CRIME, CRIMINAL JUSTICE, AND THE EVOLVING SCIENCE OF CRIMINOLOGY IN SOUTH ASIA

INDIA, PAKISTAN, AND BANGLADESH

SHAHID M. SHAHIDULLAH

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Shahid M. Shahidullah
Editor

Crime, Criminal Justice, and the Evolving Science of Criminology in South Asia

India, Pakistan, and Bangladesh

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Foreword

Crime, Criminal Justice, and the Evolving Science of Criminology in South Asia provides a fascinating account of the history and current status efforts to prevent and control crime in India, Pakistan, and Bangladesh. The unique histories, cultures, and religions of the region are used as a backdrop to explain the development of law, crime, and the criminal justice response in comparative context. The intersecting influences of poverty, disadvantage, and globalization on crime, violence, and criminal justice reform are analyzed in 16 chapters.

This group of 17 contributors, all of whom are experts in the field, provides a multidisciplinary perspective and context to understanding the history and influences behind current crime problems and the operation of criminal justice in South Asia. The book also offers specific paths to be followed in preventing and controlling the incidence of violence and abuse in the region.

An important feature of the book is that it addresses a broad range of criminal activity including child abuse, sexual exploitation, juvenile delinquency, human trafficking, domestic violence, and rape. It devotes equal time to the challenges of reforming the criminal justice system with reference to international norms and standards on human rights, rule of law, equal access to justice, due process protections for individuals, and police and judicial accountability.

The individual chapters of this book examine impacts of modernization and globalization on crime and justice, where the region has made progress, and the areas in which further progress needs to be made.

This volume is a welcome contribution to the literature in understanding the distinctive aspects of crime and criminal justice in South Asia. Its historical and comparative approach makes it a valuable addition to our understanding of crime and justice globally.

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Acknowledgment

On February 17, 2014, Dr. Susyan Jou, Chair and Professor of Criminology and Director of Research Center for Taiwan Development, National Taipei University, who is also one of the editors of the *Palgrave Series on Advances in Criminology and Criminal Justice in Asia*, sent me an e-mail inquiring whether or not I would be interested in doing a book on Asia or any countries in the surrounding region. I proposed to do a volume on Crime and Justice in South Asia. The title and the book proposal were accepted, and that was the beginning of the birth of this project. I am truly grateful to Professor Jou for making this project possible, and allowing me this humbling opportunity. Next, a summary of the book chapters was sent to Palgrave for reviews. Ms. Julian Willan, Senior Commissioning Editor of Criminology, had the chapters reviewed by an anonymous group of experts in the field. I received some excellent comments and reviews, and I am greatly indebted to this group of reviewers for the enhanced quality of this book. Later on, Ms. Willan and I exchanged a series of e-mails discussing in detail about the perspective and directions of this text. I want to sincerely thank Ms. Willan for her inspiring comments and continuing assistance in the completion of this project. After the book proposal was accepted and the directions of the project were completed, I started to work with the authors who selflessly contributed chapters in this volume. All of them are distinguished experts in their areas of research. I am truly grateful for their contributions in this volume and highly respect their opinions.

I want to express my deep gratitude to Dr. Jay Albanese, Professor and Chair, Criminal Justice Programs, Wilder School of Government and Public Affairs, Virginia Commonwealth University, Virginia, USA, for kindly agreeing to write the foreword for this book. His perspective on crime and globalization has greatly impacted this work. I would like to thank Dr. Liu Jianhong, Professor of Criminology, University of Macao, China, and the President of the Asian Society of Criminology and Editor-in-Chief of the *Journal of Asian Criminology*, who kindly took the time to read the manuscript and wrote a recommendation as well. Professor Liu is one of Asia's leading criminologists. His book, *Handbook of Asian Criminology* (edited with J. B. Habenton and Sysyan Jou) published by Springer, is one of the earliest collections on crime and criminology in Asia. I am very grateful for his endorsement. Dr. Zina McGee, Endowed Professor of Sociology and Criminal Justice, at Hampton University in Virginia, is one of America's leading experts on violence research, family impacts of incarceration, criminological theory, and juvenile justice, and I am deeply appreciative of her inspirational reviews and comments. Thanks also to Dr. David L. Spinner, Director of the Graduate Program in Criminal Justice at Norfolk State University, Virginia, and Dr. Nana C. Derby, Professor of Sociology and Criminal Justice at Virginia State University, for their learned recommendations.

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Last but not least, my utmost gratitude to my family: my wife Sufia B. Shahid, MD., and my daughter, Ashley Shahid. I promised to them to

make more family time available after the completion of this work, and this book is dedicated to them. None of the people cited above, however, are responsible for the mistakes that remain. For the mistakes and the incompleteness, only I am to blame. To my reader, I hope that this book finds you well, thank you.

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Modernization, Globalization, and the Emerging Challenges to Criminal Justice in South Asia: Editor's Introduction

Shahid M. Shahidullah

Introduction

This book is about the nature of crime and criminality, the profile of modernization and reforms in criminal justice, and advances in the science of criminology in South Asia with special reference to India, Pakistan, and Bangladesh. The authors of this study have been chosen because of their substantive knowledge and experience in the field of crime and criminal justice, and their vast familiarity with the historical and cultural specificities of the region with respect to crime and justice. The shared perspective of this study is that the understanding the nature of crime and advances in criminal justice in any region of the world needs to be approached in terms of both external and internal forces and

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predicaments. On the basis of this historical and comparative perspective, the book examines crime and justice in South Asia in terms of the impacts and the imperatives of modernization and globalization—the forces that are primarily external in nature. The book also explores crime and justice in South Asia in terms of its local peculiarities—the forces that are primarily internal in nature, and are related to the region's social and political histories, cultures, creeds, and religion. Some of the authors had an opportunity to deliberate on the theme and the perspective of this study at a Roundtable Discussion organized at the Annual Meeting of the American Society of Criminology in Washington DC in November 2015.

External Forces on Crime and Justice in South Asia: Colonialism, Modernization, and Globalization

Since the days of the spread of colonialism in the eighteenth and nineteenth centuries, modernization and globalization have been spreading in almost all regions of the world. With the spread of colonial modernization and globalization, a new world system of criminal justice began to expand to the colonies (Ward 2000). The new world system of criminal justice spread, although in different depths and degrees, in almost all over the colonized world from Calcutta to Kenya, Jakarta to Jamaica, and Hong Kong to Honduras. The new world system of criminal justice in the colonies was indeed an extension of the evolving modern criminal justice in Western Europe—England, France, Germany, and the Netherlands. The expansion of the modern world system of criminal justice within the colonized societies continued for more than two hundred years. Within the colonial states, the old structures of medieval criminal justice were destroyed, new definitions of crime and criminality were invented (Brown 2014; Kolsky 2011, 2010; Schwartz 2010; Yang 1985), new institutions of law and law enforcement were established (Nijhar 2009), new structures of the judiciary were created, new models of prison and corrections were introduced, and research for a new science of criminology began to

expand (Agozino 2003; Sengoopta 2003). This was the beginning of the first wave of modernization in criminal justice in the colonies. In South Asia, this first wave of modernization formally began with the introduction of English Common Law through the enactment of the Government of India Act of 1858. With the introduction of the English Common Law, the old Muslim Laws of Mughal India and the existing body of Hindu Laws were largely removed from criminal justice. From the mid-nineteenth century, a modern structure of criminal justice began to expand in South Asia through the India Penal Code of 1860, India Police Act of 1861, India Evidence Act of 1872, Indian Code of Criminal Procedure of 1882, and the Indian Code of Criminal Procedure of 1898. The present systems of criminal justice in India, Pakistan, and Bangladesh are structurally built on the foundations of these five legal documents of British Colonial India, and they remained largely unchanged for the past one hundred and fifty years.

The first wave of colonial modernization in criminal justice had two contrasting and competing forces. It certainly strengthened the British imperial rule in India and established an elaborate imperial system of governing crime and justice based on the absolute dominance of the British colonial elite (Kolsky 2011, 2010). Within the colonial criminal justice, native criminality was defined, law enforcement was created, and the judiciary was designed to serve the interests of the colonial governing elite. The misuse of power and the injustice to the natives were not few and far between. But at the same time, colonial modernization was also a historical predicament that liberated India from the shackles of medieval justice and the age-old customs of crime and punishment. The colonial modernization in criminal justice in India created a universalized and a centralized system of crime and justice by introducing a new body of written law, a new system of professionalized policing, and a new centralized and hierarchical system of professional judiciary. The criminalization of Sati—an old India custom of burying alive a widow with her deceased husband—is probably one of the most civilizing impacts of colonial criminal justice in India that came through the enactment of the Bengal Sati Regulation Act of 1829 promulgated during the rule of Governor-General Lord William Bentinck. An equally civilizing statute was the Hindu Widow Remarriage Act of 1856 that decriminalized the remarriage of Hindu

widows. From the perspective of systemic modernization, the passage of the Legal Practitioners Act of 1846 that paved the way for the integration of the native Indians into the colonial judiciary, and the India High Court Act of 1862 that created a modern hierarchical system of upper courts in India, were of great significance.

The second wave of modernization and globalization in criminal justice in South Asia began in the context of postcolonial developments of modern states in the 1940s and 1950s. Between the 1950s and 1980s, during the time of the Cold War, the colonial process of modernization in criminal justice further expanded in the context of national development in the postcolonial states of India and Pakistan. In the 1980s, the world witnessed the emergence of a new historical time. That was a time of the end of the Cold War, and the beginning of a new historical era for the global expansion of the market economy and new dreams for freedom and democracy all over the world (Fukuyama 2006). That was a time for the rise of a new information society, a new knowledge economy, and a new "global village" (Friedman 2007). The explosion of the new global information society from the beginning of the 1990s brought a series of new challenges for governing crime and justice in all regions of the world.

Within the realm of crime and criminal justice, that was the beginning of the second wave of modernization and globalization. Like that of colonial time, the second wave of modernization and globalization also created a series of competing and contrasting forces (Shahidullah 2014; Bohlander 2010). The second wave of modernization and globalization led to the rise and expansion of many new global and transnational crimes (Nelken 2013; Albanese 2011; Glenny 2009; Aas 2007; Naim 2005). Some of these new crimes include global illegal human trafficking (United States Department of State 2015; United Nations Office on Drugs and Crime 2014), global sex tourism (Chin 2014; Chin and Finckenauer 2012; Beeks and Amir 2006; Brown 2000), global trading of illegal drugs (Naim 2005), global illegal trading of conventional weapons (Lumpe 2000), global illegal trading of stolen cultural artifacts (Carney 2011), global illegal organ trafficking (Territo and Matteson 2011; Chery 2005), piracy in the seas (Burnett 2003), global cybercrime (Goodman 2016), and global terrorism (Bennis 2016; Burke 2016; Cockburn 2015).

With the emergence of these new transnational criminal activities, there also began to grow a new generation of transnational organized criminal gangs who were far more mobile, educated, and technologically literate than those of the professional criminal gangs of the past. The emergence of this new phenomenon of global and transnational crime has brought many new challenges in criminal justice in the societies of the developing world. These challenges are for defining the peculiarity of the new global crimes, developing new laws and statutes to control and prevent them, and devising a new system of law enforcement, justice, and punishment. The new global crimes and new transnational criminal gangs have been spreading in South Asia from the beginning of the 1990s more rapidly than any other regions of the world particularly because of South Asia's specific economic, political, and social dynamics, and its location as a gateway to Afghanistan in the "Golden Crescent" and Myanmar, Thailand, and Laos of the "Golden Triangle."

Modernization and globalization, however, have also created many new possibilities for change and reforms in criminal justice in the developing world. Modernization and globalization have brought new demands for criminalization and decriminalization, new movements for human rights and equal justice, new requirements for judicial accountability and transparency, and a new perspective for a science of crime and justice (Bassiouni 2015; Pakes 2012; Shahidullah 2014, 2009). These new demands and movements for a modern system of criminal justice have been swiftly spreading all over the world regions since the beginning of the second wave of modernization and globalization. There is hardly any region of the world where movements are not growing for criminalizing such acts as domestic violence, sexual harassment, child abuse, corporal punishment, domestic servitude, date rape, cybercrime, and human trafficking. There is hardly any region of the world where movements are also not growing for decriminalizing abortion, homosexuality, and premarital love, sex, and intimacy. The external forces of modernization and globalization are reinventing the criminal law; bringing many new definitions of crime and criminality; reinforcing the issues of democracy, the rule of law, human rights, and equal justice; creating many new institutions of criminal justice; and raising many new intercivilizational debates and disputes on governing crime and justice.

Internal Forces on Crime and Justice in South Asia: Religion, Population, and Poverty

The nature of crime, criminality, and criminal justice in all societies and regions at the same time are also shaped and formed by their internal social and cultural forces. In no regions, and in societies of the world, modernization and globalization have completely wiped out their innate civilizational frames of reference and their internal logics and rationalities about crime and justice (Nelson 1981). Many crimes and criminalities are peculiarly and intrinsically local in nature. In the societies of South Asia, for example, the American crimes of gun violence, school shooting, and mass killing are few and far between. In America, on the other hand, the South Asian types of political and economic corruptions are exceptional in nature. The physical terrain of Afghanistan is peculiarly suitable for opium production. The criminality of opium trade, so, has remained intrinsically connected to the local economy, politics, and culture of the Afghans for centuries. The plight of organized crimes in South and Central America, high rate of homicide and violent crimes in Africa, religious violence in the Middle East, economic crimes in China and Eastern Europe, the rise of organized criminal gangs in post-Cold War Russia, and the spread of global sex tourism in Southeast Asia—all are impacted by these regions' local economic, political, and cultural forces and peculiarities.

Many facets of crime and criminal justice in South Asia are shaped and molded by its internal forces and predicaments. South Asia, until the end of the British colonial rule in 1947, was a part of greater India historically known as "Bharat" (Thaper 2014; Asher 2006). There was no country named Pakistan in South Asia before 1947. There was no country named Bangladesh in South Asia before 1971. At the end of the colonial rule, the British India was divided into two countries—India and Pakistan. The state of Pakistan was created to include the Muslim majority regions of India. The region of Eastern Bengal in 1947 was inserted into the state of Pakistan because of its majority in Muslim population. The region of Eastern Bengali remained with the state of Pakistan as East Pakistan from 1947 to 1970. Through a liberation war

in 1971, East Pakistan broke away from the state of Pakistan on the grounds of its different cultural, racial, and linguistic heritage. The division of India and the creation of three different states is one of the central dynamics of politics and culture in South Asia, and in many complex ways it is connected to the nature and governance of its evolving system of crime and justice.

There are three internal historical forces and predicaments that are crucially significant in any systematic study of crime and justice in South Asia—religion, population, and poverty. Religion particularly is one of the central components of the social and political landscape of South Asia. Many issues of social and political violence are deeply embedded in the region's religious history. India has been predominantly a Hindu civilization that is about three thousand years old. Hinduism is older than Judaism, Christianity, and Islam. A process of inter-civilizational clash centering religion began in Ancient India from the time of the arrival of Arab traders in the mid-eighth century. It was during the dominance of Hindu aristocracies in power and politics from the eighth to the twelfth century that a process of Islamization began in India—a process of religious conversion from Hinduism and Buddhism to Islam. By the end of the twelfth century, a significant portion of India's population became Muslims. The thirteenth century saw the end of the dominance of Hindu aristocracies in India. From the thirteenth to eighteenth century, from 1199 AD to 1857 AD, India was ruled by six successive foreign Muslim dynasties—Slave dynasty (1199–1290), Khilji dynasty (1290–1320), Tughlaq dynasty (1320–1414), Sayyid dynasty (1414–1450), Lodhi dynasty (1450–1526), and Mughal dynasty (1526–1857). During more than seven hundred years of Muslim rule in India, the process of Islamization in the middle of a vast Hindu civilization further advanced and became far more entrenched into its social and political landscape (Eaton 2006, 1996). This led to the further widening of the boundaries of inter-civilization clash between Hinduism and Islam (Huntington 2007; Naipaul 2003).

After the end of the Mughal dynasty in 1857, India became formally colonized by the British and the colonial rule continued up to the

mid-twentieth century. During the two hundred years of colonial rule, the inter-civilizational clash between the Hindus and the Muslim further expanded. Among the Muslims in the nineteenth century, political aristocracies were few and far between. Throughout the successive dynasties of the Muslim rule, the number of Muslim population increased in India, but the dominance of the Hindu aristocracies remained almost untouched and unbroken. The Hindu political aristocracies were further strengthened during the colonial rule because of their immediate acceptance of the British Raj and their immediate participation in the expansion of westernization in India. The British colonial rule left a huge mass of poor and illiterate Muslims in the middle of a vast Hindu civilization and this further intensified the inter-civilizational clash. At the end of the colonial rule, the inter-civilizational clash between the Hindus and the Muslims in India exploded. During the years of 1946 and 1947, the Hindus and the Muslims clashed in almost all regions over the issue of creating a separate homeland for the Muslims in India. Hundreds of thousands of Hindus and Muslims were killed in 1946 in the riots of Calcutta, Noakhali, and Bihar. In 1947, in Punjab alone, about one million Muslims, Hindus, and Sikhs were killed in the political and religious violence. In the midst of this intense inter-civilizational conflicts between the Hindus and Muslims in 1946 and 1947, the British colonial government created two states in India—India and Pakistan in 1947.

This particular historical predicament of conflicts between the two major world religions in South Asia is of enormous significance for understanding this region's many contemporary issues of religious and political violence (Armstrong 2015; Juergensmeyer 2003). Without this historical reference, one will not understand why the military of Pakistan unleashed a genocide on the Hindus of East Pakistan during the liberation war of Bangladesh in 1971; why violence against the Hindus is an integral part of religious politics in Bangladesh; why the Muslims of Gujarat and other regions of India live in a continuous state of fear for religious violence particularly during the accession of power by the Bharatiya Janata Party; and why violence against the religious minorities has remained an endemic feature of crime and criminality in the state of Pakistan. The banality of religious violence is a part of not just power and politics but also of the whole social and cultural landscape of

South Asia—the South Asian world view. This banality of religious violence partly explains why a Hindu man was abducted and brutally killed in 2015 by his neighbors in Bihar for marrying a Muslim woman; why a Muslim man in West Bengal was murdered in 2007 for marrying a Hindu woman; why in Pakistan a Christian man was killed in 2015 for marrying a Muslim woman by converting her to Christianity; why in Pakistan a Christian couple was publicly burnt alive in Lahore in 2014 for the alleged crime of defiling the sacred book of the Quran; why the Hindu Gods and Goddess and Hindu temples become the special targets for burning and destructions in Bangladesh during any political change and transformations; why a Muslim parliamentarian in Kashmir in 2015 was severely beaten up by his colleagues inside the parliament for allegedly serving beef at a dinner party in his own home; and why a Muslim man in India named Akhlaq was beaten to death in front of his daughter in 2016 over a rumor that his family eats beef. The banality of religious violence in India, Pakistan, and Bangladesh explains why these regions are increasingly becoming the hot-spots of global terrorism in South Asia. Religious violence is a significant part of the chronicle of crime and justice in South Asia. It is imperative for a student of criminal justice to explore how this inescapable hate on the basis of religion has remained as one the driving forces for many crimes of violence in this region. The two Muslim nations of South Asia, Pakistan and Bangladesh, are increasingly becoming engulfed with the horrors of religious violence. The event of July 1, 2016 in Dhaka, Bangladesh, where scores of men and women were shot and beheaded during the holy month of Ramadan, not only shocked the world but it also reminded, as one of the authors in this book quoted by saying that "civilization [modernity] is the only wall between humans and savagery." Modernity—a process that started more than two centuries ago in this region—has yet to build and expand the foundation of a new liberal civilization in South Asia—a civilization based on the principles of the rule of law, separation of the church and state, equality, individualism, democracy, respect for universal human rights, recognition of social and cultural diversities, and the pride for multiple identities. Indian-born Noble Laureate Amartya Sen (2007) rightly said that identify [single identity as a Muslim or a Hindu] is a source of joy and pride and strength and confidence but "identity can also kill, and kill with abandon" (p. 1).

South Asia is also one of the most populous regions of the world, and in many complex ways, population density is intimately connected to crime and justice in South Asia. In 2015, Asia contains about 60 percent (4.3 billion) of the world's 7.3 billion people. Out of 4.3 billion, 1.7 billion lived in South Asia that includes the countries of India, Pakistan, Bangladesh, Sri Lanka, Bhutan, Nepal, and Maldives. Out of all the countries of South Asia, India, Pakistan, and Bangladesh are the most populous countries of the world. In 2015, with about 1.3 billion people, India ranked as the second largest country in the world. Pakistan with about 189 million people ranked as the sixth largest country in the world and Bangladesh with about 161 million people ranked as the eighth largest country in the world. Because of its total size of the population, South Asia also contains some of the largest cities of the world such as Delhi (23 million), Karachi (22 million), Mumbai (22 million), Dhaka (14.6 million), Lahore (10.1 million), Bangalore (8.5 million), Hyderabad (6.3 million), and Ahmedabad (5.6 Million). Out of the world's 10 densest cities, 8 are in South Asia: Dhaka, Hyderabad, Mumbai, Kalyan, Chittagong, Vijayawada, Malegaon, and Aligarh. Dhaka, the capital of Bangladesh, is at the top of the world's densest cities. Dhaka's 14.6 million people live in 125 square miles. With about 45,000 people per square kilometer, Dhaka is 75 percent more dense than Hong Kong and 60 percent more dense than Manhattan in New York (Cox 2012, p. 1).

In criminology, there is a long tradition of research on relations between crime and population density, crime and space connections, and crime and urban growth. One of the earliest related studies conducted by Calhoun (1962) found that space and social pathology are positively connected. Calhoun found that the lack of space creates unwanted social interactions, and unwanted social interactions are more likely to generate stress and tensions, which in turn contribute to the growth of social pathology. Calhoun's study led to further research in areas of environmental psychology, urban and city planning, prison and school crowding, and environmental criminology—a criminology to control and prevent crime through environmental design. The strategy of crime mapping that is widely used in modern policing is based on the theory that crime and space and crime and density are positively

correlated. The cognitive world of the rational criminals scans a physical space for a favorable climate to commit crime and violence. Cities with high density population provide more opportunities for crimes of property, violence, drugs, gangs, sex, corruptions, and deceptions. Cities with high density are also the breeding grounds for many innovative strategies of committing crimes and those criminal innovations are in abundance in the cities of Dhaka, Mumbai, and Karachi.

The issues of South Asia's population are closely connected to another dimension of crime and justice in South Asia—the dimension of poverty. The World Bank estimates that about 18.8 percent of South Asia's 1.7 billion people live below the level of poverty—they live with less than $1.90 a day. The number of people below the level of poverty ($1.90 a day) in South Asia, however, varies from country to country. In 2013 in Bangladesh, 45.7 percent of its 157.2 million people were below the level of poverty. In 2011 in India, 21.3 percent of its 1.2 billion people were below the level of poverty. In 2010 in Pakistan, 8.3 percent of its 182.2 million people were below the level of poverty. According to the World Bank estimates, out of all South Asian countries, Bangladesh has the highest number of people below the level of poverty followed by India and Pakistan. In 2015, in the three countries, India, Pakistan, and Bangladesh, there are about 360 million people, more than the total population of the USA and Canada, who lived below the level of poverty ($1.90 a day). The existence of this vast majority of population under poverty in these countries is a serious challenge to their governance of crime and justice.

While it is true that all poor people do not commit crimes and all criminals are not poor, the relations between crime and class and crime and poverty are well established in the literature on crime and criminology. A number of perspectives in criminology such as structural criminology, Marxist criminology, critical criminology, and radical criminology center on relations between crime and class and crime and poverty. Poverty affects crime and criminality in many complex ways. Poverty is not merely the lack of income and wealth. In the context of the Multidimensional Poverty Index (MPI), developed by the United Nations Development Program (UNDP) and the Oxford University's Poverty and Human Development Initiative on the basis of a new

discovery of the notion of poverty by Noble Laureate Economist Amartya Sen, poverty today is defined by all development professionals as a multidimensional phenomenon that has multifaceted consequences. Sen theorized that poverty is not merely a matter of estimating the per capita income of a group of people. Poverty concerns the whole human quality of life. It affects the very crux of the morality and the humanity of an individual. It affects the body and the brain, the mind and the morality, and the soul and the self-esteem of an individual. It leads to human deprivation, degradation, and injustice (Sen 2001). In South Asia, as mentioned before, more than a quarter of billions of people are in poverty, and they mostly live in the slums of the megacities of Delhi, Mumbai, Karachi, and Dhaka. One of the World Banks' recent studies noted that in 2017, about 69 million of India's 500 million urban population will live in slums. The same study noted that out of Dhaka's 17 million people, 28 percent are below the level of poverty and 3.4 million live in slums (The World Bank 2013). The World Bank explains this phenomenon in South Asia in terms of the notion of messy and hidden urbanization or urban poverty. As the World Bank describes: "South Asia's urbanization has been messy as seen in the widespread prevalence of slums. At least 130 million South Asians—equivalent to more than the entire population of Mexico—live in informal urban settlements characterized by poor construction, insecure tenure and underserviced plots" (The World Bank 2015, p. 3). From the perspective of crime and justice, this phenomenon of urban poverty and messy urbanization is a hugely important factor. It is imperative for the criminologists of South Asia to examine how this messy and hidden urbanization is creating and expanding a new world of urban slums and how those urban slums are becoming the new hot-spots of crime and violence. The 2008 report of the United Nations on *Human Settlement 2007: Enhancing Urban Safety and Security* clearly documented that urban poverty and urban slums are intimately connected to growing urban crime and violence in all regions of the developing world including South Asia.

The authors in this volume, in different ways and perspectives, have taken these external (colonialism, modernization, and globalization) and internal factors (religion, population, and poverty) into account to

address the various issues of crime and justice in South Asia. In Chapter 2, Mark Brown examines the nature of colonial criminology in South Asia (1765–1947). He explores the early nineteenth-century classification of crimes and the phenomenon of Thuggee, the emergence of the notion of criminal tribes in the mid-nineteenth century, and the arrival of the concept of Western criminology in the early twentieth century. One of his key arguments is that colonial criminology

> emerged over time and place; it responded to problems of governance of different types; it was authored and practiced by diverse actors; its elements were fashioned in various institutional contexts. As a consequence, it was never a 'thing' in the sense of it having an essence and body. It was more, instead, a game in motion, a way of thinking and doing and being, at a certain moment, perpetually in process of development.

One of the major innovations of colonial criminology, in his view, "was the development of a distinct ethnographic science of criminal identification that was then manualized in the form of police handbooks and bureaucratized in the form of criminal history sheets. The latter remain in police stations to this day."

In Chapter 3, Sesha Kethineni and Ying Cao explore the evolution of modern criminology in contemporary India. The evolution of academic criminology in India, according to these authors, began with the call of the United Nations Educational, Scientific and Cultural Organization (UNESCO) in 1957 for the development of criminology in the newly developing countries as a part of expanding science and scientific research in the study of crime and criminal justice. "Following the UNESCO report, India took the initiative to establish the scientific teaching of criminology to bring about progressive changes in the criminal justice system. In 1959, the University of Saugor (or Sagar), located in the central state of Madhya Pradesh, responded to the recommendations of UNESCO and created the first department of criminology and forensic science." This chapter reveals that outside the Western world, and among the South Asian countries, academic criminology and criminal justice research and education are highly advanced in India with a huge number of doctoral, masters, and undergraduate programs within the university

settings; a growing number of journals and professional societies; and an expanding job marker for the graduates of criminology and criminal justice. In Chapter 4, Sami Ansari, examines the issues of crime classification and crime measurement in India on the basis of reviews of some of the advanced systems of crime measurement in the USA, Canada, and England and Wales. In India, crime measurement is presently based on police-recorded crimes statistics measured by the National Crime Records Bureau (NCRB). The author finds that:

> In addition to the universal limitations of police-recorded crime statistics, the NCRB data also have some specific limitations because of the counting protocol adopted by the NCRB. The police-recorded crime data, including the NCRB data, are often summary data. The researchers, policy makers, and practitioners do not have access to the information pertaining to the details of incidents, offenders, and victims of crimes. This particular limitation is more detrimental for India, because India does not have a national victimization survey, and it also does not participate in the International Crime Victims Survey (ICVS).

The author argues that for further modernization in crime classification and crime measurement in India, police-recorded crime statistics should be supplemented with systems that can measure criminal victimization and self-reported crime data. The extension of police-recorded crime statistics with criminal victimization surveys of different kinds is one of the dominant trends in the countries of Europe and North America. Some of those more improved systems of measurement of crime include the National Crime Victimization Survey (NCVS) and the National Incidence-Based Reporting (NIBRS) system of the USA, Crime Survey for England and Wales (CSEW), General Social Survey (GSS) of Canada, European Crime and Safety Survey (EU ICS), and the International Crime Victimization Survey (ICVS) conducted by an ICVS International Working Group.

In Chapter 5, Shahid Shahidullah explores the advances in law and legal developments related to the criminalization of child abuse and violence against children in India, Pakistan, and Bangladesh. He argues that ending child abuse and violence against children is presently a

global movement spreading particularly at the behest of the United Nations Convention on the Rights of the Child (CRC) in 1989. The signatories of the CRC are bound by this international treaty to criminalize all forms of child abuse and violence against children. The chapter examines the development in recent years of various laws and legal instruments in India, Pakistan, and Bangladesh to implement the mandates and the directives of the CRC. Some of these laws include India's Prevention of Children from Sexual Offenses Act of 2012 and the Juvenile Justice (Care and Protection of Children) Act of 2015; Pakistan's Prohibition of Corporal Punishment Bill of 2013 and the Criminal Law (Amendment) Bill of 2014 (both bills were not passed by the Senate); and Bangladesh's Prevention of Oppression Against Women and Children Act of 2000 (amended in 2003), The Acid Control Act of 2002, the Domestic Violence (Protection and Prevention) Act of 2010, and the Children Act of 2013. The chapter finds that among these three countries of South Asia, considerable advancements in the criminalization of child abuse and violence against children have been made in India and Bangladesh. As of 2016, Pakistan has not passed any national legislation criminalizing child sexual abuse and violence against children. In all these three countries, however, child abuse and violence against children within the family setting has not been criminalized. Corporal punishment in schools of these countries is still widely used. The chapter concludes by saying that South Asia's advances in law and criminal justice with respect to ending child abuse and violence against children may still be limited but there is no denying that this movement has been rapidly spreading across the whole region. Along with the governments of this region, the international organizations, women rights groups, human rights advocates, and child rights nongovernmental organizations have been playing an important role in keeping this agenda alive in policy-making for the governance of crime and justice in South Asia.

Chapter 6 deals with the issues of online child sexual abuse and exploitation in Bangladesh. The author of this chapter, Ishrat Shamim, examines the global nature of this problem, the nature and prevalence of online child sexual abuse in Bangladesh, and

Bangladesh's advances in law and legal instruments to curb and control online child sexual abuse. The author observed that:

> In the present era of globalization and the expansion of information communication technology, no South Asian country is exempt from the advent of child sexual abuse and exploitation, although the magnitude of the problems is unknown. Increased Internet usage across Bangladesh is heightening children's exposure to a number of online threats, including sexting, grooming, cyber-bullying, cyber-harassment, and production of abusive images. Moreover, smart mobile phones with Internet connections make it possible for clients to seek out young girls.

