

# **South Asian Regional Perspective on Law, Governance & Gender**

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There is a tendency for the discourse on laws, governance and gender to remain confined within the rather narrow triangle of state, government and citizens. Formulated within this limited framework, the discourse ignores the complex nature of actual societies in which competing interests, groups and ideas vie for acceptance and ascendancy. My contention is that there is not one system of governance, but multiple systems of governance. Only by broadening the discourse beyond the nexus of state-government-citizens can we begin to address the complexities faced by people who are confronted and governed by competing systems of rules and governance. It is not enough, therefore, to merely ask whether 'good governance' exists, as is popular. It is essential to recognize (a) that multiple governance systems co-exist *simultaneously*, starting from the family/household and (b) that these governance systems determine acceptable and unacceptable behaviour, lay down the rules and procedures for decision-making and determine the basis of resource allocations.

There is also a tendency to use notions of democracy, governance, laws and state as conceptual constructs without "interrogating how these constructs are products of historical factors and experiences", as the Developing Alternatives with Women for a New Era (DAWN) states. (Taylor 2000:16)<sup>1</sup> To this, I would add also without interrogating the power structures and dynamics within that society. People are not poor marginalized or oppressed because they want to be: they are poor, marginalized or oppressed due to "processes of disempowerment visited upon them by the power structures within which they are located". (WEMC 2007: 8) There is a need, therefore, to deconstruct and problematise notions of law as well as notions of governance.

Regarding law, one of the best deconstructions is presented M. Tigar and M. R. Levy in their 1977 work. They define laws as:

Legal rules and principles [that] are justified by resort to sources that are accepted because of their reputed age and authenticity and to principles of social theory that are believed to be self-evidently valid but that in fact express the aspirations of the group which has for the moment achieved dominance" (Tigar & Levy 1977: 283)

It is important to remember that, dependent on the ability to enforce the rules set out and/or mete out sanctions for disobedience and contravention, laws are made by those with sufficient power to have become dominant. Laws are not necessarily either benign or neutral rules supporting the common good of all persons. It would be naïve, for instance, to expect to find laws supportive of peasants in societies and states in which the presence feudal structures of power remain strongly entrenched, such as in many parts of South Asia. From a gender perspective, laws the world over are even more problematic, elaborated and enforced as they are within patriarchal structures that

discriminate against women. Critically, women's lack of economic and political power translates into the complete absence of their experiences in both the text and institutions of the law. "It is generally men's experiences, opinions and interests that throughout time have been etched into law," as the founder of the Institute of Women's Law in Oslo, Tove Stang Dahl, insightfully states. (Dahl 1987:362) This is why, Dahl contends, there is a need of an Institute of Women's Law and not, as would be more commonly assumed, a women's institute of law.

Groups excluded from the centres, corridors, or even side streets of power cannot, therefore, presume that their rights will be safeguarded, much less promoted in any given legal system. Indeed, to achieve their rights, women (and other disadvantaged groups in a society) have to first convince society (and within this, policy-makers) that their demands are justifiable before they can hope to have justice.

So what then is governance? To me systems of governance complement the rules of society as the mechanisms and processes that people put into place to regulate interaction between individuals and groups of persons within a particular community – however 'community' may be defined. Along with the accepted rules, a system of governance additionally regulates interaction of community members with persons and entities outside the defined community – be it a household, village or state. As systems of decision-making and the sharing of resources, governance thus starts within the family; it passes through non-state self-governance mechanisms as well as state mechanisms to culminate in global governance structures and dynamics. The paradox of South Asia is that it has the highest number of women heads of governments of any region on the one hand, but a glaring absence of women in the legislative processes, law enforcement agencies and judicial structures on the other that mirrors the real lack of power of women as a class of people. At the root of women's absence from the processes of governance is their exclusion from the basic unit of decision-making and resource allocations at home.

