,000	3,061,000	11,900	-	-	6,325,900
1991	3,098,000	3,187,000	9,800	-	-	6,294,800
1992	1,627,000	2,901,000	11,000	8,800	3,000	4,550,800
1993	1,477,000	1,850,000	24,400	24,900	11,900	3,388,200
1994	1,053,000	1,623,000	22,400	28,300	12,300	2,739,000
1995	1,200,000	1,429,000	19,900	18,300	9,700	2,676,900
1996	1,200,000	1,415,000	18,600	20,400	10,700	2,664,700
1997	1,200,000	1,412,000	17,500	21,700	12,500	2,663,700
1998	1,200,000	1,401,000	16,100	8,700	8,400	2,634,200
1999	1,200,000	1,325,700	14,500	12,600	10,000	2,562,800

Note: A on 31 December of each given year.

a. Asylum seekers registered with UNHCR only. By the end of 1999, an additional 100,000 Afghans were in need of protection according to UNHCR.

b. Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan.

Source: *The State of the World Refugees: Fifty Years of Humanitarian Action*, UNHCR (Oxford, Oxford University, 2000) p.,119.

**Table 2****Afghan Refugees in Pakistan by Province of Origin in Afghanistan and Province of Destination in Pakistan ( UNHCR 1988)**

<b>Source Province</b>	<b>Destination Province</b>	<b>NWFP</b>	<b>Punjab</b>	<b>Total</b>
Badakhshan	28,100			28100
Baghlan	51900		47,400	99,300
Balkh		2,200	5,750	7,950
Bhazni	107,100	263,800	150	371,050
Helmand	135,200			135,200
Jowzjan			7,510	7,150
Kabul		56,200	12,600	68,800
Kunar		222,800		222,800
Kunduz	26,250	30,200	41,150	97,600
Laghman		222,800	950	223,750
Logar		261,600	20,750	282,350
Nangrahar		389,200	9,750	398,950
Nimroz		6,950		16,950
Paktika		266,000	1,950	267,950
Paktya	15,900	313,500	19,000	348,000
Parwan		47,500	4,700	52,200
Qandahar	963,050	1,100	2,450	966,600
Samangan		4,300	6,000	10,300
Wardak	5,850			5,800
Zabul	48,250	1,100		49,350
<b>Total</b>	<b>1,381,550</b>	<b>2,099,250</b>	<b>179,750</b>	<b>3,660,600</b>

**Source:** Robert F. Gorman, (ed.), *Refugee Aid and Development: Theory and Practice* (London, Westport, Connecticut, Greenwood Press, 1993), p. 114.



living in urban areas and Northern territories.<sup>9</sup> Fig. 1 shows the distribution of Afghan refugees in Pakistan.

It is estimated that women and children make up 75 per cent of the refugee population in Pakistan in 1999. 49 per cent of this population is composed of women, of which 22 per cent are of child bearing age. 3.5 per cent are pregnant and 22.5 per cent are beyond child bearing age, 54.2 per cent of this population are children, out of which 29.2 per cent are under five years of age, 11.2 per cent are under the age of two years and 25 per cent are under the age of fifteen years.<sup>10</sup> This only proves that women and children constitute majority of the refugee population.<sup>11</sup>

Why the people of Pakistan and the government received these people with an openness and generosity which could not be matched in the history of large scale refugee movements needs to be examined. 80 per cent of the Afghans who crossed the borders were Pashtuns who had ethnic linkages with the Pathans on the other side of the border in NWFP and Baluchistan. Past Afghan Governments had insisted that the Pashtun area of Pakistan belonged to Afghanistan. Since Pashtun nationalism would become a problem for Pakistan, they were greatly accommodative of the Afghan Pashtuns coming into Pakistan. Thus in order to consolidate its Pashtun identity, the Government of Pakistan supported the refugees. Thus political and geo-strategic considerations influenced the actions of the Government of Pakistan. Moreover, the Durand line which lies between Afghanistan and Pakistan is a very porous border.

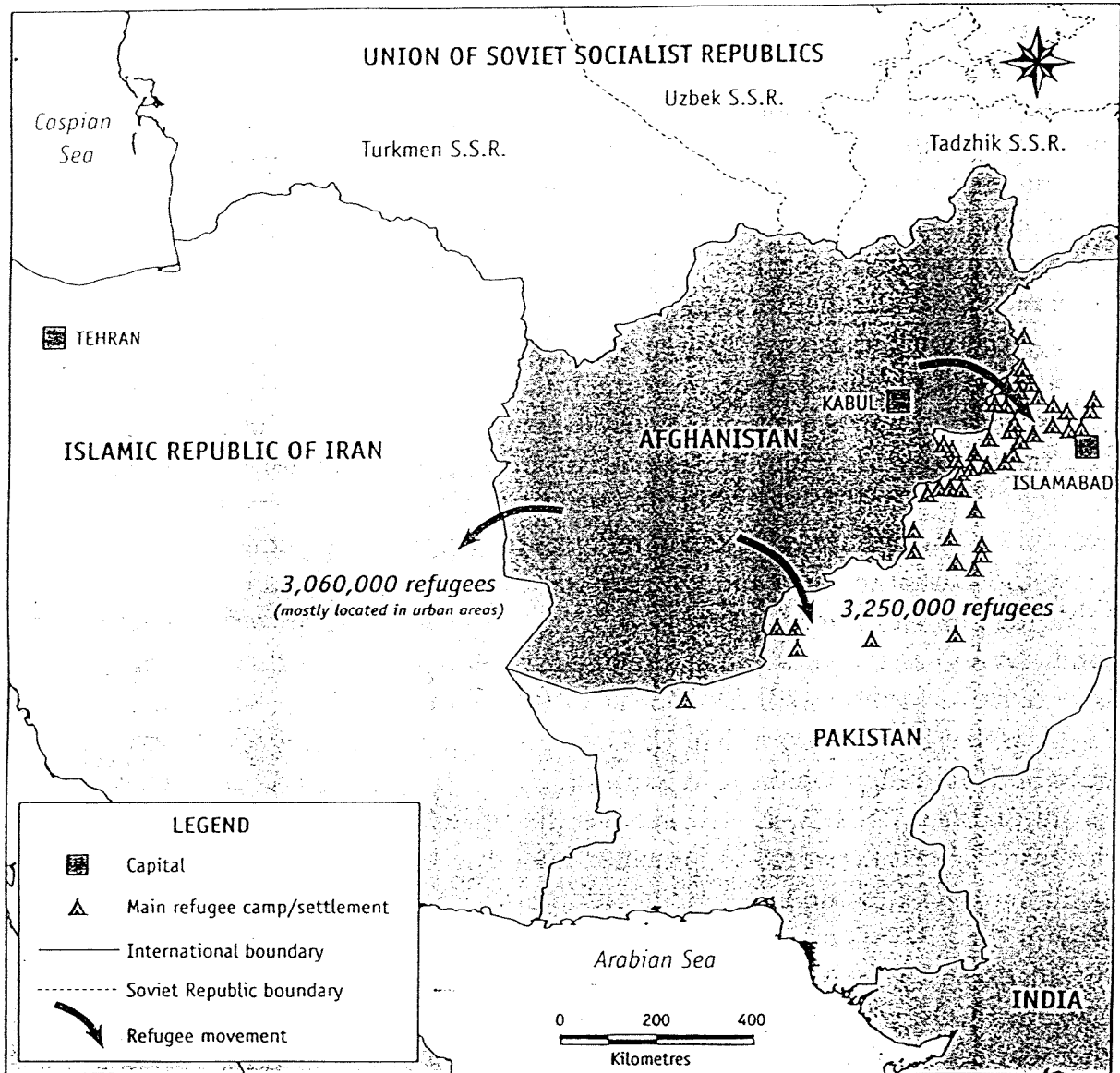
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<sup>9</sup> UNHCR, *The State of the World's Refugees* (New York and UK, Oxford University Press, 2000), p. 119.

<sup>10</sup> UNHCR, *Fact Sheet: Pakistan*, no. 15, March 1987.

<sup>11</sup> Linnic Kisseley, "Rights of the Refugee Children: ARC in the Pakistan-Afghanistan Region", Paper presented at *Women and Children in Refugee and Refugee like Situations in South Asia*, (Dhaka, RMMRU, 1999) p.3.

Fig. 1



Source : *The State of the World's Refugees: Fifty Years of Humanitarian Action*, UNHCR (Oxford, Oxford University Press, 2000) p., 117.

There were other ethnic groups found in the refugee areas in Pakistan and they are Baluchs, Nuristanis, Tajiks, Hazaras, Ujbeks, Turkmen and Mongols. These refugees come from all parts of Pakistan, many after a long and harrowing journey across the country. Almost all refugees come from rural areas where they were herdsmen, tenant farmers and farmers with their own landholding.

The Afghan asylum seekers in India on the other hand, have come after seeking proper visas and passports. There are about 19,000 Afghan refugees in India.<sup>12</sup> These are Pashtuns, Tajiks, Hazaras and quite a few Uzbeks in India. Most of them are the Shia Hazaras who faced persecution in their country because of their religious beliefs. While the refugees started moving into Pakistan in the post 1979 period, there was a surge in the number of refugees in India in the post Mujaheedin period. This is because the Mujaheedin got intolerant of Religious minorities. These refugees are not considered to be mandate refugees like the Tibetan and Sri Lankan ones, and thus their status is that of foreigner in India. These refugees are concentrated in Malviyanagar, Hauz Rani, Saket, Green Park Lajpat Nagar areas of South Delhi. Some Afghan refugees are found in Pune also. These refugees prefer to live in close proximity to one another. Women and children constitute majority of the asylum seekers in India also.

#### **Reasons for Flight:**

The refugees left Afghanistan in waves. A small number had left Afghanistan as early as 1973 after the relatively peaceful palace coup deposing King Zahir Shah.<sup>13</sup> The Soviet invasion, and the subsequent

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<sup>12</sup> B. S. Chimni, op. cit. n.2, p.20.

<sup>13</sup> Grant Farr, "Refugee Aid and Development in Pakistan: Afghan Aid After Ten Years" in Robert f. Gorman (ed.), *Refugee Aid and Development: Theory and Practice*, (Connecticut, Green Wood Press, 1993), p.112.

attempt at bringing about of radical changes and the subsequent violence acted as flood gate for the major exodus of Afghan refugees. In a study conducted by Kenny M. Connor, where 11 categories of reasons for leaving Afghanistan were identified and responses generated by an interview of 771 people, bombing or heavy fighting in an area was the reason cited by 24% of the refugees.<sup>14</sup> Threats to life and property were identified as the major reason for the exodus. One Afghan woman in Malviyanagar said, "There were rocket attacks everywhere and one rocket destroyed our house, hence we decided to leave." Many also left because they were a party to the Mujahdeen resistance group and wanted to contribute to the Jihad by being with fellow Jihadis who were in exile. Threat of sexual violence from the Soviet soldiers was one of the major reason which women cited.

With regard to the asylum seekers in India, religious intolerance by the Mujahedeen groups, who were the followers of the mainstream Sunni Islam and who looked at the Shias as defaulters of the faith, was the major reason why the minorities like Hazaras, Tajikis and Uzbeks migrated. The Pashtuns, which is a protected group reported the civil war and the ongoing aerial bombing as the major reason. Women of the minority group felt threatened that the men from the resistance parties would assault them physically.