The author quotes from a survey that found that "76 percent of students have own mobile phones and the rest use mobile phones of parents, relatives, and friends. About 82 percent mobile users used to see porn videos of whom 62 percent used to see porn video in the classrooms." The government of Bangladesh has enacted a number of legislations in recent years and some of these include the Pornography Control Act 2012, the Human Trafficking Deterrence and Suppression Act 2012, and the Children Act of 2013. The author, however, argues that "In Bangladesh, some laws for child sexual abuse are in place, but there is needed more innovations in software and technology, and more involvement of the civil society as a whole to control the spread of this destructive impact of the emerging digital age on children."

Chapter 7 examines the issues of modernization in juvenile justice in South Asia—India, Pakistan, and Bangladesh. The authors of this chapter, Shahid Shahidullah and Shyamal Das, describe the structure of modern juvenile justice in the USA as a comparative frame of reference, outline the international norms and standards for modernization and reforms in juvenile justice, and assess the growth of juvenile justice laws and legal instruments in India, Pakistan, and Bangladesh. The chapter particularly examines India's Juvenile Justice Act of 1986, Juvenile Justice (Care and Protection of Children) Act of 2000, and Juvenile Justice (Care and Protection) Act of 2015; Pakistan's Juvenile Justice Ordinance of 2000; and Bangladesh's Children Act of 2013. The study finds that out of the three countries in South Asia, India and

Bangladesh made some notable advances in reforms and modernization of juvenile justice. The legislations of these two countries:

> made a series of legal advances to harmonize the laws, rules, and standards of juvenile justice with those of the American model, the CRC, and the concept of child-friendly justice such as defining a juvenile who is below the age of 18, the abolition of death penalty and the punishment for life in prison for juveniles, [In India, death penalty for juveniles is legal for heinous crimes], and the nation-wide creation of a separate system of juvenile justice including juvenile courts, juvenile justice boards, juvenile police units, and juvenile probation officers.

The authors of this chapter found that "Pakistan is still far behind in harmonizing its laws and rules for juvenile justice with those of international standards. Pakistan's Juvenile Justice Ordinance of 2000 remained utterly ineffective partly because it was struck down by a court that challenged its legitimacy and constitutionality." Chapter 8 of this book is concerned with the problem of human trafficking in South Asia with particular reference to India and Bangladesh. The author of this chapter, M. Basir Uddin, presents an innovative perspective to examine the root causes of human trafficking. He argues that human trafficking has been traditionally approached from the perspective of criminalization mainly because of its adverse effects on sexual exploitation of women and children. The author believes that the root causes of human trafficking, particularly women trafficking, from India and Bangladesh, are related to these region's vast and intractable economic poverty of women which, in turn, is related to the political economy of global capitalism. The unequal economic distribution of wealth within the global economy and within the societies of South Asia has created a great crisis of human security in the lives of millions of women, particularly those who belong to the lower castes in India and lower and disenfranchised classes in Bangladesh. Because of this problem of human security that bolsters intra-regional and inter-regional women trafficking in and from India and Bangladesh, there will always be a limit, the author argues, to the success of criminalization alone as a policy for combating human trafficking in these regions. "While prostitution, migration and legal perspectives have been

the main focus with regard to trafficking in South Asian countries, the research contends that economic insecurity, corruption, declining child sex ratio, caste system, various forms of exploitative labor, and organ harvesting help flourishing the human trade, which could be better explained through the perspective of global political economy."

Chapters 9 and 10 of the book are concerned with the issues of police modernization in South Asia in the context of Bangladesh. In Chapter 9, Rawshan Afroze begins with the assertion that police modernization in developing countries should be approached both in terms of international norms and standards and local social and political contexts. Internationally, the author argues that:

> the issues are to conform to international norms and standards of policing; understand the problem of human rights and human security in terms of police accountability, transparency, and respect for human rights and equal justice; integrate the state-of-the-art of innovative police technology for crime control and prevention; learn the lessons from best-practiced examples of police reforms in other countries; and understand the emerging nature and challenges of global crimes.

Some of the major international rules and standards for police modernization are contained in such documents as the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, United Nations Standard Minimum Rules for the Administration of Juvenile Justice, and the United Nations Human Rights Commission's International Human Rights Standards for Law Enforcement. The issues and challenges of police modernization at the same time, the author contends, are connected to local peculiarities in politics, government, culture, and diversities in race and religion. Rawshan Afroze argues that "in comparison to many other countries of South Asia, particularly India and Pakistan, Bangladesh has achieved some remarkable change and modernization in the institution of policing." This process began in general with the enactment of the Dhaka Metropolitan Act of 1976, but more particularly with the initiative of the Police Reform Program (PRP) taken in 2005 by the Bangladesh Ministry of Home Affairs in collaboration with the United Nations Development Program,

European Union, and the UK Department of International Development. The PRP established 35 model police stations, undertook programs to improve police investigating capabilities, introduced community policing, and created a new set of institutions for police education and training. One of the major innovations in policing in Bangladesh, according to Rawshan Afroze, is the integration of women in policing. In 1973, there were less than 20 women in policing in Bangladesh. In 2016, the number of women police in Bangladesh has reached to about 10,000. Women are also aggressively moving to leadership positions in policing, participating in the United Nations Peace Mission, and pursuing higher education in criminology and criminal justice at home and abroad. More importantly, the author observes that a new culture of professionalism and recognition of the role and respect for women in policing has been rapidly advancing. Mohammed B. Kasem, in Chapter 10, looks into the problem of a criminal investigation in Bangladesh. The author contends that "The significance of criminal investigation is based on two major doctrines or principles of modern criminal justice: the 'presumption of innocence' and the doctrine of the 'beyond a reasonable doubt.' In criminal justice systems based particularly on the Common Law tradition, the doctrines of the presumption of innocence and beyond a reasonable doubt are at the core of the due process of law." The author's study is based primarily on interviews of some of the police leaders in Bangladesh. The main argument of Mohammed Kasem is that the PRP has brought some important organizational and cultural changes within the policing in Bangladesh, but the traditional model of "case construction" approach to the criminal investigation has not significantly changed. One of the goals of the PRP in the area of criminal investigation was to change the traditional model of confession-based investigation—the case construction model. "To enhance the investigative capabilities of the Bangladesh police, PRP established an Automated Fingerprint Identification System (AFIS), created DNA Laboratories, and set up an Integrated Ballistics Identification System (IBIS). Additionally, existing forensic laboratories have been modernized and five more forensic laboratories were established at five divisional headquarters." But the impacts of these new and improved criminal investigation methods and technology, according to this author, are still few and far between. In Bangladesh, "There is still a high reliance on

confessions and oral evidence in constructing cases for prosecution," and this, by and large, is true of all the countries of South Asia that are still governed by the Police Act of 1861 and the India Evidence Act of 1872.

Chapters 11 and 12 are on crimes of domestic violence in India, Pakistan, and Bangladesh. In Chapter 11, Melody Brackett and Kim Downing explored the problematic of domestic violence in Pakistan and Bangladesh from the perspective of its evolution as a global movement. A global movement for the criminalization of domestic violence, the authors believe, has been spreading from the 1970s in the context of the International Women's Movement, but more particularly in the context of the 1979 United Nations Convention on the Elimination of all Forms of Discrimination against Women (CEDAW). One of their key arguments is that modernization or modernity is an irreversible social and cultural force, and it is presently in a process of globalization. The issues of gender equality are no longer the issues of any specific culture, a specific region, or a specific religion. Violence against women is a crime, and this process of criminalization has been rapidly spreading all over the developed and the developing world. In their research, the authors found, that "violence against women in Pakistan is widespread, pervasive, and persistent . . . the World Economic Forum's Global Gender Gap 2014 report places Pakistan as the second lowest performing country in the world in terms of gender equality. In Pakistan's rural areas instances of violence against women in the form of so-called 'honor' killings, child marriages, acid attacks, and domestic and sexual abuse are frequent." Violence against women is equally pervasive in Bangladesh. The World Bank (2014) study finds that among all South Asian countries, "Bangladesh has the highest prevalence of intimate partner sexual and physical violence. Among the 15 countries with the highest global prevalence of physical intimate partner violence, Bangladesh ranks second only to the Republic of Congo. India is seventh on this list, with Pakistan and Nepal 11th and 14th, respectively." Melody Brackett and Kim Downing analyze some of the major domestic violence legislations of Pakistan and Bangladesh in the light of the 1994 Violence Against Women Act (VAWA) of the USA. The case of VAWA of the USA is examined to see how domestic violence is defined and legal measures are taken to criminalize domestic violence in Pakistan and Bangladesh in comparison to the USA. The authors review four major

domestic violence legislations of Pakistan: the Protection of Women Act (Criminal Law Amendment) Act of 2006, the Acid Control and the Acid Crime Prevention Act of 2010 (amended in 2011), the Protection against Harassment of Women at the Workplace Act of 2010, and the Domestic Violence (Prevention and Protection) Act of 2012. They also review four major domestic violence legislations of Bangladesh: the Dowry Provision Act of 1980, the Suppression of Violence Against Women and Children Act of 2000, the Acid Control Act of 2002, and the Acid Crimes and Control Act of 2002. On the basis of analysis of these legislations, the authors observed that all the three countries, the USA, Pakistan, and Bangladesh, "defined domestic violence in terms of the norms of international standard which is that domestic violence is not just physical and sexual in nature. Emotional, psychological, and economic abuses are also a part of domestic and intimate partner violence." The authors find commonalities in the legislations also "in the areas of protection orders, victim support, and the confidentiality of domestic and intimate partner case records." In terms of punishment for domestic and intimate partner violence, the authors, however, observe many differences. "Bangladesh probably has one of the toughest laws of domestic violence in the world. The Bangladesh Law (the Suppression of Violence Against Women and Children Act of 2000) imposed the death penalty for 12 different kinds of crimes related to violence against women."

In Chapter 12, Sesha Kethineni explores the issues of domestic violence in India. One of her key arguments is that the problem of ending domestic violence in a society depends on its cultural perception about the status of women. The author takes a broad historical view of the evolution of the status of women from ancient to modern India. In the ancient *Vedic* period in India (1500–500 BC),

> women were educated, able to choose their mates, and held prominent positions. In addition, women distinguished themselves in science and learning, and even participated in philosophical debates and wrote some of the *Vedic* hymns. Women from the *Kshatriya* caste received training in martial arts and the use of arms. In particular, the *Rig Veda* (1100–500 B.C.E.) says that wife and husband are equal in every aspect, and, therefore, should take part equally in religious and secular affairs.

From the *Smriti* period (after 500 BC), the status of women began to be redefined. In the *Smriti* period, the most significant lawmaker was Manu. According to Manu, "a woman should never be allowed to assert her independence. Girls must be in the custody of their fathers when they are young; women must be in the custody of their husbands after marriage; when a woman is a widow, she must be under the custody of her son." From the days of the Muslim conquest in India in the twelfth century,

> women experienced a further deterioration of status. The practice of wearing veils became common among Muslim women. Hindu women also wore concealing clothes from head to toe and lived behind high walls, curtains, and screens within the home. According to one version, *sati* was used as a way to preserve the honor of Hindu women from the warrior caste whose husbands were captured in war; however, some evidence suggests that the practice existed in western and southern parts of India well before the Mulsim rule. During the colonial era, Indian social reformers such as Raja Ram Mohan Roy (1772–1833 C.E.) fought to abolish *sati.* [Sati was abolished by the colonial government in 1829]. The efforts of Ishwar Chandra Vidhyasager resulted in the Hindu Widow Remarriage Act of 1856.

With the onset of modernization in India from the mid-twentieth century, women in India began to be educated and began to enter the modern workforce. From the 1970s, particularly in the context of the CEDAW and the spread of the global women's movement, many new laws to criminalize domestic violence in India were enacted such as the Dowry Prohibition Act of 1986 (originally enacted in 1961) and the Protection of Women from Domestic Violence Act (PWDVA) of 2005. Under the National Commission for Women Act of 1990, the National Commission for Women (NCW) was established in 1992 as a think-tank to help innovative policy-making for the empowerment of women. Many notable nongovernmental organizations (NGOs) on women issues were also established such as *Mahila Samakhya* Society (education for women's equality, MSS); Ahmedabad Women's Action Group (AWAG); International Center for Research for Women, *Jagori* (awaken

women); and Society for Nutrition, Education and Health Action (SNEHA). Under the leadership of the *Mahila Samakhya* Society, many *Nari adalats* (women's courts), *Mahila Panchs* (women's councils), *Sahara Sanghs* (village-level collectives), and *Shalishi* (mediation and arbitration) institutions were also created all across the country. The author, however, contends that despite changes in legislation, the creation of a national body for the empowerment of women, and some grassroot mobilization by many NGOs, the incidence of domestic violence is still on the rise in India. The incidence "of cruelty by husband and relatives in 2014 increased 3.4% over 2013. Other forms of violence, such as dowry deaths, continue to increase. For example, dowry deaths increased by 4.6% in 2014 compared to 2003."

The next two chapters in the book, Chapters 13 and 14, are on the problem of rape as a part of violence against women in India. In Chapter 13, Bula Bhadra examines the issues of rape from the broader perspective of feminism and gender justice. Are the existing laws, she asked, adequate to provide gender justice or the modernization of the legal system is merely a part of the neo-liberal social order of contemporary India? She examined a number of recently enacted rape legislations and found that "Despite the demand from the women's movement for its removal, the specification that a victim's past sexual history can be used as a defense for the accused was retained." This provides to the defense lawyers a scope to "harass the victim at will. In every rape trial the woman goes through a verbal rape in the name of judicial verification and the judicial discourse objectifies and sexualizes the body by humiliating the victim in a packed courtroom through offensive cross-examination." In a rape trial "a whole topology of signs is created to move on the surface of the body, territorialize it, and constitute it as a sexual body, fit or unfit for exchange. The body is objectified in ways that became a kind of judicial pornography." In a courtroom for rape trial "Defense lawyers periodically use legal textbooks during trials to humiliate rape survivors: to ask them how long they were penetrated, how much and how did they know whether they were penetrated." On the basis of these and other ethnographic descriptions of the language and symbolisms used in rape trials, Bula Bhadra insists that the Indian rape laws have a long way to go to establish gender justice in India. The police, the court, and the whole

trajectory of rape trials in India are still dominated by the culture of patriarchy. Meantime, the incidence of rape is alarmingly growing, the reporting of rape is tragically going down, and rape conviction has remained shamelessly low. The author concludes by saying that the integration feminist jurisprudence into law and policy-making can bring some significant changes in this whole problem of ending rape and violence against women in India.

In Chapter 14, Evanka Swampillai and Laurel Mazar present a thesis of the social tolerance of rape in India in the context of the gang rape of Joythi Singh in New Delhi on December 16, 2012. The authors suggest that rape and gender-based violence is a pervasive global problem. "Although the incidence of rape varies from country to country, it is common to each and every country of the world. The World Health Organization reports that almost 35 percent of women worldwide have experienced physical and/or sexual intimate partner violence or non-partner sexual violence." According to data from the United Nations, "Around 120 million girls worldwide (slightly more than 1 in 10) have experienced forced intercourse or other forced sexual acts at some point in their lives." The authors observe that ending gender-based violence is also a global movement that is spreading across the world, particularly in the context of the CEDAW of 1979 and the Beijing Plan of Action of 1995.

> Ending sexual and domestic violence against women is presently a global agenda for reforms and modernization in criminal justice in all across the world societies. The 185 member states of the United Nations, who participated at the Fourth Conference on Women (Beijing Plan of Action) in Beijing in 1995, have an obligation under the international law to prevent violence against women by enacting new laws and developing a new culture of respect for the human rights and dignity of women.

In India, "After the Jyothi Singh Case in 2012, renewed debates and discourses began to grow about how to modernize the rape laws in particular, and how to change the culture of violence against women in general. The global movement for ending violence against women became a local movement for major legal and cultural transformations in India in the context of the tragedy of Jyothi Singh Case." In response

to the debates and discourses generated in the context of the Jyothi Singh Case, India enacted a new rape law—the Criminal Law (Amendment) Act—in 2013. "The new Act amended the India Penal Code of 1860, the Indian Evidence Act of 1872, the Code of Criminal Procedure of 1973, and the Protection of Children from Sexual Offences Act of 2012." The new law made a provision that "Whoever commits rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than seven years but which may extend to imprisonment for life. The Criminal Law (Amendment) Act of 2013 imposed 20 years to life imprisonment for gang rape." The authors find that the Criminal Law (Amendment) Act of 2013 "has criminalized many facets of violence against women, made provisions for tougher sentencing and penalties and brought many legal reforms for effective investigation and prosecution of rape and other cases of violence against women." The authors, however, claim that the impacts of the Criminal Law (Amendment) Act of 2013 remains to be seen. Pervasive violence against women in India is not a matter of law alone, it is also deeply cultural in nature. The authors conclude by theorizing that there is a culture of social tolerance of rape in India, and at the core of this culture is the perspective of victim-blaming which is both external and internal in nature. "Externally, it is characterized by negative reactions . . . internally, victim-blaming leads to the internalization of a sense of guilt and shame in the mind of the victims." It is this perspective that limits the role of law in ending rape and violence against women. The issues of rape and violence against women are issues, the authors believe, that are broadly related to modernity. "Reforms in law and legislations are needed to end rape and violence against women in India. But changes in the worldview and the cultural paradigm of the social tolerance of rape will probably need far more fundamental social and cultural transformations."

In Chapter 15, Habibul Haque Khondker deals with the larger problem of violence in Bangladesh. He finds that violence in recent years has significantly increased in all sectors and facets of the society of Bangladesh. The United Nations Office on Drugs and Crime's 2011 report on global violence estimated that if measured by data from public health sources alone, "Bangladesh has the highest rate of violence (8.5 homicide per 100,000 population, higher than the global average)

within the region of South Asia." The World Health Organization's World Report on Violence and Health defines violence as "the intentional use of physical force or power, threatened or actual, against oneself, another person, or against a group or community, that either results in or has a high likelihood of resulting in injury, death, psychological harm, maldevelopment, or deprivation." From this larger perspective, according to the author, "the rate and the incidence of violence in Bangladesh, taking into account the incidence of different forms of violence such as corporal violence in different settings, interpersonal violence, intimate partner violence, sexual violence, political violence, religious violence, and community violence, would be much higher than what is estimated by United Nations Office on Drugs and Crime." The key question addressed by this author is how can we sociologically explain this rising rate of violence in Bangladesh? Is Bangladesh a violence-prone society? If so, why? The author theorizes that both the brutal nature of violence and the readiness to engage in violence are linked to the lack of civility in the broader culture of Bangladesh. Civility is defined as a "broad cultural code and as a social compact where values of tolerance, responsibility, and respect are the core values." The author's thesis is that "The core of civilization is civility. A society must accept, what philosophers call the first principle argument, that polite conduct based on non-humiliation is the core of civilization." Civilization is "the only wall between humans and savagery." Taking a perspective from Norbert Elias, the author believes that with the advance of civilization, particularly in the West, overall violence has declined because of the exclusive and legal monopoly of power in the hands of the state. The hypothesis, in other words, is that a strong state leads to the decline of violence, and a week state leads to the escalation of violence. The author concludes by suggesting that the policy-makers of Bangladesh must strengthen the state not just by modernizing law and law enforcement but also by creating a culture of democracy, the rule of law, human rights, and equal justice. These values, in turn, will strengthen the culture of civility, and a strong culture of civility may lead to the decline of violence.

Chapter 16 of this book provides a historical narrative about the birth of academic criminology in Bangladesh and some of the directions for its

future growth and evolution. The authors of this chapter, Shahid Shahidullah and Mokerrom Hossain, claim that "The academic recognition and acceptance of a scientific specialty is not merely a matter of an accumulated body of scientific theories. It is a social and a bureaucratic process as well. For the academic growth of a scientific specialty, the social, political, and the economic contexts must be favorable, a scientific community must play the role of an advocate and agenda setting, and some groups of scientists must be able to go and 'speak truth to the power'." Academic criminology was established at Dhaka University in Bangladesh in 2010 in the context of the country's rising rate of global crimes, emerging challenges from global and domestic terrorism, and a new development agenda based on reforming criminal justice in line with international norms and standards. The impetus for the growth of academic criminology in Bangladesh came in the contexts of both global and local imperatives. Globally, the science of criminology became firmly established within the academic settings of the West by the end of the twentieth century. At the same time, there also began a global movement for reforms in criminal justice as an integral part of an international development aimed to foster human security, democracy, the rule of law, judicial accountability, and equal access to justice. Locally, Bangladesh was facing many challenges of expanding global crimes in the South Asian region, and the country embarked on a huge plan to modernize its criminal justice system with the aid of the United Nations Development Program, European Union, Asian Development Bank, and many other international assistance organizations. The time of the first decade of the twenty-first century, the authors believe, was ripe for the growth of academic criminology in Bangladesh. The authors of this chapter were the catalysts for this change and transformation. They lobbied with the leadership of Dhaka University, mobilized faculties from social sciences, and galvanized the support from local law enforcement and justice communities. A program of Master of Social Science in Criminology and Criminal Justice was formally launched at Dhaka University from the fall of 2010. Within a short span of five years, criminology and criminal justice has become one of the most rapidly growing academic specialties in Bangladesh. The future researchers in Bangladesh criminology, the authors suggest, should focus on such

areas as theory development, modernization of crime measurement, development of victimization and self-reporting crime surveys, integration of modern science and technology into policing and crime analysis, development of new laws for combating global crimes of different kinds, and innovative methods and strategies for crime prevention.

Conclusion

With these 16 chapters briefly summarized above, this book, I believe, is a unique contribution in South Asia criminology. One of the aims of the Palgrave project on "Advances in Asian Criminology" is to assess how criminology and criminal justice in this region have been growing and evolving in comparison to those of the West. Almost all chapters in this book begin with the global profile and assessment of the problems of their choice, and at the same time they explore and examine their local histories and peculiarities. The different chapters of this book analyze the impacts of modernization and globalization on local issues of crime and justice, explore the conformity of local reforms in law and justice to international norms and standards, and assess the region's advances in criminology and criminal justice in comparison to the West. Another unique feature of this book is that it has revealed many new faces of crime and criminality in South Asia such as child abuse, domestic violence, intimate partner violence, rape, corporal punishment, juvenile justice, human trafficking, prostitution of the boys, and online child abuse. In response to the quest of the Palgrave Series on Advances in Asian Criminology, the chapters of this book share in common that criminology and criminal justice in South Asia made many major advances in recent decades in terms of such issues as the criminalization of domestic and intimate partner violence, child abuse and violence against children, and online child sexual abuse and exploitation; the modernization of rape laws; transformation in juvenile justice, police modernization, women in policing; and the academic growth of the science of criminology. Some of the chapters also share in common that legal advances in such areas as domestic violence, rape laws, laws against child abuse, and online child sexual abuse and exploitation must be complemented with social and cultural change and transformations. Some of these issues are

not the issues of law and criminal justice alone. They are deeply embedded into this region's culture, creeds, customs, and religion. Advances in criminology and criminal justice in South Asia, in general, are not just matters of advances in law, justice, and law enforcement. They are intimately connected to South Asia's broader dynamics of social and cultural transformations in an age of modernity and globalization.

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2

The Birth of Criminology in Colonial South Asia: 1765–1947

Mark Brown

Introduction

This chapter examines the first formations of modern thought on crime and criminals in South Asia. It takes the British assumption of *diwani*, or civil administration, of Bengal in 1765 as its starting point and closes with the moment of independence in 1947. For most of the colonial period and across a swathe of territory ranging eventually from Peshawar in the west to Rangoon in the east, the crimes committed by India's native inhabitants were for the most part considered run of the mill, ordinary and not inordinately different from those generated by rural poverty in Britain. Crime, in the general sense then, did not overly exercise the minds of colonial administrators, British or Indian. Yet if that was true of crime in the general, it was

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certainly not so of particular types of "extraordinary" or "abhorrent" crime. The behavior in particular of criminal groups, including dacoit gangs, thug bands, and later criminal tribes and habitual offenders became the focus of intense interest to colonial administrators and it was toward these groups and types that most attention and real thinking was directed.

Despite the emergence of criminology as a distinct science in Europe from around the mid-nineteenth century, it would be fair to say that few colonial administrators at any point prior to 1947 would have thought of themselves as working within such a field. Indeed, the term criminology itself entered circulation in India primarily via the efforts of Bengali legal scholars, c. 1920, to square contemporary metropolitan theories with Indian "realities." South Asian criminology as it had evolved by 1947 was a rather fragmented affair. Ethnologically informed accounts of criminal tribes and classes drove administrative policy, but by the late colonial period these were being transformed by a nascent social work enterprise focused upon India's "backward" tribes and castes. At the same time, theoretical and bookish treatises of legal scholars sat uneasily next to much more general, and often administratively influenced, accounts of policing or rehabilitation practitioners that were, nevertheless, strongly grounded in the world of every day work with criminals and their communities. The purpose of this chapter is to cast some light on these early formations of knowledge and practice, the legacies of which have shaped criminology in the postcolonial states of India, Pakistan, and Bangladesh.

From here the chapter is divided into three parts. First, it considers problems of definition, terminology, and method. One upshot of the choices made methodologically is that the chapter uses a series of crime problems and their analysis as a way of marking out change and development in thinking about crime on the subcontinent. Part two of the chapter examines six of these formative instances: early visions of the distinctiveness of some forms of criminality in India (circa 1770), early attempts at criminal classification (c. 1820), the phenomenon of Thuggee (c. 1830), the emergence of the idea of criminal tribes (c. 1860s–1947), the arrival of and response to North American and European criminology (c. 1920), and pre-independence visions of crime and causation (c. 1930–1940). Finally, in an effort at summation some

concluding comments will be made. On this note we may observe that while certainly there were continuities and legacies of thought across period considered here, they did not develop in any simple linear fashion. Moreover, early criminological thought in India evolved in response to a number of different problems and from a wide variety of sites that spanned the divide of colonizers and colonized.

On the Historiography of South Asian Criminology

Any attempt to form a view of the past will face difficulties of balancing breadth and depth of analysis. Particularly in a short, survey-like piece such as this chapter, the writer is caught between two methodological poles. On the one hand is the option of focusing upon the broad sweep of history, which obviously has many advantages but which also tends to flatten contest, difference and contingency (Cooper, 2005) in the period described. The opposite alternative, probably equally problematic, is what Frederick Cooper terms "story plucking," wherein one dips in and out of time and place for specific illustrative effect, but in so doing threatens any sense of historical continuity or context. The strategy elected for here will be some kind of mid-way position. It is to identify a series of moments in thinking criminologically across the almost two hundred years of British engagement with the subcontinent. What these will give a sense of, it is hoped, is the distinctive character of criminological thought that grew up in India in the period of British rule. For, whatever the relationship between South Asian criminologies and those of the Western academy today, it is a signal characteristic of most colonial thinking about crime in India that it was strongly independent of metropolitan (that is European and North American) thought. Of course these spheres were not entirely independent and the theme of reciprocal influences between Britain and India, and indeed India and the rest of empire, is a strong vein within much contemporary historical work. But colonial criminology, particularly it is more administrative and thus influential branch, was never simply a

rehashing or reapplication of Western models to Eastern problems: It was a distinctive discourse in its own right.

As quickly as saying this, however, a caveat must be inserted. In the form of a question it asks, just what *is* this criminology we speak of? What, in other words, do we mean when we refer to criminology on the subcontinent? The answer to that is important, for it will involve a bracketing off of some things to include others and the emergence of distinctions that might at first blush not obviously seem necessary. The primary distinction drawn for the purpose of this chapter will be a familiar one, particularly to North Americans: it is the distinction between criminology and criminal justice administration. For the purposes of this chapter, criminology will be taken to include the study of crime and criminals, theories and formulations of how crime arises and how it might be reduced, including thinking on punishment, reform, and the like. It therefore takes in work done by police to understand the criminal milieu, but excludes work done by police on force organization or effectiveness (e.g., Indian Police Commission, 1905). It takes in thinking about whether the Indian criminal would more likely be reformed by recruitment into a local military corps, by whipping or by rigorous imprisonment. But it excludes thinking about prison design, sanitary conditions, or forced labor (e.g., Indian Jails Committee, 1920).

Perhaps less obviously, we also need to think about what is meant by the term "colonial." It might be tempting, and certainly it would ease expression, to speak of colonial criminology on the one hand – being that emerging from the colonial British mind as it sought to encompass this foreign space of rule (see Inden, 1990) – and indigenous criminology on the other. The latter would include the work of Indians, who participated in contemporary debates on the causes and cures of crime through their own vision of the world and recruitment of indigenous analytic frames. Yet such a distinction would be artificial and misleading. To begin, despite the efforts of postcolonial revisionist historians to claim that Indians played no part whatsoever in fashioning the colonial state (Guha, 1998), this state was only ever run by a small cadre of British officers and officials who oversaw and collaborated in the work of governance with Indians themselves. Thus, from the interpretive work done by Brahmin

pandits for Halhed's (1776) *Compilation of Gentoo Laws* to the work done by figures like Rai Bahadur Pandit Hari Kishan Kaul authoring the *Report on Questions Relating to the Administration of Criminal and Wandering Tribes in the Punjab* (Kaul and Tomkins, 1914), Indians were at the center of colonial thinking about Indian crime and criminals.

Neither would it be valid to posit a distinct space outside governmental discourses occupied and defined by Indians and suitable to be thought of as an indigenous space of knowledge and practice on crime and criminals. For most participation by nonofficial Indian thinkers and writers were grounded to one degree or another within extant debates of the day linked to local administrative and global scholarly thought. Thus, Muhammad Ghafur's (1879) *A Complete Dictionary of the Terms used by Criminal Tribes in the Punjab* replicated modes of analysis used by William Sleeman (1836) in his *Ramaseeana, or a Vocabulary of the Peculiar Language used by the Thugs* which, itself, drew upon contemporary European thinking in the science of philology. Somewhat counter intuitively, the greatest recruitment of and reference to what might be said to be indigenous points of reference – in terms of serious attention to folklore, deities, modes of dress, omens, and the like – emerged within British administrative circles, first in the Thuggee and Dacoity Department and later in criminal tribes manuals, such as E. J. Gunthorpe's (1882) *Notes on the Criminal Tribes Residing in or Frequenting the Bombay Presidency, Berar and the Central Provinces*. More will be said of these below.

All of this forms a rather long methodological introduction to the chapter, but it may be hoped that it draws attention to the difficulty of making simple assertions about the birth of criminology in South Asia. Thinking about crime and criminals was always an opportunity for the coproduction of knowledge, but the knowledge produced does not fit any simple binary of colonizing versus colonized or foreign versus indigenous. It emerged over time and place; it responded to problems of governance of different types; it was authored and practiced by diverse actors; its elements were fashioned in various institutional contexts. As a consequence, it was never a "thing" in the sense of it having an essence and body. It was more, instead, a game in motion, a way of thinking and doing and being, at a certain moment, perpetually in process of development. It was something

like what Gilles Deleuze and Felix Guattari (1987) referred to by the French term *agencement* and that in English has been rendered as assemblage: A colonial criminological assemblage.

South Asian Criminology: Elements of Assemblage

Assemblage is a useful way of thinking about a nascent criminology since it drives a focus on processes of becoming rather than the end state of being. Each of the six moments below represent contributions to this process. Together, by the time Britain quit India in 1947, they had laid the genealogical building blocks for a postcolonial criminology, the contours of which will be described by the other contributors to this collection.