If laws are state-sanctioned rules, and governance the mechanisms and processes put into place for that regulation, only a small number of social rules are ever converted into codified law. For the most part it is customs, traditions and conventions that more immediately influence people's lives. There are no laws in South Asia that forbid women from walking the bazaar at night, from entering almost any profession, from deciding whether and who to marry, when, whether and how many children to have. If women's lives are constrained in all these aspects it is due to the existence and implementation of unwritten rules learnt and internalized through socialization processes and daily interactions. Such rules are often more powerful than the laws of the country for they operate on a daily basis, kept in place by the very immediate threats of physical or social violence from family and community members for any contravention. Tove Bolstad, a Norwegian feminist, uses the term 'informal law' for such internalized rules which she defines as:

rules which are adhered to because they are perceived as a moral duty and because they may be sanctioned by, for instance, some people becoming angry if such duties are not performed. Such informal regulations arise steadily in semi-autonomous spheres. Family life and in particular farm life is precisely such an area. (Bolstad 1995:26-27)

She goes on to emphasize that:

All cultures contain spheres in which it is impossible for the members 'to think that they are thinking wrongly' - things are obvious, self-evident and natural. These are implicitly areas of

silence, of inarticulation, arenas into which language does not intrude or in which it is forbidden to speak.

Bolstad is not referring to so-called 'traditional' societies of the Third World. She is describing Norwegian society that, arguably, enjoys some of the most gender-neutral formal law in the world. And yet, the confluence of informal law or customs is found in family life.

Other complicating factors present themselves in ex-colonial states such as South Asia, due to the fracturing of society under colonial rule – a fracturing that continued even after states were catapulted into the nation-state framework and decades of independent self-rule. Where state and nation converge, societal rules will be better integrated into the principles and laws of the state and vice-versa. Changing societal conventions will have a better chance of being transformed into accepted rules of law through the processes of state governance available to the citizens. In contrast in South Asia's post-colonial states, non-state governance systems (e.g. *panchayats*, *jirgas*, tribal leadership and other 'councils of the elders') were never fully displaced by colonial rule and ran parallel to the colonial rule, especially with regard to personal status matters and gender which least affected the interest of the colonisers. (Indeed, in some instances, the British colonial rulers acknowledged and integrated traditional forums such as *jirgas* and *panchayats* into their governance structures insofar as they related to the 'natives'.<sup>1</sup>) Moreover, ex-colonial states did not have evolutionary processes in which nation and state coalesced, so that these traditional self-governance structures have persisted after independence.

Not infrequently, the viewpoint of those who adjudicate in these parallel systems, conflicts openly with the official laws and principles of state governance. In South Asia, informal structures of power and influence are often strong enough to ignore and displace the formal state structures and systems; rulings by *panchayats* and *jirgas* flagrantly contravening the laws and any modicum of human rights are everyday occurrences in Pakistan. From the perspective of governance it becomes imperative to ask why such institutions are allowed to flaunt the state's laws with such impunity? Whose interests are being served by the blatant disregard of the legal rights sanctioned by the state law; by the inability of the writ of the state to be established? Even more perturbing is that in some instances, new forms of informal dispute resolution forums have emerged, such as the *salishes* in Bangladesh that, like the Pakistani and Indian *panchayats*, have much to answer for in terms of women's rights. It is also of concern that informal dispute resolution forums are being promoted by international donor agencies and IFIs as cheap appropriate 'community-based' alternatives to poorly resourced judicial systems, when surely the objective should be to ensure the rights of the people and the writ of the state.<sup>2</sup>

One of the answers lies in the fact that while formal, de-personalised structures of state and politics do exist, the dynamics of real power in South Asia remain intricately linked to family and personal connections, as epitomised by the Gandhi dynasty in India's politics, and clearly evident in Sri Lanka, Pakistan and Bangladesh. The issue goes far beyond leadership. Formal channels and structures of political power in the region are seriously threatened by the politics of informal power brokerage, and systems of patronage overshadow the formal systems of governance. Consequently, the exercise of real power is often indirect and, as philosopher John

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<sup>1</sup> See for instance Shaheen Sardar Ali & Kamran Arif "Parallel Judicial Systems in Pakistan and Consequences for Human Rights" pp.29-60 and Kamran Arif "The Evolution of Muslim Personal Law in Pakistan" pp.81-92 in *Shaping Women's Lives: Laws Practices and Strategies in Pakistan*; ed Farida Shaheed, Sohail Akbar Warriach, Cassandra Balchin & Aisha Gazdar, Shirkat Gah. Lahore: 1998