## **Response to the Refugees**

### **Pakistan's Response and the Role of UNHCR**

Initially the immense influx of people was met with an equally impressive response. In the early days the tribal leaders and private

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<sup>14</sup> Kerry M. Connor, "The Movement of Afghan Refugees to Peshawar" in Grant M. Farr and Joha G. Merriam (eds.), *Afghan Resistance: The Politics of Survival*, (Vanguard Books, Karachi, 1988), p.160.

individuals made generous effort to see that their fellow tribesmen and co-religionists were taken care of. Pakistan was not prepared for the massive movement. Islamabad did not have an official policy and the management of refugees was haphazard. The refugees settled in the refugee camps in the border, tribal areas. As the situation quickly surpassed the level where private initiatives were sufficient, the government of Pakistan assigned overall responsibility of refugee policy to the States and Frontier Region Ministry (SAFRON). SAFRON working with the provinces set up an administrative structure to organise the registration of refugees and bring them urgently needed relief assistance. Refugee policy is implemented at the provincial level by Commissioner for Afghan Refugees (CAR) who reports to the Provincial Governor.<sup>15</sup> There are Commissioners in three provinces Baluchistan, NWFP and Punjab. The commissionerate structure in each village includes districts, areas and refugee village administrators. Until 1979, the Pakistan Government allocated its own resources to care for refugees paying a subsistence allowance to the herdsmen, tenant farmers and farmers with their own landholding.

When the refugees started arriving in Pakistan the UNHCR did not have an office in the country. The Government of Pakistan turned to the UNDP for help. UNDP asked UNHCR, and following two assistance missions to Pakistan. UNHCR raised more than, 1 million US \$ to assist the refugees. It opened an office in Islamabad in 1979.<sup>16</sup>

During the initial year (1980-82), because of the continuing large scale flow of refugees, UNHCR's assistance was mainly in the form of emergency relief food, water, shelter and healthcare to enable the refugees to survive. Later (1983-85), came a period of consolidation improving

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<sup>15</sup> Marvin G. Weinbaum, *Pakistan and Afghanistan: Resistance and Reconstruction*, (Boulder, West View Press, 1994), p.54.

<sup>16</sup> *ibid.*, p.54.

negotiation and administrative procedures, assuring regular supplies and providing additional services that were needed such as education. Since 1985, the emphasis has shifted from care and maintenance towards income generation.<sup>17</sup> The UNHCR has to keep changing its role depending upon the nature of exodus and the pressure it creates on its resources.

The overall control in each camp was put in the hands of Pakistani official, whose legitimacy emanated from their being government appointees and also the approval of the dominant political party. The refugees had to owe allegiance to one of the resistance parties in order to get official assistance. Thus aid also was politicised under Pakistani administration Jirgas were formed to deal with problems facing the refugees. Thus the Afghan refugee status in Pakistan was not determined by any national or international norms. The administration of refugees was very much in the traditional structure of Jirgas. Since aid was also distributed by the heads of the resistance parties in co-operation with the UNHCR, the party leaders and their ideology played a major role. Thus, they were not administered according to national laws but traditional practices.

With regard to women also, they did not have an official policy. Since Pakistan was an extension of the same Afghan culture, they continued to be under the same Pakhtunwali tradition. Thus the government's policies did not give much importance to women. They were seen as an extension of the male property. Thus, the policies, which take special needs of the women into consideration, did not surface. UNHCR also did not take a stand on the women refugees because they did not want to antagonize the religious heads and gave cultural relativism as a reason.

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<sup>17</sup> *ibid*, p.60

They were afraid of antagonizing the heads who would then not allow them to carry their work.

Thus Pakistan did not have an official policy per se, but it evolved its policy according to changing times and these policies were not grounded in any national or international norms. They were rather an extension of tribal feudal culture of the Afghan society.

### **India's Refugee Policy and the Role of UNHCR**

Since independence India approached the refugee situation with a bilateral policy, by negotiating with the country of origin and with no interference of the UNHCR, (which has no formal status in India). As for as bilateral approach is concerned the consideration of good relation with the states is often an over ruling factor is the decision making by the states as to how a particular groups of asylum seekers could be treated. The government of India prefers to resolve the refugee problem in accordance with domestic, political and bilateral consideration. Thus, it could be said that the current situation of refugee management in India is that of ad hocism: different groups of refugees enjoy different treatment.

The refugee situation in India is governed by the 1939 Registration of Foreigners Act, 1946 Foreigners Act, the Constitution the 1962 Extradition Act and the 1967 Passport Act.<sup>18</sup>

The refugees are not given any kind of work permits. They have to seek extension of their stay from the Government of India.

But when it comes to the issue of rights, even those states which are not parties to international refugee law are obliged to provide minimum

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<sup>18</sup> B. S. Chimmi, (ed.), *International Refugee Law: A Reader* (London, Sage Publications, 2000), p. 534.

standards of treatment under the Executive Committee resolution or customary international law and respect fundamental rights under the Constitution or Municipal law such as Immigration Act and Alien's Act. The Indian Supreme court has taken the view that a foreigner does possess rights, but is confined to the right to life and liberty contained in Article 21 of the Indian constitution which reads as follows:

‘Protection of life and liberty: No person shall be deprived of his life and personal liberty except by procedures established by law.’<sup>19</sup>

Thus, in the context of refugee rights it can be argued that Article 21 encompasses the principles of non-refoulement which requires that a state shall not expel or return a refugee in any manner to the frontier of any territory where his life and liberty is threatened on account of his race, religion, nationality, membership of a particular social groups or political opinion. But it also needs to be mentioned here that the Supreme Court of India also gives the government total powers to deport refugees.

In addition to this, the relevant legislation in the area of human right of refugees is the Protection of Human Rights Act. (1993), which established the National Human Rights Commission (NHRC).<sup>20</sup> Under this act, the NHRC has authority to inquire *suo muto* or on petition by a victim or any person on his behalf into a complaint of the violation of human rights. Till date the NHRC has investigated a number of cases involving refugees.

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<sup>19</sup> *ibid.*, p. 535.

<sup>20</sup> Brian Gorlick, “Refugees and Human Rights”, *Seminar* (New Delhi), no. 463, March 1993, p. 19.



## The Role of UNHCR in India

The UNHCR recognizes 18,600 Afghan refugees in India.<sup>21</sup> More than 14000 refugees arrived in India in 1993 and 1994. An estimated 60 per cent were Hindi speakers whose families had migrated to Afghanistan from present day India. The UNHCR provided financial assistance to 12,500 of these refugees and arranged for 6,200 of the refugees.<sup>22</sup> UNHCR has full access to these refugees because India had no national legislation regarding refugees. The Indian Government did not grant even the UNHCR recognised refugees any legal status, nor did it permit them to work.

As per the current practice, a primary applicant (head of household) receives Rs.1200 per month a supply subsistence allowance (SA) and collects Rs.500 per month for each of the first three dependents. The fourth, fifth and six dependents are allotted Rs.200 each.<sup>23</sup> Those who received SA must struggle to make this amount stretch to cover rent, activities and food. In 1994, UNHCR terminated assistance to about 6,000 of these refugees some of whom it gave a one-time lump-sum grant intended to help them develop their own income generating activities.<sup>24</sup> UNHCR based its decision to terminate assistance to many of the urban refugees on a study that the agency conducted in 1993. That indicated that many of the refugees were living in good conditions. After a year, a review was taken of the progress achieved and was found that many had done well, that some needed extra help which the UNHCR gave, and that other

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<sup>21</sup> U.S. Committee for Refugees (USCR), (Washington 1997), p.124.

<sup>22</sup> *ibid.*, p.125.

<sup>23</sup> Catherine Moller, "Survival, Dignity and Democracy", *Seminar*, vol.463, 1998, p.37.

<sup>24</sup> USCR, *op. cit.*, n. 22, p. 128.

were not doing well and UNHCR reinstated their assistance. UNHCR said 5,000 urban refugees continue to receive assistance at the end of the year.<sup>25</sup>

A female primary applicant is normally given the same special assistance as a man. However if she later marries, she is downgraded to a dependent and receives only Rs.500 per month. This policy contradicts UN principles and discriminates against both women and married couples. It unequally bestows benefits on men, thereby reinforcing sexist notions and creates a notion of dependency for wives. Moreover, it also supports the traditional stereotypes that women are domestic and dependent while men are the bread winners and active in the public sphere.

The UNHCR in handling of Afghan refugees has worked in close association with NGO's. It subcontracted PILSRAC (Public Interest Legal Supports and Research Centre) to provide legal services to the refugees. But majority of the refugees did not know of this organisation and have not sought any legal assistance. YMCA has been subcontracted for providing English language courses and also vocational courses like beauty culture, tailoring, motor mechanics, television technology; refrigerator repairs air tickeling baking, cooking and computers. Many of the Afghan refugee women did take advantage of these courses. Another NGO, Voluntary Health Association of Delhi (VHAD).assumed responsibility to administer health services to all Delhi based refugees. Due to confusion, misunderstanding and in some cases, dislike for anything connected with UNHCR, most refugees interviewed had not visited the clinics. Most of the people who visited were not happy with the bureaucratized way of functioning.

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<sup>25</sup> *ibid.*, p.26.

Refugee women also face unique problem when it comes to their resettlement in a third country. Women were unhappy with the treatment they got at the interviews. Some women also were not happy with the attitude of interpreters, who they claimed, had a bias towards a particular ethnic group. UNHCR promotes the resettlement of 'women at risk'. This category encompasses women who have protection problems and are single heads of families or are accompanied by an adult male who is unable to support and assume the role of the head of the family.

Intrinsic to a successful application for resettlement is the establishment of a refugee claim. This is problematic since most women have refugee claims based on the activities of other family members that placed their lives in danger. In other cases a lack of gender sensitive interviewing skills has led to the security of adequate information. The case of Raihan Muhibe (a refugee from Parwan) is a case in point. Raihan is the principal applicant who has an old mother and whose father has expired in India. She has applied for resettlement to Canada thrice both through UNHCR and Canadian Embassy. She clearly falls in the category of Women at Risk because she has no male support her and she cannot work in India. because she has no work permit. But her application has been rejected. Another ideal example is of an old couple called Rahimi's who reside in Hauz Rani (The lady is almost seventy and her husband is eighty plus). They have been in India for the past nine years without any of their children around. Rahimi's fear is that they will die without seeing their children who are in Pakistan and Canada. Their application has been rejected and have not got a clearance for resettlement.

There have also been cases that widows or single refugee women have married refugees who do not have a very strong refugee claim. Upon marriage almost all husbands become the principal applicant on the refugee

certificates accepting responsibility for all the people on the certificate. The main problem with this approach is that it can have ramifications for resettlement chances, because perspective embassies only review the refugee claim of the principal applicant in working out a decision regarding resettlement. Afghan women who have married male refugee with work claims are severely disadvantaged.

### **Broad Categorization**

For the purpose of analysis and to enable a broad understanding of the Afghan refugee women they can be categorized as urban and rural, old and new. The lifestyles in both these framework vary and affect their perceptions of issues and understanding of human rights. The rural refugee women because they are brought up within the Pashtunwali code have lower levels of expectation. They support the Taliban because they perceive them to be true Jihadis making an attempt to bring peace to erstwhile anarchic political turmoil in Afghanistan, While the urban refugee women have problems as they have seen the outer world, got education, tasted freedom and they expect more from life.

The distinction between old and new refugees is also important because this enables us to understand the difference of treatment of the government towards these refugees. While the old refugees have acclimatized themselves to their new setting, the new refugees face problems in the adjustment to new environments. They also react to the inadequacies of the government and its agencies faster, while the old ones have learnt to ignore the same as an assault on their right. The old refugee women in Pakistan speak about being Pakistanized as they have adopted much in the social and cultural sense. The old educated urbanites can speak Urdu, the national language of Pakistan. Same is true about the old

refugees in India. They have picked up Hindi, while their children have good command over the language.