Early Visions of Criminality in India: Special Types and Special Measures

In the first decade of its rule on the subcontinent the East India Company followed a principle of intervening as little in the social fabric of society as possible. Writing to the Lord Chief Justice in England in 1774, Governor General Warren Hastings described his goal as being "to rule this people with ease and moderation, according to their own ideas, manners and prejudices" (reprinted in Gleig, 1841, p. 404). Governing was expensive and excessive intervention in native society was thus not only costly but felt both unjust and likely to invite resistance and possibly even rebellion. Yet against such restraint went a special type of outrage reserved for groups that were seen to prey upon their own people. Just a few months earlier, Hastings had observed to his governing Council that there continued to exist in Bengal a special type of crime problem: dacoity. "The term decoit in its common acceptation," he said, "is too generally applied to robbers of every denomination":

> but [it] properly belongs only to robbers on the highway, and especially to such as make it their profession, of whom there are many in the woody

> parts of the district of Dacca, and on the frontiers of the province; a race of outlaws who live from father to son in a state of warfare against society, plundering and burning villages and murdering their inhabitants. (Reproduced in Colebrook, 1807, p. 114)

Special measures had been put in place the year before to deal with dacoits and Hastings was concerned they might draw in the ordinary criminal with those meriting such sanguine measures. Thus, he said:

> if a careful distinction is not made, the Raiat, who impelled by strong necessity in a single instance invades the property of his neighbor, will with his family fall a sacrifice to this law (p. 115).

This image of man and family sacrificed was no mere flourish. Minutes of the Proceedings of the Committee of Circuit describe Article 35 of 1772, which sought to suppress the scourge of dacoity, as "dictated by a spirit of rigour and violence, very different from the caution and lenity of our other propositions" (reproduced in Colebrooke, 1807, p. 13). Part of the problem appeared to be that "many instances" could be found of condemned dacoits "meeting death with the greatest insensibility," which rather blunted the intended terror of the death penalty (p. 13). Article 35 therefore extended criminal liability to the dacoit's whole family: he would die while they would be separated and sold as slaves.

Established here are a number of themes and concerns that would become recurrent elements within explanations of Indian crime, criminality and methods for their resolution. First, there is the recurrent contrast drawn between ordinary and extraordinary crime and criminals: Hastings' ordinary farmer driven by want to crime, likened to the ordinary criminal at home in England. Moreover, and secondly, part of what made some crime exceptional was the appearance that it was conducted as a profession not just by individuals but indeed by whole corporate groups. Thus, the Committee of Circuit claimed:

> The decoits of Bengal are not, like the robbers in England, individuals driven to such desperate courses by sudden want; they are robbers by

> profession, and even by birth; they are formed into regular communities, and their families subsist by the spoils which they bring home to them. (In Colebrook, 1807, p. 13)

Third, time and again a narrative of insensitivity justified the need for special measures, something that will be returned to below. Fourth, the apparently corporate character of crimes like dacoity and the difficulty of effecting deterrence by punishing the offender alone raised questions of the proper target of punishment and the point at which criminal liability in Indian society could reasonably be set: individual, family, village? Fifth, the focus upon dacoits was part of a pattern that would only grow stronger of selective intervention: certain crimes seemed to excite the colonial imagination or frustrate its methods, drawing an extraordinary focus of time and energy, while most run of the mill crime attracted little comment or analysis. Finally, the need to identify and separate out the dacoit from the *ryot* initiated what would become an enduring interest in criminal identification and classification.

Distinguishing the Criminal: Identity and Classification

In early form, attempts at classification were exceedingly crude, displaying little of the logic or taxonomic distinctiveness that would come later. In 1820, for example, Mr John Shakespeare, the Acting Superintendent of Police in the Western Provinces, reported in the journal *Asiatick Researches* some work on classification he had been compiling over a few years. His scheme was designed to differentiate among groups of what he termed *Badheks* and *T'hegs*. Regarding them he wrote:

> The following tribes of Jackal eaters are notorious in the Western Provinces: – *1st, Badheks, – 2nd, Kunjar, – 3rd, Gidia, – 4th, Bauria, – 5th, Harbura*. All of these subsist by robbing, and are more or less attached to a vagrant life, eating the flesh of jackals, lizards, &c. When stationary they commonly reside with their families in temporary huts, constructed of reeds and leaves, and erected in jungles and plains. (Shakespeare, 1820, pp. 282–3)

Other schemes were being developed in this period. Shakespear noted one proposed by a Mr Forbes in 1813. This was divided into five extremely loose and potentially overlapping categories, the first three of which will give some sense of the scheme's tenor:

> *1st Class* – The high roads leading through *Etawah, Aly Gher*, and *Furrackabad* are, for the most part, the scenes of the atrocities committed by this class…
>
> *2nd Class* – This class consists exclusively of *Hindus*, and chiefly of the *Lodeh* tribe…
>
> *3rd Class* – This class…[are *Thegs* and]…have taken up residence in *Mahratta* villages, on the confines [sic] of our territory, where the *aumils* of the native Governments are said to derive revenue from their depredations… (Cited in Shakespeare, 1820, pp. 288–90)

As such classification schemes began to emerge, were compared and refined, a set of themes and concerns that would shape later generations' engagement with native crime were established. These were not *sui generis* to the Indian environment, however. In 1817, James Mill, father to the later much more famous John Stuart Mill, had published a monumental six volume *History of British India*. In this, key elements of Enlightenment thinking about progress and the hierarchical ordering of civilizations were set out. Amateur scientists like Shakespear would have noticed the importance given by Mill to understanding a race or class's history as part of distinguishing one from another and placing them on a ladder of human progress. Ethnology, the study of a group's customs, ways and norms, patterns of work, religious beliefs and so on, also began to emerge at about this time. The classification schemes of both Shakespear and Forbes evidence elements of these in their most rudimentary form. That of Forbes also points, in his third class, to an observation that would be reaffirmed and strengthened in coming years: the link between thieves, dacoits and other bands of organized criminals and powerful native elites. In Forbes's case, the criminal type he believed he'd discovered was a peculiar fraternity he termed *Thegs* and who would soon garner worldwide attention under the Anglicized name Thugs.

Uncovering a Criminal Confederacy: The Discovery of Thuggee

The Thuggee phenomenon has attracted so much attention (see generally, Brown, 2014, Ch. 3; Wagner, 2009) that the purpose here will be to focus not on the crime but what it contributed to that assemblage of ideas, practices, methods of analysis, representation and more that came to constitute early South Asian criminology. Thuggee itself was a crime of robbery and strangulation. Victims would be waylaid by thug gang members on rural roads, robbed, killed, and their bodies dumped down wells or otherwise hidden. It was said to have ritual elements and the goddess Kali, a most fearsome looking deity, apparently sanctioned thugs' crimes. Omens, portents and signs were said to be important in dictating victim choice and whether or not conditions were propitious for a murder. Despite the earlier work of Sherwood and Forbes in identifying thugs as a distinct class, they were instead "discovered" by a self-aggrandizing East India Company officer, William Sleeman, who having "alerted" British authority to the threat they posed was subsequently appointed by Governor General William Bentinck to take charge of operations for their extirpation. Special laws were set in place to allow "approver" hearsay evidence in trial and provide for expedited and condign punishments: generally, death by hanging or transportation for life.

Sleeman not only caught, had hanged, transported, or imprisoned many thousands of thugs within a short space of years, but he also studied them and published his work in 1836 in a long book titled *Ramaseeana, or a Vocabulary of the Peculiar Language used by the Thugs, with an Introduction and Appendix, Descriptive of the Measures which have been Adopted by the Supreme Government of India for its Suppression*. His efforts were rewarded with a department of his own, the Thuggee and soon Thuggee and Dacoity Department, a forerunner of the later Indian CIB. His cousin, Henry Spry, a Company doctor, was connected with the then-vogue phrenology movement. Spry collected thug heads from the gibbets at Saugor in central India before sending them to Edinburgh for examination and writing of them himself in learned journals (e.g., Spry, 1833). Others close to events, and most notably an officer named

Meadows Taylor, wrote of their experiences in putting down the thug scourge, with Taylor's (1839) *Confessions of a Thug,* a hugely successful book that remains in print today.

But in criminological terms, none of this constituted the important contribution and enduring legacy of the Thuggee moment. What the thug phenomenon did contribute was three things. First, the volume and detail of material collected and analyzed marked it as probably the first moment of dedicated, focused criminological enquiry during the colonial period. Here, a certain type of crime became, as never before, what Michel Foucault (2008, p. 30) has termed a "privileged object of government vigilance and attention." Its science was rather rough and ready, but it was nevertheless the first science of a distinct crime and criminal type in India. Others would follow. Second, it connected three elements that would, in their interplay, come to define thinking about crime in India right through into the postcolonial period: extraordinary character, emergency and legal innovation. Third, it reinforced earlier intimations of how crime in India had a special character: its connection with religion, the links between atrocious crimes and protections offered by powerful landlords, and its subterranean character, making the criminal difficult to discern from the mass of otherwise law abiding Indians. Some 50 years later these elements would be reprised, reconceptualized, and reassembled into an ethnographically driven science of identification directed toward criminal tribes.

India's Criminal Tribes: Problem and Policy

In 1871, the Government of India in Calcutta passed a piece of central legislation the writ of which, however, was limited to the Punjab, North Western Provinces and Oude. Named the Criminal Tribes Act, this statute made available to these local governments extra-judicial and extra-penal measures to be deployed against "any tribe, gang or class of persons…addicted to the systematic commission of non-bailable offences" (s.2). Measures included powers to forcibly settle nomadic tribes, move sedentary ones, restrict freedom of movement with a passport system, require roll calls and registers in villages, make rules and

enforce them through imprisonment or whipping without recourse to courts, enhance punishment for offences that did go to court and, finally, remove legal rights to appeal. Later changes would extend jurisdiction to all India, provide for removal of children from parents, add even harsher punishments and forced labor and allow deportation from natives states into British jurisdiction (see Brown, 2014).

The crimes these tribes were said to commit ranged from dacoity down to the pilfering of livestock and miscellaneous forms of petty property crime. Taken as a whole, the tribes so affected tended to be those on the margins of Indian society, yet their behavior was most often put down not to poverty and the precariousness of life but to malign character, hereditary disposition to dishonesty and a loose amalgam of ideas about caste-sanctioned religious duty. Though responses to the tribes rested heavily upon innovative legal means to do what was otherwise impossible under ordinary law, it is there the similarity with responses to Thuggee probably end. Thugs were thought of as rapacious and bloodthirsty, but nevertheless they were always recognized as individual criminals. Here though, we have ideas more akin to Hastings' 1770s descriptions of criminal communities of dacoits. Criminologically, what we see at this moment is a recruitment and recombination of a variety of threads of thinking that go back to Hastings' time, drawn together with new "scientific" approaches. Limited experiments were made with anthropometry (e.g., Bengal Police, 1895) and fingerprinting, which was developed in large part in India (Sengoopta, 2003), and the whole criminal tribes policy's sedentarization approach drew on experiments done in the Punjab in the 1850s and 1860s with "kot" settlements (Hutchinson, 1866). But the largest innovation was the development of a distinct ethnographic science of criminal identification that was then manualized in the form of police handbooks and bureaucratized in the form of criminal history sheets. The latter remain in Indian police stations to this day. Criminal identification thus rested upon officers' mastery of a host of social, cultural, ethnic, and religious markers of problematic tribes together with a capacity to detect and read the signs and signals left by their passing. Kennedy's (1908) *Notes on Criminal Classes in the Bombay Presidency*, for example, runs to 257 pages and covers 23 tribes the

police officer was instructed to become familiar with. Each tribe was considered and described thus:

(a) The name by which the criminal tribe or class went
(b) Habitat
(c) Sphere of activities and wandering proclivities
(d) Appearance, dress, etc.
(e) Dialect and peculiarities of speech
(f) Slang and signs used
(g) Ostensible means of livelihood
(h) Disguises adopted and means of identification
(i) Crime to which addicted
(j) Methods employed in committing crime, and distinguishing characteristics likely to afford a clue
(k) Stock-in-trade, instruments and weapons used in committing crime
(l) Ways and means of concealing or disposing of stolen property

Criminologically, the response to criminal tribes at once drew upon and developed old themes in thinking about criminals while leaving new imprints of its own. Three of these bear mention. First, if Hastings' dacoits had intimated a special type of criminal in India, these tribes reaffirmed in the governmental imagination the need for special measures to deal with special problems. The criminal tribe's legislation was never brought within the ordinary criminal law of colonial India. The belief that there existed a section of society that must be dealt with outside the ordinary law endured into the post-colonial era in India, albeit with some small refinement of terminology (Brown, 2016). Second, as early repressive efforts gave way to more reformatory thinking, the criminal tribe's settlements created the context within which something like a modern social-work approach to crime could begin to emerge (see below). And finally, the criminal tribes discourse, both as policy and practice, reinforced an enduring belief in sociocultural rather than racial explanations for crime in India. Even as biological race theory took hold in other areas, where, for example, H. H. Risley (1908) in his famous *People of India* emphasized

racial purity and mixing, that vision never gained ground in criminal tribes discourse nor indeed in later discussions of criminal propensities.

Squaring the Circle: Metropolitan Theory, Indian Experience

In 1864 Major G. Hutchinson, Inspector General of Police in the Punjab, took a brief home leave to England. There he toured English penal institutions before embarking upon a tour to the Mettray in France and an inspection of the Irish system. In 1866 his conclusions on best European practice, the contemporary state of things in India and the particular problems the country and its people were published under the title *Reformatory Measures Connected with the Treatment of Criminals in India*. His object, he said, was "to ensure that judicial sentences and prison discipline in India tend, not only to the punishment, but to the reformation, of criminals" (Hutchinson, 1866, p. i). Such ruminations upon India and the world were not uncommon, though they did little to change the broad course of administrative thinking which remained, as the criminal tribes manuals illustrate, grounded in a distinctively local vision of crime, criminals, communities, and the social milieu.

When metropolitan criminology did eventually force itself onto the scene in India it did so from a rather unexpected quarter. In two notable publications c.1920, Bengali legal scholars sought to draw attention to contemporary metropolitan theories of crime and criminals and, to differing extents, to reference them to local conditions. In 1920, K. Subrahmania Pillai, the Tagore Professor of Law at Madras Law College, had given the prestigious Tagore Law Lectures and in 1924 they appeared in print: a more than 700 page volume titled *Principles of Criminology*. It had been Pillai's aim to weave a thread of Indian philosophy and reflection upon Indian society and conditions through the text. But India only ever appears dimly in the background of this highly cerebral work that, as a contribution to criminology, would sit easily alongside the tomes of metropolitan theorists of the day.

A rather more balanced attempt at bringing the two worlds together had been made a few years earlier by Sitaram Banerjee, Professor at the University Law College, Calcutta. *Principles of Criminology: With Special Reference to Their Application in India* likened India to a vast ethnographic melting pot of scientific data ripe for criminological examination. In fact, argued Banerjee:

> nowhere else in the world do we find this curious admixture of heterogeneous races – with different languages, different religions, and at different stages of culture – this conglomeration of the fabulously rich and the incredibly poor…this eternal struggle between capital and labour…all the various types of social order beginning from the most archaic to the most finished types of society. (pp. 68–69)

Yet it is perhaps a measure of the social distance between a professor of law and the common person in India that Banerjee's vision of Indian society in all its diversity was a rather crude one, reflective in some cases of mid-nineteenth century stereotypes. Thus he contrasted the "sturdy and martial people of the Punjab and Rajputana" to the "ease-loving and peaceful agriculturalists of Bengal." Similarly, in the forest-dwelling tribes of the Central Provinces he found only evidence of a "truly atavistic type of humanity in the semi-naked savages" (p. 69). Yet these works were nonetheless hugely important to criminology on the subcontinent. It is unlikely they had any effect whatever on crime governance as practice. But they set metropolitan criminology as an enduring reference point for South Asian scholars who would imagine themselves working within big "c" Criminology. The texts also marked the emergence of a schism within criminological writing in the late colonial era. On one side were approaches deriving from the criminal tribes frame, mainly focused on criminal, backward and depressed social classes and tending toward a social work approach. On the other were more theoretically and conceptually sophisticated approaches, more clearly linked to metropolitan thought but much less so to the practical problems posed by crime and criminals in India.

Pre-Independence Visions of Crime and Causation

By the late 1920s, the immense scale of the criminal tribe's policy, drawing in an estimated four million Indians within an armature of penal control, had begun to turn reform and rehabilitation into a small industry. Government and non-government agencies, the latter including the Salvation Army, the Canadian Mission and Ahmedia Anjuman Ishad-I-Islam Hindu saba, were involved in the drive. Numerous factories and other businesses, such as tea plantations, drew upon this pool of forced laborers. But importantly, analysis of the problem was widening appreciation of the link between economic conditions and social marginality. Crime was one effect of such marginalization. But the corrosive effect of untouchability upon lower social orders and the claims therein for social uplift on a wide scale was blurring the boundaries of criminal and civic rehabilitation. Treatises like Benoy Shanker Haikerwal's (1934) *Economic and Social Aspects of Crime in India* drew attention to criminogenic "factors connected with the transition of an ancient rural civilization to modern urban and rural conditions" (p. 7). Yet while Haikerwal name-tagged a criminological lineage running from Cesare Beccaria to Edwin Sutherland, his text really was continuous with the long history of scientific-administrative thinking about crime and society in India. Indeed, it rested heavily upon them. His account of the criminal tribes offered no new thinking, nor critique. It simply re-bundled long held views, many of which originated prior to the 1871 legislation. What Haikerwal did do, however, was connect the problem of crime with a broader critique of Indian society's hierarchical and unequal structure. It was out of this kind of recognition that the Indian constitution and charter of fundamental rights would later develop quite unique visions of justice, equity, and liberty suitable to the new post-colonial state (see Mukherjee, 2010).

For now though, Haikerwal's work nodded to but did not explicitly connect with the considerable work being done within the field of social uplift, or what we would otherwise term social work. On the criminal side, most of this was occurring in criminal tribes' settlements. In 1941, for example, Govind Harshe, a probation officer in the Poona Aftercare Association, published a report on a tribe known as the Mang Garudies

and their lives under settlement conditions at Mundwa. On the question of whether India's four million criminal tribes people would ever be reclaimed into the mainstream of law abiding society he felt ultimately that he should be "diffident about giving a positive answer" (p. 551). His study critiques the policy confusion of a penal settlement attempting to achieve social and economic rehabilitation, suggesting that only through economic emancipation could criminal reform flow. Despite 25 years of work little appeared to have been achieved at the Mundwa settlement and the criminal tribes interred there clung desperately to cultural norms favoring and indeed valorizing criminality.

Whereas Haikerwal and Harshe each in their own way connected with the long history of colonial administrative thought, the efforts of Bengal lawyers c.1920 to bring metropolitan theory to bear upon Indian questions was, in another stream of activity, still influential. Prosanto Kumar Sen, for example, sought to bring Hindu thought into meaningful connection with the Western theoretical tradition on matters of crime and punishment. In *From Punishment to Prevention* (Sen, 1932) he undertook a wide ranging review of ancient and modern legal codes and of modes of punishment. Into this mix he wove a narrative of Hindu thought and law, observing for example that "whereas the dominant note in early Germanic law is vengeance, that in the early Hindu law is deterrence" (p. 34). Overall, he suggested, while Hindu thinking had many of the outlines of the modern concepts espoused by European thinkers like Ferri or Garofalo, these ideas appeared to the writers of the ancient Hindu texts "only by way of intuition, almost like a vision, and they could not fully analyze its implications or carry out its dictates" (p. 43). This effort to square Indian thought with its Western counterpart was given greater space in *Penology Old and New* (Sen, 1943), though it must be observed that the Indian thought to which Sen referred remained ancient Hindu thought. It was not based on contemporary practices, such as those of village or caste Panchayats. Nor did it consider the intersection of customary law, much of which was civil but which had enormous influence on shaping the social conditions out of which social order or disquiet flowed. Thus, like those scholars before him, Sen's work was primarily theoretical and so in this way contrasted with the quotidian, less sophisticated but distinctly more practical concerns of writers like Haikerwal (1934) and Harshe (1941).

Conclusion

This brief assay of South Asian criminology's lineage has tried to identify some of the more important crime problems and modes of thinking and responding as they formed in India prior to 1947. It has eschewed the idea of a solid, definable essence of colonial criminology, concentrating instead on strands of thought and practice that were variously assembled and recombined at different times and in different places. Yet this story is also far from complete. There were numerous mediums in which thinking about Indian crime and criminals was fashioned that have escaped attention here. These include the local gazetteers of civil administration (e.g., Government of Punjab, 1884), the medical-topographical gazetteers often produced around military cantonments (e.g., Woolbert, 1898), non-official treatises on Indian crime and reform (e.g., Booth-Tucker, 1916), travelogues describing criminal encounters (e.g., von Orlich, 1845), and popular crime books (e.g., Somerville, 1931). Nevertheless, it is hoped this chapter has managed to outline some of the key threads and contours of modern criminological thought as it developed on the subcontinent over nearly 200 years prior to independence from Britain in 1947. These formed the background intellectual and practical resources from which post-colonial criminologies were fashioned, grounded now in the attitudes and concerns of the new nation states of India and Pakistan, and then later of Bangladesh.

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3

Evolution of Criminology and Criminal Justice Education in India: Past, Present, and Future

Sesha Kethineni and Ying Cao

Introduction

The term "criminology" was conceived by pioneers like Lombroso, Ferri, and Garofalo. Cesare Lombroso, born in 1835 in Italy, developed an interest in the physiology and anatomy and the link between these characteristics and behavior. Famous for his positivist criminology, his theory of the "born criminal" has been criticized because he failed to see that criminal potentialities are normal in every human being and how

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one represses them depends on various social agencies. However, his publications in English paved the way for the development of criminological sciences in America (Ellwood 1912). In 1885, Raffaele Garofalo, a renowned Italian law professor, coined the term "criminnologia," which we refer to as criminology. His theory of punishment and his concepts of crime and criminals provide a base for his "social defense" against "criminality" (Glick 2005, p. 74). These scholars' efforts resulted in a penal reform movement in the USA. In particular, parole boards and prison administrators were looking for tools to improve and manage the offenders under their supervision (Jeffrey 1959). Thus, the field of criminology played a role, although limited, in the development of parole prediction tables and prison research. Sutherland's definition is considered a standard definition that still prevails today. According to Sutherland and Cressey (1960), "Criminology is the body of knowledge regarding crime as a social phenomenon. It includes within its scope the processes of making laws, of breaking laws, and of reacting toward the breaking of laws. . . . The objective of criminology is the development of a body of general and verified principles and of other types of knowledge regarding this process of law, crime, and treatment" (p. 3). Unlike criminology, the academic field of criminal justice evolved in the 1950s (Bernard and Engel 2001). It includes the study of police, criminal courts, correctional institution, and juvenile justice agencies, and includes the policies, procedures, and the agents who operate within these institutions (Bernard 2007). Compared to many Western countries, criminology and criminal justice education in India is relatively new. Although there is a substantial scholarly work related to the development of legal education in India, the literature on the evolution of criminology and criminal justice education is limited. This chapter uses several sources to provide an in-depth look at the development of criminology and criminal justice education in India; institutions that offer higher education degrees in criminology and criminal justice or allied fields; research and publication avenues; and professional associations related to criminology and criminal justice. Finally, the chapter discusses the gaps between academic education and job-related training and the future of criminology and criminal justice in India.

Historical Development of Criminology

Twentieth-century criminology is derived from the theories of the eighteenth and nineteenth centuries. Jeffrey (1959) discusses the involvement of criminology in addressing the three different types of problems. First, the problem of identifying law violators, which is the job of the detective, the medical examiner, the police, and others involved in the field of criminalistics. Second, the problem of incarceration and treatment of offenders, which is the work of the penologist. Other actors involved in the process are the social workers, psychiatrists, sociologists, psychologists, judges, probation and parole officers, and others involved in the prevention and control of crime and delinquency. Third, the problem of explaining crime and criminal behavior rests with professionals. For example, although the legal aspect of crime and criminal behavior is the function of the lawyer, explaining criminal behavior is of interest to sociologists, psychologists, psychiatrists, anthropologists, and even biologists. Thus, the problem of studying crime and criminal behavior is interdisciplinary in nature.

There was a contention among scholars about accepting criminology as a science, and the most devastating criticism came from Jerome Michael's report of 1932 ("the Michael-Adler Report"). Jerome Michael, a lawyer and a faculty member of Columbia University Law School, and Mortimer Adler, a philosopher and a faculty member of the University of Chicago, criticized the state of criminology. According to them, criminological research had been futile because it had not achieved any scientific knowledge of the phenomenon of crime, a single scientific proposition, or a definite conclusion. The reasons for the futility of research in criminology, according to the authors, was the incompetence of criminologists in science. Their recommendation was that current methods of criminological research should be abandoned, and scientists from another field should be imported into criminology (Laub 2006, p. 237; Michael and Adler 1933, p. 169; Sutherland 1932–1933/1973, p. 231). Sutherland responded to the criticism by arguing that criminology, being a new field of science, had difficulties in accessing crime data, obtaining information from offenders, and getting funding to conduct research (Laub 2006, p. 238; Sutherland 1932–1933/1973, p. 235, 241).

Since the Michael-Adler Report was published, criminology and criminal justice education and research have made great strides regarding our understanding of criminal behavior and prevention of crime. Western countries, especially the USA, has seen a rapid growth in criminal justice education as a field of study and as a college major over the last eight decades. From a mere 184 programs in 1966 (Kobetz 1975), there were over 1012 schools/universities offering degrees in 1977 (Bennett and Marshall 1979); today most universities offer four-year degrees and community colleges offer associate degrees in the field. More than 35 universities offer doctoral degrees.

Structure and the Status of Education in India

Before discussing the evolution of criminology and criminal justice education in India, it is relevant to understand the educational structure of the country. Article 29 of the Consitution prohibits discrimination in any educational institutions run by the state government or funded by the state government on the basis of race, caste, language, or any other factor (Dash 2004). In 1976, the 42nd Amendment to the Constitution made education a vital component of both the cental and state governments' responsibility. However, state governments have considerable leeway in implementing them. The school system in India typically consists of a preschool, kindergarten (divided into lower and upper kindergarten), primary school (first to fifth grade), middle school (sixth to eighth grade), secondary school (ninth and tenth grade), and higher secondary or pre-university (11th and 12th grades). Students learn a common curriculum, with some specialization at the higher secondary level. The curriculum is standardized throughout the country, and the students have to learn three languages (English, Hindi, and their mother tongue) with some exceptions. The school system at the national level falls under the Central Board of Secondary Education (CBSE) or the Indian Certificate of Secondary Education (ICSE). These systems enabled children of central government employees who are periodically transferred from one area of the country to another to avoid any disruption in their studies. They go to "central schools" (*Kendriya*

Vidyalaya). Since Independence, some private schools follow the CBSE system but have the freedom to use textbooks of their choice and teaching methods. The ICSE was a replacement of the Cambridge School Certificate system introduced during British rule. A large number of private schools throughout India are currently affiliated with the Council. Both CBSE and ICSE conduct their own examinations (Kumar 2014).

In addition to these central educational systems, there are a small number of exclusive schools that offer an international curriculum to attract children of diplomats and Indians working in foreign countries. These are very expensive residential schools with excellent infrastructure, a low student-teacher ratio, and great amenities. The state-level educational system has three kinds of schools: the government-run schools, mainly for low-income children; private schools mostly for middle-class families; and grant-in-aid schools, where state government funds support the schools, although the school is privately owned (Kumar 2014). Undergraduate degrees (which typically take three years) and professional degrees (such as medicine and law) require five years, and an engineering degree requires four years of college. After entrance to a college, students usually take examinations at the end of every semester. A master's degree takes two years, exams at the end of each year, and a thesis. Doctoral students take a limited number of courses, if any, but primarily focus on their dissertation work.

In the area of college education, India has seen rapid growth and advancement. It has the third largest educational system in the world, after the USA and China (Jaipuria 2014). *Statistics on Indian Higher Education* in 2014 reported that in India, there are 712 universities, 36,671 affiliated colleges, and 11,445 stand-alone institutions offering diploma-level training with a total enrollment of more than 16 million students (Ministry of Human Resource Development 2014). The majority of the students (about 12.8 million) are enrolled in bachelor's programs, with 1.7 million in master's programs, and the remainder in doctoral and diploma/certification programs. At the undergraduate level, about 40% of students were enrolled in arts/humanities/social sciences, followed by engineering (16%), commerce (14.5%), and science (12.6%). Science, social sciences, and engineering and technology have

the three largest enrollments, respectively (Ministry of Human Resources Development 2014). Despite the country's success in increasing educational accessibility, only a small number of universities and colleges offer degrees in criminology/criminal justice.

Birth of Criminal Justice Education in India

Unlike the USA and most Western countries, the emergence of criminal justice/criminology in India came later than many developed countries (Khan and Islamia 1984). After gaining independence in 1947 from the British, India decided to address the problem of recidivism among released offenders. The Government of India invited Dr. Walter C. Reckless, a renowned criminologist who served as the United Nation's expert, to carve out a plan to develop reformation and rehabilitation programs for adult offenders. In 1952, he submitted a report on the study of jail administration in India. The report offered broad recommendations concerning the care, welfare, discipline, training, and treatment of adult and juvenile offenders (Madan 1967). Prior to 1950s, one or two courses on criminology were taught in undergraduate and postgraduate programs in sociology in places such as Karnataka University (southwestern India), Kashi Vidyapith (later renamed as Mahatma Gandhi Kashi Vidyapith and located in the northern state of Uttar Pradesh), and Lucknow Universtiy (also located in Uttar Pradesh). However, many law schools throughout India offered criminology as an elective course in master of law programs. Likewise, some social work programs offered criminology as an elective (Diaz 1990). In 1954, the Tata Institute of Social Sciences (TISS), a deemed university in Mumbai (A "deemed university" is an accredited university that has been awarded the status of a university in India because of its very high standard of performance in a specific area of study) was the first university at the national level to introduce a master's degree program in criminology and correctional administration. The program was offered as part of a master's of social work (Tata Institute of Social Sciences 2016; Unnithan 2013). The guiding principles laid out in Reckless's report shaped the mission of the Institute and many other institutions that

established the degree programs in these fields. Following the Reckless study, the United Nations Education, Scientific and Cultural Organization's (UNESCO) 1957 report, *University Teaching of Social Science: Criminology*, provided the required impetus for the development of criminology (Bajpai 2016). India was 1 of the 10 countries surveyed by the UNESCO. The report advocated the need for teaching criminology in education, creating institutes of criminology, and teaching of criminology outside of institutes. The report highlighted the importance of criminology in reducing crime and developing a theoretical understanding of crime. The report further emphasized that criminology education should be interdisciplinary and include criminal biology, criminal psychology, criminal sociology and penology; general and clinical criminology; scientific police methods; judicial psychology, and forensic medicine (UNESCO Report 1957, pp. 28–40). The report also stressed the need to have "relevant and purposeful transformation of the police, the judiciary, and the penal systems" (Diaz 1990, p. 101). Following the UNESCO report, India took the initiative to establish the scientific teaching of criminology to bring about progressive changes in the criminal justice system. In 1959, the University of Saugor (or Sagar), located in the central state of Madhya Pradesh, responded to the recommendations of UNESCO and created the first department of criminology and forensic science. It offered a master's degree in criminology and forensic science (In 1983, the University was renamed the Dr. Hari Singh Gour University). Three other universities—the Patiala Univeristy (now Punjab Universtiy, located in northern India), Karnataka University (located in the southwest region), and the University of Madras (located in the south)—followed UNESCO's suggestions and established separate departments. The Patiala University was the first university in the northern region to start a Department of Forensic Science exclusively devoted to criminology (Unnithan 2013). The University of Karnataka offered a combined degree in criminology and forensic science; the University of Madras offered degrees in criminology. At the national level, the National Conference of Inspectors General of Police in India in 1959) echoed UNESCO's sentiments and recommended that some of the Indian universities start criminology as a subject of study (Diaz 1990). The

Institute of Criminology and Forensic Science was established in New Delhi in 1972. In 2003, the Institute was renamed the Lok Nayak Jayaprakash Narayan National Institute of Criminology and Forensic Science (2016).