Stuart Mill had postulated, being divorced from accountability and responsibility, it is essentially irresponsible. There are also intricate links between the formal and informal systems. A South Asian regional study on women and governance under the aegis of the International Centre for Ethnic Studies (I.C.E.S. 2002),<sup>3</sup> for instance, concluded that there has been a large-scale appropriation of the modern state's mechanisms by the traditional power elite (Asmita, 1999 & 2002) such that the local power elites are able to simultaneously perpetuate local power structures and mould the "new" state institutions to their purpose. Without the material and social conditions that would enable people to cast their votes independently, the electoral process frequently returns those heading the traditional power structure. Elected, these local elites then simultaneously hold office in the formal state structures and still control decision-making in the non-formal structures. This situation has immediate consequences for women, governance and access to power. First, traditional forums exclude women as a policy, impeding access to decision-making and power through the informal governance mechanisms (*jirga*, *panchayat*, *salish*). Second, these non-formal forums exercise a more immediate control over women's everyday lives than the more distant formal institutions of the state.<sup>4</sup> As the more immediate means of governance intruding in women's lives, these parallel structures of governance also obstruct women's access to any opportunities for participation and decision-making provided for by state structures by enforcing prescriptive cultural notions of constrained female roles and activities (for example, excluding women from decision-making about the family and community, forbidding women to work outside their homes, limiting female mobility etc.)

#### *Culture Traditions; Laws & Governance*

The notions surrounding culture and tradition also need to be problematised. There is a common presumption that the law is divorced from culture and that culture relates only to customs. Similarly there seems to be a belief that traditions exist in a magical vacuum independent of human will and action; self-perpetuating and self-generating without the benefit of human agency and unaffected by the realities of people's lives. Nothing could be further from the truth.

In the ICES study, the north India research team, Ekatra, comments that after independence, "the Indian state adopted a so-called modernistic rationalistic ideology that would, it was presumed, gradually replace the tradition and irrational," resulting in a conflict between state and society, in which the tradition exhibited "a surprising resilient." Underlying this conflict, Ekatra was a faulty premise: parliamentary institutions of democracy presume a highly individuated society in which people acted independently in their own self-interest. Whereas in India, "most people live according to social principles fundamentally opposed to individuation, being apt to act according to the membership of groups like castes, religious communities or linguistic block." (Ekatra: 2002: 291) While Ekatra's case study was specific to north India, the point they make is valid for all South Asia. These multiple simultaneous belongings have implications for citizenship; they are what Nira Yuval-Davis calls 'layered citizenship'. (Werbner & Yuval Davis 1999) The layered citizenship includes exclusions from power of ethnic and religious groups as well. The Sri Lankan I.C.E.S. study, for instance, notes that a belief in the normative power of constitutionalism instituting transformative reform was essential "to the notion that the state existed for the common good," but points out that in fact constitutionalism failed "to provide for the needs of ethnic minorities and the need to reflect the multi-ethnic character of the polity." (ICES 2002: 421-422) I have written about citizenship elsewhere and will not deal with this topic here.<sup>5</sup> I do, however, want to return to the question of tradition.

All traditions need to be practiced to survive; this holds true of any tradition – grand or minor, family or state. If people do not adhere to the practice of a tradition, it ceases to be a tradition. At the same time, as people practice traditions and customs, these traditions and customs evolve and mutate, lose or gain strength. Hence, the greatest tradition, as Ashish Nandy says, is the tradition of inventing traditions.<sup>(Nandy 1989)</sup> It is important to remember therefore that what is called a tradition may only be yesterday's invention. It is equally important to interrogate who is claiming it as tradition and whose interests are served by that 'tradition.'

Then there is the dissociation of law from custom. Whereas culture and customs are popularly perceived to be "naturally" connected and so occur together in the discourse, the law has somehow become de-linked from its cultural moorings so that there is a tendency to consider the law abstracted from people's everyday lives. Attempting to formulate strategies for change without exploring the nature and implications of the inter-linkages between law and culture is problematic.