This categorization may not be accurate and may overlook other division such as ethnic, living in camps or outside refugee villages etc. But the broad framework enables in understanding the change in perception of these women, of issues of their rights which are of vital importance for them.

An attempt will be made to analyse the human rights violation of these women in both Pakistan and India by understanding their treatment under the following subheadings: health, education, employment, physical and sexual violence, availability of food. The emphasis is more on the second generation of rights because these are more important for survival.

### **Health**

Both the physical and mental health of the refugee women is badly affected. Women in refugee camps were patients of hypertension or Post Traumatic Stress Disorder (PTSD). A refugee child in Peshawar said that his mother kept weeping without any reason most of the day.<sup>26</sup> What was an assault on their basic rights was that women were not allowed to be treated by male doctor. The women had to wait for trained women doctors to visit the Refugee Tented Villages (RTVs). The denial of the right to physical mobility without a male relative further curtailed their rights to avail medical treatment by going to hospitals. Women doctors were not available in the tents since all the trained professionals had left the country because of war. A female nurse was tortured because she refused to conduct a surgery on a pregnant woman because she realised that she was

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<sup>26</sup> Patricia Smyke, "Afghan Refugee Children" in *Pakistan Transnational Perspectives*, vol. 14, no.1, 1988, p. 31.

incompetent to conduct it. In another incident a lady died after being brought to the hospital because there was no male doctor to attend to her. On questioning the authorities said that thousands of men died everyday in the Jihad and nothing was wrong if one woman dies. This was the callousness with which women are treated.

Afghan women are made to bear children in almost intolerable circumstances and pressures. Despite being malnourished, they bear numerous children in utter disregard of healthy birth spacing techniques. Less than 10% of Afghan women receive professional birth assistance.<sup>27</sup> The fertility rate in the refugee areas is very high. One survey conducted among households on the basis of systematic sampling of households within certain camps, indicated a fertility rate of over 400 per 1000 women, which would place it amongst the highest in the world.<sup>28</sup> It is not that women are not aware of family planning techniques, but it is considered to be un-Islamic to use family planning techniques. Moreover, providing sons to the Jihad is considered to be the contribution of these women to the Jihad. Thus according to health workers both from Afghanistan and Pakistan it is not uncommon to have 6,8,10 or more babies.

Another major impact of the refugee experiences, on their health is of the rise in the number of women having hypertension and high blood pressure. Most of the health workers think this is related to stress under which women live. Tuberculosis is common especially among the new arrivals. It is reported to be more difficult to control among women because of their heavy workload, poor nutrition, confinement in crowded conditions

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<sup>27</sup> *Report of Women's Commission for Refugee Women and Children Afghan Refugee Women: Needs and Resources for Development and Reconstuction*, New York, May -June 1990, p.11.

<sup>28</sup> *ibid.*, p.12.

inside the home and the fact that they often do not come regularly to health centres for treatment. Anemia too is fairly common.

Malnutrition is very common. It is more so among women restrained by the practice of purdah. Afghan refugee women in Pakistan cannot avail of food rations if they do not have a male around. Malnutrition is also because of the pattern of intra-household food distribution where women not only eat last after feeding the men and children, but also do not realize the importance of women's special nutritional needs especially during pregnancy and lactation.

There was also a shortage of medical care in the camps because of the reluctances of physicians and health workers to serve under difficult conditions and the medical unit are poorly equipped.

With regard to the access to health facilities, for women in India, they are supposed to seek health assistance from the Voluntary Health Association of India, which is one of the implementation partners of the UNHCR. Though the women in the refugee settlements in India do not face the constraints with regard to the freedom of movement and other cultural constraints, which they do in the Pakistani settlements, the women still have difficulties in having access to health care. One refugee girl, Latiqa Nasserri complained that she lost her mother because of inadequate care from VHAI. She said that she had to take her mother only to those hospitals which VHAI has recognised. Six months after her mother's death also, VHAI has not cleared her bills. Her mother needed hospitalization and oxygen but the doctors advised her to take her mother home and keep her on oxygen cylinders at home. She said that she pleaded to the doctors that her mother should be, allowed medical care in the hospital, but the hospital authorities did not allow. Do Refugees not have a right to life? This is a basic right guaranteed by both humanitarian and human rights

law. The Afghan refugees also complained that VHAI is highly bureaucratized and the clearance of claims takes a long time. Another girl, Khursheed said that the bills which she had submitted to VHAI had been misplaced by the officers at VHAI and hence she said that she could not claim the money she had spent on her mothers cataract operation and medicines. Afghan refugees find it better to consult private clinics, but money is a problem with private clinics. There are also instances where the claims of the people are underpaid by VHAI.

Some women coming to the clinics describing their own sickness symptoms said that they had weakness or fever. The physicians at VHAI find no clinical basis for these symptoms but had only psychological ones. The sense of frustration with their refugee status, the separation from the field, their families, the memories, of forced flight from the villages and the loss of family members through war and other acts of terror had made them feel the same.

## **Education**

Afghan village schools for girls prior to the Soviet takeover were never numerous or effective. In the larger towns and cities, the advantages of education for women were being perceived even among the conservatives. The heavy handed tactics of the Kabul government destroyed this declaring Jihad against illiteracy. Women of all ages were dragged into classes where they were bombarded with Marxist rhetoric.<sup>29</sup> Refugees arriving into Pakistan at that time have stated that forceful implementation of the literacy programme was one of the major reasons for their departure.

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<sup>29</sup> Nancy Hatch Dupree, *The Women's Dimension Among Afghan Refugee in Pakistan*, 1982, p.6.



The mention of the term education in the RTV's was considered inauspicious. Afghan teachers in the RTVs promoting this idea have been bodily threatened. But these sentiments gradually cooled down. The manifesto of even the most conservative party in Peshawar included education for women, but in separate schools of course. Initially RTV statistics recorded a smattering of primary girls schools: 10 in NWFP and none in Baluchistan.<sup>30</sup>

Gradually, Pakistan became a host to one of the largest education programme set up for refugees. Over 100,000 refugee children attend 700 UNHCR assisted primary schools (grades 1-5). They are taught by some 3,000 teachers, about two thirds of whom were Afghan. There were in addition, some 100 middle schools (which include grade 1-5 as well as 6-8), attended by another 12-15,000 students. Of whom only 5-6,000 are in grades 6-8: the first secondary school (grade 9-12) was set up in 1984 there were 600 students attending 4 such secondary schools all in NWFP.<sup>31</sup> This clearly shows that enrollment of students was lower in higher classes. In addition to these schools, run by education cell of the Pakistan Commissionerate, there were other schools run by Afghan political parties or the traditional religious schools or madrassas. It also has to be mentioned that refugee education programme has had to develop in an extraordinarily complex tangle of social, political religious, educational and cultural constraints. Only 4,100 refugee girls are receiving education compared to more than 35,000 boys.<sup>32</sup> The closure of Ummahatul Momin, a Women's University operating in Hayatabaed Peshawar, affected the future of Afghan women aspiring education and intending to play a positive role in

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<sup>30</sup> *ibid.*, p.8.

<sup>31</sup> Patricia Smyke, *op. cit.*, n.26, p.31.

<sup>32</sup> Nasreen Ghufraan, "Afghan Refugee Women in Pakistan", Paper presented at the *International Conference on Refugees, Internally displaced People and Stateless people: The Humanitarian Challenge*, April 1993, Germany, p.9.

the rehabilitation of Afghanistan. The table given below shows the sex bias in Education in the camps in Pakistan.

**Table No. 3**  
**Percentage of Literacy among Afghan Refugees**

Age	Males	Females
6-11	65	6
12-17	56	3
18-24	37	2
25-34	37	3
34-49	18	1
50-69	10	0.5
70+	4	0.7

Source: Christian Hanne and Wolf Scott, *Survey of the Social and Economic Conditions of Afghan Refugees in Pakistan*, UNRISH, p.985 p, 27.

The above table not only shows how the basic right to education was not given to women, but also how the enrolment of women in higher classes slashed down drastically. The majority of these girls are in the lower grades. Attendance is good for the first one or two possibly three years. After that it declines either because the girls are needed at home to help with the housework and child care, or they must stay inside because of Purdah or because at the age of puberty they donot want their women to go out and take any kind of risk.

One voluntary agency, investigating the demand for girls in secondary education, turned up revealing figures on the enrollment of girls in refugee middle schools in NWFP 29 girls were in the 5<sup>th</sup> grade in commisionerate schools in Peshwar, 22 in all other districts of NWFP combine. Seven girls were enrolled in the 6<sup>th</sup> grade in Peshwar, none were in the 6<sup>th</sup> grade in all other districts.<sup>33</sup>

<sup>33</sup> Patricia Smyke, op. cit, n.26, p.32.

<sup>33</sup> Patricia Smyke, op. cit., n.26, p.32.

Thus all the data prove that women did face a sexual bias when it came to education. Thus education in the refugee villages in Pakistan is a very sensitive issue because of the cultural, religious and educational cultural constraint. The feeling among both Afghan and Pakistani men and women that formal education is not necessary a desirable for Afghan girls that they need only religious education and training in domestic skills is a major impediment.

With regard to the experiences of Afghan women vis-à-vis education in India, the refugee experience has forced them to recognize the utility of formal education for boys and girls as they face a world quite different from their parents knew. Majority of the girls who have come to India have completed their secondary and higher secondary education. They have also acquired computer skills and some of them have acquired graduation degrees also (but the number is very small). The teachers I met at YMCA, reported that the girls are faster in picking up studies than boys. But the number of girls going beyond higher secondary school is low. The same cultural mindset of losing control over women avoided them from seeking higher education. Most of the families I, spoke to the children especially the girls were enrolled in schools and were acquiring skills.

The Ismaili Hazara community which is located in Malviya Nagar, Savitri Nagar and Hauz Rani in Old Delhi have achieved novel feat in terms of education. The Ismailis in India have formed an organisation called the Afghan. Ismaili Information Centre in Malviyanagar which provide additional training to the children and basic training to the youngster and older people in both written and oral English. This institution conducts classes for the children of all age. This institution also trains them in French. As most of these people are being resettled in Canada, the knowledge of French makes it easier to get immigration visa to

Quebec. Women and children have also acquired diploma certificate in computers.

In addition to secular education, the Afghans in India have formed an organisation called the Afghan Association, which provides the women with religious education and also trains them in Persian and Dari. When I, last visited them plans were on to buy computers so that people who have acquired certificates can practice their skills. Thus, the Afghans in India have realised the value of education and are acquiring skills which will enable them to be self reliant.

### **Employment**

During twenty years of war, the Afghan women especially the war widows had to take employment outside the home to support themselves though the government ordered women to stay at some on Islamic grounds and return to the habit of veiling this denied them the right to earn their livelihood and showed disregard for centuries old Afghan tradition supported by Islamic principle that calls for protection and care of widowed and orphaned children.

The same was true with regard to the refugee villages in Pakistan. They were not permanently employed. Most of them worked as casual labor in factories. Many of them worked at the bakery's and made their living. These jobs were temporary and women were normally underpaid. In the total labour force 14 per cent were women. Out of this 14 per cent, 97 per cent is self employed tailoring, embroidery, carpet making and bead work as against the men's profession like shopkeeping. A young girl Afghan, Sohaila complained that her sister could not work in Pakistan, she was a doctor in Afghanistan. As opportunities have been restricted frustration has spread amongst Afghan women. Their dignity and honour

has a heavy men dented by the increasing number of Afghan women beggars and prostitutes.<sup>34</sup> As presently no financial assistance is provided to refugees in the camps. Some women have started begging as it is a matter of survival. They have no jobs, no skills and no other source of income.