Expansion of Academic Criminology: Current Programs in Criminology and Criminal Justice

In this study, three primary sources are used to compile the information related to criminology/criminal justice/forensic science programs in India. First, we began by examining the member listing of universities in India in the 2016 Association of Commonwealth Universities. The Association of Commonwealth Universities (2016) represents 535 universities from 37 Commonwealth countries and has 173 member universities in India. Then we went to each university's website to check their coursework and degree programs. We looked for degree programs involving criminology, criminal justice, and forensic science. Among the 173 universities, there are 18 universities offering programs related to criminology, criminal justice, and/or forensic science. The second source we used is the National Institutional Ranking Framework from Ministry of Human Resources Development in India (2016). It provides rankings of all Indian universities. We checked the top 100 universities. Finally, we crosschecked and verified this information with major India media and other publications and websites about criminology/criminal justice and forensic science education in India.

Based on our research, there are more than 35 public and private universities that offer criminology/criminal justice-related programs. These programs show three key factors. First, the universities that provide criminology-related programs are primarily state universities. Second, various courses are offered by different universities, such as criminology, criminal justice, forensic science, and correctional administration. Some universities provide integrated programs. For example, Mangalore University offers a master's degree in social work (M.S.W.) with a specialization in criminology and correctional administration. It is a unique program that combines criminology and social work. Others provide programs in specific areas within the discipline. Shivaji University, for example, offers M.Phil.

and Ph.D. in juvenile delinquency and Ph.D. in penology and the treatment of offenders. It is the only program that provides specialization in juvenile delinquency in India. Guru Nanak Dev University offers master's program in police administration (see Table 3.1)

Third, the universities in India offer not only academic degrees, from bachelors to doctoral programs, but also postgraduate (P.G.) diploma courses. Diploma courses provide excellent choices for students as well as for those working in the criminal justice field. Andhra University provides a postgraduate diploma in criminal justice. It is a one-year diploma course without entrance test. It also offers a two-year master's degree in criminal justice with two specializations—security management and forensic psychology. Table 3.2 provides a list of universities that offer diploma courses. There also are a few universities that offer certification in criminology/criminal justice.

Regarding doctoral programs, few offer majors in criminology or criminal justice. The Department of Criminology at the University of Madras (located in Chennai, South India) was established in 1983 as a separate department. Before being an independent department, it was part of the Psychology Department. In addition to offering a master's degree in criminology and criminal justice, it offers Ph.D. in Criminology. The Department is known for excellence in teaching, research, and grant acquisitions (University of Madras 2016). The Department recently developed specializations in cybercrime and information security. Manonmaniam Sundaranar University, Thirunelveli (South India) established the Department of Criminology and Criminal Justice in 2003. It offers B.A. in criminology and police administration, M.Sc. in criminology & criminal justice sciences, and Ph.D. in criminology and criminal justice sciences. Although it is relatively a new department, it has developed an impressive record of scholarship, funding, and collaboration with other countries. The Department provides consultancy in the areas of juvenile justice, victimology, and cyber-crimes (Manonmaniam Sundaranar University 2016). The Department of Criminology and Forensic Science at Dr. Harisingh Gour University in Sagar (in Madhya Pradesh) is one of the oldest universities in India. It was established in 1959 after the publication of the UNESCO report. It offers Ph.D. degrees in both criminology and

Table 3.1 Degree programs in criminology and criminal justice in some selected Indian universities

University	Type of Degree
A.V.K Institute of Higher Education	M.A. Criminology & Police Administration
Andhra University	M.A. Criminal Justice
Bundelkhand University Jhansi	B.Sc. Forensic Science; M.A.Criminology
Dr. Harisingh Gour University (Sagar)	B.A., M.A., and Ph.D. in Criminology
Dr. B.R.Ambedkar University, Agra	M.Sc. Forensic Science
Government Institute of Forensic Science	B.Sc. Forensic Science;m M.Sc. Forensic Science
Gujarat University	M.Sc. Forensic Science
G.G. Singh Indraprastha University	M.A. Criminology; M.Sc. Forensic Science
Guru Nanak Dev University	M.A. Police Administration
Institute of Forensic Science, Mumbai*	B.Sc. Forensic Science
Karnataka University	M.A. Criminology; M.Sc. Forensic Science; Ph.D. Criminology
National Institute of Criminology	M.A. Criminology; M.Sc. Forensic Science
Mahatma Gandhi Kashi Vidyapith	M.A. Criminology
Manonmaniam Sundaranar University	B.A. Criminology; M.Sc. Criminology; Ph.D. Criminology
The National Institute of Criminology	M.A. Criminology; M.Sc Forensic Science
Osmania University	M.Sc. Forensic Science; Ph.D. Forensic Science.
Patna University	M.A. Criminology
Punjab University	M.Sc. Criminology & Security Studies
Raksha Shakti University	M.A. Criminology; M.A. Police Administration
Rani Channamma University	M.A. Criminology
Sardar Patel University	M.A./M.Sc. Applied Criminology; M.Sc. Forensic Science
Shivaji University	M.Phil. Juvenile Delinquency; Ph.D. Juvenile Delinquency Ph.D. Penology, Treatment of Offenders

(*continued*)

Table 3.1 (continued)

University	Type of Degree
Swami Vivekanand University	B.A. Criminology; MA. Criminology & Criminal Justice
Tamil Nadu Open University	M.A. Criminology & Criminal Justice Administration
Tata Institute of Social Sciences,	M.S.W. Criminology
The Global University	M.Sc. Criminology; M.B.A. Criminology Management
University of Lucknow	M.A. Criminology & Criminal Justice Administration
University of Madras	M.A., Ph.D. Criminology & Criminal Justice Science
University of Mysore	M.Sc. Criminology & Forensic Science; M.Sc., Geographical Information System

Source: Target Study, Education, Knowledge, Career (n.d.). Also, degree offerings were compiled from individual university websites

forensic science (Dr. Harisingh Gour University 2016). The Department of Criminology and Forensic Science at Karnatak University, Dharwad (located in the southwestern state of Karnataka) was established in 1969 as an institution that offers professional education, training, research, and expertise. It is known for providing professional training to various criminal justice agencies in the state. The Department started offering the Ph.D. program 1985 with specific emphasis on police, courts, correction, cybercrimes, security, child labor, and insurance fraud (Karnatak University 2016).

At the national level, the National Institute of Criminology and Forensic Science, Delhi, in partnership with Guru Gobind Singh Indraprastha University, Delhi, decided to enter the academic side of criminology and criminal justice (Unnithan 2013). When it was initially set up in 1972 (The Government of India 2016), its primary objective was to offer training classes to senior criminal justice professionals. Since its inception, it has provided training to over 34,000 officers representing the police, civil administration, prosecution, judiciary, correctional administration, customs, defense forces, and forensic laboratories. The training was extended to professionals from the Middle East, Asia, and Africa (Lok Nayak Jayaprakash Narayan, the National Institute of Criminology and

Table 3.2 Postgraduate diplomas in criminology, criminal justice, and allied fields

University	Type of Diplomas
Aligarh Muslim University	P.G. Diploma in Criminology & Criminal Justice Administration
Andhra University	P.G. Diploma in Criminal Justice & Forensic Sciences
Andhra University	P.G. Diploma in Criminal Justice
Annamalai University	P.G. Diploma in Criminal Justice & Forensic Science
B.J.S. Rampuria Jain Law College	Diploma in Criminology
Bundelkhand University Jhansi	P.G. Diploma in Forensic Science
Dwarika Prasad Vipra Law College	P.G. Diploma in Criminology & Law of Crimes
Gujarat National Law University	Diploma in Criminology and Forensic Management
Hyderabad Central University	P.G. Diploma in Criminal Justice & Forensic Science
Institute of Forensic Science, Mumbai	P.G. Diploma in Forensic Science and related laws
Indira Gandhi National Open	P.G. Diploma in Criminal Justice
Maharaja Ganga Singh University	P.G. Diploma in Criminology & Correctional Management
Maharaja Sayajirao University of Baroda	P.G. Diploma in Criminology & Correctional Management
Maharishi Dayanand Law P.G. College	Diploma in Criminology
Manonmaniam Sundaranar University	P.G. Diploma in Applied Criminology
Mohanlal Sukhadia University,	P.G. Diploma in Criminology
Roshni Nilaya Mangalore	P.G. Diploma in Criminal Justice & Forensic Science
University of Hyderabad	P.G. Diploma in Criminal Justice & Forensic Science
University of Jammu	P.G. Diploma in Criminology & Police Science
Savitribai Phule University of Pune	P.G. Diploma in Criminology
University of Patna	P.G. Diploma in Applied Criminology
University of Rajasthan	P.G. Diploma in Applied Criminology

Source: Target Study, Education, Knowledge, Career (n.d.). The list of degree offerings was also compiled using individual university websites

Forensic Science). The curriculum for master's in criminology is comprehensive and includes wide array of topics such as: principles of criminology, forms of crime, criminal law and procedure, criminal justice system, juvenile justice, theories of crime, psychology of crime, forensic science, research methodology, policing and law enforcement, penology and correctional administration, the economics of crime, impact of economic crimes, security management, evolution of human rights, human rights in criminal justice system, protection of human rights, crime prevention and management, victimology, legal process, economic crimes, and corporate security and management. In addition, the students do field work and write a dissertation (Guru Gobind Singh Indraprastha University 2012).

The Professional Growth of Criminology and Criminal Justice: Scholarly Journals and Associations

There are a few journals in which criminology/criminal justice scholars can publish their research: *Indian Journal of Criminology, Indian Journal of Criminology and Criminalistics, Indian Police Journal, Police Research and Development*, and *Journal of Institute of Human Rights*. In recent years, two journals—*International Journal of Cyber Security* and *International Journal of Criminal Justice Science*—have been developed. The *Indian Journal of Criminology*, an official publication of the Indian Society of Criminology, provides a forum for scholars to exchange ideas. The *Indian Journal of Criminology and Criminalistics*, publishes three times a year, has wide circulation in India as well as other countries. The journal covers topics ranging from criminology, sociology, victimology, juvenile delinquency, administration of criminal justice agencies to forensic science.

There are four notable criminology and criminal justice professional associations in India, and they are the Indian Society of Criminology, the South Asian Society of Criminology & Victimology (SASCV), the Indian Society of Victimology, and the Asian Criminology Society. The *International Journal of Criminal Justice Science* is affiliated with the

SASCV, and it hosts an annual conference. Indian Society of Criminology was established in 1970. The membership includes criminologists, psychologists, sociologists, judges, lawyers, police officers, correctional officers, forensic scientists, social workers, and others from related fields. The goal of the organization was to prevent crime and reform lawbreakers by organizing annual conferences, annual symposia, training programs, and public lectures. Table 3.3 presents the major themes of the past three conferences. The mission of the SASCV was to promote research in criminology and victimology in South Asian countries such as Afghanistan, Bangladesh, Bhutan, India, Pakistan, Maldives, Nepal, and Sri Lanka. It also aims to provide educational programs, develop employment opportunities for students, create new center/department of victimology, and serve as a consultant to various entities in the South Asian region (see Table 3.4). Indian Society of Victimology (ISV) was established in 1992 with the "objective of advocating the cause of victims of crime and abuse of power in India" (The Fourth International and Eight Biennial Conference of Indian Society of Victimology, 2014).

It has about 400 members. Since its inception 22 years ago, the organization has been proactive in fighting for victim's rights. It prepared a draft of victim legislation in consultation with the National Law School of India University, Bangalore, and the National Human Rights Commission (see Table 3.5). The Society recently organized the Ninth Biennial Conference with a focus on "The Victimization of Children: Dimensions and Response of the Stakeholder." The Asian Criminological Society (ACS) was established in December 2009 in Macau, China, with the cooperation of more than 60 leading criminologists representing 14 countries and regions (see Table 3.5). The purpose of the initiative was to (1) promote criminology, and criminal justice education across Asia; (2) enhance cooperation between scholars and practitioners in the field; (3) improve communication between criminologists and criminal justice practitioners in Asia and the world; and (4) foster training and research in the field (Asian Society of Criminology 2016).

Table 3.3 Indian Society of Criminology Conferences, 2012–2014

Conferences	Time	Major Theme	Major Subthemes
Thirty-Fifth Conference	March 23–25, 2012	Transnational Crime	Organized and transnational crimes Technology and crime: A game changer? Organized crime, state, and governance. Correctional administration/reintegration of offenders.
Thirty-Sixth Conference	February 15–17, 2013	Rethinking Criminal Justice in twenty-first century	Crime, development, and Criminal Justice policies. Protection of women, children, and elderly. Access to justice sentencing, corrections, and re-integration. Civil society initiatives in criminal justice. Future of criminology.
Thirty-Seventh Conference	February 28–March 2, 2014	Crime, Criminology, and Criminal Justice: A Relook in the Present Scientific and Technological Era	Community, culture and prevalence of crime Change in crime and crime Pattern in the present scientific and technological era. Complexities in cross-border crimes and criminality Crime control, prevention, and treatment Contemporary crime discourse and depiction. Crime and technology.

(*continued*)

Table 3.3 (continued)

Conferences	Time	Major Theme	Major Subthemes
Thirty-Eighth Conference	October 15–16, 2015	Sex, Power, Crime, and Victims: The Need for Policy Shift in India	Youth and gender crimes Power and abusive crimes Cyberspace and sexual crimes Social structure and sexual crimes Criminal justice responses to sexual crimes and victims Sex crimes Crime policy/Crime Legislation Contemporary trends in teaching criminology

Source: Department of Criminology (2015); Rajiv Gandhi National University of Law, Punjab (2014); *36th All India Alliance University, Criminology Conference of the Indian Society of Criminology* (ISC): *Call for Papers.* (2013). Retrieved June 2, 2016, from http://www.advocatekhoj.com/lawschool/announcement.php?WID=2441; Indian Society of Criminology (2012)

Table 3.4 The South Asian Society of Criminology and Victimology 2011, 2013, and 2016

Conferences	Time	Major Theme	Major Subthemes
First Annual Conference	January 15–17, 2011, Jaipur, India	Crime and victimization in the globalized era	Terrorism and extremism Cybercrimes, laws, and security Crimes of culture and culture of crimes Marginality, social exclusion, and victimization Criminal victimization in South Asia and victimization of South Asians in other countries
Second Annual Conference	January 11–13, 2013, Kanyakumari, India	Revisiting interpersonal crimes and victimization	Interpersonal crimes against women Interpersonal crimes against children and youth Men as victims: Myths and realities Culture conflict and victimization of groups Interpersonal cybercrimes
Third Annual Conference	January 28–29, 2016, Margao, Goa	Violence and victimization: New challenge for traditional and modern society	Interpersonal and self-directed violence Collective and targeted violence Workplace violence State-sponsored violence and abuse of power Online violence

Source: SASCV (2016)

Table 3.5 Asian Society of Criminology, 2009–2016

Conferences	Time	Major Scheme
First Annual Conference	2009	Asian Criminology in a Global Context: Challenges and Prospects
Second Annual Conference	2010	Advancing Criminology: Challenges and Opportunities in Asia
Third Annual Conference	2011	Asian Innovations in Criminology and Criminal Justice
Fourth Annual Conference	2012	Development & Society: Rethinking Crime and Crime Policies
Fifth Annual Conference	2013	Access to Justice for the Marginalized: A Human Rights Perspective
Sixth Annual Conference	2014	Advancing Criminological and Criminal Justice Theories from Asia
Seventh Annual Conference	2015	Asian Criminology in a Global Context: Challenges and Prospects
Eighth Annual Conference	2016	Crime Prevention and Control under the Perspective of Globalization

Source: Asian Society of Criminology (2016)

The Career Growth in Criminology and Criminal Justice in India

When India was under the British rule, Lord Curzon, Viceroy of India, set up a new police commission to review the functioning of the police. The commission's report became the benchmark for evaluating police performance for years to come (Bailey 1969) The report stated, "[T]he police are far from efficient; it is defective in training an organization; it is inadequately supervised; it is generally regarded as corrupt and oppressive; and has utterly failed to secure the confidence and cordial cooperation of the people" (Indian Police Commission 1905, p. 150). According to Bailey, the report ignored the accomplishments of the police. For example, the Chemical Examiners' Department of the Punjab was the precursor of the modern-day forensic laboratories. In addition, the fingerprint system used today was developed in India by the Inspector General of Police in Bengal, Sir Edward Henry. India was the first country in the world to provide systematic training for high-ranking police officers (p. 48). Training for police officers depends on whether they are officers of the

Indian Police Service (IPS) or the state service. The National Police Academy (renamed the Sardar Vallabhbhai Patel National Police Academy, Hyderabad) trains IPS officers at the rank superintendent, deputy inspector general, and inspector general, who are selected through a competitive Indian Civil-Service Examination selection process. These officers are posted in their respective states by the assistant superintendent (ASP). They can be removed only with the approval of the President of India. The other officers—constables, subinspectors, inspectors, deputy superintendent—are trained at the state level. As a general rule, IPS officers are initially sent to a five-month basic training, followed by at least a year of intense training at the National Police Academy. Scott et al. (2009) conducted a study to measure the effect of higher education on perceptions among police personnel. They concluded that education had only a marginal effect on role perception, work values, stress, and managerial issues, and suggested a policy change in training officers.

In 1940, the first formal training program—Lucknow Jail Training School—for correctional officers was inaugurated in Uttar Pradesh (Khan and Unnithan 2008). In 1951, Walter C. Reckless visited India as a correctional expert at the request of the Government of India to review the correctional system and make recommendations. He was teamed up with J. M. Kumarappa, Director of the Tata Institute of Social Sciences, who served as an intermediary between the government and Dr. Reckless. In 1957, the government of India created the Committee of Inspector-Generals of Police to develop a jail manual that could be applied uniformly throughout the country. The report was submitted by the Committee in 1959 (Madan 1967). The Committee recommended that all aspects surrounding the offender—prevention and control of crime, treatment, and aftercare—should be under a comprehensive program of social defense. Also, the Committee provided a detailed account of how the care, welfare, discipline, training, and scientific treatment of juvenile and adult offenders should be carried out (Madan 1967). Other states subsequently developed correctional training centers based on the Lucknow model. In Vellore (in the southern state of Tamil Nadu), for example, a training center for new recruits and lower-tier officers was built. In 1979, the Regional Institute of Correctional Administration was created to serve high-level correctional

officers from four neighboring states to Tamil Nadu. It is now known as the Academy of Prisons and Correctional Administration, and officers can come from any state for training. The courses include human rights in prison management, criminal justice system, personality development, deviance among street children, crimes against senior citizens, the role of imprisonment within the criminal justice system, and rehabilitation and reintegration of released prisoner. Chandigarh (in northern India) created the Institute of Correctional Administration in 1989 to serve the northern states (Unnithan 2013). In addition, the National Institute of Social Defense, a part of the central government, which was set up to serve as the Central Bureau of Corrections, is now providing small grants to teach and train officers. In 2010, the Regional Institute of Correctional Administration was set up in Kolkata to provide training to correctional personnel in northeastern India. A review of the curriculum of the correctional training centers indicates the lack of social science-based criminal justice education in these training (Unnithan 2013). Unnithan emphasizes the need for correctional officers to be exposed to criminology or criminal justice education in college. Verma (2005), a strong critique of the current police training and police accountability in India, contends that the recommendations of several committees on liberalization and reform of police have been largely ignored. Although some of the state-level training academies that train low to mid-level officers and the National Police Training Academy incorporate criminal justice in their curricula, this is not uniform across the country.

Conclusion

This chapter has examined the growth and evolution of criminology and criminal justice in India since the 1950s. The evolution of modern criminology in India was impacted by two major studies—the Reckless study and the UNESCO's (1957) call to develop a scientific study of criminology made through its report *The University Teaching of Social Science—Criminology*. These studies directly resulted in the development of correctional reform initiatives, the introduction of criminology, many initiatives for reforms in criminal justice, the evolution of academic

forensic science; and the development of training institutions for criminal justice professionals. Since the 1980s, in response to the globalization of criminology, particularly its rapid growth and expansion in Western universities, undergraduate and graduate programs in criminology and criminal justice began to rapidly grow within the academic settings of India. Some universities began to build research partnerships and student exchange programs with foreign universities. From the 1980s, with the expansion of the Indian economy and the bureaucratic structure of the government and law enforcement, a market for criminology and criminal justice students also began to rapidly expand in India. From that time, trained professionals with degrees in criminology, criminal justice, and forensic science began to enter the workforce, particularly as teachers of criminology, legal studies, law, and sociology. There was also growing demand for criminology and criminal justice majors from nongovernmental agencies, research institutions, and private organizations. It is, however, noticed that although major advances have been made in academic criminology and criminal justice in India, there is still a gap in integrating criminal justice education and research with the practice and policy-making in crime and criminal justice. In this respect, the academic institutions have a major responsibility of developing collaborative partnerships with criminal justice practitioners. In meeting the growing challenges of global crimes and reforming criminal justice in terms of international norms and standards related to human rights, democracy, the rule of law, and equal justice, the crime and justice policy-makers of India have also a great responsibility to create a space for more integration between research and practice in criminology and criminal justice. This will result in a better use of scientific research for the governing of crime and justice in India.

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4

Modernization and Advances in Crime Measurement and Crime Classification in India: A Critical Review

Sami Ansari

Introduction

The study critically describes crime measurement in India; presents the issues with regard to the reporting and recording of crimes; briefly reviews the crime measurements in the USA, Canada, and England, and Wales; and recommends the modernization and improvement of crime measurement in India. The single source of crime data in India is police-recorded crime statistics measured by the National Crime Record Bureau (NCRB). Empirical evidence shows that the reporting and recording of crime in India are especially problematic, so official police-recorded crime statistics are not appropriate for empirical research and effective crime policy formulations. The study, drawing upon the best crime measurement

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practices, strongly recommends the establishment of a national crime victimization survey and the collection of incident-based police-recorded crime data. The lessons, however, should be modified to suit India's institutional and socioeconomic characteristics. The importance of an accurate measurement of crimes cannot be exaggerated. To understand the trend of crime, formulate and evaluate crime policies, and conduct criminological research, the accurate and detailed crime data are required. Majority nations, including India, measure only police-recorded crime. In the absence of an alternative measure, it is difficult to estimate the magnitude of crime not recorded because police-recorded crime statistics can measure only a fraction of the entire unknown universe of criminal events (Sellin 1951; Wolfgang 1961). The police-recorded crime is a function of reporting and recording. A large number of crimes are not reported to the police, but all crimes reported are not recorded by the police. National victimization surveys show the discrepancies between police-recorded and victim-reported crime. The surveys also show that the police fail to record a large number of crimes reported to them (Van Dijk 2007) because they are generally held accountable for crime situation, and are always interested in keeping the crime rates low and clearance rates high. Both can be achieved by the low recording of crime (Van Dijk 2007).

Nations measure police-recorded crime with varying degrees of accuracy. The collection and dissemination of national data on crimes known to the police began in the twentieth century (Van Dijk 2007). The first systematic effort was the establishment of the Uniform Crime Reporting (UCR) in the USA in 1929, which not only began providing national statistics on crimes known to the police, but also overcame the problems of differences in defining and recording crimes by different police departments by creating a standard reporting format and including only commonly well-defined crimes. The measurements of police-recorded crime have generally been limited to the collection and dissemination of summary crime data, but, with the advent of technology, the incident-based reporting began and some of the industrial countries now collect detailed information. For instance, micro-data reporting in England and Wales and Canada have allowed extracting detailed incident information directly from the police records. Canada has also taken in an initiative to measure crime severity index based on the actual incarceration given by the courts.

The inability of police-recorded data in estimating the actual magnitude of crime committed led to the establishment of the victim surveys. In order to illuminate the dark figure of crime and make an estimation of an actual number of crimes, the USA pioneered crime victimization survey in 1972, and soon other European countries, that is, Netherlands, England and Wales, and Switzerland followed it and began their national victimization surveys. These surveys provide estimates of recorded and non-recorded crimes. The survey reports also revealed great discrepancies between police-recorded and victim-reported crime rates. Using the questionnaire of the Dutch, English, and Swiss national crime surveys as its basis, the International Crime Victim Survey (ICVS) was launched in 1989. Since its initiation in 1989, the ICVS has conducted surveys in 78 countries. The results of the ICVS also show discrepancies between police-recorded and victim-reported crime statistics. In view of the significant discrepancies between police-recorded and victim-reported crime as shown by the national victim surveys as well as the ICVS, the utility of police-recorded crime for conducting criminological research and formulating crime policies is questioned. Van Dijk (2007) strongly suggests that police-recorded crime statistics should be replaced by victimization survey-based statistics if available. Van Dijk (2007) further argues that police-recorded crime data are also not appropriate for trend analyses because the reporting and recording practices can be dramatically altered by some external factors such as communication and surveillance technology and advances in record-keeping and data management.

Crime measurement in India is limited to the measurement of police-recorded crime. The summary crime statistics are collected from the police departments by the National Crime Record Bureau. The problem with police-recorded crime is that it represents only a fraction of crimes committed (Sellin 1951; Wolfgang 1961). This problem gets magnified in India due to serious issues with reporting and recording (Ansari et al. 2015). In the absence of an alternative measure, that is, victim survey, there is no way to make an estimation of the magnitude of crimes not recorded by the police. A recent observation by the Supreme Court of India that over six million cognizable crimes, which is almost 50% of the total reported crimes, were not recorded by the police in year 2012 (Lalita Kumari v. Govt. of U. P. and Ors 2013) indicates the inadequacy of

police-recorded crime statistics in measuring crime in India. The first step to modernizing the crime measurement in India is to establish a national victim survey. A victim survey will provide a better and more accurate estimation of total crimes committed and calibrate the NCRB's police-recorded crime statistics. The modernization of crime measurement, therefore, will not only facilitate the effective crime policy formulation and criminological research but will also help improve the reporting and recording of crimes in India.

Crime Measurement in the USA, Canada, and England and Wales

Crime Measurement in the USA

Crimes in the USA are measured by two crime data collection programs, known as the UCR and the National Crime Victimization Survey (NCVS). The UCR, as a summary data collection program, began in 1927 at the initiative of the International Association of Chiefs of Police (IACP) (FBI 2004). At the request of the IACP, Congress authorized the Attorney General of the USA to collect the data, and the Attorney General handed the responsibility of administering the crime data collection program to the Federal Bureau of Investigation (FBI) (FBI 2004). The UCR program, which began with 4000 reporting law enforcement agencies in 1930, currently collects crime statistics from over 17,000 law enforcement agencies.

The UCR is a voluntary data collection program in which local, state and federal law enforcement agencies participate voluntarily. The local agencies report through the state programs, but other agencies report directly to the national program. Different measures are taken by the program to ensure the optimal level of uniformity and precision in defining, classifying, and reporting data by the law enforcement agencies and state programs (Federal Bureau of Investigation 2004). To maintain the validity of the data, the UCR program especially focuses on frequent training for individuals working in the state programs and law enforcement agencies, audits of the data submitted

by the agencies, and data quality control focused on dealing with outliers (Federal Bureau of Investigation 2004). The program makes estimations of crime data for the agencies that, for some reason, either do not participate in the program or do not submit data for the entire year. The UCR collects and publishes summary crime data for Part I offenses and arrest data for Part II. The Part I crimes are the most serious violent and property crimes. They are homicide, rape, robbery, aggregated assault, burglary, larceny-theft, motor vehicle theft, and arson. The Part II crimes include 21 less serious crimes (Federal Bureau of Investigation 2013).

One of the limitations of the UCR is that it is a summary data collection program. To overcome this limitation the FBI began an ambitious incident-based crime data collection program in 1987, known as the National Incident-Based Reporting System (NIBRS). The NIBRS collects and reports incident and arrest data for 23 offense categories consisting of 49 specific offenses (Federal Bureau of Investigation 2015). Apart from the depth and details, the NIBRS also collects data on cybercrime, rape against men, and crime against society other than the crime against property and persons. The expansion of the NIBRS is slow because of its ambitious nature and the need for resources and technical expertise. Currently, 6328 law enforcement agencies from 37 states are participating in the NIBRS (Federal Bureau of Investigation 2015). Another limitation of the UCR is that it measures only crimes known to the police. Therefore, the UCR had been criticized from the beginning for presenting only a fraction of crime events (Biderman et al. 1991). Several city-based victim surveys in the 1960s showed that the UCR was not able to capture a larger number of crimes not known to the police. The crime figure not known to the police was termed as the dark figure of crime (Biderman and Riess 1967) and the argument was made in favor of establishing a national crime victim survey to illuminate the dark figure of crime and to give an alternate perspective to crime measurement. In 1972, a national household victim survey, known as the National Crime Survey (NCS), was established by the Bureau of Justice Statistics (BJS) and is conducted by the US Bureau of Census. The survey has gone through several methodological changes including the rate affecting major changes of

1992. In 1992, the name of the survey was changed from the NCS to the NCVS. The purpose of the survey is to provide an independent calibration for the UCR, an alternative indicator of the crime problem, victims' perspectives, and an insight into citizens' definitions of crimes (Ansari and He 2015).

The NCVS is a national household survey that represents US residential population aged 12 years and older. A complex sampling procedure, involving stratified multistage cluster sampling, is used to draw a representative national sample. The selected households remain in the sample for three years and eligible persons in these households are interviewed seven times every six months. The computer-assisted interviews are conducted either in person or by phone. The respondents provide basic information in the first part of interviews when screening questions are administered. The respondents are asked if they experienced certain criminal victimization in the past six months. The second part of interviews includes the administration of crime incident report questionnaire, in which details about the victimization incidents are collected. The data collected from the first interview are not used for the estimation but they are used for the bounding purpose. The survey employs six months referencing period and bounding technique to minimize the problems of recall and telescoping. The survey collects data on personal crimes (rape or sexual assault, robbery, aggravated and simple assault, and personal larceny) and household property crimes (burglary, motor vehicle theft, and other theft) both reported and not reported to the police (Bureau of Justice Statistics 2013). Based on the victimization data collected from the sample, the NCVS uses weighting procedure to estimate total national victimization. The interviewers are also required to identify series victimization and collect data on only the most recent incident in the series (Bureau of Justice Statistics 2013). In the cases of series victimizations, up to a maximum of ten incidents reported by the victims are counted (Truman and Langton 2015). The quality of the NCVS, especially after the methodological changes, began declining due to a sharp decrease in sample size and a lack of other quality control mechanism (Grove and Cork 2008). In 2006, when the sample size reached its lowest level, only 67,000 people from 38,000 households participated in the survey. The sample size,

however, began increasing after 2010 and in the 2014 survey, 158,090 persons aged 12 or older from 90,380 households were interviewed.