A major pitfall of seeing the law as neutral and divorced from culture is that such a perspective successfully hides from view the basic premise that these are rules and principles that "express the aspirations of the group which has for the moment achieved dominance." The law flows from the social relations that it seeks to codify and simultaneously - by both prescription and prohibition - projects an ideal for society. In projecting an ideal the law necessarily has cultural underpinnings and, as the Institute of Women's Law confirms, these underpinnings are patriarchal in nature. Culture not as artifact, but as a window modulating perception, a casting mould for behaviour, and a vision of the ideal is clearly visible in the constitution and sub-constitutions – both as provisions of the text and as silences.

Let us take as example violence against women concerning which it is often posited that 'cultural' justifications for violence only operate in so-called 'traditional' societies, which is used as a euphemism for the less economically developed (and powerful) states and/or to connote social groupings within a state, such as migrant communities perceived as bringing with them and adhering to cultural norms in conflict with the mainstream. As Dr Yakin Erturk, the current UN Special Rapporteur on Violence Against Women commented sometimes it seems that the industrialized West has human rights while countries like ours have culture.<sup>6</sup> Yet there is the sub-culture of youth and elite just as well as the sub-cultures of the marginalized and disenfranchised populations. The fact is that all societies cultures and the world over, the dominant culture is patriarchal and patriarchal culture validates violence as an acceptable, even desirable, attribute of masculinity (at the same time it de-values women and all attributes considered feminine, such as nurturing - not just of persons but also of relationships). Consequently, regardless of when it occurs and the nature of its manifestation, violence against women is *always* justified by culture. Whether explicit or implicit, cultural legitimization for gender-based violence is to be found in contemporary political discourses and throughout formal state laws. For, despite appearances to the contrary, the legal rules and principles in operation reflect not the good of all persons within society but that of the group(s) having achieved ascendancy and a dominant position.

However, much like the rules attached to competing systems of governance, societies have more than one culture: while there is a dominant culture reflected state laws, policies and attitudes, sub-state communities have their own cultures; and of course there are the cultures of resistance and the cultures of the marginalized. Cultural contestations are integral part to contestations of power – a process in which those aspects of culture are selectively promoted that further the political agenda. Hence, Radhika Coomaraswamy, former UN Special Rapporteur on Violence

Against Women, notes that "There's a lot of law writing, standard setting, programmes being planned, but the biggest problem...is that people are using culture and religion to deny women's rights."<sup>2</sup>

### *The mantra of good governance and political representation*

In 2000, the South women's network, DAWN, noting that "global governance and efficient management are the new mantras of international agencies and institutions," pointed out that "throughout the South, political and economic compacts of power are made through international institutions at the global, regional and national levels." (DAWN: 15) These compacts of power are seldom negotiated in a democratic manner that would include the voices of the citizens' of concerned countries and yet, the same institutions speak of the need for good governance and people's participation and women's representation. Several questions arise, especially when the discourse of such 'good governance' replaces the term citizens with 'clients,' dislocating the narrative of citizens' entitlement to claim rights from the state.<sup>7</sup> The basic question is whose interests are served in these compacts and who gains and who loses power through their implementation. An equally pertinent question raised by DAWN is why the reassertion of neo-liberalism has been accompanied by the rise of what I call the politics of essentialist identity and other call 'fundamentalism'? Ekatra, raises the point that the 'crisis of governance' often actually refers to a crisis of governability in which the principle concern is with easing the environment for economic processes and interests. Further, Ekatra states that Structural Adjustment Programmes and accompanying conditionalities have led to the gradual retreat of the welfare state in India. (Ekatra 2002)

There is also the contradictory situation of the official policy documents of South Asian states being mindful of women's rights and gender-appropriate policies. This may be less due to a commitment to women's equality and well-being than finding themselves obliged to subscribe to principles and policies that promote women's rights. As suggested by ICES, what may appear to be commitment is contradicted by the persistence of discriminatory laws, by discriminatory practices condoned by the state, and by the sanctioning of the authority of men over women in the everyday practice of state officials and offices. (I.C.E.S. 2002:422) India, Sri Lanka, Bangladesh and Pakistan have all acceded to CEDAW; Nepal has signed but not ratified. Excepting Sri Lanka all the other states have instituted fairly substantive quotas (20%-33.3%) for women's political representation at different tiers of government; all countries have measures aimed at strengthening women in the bureaucracy. But women's political participation and increased presence in government bureaucracies have failed to significantly shift the balance of power between men and women (or for that matter between different ethnic or religious groups, castes etc.) It is vital not to confuse 'participation' with equality or rights. Indeed, the feminist critique of the 'women-in-development' concept of the 1980s was precisely that women do participate in development; development could not take place without their full participation. The problem is not one of participation but the fact that, despite participation, women are excluded from the benefits of development processes.