Although women were asked for stay at home on Islamic grounds, its real motive was to provide job opportunities for more than 1.5 million war returnees, majority of whom were males.<sup>35</sup> This policy served as a powerful political tool rewarding resistance partners with employment and access to limited resources in exchange for waging Jihad. It was waged against women's mobility, freedom and human rights.

In India, in cases where there is no male to seek gainful employment women have sought employment in beauty parlors or travel agencies. These refugees have not been given official work permit. Most of them survive on the paltry amount which the UNHCR gives. Many women are apprehensive to take up jobs because once the UNHCR gets to know they are earning, they withdraw the assistance. Women are scared of losing the money which they get from UNHCR. A 27 year old girl, burnt herself dead at the back gate of UNHCR office in New Delhi.<sup>36</sup> This was reported in South Asian Human Rights Documentation Centre (SAHRDC). According to a 1995 report by SAHRDC, UNHCR's cash assistance was insufficient to meet basic necessities. The report added rents are high and commence a considerable amount of refugees cash assistance leaving very little for

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<sup>34</sup> Christensen and Wolf Scott, "Survey of Society and Economic Conditions of Afghan Refugee Women in Pakistan", *United Nations Research Institute for Social Development*, Switzerland, 1988, p.34-36.

<sup>35</sup> Nasreen Ghufra, *op. cit.*, n.32, p.7.

<sup>36</sup> *The Status of Refugees under the protection of UNHCR in New Delhi* (South Asia Human Rights Documentation Centre, New Delhi, 1995).

food, clothing and other necessities.<sup>37</sup> SAHRDC also criticized the lump sum self sufficiency grant saying that the sum offered was too meager to establish any business on develop self sufficiency.<sup>38</sup>

Many of these women are self-employed - they stitched clothes engaged in knitting, and also provided private tiffins to people working in offices. Some women help in the bakery business, which their men run. But all this money is spent off on the up keep of the family. Girls also complain that people around are apprehensive to give them jobs to them once they reveal their identity. So despite having diplomas in computers and travel and ticketing many of these girls are waiting for jobs and are disgusted with life.

## **Housing**

The asylum seekers are provided refuge in tents in the RTV's. The most notable change since the 1980's is the gradual change from tents to the Kacha housing (present mud or mud brick housing). But the kacha housing facility is available to the old time stayers. Kacha housing differs from RTV to RTV depending on the length of the stay and on the energy and affluence of the male members of the household.<sup>39</sup> The least fortunate NWFP and Peshawar are provided with sunken roofs surrounded by low, windowless walls pierced by a single door way and a tarpaulin draped over a roof beam. No walls surround these houses.

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<sup>37</sup> *ibid.*.

<sup>38</sup> *ibid.*

<sup>39</sup> “*Afghan Refugee Women: Needs and Resources for Development and Reconstruction*”, Report prepared by Women's Commission for Refugee Women and Children,( New York, June, 1990).p.7

war widows and also women who do not have any male member in the family are particularly vulnerable to sexual violence not only by fellow refugees but also by Pakistani officials. There are reports of a 70 years old widow being raped in a camp area in Pakistan. Particularly vulnerable here are the minority ethnic groups viz. Shia Hazaras, Uzbeks, Tajiks etc. because the Pashtuns which is the majority community among the refugees in Pakistan are particularly protected because of the larger political agenda.

The asylum seekers in India did not report any kind of sexual violence after seeking refuge in India. Though women who did not have support were considered to be the communal property of all the Afghan men, they tried making propositions to them. One Pashtun woman Jahantab who has now been resettled in Australia had to take help from her house owners in order to rescue herself from the clutches of a Tajik man. Similarly Najeba, a Shia Hazara woman whose husband had joined the resistance movement, faced similar problem, where the man beat up her old mother and son because she did not argue to have conjugal relations with him. Do women not have a right to live in dignity? But women in India have not faced threats like the women in Pakistan who crossed across the border.

### **Food**

With regard to the supply of food in the RTV's in Pakistan, the WFP and UNHCR provide more or less daily per capita supplies of wheat, edible oil, dried milk, sugar, and tea. But there is a 1-2 month time lag between the arrival of refugees and the formal registration which automatically enrols them onto the ration rolls. During this period, food becomes a problem for these refugees.

Bathing needs are coped with those living behind the compound walls. Roofless, enclosures with brick floors are constructed sanitation is a major problem.

It is not customary to place toilets inside the house. A latrine against the outer house from which wastes are collected from outside is usually provided in traditional architecture. In some RTV's communal latrines are provided which are most of the time overflowing due to inadequate separate facilities. Women are reduced to using open areas near their homes. The lady doctors in the RTV's emphasize that the lack of sanitation is central to the incidence of gastro intestinal disease.

Because of drought in Afghanistan a fresh lot of 80,000 refugees have arrived in Jalozai in Northern Afghanistan in 2000. Jalozai according to Yusuf Hassan a spokesman for the United Nations Refugee Agency is fast turning into a death camp.<sup>40</sup> The camp has no sanitation, no shelter and no clean water facilities. The camp resembles a dumping ground where thousands of aimless people are wandering between endless rows of miniature makeshift plastic tents one next to the other. They are no more than three feet high and cramed with families up to 10 people. Some 3000 families have been badly affected by heavy rains. The winter last year was also bad and led to a major exodus to Paksitan. The government is not allowing the new comers to register and unless these people do not register they will not get access to free food, blankets and tents that are available. There are reports of flesh eating virus transmitted by flies which is deforming the faces of children.<sup>41</sup> Thus what is urgently needed is shelter for some 14,000 families who are surviving on almost nothing and children are dying everyday.

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<sup>40</sup> Jemima Khan, "This is My Home", *The Hindu*, New Delhi, 12 May 2001, p.12.

<sup>41</sup> *ibid.*, p.12.



Most of the asylum seekers in India stay on rent in different places in Delhi. The houses are small and consist of one room and one kitchen in most of the cases. The houses are overcrowded because every family consists of at least 10-12 members. Most of the people depend upon financial assistance from relatives abroad to pay their rents because rents are so high that they cannot pay from the assistance which they receive from UNHCR.

### **Sexual Violence**

Along with social and economic subjugation women are subject to sexual violence. There were rapes of Afghan women perceived to be supporters of family members of rival resistance groups. Afghan men who witnessed the atrocities committed against women during the war, but could not prevent them have shown grave concern about the phenomenon of sexual violence against women and girls, particularly since the instigators are supposed to be their own Muslim brethren. Moreover, the social stigma of rape of girls is great because it is thought to bring shame not only on the girl's immediate family but on the larger clan as well. Reports of honour killing of rape victims in Afghanistan NWFP Baluchistan are common.

There are reports of selling of Afghan virgin girls to Arab countries or forcing them into prostitution in Pakistan brothels. These activities are well financed organised and usually secret.<sup>42</sup>

Because of the Pakhtunwali tradition wherein women do not move alone and are chaperoned with a male member, the number of rape cases have been relatively low in comparison with other refugee movements in the world, where 70 per cent have been raped during flight and refuge. But

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<sup>42</sup> Mahnaz Afkhami, *Faith and Freedom* (ed.) (London, I.B. Tauris, 1998), p.178.

Incoming refugees from Afghanistan were expected to get affiliated with one of the Afghan political groups, in order to be certified as refugees. To qualify for rations from the Pakistani government they also had to settle in government designated camp area. Affiliation to a particular political group was not possible for ethnic minorities because all the political groups were not accommodative of the interests of various minorities. Secondly, in cases of mass exodus it was not always possible to settle in government designated camp areas.

The purchase of additional food item was possible because almost every household, one or more male members were said to be employed. Women suffer because women refugees cannot collect their food rations in public and therefore suffer from hunger if they have no male relatives or male children to rely on for collecting their rations. Most of the women were undernourished because they only ate the food which was left after feeding the guests, children and their male counterparts.

The food distribution thus reflects the secondary status of women and children and the role women's honour plays. Women headed households are not as likely to receive a fair share from men. This is proved by the incidence of anemia among the adult female population. It has also been observed that food given is diverted to local markets as a means of generating income to support the Mujahedin return to Afghanistan. The sacrifices here again are women and children.

Unlike RTV's in Pakistan, where the UNHCR provides food items, the UNHCR in India provides a monthly special assistance which comprises a specific amount of money to the principal applicant. This is supplemented by some specific amount for every dependent person. In addition to this, most of these people are either self employed like selling vegetables or other bakery items or are working as motor mechanics etc. in

companies. Women also contribute to the family expenses though in small way together stitching clothes or knitting. Most of these people have relatives abroad who contribute to the family expenses. Thus food is not a major problem for asylum seekers in India. The women also are not subject to strict cultural norms which stops them for working out of the house to avail assistance and also to buy food stuff and other items from the market. But when one looks at the intra-household distribution of food one finds that they consume that only which is left after the rest of the family has consumed. Thus, though food is not a major problem for these asylum seekers most of these women are full and anemic.

The situation of Afghan refugee illustrates how political considerations can override encoded social mores undermining humanitarian considerations. It also illustrates the transfer of male led political agenda to sexual politics. The survival rate, physical protection, nutrition, education, skill development and psychosocial well-being of female refugee and displaced women fell below those of their male counterparts. Refugee camps progressively institutionalized along patriarchal lines are inadvertently supported by the west and by the donor policies that often fail to take into account the special needs of women in exile. The argument of cultural relativism widely used by the international donor community as a reason not to act, in effect feeds into the male political agenda of keeping women subservient and victimized.

After analyzing whether these refugee women had access to basic amenities of life like food, shelter, health, education, employment etc. It becomes important to understand whether the experiences of conflict and its aftermath has brought about any kind of ambivalent empowerment in the lives of these women. When we speak of the term 'ambivalent empowerment' what I mean by empowerment that it is enabling, that which

is ambiguous, which is indecisive, which is a no win situation but which is still empowering and enabling.

It becomes more important to understand the same in terms of the Afghan refugee experience because of the cultural context they come from, and also to see whether placed in a different socio-cultural environment, do these women act differently.

Since the cultural context of their home country is almost similar to that of those pockets in Pakistan where these asylum seekers have sought refuge. There was not much change in the status of women. It is just an extension of their stay in Afghanistan but where conditions are much worse than those in the home state. But looking at the way women are seeking asylum in India have handled themselves, despite of the fact that the experience was quite unsettling and also left deep psychological scars on them. I do think that there is some kind of empowerment. They have gained basic education, acquired language skills, both English and French, they have acquired skills like diplomas in beauty culture, tailoring and vocational training. They have done away with the veil and are moving around alone to get their work done without male support. Even those women who pack tiffins and stitch clothes for people feel good because they are contributing to the welfare of the family.

#### **Future of Afghan Women:**

Afghan women refugees find it difficult to answer questions about their future. They become emotional and cynical about it. They cannot be blamed about this cynicism because Afghan conflict has prolonged so much that it seems to have exhausted the patience of those trying to find a peaceful settlement. They are simply at a loss to predict their futures; they are faced with three choices: of removing the refugee mantle and assuming

normal peaceful life upon return, a defaulted future of continued refugee hood in Pakistan and India and of resettlement in a third country. All three are fraught with problems, but the first one seems dark given the prevailing situation in Afghanistan.