Crime Measurement in Canada

Canada employs three different measures of crime—the Uniform Crime Reporting Survey (UCR), victim-reported crime from the General Social Survey (GSS) Victimization Cycle, and the police-reported Crime Severity Index (CSI). The UCR Survey, on the initiatives of the Canadian Association of Chiefs of Police, was established as a summary crime data collection program in 1962. All the police departments report to the program and the Survey includes all criminal code offenses excluding traffic offenses, drug offenses, other federal statute offenses, and provincial statute offenses (Boyce 2015). The UCR survey, like the UCR in the US, was originally a summary data collection program, but in the late 1980s, the UCR survey became an incident-based crime measurement program after the advent of micro-data reporting technology. The incident-based data collection program collects information on the age and sex of victims and accused persons, the relationship between them, the location and time at which a crime took place, the presence or use of a weapon, and any injuries received by the victim (Wallace et al. 2009). One of the limitations of the traditional overall crime rate is that it does not take the severity of crime into account. The increasing or decreasing crime trend show an incomplete picture of crime and safety if severity is not factored in. Therefore, for the accurate measure of crime and safety trend, the more serious crime should be given higher weight than the less serious crimes. This is the rationale behind Canada's Crime Severity Index (CSI) created in 2004 (Wallace et al. 2009). The CSI assigns a seriousness weight to each crime based on the actual sentences given by the courts. The incarceration rate is multiplied by the average sentence length handed down by the courts to calculate the final seriousness weight for each type of police-recorded offenses (Babyak et al. 2009). The CSI does not only capture the severity but also covers a wider range of crimes not included in the calculation of traditional crime rate. The CSI, therefore, is a more comprehensive and better indicator of crime trend

than the traditional crime rates. Another limitation of the UCR survey, like the UCR in the USA, is that it measures only crimes known to the police. To address this limitation, Canada began collecting criminal victimization data since 1988 through the General Social Survey (GSS). The Canadian GSS collects criminal victimization data from a national sample through a household survey every five years, and the latest survey was conducted in 2014. The individuals aged 15 and over included in the sample are asked about their experiences of being a victim of eight types of personal and household victimization. The offenses included in the survey are sexual assault, robbery, physical assault, theft of personal property, break and enter, theft of motor vehicle or parts, and theft of household property or vandalism. Canada, unlike the US and several other industrial national, does not have an independent national victimization survey (Perreault 2015). The victimization estimates by the GSS is done every five years. The survey also does not have an inbuilt mechanism of referencing and bounding to control telescoping.

Crime Measurement in England and Wales

In England and Wales, two sets of crime data are available. One is police-recorded crime and the second is victim-reported crime collected through the Crime Survey for England and Wales (CSEW), formerly known as the British Crime Survey (BCS). The police-recorded crime statistics are compiled and published by the Office for National Statistics (ONS). The data are supplied to the Home Office on a monthly basis by 43 territorial police departments of England and Wales, and the British Transport Police. The Home Office, after verifying and ensuring the quality of the data, supplies them to the ONS every three months for publication. The police-recorded data collection program has been a summary data collection program, but it will soon become an incident-based data collection program. The Home Office is in the process of implementing a new system that will extract the detailed incident-based data directly from the police departments' own recording systems. The new system will become fully functional after all the police departments switch over to the new Home Office Data Hub. The police-recorded

crime statistics in England and Wales, like police-recorded crime in other countries, also include only crimes recorded by the police. To overcome this problem and make a more accurate estimation of total crimes committed, a national biennial household victim survey was established in 1982, known as the BCS. In 2001, the survey became an annual survey and in 2012, the survey was renamed to the CSEW and its responsibility was transferred to the ONS.

The CSEW is a face to face national household victimization survey, conducted by a non-governmental independent agency. The transfer of responsibility from the Home Office to the ONS in 2012 further strengthened the independence of the survey. A combination of cluster and non-clustered sample design is used to select a nationally representative sample of households. One sole adult selected randomly from the selected households is interviewed. In addition, one child aged 10–15 from the sampled households is also selected, where applicable, to be interviewed. The CSEW uses the computer-assisted personal interviewing (CAPI) to interview participants. The CSEW is more comprehensive and complex in comparison with the NCVS. The questionnaire consists of a set of modules including victimization, the performance of the criminal justice system, contact with and attitudes to the police and the criminal justice system, mobile phone theft, antisocial behavior, plastic card fraud, mass marketing fraud, online security, and demographic characteristics of the respondent and households. Not all the respondents are asked of all the modules. The survey also includes self-completion modules that are completed by the respondents aged 18–59 using the computer assisted self-interviewing (CASI). Self-completion modules include questions on sensitive issues such as sexual assault. The CSEW collects data on all victim-based crimes against persons and households. The data are collected on a range of violent offenses, excluding homicide, theft offenses, criminal damage and arson, fraud, drug offenses, public order offenses, hate crime, and antisocial behaviors. In 2014–2015 survey, 35,000 adults aged 16 and over and 3000 young people from 10 to 15 years were interviewed. The response rate for adults was 70% and for children was 60%. The purpose of the survey is not to provide an absolute count of crime but to provide the trend of certain crimes (ONS 2015).

One of the major differences between police-recorded crime measurements in three countries is that the UCR reports only summary statistics for eight most serious violent and property crimes, whereas the current UCR survey in Canada and police-recorded crime statistics in England and Wales report the detailed incident information on a wide range of crimes. The police-recorded crime measurements in Canada and England and Wales use the microdata reporting technology and extract incident-based detailed information from the police records. Although the NIBRS is an incident-based reporting system that covers all different types of crime, its population coverage is limited. Only 6328 law enforcement agencies report to the NIBRS. Apart from the UCR survey, the use of CSI index by Canada is an innovative measure that gives a deeper and more real understanding of the trend of crime and safety through the trend of severity index. The NCVS pioneered the national victim survey, but the coverage of the CSEW is more comprehensive and detailed. The relative sample size of the CSEW is greater than the sample size of the NCVS. The CSEW covers a much wide variety of crimes and perception of victims, the police, and the criminal justice system. The sorter referencing period and bounding process enable the NCVS to minimize the telescoping problems more than the CSEW. The CSEW uses one-year referencing period. Canada does not have an independent victim survey and it conducts the infrequent and limited victim surveys through the GSS.

Modernization of Crime Measurement in India

Police-Recorded Crime Statistics

The single source of crime statistics in India is *Crime in India*, an annual report published by the NCRB. The reporting of annual police-recorded crime data in India began in 1953 when the Intelligence Bureau of India published the first *Crime in India*. The Intelligence Bureau of India continued the collection and publication of crime data until 1986 when the newly created NCRB took over. The NCRB is a national criminal justice data clearinghouse, which collects, classifies,

and publishes crime and prison data. The NCRB was established in 1986 by the Government of India under the Ministry of Home Affairs, following the recommendations of the National Police Commission. The NCRB is responsible for collection, archiving, and dissemination of official criminal justice statistics to help policy making, law enforcement, and research. Currently, the NCRB publishes three annual publications—*Crime in India, Accidental Death and Suicide in India, and Prison Statistics India*—from the data it collects.

Although the reporting began in 1953, *Crime in India-1954* was the first systematic report, which collected and published the summary statistics, numbers and rates per 100,000 people for India, states, and union territories for six violent and property crimes—murder, kidnapping, dacoity (robbery committed by a gang of five or more offenders), robbery, housebreaking (burglary), and theft—and other cognizable crimes[1] committed in violation of Indian Penal Code (IPC). The report also provided the clearance and conviction data. The collection and reporting of crime data continued to steadily expand and improve. *Crime in India-1955* added rioting, criminal breach of trust, cheating, and counterfeiting in the list of crimes and reported arrest data. This report also included the number of police officers killed and injured in the line of duty. The 1957 report added city crime data for seven largest cities—Bangalore, Bombay, Calcutta, Delhi, Hyderabad, Kanpur, and Madras—in India. The 1958 report first provided statistics on juvenile delinquency for India and states and the 1960 report

[1] Cognizable crimes are the serious violent and property crimes in which the police have the power of arrest without an arrest warrant. Cognizable crimes, as defined by the criminal procedure code in India, are similar to a felony, or arrestable crimes in different common law countries. The distinction between cognizable and non-cognizable offenses has its roots in the common law tradition where the offenses were classified as felony and non-felony or misdemeanor. In the UK, the felony offenses were renamed as arrestable offenses in 1967, and subsequently, the concept was abolished in 2005. Currently, the police in the UK can make an arrest in any crime if they think that an arrest is necessary. In the USA, although the distinction between felony and misdemeanor exists, the recording of crime or arrest decision is not based on it. Every reported and discovered crime is recorded and the police are required to make an arrest if there is a probable cause. In India, however, the classification of crime between cognizable and non-cognizable greatly influences the recording and arrest. Mandatory recording of crime incidents is recommended for only cognizable crimes (Lalita Kumari v. Govt. of U. P. and Ors 2013), therefore, the recording of non-cognizable crimes is even more problematic in India and may be a big contributor to the dark figure of crime.

added Ahmedabad as the eighth city for providing city level data. In the 1960 report, some more cognizable IPC crimes—offenses by or relating to public servants, offenses affecting public health, safety, convenience, decency, and morals—were added to the miscellaneous category. The 1964 report added a section on property stolen and recovered by the police and also began reporting of police employment in states. The 1966 report began reporting cognizable crimes committed under the state and special criminal laws in addition to cognizable crimes committed in violation of IPC. The 1967 report started the annual publication of *Accidental Deaths & Suicide in India*. The 1969 report included more detailed and comprehensive data on disposal of criminal cases by the police and the courts, crimes committed under special and state criminal laws, and police employment. The report also added more details of arrest data. The 1970 report added a section on the deadly force used by the police, reported rape data first in 1971, and added a section on recidivism in 1972. The 1971 report also provided separate data on arrests made under state and special laws. *Crime in India-1979* first time reported city and district crime data and published crime data for all mid and large size cities in addition to eight megacities. *Crime in India-1981* added four more cities to the list of mega cities for which crime data were provided.

Based on the recommendations of the National Police Commission, the Government of India set up the NCRB in 1986 and the responsibility of collection of crime data and publication of the *Crime in India* was transferred to the NCRB from the Intelligence Bureau in 1987. The NCRB has continuously expanded its data collection coverage, added new chapters and sections to its reports, and provided more classification and details of crime data. The 1988 report expanded the city-wise data reporting. State and city-wise data for juvenile delinquency and arrest, stolen and recovered property, recidivism, police officers killed and injured, etc. were added in the publication. The NCRB added a new section "crime against women," in *Crime in India-1992*. The report also added 11 more cities in its list of megacities. In its 1993 report, the NCRB added the chapters of "urban crimes," and "economic offenses" and in 1994, it added the chapters of "crime against children," and

"crime against the weaker section of society (SC/ST)." The NCRB in *Crime in India-1995* added data on arson, hurt/grievous hurt (simple assault/aggravated assault), dowry death, molestation, sexual harassment, and cruelty by husband or relatives. In 1995, the NCRB also began collecting prison data and publishing them into an annual publication of *Prison Statistics in India*. In *Crime in India-1996*, the NCRB added a chapter "Complaint against Police Officers" to report data on human rights violation by the police officers. In 1997, the NCRB rearranged the data collection and reporting. A new chapter "Violent Crimes" was added. The chapter "complaint against police officers" was merged into the "Custodial Crimes" chapter, the chapter of "Urban Crimes" was renamed to "Crimes in Mega Cities" and some chapters were discontinued. In *Crime in India-1999*, the NCRB first reported motor vehicle theft data by bifurcating auto theft from other thefts. In *Crime in India-2001*, the NCRB reported data for three newly created states and added 12 new cities to the list of megacities (metropolitan cities with 1,000,000 or over population). The Report also added district-wise data on crimes against children and weaker section of society. The NCRB began reporting cybercrime data from 2001, human trafficking data from 2006, and crime in Railways from 2008. In 2011, the NCRB, based on 2011 Census data, added 18 new metropolitan cities (cities with or over one million populations) to the list of megacities. Currently, the NCRB reports crime data for 53 mega cities. In 2012, the NCRB combined molestation, sexual harassment, importation of girls, and cruelty by husband and relatives into one category of assault on women. *Crime in India-2013* reported the numbers and the rates of crime against persons, property, public order, women, children, and against Schedule Caste and Schedule Tribes (socio-economically disadvantaged class in India). It also reported the numbers and the rates of economic crime, cybercrime, custodial crime, juvenile delinquency, crime in Railways, and human trafficking. In addition, it provided data on the disposal of cases by the police and the courts, arrest, trial, law enforcement employment, expenditure, use of force including deadly force by the police, and complaint of human right violations against the police. *Crime in India-2013*, in addition to national and state-level crime data, provided data for 53 megacities (metropolitan cities with the population of 1,000,000 or more).

Current Methods of Crime Data Collection

The NCRB, for the collection of crime data, relies upon the State Crime Record Bureaus (SCRBs)[2], which function under the state police organizations, independent of the central government. The SCRBs collect data from different district and city police units and send them to the NCRB. The crime measurement and reporting by the NCRB has a dual system of quality control. The SCRBs, after receiving data from district and city police units, do a regular screening to ensure that the data are reported according to the NCRB format and that there are no missing data or apparent discrepancies. The actual quality control, however, is done at the NCRB level. When the NCRB notices any extreme discrepancies or missing data, it asks the SCRBs to verify and make corrections. The NCRB, unlike the UCR program, makes no estimation for missing data. The NCRB, in a case of the missing data, sends repeated reminders to the SCRBs and ensures that the missing data are availed before the publication of *Crime in India*. In the past, this system resulted in the delayed publication of *Crime in India*, but currently, it is published regularly. The NCRB provides technical support to the SCRBs, conducts training at national and regional levels, and organizes regular coordination meetings with the SCRBs to ensure the quality and timely reporting of the data. The semi-decentralized structure of law enforcement in India helps the NCRB to achieve efficiency in publishing regular annual reports without missing data. All the states have their own unified police departments with district and city administrative units. The government of India has a few central police departments, which include investigating, intelligence, and paramilitary agencies. Consequently, the NCRB, unlike the UCR program in the USA, does not collect crime data from thousands of autonomous and independent law enforcement agencies, but instead, it coordinates with only a few dozen SCRBs, which collect data from city and district units and send them to the NCRB.

[2] Based on the recommendations of the National Police Commission, the government of India helped states and union territories to establish State Crime Record Bureaus and District Crime Record Bureaus.

Limitations of the NCRB Data

In addition to the universal limitations of police-recorded crime statistics, the NCRB data also have some specific limitations because of the counting protocol adopted by the NCRB. The police-recorded crime data, including the NCRB data, are often summary data. The researchers, policy makers, and practitioners do not have access to the information pertaining to the details of incidents, offenders, and victims of crimes. This particular limitation is more detrimental for India, because India does not have a national victimization survey, and it also does not participate in the International Crime Victims Survey (ICVS). Further, the reliability of police-recorded crime statistics is severely affected by reporting and recording. A large number of crimes are not reported to the police, but the police may not record all the crimes reported. All the national victimization surveys and the ICVS show great discrepancies between police-recorded and victim-reported crimes (Van Dijk 2007). According to the estimate based on the ICVS data, approximately 40% of total conventional crimes are not reported to the police globally (Van Dijk 2007). The rate of reporting also varies across regions. People living in developed countries in Europe, North America, and Australia/New Zealand report twice as much as people in developing countries. In the developing world, East European, Latin American, and Asian countries have the lowest reporting rates. As an Asian and developing country, India is likely to be among the countries with the lowest reporting rates. The ICVS surveys also show that the police fail to record a large number of crimes reported to them. Van Dijk (2007), based on these findings of the ICVS surveys, argues that there exists a systematic bias in the police worldwide with regard to the recording of crime. The increasing or declining crime rates are presumably associated with the performance of the police; therefore, the police tend to less enthusiastic in recording crimes. Apart from the police bias, the limitations of criminal justice systems in processing and disposing of crimes are another reason behind the limited recording of crime. Criminal Justice Systems across the world, especially in developing countries, have limited abilities to process cases. The police, as the gatekeepers of the criminal justice system, have a responsibility of maintaining caseloads. The most efficient way to

do so is to control the entry of cases at the recording level. The Indian Supreme Court observed that the police do not record over six million cognizable crimes reported to them annually (Lalita Kumari v. Govt. of U. P. and Ors 2013). The findings of the empirical studies with regard to the recording of crimes in India are similar to the findings of the ICVS (Chakraborty 2003; Chokalingham 2003; Mohan 2008; Prasad 2013; Singh 1996). The measurement of police-recorded crime statistics by the NCRB fails to include a large number of crimes not recorded by the police.

In view of such limitations, Van Dijk (2007) argues that police-recorded crime statistics cannot be used for empirical research. It is believed that despite the problem of reliability, the police data can still be used to study long-term trend. The assumption that the reporting and recording problem is a constant factor is not correct (Van Dijk 2007). The reporting and recording practices can be dramatically altered by the legislative, policy, and implementation changes, and by other factors, such as communication and surveillance technology and advances in record keeping and data management (Van Dijk 2007). Therefore, police-recorded crime data can also not be used for trend analyses. Moreover, the changes in the social and political environment in a country greatly affect reporting and recording practices of certain crimes. For example, police-recorded rape rate in India has shown a sharp increasing trend in recent years against the declining trend of all other violent and property crimes. There is no theoretical explanation of the exceptional and continuous increase in police-recorded rape rate, and it is speculated that the increase in police-recorded rape rate is a result of significant changes in reporting and recording due to social, political, and legal activism with regard to crime against women in India (Chari 2014; Iyer et al. 2012). What is the solution? The only solution is to install a national crime victimization survey. We would also like to mention a specific limitation of the Indian police-recorded crime data measured by the NCRB. The NCRB uses the counting protocol of the *Principal Offence Rule* that is also responsible for undercounting and inaccuracy of measurement. The NCRB counts only the most serious crime when multiple crimes are committed together. For example, a case of murder

with rape is counted as only murder. This counting method may have significant effects on the numbers of all crimes except murder.

Reporting and Recording Issues

The NCRB crime data represent crimes recorded by the police, which chiefly include crimes reported to the police by victims and bystanders (Skogan 1984) because the role of the police is primarily reactive. The reporting and recording of crime depend on how often victims report to the police and how readily the police record (Langan and Farrington 1998). People do cost-benefit analysis before making a decision to report crime to the police (Skogan 1984). Studies have found several determinants of crime reporting, which include seriousness, socioeconomic disadvantage, insurance, obligation and efficacy, attitude toward police, culpability of victims, fear of reprisal, demographics, relationship between victims and offenders, third-party reporting, and self-help (Chakraborty 2003; Felson et al. 2002; Goudriaan et al. 2006; Skogan 1984). Issues of reporting by victims and lack of record keeping by police plague police-recorded crime statistics (Van Dijk 2007). The problems of reporting and recording are not equally distributed. Crime is more frequently reported and recorded in North America, West Europe, and Australia/New Zealand than in East European, African, Latin American, and Asian countries (Del Frate 2003; Van Dijk 2007). Reporting of crime to the police is problematic universally, but the reporting of crime is especially low among the developing countries (Van Dijk 2007). In absence of a national victimization survey in India, and its non-participation in the ICVS, there is no way to find out the exact percentage of crimes not reported to the police. In view of the ICVS findings, we can assume that a large percentage of crimes are not reported to the police. The ICVS data analyses also tell us why people tend to abstain from reporting in developing countries. Understanding of offenses, in-person reporting requirements, distances to police stations and poor transportation, poverty and lack of awareness, and attitude toward the police and criminal justice system are some of the reasons for poor reporting (Van Dijk 2007).

The evidence suggests that people in India often abstain from reporting crime to the police (Chakraborty 2003). Their decisions of not reporting crime to the police are of course affected by several factors listed above, but the lack of trust in the criminal justice system seems to be a critical factor. People in India, because of the extremely slow process of adjudication, do not have an adequate trust in the criminal justice system with regard to the delivery of justice. The Prime Minister of India in his address at the joint conference of Chief Ministers and Chief Justices said that India has more than 30 million criminal cases pending in the various courts and a large number of them are pending for over five years (Press Information Bureau 2013). In addition to the lack of trust in the criminal justice system, several other factors, such as the informal community-based conflict resolution, access to the police, less access to technology, and the legal requirement of in-person reporting are also impediments to reporting.

The attitude toward the police, perhaps, plays the most critical role in people's decision to report crime. People are less likely to report crime to the police when there is a deficit of trust with regard to responsiveness and efficiency of the police (Black 1970; Skogan 1984). The ICVS surveys revealed that a large number of people in the developing countries who did not report crime to the police said that they did not report because "the police would not do anything" (Van Dijk 2007). An equally large number of people, approximately 25% respondents, said that they feared or disliked the police (Van Dijk 2007). According to Van Dijk (2007), in many developing countries, the police are generally disliked or feared by large segment of the public, and approaching them in case of victimization may not be perceived as the obvious step to gain access to justice. The police may also be seen as corrupt and/or biased against minority and women. (p. 19). As a developing country, India is likely to have similar issues with crime reporting. In 1992, the ICVS in Bombay city (now known as Mumbai) reported that respondents were significantly dissatisfied with the police with the way the police responded to crimes and treated victims (Singh 1996). Another victimization survey conducted in four cities in Tamil Nadu reported the dissatisfaction of respondents with police performance (Chockalingham 2003). The trust deficit in the police in India is caused by multiple factors and can be understood in historical, political, and

professional contexts. However, the current practices of the police and the perception among people about the role of the police are the main determinants of the lack of trust (Verma and Subramanian 2013). The police are considered corrupt (Nalla and Madan 2013), non-neutral, biased, and inefficient during the sectarian violence between the majority and the minority communities (Raghavan 1986; Rai 1999). The police are also brutal and frequently involved in custodial torture and cold-blooded killings, known as the encounter killings, of suspects and innocent people (Noorani 1987). From 2001 to 2010, the National Human Rights Commission (NHRC) of India recorded 14,231 deaths of those in police and judicial custody, and 99.99% of deaths in police custody were due to the torture and occurred within the first 48 hours of detention (Asian Centre for Human Rights 2011). The reports by several human right organizations, including India's NHRC, and empirical studies provide evidence that the police in India often use coercive means during interrogations of suspects to draw out confessions (Alison et al. 2008; Epp 2012). The above factors not only go against establishing a trust of the police among people, but also make people fearful of the police.

Recording of crime by the police are also affected by the limitations of the resources and the systematic bias in the police (Van Dijk 2007). The ICVS data show that recording of crime by the police is negatively correlated with the economic condition of a country; therefore, developing countries have significantly low level of crime recording (Van Dijk 2007). The empirical studies and the observations made by the courts suggest that the police in India do not adequately record crimes reported by the people (Chakraborty 2003). For instance, in the recent case of Lalita Kumari versus Government of the state of U.P., the Supreme Court observed that over six million cognizable crimes, which is almost 50% of the total reported crimes, were not recorded by the police in 2012 (Lalita Kumari v. Govt. of U. P. and Ors 2013). Although the number is not based on a scientific estimation, it is indicative of a large number of missing serious crimes from the police record in India. It is also important to note that the six million cases do not include the cases not reported to the police or the cases not classified as cognizable. Apparently, these are the serious cases that were reported to the police, but the police refused to record them. The police are especially unwilling to record domestic violence cases in India,

unless the cases are extremely serious (Chakraborty 2003). A crime is recorded in India when the police make a formal report of an incident of crime, known as the First Information Report (FIR). For several reasons discussed in an earlier section, the victims greatly avoid filing first information reports. It is a common belief among the police and the people that every incident report (FIR) must result in an arrest, which has also been one of the factors for non-recording of crime in India. The Supreme Court of India in its recent judgment (Lalita Kumari v. Govt. of U. P. and Ors 2013) reiterated the mandatory requirement of filing an incident report (FIR) in case of all reported cases of cognizable offenses, and also clarified that the filing of an incident report (FIR) should not automatically lead to arrests. However, the police have generally remained indifferent to the court directives. The magnitude of non-recording of crime by the police was revealed in an experiment, known as *Jalpaiguri Experiment*, conducted by a police chief of district Jalpaiguri of West Bengal (Mohan 2008). The police chief on June 28, 2007, mandated that the police, without using their discretion, will record incident report (FIR) for every single cognizable crime reported. Prior to the experiment, an average of 249 cognizable crime incidents (FIR) per month were recorded, but after the experiment started police-recorded an average of 1060 cognizable crime incidents (FIR) every month. The discrepancy between the numbers of pre and post experiment incident reports (FIR) reveals the misuse of discretion by the police and their unwillingness to record. The systematic bias in the police against the recording of crime and the resource limitations of the police and criminal justice system result into non-recording of reported crimes. The non-recording of crime, in turn, negatively affects the reporting.

Victimization Surveys and the Dark Figure of Crime in India

The dark figure of crime, as defined by Biderman and Reiss (1967), is the number of crimes not known or recorded by the police. The difference between the unknown actual number of crimes and police-recorded crimes may be defined as the dark figure of crime. In the absence of an

alternative crime measure in India, it becomes difficult to make an accurate estimate of the dark figure of crime, but given the problems with reporting and recording, we can safely assume that the dark figure of crime in India is rather significant. The argument can be substantiated through several victimization survey reports and a recent judgment in which the Supreme Court of India observed that the police did not record over six million cognizable crimes in 2012.

In 1992, the ICVS included Bombay (now known as Mumbai) in its survey in which 1040 respondents aged 16 and over were interviewed face to face. A comparison between the ICVS reported victimization rates and the official crime rates for certain crimes indicate a large gap between victim-reported and police-recorded crime figures. In 1992, the police in Bombay reported 1219 robberies and 2708 burglaries (see *Crime in India-1992*). In other words, the police reported 0.12 robberies and 0.27 burglaries for every one thousand people. For the same year, the ICVS reported six robberies and 13 burglaries for every one thousand people. The victimization estimates by the ICVS were almost 50 times higher than the official crime rates. In 2003, a more systematic victimization survey was conducted in four Indian cities—Madurai, Coimbatore, Trichy, and Chennai (Chockalingham 2003). The victimization survey conducted face-to-face interviews during which 4030 respondents, age 16 and above, were asked about their victimization experiences in the past year. The crime categories included in the survey were vehicle thefts and related crimes, burglary, attempted burglary, robbery, theft, sexual offenses and assaults or threats. The estimated rates of crime victimization based on the reporting of respondents were much higher than the official crime rates. The survey found that large percentages of crimes are not reported to the police and police-recorded crime is just a fraction of the total crime committed (Chockalingham 2003).

A recent survey on human development also revealed the magnitude of unrecorded crime in India (Prasad 2013). India Human Development Survey of 2005 also included a question asking 41,554 respondents if they were victims of certain crimes in the past 12 months. For 2004, the survey estimated 1134 burglaries and 4028 thefts for per 100,000 people (Prasad 2013). The rates of burglary and theft estimated by the survey were much higher than police-recorded rates of burglary (8.23) and theft (24.30) for the year. The problems of recalling and telescoping, difficulties in understanding

the definition of crimes by the respondents, and sampling and non-sampling errors may question the validity and accuracy of the estimates by the three surveys, but large discrepancies between police-recorded and victim-reported crime rates certainly insinuates that the recorded crimes are just a fraction of the total crimes committed. The three victim surveys, the results of the *Jalpaiguri Experiment*, and the recent observation made by the Supreme Court about non-recording of a large number of crimes by the police provide compelling evidence to support our assertion that the dark figure of crime in India is large. While in the USA, the dark figure of crime traditionally includes crimes not reported to the police, in India, the dark figure not only includes unreported crimes, but also a significant number of crimes reported but not recorded by the police.

Conclusion

An accurate estimation of crime is required to formulate and evaluate crime policies and help criminological research. India, being a developing country with the second largest population, faces the challenges to address the problems of crime. The increasing young population, urbanization, and economic conditions will pose further challenges to the criminal justice system in India. An accurately estimated crime will help the country to formulate effective crime policies and facilitate research in the field. The police-recorded crime statistics have certain universal and country-based limitations. The police-recorded crime data not only have questionable reliability because of the serious issues with the reporting and recording, but they are also not true trend indicators. The reporting and recording of crime can be significantly altered by external social, legal, political, or operational factors (Van Dijk 2007). The overwhelming evidence suggests that problems of reporting and recording of crimes greatly affect the measurement of crime in India (Chakraborty 2003; Chockalingham 2003; Lalita Kumari v. Govt. of U. P. and Ors 2013; Mohan 2008; Prasad 2013; Singh 1996). Given the magnitude of problems with the reporting and recording of crimes in India, the NCRB crime statistics cannot be used as a true indicator of the crime problems in India. More specifically, the existing police-recorded crimes statistics, measured and

disseminated by the NCRB, may not alone be used to formulate effective crime policies and conduct empirical research.

The importance of an accurately measured crime and the serious issues with the existing crime measurement in India work as an impetus to change and modernize crime measurement in India. The modernization of crime measurement in India can be achieved through the implementation of the best crime measurement practices adopted by different countries. The lessons learned from the existing best practices can be modified to suit the institutional and socioeconomic characteristics in India. The first and the most important step in this direction is the establishment of a national crime victimization survey. Since India does not participate in the ICVS and does not have a national victimization survey, we do not have the means to assess the reliability of police-recorded crime. More importantly, we do not have means to make an estimate of an actual number of crimes occurring. The victim surveys calibrate police crime statistics, give victims' perspective to the measurement of crime, and provide a better estimation of the real magnitude of crimes. A better estimated criminal victimization and knowledge of victims' perspective are essential in designing and evaluating crime policies. The importance of a victimization survey in India, a country that aspires to be an important economic power and global player, cannot be exaggerated. Moreover, India has a serious issue of non-recording of crimes by the police. The observation of the Indian Supreme Court and the findings of some city-based and regional victim surveys indicate an enormous number of crimes that are not reported and/or recorded by the police. Thus, the establishment of a national victimization survey may prove to be the biggest step in the direction of minimizing the discretion of the police with regard to the recording of crime. Therefore, it is strongly recommended that India establishes a national victimization survey and regularly participate in the ICVS. A national victim survey requires huge resources and technical expertise. At the beginning, the existing survey infrastructure can be leveraged to collect data on criminal victimization rather than establishing a separate survey. We recommend that the services of the National Sample Survey (NSS) can be employed to collect data on criminal victimization. The NSS is a national household survey that collects data on consumer expenditure, employment, and several other socioeconomic indicators (National

Sample Survey Organization-NSSO 2010). The NSSO uses ten and five years cycles to collect certain data, but it also collects annual data on consumer expenditure and employment. The five-year cycle of the NSS can be used if it is not possible to include criminal victimization questions in the annual surveys. Canada uses the GSS and collects victimization data every five years. also, the collection of criminal victimization data by the NSS at the beginning can be limited to a few serious violent and property crimes. The NCVS collects victimization data on a limited number of crimes, whereas the CSEW is very comprehensive. Another step in the direction of modernizing crime measurement in India is to begin collecting incident-based police-recorded crime statistics. The incident-based data collection requires the commitment of huge resources, but it can be achieved in a phased manner while utilizing the technological advancement in computer technology. The police stations that record crimes in India can use electronic methods to transmit crime incident reports to the SCRBs and the NCRB. The NCRB can extract the detailed information directly from the police records. This method is being adopted by industrial countries, such as Canada and England and Wales. Since the electronic transmission of detailed crime incident data requires the establishment of computer infrastructure, connectivity, and technical support system, it may not be possible to implement it immediately. However, this can certainly be implemented in phases.