If good governance is measured by status indicators, then a good case study is Sri Lanka where the healthy status indicators for women contrast so vividly with the distressing indicators for the

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<sup>2</sup> Radhika Coomaraswamy quoted in S. Cameron-Moore, 5 May 2005, 'Violence against women rising in South Asia: UN', Islamabad: Reuters, available at <<http://www.dawn.com/2005/05/05/intl1.htm>>.

rest of South Asia. Female literacy stands at 83.1% (compared with a 90.1% male literacy rate), maternal mortality is low, fertility rate has been significantly reduced and the official female labour force participation rate is 31.8%.<sup>8</sup> And yet, despite these encouraging statistics and the trend of women entering political and assuming political office as replacement for males (in what is known as the 'over-his-dead-body' syndrome), as a group, women exercise little power in political decision-making. It is worth noting that in all the countries, few women hold offices, as head of local councils, or ministers in provincial or federal government. With respect to Sri Lanka, ICES believes that the state of Sri Lanka promoted those measures for women that fit into a basic needs approach to development but not others. In other words, improving health and education and even employment of women were acceptable objectives to be pursued. Not so measures that would entail – or result in – a shift in the allocations of resources, or balance of power. Researchers also point to the culturally determined constraints faced by women in Sri Lanka, as in other South Asian countries. "Socially learned behaviour and expectations that distinguish between masculinity and femininity, although not immutable over time, have always tended to inhibit women's participation in the public sphere." (ICES: 429) The prescriptive attributes defining a 'good woman' in society function as hurdles. Kumari Jayawardene, a doyen of Sri Lankan academe and long-time feminist, notes that in the Sri Lankan context these are embodied in the concept of '*lajja baya*' which translates into 'shame and fear.' Elaborating on this concept she states:

The do's included chastity, modesty, servility, self-sacrifice, confinement to home, preoccupation with children, husband, relations, husband's friends, not to mention looking after his property. There were also several don'ts including loud talk, laughing, running, idling, and keeping the company of independent (therefore bad) women."<sup>9</sup>

Similar concepts exist in all the South Asian countries and, as ICES goes on to note, such notions of 'good' and 'proper' behaviour are transmitted through socialization that starts at home. The family therefore becomes critical to governance and, as noted by the DAWN network, while there is considerable diversity amongst feminists "on the degree to which the state oppresses women," there is convergence "in viewing the family as the core site of women's oppression. For it is the family that defines the dividing line between the public and the private and public domains; that is, the boundary of state interference in individual existence." DAWN posits that is in its policies towards the family that the state intervenes most powerfully in lives of women regardless of the political systems they may inhabit. (DAWN: 93)

This is also the experience of Shirkat Gah and the reason its Women Law and Status programme, that works annually with between 45 and 50 community-based organizations in all four provinces of the Pakistan to bring about legal consciousness, has such a primary focus on family law. The term and the legal consciousness programme of Shirkat Gah grew out of a critical review of legal literacy initiatives. It differs from both legal literacy and legal aid since the former aims at simply informing people of the existing laws and institutions; the latter assists people within existing legal systems. Legal consciousness, however, looks at law and the legal system critically from the perspective of rights, social justice and development. Legal consciousness is not limited to helping women (or whoever) to choose within existing options but in the long term aims at enabling people to define the choices available through social and legal activism. Although the terms and ideas were developed independently by Shirkat Gah through its ground experience, the notion of legal consciousness resonates with the legal activism of others such as the suggestion of the Institute of Women's Law that the need of the hour is:

“to apply a perspective of law grounded from below. Having collected data about women’s reality and manifest needs, we examine to what extent the law meets such needs. On the other hand one has to mould these findings into a general structure of norms, a structure anchoring the various claims and options to certain long-range principles of a fundamental character.” (Dahl: 364)