A refugee woman in an answer to the question of their future remarked that she could not think about the future. 'We have to survive everyday.' 'I don't really know what in future we will be or do' said another refugee. Another woman explained, "Our future is dependent on the efforts of UN to establish a central rule in Afghanistan. If Taliban contested with their present policies our future is dark'. Another lamented that if we continue our lives like this, we (refugees) have no future. One girl whose family is in India for nine years explained, "Everyday in the morning I wake up thinking that something will happen today. We have no hope'.

All these remarks reflect the deeply troubled minds of Afghan women. They are not optimists and do not envision any future. On being asked whether they wanted to go back to Afghanistan, they replied in the negative. They are extremely scared and shut off totally when one discusses their future with them.

Thus it can be said that unless a political solution comes out of the conflict the future of these refugees is uncertain. Refugees have become pawns in the political games of the superpowers. These superpowers for their vested interests have been playing with the lives of people in Afghanistan. The women here have been severely affected. They not only have to put up with political regimes which are hostile, but also the policies of UNHCR which are not sensitive to their needs. It is important that women take active part in the management of the refugee issues, that they have a say in the management of the refugee affairs, that humanitarian assistance be given after integrating the local women in the process. This is

also one of the major recommendations of the Women's Commission of the refugee women and children. Recent policy of the UNHCR also focuses on the integration of refugee women in the development process and encourages members of its staff to become more conscious of the special needs and resources of female refugees. But all this happens only on paper given the socio-cultural constraints which the Afghan women face. This seems to be a difficult task because this involves breaking the traditional bonds and acquiring a new role which looks quite challenging in the Afghan refugee context. It requires a total change right from active participation at decision making level to the implementation level.

There is no immediate solution to the Afghan refugee problem. But opportunities do exist to introduce programmes which will provide long term social and economic benefits.

## CHAPTER IV

### COPING WITH HUMAN RIGHTS VIOLATIONS

This chapter aims at looking at the initiatives taken by the United Nations (UN) and non-governmental organisation in (NGOs) the area of women's rights in the conflict in Afghanistan and also the refugee affected areas in India and Pakistan.

The costs of two decades of civil war in Afghanistan are enormous. More than one million civilians have been killed and countless others injured. During the Soviet occupation, over six million people have fled the country. Although many returned after the Soviet withdrawal, there are still over, two million Afghan refugees in Iran and Pakistan, making Afghans the largest single refugee group in the world<sup>1</sup>. Inside the country, the infrastructure and the institutions of state have been largely destroyed by the conflict. There are landmines and rockets everywhere. Agriculture which was the only source of subsistence had been badly affected. Total rubbleization has taken place. The country has ceased to be a viable state and when a state fails, civil society is destroyed. All this has had different impact upon women. According to the UN, the socio-economic conditions of the population are amongst the worst in the world. Healthcare is rudimentary and many are without any access to basic health care provisions. Thousands of children die from malnutrition and respiratory infections every year. Maternal mortality is one of the highest in the world. Literacy rates are extremely low and are estimated to have dropped to low as 4% for women. Afghanistan is ranked at the bottom of the UN Gender Development Index. The people helped each other in the reconstruction of

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<sup>1</sup> Amnesty International, *Human Rights Defenders in Afghanistan: Civil Society Destroyed*, Amnesty International (London, November 1999), p.2.

houses and the clearance of rubble. But a point was reached when technical assistance was inevitable. Aid in Afghanistan came from the UN and its agencies as well as from the non-governmental organisations.

Assessing the impact of the conflict on women is not an easy task because the conflict itself is divided into three major phases and each of these had a different impact upon women and the nature of the subsequent assistance which came in was also different. Each phase, depending upon the kind of political elite, its ideological moorings had different issues at stake and hence the strategies of the NGO's and all the aid provided was also different.

Since the issues of human rights of women were different at different phases of the conflict. It becomes imperative to understand the issues important at partition phase of the conflict and then understand the subsequent initiatives taken..

### **Saur Revolution and Initiatives in the Area of Women's Rights**

Given the feudalistic tribal, patriarchal background of Afghanistan. the Saur revolution led by the Communist PDPA, aimed at introducing rapid reforms to change the political and social structure of Afghan society, including patterns of land tenure and gender relations. Three decrees numbers 6,7 and 8 were the main planks of the program of social and economic action. Decree number 6 was intended to put an end to land mortgage and indebtedness, no.7 was designed to stop the payment of bride price and give women more choice in marriage, no.8 consisted of rules and regulations for the confiscation and redistribution of land.<sup>2</sup> The three

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<sup>2</sup> Valentine Mogadham, *Modernizing Women, Gender and Social Change in the Third World*, (Colorado, Lynne Rienner, 1993), p.226.



decrees were complimentary especially no.6 and 7 because extravagant marriage expenditures added to the rural household's indebtedness.

This was done with the aim of ensuring equal rights for women and removing patriarchal and feudalistic ties. It was recognized that women were economically exploited in Afghanistan and the decree therefore outlawed cultural, traditional Afghan practices that were economically significant. Along with the promulgation of this decree, the PDPA also started a literacy campaign.<sup>3</sup>

One of the organisations which played a major role in implementing the program of PDPA, was the Democratic Organisation of Afghan Women (DOAW) whose major task was to educate women, bring them out of seclusion and initiate social programmes.<sup>4</sup> By August 1979, the government had established 600 schools in different parts of Afghanistan.<sup>5</sup>

The rationale for pursuing the rural literacy campaign with such zeal was that all previous reformers had made literacy a matter of choice and so male guardians had chosen not to allow their females to be educated, and thus 99% of all Afghan women were illiterate prior to the Saur revolution. It was therefore decided to make literacy a matter of principle and law. One of the most remarkable activists of the DOAW was Anahita Ratebzdad who had studied nursing in USA. She was on the Central Committee of PDPA and following the Saur Revolution, she was elected to the Revolutionary Council of the Democratic Republic of Afghanistan (DRA).<sup>6</sup> Other PDPA women in the Taraki government were Sultana Umayad, Director of Kabul Girl's School, Soraya, President of DOAW, Ruh'afza Kamyar who

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<sup>3</sup> *ibid.*, p.267.

<sup>4</sup> *Ibid.*, p.228.

<sup>5</sup> *ibid.*, p.228.

<sup>6</sup> *ibid.*, p.228.

supervised people in a construction firm and also was the principal of Amana Fidawa School and Professor Mrs. R.S. Siddiqui. These were the women who were behind the women's rights movement.<sup>7</sup> Their spirit was reflected in an editorial in the Kabul Times (25 May 1978) which stated that 'privileges which women, by right, must have are equal education, job security, health services and free time to rear healthy generation for building the future of this country. Educating and enlightening women is the subject of close government scrutiny'.<sup>8</sup>

Their intention was to expand literacy especially for girls and women, provide health and legal services for women, and eliminate those aspects of Muslim family law that discriminate against women unilateral male repudiation father's exclusive rights to child custody, unequal inheritance etc.

Kabul Women's Council (KWC) was another organisation which held literacy classes everyday.<sup>9</sup> It also offered vocational training and employment workshops where women learnt to weave rugs and carpets, sew uniform, embroider and produce handicrafts. Child care and transportation was provided, courses on house management, health, hairdressing and typing were provided free of cost. The women's club also worked with the Ministry of Public Health on Mother and Child issues as prevention of diseases, vaccination of children, breast feeding and family planning.

RAWA, was another organisation which was formed in 1977 by Mina Kishwar Kamal, a Maoist.<sup>10</sup> It started its activities for women's

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<sup>7</sup> *ibid.*, p.229.

<sup>8</sup> *ibid.*, p.229.

<sup>9</sup> *ibid.*, p.230.

<sup>10</sup> Behroz Khan, "Rebel and Her Cause", *Communalism Combat Sabrung*, (Mumbai, November 1998), Year 6, no.48, p.18.

rights. This organisation was meant to give a voice to the deprived and silenced women of Afghanistan. RAWA established a clinic, schools, orphanages, work places etc where a large number of women were working. After the Soviet invasion, many of the RAWA members came to Quetta, Pakistan. Here it also organises courses for women and children. Another service rendered by RAWA for the Afghan women is the launching of the bilingual Payam-e-Zan (Women's Message) in 1980.<sup>11</sup> RAWA through Payam-e-Zan aimed at constantly exposing the criminal nature of fundamentalist groups. It motivated and mobilised women through its writings like poetry and thought provoking articles. It basically aimed at making them aware of their rights. Its other activities were organising demonstration on December 10<sup>th</sup> (Human Rights Day) and March 8<sup>th</sup> (International Women's Day). The activities of RAWA are still persisting in Afghanistan but with secrecy. RAWA is not an NGO in the sense that it does not receive aid from any other aid organisation rather funds its activities through the sale of its magazines. The active social work and anti-Jihad feelings of the founder member, Mina Kishwar Kamal had provoked the wrath of the Jihadi elements and she was assassinated along with two other members of the family in February 1987.<sup>12</sup>

The DOAW was renamed as Afghan Women's Council (AWC) in 1986<sup>13</sup> and underwent a shift in orientation. It became less radical and more of a service organisation providing legal assistance to the poor Afghan women. It became more of a social organisation than political. During the 1980's the AWC was led by Esmaty Wardak. An example of the kind of work AWC took up was the complaint by twenty two year old Najiba who had been abandoned by her husband for another woman because she could

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<sup>11</sup> *ibid.*, p.19.

<sup>12</sup> Amnesty International, *op.cit.*, n.1, p.4.

<sup>13</sup> *ibid.*, p.230.

not give him a child. He had since re-married but, the AWC took up Najiba's case for maintenance rights in accordance with the law. The AWC had a membership of 1,50,000 Women with branches in all provinces except Wardak and Katawaz. The branches organised traditional festivals which included awards for handicraft pieces and peace camps that provided medical care and distributed garment and relief goods free of charge. The principal objective of this organisation was to raise women's social consciousness, making them aware of their rights - to literacy and work and improving women's living conditions and professional skills. The AWC provided social services like literacy, vocational training in such fields as secretarial work, hairdressing and sewing. Organised income generating activities such as bag and carpet weaving, offered assistance to mothers and widows of martyrs in the form of pension and coupons and gave legal advice mainly through a network of female lawyers annually.

Other major concern of the women during this phase was health and health related facilities. Though the doctors did not charge much, the quality of medical care was not high and the quantity of services insufficient. In 1989, there was a total of 64 hospitals, 5.141 beds and 98 clinic. Kabul had 14 hospitals and 5 clinics.<sup>14</sup> Thus most of these hospitals were treating men injured in the war. In 1985, the council of Ministers endorsed a national program called protection of Mother and Child Health in Afghanistan. This programme offered among other things, various birth control measures to limit family size. Nonetheless, in 1986, some 138,000 women adopted various birth control/family planning techniques and these pills became the most popular form of contraception. Although there were three maternity clinics established in Kabul, most women preferred to deliver at home, and thus training of midwives was also emphasized. It

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<sup>14</sup> Valentine Mogadham, *op.cit.*, n.2, p.238.

seemed clear that, given cultural concern about excessive male-female interaction, attention would have to be paid in the post war future to training of women doctors in gynecology, obstetrics and pediatrics.