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5

Criminalization of Child Abuse and Violence against Children in South Asia: Law and Legal Advances in India, Pakistan, and Bangladesh

Shahid M. Shahidullah

Introduction

The notion of childhood is a historically and culturally contingent phenomenon. The discovery of the notion of childhood as a separate phase of human life came with the discovery of modernity from the beginning of the eighteenth century. In the medieval society, adults and children were conceptually inseparable (Aries 1962). It was after the disintegration of the medieval world characterized by collectivism that the nuclear family began to emerge as a differentiated domain of society—a domain connected to but different from the economy, politics, and religion. "Before the eighteenth century, noble families lived in great houses in which space was shared between children and adults and

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servants and masters . . . This indeed was a different kind of social life—a crowded public life that placed more value on the collective than it did on the individual" (Ulanowicz 2016, p. 5). With the progress of modernity, "the family began to hold society at a distance, to push it beyond a steadily extending zone of private life" (Aries 1962, p. 398 as quoted in Ulanowicz 2016, p. 5). With the discovery of the notion of childhood, concerns began to grow under modernity about the rights of the children. The League of Nations created in 1919 for the first time adopted a Declaration of the Rights of the Child in 1924. The United Nations' Universal Declaration of Human Rights in 1948 recognized that states are responsible to protect the rights of the children. The global movement for the criminalization of violence against children formally began with United Nations Convention on the Rights of the Child (CRC) in 1989. The Convention defined a child "as a person below the age of 18" and declared that "Governments have a responsibility to take all available measures to make sure children's rights are respected, protected and fulfilled" (Article 4). The Convention made provisions that the views of the children must be respected (Article 12), their right to freedom of expression must assured (Article 13), their freedom of thought, conscience, and religion must be respected (Article 14), their privacy and freedom of association must be guaranteed, and they must be given protections from all forms of violence (Article 19). Article 49 of the CRC described the need and the significance for a separate system of juvenile justice in all member states of the United Nations. The Article states: "Children who are accused of breaking the law have the right to legal help and fair treatment in a justice system that respects their rights. Governments are required to set a minimum age below which children cannot be held criminally responsible and to provide minimum guarantees for the fairness and quick resolution of judicial or alternative proceedings." As of 2016, 193 member states of the United Nations, including all the countries of South Asia, have ratified the CRC. The ratification of the CRC means that the member states are obligated, under the international law, to criminalize child abuse and violence against children through the development of law and legislations. The criminalization of child abuse and violence against children has indeed become a global movement that is now spreading in all regions of the

world. There is hardly any country today that does not have a grass-root movement for the criminalization of child abuse and violence against children. The traditional values and perceptions about the rights of the children are being increasingly challenged in all regions of the world. Intense debates and disputes indeed are growing in all regions of the world centering the rights of the children and the cores issues addressed by the United Nations CRC. The purpose of this chapter is to examine how this global movement for the criminalization of child abuse and violence against children is unfolding in the region of South Asia, particularly in India, Pakistan, and Bangladesh. The chapter proceeds in four stages: First is the description of the global profile of child abuse and violence against children. The second is the regional profile of child abuse and violence against children in South Asia. The third is the nature and prevalence of child abuse and violence against children in India, Pakistan, and Bangladesh. The fourth is about advances in law and legislation for the criminalization of child abuse and violence against children in India, Pakistan, and Bangladesh. The driving hypothesis of this study is that the issues of criminalizing child abuse and violence against children are presently at the center of criminal justice reforms in almost all countries of the world. But in many regions of the developing world, like in South Asia, child abuse and violence against children is still not socially and culturally recognized as a major problem for modernization in criminal justice in particular and the society and civilization in general. The global movement started by the United Nations CRC has brought many legal advances in many countries of the world, but it also created intense cultural debates and disputes about what is right and what is not right about the rights of the child, and where the boundary of control of the children ends and where the boundary of abuse and violence of the children begins.

The Global Profile Violence against Children

There are about 2.2 billion children in the world (2016 estimate), and "every five minutes, a child dies as a result of violence. An estimated 120 million girls and 70 million boys have been victims of sexual violence,

and almost one billion children are subjected to physical punishment on a regular basis" (Global Partnership to End Violence Against Children 2016, p, 1). One of the first systematic studies on global violence against children was conducted by the Office of the High Commissioner for Human Rights, United Nations Children Fund, and the World Health Organization in 2006. The study, titled *World Report on Violence against Children,* was mandated by the United Nations Committee on the Rights of the Child in 2001. One hundred and thirty-one countries of the world responded to the questionnaire on their policies to eliminate violence against children. The study examined and analyzed the "testimony of thousands of adults and children from all regions of the world" (2006, p. XVII). One of the nongovernmental organizations' (NGOs) advisory panel associated with the study summarized its goal in the following words: "This Study brings to the attention of the highest level of the United Nations the horrific scale of all forms of violence suffered by girls and boys at the hands of adults throughout the world. The study process and outcome are also an affirmation of the involvement and capacity of children. Children have been engaged in the study to an unprecedented degree" (2006, p. XV).

The *World Report on Violence against Children* adopts the definition of a child in terms of Article 4 of the CRC (every human being below the age of 18) and the definition of violence in terms of Article 19 of the CRC (all forms of physical or mental violence, injury and abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse). The study finds that violence against children "occurs in every country in the world in a variety of forms and settings and is often deeply rooted in cultural, economic, and social practices" (2006, p. 6). Violence against children occurs particularly in five settings: home and family, school and educational settings, caregiving organizations and justice system institutions, work setting, and the community. There are certain forms of violence that occurs in all settings. "Sexual abuse, physical and psychological violence, and sexual harassment are forms of violence which occur in all settings" (2006, p. 7). Sexual abuse of girls and boys are more likely to occur in home and families, and girls are more likely to be victimized by sexual abuse. Violence against children is largely a hidden issue, it remains largely unreported and under-reported

primarily because it is socially and culturally accepted in most countries of the world. A study on *Global Initiative to End All Corporal Punishments for Children* published by a London-based organization, Association for the Protection of all Children in 2006, noted that about 98 percent of the world's children at home, 78 percent in caregiving institutions, 58 percent is schools, and 55 percent in penal institutions are not legally protected from corporal punishment (as quoted in Office of the High Commissioner for Human Rights, United Nations Children Fund, and the World Health Organization, 2006, p. 11). One of the World Health Organization's studies on violence against children (2006) found that "An estimated 150 million girls and 73 million boys under 18 have experienced forced sexual intercourse or other forms of sexual violence involving physical contact" (as quoted in Office of the High Commissioner for Human Rights, United Nations Children Fund, and the World Health Organization, 2006, p. 12).

The United Nations Children Fund's 2014 study, *Hidden in Plain Sight: A Statistical Analysis of Violence Against Children* based on data collected from 190 countries, made a similar observation which is that "violence remains an all-too-real part of life for children around the globe—regardless of their economic and social circumstances, culture, religion or ethnicity" (p. 1). Violence occurs in all forms of settings and "a wide range of perpetrators commit violence against children, such as family members, intimate partners, teachers, neighbors, strangers and other children" (p. 2). The study finds that "On average, about 6 in 10 children worldwide (almost 1 billion) between the ages of 2 and 14 are subjected to physical (corporal) punishment by their caregivers on a regular basis" (p. 3). Severe forms of corporal punishment such as hitting a child on the head, ears, or face or hitting a child hard and repeatedly were found in 58 countries of the world. "In 23 countries, severe physical punishment is widespread, with more than one in five children affected" (p. 3). Girls aged 15–19 reported that they were the victim of some forms of physical violence since age 15. "Globally, nearly one in three adolescent girls aged 15 to 19 (84 million) in formal unions have been the victims of emotional, physical and/or sexual violence perpetrated by their husbands or partners. Rates of partner violence are

particularly high in sub-Saharan Africa, South Asia, Latin America, and the Caribbean" (p. 4). Sexual violence data from different countries of the world show that "Around 120 million girls worldwide (slightly more than 1 in 10) have experienced forced intercourse or other forced sexual acts at some point in their lives" (p. 4). Data from the United Nations-Women's *Virtual Knowledge Center to End Violence against Women and Girls* (2016) show that "Approximately 130 million girls and women in the world have experienced female genital mutilation/cutting, with more than 3 million girls in Africa annually at risk of the practice. Over 60 million girls worldwide are child brides, married before the age of 18, primarily in South Asia (31.3 million) and sub-Saharan Africa (14.1 million)" (p. 1). The United Nations-Women's *Virtual Knowledge Center to End Violence against Women and Girls* (2016) also noted that "Women and girls are 80 percent of the estimated 800,000 people trafficked across national borders annually, with the majority (79 percent) trafficked for sexual exploitation. Within countries, many more women and girls are trafficked, often for purposes of sexual exploitation or domestic servitude" (p. 2). The United Nations Children Fund estimates that about 1.2 million children are trafficked every year for the purpose of forced labor, domestic servitude, and sexual exploitation. Girls less than 13 years of age are trafficked, mainly from Asia and Eastern Europe as "mail-order-brides." A study by the United Nations Office on Drugs and Crime (2009), conducted on the basis of data collected from 155 countries of the world, observed that children comprise a significant portion of the victims of human trafficking. "For 42% (N: 26) of the countries where information was available, children made up less than 10% of the total population of victims, whereas for the remaining 28% of countries, children ranged between 10 and 50% of the total identified victims" (2009, p. 49). The study also found that sexual exploitation was the most common form of human trafficking (79 percent on the basis of data collected from 52 countries).

Another new dimension is the violence against children in cyber space (Internet Society 2015; United Nations Organization 2014; End of Child Prostitution, Child Pornography, and Trafficking of Children for Sexual Purposes (ECPAT) International 2005). More than 3.4 billion people of the world's 7.4 billion are now using the third and fourth generation of

mobile Internet. Out of the 3.4 billion users of the mobile Internet, 1.6 billion users are in Asia—the highest in the world. It is estimated that 192 countries have active 3G mobile networks, which cover almost 50 percent of the global population. There are well over 1 million apps available, which have been downloaded more than 100 billion times (Internet Society 2015, p. 9). A recent study on violence against children in cyber space titled *EU Kids Online: Final report* (Livingston and Haddon 2009) has "identified three principal sources of risk to children on the Internet, some or all of which can result in sexual violence of one kind or another. These have been categorized under the broad headings: content, contact and conduct" (p. 10). These and numerous other studies conducted by the United Nations Organization and different international development organizations (Centers for Disease Control and Prevention 2015; United Nations Office on Drugs and Crime 2014; United Nations Children Fund and the Government of Netherland 2009; End of Child Prostitution, Child Pornography, and Trafficking of Children for Sexual Purposes (ECPAT) International 2005) have given birth to a new global movement for the criminalization of child abuse and violence against children. This movement is spreading in all regions of the world not merely on the grounds of human rights. It is spreading also on the basis of scientific understanding of the devastating physical, psychological, and social consequences of violence against children. The sciences of early childhood development, behavioral neurology, brain development, psychiatry, sociology, and many other research specialties related to the evolution of the teen brains and behavior have shown that child maltreatment and violence against children have destructive impacts in all stages of the life cycle of children from prenatal to early childhood and through middle childhood to late childhood and adolescence. The victims of childhood abuse and violence may have abnormal brain development, developmental delays, depression and anxiety, sexual dysfunctions, sleep disorder, eating disorder, poor school performance, poor self-esteem, poor interpersonal skills, suicidal and self-destructive behavior, and violent and criminal behavior. A recent study by the Centers for Disease Control and Prevention (2015) on violence against children in seven countries observed that "Globally, studies show that exposure to violence during childhood can increase vulnerability to a broad range of mental and

physical health problems, ranging from depression and unwanted pregnancy to cardiovascular disease, diabetes, and sexually transmitted diseases, including human immunodeficiency virus (HIV)" (p. 1). In any society, the victims of severe and continuous childhood maltreatment and violence are more likely to remain socially and economically disadvantaged and marginalized. In many countries of the world, it is from these disadvantaged and marginalized youths that professional criminal gangs and groups begin to emerge and domestic radicalization begins to grow. The urgency of criminalizing all forms of violence against children is a matter not just of law and criminal justice. It is intimately connected to issues of morality, human rights, development, and good governance. Hon. Landon Pearson, Director, Landon Pearson Resource Centre for the Study of Childhood and Children's Rights, Carleton University, Canada once rightly said, "Nations will not prosper if their children do not heal. To suffer violence in childhood is to be wounded in the soul, and if not healed, to go on to inflict pain on others as well as oneself. No child should be a victim of violence. All children have the right to protection and to first call on their nations' resources" (as quoted in Office of the High Commissioner for Human Rights, United Nations Children Fund, and the World Health Organization, 2006, p. 15).

Child Abuse and Violence against Children in South Asia: The Regional Profile

Among the world regions, the rate of homicide among children (0–19 years) in the countries of South Asia in 2012 was 2 per 100,000 population (15,000 victims). In 2012, the highest homicide rate among children was in Latin America and the Caribbean (12 per 100, population) followed by West and Central Africa (10 per 100,000 population), and Easter and Southern Africa (6 per 100,000 population) (United Nations Children Fund 2014, p. 36). Among the countries of South Asia, Pakistan had highest rate of children homicide in 2012 (4 per 100,000 population) followed by India (2 per 100,000 population), and Bangladesh (1 per 100,000 population) (United Nations Children Fund 2014, p. 36). It was also observed that in

2012 India and Pakistan were among the world's ten countries those have the highest number of homicide victims among children (United Nations Children Fund 2014, p. 37). In all world regions, adolescent boys (15–19 years) are more likely to be the victims of homicide, and in South Asia the rate of homicide among adolescent boys is comparatively much higher than other regions of the world (8 per 100,000 population) (United Nations Children Fund 2014, p. 38). The United Nations Children Funds (2014) further reported that "Partner violence is also pervasive in South Asia, where at least one in five girls who have ever been married (between 15 and 19) or in union experienced partner violence" (p. 132). The study also revealed that about 43 percent of ever-married adolescent girls in South Asia think that wife-beating in some cases is justified (2014, p. 147). About 52 percent of adolescent girls in Pakistan and 43 percent of adolescent girls in India think that wife-beating in some cases is justified (2014, p. 149). All forms of violence against children in South Asia are widespread and they "include not only physical violence, but also sexual, psychological and emotional abuse. Physical violence extends even to murder, sometimes in the guise of 'honor killings,' and also includes domestic violence, public assault, mutilation and torture, as well as stove burning and acid throwing" (United Nations Children Fund 2001, p. 15).

Article 34 of the United Nations CRC states that children have the rights to be protected from coercion "to engage in any unlawful sexual activity," exploitative use "in prostitution or other unlawful sexual practices," and exploitative use "in pornographic performances and materials." Sexual violence against girls and boys in South Asia is widespread. A study by the United Nations Children Fund Innocenti Research Center in 2010 noted that sexual abuse of children in South Asia is widespread in homes and families, school settings, institutional settings (i.e., juvenile detention centers, prison, and orphanages), work settings, and the community. "Across South Asia . . . sexual abuse and sexual exploitation adversely affect the lives of countless children, from preschool boys and girls to adolescents. No country in South Asia is exempt from of the occurrence of child sexual abuse and exploitation, although the full magnitude of the problem is unknown" (United Nations Children Fund Innocenti Research Center 2010, p. 1). Most

child sexual abuse cases in South Asia, because of secrecy, social stigmatization, and family shame and honor, remain unreported. "Little information is available about the magnitude of sexual abuse of children within the confines of the home in South Asia, for the great majority of such cases go unreported" (United Nations Children Fund Innocenti Research Center 2010, p. 9). The children victims of sexual abuse, as the study observed, "fear stigma or blame, think no one will believe them or have no one they feel they can speak with safely. They may fear that disclosure of the abuse will harm the family's honor, that a family member will end up in prison, that they will be cast out of the house or, for girls, that they will lose marriage opportunities" (p. 9). Sexual abuse of boys in South Asia, according to the above study (United Nations Children Fund Innocenti Research Center 2010), is also rampant in all settings including among the street children and the children who are born and raised in brothels. "Research has shown that while girls face greater threats of sexual abuse in the private sphere, boys face more risk in the public sphere, including in parks, markets, theatres and the perpetrator's house" (p. 10). Many researchers trace back the origin of the sexual abuse of boys in South Asia in one of the region's oldest tradition called *bacha baazi* (boy play'), particularly observed in Pakistan and Afghanistan. It is perceived that the degree of "acceptable violence" in South Asia is rooted in the region's cultural norms and practice. The economic, educational, and technological progress in South Asian societies is highly commendable. Sociologically, however, the region has remained very deeply embedded into its tradition of caste, class, honor, respect, deference, and unequal power relations. South Asia is a region "with strong hierarchy and unequal power relations . . . Violence can often be attributed to these unequal power relations" (United Nations Children Fund 2014, p. 15). South Asia is also an expanding region of origin, destinations and transit of trafficking children. Another study by the United Nations Children Fund Innocent Research Center (2008) observed that "Trafficking is reported to occur both within the region and also between South Asia and other regions, including East Asia, Europe and the Gulf States. However, South Asia is primarily a region of origin" (p. 4). The United Nations Office of Drug and Crimes (2012) found that the majority of the victims of illegal trafficking in

South are women and girls, and sexual exploitation is one of the major forms of exploitation (about 44 percent) (p. 71).

Child Abuse and Violence against Children in India

The first systematic study on child abuse in India (out of the world's 2.2 billion children, 450 million live in India) was conducted, in collaboration with the United Nations Children Fund, by the Government of India's (2007) Ministry of Women and Child Development in 2007. The study was based on a sample of 17,220 children (5–18 years) drawn from 13 states—"one of the largest ever conducted in the world." (Human Rights Watch 2013). Following the methodology of the *Global Report on Violence Against Children* (Office of the High Commissioner for Human Rights, United Nations Children Fund, and the World Health Organization 2006), information was collected from all five settings of child abuse: home and family, schools, institutional care, workplaces, and street and the community. The study found that about 66 percent of the children surveyed were physically abused, and out of those 88.6 percent were physically abused by parents; 66 percent of corporal punishments were in public schools; 53.22 percent of children faced one or more forms of sexual abuse, and about 50 percent of the children were victimized by emotional abuse (Government of India 2007, pp. vi–vii). The study also reported that "slapping/kicking (74.3%) was the most common form used for physical abuse by the majority of family members" (2007, p. 51) and "every fifth child abused by family members received a physical injury that resulted in swelling or bleeding" (2007, p. 51). The highest percentage of physical abuse was reported from Assam (84.65 percent), Mizoram (84.64 percent), Delhi (83.12), and Uttar Pradesh (82.77 percent). The highest percentage of child physical abuse was reported from Delhi, which is the capital of India and historically the center of Indian high culture and education. This suggests that child abuse in India is not just a rural phenomenon, and it is not just a matter of poverty and illiteracy. The above study also reveals that corporal punishment in schools in India is widespread. "About 66 percent of children get beaten in schools across the

country" (p. 52) and data from all across the 13 states surveyed show that boys (55 percent) are more likely to be victimized by corporal punishment. The highest rate of corporal punishments was found in the schools of Assam, Mizoram, and Uttar Pradesh. "The study found that there were on average at least five beatings of students per day in the schools. Teachers tended to justify their actions by saying they were overburdened with too many pupils . . . many students believe that sometimes corporal punishment is necessary" (Hindustan Times 2010, p. 1)

For data on sexual abuse of children in the above study by the Ministry of Women and Child Development (Government of India 2007), questionnaires were administered to 12,447 children belonging to the five different categories including children in family environment, children in schools, children in institutions, children at work and street children" (p. 74). The study reported that 53.22% of children surveyed "faced one or more forms of sexual abuse that included severe and other forms. Among them, 52.94% were boys and 47.06% girls" (p. 75), and "Out of the total child respondents, 20.90% were subjected to severe forms of sexual abuse that included sexual assault, making the child fondle private parts, making the child exhibit private body parts and being photographed in the nude" (p. 75). It was also noted that "in contrary to the general perception, the overall percentage of boys was much higher than that of girls. In fact, 9 out of 13 states reported a higher percentage of sexual abuse among boys as compared to girls, with states like Delhi reporting a figure of 65.64%" (p. 75). The highest percentage of sexual abuse of children was reported from Assam (57.27 percent) and Delhi (40.90 percent). The highest percentage of children being forced to fondle or touch private body parts of the perpetrator was reported from Assam (43 percent) followed by Delhi (26.61 percent) and Bihar (23.74 percent) (p. 82). The study also finds that "Out of the total child respondents, 4.46% reported being photographed in nude [boys 52.1 percent and girls 47.99 percent]". It was revealed by the study that "very few cases are ever reported. The vast majority of victims (72 percent) said that they did not report the matter to anyone and only 3 percent of them or their families told the police" (Human Rights Watch 2013, p. 15). The United Nations Children Fund's 2014 study reported that 23 percent of the girls interviewed in India said that they experienced physical violence since the age of

15 (p. 48), and the study defined physical violence to include such acts "slapping, spanking, pushing, punching, kicking, choking, burning, assaulting a child with a weapon or object, and murder" (p. 30). In India, 70 percent of the married girls who experienced physical violence since the age of 15 reported that their intimate partners were the perpetrators of violence. The perpetrators of physical violence against adolescent girls in all regions of the world are mostly parents and other caregivers. The above study noted that in India, 33 percent of physical violence against adolescent girls was committed by current husbands and intimate partners, 41 percent by mothers and stepmothers, and 18 percent by fathers and stepfathers (p. 51).

The United Nations Children Fund's 2014 study also observed that forced sexual intercourse and other forms of sexual coercions are common in India. According to the above study, 5 percent of adolescent girls (between 15 and 19) in India said that they were victimized by forced sexual intercourse and other forms of sexual coercions (p. 67). In India, 77 percent of sexual violence perpetrators were current husbands and intimate partners. In 2013, the Human Rights Watch conducted a survey on child sexual abuse in India on the basis of case studies. The study found that one of the major problems with child sexual abuse in India is silence, secrecy, and denial. "Children's complaints are often dismissed not just by family members . . . but also by the police, medical staff, and others. Instead of compassion, victims may be re-traumatized by how they are treated once they make their abuse known" (2013, p. 19). In terms of the new dimension of child abuse in cyberspace, according to a study of 25 countries by Microsoft, India ranked third after China and Singapore. In the Global Youth Online Survey conducted in 2012, Microsoft found that "India ranked third with 53% of respondents (children aged between 8–17) saying they have been bullied online, behind China (70%) and Singapore (58%). . . . In India, the survey found that more than five in 10 children surveyed said they have experienced what adults might consider online bullying" (End to Cyber Bullying Organization 2012, p. 1). Another growing phenomenon in India is domestic and regional child trafficking. The United States Department of State (2014) Trafficking in Persons Report, 2014 noted that "India is a source, destination, and transit country for men, women, and children subjected to forced labor and sex trafficking. The forced labor of an estimated 20 to 65 million citizens constitutes India's

largest trafficking problem" (p. 1). The report further stated that "Experts estimate that millions of women and children are victims of sex trafficking in India. Children continue to be subjected to sex trafficking in religious pilgrimage centers and tourist destinations. The rise of trafficking and abduction of children for internal domestic servitude is becoming one of the major concerns for law enforcement in India" (The United States Department of State, p. 1). It was recently reported that "Between 2011 and 2013, more than 10,500 children were registered as missing from the central state of Chhattisgarh, one of India's poorest states. The majority are believed to have been trafficked out of the state and into domestic work or other forms of child labor in cities" (Saharia 2015).

Child Abuse and Violence against Children in Pakistan

Pakistan does not have a study comparable to that of the *Study on Child Abuse in India 2007*. Pakistan's data on child abuse and violence against children can only be gleaned from studies conducted by different regional and international development organizations, NGOs, and media reports. One of the studies, *The State of Pakistan's Children 2013,* conducted by a South Asian NGO, Society for the Protection of the Rights of the Child (SPARC) in 2014 observed the existence of widespread child abuse and violence against children in Pakistan. What is particularly alarming in Pakistan, the study noted, is that child abuse and violence against children "are culturally entrenched normative practices and are not perceived as 'abuse' by much of the general public" (Society for the Protection of the Rights of the Child 2014, p. 132). The use of physical punishment is "institutionalized to a great extent throughout Pakistan" (p. 134). It is seen and justified "as an appropriate and institutionalized measure for disciplining children in homes, schools, and workplaces" (p. 134). About child sexual abuse, which is also widespread in Pakistan, secrecy is much deeper (Shujatt, 2015). Within the Islamic cultural context of Pakistan, there is no scope for open discussions on child sexual abuse and exploitation. "Notions about family honor often discourages the victim and his/her parents from reporting to police and

concerned authorities. This creates a culture of silence or willing ignorance regarding topics such as rape and child molestation" (p. 140). According to this 2014 Study, child sexual abuse in Pakistan is growing. The study found that 3002 child sexual abuse cases were reported in Pakistan in 2013. The total number of child abuse cases reported in 2014 increased to 3508. Out of those cases, abduction was the highest (48 percent) followed by sodomy (25 percent), sodomy gang rape (16 percent), and murder after sexual assault (5 percent).

A survey conducted by the International Center for Research on Women and Plan International in 2014 in Pakistan found that 44 percent of students surveyed were victimized by corporal punishment in schools in the last six months and 30 percent "had been locked in the toilet by a teacher . . . Teachers expressed a belief that corporal punishment is necessary for ensuring good academic achievement" (as quoted in Global Initiative to End All Corporal Punishment of Children 2016, p. 9). Another study conducted by Plan International in 2013 observed that "20% of teachers fully agreed and 47% partially agreed that a small amount of physical punishment is necessary for most children; 41% of parents and other adult family members fully agreed . . . with the statement. Three quarters of teachers and 84% of parents agreed that teachers were justified in beating students" (as quoted in Global Initiative to End All Corporal Punishment of Children 2016, p. 9). According to a report made by the SPARC, more than 35,000 students in Pakistan drop out from school "every year because of corporal punishment" (as quoted in Global Initiative to End All Corporal Punishment of Children 2016, p. 10). A study conducted as a part of Plan International's "Learn Without Fear" campaign in Pakistan in 2012 found that "physical punishment was used in 89% of public and private schools in Punjab. Physical punishment was most common in public schools, followed by private schools and then madrasas. It sometimes caused major injury or death" (as quoted in Global Initiative to End All Corporal Punishment of Children 2016, p. 10). One of the Plan International's 2012 studies on Pakistan noted that "three-quarters of adult Pakistanis believe their religion allows them to slap their children if they do not behave" (as quoted in Global Initiative to End All Corporal Punishment of Children 2016, p. 10).

A study by a local Pakistani NGO on reported cases of child sexual abuse found that 10,726 children were sexually victimized during the period from 2007 to 2011, and some of the extreme forms of sexual victimizations included sodomy murder, rape murder, gang sodomy murder, gang rape murder, and molestation murder. The study observed that "Out of the total number of 10,726 cases, 532 children belonged to the age bracket of 1–5 years; 1737 were in 6–10 years; 2617 were in 11–15 years; and 1245 children were from the age bracket of 16–18 years" (Bano 2011, p. 8). In terms of gender comparison, the study reveals that out of 10,726 victims of child sexual abuse, 7570 were girls and 3156 were boys, and most of the cases were reported from the province of Punjab (7384) and Sindh (2330) (Bano 2011, p. 13). The study concluded that "The issue of CSA is complicated due to social norms which perpetuate practices; child sexual abuse occurs in all classes of the society; in a prominent number of cases, the abuser is an acquaintance and has the trust of children and their families and they have access to the children in their homes" (Bano 2011, p. 21). According to a child sexual abuse report titled "Confronting Reality" by a Swedish NGO Save the Children, "People in Pakistan are surprisingly tolerant of some forms of child sexual abuse, and male child prostitution is not only tolerated but seen as a status symbol in some parts of the country" (as quoted in IRIN Special Report on Child Sexual Abuse, 2001, p. 1). The ECPAT International (End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes) and Pakistan's Pediatric Association conducted a survey on male child prostitution in Lahore and Peshawar in Pakistan in 2006. The study found that in the North West Frontier Province of Pakistan, *bachabazi*—keeping boys at home for sexual services is a socially recognized and culturally accepted practice, particularly among the rich people. It is seen as a symbol of power and status.

One of the main problems in tackling child sexual abuse in Pakistan is getting acknowledgment of its existence but, for most Pakistanis, "this is a taboo subject" (as quoted in IRIN Special Report on Child Sexual Abuse, 2001, p. 1). Another alarming trend in Pakistan, like India, is child trafficking for sexual exploitation. Pakistan is the destination of thousands of children victims of trafficking, particularly boys for prostitution, from Bangladesh, Nepal, and India. A report on child sex

trafficking in Pakistan by the ECPAT found that "In Pakistan, young girls (sometimes as young as 9 years old) have been sold by their families to brothels in big cities as sex slaves. Often this occurs because of poverty or debt, whereby the family feels they have no other way to raise the money than to sell the young girl" (2016, p. 7) The report also discovered that "Children trafficked into Pakistan for sexual exploitation may be bought by 'agents' in Afghanistan who trick young girls into coming to Pakistan for well-paying jobs. Once in Pakistan they are taken to brothels (called Kharabat) and forced into sexual slavery" (2016, p. 7). The United States Department of State (2014) report on human trafficking in Pakistan observed that "Children as young as 5-years-old are bought, sold, rented, or kidnapped and placed in organized begging rings, domestic servitude, small shops, brick kilns, and prostitution" (p. 1). Child abuse and violence against children in cyber space in Pakistan is also rapidly growing. In 2015, for example, 400 videos on child pornography, involving 280 children below the age of 14, were discovered by law enforcement in the province Punjab in Pakistan. It was also discovered that thousands of copies of those videos were sold in the market across the country, and some of those videos were also sold to porn sites in the USA, UK, and Europe.

Child Abuse and Violence against Children in Bangladesh

A number of governmental studies and research surveys conducted by international organizations and NGOs in Bangladesh, (Bangladesh Shishu Adhikar Forum 2012; ECPAT International and INCIDIN 2006; United Nations Children Fund and the Ministry of Women and Children Affairs, Government of Bangladesh 2009) show that child abuse and violence against children in Bangladesh is widespread. According to the United Nations Children Fund, about 40 percent of Bangladesh population (2016 estimate 162 million) are children below the age of 18 (about 54–60 million children in Bangladesh are below the age of 18). Under Article 89 of the Penal Code of 1860, corporal punishment is lawful in all settings in Bangladesh-home and family, alternative

care setting, schools, day care, and penal institutions. Under the code of criminal procedure of 1898, which has not significantly changed for law enforcement until recently, whipping was lawful in Bangladesh as a form of punishment for a crime. In 2009, the United Nations Children Fund and the Government of Bangladesh conducted a survey of 4000 households in Bangladesh. The study found that "91% of children had been physically punished at school, including being hit on the palm with a ruler or stick (76%), having to stand in class, being hit on other body parts with a ruler or stick, and being slapped; 23% said they faced corporal punishment every day, 7% reported injuries and bleeding as a result" (United Nations Children Fund and the Ministry of Women and Children Affairs 2009). In 2012–2013, the Bureau of Statistics of the Ministry of Planning of the Government of Bangladesh, in collaboration with the United Nations Children Fund, conducted one of the most systematic surveys on the state of children in Bangladesh—the Progotir Pathey-Multiple Indicator Cluster Survey. The survey interviewed 48.9 percent of children from 51,895 households (20.7 percent urban and 78.3 rural) selected from all seven divisions of the country. The study finds that nationally 82.3 percent of the children (1–14 years) surveyed experienced psychological aggression and physical punishment. Out of those, 26.6 percent of the children said that they experienced severe physical punishment and 82 percent of the children said that they experienced any methods of violent discipline (p. 28). One of the 2014 reports from the UK based NGO, Childreach International and Bangladesh's NGO Phulki found that in Bangladesh "All forms of child abuse, including sexual abuse, physical and humiliating punishment, child abandonment, kidnapping and trafficking, continued to be serious and widespread problems. Children remain vulnerable in all settings; home, community, school, residential institutions and the workplace" (2014, p, 7). The study noted that of the 729 officially reported incidents of rape against females, "404 were against girls. Of those child victims, 30 were killed after being raped, 83 were victims of gang rape, and three committed suicide after the crime" (Children International and Phulki 2014, p, 7).