The ideas and activism of Shirkat Gah have been influenced by Salma Sobhan who established the legal programme of BRAC and was a founder of Ain-o-Salish Kendro in Bangladesh and bears similarities with the work and perspective of ASK. One of the key premises of Salma Sobhan underlying the programmes of both ASK and Shirkat Gah is that if the aim of activism and intervention is not merely to ease the pressures within the boundaries of an existing situation but to empower women, helping women make a choice amongst the current options is only a first and insufficient step. For, in the words of Salma Sobhan:

“without ‘power’ women’s freedoms amount to very little. the basic tenet of empowerment is that women not only have a right to make decisions concerning the fundamental issues affecting their lives, but they also need to determine the nature of these choices.” (Sobhan\_\_:229)

## Conclusion

I have tried to outline why I believe it is so important to revisit the notions of law, governance and gender as they are generally used in current discourse; why the debate needs to be expanded beyond the confines of state-government and citizens to include the complexities of society and to recognize that nation and state do not always coincide; and why, from the perspective of women, isolated affirmative action measures such as reserving quotas, that do not take into account the realities of women’s daily lives remain inadequate. The debate, I argue needs to be grounded in understanding and analysis of power structures and power contestations – concepts that tend to be sidelined, either in the pursuit of political correctness or – and more frequently – in side-step commitments to changing the balance of power.<sup>10</sup>

With respect to laws, an intrinsic problem is that laws are based on the experiences of some men in society. They do not reflect the experiences of even all men, and certainly not of women. It is essential to remember that laws are not neutral; they reflect the aspirations of those who have become dominant at a particular point in time. Laws do not automatically provide for the best interest of all people in a society; those excluded from power have always had to struggle for their rights. This is not to suggest that there is no point in legal activism. On the contrary, legal activism is essential; engagement however needs to be based on a clear understanding of the limitations of the law, including the existence of multiple internalized informal law or customs that run parallel to and can nullify the impact of the formal state law for many people, especially women.

I have also argued that governance as a system of mechanisms and processes regulating interaction between individuals and groups of persons is not limited to the state. Like different sets of rules, different governance systems co-exist in society, especially but not only, in ex-colonial states such as those in South Asia. Governance cannot be seen limited to the parameters of state, government and citizens, and needs to be seen in terms of society as well as state and come to grips with the existence of parallel systems of self-governance. If governance starts with

the family, so too should the discourse on governance. The role of society is ignored by most social scientists. Jürgen Habermas is an exception. But, while Habermas acknowledges the interface of state and society, he sees the 'public sphere' as a benign force ideally 'made up of private people gathered together as a public and articulating the needs of society with the state' Habermas (1962: 176). This conceptualization of the state-society interface has diffused into development discourse such that 'civil society' comes to be seen as a desideratum to be promoted, while 'society' as such is quietly ignored.<sup>3</sup> (WEMC: 5)

Good governance cannot be judged by the simple criteria of whether health indicators and labour force participation rates have improved for women; otherwise Sri Lanka would present a radically different situation from other South Asian countries. The fact that there are similarities across South Asia suggests that good governance needs to tackle structural issues confronting women and other groups of marginalized people in each country. Until there is a shift in the balance of power and in the allocation of resources, terms such as poverty alleviation and participation will remain palliatives for those demanding equal rights and equitable resource allocations and development benefits.

In conclusion it seems to me that some of the essential questions to emerge are as follows.

1. Given the unequal power bases of men and women on the one hand, and the complexities of competing governance systems on the other, the question is how women can negotiate for rights and decision-making including in formal and informal governance structures; how does one support women to become rights-claimants able to hold the state responsible and how to do this in the midst of competing systems of governance.
2. Structural changes rarely take place through top-down interventions; they require social movements. At the same time, it is not possible for women to change society alone; for this men as well as women must change. There is a need therefore for women's movements to connect to and work with other social movements. Here it should be said that the current focus on civil society as key movers of change needs to be tempered with the understanding that (a) deep rooted change requires a groundswell which only comes about through social or political movements and (b) not all institutions of 'civil society' share the same goals. There are many institutions and groups opposed to women's rights and gender equality.
3. There is a need to address the challenge posed by both traditional parallel systems of self-governance such as *jirgas* and *panchayats* and the new non-formal or semi-formal institutions which have official sanction such as *salishes* or alternative dispute resolution forums being promoted by development agencies. In this there is a real dilemma when citizens believe the informal institutions (new or old) have greater authority or legitimacy than the state and its organs.
4. Finally there is the contradictory policies of donor agencies who are supporting women's rights (or human rights in general) and democratic norms on the one hand but whose economic and other policies may have the consequence of exacerbating poverty and a sense