Thus, women's organisations in the 1980's though affiliated to political parties and insurgent groups, worked among and mobilized hundreds of urban Afghan women. Perhaps a very crucial reason for the absence of support for the women's right and reform programme was widespread perception that this was somehow inappropriate in a developing Muslim context. It also should be mentioned here that during the 1980's; debates ranged around issues of universalism versus cultural relativism women's rights and community rights, orientalist and neo-colonialist discourse, the nature of Islamist movements and the meaning of development and the Feminists from around the world had failed to strike a common ground. There existed a notion that there was a feminism, for the west but different priorities for the women of the south. Thus, the takeover of Afghanistan by the conservative Mujahedin led to the withdrawal of all the aid programmes.

Since it was a total war like situation, women had other concerns like physical security, protection against sexual abuse by the USSR soldiers but these issues were totally unaddressed by the NGO community.

### **The Mujahedin Regime and the NGO Initiatives in the Area of Women's Rights:**

From a total war like situation during the Soviet Regime, the Nature of the conflict became internal with different warring group competing for power after the Soviet withdrawal. This had a major impact upon women. Since the Mujaheds were ultra conservative Mullahs raised in exile, their first decrees were against women not only forbidding them to move around without a burqah, and also to be accompanied by a male relative. Women

faced difficulties in access to Education and health services because Education was banned for women and was subject to the creation of an Islamic curriculum. Women did not have access to health facilities. They did not have the freedom to work.

The Mujahedin elements were funded by the Islamic world (Pakistan, Saudi Arabia) who were alarmed by the assault on fellow Muslims by a secular force. The United States also supported the Islamic states in the humanitarian work in order to curtail the influence of USSR on Afghanistan. This also coincided with US military support to the Mujahedin.<sup>15</sup> Thus, the sympathizers from both the west and the Islamic world found themselves supporting a resistance movement in which radical Islam was the binding force and women were the major targets in this process. Dozens of NGO's emerged during this period under the aegis of the Resistance parties. Although some were staffed by Afghan technocrats with the noblest motives, many existed to soak up funds rather than deliver any verifiable services. There are instances when the NGO's have sold off grains on the sly in order to make money.

With the Mujahedin forces the seclusion of women was an element in their political agenda. There had been a pronounced rigidity in response to requests from agencies that women should be consulted, involved and derive equal benefit. The Western NGO's were cautious about how they have worked with women both as recipients of aid and as staff. They would discuss with male representatives of traditional structures in the villages how access to women could appropriately be achieved and how women could be involved in decision making process and many a times did not

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<sup>15</sup> Michael Keating, "Dilemmas of Humanitarian Assistance in Afghanistan" in William Maley (ed.), *Fundamentalism Reborn: Afghanistan and the Taliban*, (London, Hurst & Co. 1998), p.135.

carry out the reforms which would antagonize the leaders. Thus they would compromise issues of human rights of women in order to maintain good relations with the male religious leaders.

The major concern of the women was access to food aid and health facilities. The major NGO's functional during this period in the area of food aid were Afghan French Solidarity Organisation (AFRANE) and the Bureau International de Afghanistan (BIA).<sup>16</sup> But these organisations functioning did not speak about the distribution of food aid to women. Even with regard to health, there were organisations like Medicine Sans Frontiere (MSF), Aide Medicale International and Medicine du Mundo (MM). There were others, like the Swedish Committee for Afghanistan (SCA), Swedish International Development Authority (SIDA), American Aid to Afghanistan (AAA) etc.<sup>17</sup> There were also organisations like AMERICARES which provided medical supply for people within Afghanistan. But the functioning of these organisations did not highlight the distribution of medical aid to women. Thus, the western aid organisations did not want to risk antagonizing the Fundamentalists Mullahs by speaking about women and the disbursement of aid to them.

Single women and widowed women faced problems because of the restrictions on the freedom of movement and freedom to work. These women were at the receiving end because they had no male member to support them. Another reason because of which there is not enough literature on the NGOs working on women's rights during this phase was that the Mujahcedin rule was very shortlived and they were pre-occupied with solving internal squabbles. The Taliban takeover within a very short

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<sup>16</sup> Ralph H. Magnus, "Humanitarian Response to an Inhuman Strategy" in Grant M. Farr and John G. Merriam (eds.), *Afghan Resistance: The Politics of Survival* (Lahore, Islamabad and Karachi, Vanguard Books, 1998), pp.194-202.

<sup>17</sup> *ibid.*, 17.

period. Moreover, the Mujahedin were not as harsh as the Taliban in enforcing their policies they were not uniform with the implementation of their policies because in places like Kabul women still continued to work and play an active role in the economy .

Here it becomes important to mention that prior to the 1980's, there was an innocence about assistance that gradually evaporated in the 1980's and as aid became less a gesture of solidarity and developed in politics, particularly once the US stepped up its involvement in the war in the middle of the decade. Once the Soviet forces withdrew in 1989, Afghanistan was dropped off the radar screen of world attention. The ever dwindling aid of the wealthy donor countries which did not even meet the minimum budgetary requirements of the humanitarian aid effort became a scandal. During the 1980's most aid agencies paid little attention to the needs or the rights of women. Some even provided direct assistance to the Mujahedin, an approach that had serious negative effects of Afghan women's human rights within Afghanistan.

### **The Taliban takeover and the NGO Initiatives in the Area of Women's Rights**

The Taliban takeover is considered to be the darkest phase of the conflict in terms of the rights of Women. Women were restricted to move out, a strict dress code (Burqa) was imposed, Right to work, Right to freedom of speech, Right to livelihood, to access to Education, health services etc. were taken away.

To top it all, women belonging to minority ethnic groups faced sexual abuse from the majority groups. Thus it was an irony that the Taliban who imposed restrictions upon women to preserve their honor and prestige ended violating the most basic rights like physical security of these women. Widows and single women faced a problem because they could



not move alone and hence if they did not have a male member around they could not get access to the food aid that was provided.

The NGO community in its various parts reached little agreement regarding common strategies for assisting women and girls. In the early days, most agencies were baffled and confused about how to respond to the edicts. NGO gender policies were not articulated and communicated adequately by headquarters to the field staff, because of the apprehension about the reaction from the Taliban. There was total chaos because many of the field staff were on short term contract and without any background on gender policies.

One mechanism for discussion of policies and strategies among NGO's is the Peshawar based Agency Co-ordinating Body for Afghan Refugees (ACBAR)<sup>18</sup> whose main purpose is to co-ordinate and share information among the agencies working inside Afghanistan. In 1999 it had 150 local and International NGO members.<sup>19</sup> ACBAR also houses the Afghan Resource and Information Centre, which among other things, runs mobile libraries in order to disseminate information amongst the people. This centre directed by the well known Afghan Scholar, Nancy Hatch Dupree, These mobile libraries go into the villages where women who read and write benefit and illiterate readers read for the illiterate. This helps them to keep themselves abreast to the latest happening around. While ACBAR played a constructive role in making an effort to get all the NGO's to speak on common lines and also devise strategies for actions, it faced two constraints: first the restrictive circumstances under which agencies operated in Afghanistan limited NGO willingness to share information and discuss strategies with one another. Second, since the Taliban does not

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<sup>18</sup> Julie Mertus, *War's Offensive on Women: The Humanitarian challenge in Bosnia, Kosovo and Afghanistan* (Colorado, Kumarian Press, 2000), p.61.

<sup>19</sup> *ibid.*, p.17.

enforce the edicts evenly throughout the areas under its control, many NGO's have been reluctant to co-ordinate or discuss day to day programme activities for the fear that they will lose privileges if too much attention is called to their work. A local official in one province may allow women to meet for training sessions which his counterpart in other province will not. Approvals from the Taliban representatives are also tenuous and not always sanctioned by the headquarters in Kandahar. Thus, women and children are highly apprehensive about how the Taliban are going to react and this ambiguity leads to the women and children not accessing the available facilities at a particular point of time.

An organisation comprised of the educated Afghan women in exile and Afghanistan, called the Afghan Women's Network (AWN) was formed in 1996.<sup>20</sup> Some of the activists of this organisation are working with NGO's schools and UN agencies. Because these women are educated they strongly felt that they had a responsibility to speak for themselves and for the other Afghan women who have not had similar opportunities. The Afghan Women's Network is active in Peshawar and Islamabad in Pakistan and Mazar-i-sharif and Kabul in Afghanistan. In September 1996, AWN launched a campaign for peace and human rights in Afghanistan. A delegation of them went and meet representatives of human rights organisations, NGO's, Women's organisations in the USA and drew up a small memorandum of basic rights which should be guaranteed.

These are:

- (1) Women's Right to Employment outside the home, which includes the right to work with their male colleague.

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<sup>20</sup> Statement by Afghan Women's Network, *Dossier 17* (France), June 1997, p. 98.

- (2) Women's and girls right to security women should not be forced to wear a burqa they should have mobility without harassment.
- (3) Women's and girls right to equal access to education. Women and girls should have equal access to a complete educational curriculum, not just Quranic instructions.

It also endorsed that guarantees of women's basic rights should be part of all interim peace agreements. International donors should require guarantees of women's human rights before contributing funds for rehabilitation and development in Afghanistan.

The AWN has received support from many human rights organisation from all over the world, like International League for Human Rights, Equality Now, Amnesty International, People's Decade for Human Rights Education, Refugee Women in Development etc. But the AWN has not achieved a major dent in its functioning and implementation of HR's in Afghanistan.

Major NGO's providing food aid during this period were CARE, WFP etc.. The WFP run by the UN provided bread to almost 4,00,000 people out of which 28,000 families are headed by war widows and 7,000 families were headed by disabled men.<sup>21</sup> Forced to grapple with the restrictive policies of the authorities, NGO's charted out their courses in different ways CARE suspended its widow funding programme on three occasions when Taliban violated negotiated understanding, asking those incidents, as opportunities to uphold human rights and demonstrate its principles to the authorities.<sup>22</sup>

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<sup>21</sup> Julie Mertus, *op.cit.*, n 18. p.60.

<sup>22</sup> Ahmad Rashid, *Taliban, Islam Oil and the New Great Game in Central Asia*, (London, I.B. Taurius, 2000), p.105.

Even with regard to Education, OXFAM, SAVE the children closed down programmes when the Taliban refused to allow girls to attend schools and to meet with International Female staff.

Many NGO's on the other hand, placed highest priorities on keeping their activities functioning seeking to avoid what they considered political issues. One such NGO is the International Assistance Mission (IAM), a Christian Organisation which over a period of 35 years has managed to survive numerous conflicts and social disruption.<sup>23</sup> While the number of its activities are limited and its approach intentionally low profile it operates the highly valued Noor Eye Clinic in Kabul and carries out various community, health and education programmes. Other NGO's by contrast have taken the step by closing certain programmes when they found no way round the edicts.

The greatest impact the Taliban regime has had on women was in the area of Education. Ban on Education not only kept the girls illiterate but almost 70% women became unemployed because most of them were teachers. Private home schools began to appear after Taliban forbade girls from attending public schools. Their formation was a community initiative because parents wanted their daughters to be educated. UN and NGO agencies responded by offering assistance. Some paid teachers salaries or supplied teaching materials and books; other paid for fuel to heat the classrooms usually in private homes. The Taliban closed home schools in Kabul in 1998 because they were receiving too much attention and too many visitors. Thus, the NGO's were not directly involved in Education. during the Taliban era but indirectly they did support the home schools.

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<sup>23</sup> *ibid.*, p.61.

There were NGO's like Terres de Hommes,<sup>24</sup> which because of restrictions of movement imposed upon women provided services at home for women. They visited pregnant women to provide prenatal services; although it stopped home visits after several months because the Taliban imposed too many restrictions on the staff. Several agencies kept female staff on their pay rolls, in some cases for two years, hoping that the Taliban would lift the edicts. The Afghan League for Human Rights operates both in Afghanistan and Pakistan. The Co-Operation Centre for Afghanistan (CCA) is an Afghan NGO that operated in both Afghanistan and Pakistan, where it produces a newsletter on the Afghan human rights situation. It also monitors and documents the human rights situation from both Taliban controlled and Northern alliance controlled cities.