In 2006, ECPAT international and INCIDIN (Integrated Community & Industrial Development Initiative) of Bangladesh conducted a major study on prostitution of boys in Bangladesh (Association

for Community Development 2008). The study was based on in-depth interviews, focused group discussions, field visits and observations, tea stall discussions, and inputs from community leaders of the study areas. The study areas included the divisions of Dhaka and Chittagong. The study noted that most of the prostitute boys were drop-outs from schools, came from poor families (primarily Rickshaw pullers), and were mostly migrants in the big cities of Dhaka and Chittagong. One of the major findings of the study was that "68 percent of the boys who were engaged in prostitution, were sexually abused before they ended up on the street. The mean age of the first occurrence of the abuse of the boys was 12.5 years. The earlier exposure to sexual abuse was inflicted upon the boys by relatives or close friends, neighbors, and other family persons" (p. 26). It was also observed that "social taboos did not provide room for the boys to come forward and report sexual abuse" (p. 26) or seek legal and psychological counseling. According to a study on Commercial Sexual Exploitation of Children by the Bangladesh Bureau of Statistics in 2008, "there are about 15,702 girls' sex workers in Bangladesh. Out of these, 430 are in brothels, 2498 in hotels, 4088 on streets, and 8686 are residence based sex workers. It is believed that the actual number of child sex workers is much higher than the statistics" (Bangladesh Shishu Adhikar Forum 2012, p. 16). In 2013, Bangladesh Shisu Adhikar Forum, a Bangladesh NGO, conducted a similar study on child prostitution in Bangladesh. The study was based on the interviews of 112 child prostitutes (46 from brothel-based, 90 from street-based, and 44 from hotel-based prostitution), 10 parents of prostitutes, and 80 stakeholders including included pimps, local leaders, clients, and governmental and nongovernmental officials. The study reported that there was a huge network of vested interest groups including pimps, brothel owners, and even law enforcement personnel in different cities for the recruitment of child prostitutes (Clarke 2003).

According to a survey conducted by the Bangladesh Institute of Development Studies in 2013, "there are 4,45,000 street children in Bangladesh of which 75 percent live in Dhaka city alone. Based on analysis of the trend of growing street children, it is assumed that by 2014, the number of the street children may exceed 9,30,000"

(Bangladesh Shishu Adhikar Forum 2012, p. 22). Studies have shown that about 20 percent of the girl street children are forced into prostitution (Bangladesh Shishu Adhikar Forum 2012, p. 14). Research has also shown that about 1.5 million children live in the slums of Dhaka (International Labor Organization (ILO) 2009). According to a baseline survey made by the ILO, there were about 3.2 million child laborers in Bangladesh in 2006 and about 420,000 of them were employed as domestic servants (83 percent of them were females in the age group of 6–17) (Bangladesh Shishu Adhikar Forum 2012, p. 27). ILO's 2014 study on *Measuring Children's Work in South Asia* found that "Over 6.3 million children in Bangladesh are in employment, many in agriculture and paid work. Overall, 17.5 per cent of Bangladeshi children between 7–17 years of age are in employment. Bangladesh has the highest employment ratio for 7–14-year-old and 15–17-year-old children" (p. 38). United Nations Children Fund of Bangladesh conducted a major study on child sexual exploitation of children in Bangladesh in 2011 in response to the Second World Congress on child sexual exploitation in Yokohoma in 2001 (Yokohoma Declaration) and the Third World Congress on child sexual exploitation in Rio de Jeneiro in 2008. Data were collected from a variety of settings including urban communities, schools, work settings, brothels, and streets. As a part of the methodology, "Discussions were held with students, teachers, parents, child workers, employers, managers and implementers of NGO and government projects serving children. Observations, interviews, consultations and focus group discussions were conducted with informants" (United Nations Children Fund 2011, p. 1). On the basis of an intensive analysis of 128 sexual abuse cases (68 sexual abused girls, and 60 boys engaged in prostitution), the study concluded that child sexual abuse exists in Bangladesh "in all classes of society. Often hidden, it affects a far larger population than does commercial sexual exploitation" (2011, p. 5). What is more alarming, the study confirmed, is that "in the great majority of cases, justice is not sought and the law is not applied. When cases of sexual abuse are brought for arbitration at community level (shalish), (for girls only), the principles and values upheld do not correspond to standards of child rights" (2011, p. 7). The study examined 68 cases of child sexual abuse and found that "law was activated

only once" (2011, p. 2). The girl victims of sexual abuse "bear the brunt of punitive sanctions as they are considered 'stained' or defiled and may be pregnant. They are assumed to be noshto (spoiled), a status that applies equally to girls who are victims of rape and to those who voluntarily engage in non-marital sexual relationships" (2011, p. 7). The sexual abuse of boys within the existing cultural construction of gender in Bangladesh, like in India and Pakistan, is not even clearly recognized. "There is a sense that boys cannot be raped. The sexual abuse of boys may be shameful but it is not a matter for public intervention as it does not threaten public morality" (2011, p. 7). In 2012, Adhikar conducted an empirical study on violence against women and children in Bangladesh. Data were comprised of the reported cases of rape, acid violence, and dowry violence from the four districts of Bangladesh. The study found that "in 2011, out of 696 recorded incidents of rape, almost 68% of the victims were below the age of 18" (Adhikar 2012, p. 37). The total number of rape incidents reported from the four districts in 2010 was 559 (311 were below the age of 18), in 2011 was 696 (450 were below the age of 18), and in 2012 was 801 (511 were below the age of 18) (2012, p. 39).

Child Abuse and Violence against Children: Law, and Policy Developments in South Asia

The global discourse and the global movement to eliminate and criminalize child abuse and violence against children, formally began with the United Nations CRC in 1989, led to the development during the last two decades of a series of a national plan of actions and legislations (United Nations Children Fund 2007). One hundred and ninety-three member-states of the United Nations, as mentioned before, ratified the United Nations CRC. According to a study by the London-based NGO titled *Global Initiative to End All Corporal Punishment of Children* (2015a), 48 member states of the United Nations, as of December 2015, enacted legislation to criminalize corporal punishment in all settings including home, day care, alternative care settings, schools, penal institutions, and as sentence for crime, and "governments of at least 52 others have expressed a commitment to enacting full prohibition. Fifty-five UN member states have prohibited

corporal punishment in all alternative care settings, 55 in daycare, 124 in schools, 133 in penal institutions and 158 as a sentence for crime" (p. 1).

All the countries of South Asia including India, Pakistan, and Bangladesh have ratified the CRC and they are legally obligated to promote legislation and national plan of actions to criminalize child abuse and eliminate all forms of violence against children. The countries of South Asia have also ratified the two optional protocols of the CRC related to the protection of children from commercial sexual exploitation and the protection of children from armed conflict (except Pakistan). In 2005, the eight countries of South Asia (Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, and Sri Lanka), under the leadership of the South Asia Association for Regional Cooperation (SAARC), created a South Asia Forum (SIF) for ending violence against children. In 2010, the SIF was renamed as South Asia Initiative to End Violence Against Children (SAIVAC). The SAIVAC is presently the regional institutional framework in South Asia responsible, under the guidance of the SAARC, for coordinating national policy actions and legislation for ending child abuse and violence against children in South Asia. The creation of the SAIVAC is a major regional policy response to the globalization of the movement for ending child abuse and violence against children in South Asia—a movement that began with the birth of the CRC in 1989.

Child Abuse and Violence against Children: Law and Policy Developments in India

During the last two decades, India has enacted a number of legislations and created many statutory administrative bodies for the protection of the rights of the child and prevent child abuse and violence against children. Some of the major legislations include the Goa Children Act of 2005, Prohibition of Child Marriage Act of 2006, Right to Education Bill of 2009, Justice (Care and Protection) Act 2000 (amended in 2006, 2011), Prevention of Children from Sexual Offenses Act of 2012, and the Juvenile Justice (Care and Protection of Children) Act of 2015. For the protection of the rights of the child, the government of India

introduced a National Plan of Action for Children in 2005, created a National Commission for Protection of Child Rights in 2005, and established an Integrated Child Protection Scheme (ICPS) in 2009. Through these legislation and national policy strategies, considerable developments have been achieved in recent years in the area of ending child abuse and protecting the rights of the child in India.

In 2012, India made a commitment to the United Nations Committee of the Rights of the Child to criminalize corporal punishments from all settings including home and family (National Commission for the Protection of Child Rights 2008). The India Penal Code (IPC) of 1860 which provides the basic foundation of criminal law and criminal justice in India made corporal punishment legal (sections 88–89) in all settings (homes, schools, and alternative care settings) except as sentence for the crime. During the last two decades, India has partially amended the IPC of 1860 (Section 89) but that was only to criminalize corporal punishment in schools and educational settings (only for students aged between 6 and 14 and except religious schools), penal institutions, and childcare centers (National Commission for the Protection of Child Rights 2008). In India, the law still does not define corporal punishment as a crime in homes, in schools for children between 14 and 18 years old, and in traditional justice systems. The National Policy for Children 2013 "provides for protection of children from 'all forms of violence' but specifically refers to corporal punishment only in connection with education" (Global Initiative to End All Corporal Punishment of Children 2015b, p. 1). The Juvenile Justice (Care and Protection of Children) Act of 2000 (amended in 2006 and 2011), recognized that India, under the CRC, is bound by the international treaty to end all forms of child abuse and violence against children. The Act made a provision that "Whoever, having the actual charge of, or control over, a child, assaults, abandons, abuses, exposes or willfully neglects the child . . . shall be punishable with imprisonment for a term which may extend to three years or with a fine of one lakh rupees or with both" (Clause 76). The Act further states that "Any person in charge of or employed in a child care institution, who subjects a child to corporal punishment . . . shall be liable, on the first conviction, to a fine of ten thousand rupees and for every subsequent offence, shall be liable for imprisonment which may extend to three months or fine or with both"

(Clause 83). The Act criminalized a variety of abusive behaviors against children including assault and abuse by people in power, kidnapping of children for the purpose of begging, use of children for trafficking of illegal drugs and intoxicating liquor, and use of children for bonded labor and gang activities. But corporal punishment and violence against children in homes and families in India are still outside boundaries of crime and criminality. The 2007 study on child abuse and violence against children in India conducted by the United Nations Children Fund and the Government of India's Ministry of Women and Child Development, as mentioned earlier, reported that about "66 percent of the children surveyed were physically abused, and out of those 88.6 percent were physically abused by parents" (Government of India 2007, pp. vi–vii).

The IPC of 1860 not only makes corporal punishment in homes and families legal but it also lacks a clear definition of child sexual abuse. IPC's Section 293 criminalizes the sale of obscene materials to children under the age of 12; Section 294 criminalizes "Obscene acts, songs and expressions in public places"; and Section 354 criminalizes "Assault or criminal force to woman with intent to outrage her modesty." Males and children are kept outside boundary of sexual criminality. IPC's Section 375 defines rape as "intentional, unlawful sexual intercourse with a woman without her consent." The IPC left boys and girls outside the definition of statutory rape. The first systematic law in India that criminalized child sexual abuse came through the Protection of Children from Sexual Offenses Act of 2012. The Act for the first time clearly defined, in line with the provisions of the CRC, the offenses of child (below 18 years of age) sexual assault, sexual harassment, and pornography. The Act criminalized five different forms of child sexual abuse: aggravated penetrative sexual assault, sexual and aggravated sexual assault, sexual harassment, and using a child for producing pornographic materials. The Act made provisions of penalty of seven years to life in prison for penetrative sexual assault (Sections 3–4); penalty of ten years to life in prison for aggravated penetrative sexual assault (Sections 5–6): penalty of three to five years in prison for sexual assault (Sections 7–8); penalty of five to seven years in prison for aggravated sexual assault (Sections 9–10); penalty of three years in prison and fine for sexual harassment (Sections 11–12); and penalty of

five to seven years in prison for using a child for pornographic purposes (Sections 13–14). The Act defines that a person commits a sexual harassment when he or she "utters any word or makes any sound, or makes any gestures or exhibits any object or part of the body with the intention that such word or sound shall be heard, or such gestures, or object or part of the body shall be seen by the child (Section 11)." According to the Act, a person commits a crime of child pornography when he or she "uses a child in any form of media . . . for the purpose of sexual gratification, which includes representation of the sexual organs of a child, use of a child engaged in real or stimulated sexual acts (with or without penetration), or the indecent and obscene representation of a child." The Act also made a series of provisions to modernize the process of child sexual offense trials including the creation of special courts, victim relief and rehabilitation services, respecting victim family privacy, recording of child abuse evidence within thirty days, maintenance of the secrecy of child sexual offense trials from the media, and a time-limit of one year for a special court to complete a child sexual offense trial.

Child Abuse and Violence against Children: Law and Policy Developments in Pakistan

In the context of implementing the CRC, Pakistan made a commitment to the United Nations Committee on the Rights of the Child for ending corporate punishment in all settings. As of 2016, the implementation of banning corporal punishment in Pakistan, however, remained very limited. In 2009, the UN Committee on the Rights of the Child in its review of the implementation of the CRC in Pakistan said that the Committee is "deeply concerned that corporal punishment is currently lawful under section 89 of the Penal Code of 1860 and extensively used as a disciplinary measure in homes, schools, and alternative care settings and that it is still used in the penal system despite its prohibition through the Juvenile Justice System Ordinance (JJSO)" (as quoted in Global Initiative to End All Corporal Punishment of Children 2016, p. 8). As of 2016, according to a report prepared by the Global Initiative to End All Corporal Punishment of Children, corporal punishment in

Pakistan remained legal in homes and families, alternative care setting, childcare centers, and penal institutions. Corporal punishment in schools are banned for 5–16 year olds only in Islamabad Capital Territory, and the provinces of Sindh and Punjab (corporal punishment in schools and other setting is legal in the provinces of Baluchistan and Khyber Pakhtunkhwa). Corporal punishment is also legal as a sentence for crime under the Sharia Law in Pakistan. In 2013, Pakistan's National Assembly passed a landmark legislation to end corporal punishment from all settings. The new legislation—The Prohibition of Corporal Punishment Bill of 2013—made a provision to amended Section 89 of the Pakistan Penal Code (PPC is an extension of the IPC, India Penal Code of 1860) that legalized corporal punishment in all settings. In 2014, Pakistan's National Assembly passed the Criminal Law (Amendment) Bill of 2014. The Bill proposed to criminalize corporal punishment and made new laws to prosecute child sexual abuse, and criminalize the use of children for pornographic purposes. Both Bills were not passed by the Senate, and their status remained uncertain. As of 2016, Pakistan has not passed any legislation criminalizing child sexual and violence against children. The Pakistan Penal Code of 1860 is still the legal framework for dealing with cases of child sexual abuse, corporal punishment, and violence against children in Pakistan (South Asia Initiative to End Violence against Children 2011),

Child Abuse and Violence against Children: Law and Policy Developments in Bangladesh

Like Pakistan and India, Bangladesh also made a commitment to the United Nations Committee on the Rights of the Child to prohibit "all corporal punishment of children, including in the home" (Global Initiative to End All Corporal Punishment of Children 2015b, p. 1). In 2009, in a written reply to the United Nations Committee on the Rights of the Child, the government of Bangladesh identified "protection of children from corporal punishment at home, schools, and institutions as a priority" (Global Initiative to End All Corporal Punishment of Children 2015b, p. 3). As of 2015, prohibition of corporal punishment in Bangladesh "still

to be achieved in the home, alternative care settings, day care, schools, penal institutions, and as sentence for crime" (Global Initiative to End All Corporal Punishment of Children 2015b, p. 1). In 2011, the Supreme Court of Bangladesh, in response to a public-interest litigation filed by two child rights advocacy organizations (Bangladesh Legal Aid and Services Trust and Ain O Shalish Kendra) and on the basis of the United Nations CRC of 1989, made a ruling that corporal punishments in schools are a "clear violation of children's fundamental rights to life and liberty." The Supreme Court ruling clearly stated that "laws relating to disciplinary action against the teachers, who impose corporal punishment on students are required to be amended." The ruling further added "With regard to the prohibition of corporal punishment within the home and workplaces, the government is directed to consider amending the Children Act of 1974 to make it an offense for parents and employers to impose corporal punishment upon children." The Supreme Court ruling strongly recommended that the old laws that make corporal punishment legal in all spheres must be immediately removed. "We are of the view," the Court described in the ruling "that laws which allow corporal punishment, including whipping under the Penal Code, Code of Criminal Procedure, Railways Act, Whipping Act, Suppression of Immoral Traffic Act [and] the Children Rules of 1976 . . . should be repealed immediately." Following the Supreme Court ruling, the Government of Bangladesh issued guidelines for the prohibition of corporal punishment in educational institutions. In recent years, Bangladesh enacted a number of child welfare related legislation such as the National Education Policy of 2010, The National Policy on Child Development of 2011, Human Trafficking Deterrence and Suppression Act of 2012, the Pornography Control Act of 2012, and the Bangladesh Children Act of 2013. The Bangladesh Children Act of 2013 was particularly enacted to address some of the issues central to the CRC. The Act made provisions for juvenile courts, services for juvenile victims, the criminalization of child abuse including child neglect and child abandonment, and the abolition of judicial corporal punishment. But the Children Act of 2013 "does not explicitly prohibit corporal punishment" (Global Initiative to End Corporal Punishment of Children 2015c, p. 3) from all settings including home and family. Corporal punishment in Bangladesh is prohibited only in schools but that is also under a ruling of the Supreme Court

of Bangladesh in 2011, and it is "still to be confirmed in legislation" (Global Initiative to End All Corporal Punishment of Children, 2015c, p. 5).

The legal framework for dealing with the issues of child abuse and violence against children in Bangladesh is based on four broad legislations. These are the Prevention of Oppression Against Women and Children Act of 2000 (amended in 2003), The Acid Control Act of 2002, the Domestic Violence (Protection and Prevention) Act of 2010, and the Children Act of 2013. There is also a High Court ruling in 2009 on the criminalization of sexual harassment of women including children, the Prevention of Oppression Against Women and Children Act of 2000 (amended in 2003) contains a number of significant provisions that criminalized different forms of child abuse and violence against children. The law imposed death penalty or life in prison for trafficking of children for prostitution. The law says that "Whoever fetches from abroad or dispatches or smuggles abroad a child for any illegal or immoral purpose, or sells or purchases or keeps a child in his possession, custody or security for such purpose, he shall be punished with death or rigorous transportation for life." The law imposed 14 years of prison sentence for kidnapping a child, and life in prison to death penalty for kidnapping a child and demanding ransom. "Whoever detains a child or a woman to levy a ransom; he shall be punished with death or with rigorous imprisonment for life and also with fine." The law imposed life in prison for the rape of a child and death penalty in case of rape and murder. The law said that "If in consequence of rape or any act by him after rape, the woman or the child so raped, died later, the man shall be punished with death or with transportation for life." It was further added that if a child is raped under police custody, all of those who were responsible for her custody and safety would receive a punishment of five to ten years in prison. For child molestation, described as sexual oppression, the law imposed a punishment of two to ten years of imprisonment. "Whoever, to satisfy his sexual urge illegally, touches the sexual organ or other organ of a woman or a child with any organ of his body or with any substance, his act shall be said to be sexual oppression and he shall be punished with imprisonment . . . which may extend to ten years but not less than two years." In Bangladesh, the limbs of many children who are abducted and kidnapped are impaired for the purpose of begging. The Prevention of Oppression

Against Women and Children Act of 2000 imposed death penalty for "impairing any limb of a child for the purpose of begging."

The Act also contained a number of innovative provisions for effective investigation and prosecution of cases related to child abuse and violence against children. One of the major innovations was about the social recognition of the children born as a consequence of rape. The law said that "any child born in consequence of a rape, the maintenance of that child shall be borne by the person who commits rape . . . this expense shall be provided for up to the period, the child attains twenty-one years if male and, marriage of the female child." The Act made a provision for the establishment of a Special Tribunal in each of the 64 districts of Bangladesh for trial of the cases related to violence against children and women and imposed a legal injunction that "The Tribunal shall complete the adjudication within the period of one hundred and eighty days from the date the case was filed." The Prevention of Oppression Against Women and Children Act of 2000 also criminalized the act of sexual harassment and made it an offense that carries a punishment of a prison term of minimum two and maximum seven years. However, about the criminalization of sexual harassment, the 2009 ruling of the High Court of Bangladesh is still the law of the land. In 2009, Bangladesh High Court, in response to a public interest ligation filed by the Bangladesh National Woman Lawyers Association (BNWLA), presented a set of guidelines to protect women and children from sexual harassment in educational institutions, work places, and on the streets, and made a ruling "that the guidelines are strictly followed and observed in all educational institutions and work places in both public and private sectors until adequate and appropriate legislation is made in this field." About the aims and objectives of the guidelines, the court said that they include "(a) to create awareness about sexual harassments; (b) to create awareness about the consequences of sexual offences; (c) to create awareness that sexual harassment is punishable offense." The court defined sexual harassment broadly and it included unwelcome physical touch and advances, sexual explicit verbal discussions and gestures, demand of sexual favors, particularly by those who are in power, showing pornography, indecent gestures, cyber stalking, obscene phone calls, taking pictures or recording videos for blackmailing and character assassination, and attempts to

establish sexual relation by force, intimidation, and deception. For sexual harassment guidelines, the Court said that a "woman" means a woman of any age as defined by the Prevention of Oppression Against Women and Children Act of 2000. The court further added those who are found guilty of sexual harassment must be punished "according to the disciplinary rules of all work places and the educational institutions in both public and private sectors within 30 (thirty) days and/or shall refer the matter to the appropriate Court or tribunal if the act complained of constitutes an offence under any penal law." In 2010, in another historical ruling, the Supreme Court of Bangladesh said that forcing a woman of any age to wear a veil against her will at homes, educational institutions, and public places is a violation of the fundamental rights enshrined in the constitution. In many rural areas of Bangladesh, the local Islamic priests impose extrajudicial punishments on women and girls and some of those include whipping, lashing, and public humiliations. In 2011, the Supreme Court of Bangladesh made another ruling that such extrajudicial punishments on women and girls under the pretext of "fatwa" are unconstitutional and a violation of the rights to life and liberty enshrined in the constitution.

Conclusion

Ending child abuse and violence against children is presently a global movement. There is hardly any region in the world where there is no grass-root movement for criminalizing child abuse and violence against children. The movement for protecting the rights of the children and recognizing childhood as a distinct phase of life historically began from the beginning of modernization in the nineteenth century. It began particularly from the United Nations CRC in 1989. The United Nations Office of the High Commissioner for Human Rights, United Nations Children Fund, and the World Health Organization's 2006 *World Report on Violence Against Children*, the United Nations Children Fund's 2014 study on *Hidden in Plain Sight: A Statistical Analysis of Violence Against Children*, the United Nations Office on Drugs and Crime's 2014 report on *United Nations Model Strategies and Practical Measures on the Elimination of Violence Against Children in the Field of*

Crime Prevention and Criminal Justice, the United Nations Organization's 2014 study on *ICTs, the Internet, and Violence Against Children*, the United Nations Children Fund's 2007 report on *Eliminating Violence Against Children: Handbook for Parliamentarians,* and a number of other global reports and studies in recent years have pushed forward the global agenda for ending child abuse and violence against children in all regions and countries of the world. This chapter has examined the nature and prevalence of child abuse and violence against children and related laws and legal developments in three countries of South Asia: India, Pakistan, and Bangladesh. The study shows that child abuse and violence against children including corporal punishment, child sexual abuse, child prostitution, forced labor, child domestic servitude, child trafficking for sexual exploitation, and child abuse in the cyber space are widespread in South Asia. Particularly alarming is the widespread use of corporal punishment and sexual exploitation of girls and boys. There are some advances in law and legal developments in India, Pakistan, and Bangladesh in the area of criminalizing child abuse and violence against children. These countries, however, have a long way to go to meet their commitments to the CRC for ending child abuse and violence against children from all settings and sectors of life. In all these three countries of South Asia, corporal punishment is still legal in homes and families and this legality is defined by the old IPC of 1860, and sanctified by the ideas of children as "properties" ingrained in local creeds, customs and cultures. Sexual abuse of both girls and boys are rampant in homes, schools, works place, streets, and penal institutions. Public discourses and discussions about child sexual abuse, particularly of boys, in South Asia in general are taboos. This seriously limits research on the prevalence and the patterns of child sexual abuse and the implementation of laws within the framework of criminal justice. The legal framework for the criminalization of child abuse and violence against children in India is based on two major legislations: Protection of Children from Sexual Offenses Act of 2012 and the Juvenile Justice (Care and Protection) Act of 2015. In Bangladesh, the legal framework that criminalized a number of child sexual offenses and violent acts against children is based on the Prevention of Oppression against Women and Children Act of 2000 (amended in 2003), Acid Act of 2002, Domestic Violence (Protection and Prevention) Act of 2010, and Children Act of 2013. In

Bangladesh, sexual harassment is defined as a crime by a judicial ruling made in 2009. Pakistan has shown some legislative activities but enacted no major legislation to criminalize child abuse and violence against children even though Pakistan made a commitment both to the United Nations Committee on the Rights of the Child and the SAIVAC to do so.

For no society and for no region of the world, ending child abuse and violence against children is an easy challenge for criminal justice and the governance of crime. Even in the USA, where this movement began from the days of the progressive era in the late nineteenth century, and where there are dozens of state and federal statutes that criminalize all forms of child abuse, child sexual assault, and violence against children, the problems are still daunting. Corporal punishment is a crime in the USA in all settings including homes and schools, but child sexual abuse is still pervasive. South Asia's advances in law and criminal justice with respect to ending child abuse and violence against children may still be limited but there is no denying that this movement has been rapidly spreading across the whole region. Along with the governments of this region, the international organizations (i.e., United Nations Children Fund and the United Nations Office on Drugs and Crime), women rights groups, human rights advocates, and child rights NGOs (i.e., Save the Children, End Child Prostitution, Child Pornography and Trafficking, Global Initiative to End All Corporal Punishment of Children) have been playing an important role in keeping this agenda alive in policy-making for the governance of crime and justice in South Asia.

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6

Child Sexual Abuse and Exploitation Online in Bangladesh: The Challenges of the Internet and Law and Legal Developments

Ishrat Shamim

Introduction

The recent birth of the cyber age and global expansion of the mobile Internet and the information communication technology (ICT) have brought many remarkable transformations in the global economy, politics, knowledge, and culture. There is hardly any realm of human affairs that has not been touched and advanced by the use of the mobile Internet and the ICT technology. According to Internet Live Stats, out of the world's 7.4 billion people, 3.4 billion (about 46.1 percent) are connected to the Internet. In 1995, only about 1 percent of the world population used the Internet. From 1999 to 2013, the number of Internet users has increased tenfold. "The first billion was reached in

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2005, the second billion was reached in 2010, the third billion was reached in 2014" (Internet Live Stat, p, 1). One of the growing trends is the increased Internet connectivity through the 3-G or 4-G mobile devices. It is reported that:

> Mobile data traffic has grown 4,000-fold over the past ten years and over 400-million-fold over the past fifteen years. . . . Fourth-generation (4G) traffic exceeded third-generation (3G) traffic for the first time in 2015. Although 4G connections represented only 14 percent of mobile connections in 2015, they already account for 47 percent of mobile data traffic, while 3G connections represented 34 percent of mobile connections and 43 percent of the traffic. In 2015, a 4G connection generated six times more traffic on average than a non-4G connection (CISCO 2016, p. 1).

It is also revealed that more than half a billion (563 million) mobile devices and connections were added in 2015. Smartphones accounted for most of that growth. Global mobile devices and connections in 2015 grew to 7.9 billion, up from 7.3 billion in 2014. Globally, smart devices represented 36 percent of the total mobile devices and connections in 2015; they accounted for 89 percent of the mobile data traffic (CISCO 2016, p. 1). This emerging and expanding state of global connectivity has indeed brought a qualitatively new and a different civilization – a civilization that has opened up unprecedented possibilities for expanding science, technology, development, and democracy on a global scale. It is estimated that the total worldwide contribution of Internet is $1872 billion (2.9 percent of the world's total GDP (Gross Domestic Product)). In developed countries, the Internet share of the GDP is about 3.4 percent. "There is a very robust correlation across all countries between internet usage and measures of GDP. Countries with very high levels of internet usage tend to be the most developed" (Murphy and Roser 2016, p. 7). The Internet and the ICT technology have brought new modalities of human connectivity, noble ways of human communications, and distinctive modes of human learning. In no stage of the growth of human civilization, the birth of new technology, however, was an unmixed blessing. Each and every phase of human technological advancement brought new trajectories of crime and criminality, and new forms of human violence, exploitation, and degradations, and the

birth of the Internet and the digital civilization in the twenty-first century is no exception. The Internet and the ICT technology have brought the possibilities of many new global crimes and criminality, and one of the most destructive of them is the online child sexual abuse and exploitation. The escalating growth of online child sexual abuse and exploitation has recently become a global concern. The United Nations Office on Drugs and Crime (UNODC) (2016) recently expressed this concern in the following way: "Children, in particular, have unprecedented access to computers and mobile technologies, and have in recent decades tended to adopt these from an early age, resulting in ICTs becoming thoroughly embedded in their lives. Although the exploitation of children is not a new phenomenon, the digital age has exacerbated the problem and created more vulnerability to children" (p. 1). It is with this problem of online child sexual abuse and exploitation that this chapter is concerned. The chapter proceeds in four stages. First, it describes the global nature and profile of online child sexual abuse and exploitation. Second, the chapter describes the nature and the extent of online child sexual abuse and exploitation in Bangladesh. Third, the chapter examines Bangladesh's existing laws and legal instruments created to curb and control online child sexual abuse. Finally, the chapter analyzes the limits of the laws and the need for broader involvement of the parents, families, and civil society in combating the scourge of online child sexual abuse and exploitation in Bangladesh.

Global Profile and the Extent of Online Child Sexual Abuse and Exploitation

The United Nations Office on Drugs and Crime launched a study on child sexual abuse online in 2013, and it examined the major ICT-facilitated online child sexual abuse materials including child pornography, commercial sexual exploitation of children; cyber-enticement,solicitation, and grooming; cyber-bullying, cyber-harassment, and cyber-stalking. The study found that the new age of the ICT technology has given the sex offenders "unprecedented access to materials and an online community to facilitate their abusive and exploitative behavior. Through the internet, online predators gain access to children faster and in higher volumes, using

chat rooms, emails, online games and social networking sites to find and groom victims" (United Nations Office on Drugs and Crime 2016, p. 1). The study has observed that "The globalized and anonymous cyberspace environment also help predators evade detection in new ways, and a multitude of technical challenges hinder governments' abilities to identify and address child exploitation offenses. Organized criminal networks also exploit the void, profiting from the commercial child pornography and child sex trafficking markets" (United Nations Office on Drugs and Crime 2016, p. 1).