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<sup>3</sup> This trend in development discourse may perhaps be explained in terms of its implicit bias towards 'modernisation' theory, which devalues existing traditions as remnants of an irrelevant past. This biased approach overlooks a significant body of anthropological, sociological and other social science literature that has long pointed to the interpenetrations of society, culture and the politics of the state. See, for example, Yang (1989), Kasulis (1991), Shaheed (2002), Wee (2002), and many others.

of a loss of control over decision-making, may strengthen the appeal of those who oppose gender equality and democratic principles.

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## Bibliography

- Arif, Kamran “*The Evolution of Muslim Personal Law in Pakistan*” pp.81-92 in *Shaping Women’s Lives: Laws Practices and Strategies in Pakistan*; ed Farida Shaheed, Sohail Akbar Warriach, Cassandra Balchin & Aisha Gazdar, Shirkat Gah. Lahore: 1998
- Asmita Resource Centre for Women. 2002. “*South India*” pp. 345-414 in Yasmin Tambiah (ed) *Women and Governance in South Asia: Re-imagining the State* International Centre for Ethnic Studies; Colombo
- Bolstad, Tove M. 1995. *Kar Contracts in Norway: Agreements Made by Men Concerning Women’s Work, Ownership and Lives*, Working Papers in Women’s Law, No.46, August, Institute of Women’s Law, Department of Public Law, University of Oslo
- Cornwall, Andrea & Karen Brock. 2005. *Beyond Buzzwords: ‘Poverty Reduction’, ‘Participation’ and “Empowerment” in Development Policy*”, Overarching Concerns Programme Paper Number 10, U.N.R.I.S.D. November, 2005.
- Dahl, Tove Stang. 1987. *Women’s Law: An Introduction to Feminist Jurisprudence*, Oslo, Norwegian University Press
- Ekatra. 2002. “*North India*” pp. 277-334 in Yasmin Tambiah (ed) *Women and Governance in South Asia: Re-imagining the State* International Centre for Ethnic Studies; Colombo
- International Centre for Ethnic Studies. 2002. “*Sri Lanka*” pp. 415-497 in Yasmin Tambiah (ed) *Women and Governance in South Asia: Re-imagining the State* International Centre for Ethnic Studies; Colombo
- Nandy, Ashish. 1989. *The Intimate Enemy: Loss and Recovery of Self Under Colonialism*. Oxford University Press: Delhi.
- Tambiah, Yasmin (ed). 2002. *Women and Governance in South Asia: Re-imagining the State* ed. Yasmin. International Centre for Ethnic Studies; Colombo
- Taylor Vivienne. 2000. *Marketisation of Governance: Critical Feminist Perspectives from the South*. DAWN (Developing Alternatives with Women for a New Era) 2000
- Tigar, M. and M.R. Levy. 1977 *Law and the Rise of Capitalism*. New York: Monthly Review Press
- Sardar Ali , Shaheen & Kamran Arif “*Parallel Judicial Systems in Pakistan and Consequences for Human Rights*” pp.29-60 in *Shaping Women’s Lives: Laws Practices and*