Situated apart from the NGO's, on the one hand and the UN agencies on the other was the ICRC, for whom Afghanistan represented its largest program anywhere in the world. The ICRC provided health services for persons irrespective of location or political affiliation. The ICRC monitored prison conditions for both men and women and distributed food aid to vulnerable groups like widows and displaced persons. The ICRC in 1999 distributed more than 8,783 tonnes of food and material assistance to vulnerable groups. It also visited 5,733 detainees including 14 women and 177 men in 70 places of detention.<sup>25</sup> The ICRC seeks to provide access to benefits by adhering to the principle of neutrality which sets limits on the amount of public criticism of the authorities that it engages in. It is a tragedy that even the ICRC in its annual report of 1999 where it speaks about the plan of Action for the year 2000,<sup>26</sup> does not address the issue of women and the assistance to be

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<sup>24</sup> *ibid.*, p.70.

<sup>25</sup> ICRC, *Annual Report 1999*, p.110.

<sup>26</sup> *ibid.*, p.112.

provided to them as a separate category and subsumes women under the category of civilians.

The UN attempted to encourage common policies through the Strategic Framework Approach (SFA), special interagency gender mission, appeal which was the initiative of the UN Administrative Committee on Co-ordination, involving the UN secretariat and the heads of UN agencies including the World Bank and the IMF.<sup>27</sup> The program aims at coordinating all assistance activities including donor funding and programming objectives under one rubric. It makes a number of proposals including a common vision for the whole assistance community. The creation of productive livelihoods, a single assistance programme for all actors operating a single board of stakeholders, a unitary funding mechanism, an independent monitoring and evaluation mechanism and an enhanced co-ordination role for the UN both at the national and regional level inside Afghanistan. However, the SFA field assessment mission did not provide a mechanism to assess the critical gender issues that plagued every agency's work. Nor has this approach taken deep root because it is difficult to pull a unitary fund together because money comes from so many different bureaucratic sources, each with their own regulation and procedures.

In an effort to address the disarray among agencies the secretary General appointed a special Interagency Gender Mission to carry out a gender review in Afghanistan.<sup>28</sup> Its report, which reported a pragmatic approach to dealing with issues and authorities, disappointed aid agencies that wanted clear guidance to provide women with program benefits. Secondly, there were apprehensions that the whole issue of human rights

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<sup>27</sup> Julie Mertus, *op.cit.*, n.18, p.62.

<sup>28</sup> *ibid.*, p.63.

and gender raised by the Taliban were not being factored in political discussion with Afghan leaders. Thirdly, and most substantially were worries that the UN was failing to address the bigger picture - the geopolitical and economic context within which both the conflict and the assistance efforts take place.

Thus the UN system has been less innovative than NGO's in responding to the challenges raised by the Taliban forces.

In 1996, after the Taliban takeover, the aid drastically stepped down. In 1996, the UN had requested US \$ 124 million for its annual humanitarian aid program to Afghanistan but by the end of the year it had received only US\$ 65 million. In 1997, it asked for US\$ 133 million and received only 56 million or 42 per cent and the following year \$157 million was asked and only 34 per cent of the asked amount was provided. By 1999 the UN had just drastically scaled down its request to US\$113 million.<sup>29</sup> The lower the aid implied lesser amount of money going issues which are of concern to women.

The confusion among the NGOs was mirrored by similar conditions among UN organisations in responding to the same Taliban challenges. UNICEF for example refused to support schools for boys as long as girls were forbidden to attend classes. By contrast, WHO positioned itself as fully co-operative with the authorities.

Different UN agencies responded differently to Taliban demands that only male staff members participate in negotiations. Thus lack of co-ordination among the UN agencies and NGO's was used as a strategy by the Taliban and they kept delaying or refusing permission for programmes to operate, pressurized agencies to hire relatives and refused to meet with

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<sup>29</sup> Ahmad Rashid, *op.cit.*, n.20, p.60.

agency representatives fully aware that such challenges would not provoke concerted response.

Some organisations also lay stress on greater participation of women in programme activities, an objective made more difficult by edicts restricting international contact with Afghan women. The UN guidelines on the protection of Refugee women and the People Oriented Planning (POP) tool developed by the UNHCR promotes participation as a means to improve the protection of women and girls.<sup>30</sup> Since 1996, the Women's Commission for Refugee Women and children has advocated greater implementation by NGO; of the UNHCR POP guidelines in programmes round the world. In this connection, the UN hired a Pakistan based senior level Gender Advisor for Afghanistan programme to co-ordinate and guide UN agencies, employ more female staff at decision making level and with respect to UN fund for population activities resume family planning schemes in Afghanistan. This senior gender advisor assumed her post in the Islamabad office of the United Nations Development Programme (UNDP). There is still no indication that the UN fund for Population Activities (UNFPA) has yet to resume family planning programmes.

Thus, interagency collaboration on crucial gender issues has ranged from nil to passable, but rarely has it been excellent. However, much work huds to be done to incense equal access and services for women and girls. Efforts by UN agencies and NGO's to expand dialogue with the Taliban have opened the door to better communication with the expressed goal of improving conditions for women and girls.

The edicts of Taliban continue to present formidable obstacles to designing and implementing aid activities and to protecting the human

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<sup>30</sup> Julie Mertus, *op.cit.*, n.18, p.78.



rights of women and girls. To be effective assistance programmes must work within the program set by the authorities, but at the same time not perpetrate the abuses inherent in the Taliban policies. Agencies must take expedient measures as they deal with unpredictable authorities who remain largely without International recognition.

Thus it could be said that after more than two decades of the conflict, the aid community is facing donor fatigue. The very fact that the conditions within Afghanistan are getting from bad to worse, especially in the area of women's rights has made them realize that it is pointless dwelling on issues which have no solution. Moreover, International community in the post cold war era lost interest in it because there were no political interests to meet. Thus the Afghan conflict has become an 'Orphaned' Conflicts of the world which has been used and deserted by the international community in this context of endorse what the famous Afghan scholar Barnett Rubin says, "the situation in Afghanistan is ugly today, it is not because people of Afghanistan are ugly. Afghanistan is not the mirror of itself but of the world."<sup>31</sup>

#### **NGO Initiatives in the Area of Women's Rights in the Refugee Areas: Pakistan and India**

Before discussing specific programmes it is important to discuss the dangers which the women face in the war zone along the Pakistan - Afghanistan border. Since the social system within the camps is just an extension of their lives within Afghanistan, they face similar cultural constraints. They not only lose their identity which has a deep psychological impact upon them, but they also face threats to physical security. They are more vulnerable to sexual abuse. They also face

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<sup>31</sup> Ahmad Rashid, *op. cit.*, n.20, p. 78.

problems with regard to access to wealth, education facilities, food aid etc. Survival itself becomes a problem.

Afghan women refugees participating in program tailored specifically for their development needs have become targets of violence and intimidation as have some western organisations assisting them. To the most conservative factions of the Afghan male population, programmes for women are anti-Muslim the present threats to Afghan refugee women are linked to politically motivated portions (Presumably Fundamentalists) who either wish to disparage the Communist regimes agenda for women inside Afghanistan or convince more of their countrymen that women are being dangerously westernized. The emergence of radical fundamentalists has directly and adversely affected Afghan refugee women and girls and must be taken into consideration of program planning during exile as well as after repatriation.

The members of the donor community state that they fund programmes for the community at large. Therefore, they do not see the need to target the special needs of women. Although donors envision equitable distribution of program benefits, religious and traditional constraints inhabit women and girls from receiving or participating in services and programmes.

Many women's organisations like RAWA and AWN shifted office from Afghanistan to Pakistan and carried out their activities here. RAWA has been running schools, and orphanages for women. ACBAR is also based in Peshawar and provides a former for the NGOs to discuss the issues which are of vital importance for the co-ordination of activities of the humanitarian community.

WFP, Care, Swedish International Development Assistance (SIDA), UNOCA, USAID, UNHCR, UNDP, SAVE the Children, WHO, ICRC etc. opened up offices for the aid of refugee women. Most of these Western organisations did not want to antagonize the Fundamentalists and that is why distributed aid through the Resistance groups. To obtain a ration card, each refugee had to have a certificate better from one of the seven resistance parties. The process obviously politicized the refugee process and unnecessarily confused the refugees with guerillas.<sup>32</sup>

The Afghan Refugees in India do not face the cultural constraints which these women in Pakistan face. The question here is of survival. The major in India is World Vision which helps them with Educational facilities and training in vocational Courses and aims at economically empowering the refugee women. Public Interests Legal support and Research Centre (PILSARC), Young Men's Christian Association (YMCA) and Voluntary Health Association of India (VHAI) are the implementation partners of the UNHCR. PILSARC provides legal advise to them, VHAI provides health facilities and YMCA provides educational facilities. The Afghan Ismaili Centre (AIC) in Malviyanagar provides basic English classes and also teaches them the basics in computers. The AIC also runs tailoring, beauty therapy, stenography and other classes for these women so that they can gain Economic Independence. The Afghans in India belonging to various ethnic groups have come together and formed Afghan Association which again carries out literacy classes for the older people and trains the younger generation in Persian. These classes are open to all men and women.

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<sup>32</sup> Grant Farr, "Refugee Aid and Development in Pakistan: Afghan Aid After Ten Years" in Robert F. Gorman *Refugee Aid and Development Theory and Practice* (London, Westport Connecticut, Green Wood Press, 1993), p.122.

Thus it can be concluded that applying a gender perspective to the situation of Afghan women in conflict and their refugee experiences and reflecting these in programmes presents a tremendous challenge to all involved. It becomes difficult to reach at a consensus with regard to protecting human rights and providing for human needs especially in a cultural context like Afghanistan until and unless peace comes and the Afghan conflict is not politically settled and an opportunity exists for building up a civil society where women can participate humanitarian organisations and the larger international community will be forced to rely on short term short gap measures to ensure some degree of gender equality.

## CONCLUSION

This study aims at engendering the analysis of conflict and its aftermath from a human rights perspective. Women are always subsumed under the category of civilians in conflicts. They are not looked upon as individuals in their own capacity. Gender as a category also allows us to contrast the lives of men and women and prove that women experience the conflict and its aftermath much more differently and acutely.

Conflicts create refugees and refugees are created because human rights are violated in the home country. Conflicts lead to the suspension of national law, there is anarchy and lawlessness everywhere, the institutions of social redressal collapse and hence it becomes important uphold minimum humanitarian standards. When women in normal circumstances are at the receiving end of the social, political and economic milieu, their state in conflict is all the more vulnerable. They have been denied basic rights to life, liberty, movement, health, education, access to food etc.. In most of the conflicts, they have been used as pawns in the political rivalry of men.

The subordination of women runs so deep that it is viewed as inevitable or natural rather than a politically constructed reality maintained by patriarchal interests, ideology and institutions. The physical territory of this political struggle over what constitutes women's human rights is women's bodies. The physical abuse of women is a reminder of this territorial domination. This failure to see the oppression of women as political results in the exclusion of sexual discrimination and violence against women from the human rights agenda.

The problem becomes much more acute if the nature of the state is fundamentalist as is the case with Afghanistan – where the women have to bear the wrath of *fatwas* (religious injunctions) and at the same time face all the atrocities which a conflict brings.