- Strategies in Pakistan*; ed Farida Shaheed, Sohail Akbar Warriach, Cassandra Balchin & Aisha Gazdar, Shirkat Gah. Lahore: 1998
- Shaheed, Farida. 2002. *Imagined Citizenship: Women State & Politics in Pakistan* Shirkat Gah; Lahore
- Shaheed, Farida. 2007. "Citizenship and the Nuanced Belong of Women" pp. 23-39 in Jennifer Bennet (ed.) *Scratching the Surface: Democracy, Traditions, Gender* Heinrich Boell Foundation Regional Office Pakistan/Afghanistan. Lahore
- Shirkat Gah. 2002. "Pakistan" pp. 177-276 in Yasmin Tambiah (ed) *Women and Governance in South Asia: Re-imagining the State* International Centre for Ethnic Studies; Colombo
- Sobhan, Salma. 1992. Legal Literacy and Community Development in Bangladesh: Bangladesh Rural Advancement Committee in Margaret Schuler & Sakintala K. Rajasinghlan (eds) *Legal Literacy, A Tool for Women's Empowerment*
- U.N.E.S.C.A.P. 2006. *Women in Local Government in Asia and the Pacific – A comparative analysis of thirteen countries* Available at [http://209.85.165.104/search?q=cache:RBz63a5J0hsJ:www.unescap.org/huset/women/reports/comparative\\_report](http://209.85.165.104/search?q=cache:RBz63a5J0hsJ:www.unescap.org/huset/women/reports/comparative_report).
- WEMC. 2007. *Women's Empowerment in Muslim Contexts: Poverty, Gender and Democratization from the Inside Out – A Research Framework 17 January*
- WLUML 1996. *Fatwas Against Women* WLUML

<sup>1</sup> DAWN is using the analysis of Katy Gardner and David Lewis in their 2000 paper "Dominant paradigms overturned or 'business as usual?'"

<sup>2</sup> On the problematic decisions of *salishes* in Bangladesh see *Fatwas Against Women* WLUML 1996. In Pakistan, the UNDP has recently supported an initiative promoting 'Gender Justice through Musalihat Anjuman' or mediation councils that, amongst other things are intended to resolve marital disputes and domestic violence. <<  
<sup>3</sup> *Women and Governance in South Asia: Re-imagining the State* ed. Yasmin Tambiah. International Centre for Ethnic Studies. Colombo: 2002.

<sup>4</sup> See Yasmim Tambiah op. cit and Farida Shaheed *Imagined Citizenship: Women State & Politics in Pakistan*; Shirkat Gah, 2002

<sup>5</sup> Farida Shaheed "Citizenship and the Nuanced Belong of Women pp23-39 in ed. Jennifer Bennet *Scratching the Surface: Democracy, Traditions, Gender* Heinrich Boell Foundation Regional Office Pakistan/Afghanistan. Lahore: 2007

<sup>6</sup> Comment made at the *Asia Pacific NGO Consultation with the UN Special Rapporteur on Violence Against Women, Dr Yakin Ertürk and the Special Rapporteur on Freedom of Religion or Belief, Dr Asma Jahangir on 'Culture and Violence Against Women in Asia Pacific'* 11-12 September 2006, Ulaanbaatar, Mongolia

<sup>7</sup> For a discussion on development discourse see Andrea Cornwall and Karen Brock *Beyond Buzzwords: 'Poverty Reduction', 'Participation' and "Empowerment" in Development Policy. Overarching Concerns Programme Paper Number 10*, UNRISD November, 2005.

<sup>8</sup> *Women in Local Government in Asia and the Pacific – A comparative analysis of thirteen countries* United Nations Economic and Social Commission for Asia and the Pacific. [http://209.85.165.104/search?q=cache:RBz63a5J0hsJ:www.unescap.org/huset/women/reports/comparative\\_report](http://209.85.165.104/search?q=cache:RBz63a5J0hsJ:www.unescap.org/huset/women/reports/comparative_report).

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- <sup>9</sup> Kumari Jayawardene “*Feminism in Sri Lanka in the Decade 1975-1985: Third World Perspectives*” ; *Strategies and Struggles, ISIS International* (1986) quoted in ICES “Sri Lanka” in Yasmin Tambiah, ed. *Women & Governance in South Asia: Reimagining the State*; ICES, Colombo: 2002
- <sup>10</sup> For an insightful discussion of the use of terms see Andrea Cornwall and Karen Brock *Beyond Buzzwords: “Poverty Reduction”, “Participation” and “Empowerment” in Development Policy*. Overarching Concerns Programme Paper Number 10. U.N.R.I.S.D. November 2005.