The study attempts to show that Afghanistan is not a fundamentalist state per se. Though Islam has always been an important component in the history of Afghanistan, never has it been intolerant. The nature of Islam in Afghanistan was very moderate. The Afghans Mullahs have not pushed Islam down people's throats and sectarianism was not political issue until recently. After 1992, the brutal civil war has destroyed the age-old Afghan tolerance and consensus. The civil war has divided Islamic sects and ethnic groups in a way that was unimaginable to ordinary Afghans.

The conflict in Afghanistan is the creation of super powers to suit their political interests. During the Cold War era, Afghanistan was used by USA to curtail the growing influence of USSR. They not only provided humanitarian aid but also provided arms and ammunitions to the Jihadi elements. This aid along with existing fragmentation of Afghan society ensured that no national leadership emerged which suited the political interests of the US. After 1989, when the Soviet troops with drew under UN mediated agreement, Majaheedins in some regions in some regions formed more consolidated groups, which led to ethnic and regional rivalries, rather than national unity US solely started withdrawing assistance. One super power dissolved and the other power disengaged but the regional powers – Pakistan, Iran, Uzbekistan , Russia , India and Saudi Arabia continued to support one group or the other. Much of the blame for the continuation of the conflict lies in the hands of the outsiders who continue to be their proxies in an ever increasing spiral of intervention

and violence. Regional powers took advantage of the vacuum that was created and kept backing the conflict.

Taliban also rose to prominence only because of external support. The Benazir Bhutto government in Pakistan along with his Interior Minister Nasirullah Babar had shifted its support from Hekmatyar mediated Jamaat – I- Islami to Taliban mediated Jamiat-Ul-Ulema -Islam. The regional powers also had developed stakes in Afghanistan not only because of trade routes but also potentially lucrative oil and gas pipelines. IN the spring of 1996, press reports revealed that partnership between an American company Unocal and Saudi company Delta had included plans for multimillion-dollar oil and gas pipeline from Turkmenistan to Pakistan, Baluchistan via Herat and Qandahar. Though the US is not overtly involved in the conflict, Taliban appears to serve the US policy of isolation of Iran by creating a firmly Sunni buffer on Irans' border and providing survey for trade routes and pipelines would break Iran's monopoly on central Asia's southern trade route.

Here it needs to be mentioned that the point of departure for the Islamists is not the everyday experience of Islam interpreted in a cultural form but a political insight for many of them as is the case with the Mujaheedin and Taliban. The return to religion has been brought through their experience in politics and economics and not as a result of their religious beliefs.

Thus, the most extreme factions of the resistance movement have been given majority of the resources diminishing the power and status of the more politically moderate Afghans. These extremist factions have set out to change the prevailing social norms and mores especially the attitudes and perceptions about the proper role of the Afghan women ad girls in the

society. Thus the oppression of women has become a benchmark of the radicalism of both the Mujahedin and the Taliban.

Though the problems women faced at different phases of the conflict were depending upon the political and ideological moorings of the government in control and the external powers who support the dominant political alliances at that point of time. One thing is clear that women have been at the receiving end at various stages of the conflict. While during the Saur revolution, the major issue was the economic exploitation of women in the social system through practices like bride price, which denied them self esteem and reduce them commodities for exchange to sort out communal feuds and hence required legislation for modernization. During the Saur revolution they had to face forced migration as a reaction to modernization efforts. With Mujahedin rule came sectarianism, threats to physical security from rival political groups, edicts where basic rights to education, work etc. were taken away. Though the treatment of women was bad during this phase, it was not as bad as under the Taliban because it is very short lived and so the resistance parties were pre-occupied in solving internal feuds. There was no uniformity in the implementation of the edicts and women in places like Kabul still went out and worked.

The Taliban regime of the conflict is the worst of all three phases. The edicts imposed during this period were the worst - strict dress codes were imposed, women could not move around alone without male company; women could not seek access to health, education. Women's bathhouses were closed and their right to work was taken away. If women did not abide by the same, they had to face harsh punishments.

The Taliban's own internal political dynamic and the nature of their recruiting base shaped Taliban's uncompromising attitude. Their recruits, the orphans, the rootless, the frustrated proletariat and the refugees had



been brought up in a totally male society. In the madrasa milieu, control over women and their virtual exclusion was a powerful symbol of manhood and a reaffirmation of the students' commitment to jihad. Denying a role for women give the Taliban a kind of false legitimacy amongst these elements. As Sima Wali , the head of an Afghan NGO says, “ This conflict against women is rooted in the political beliefs and ideologies, not in Islam or the cultural norms. The Taliban are a new generation of Muslim men, who are products of a war culture, who have spent much of their adult lives in complete segregation from their communities. In Afghan society, women have traditionally been used as instruments to regulate social behavior and as such are powerful symbols in Afghan culture”.

The Taliban leaders admitted that if they gave women greater freedom they would lose the support of their rank and file who would be disillusioned that they might compromise principles under pressure. They also claimed that their influence was weakened and subverted by the possibility of sexual opportunities and thus would not fight with the same zeal. So the oppression of women became a benchmark for the Taliban Islamic radicalism, their aim to cleanse society and to keep the morale of their troops high. The gender issue became the main platform of the Taliban's resistance to UN and western governments' attempts to make them compromise and moderate their policies.

The Taliban leaders turned the argument of the outside world on its head. They insisted that it was upto the west to moderate their position and accommodate the Taliban, rather than the Taliban recognizing universal human rights. They openly said that anybody who talks to us should tak within Islam's framework. Attorney General Maulvi Jalilulah Maulvijada said, “ The Holy Quran cannot adjust itself to other people's

requirements, people should adjust themselves to the requirements of the Quran.” But what is most striking is that the line between Pushtunwali and Shariah also has been blurred for the Pushtuns. Taliban punishments were however drawn from Pushtunwali rather than the Shariah, it certainly did not govern the practices of other ethnic groups. Non- Pushtuns saw this as an attempt to impose Qandhari Pushtun laws on these ethnic groups by force and deepened the ethnic divide.

There were no political conditions under which they were ready to compromise. After every defeat they tightened their gender policies ferociously under the assumption that harsher measures against women would sustain morale amongst their defeated soldiers and every subsequent victory led to another tightening because the conquered population had to be shown the Taliban’s power. Thus, the hypothesis that fundamentalism uses women’s bodies as means for gaining social and political legitimacy, stands true here. The situation also illustrates how political considerations override encoded social mores, undermining humanitarian considerations. It also illustrates the transfer of male led political agenda to sexual politics.

Even with regard to the conflict induced refugee influxes, women and children constitute 80 percent of the population both in India and Pakistan. The women refugees reported a stress and trauma typical of life in exile. The survival rates, physical protection, nutrition, education, skill development and psycho-social well-being of women refugees fell far below those of their male counterparts, mainly because of inequitable access to resources. Women were being coerced into the practice of purdah, which was not the custom of their communities. They cannot collect the food rations in public and therefore suffer from hunger if they have no male relatives to rely on to collect their food. Somewhere Afghan religious leaders capitulated to Pakistani attitudes about women to appease

Pakistan, a nation ruled by strict Islamic laws and a major distributor of arms and other resources to the Afghan factions. Women of child bearing age despite being malnourished should submit to the male political agenda of replenishing a lost population devastated by war. Along with social and economic subjugation women are also subject to sexual violence. Atrocities like selling young girls to Arab countries or forcing them into prostitution in Pakistani brothels continue. Because of economic constraints women have also taken up begging.

The refugee women in India on the other hand, do not face the cultural constraints as the asylum seekers do in Pakistan and thus enjoy more freedom. This again proves the hypothesis that socio-cultural practices in the host country are a major detriment to the human rights violations of refugee women.

The absence of a national legislation as well as regional convention on refugees has totally neglected the issues about rights of refugee women. The failure of political and legal institutions to uphold their human rights at all stages of flight and countries of first asylum is devastating. The policy of ad-hocism with which both Pakistan and India deal with refugees has further affected the women. None of the countries have an official policy to deal with refugees. The UNHCR has come out with guidelines and a Policy Oriented Planning (POP), which says that no program for women refugees will be planned without due consultation with them. But all this has not worked in the context of the Afghan refugee women. The UNHCR is again dependent upon the individual states to carry out its mandate and as a consequence is incapable of protecting refugees.

With regard to humanitarian law also issues of women are subsumed under the category of civilians. They also speak about women in relative terms i.e. as mothers, sisters, and pregnant women. Thus, they fail

to recognize women as individuals in their own capacity. A human rights approach is advocated because it subsumes both humanitarian law and refugee law. Secondly, human rights are concerned about the lives of people globally and also about trans-national applicability of certain standards across borders. The only problem with international human rights laws is non-enforceability.

The NGO community also failed to integrate policies pertaining to women. They were scared of antagonizing the mullahs because of which they would have to close their offices.

It has thus become clear that refugee and displaced women are not the by-products of conflicts but rather specific objects of conflict. Female refugees and their dependents are the most vulnerable of all groups, not only to violence, but also to hunger and hunger-related illnesses. The suffering they endure over the loss of home and forced migration is made even more unbearable by inequitable food distribution, which exacts a high toll on infant and maternal mortality. Afghan war widows in refugee camps in Pakistan relate that they have gone hungry for weeks at a time because of food distribution system that favors men.

The time has come when women and families right to survival must become a priority and society and its institutions must take serious measures to develop appropriate policies and programs that can protect women from the effects of persecution, civil strife and war. Human rights agencies and guidelines must focus on the rights of refugee, displaced and returnee women.

The world community lacks the mechanism necessary to combat the systematic genocide of third world women, which had reached the scale of a lobl holocaust – this is evident at the most basic level of information

sharing in connection with violence. Despite the pervasiveness of brutality against female refugees, little information is passed on the policy makers. What policy is reported is typically viewed as isolated transgression that bears little or no relationship to larger political and conflict resolution issues.

Islamists use the relativist discourse in opposition to the universality approach. Since such abuses have profound political and economic roots, it is no coincidence that culture serves to perpetuate it. But as I said earlier culture is not a static concept and its interpretation is not applicable in the Muslim world because there are over one billion Muslims in the world living under different laws. It is true that they do not understand or practice Islam in the same way. What is common to all Muslim cultures is the variety and contradiction resulting from uneven development. The modern Muslim society is a mix of values and emotional responses. That is why any system of government that wishes to force uniformity on this dynamic variety will have to use considerable violence. The Islamist world view is defined mostly by its treatment of women and thus wherever Islamism has assumed power to become politically active women have borne the brunt of the violence. The crass infringement of women's rights we see in the Muslim world has more to do with power, patriarchy and misuse of religion as a political weapon than with religion as a political weapon than with religion properly understood as individual faith.

On the occasion of the fiftieth anniversary of the Universal Declaration of Human Rights, UN Secretary General Kofi Annan stressed the fundamental bond that this human rights to human nature. He said that human rights did not belong any government, nor were they limited to any continent. Rather they belonged to everyone. He emphasized, "the next century must be the age of prevention - let this be the year in which the

world once again looks to the Universal Declaration of Human Rights, as it 50 years ago – for a common standard of humanity for all of humanity.” I believe this should receive our support.

Finally, in the twenty first century, political activity must center on building civil societies and supporting the expansion of human rights and democracy. The rehabilitation of countries whose social structures and value systems have been shattered by chronic warfare cannot be separated from the need to support infrastructure development in newly emerging societies. Women who have responsibility in most traditional cultures of building and maintaining the social fabric of their communities, must be included in this process if it is to have any meaningful and lasting effect.

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