The European Commission launched a major global initiative titled *Global Alliance against Child Sexual Abuse Online* in 2012. The Alliance includes the 28 countries of the European Union, USA, and 54 other countries. The Alliance was formed with the mission to create a global database on online child sexual abuse, develop a legal framework to criminalize online child sexual abuse, improve police investigation and prosecution, enhance and improve victim assistance, increase public awareness on the risks posed by children activities online, and the reduce the availability of Internet child pornography and re-victimization of children. The Global Alliance's 2015 Threat Assessment Report noted that one of the growing trends in the member countries is the increased use of anonymization technology for enticement of children to engage in sexual abuse activities. In response to a question on emerging trends and issues, 37 countries surveyed responded on the increased use of such methods such as anonymization (84 percent), trafficking of large volume of files (70 percent), peer-to-peer networks (59 percent), encryption software (57 percent), increased depiction of violent conducts (32 percent), and lower range of victims involved (46 percent) (European Commission 2015a, p. 3). The Report further noted that "Twenty-six of 32 responding countries indicated that the number of offenders has increased [81 percent], 30 of 31 responding countries asserted that the number of images per offender has increased [97 percent], and 28 of 30 responding countries indicated that the number of images in circulation has increased [97 percent]" (European Commission 2015a, p. 4). Another growing trend, observed by the Report, is the self-production of child-pornography by children. "Twenty-three of 27 responding countries saw an increase [85 percent] in a number of self-production cases in the past five years. Twenty-seven of 33 responding countries

reported that they have encountered situations [82 percent] where a child created a sexually explicit image to send to a boyfriend or girlfriend, which was then shared with another person" (European Commission 2015a, p. 7). The Report found many alarming developments about the child sexual abuse online from the surveys of the countries of the Global Alliance such as more child pornography images are being stored because of the enhanced capacity of the storing devices; increased demand of self-production of child pornography; increased live-streaming of real-time sexual abuse of minor victims; increased circulation of child pornography; increased live transmission of child sexual abuse via web cameras or other live streaming technologies; increase in the number of online offenders who are sexually abusing children located in another country; increased use of extortion, blackmail, threats, and other forms of coercion by online offenders for the production of online child sexual abuse materials; and increased communication of online sex offenders with the victims of child sexual abuse through the use of online forums, peer-to-peer exchanges, social media, and other anonymous networks. The survey of the Global Alliance countries "demonstrate that the threat to children posed by online sexual offenders is increasing. Offenders are seeking more extreme materials, and they are seeking materials depicting younger victims. Self-production by children is increasing due to factors such as social pressure, extortion, and/or blackmail" (European Commission 2015a, p. 8).

The International Child Sexual Exploitation (ICSE) database, came out of the Global Alliance initiative of the European Commission and the database that is managed by the INTERPOL, included (as of April 2015), "more than 6300 identified child pornography victims from over 40 countries, as well as many unidentified victims. . . . The total number of identified victims contained in the database more than doubled between the end of 2012 and April 2015 from 2891 to 6301" (European Commission 2015b, p. 11). Another Report of the *Global Alliance against Child Sexual Abuse Online* noted that "The online sexual exploitation of children continues to pose a grave challenge to nations around the world. Since the inception of the Global Alliance, technological advances have emboldened offenders to an unprecedented degree. The Report described that "Cloud storage, for example, enables offenders to easily and cheaply store tens of thousands of images or videos

outside of a residence or place of business, and access those files from anywhere in the world. Encryption prevents even the most technically-proficient investigators from accessing contraband materials. Anonymizing technology thwarts traditionally successful investigative techniques for locating offenders, creating a safe haven where offenders can act with impunity" (European Commission 2015b, p. 43).

Almost all countries of the Alliance in recent years have made new laws to criminalize online child sexual abuse. "Member states recognize that effective legislation is required to successfully investigate and prosecute those who abuse and exploit child victims online" (European Commission 2015b, p. 17). Some of these countries include Albania, Armenia, Belgium, Denmark, Estonia, Finland, Hungary, Ireland, Japan, the Republic of Korea, Malta, Montenegro, Nigeria, Romania, Spain, Slovenia, Turkey, Ukraine, the UK, and the USA. The 2015 Report also observed that many member states of the Alliance, in addition to strengthening penalties for the crime of online child sexual abuse, have made many technical innovations to curb and control child sexual abuse online. "The overwhelming majority of member states have invested in software that is capable of identifying known child exploitation images. As these investments continue to grow, a number of states are taking additional steps to develop novel technological solutions to facilitate the identification of child exploitation materials on the Internet" (European Commission 2015b, p. 37). The Child Exploitation and Online Protection Center (CEOP), which is a department of the Serious Organized Crime Agency of the Government of the United Kingdom, conducted a survey in 2012 on the nature and prevalence of online child sexual abuse in the UK. The study revealed four major threats: the proliferation of indecent images of children through webmail, file sharing, live video streaming, and the commercial production and distribution of indecent images; online child sexual exploitation (online grooming); transnational online child sexual abuse (overseas child sexual abuse and exploitation); and contract child sexual abuse ("grooming," "street grooming," "localized grooming," "trafficking," and "group-associated child sexual exploitation"). The CEOP estimates "that there are now millions of sexual abuse images in circulation on the internet." In 2005, the United States National Center for

Missing and Exploited Children (2005) conducted a similar study on online child victimization in the USA. The study was particularly focused on child pornography (CP) possessors. The study found that "More than 80% of arrested CP possessors had images of prepubescent children, and 80% had images of minors being sexually penetrated. Approximately 1 in 5 (21%) arrested CP possessors had images of children enduring bondage, sadistic sex, and other sexual violence. More than 1 in 3 (39%) CP possessors had videos depicting child pornography with motion and sound" (p. 27).

Online child sexual abuse is a problem global in nature (see Table 6.1). With the increasing penetration of the Internet and the ICT technology, online child sexual abuse is rapidly reaching to all countries and regions of the world. In particular, it is rapidly expanding in the Asian region. According to the Internet World Statistics, 87.9 percent of the population in North America, 73.5 percent of the population in Europe, 73.2 percent of the population in Australia and Oceania, 55.9 percent of the population in Latin America, 52.2 percent of the population in the Middle East, and 40.2 percent of the population in Asia are actively using the Internet in 2015. Among these regions, Asia has the highest number of people (1.6 billion) actively using the Internet. According to a survey done by Akamai Technologies, a Cambridge, Massachusetts-based content delivery network provider, out of the world's top 100 cities, measured in terms of average Internet connection speeds, 59 are in the Asia region. The survey found that "Asia dominates the top 100 list with 59 cities; Japan accounts for 30 cities in the list; the U.S. has 12 cities in the list, with seven located in California; and Umeå, Sweden is the fastest city in Europe, and is ranked No. 18 out of 100" (Malik 2010, pp. 1–2).

The rapid growth of Internet connectivity in Asia is rapidly expanding the crime of online child sexual abuse and exploitation, and Thailand is a case in point. A report from the Ministry of Justice in Thailand noted that "In 2007, there were 500,000 sexually seductive web pages and 250 websites showing nude video clips of teenagers in Thailand" (Savestanan 2011, p. 4). In Thailand, between 2000 and 2010, Internet users grew more than 660 percent, rising from

Table 6.1 Global profile and the extent of online child sexual abuse and exploitation

- In the USA, 29 percent children under the age of 6 are online regularly while nearly 60 percent children between the ages of 6 and 9 years use the Internet every day (Gutnick et al. 2011).
- In the USA, one in five adolescents between the ages of 13 and 19 had sent or posted nude or semi-nude pictures of themselves online (National Campaign to Prevent Teen and Unplanned Pregnancy 2008).
- In Europe, about 49 percent of children access the Internet while they are in their bedrooms and 33 percent use mobile devices (Livingstone et al. 2011).
- In the UK, nearly 250,000 images of child abuse materials were submitted to Child Exploitation and Online Protection Centre between 2005 and 2009, four times as many images featured girls as compared to boys (Quayle and Jones 2011).
- Worldwide, 37 percent of children between 8 and 17 years of age had been subjected to various online activities like mean or unfriendly treatment, called mean names, made fun of or teased of whom 55 percent were girls (Microsoft Corporation 2012).
- About 81 percent victims in known child abuse images are 10 years or less while 3 percent are 2 years of age or younger and this figure has increased from 74 percent in 2011 (Internet Watch Foundation 2014).
- Between 2011 and 2012, it is estimated that there was a 70 percent increase in child sexual abuse material focused on girls under the age of 10 years, even toddlers or babies were not spared (Bose 2013).
- With regard to cyber enticement, about 99 percent of solicitations are made by men, 43 percent youth or youth adults and 70–75 percent addressed to girls, particularly those at risk are between 14 and 17 years old (The Berkman Center for Internet and Society, 2008).
- Teens are increasingly sharing personal information on social media sites. 91percent post a photo of themselves, up from 79 percent in 2006; 71percent post their school name, up from 49 percent. 71 percent post the city or town where they live, up from 61 percent. 53 percent post their email address, up from 29 percent; and 20 percent post their cell phone number, up from 2 percent. Teen social media users do not express a high level of concern about third-party access to their data; just 9 percent say they are "very" concerned (PEW Research Center 2013).

3.5 million in 2001 to 24 million in 2010. The report of the Thai Ministry of Justice also revealed that:

> Thai teenagers who put themselves at risk of being manipulated by sexual exploiters and pedophiles are on the rise. 44.8% met their virtual friends in person (Survey in 1999); 92 % had been persuaded to chat about sex online

(2000); 74% were alone when online. (2002); 21% used webcams, 22% had record themselves, and 13% had posted their personal details (2004); 13% had sex with their virtual friends after a face-to-face meeting (2006). The last research (2010) indicated 23 million Thai youths spent 3 hours a day surfing the Internet, 91% had experiences of pornography (Savestanan 2011, pp 5–8).

It is reported that "Poor families in the Philippines are pushing their children into performing live sex online for pedophiles around the globe" . . . UNICEF says the Philippines is the number one global source of child pornography and the "epicenter of the live-stream sexual abuse trade" (Thompson Reuter Foundation, June 8, 2016, p. 1). Like in Thailand and the Philippines, online child sexual abuse is rapidly spreading also in the countries of South Asia.

Online Child Abuse and Exploitation: Trends and Patterns in Bangladesh

Across the countries of South Asia including Bangladesh, online child sexual abuse and exploitation is adversely affecting the lives of countless children, from preschool boys and girls to adolescents. In the present era of globalization and the expansion of information communication technology, no South Asian country is exempt from the advent of child sexual abuse and exploitation, although the magnitude of the problems is unknown. One of the greatest challenges in addressing online child abuse and exploitation is its hidden nature, due to the fact that children, families, schools, institution and governments are reluctant to report child abuse and the majority of cases go unreported. There are many girls and boys who are victims of online abuse but who are never identified or cannot access adequate assistance and help. There is hardly any research study on Bangladesh situation on this issue and hardly any data on child abuse and exploitation online. In Bangladesh, the main underlying dynamics that contribute to the persistence of sexual abuse and exploitation of children are patriarchal structures, social and cultural practices, inadequate legal and administrative framework, non-enforcement of existing laws, widespread corruption, insufficient

awareness, difficulties in estimating the age of the child, and lack of coordination between border police and neighboring countries. Children are more vulnerable to sexual exploitation due to their age, rural-urban migration, the experience of sexual abuse and family crisis in conjunction with poverty (ECPAT International and INCIDIN 2006; ECPAT 2008, 2011). Bangladesh is one of the most densely populated countries in the world. About 26 million children live below the national poverty line and deprived of basic services: water, sanitation, nutrition, education, health, information, and shelter. Thirteen percent children are involved in child labor, who are denied education and are vulnerable to abuse and violence. Bangladesh has also one of the highest rates of child marriage and lowest rates of birth registration in the world. Sixty-six percent of women (aged 20–24) were married before the age of 18. These factors interplay to make it difficult to protect children from child labor, child marriage, and trafficking. A UNICEF study on the commercial sexual exploitation of children in Bangladesh found that half of the children surveyed were initially involved in child labor. Moreover, the average age was 13 years when children first became involved in commercial sexual exploitation (United Nations Children Fund Bangladesh Newsletter 2009).

Bangladesh Children's Increased Access to ICT Technology

Increased Internet usage across Bangladesh is heightening children's exposure to a number of online threats, including sexting, grooming, cyber-bullying, cyber-harassment, and production of abusive images. Moreover, smart mobile phones with Internet connections make it possible for clients to seek out young girls. The access of children to the Internet is promoted as a part of their right to information and freedom of expression. But at the same time, children's rights to free expression and privacy should be balanced against the right to be protected from online abuse and exploitation. In most countries, Internet presentation is being facilitated by increased use of new ICTs by children and young people. In India, over 75 percent of

Internet users were children in 2011 while 25 percent of children sent over 50 messages a day (ECPAT International 2008). According to Bangladesh government, the number of mobile subscribers has reached almost 120 million and the number of Internet subscribers is about 3.79 crores as of 2014 (Bangladesh Economic Review 2014). There is a direct correlation between increased access to the Internet and the increased exposure of children to online sexual exploitation. In August 2015, the Bangladesh Centre for Women and Children Studies conducted a web search on online pornography where children were used. It was found that web-based child sexual abuse and hardcore pornography materials have increased to an unprecedented extent and they can be easily accessed free of cost especially by young school-going adolescents. Pornographic materials of Bangladeshi girls are available on YouTube. In August 2009, Manusher Jonno Foundation organized a seminar to share the findings of an exploratory study on child pornography. The findings revealed that a major portion of children is exposed to pornographic pictures in the form of posters, picture cards, and CDs. Many are also influenced by their boyfriends, school friends, and relatives. Around 77 percent respondents admitted that they got involved in pornography as viewers, while a significant number of children have been exploited in the production and selling of pornographic videos (United Nations Children Fund 2011). The underlying factors behind children becoming involved in pornography are easy accessibility to modern technology, illiteracy, lack of awareness of parents, the absence of family cohesiveness, and most importantly the lack of proper implementation of existing laws. In 2007, Manusher Jonno Foundation also noted that there is a growing demand for child abuse images both within the country as well as from other countries. Child pornography depicting South Asian children, including minors from Bangladesh, is being produced to respond to the request for "exotic" illegal materials by consumers from the United Arab Emirates (Mausher Jonno Foundation 2007).

In Bangladesh, the usage of smart mobile phones with video options has become very harmful for school-going children. In 2013, Samoy television channel carried an investigative report on the issue of pornographic addiction among Bangladeshi school-going

children. The study was conducted with the participation of 100 eighth grade students from various schools in Dhaka city. The report revealed that 76 percent students have own mobile phones and the rest uses mobile phones of parents, relatives, and friends. About 82 percent mobile users used to see porn videos of whom 62 percent used to see porn video in the classrooms, 78 percent of students spent at least 8 hours on mobile and 44 percent use mobiles to continue their love affairs. Many students used mobile phones in the classroom by putting their hands on the bench. Experts say that pornography materials and videos amount about two and a half crore taka are being sold in the country and it has affected the children who have become addicted to these materials. Moreover, it instigates the increased prevalence of offenses like eve-teasing and sexual exploitation (An Investigative Report of Samoy TV, 2013, Dhaka). In 2007, Bangladesh National Women Lawyers Association reported of an increasing trend of girls being trapped by their boyfriends who recorded sex scenes through a hidden camera and later used these to blackmail the girls and their families, or uploaded the material on the Internet for sale as pornography. Although the online sexual exploited victims contacted the organization for legal support, no written complaint was filed due to fear of social stigma and consequent lack of cooperation from the victim and victim's family. Existing awareness raising programs are mainly focused on trafficking and sexual abuse, with no attention devoted to combating and preventing child abuse images. The Government of Bangladesh established the Bangladesh Telecommunication Regulatory Commission (BTRC) in 2002 to regulate and develop guidelines for the telecommunication services. As of 2014, the teledensity (voice) of Bangladesh is around 78.12 percent and the number of mobile subscribers has reached almost 120,350 million, and the number of Internet subscribers is about 3.79 crores. Moreover, recently the Commission has issued a set of guidelines called "SIM/RUIM Registration Guidelines" to reduce the abuse of mobile phones (Bangladesh Telecommunication Regulatory Commission 2015). In spite of the government initiatives to regulate and reduce abuse and criminal activities through the mobile phone, still we find

cases of sexual harassment by use of mobile phones with Internet facilities even in the rural context of Bangladesh.

The Emerging Threat of "Made-To-Order" Child Abuse Materials

There is the emerging threat of "made-to-order" child abuse material and this form of child exploitation is commonly linked to organized criminal groups. Perpetrators take orders and accordingly produce videos or images that conform to the customer's demands and specification regarding age, race, gender, appearance of the victim, even so physical settings or sexual acts (United Nations Office on Drugs and Crime 2014, 2016). The recent development in mobile communications provides child abusers more control over the movements of their child victims. Now perpetrators not only require victims to call them at the beginning and end of each encounter but also they can literally track child victim's movements using global positioning system (GPS). Camera-equipped mobile phones make victims more vulnerable to recording or live streaming of abuse for distribution and commercial use (United States Department of Justice 2010). Online interactions can lead perpetrators to engage in more direct contact with victims, to the point that they may solicit sexual contact after only a few brief interactions, without offending the victims, or resorting to threatening them into compliance (Choo 2009). In such cases, perpetrators may motivate and convince children to share a compromising image and subsequently threaten to send it to their parents or to upload it to a public website (United Nations Office on Drugs and Crime 2014).

In the process of accessing child victims through online contact, perpetrators break down the physical and psychological barriers to abusing or exploiting children. Many social networking sites enable users to cover or hide their true identities by which perpetrators can easily adopt false identities to allure children into an online relationship. When children feel emotionally attached and begin to trust perpetrators, then they can easily reveal their true identities by still maintaining the loyalty of their victims (United Nations Children Fund 2011). The more disturbing and risk factor is when perpetrators make use of child

abuse and pornography material to remove psychological barriers by convincing their targets that child abuse is "normal." Moreover, they may try to use sexual abuse materials to convince and vindicate acts such as rape, battery, sexual harassment, prostitution, or child sexual abuse (Choo 2009). Bullies may target children at school and then continue to harass their victim out of school time, through online connections. The extent to which children engage in risky online behavior and neglect privacy and safety measures affects the degree of exploitation encountered by them. Children who engage in risky behavior, both online and offline, face a higher risk of exploitation (United Nations Office on Drugs and Crime 2014).

Recruitment of Children for Human Trafficking

Commercial sexual exploiters of children have capitalized on the growing demand for young children by recruiting increasingly younger victims. Sex offenders are able to gain easy access to wide range of children through the use of online forums, e-mail, social networks, and other Internet-based communication tools. They may simultaneously have up to 200 "friends" or more with whom they are at different stages of grooming (Webster et al. 2010) and accordingly take calculated risks by initiating sexual conversations with children and gauging their reaction. At the same time, ICT facilitates perpetrators to have increased access to information about their victims. Social networking sites can host enormous quantities of freely shared personal and biographical information. New features on social networking sites such as geotagging of images and "checking-in" to places via mobile devices can further enhance their knowledge of a child's location (Livingstone et al. 2011). Online easy access to child victims leads perpetrators to recruit children for the purpose of human trafficking through websites, as well as by using social media technology to advertise their services to a broad public. The 2013 United States Global Report on Trafficking in Persons made special reference to the impact of technology on the recruitment of victims for trafficking and states that "In the fight against

modern slavery, technology can be a double-edged sword. Traffickers use technology to advertise their services widely and develop new methods to recruit, manipulate, and lure potential victims. Meanwhile, governments, anti-trafficking advocates, and technology companies are collaborating to leverage technological tools to turn the tables on the traffickers" (United States Department of State 2013).

Reducing Offenders' Risk of Detection

The use of ICTs has reduced the risk of detection of perpetrators as they can not only hide their identities but also their criminal activities of sexual abuse and exploitation of children. The use of mobile phones and devices, e-mail, and messaging applications has facilitated perpetrators while violating the children (United States Department of Justice 2010). Children' lack of attention to online safety and privacy is an important risk factor. Children who are inattentive of online safety precautions may be of greater risk of cyber-enticement and stalking. Initially, perpetrators might target a wide range of children but they will be most successful with children who carelessly share personal information such as age, school, geographical location and pictures. Perpetrators may get real-time information about the physical location where a child uses online applications and track their current location. Children receive more unsolicited messages from strangers via Internet messaging, e-mail, and text who has publicly available social media profiles and they are the ones who experience higher levels of cyber harassment and cyber bullying (Lenhart et al. 2011). In Bangladesh, offenders can utilize disposable phones or prepaid SIM cards. Also, e-mail accounts may be registered using false identities, multiple proxies, and public wireless hotspots, making it extremely challenging to link an account registration with a particular individual. In Bangladesh, many Internet cafés offer reasonable anonymity and privacy for their users, as they do not require identification to log on to computers, do not use monitoring systems of any kind, and thus it is very difficult to enforce codes of conduct.

Legal Framework and Policies to Control and Combat Child Sexual Abuse Online in Bangladesh

Bangladesh is one of the first countries to ratify the United Nations Convention on the Rights of the Child (UNCRC) in 1990 and committed to fulfilling the rights of Bangladeshi children. However, despite numerous efforts of the government over the years a large section of children is still deprived of their basic rights. Children still continue to be victims of acute poverty, physical and psychological torture, economic exploitation, physical and sexual violence, trafficking, prostitution, early marriage, harassment by the law enforcement agencies, and political violence. In recent years, the government reviewed some of the child rights-related laws and policies and enacted new laws and policies to protect the rights of the children. Some of the most notable enactments are the Children Act 2013, The Pornography Control Act 2012, The Human Trafficking Deterrence and Suppression Act 2012, National Children Policy of 2011, The Prevention of Domestic Violence Act 2010, National Education Policy of 2010, and National Child Labor Elimination Policy of 2010. On the realms of prevention, protection, rescue, and rehabilitation of exploited children, Bangladesh government had developed a National Plan of Action against Sexual Abuse and Exploitation of Children including trafficking in 2002, but there is still insufficient progress in addressing various manifestations of the commercial sexual exploitation of children.

The preamble of the Pornography Control Act of 2012 identified the reason for enacting this legislation and stated that this Act has been enacted to prevent deterioration of moral and ethical values of the society. Information technology has immense benefits but also has demerits and disadvantages if it is used by perpetrators with the criminal intention to sexually exploit children online. It is evident that in Bangladesh, video clips and MMS of sexual intercourse or behavior relating to sexual activities are recorded on mobile phones and then used to blackmail, cheat, and defame girls. Social media sites

such as Facebook are immensely popular especially among the younger generation and it is very easy to spread a video clip around the world cheaply and within seconds. The Pornography Control Act of 2012 makes any such recording of video, still picture, and publication of them in print, electronic, or any other forms a criminal offense. Even if the video was recorded or the still picture was taken with the consent of the persons being filmed, it is still a crime under Section 8 of the Pornography Control Act 2012, and any person convicted under the above mentioned Section can be sentenced up to seven years of imprisonment (Pornography Control Act, 2012). The Act has a separate Section for child pornography and any person below the age of 18 is a child, and any pornography recording, pictures with a child being filmed will carry a sentence of ten-years imprisonment and fine of five lac taka. Another provision of the Act is that it empowers the court to take expert opinion from information technology experts and empowers the investigation officer to siege or search any device, book, CDs as evidence. The Act is still not very widely circulated among the law enforcing agencies and legal professionals to address the criminal nature and socioeconomic context involved in child pornography. Recently, human rights activists have taken the issue forward to immediately take steps to stop the spread of pornography materials by mobile phones.

Directive of the Bangladesh High Court to Stop Child Pornography

The Bangladesh High Court, in May 2015, directed the government to stop the spread of pornography contents by mobile phone providers and in social media within seven days following a writ petition filed by Human Rights and Peace for Bangladesh (Shaon 2015). The court also wanted an explanation asking the government to explain why its inaction to stop such activities should not be declared illegal. The Chairman of the Bangladesh Telecommunication Regulatory Commission and the Secretary of the Information Ministry asked the court to take steps to comply with the directives. Bangladesh has also

established a National Human Rights Commission (NHRC) under the National Human Rights Act of 2009 with the mandate of promoting and monitoring human rights (Manusher Jonno Foundation 2014). Despite increased awareness of the rights of the children and many rules and guidelines developed by the Bangladesh Telecommunication Regulatory Commission and National Human Rights Commission, commercial sexual exploitation of children continues to be one of the pervasive violations of children's rights affecting thousands of children in Bangladesh.

Toward a Comprehensive Approach to Curbing the Growth of Online Child Sexual Abuse in Bangladesh

Response of Parents, Child Educators, and Civil Society Groups

To combat ICT-facilitated abuse and exploitation of children, parents, guardians, child educators, and civil society groups are the first defenders to support children in understanding and handling online risks of certain harmful material, the creation of telephone hotlines for reporting, and contribution toward education and psychosocial methods of prevention. In many countries, online safety guidelines have been developed by the private sector, especially ISPs, governments, schools, media such as online newspapers and NGOs. These guidelines help parents to decide the right age for children to use online devices, appropriate websites for children to visit, the best place to set a computer, provide relevant information on tools for monitoring, and limiting access. Furthermore, parents have to orient and equip properly for initiating dialogue with children regarding online behavior and safety (United Nations Office on Drugs and Crime 2014). A key priority is a need for active involvement of parents or guardians in children's use of the Internet and other ICTs, supported by adequate access to information. One of the first steps in this direction is an open, frank and frequent dialogue between children and caregivers about actions to be taken if children encounter something or when someone is troubling online for

the prevention of further ICT-facilitated abuse and exploitation of children (United Nations Office on Drugs and Crime 2014).

Protective Measures Software and Panic Buttons

Parents can record all content entered into the family computer through the keyboard, or view lists of URLs visited by using protective measures such as keystroke-recording software, as well as device management software. Similar protective measures are also increasingly available for smartphones, while some contain built-in mobile parental control options (United Nations Office on Drugs and Crime 2014). The latest version of Windows Live Messenger has "panic" buttons that appear on many child-oriented websites and software programs to enable children to report illicit content or sexual solicitation that they encounter when using these applications. These alarms not only protect children from exposure to harmful content but also provide a mechanism for children to report such content to authorities quickly and privately. One such device has been developed by Online Child Sexual Abuse Reporting Portal (OCSARP) of the Internet Watch Foundation (IWF), which enables users to report suspected online child sexual abuse images and videos. Although the IWF is based in the UK, it has the mandate to receive reports of online child sexual abuse from anywhere around the world. Civil society organizations (CBOs) can prevent and combat ICT-facilitated child abuse and exploitation by the use of mobile "apps" or software applications, but there are presently limited number of "apps" to protect children from online sexual exploitation (United Nations Office on Drugs and Crime 2014). However, in Bangladesh, the use of mobile "apps" for other purposes are gaining popularity and it can be developed for child abuse online.

Online Victim Reporting Portals

Child abuse online is complex but online victim reporting portals can offer a non-threatening way to report abuse. When such online material is encountered or reported by victims, investigators can proactively follow leads to discovering abuse, identify victims, and

provide victim support and assistance. Law enforcement agencies will come forward to pursue such cases where they can get clear digital evidence of online sexual exploitation to confirm its severity for the successful prosecution at the end. Law enforcement is becoming increasingly successful in identifying, rescuing, and protecting child victims who may be at risk of ongoing sexual abuse by using information from child sexual abuse material and other digital evidence (United Nations Office on Drugs and Crime 2014). In recent years, a number of global coalitions with the aim to combat online child sexual abuse and exploitation have been formed by leading ICT companies, especially ISPs and social networking businesses. In the USA, the International Center for Missing and Exploited Children's (ICMEC) Technology Coalition is a voluntary collaboration of nine major Internet companies aimed to disrupt and dismantle child exploitation criminal enterprises. In this regard, the coalition members are committed to providing technological expertise and resources for preventive measures, detection, and documentation of offenses.

Response of Law Enforcement Officials

To combat online child abuse, the role of dedicated law enforcement officials in key investigative areas, such as handling digital evidence and conducting image analysis, profiling offenders, ability to develop networks to facilitate cooperation across jurisdictions and borders, is most vital. However, there is lack of standard protocols for supporting victims through the investigative process, appropriate techniques for interviewing child victims, and collecting and preserving victim-related evidence (United Nations Office on Drugs and Crime 2014) However, in Bangladesh law enforcing officials and public prosecutors are being trained with special focus on investigation and prosecution of online child abuse cases. Under the Police Reform Programs of Bangladesh Police, police officials received training on victim-friendly policing and cybercrime detections.

Conclusion

The rise and the global expansion of the Internet and the ICT technology have given birth to many new global crimes and criminality. One of the most destructive of them is online child sexual abuse. This paper has examined the growth of online child sexual abuse in Bangladesh and found that increased Internet usage across Bangladesh is increasing children's exposure to a number of online threats including sexting, grooming, cyber-bullying, cyber-harassment, and production of abusive images. The Bangladesh Centre for Women and Children, directed by the author of this chapter, conducted a web-based survey on online pornography where children were used. It was found that web-based child sexual abuse and hardcore pornography materials have increased to an unprecedented extent and they can be easily accessed free of cost, especially by young school-going adolescents. Pornography materials of Bangladeshi girls are available on YouTube. Another survey conducted by a local non-governmental organization, Manusher Jonno Foundation, found that a major portion of children is exposed to pornographic pictures in the form of posters, picture cards, and CDs. Many are also influenced by their boyfriends, school friends, and relatives. Around 77 percent respondents in the survey admitted that they got involved in pornography as viewers, while a significant number of children have been exploited in the production and selling of pornographic videos. The survey also noted that there is a growing demand for child abuse images both within the country as well as from other countries. Child pornography depicting South Asian children, including minors from Bangladesh, is being produced to respond to the request for "exotic" illegal materials by consumers from the United Arab Emirates (Mausher Jonno Foundation 2007). In 2013, Samoy Television, a local channel, carried an investigative report on the issue of pornographic addiction among Bangladeshi school-going children. The study was conducted with the participation of 100 eighth grade students from various schools in Dhaka city. The report revealed that 76 percent of students has own mobile phones and the rest use mobile phones of parents, relatives, and

friends. About 82 percent mobile users used to see porn videos of which 62 percent used to see porn video in the classrooms. Research shows that the underlying factors behind children becoming involved in pornography are easy accessibility to modern technology, illiteracy, lack of awareness of parents, the absence of family cohesiveness, and most importantly, the lack of proper implementation of existing laws.

The Government of Bangladesh has recently enacted a number of legislations and national plan of actions directed to curb and control the spread of online child sexual abuse. Some of these include the Prevention of Domestic Violence Act 2010, National Child Labor Elimination Policy of 2010, National Children Policy of 2011, the Pornography Control Act 2012, the Human Trafficking Deterrence and Suppression Act 2012, and the Children Act 2013. The Pornography Control Act of 2012 has particularly addressed the issues of online child sexual abuse. The preamble of the Pornography Control Act of 2012 identified the reason for enacting this legislation and stated that this Act has been enacted to prevent deterioration of moral and ethical values of the society. The Act stated that the ICT technology has immense benefits but it also has demerits and disadvantages if it is used by perpetrators with the criminal intention to sexually exploit children online. The law described that it is evident that in Bangladesh video clips and MMS of sexual intercourse or behavior relating to sexual activities are recorded on mobile phones and then used to blackmail, cheat and defame girls. The Pornography Control of 2012 Act makes any such recording of video, still picture and publication of them in print, electronic, or any other forms a criminal offense. Even if the video was recorded or the still picture was taken with the consent of the persons being filmed, it is still a crime under Section 8 of the Pornography Control Act 2012, and any person convicted under the abovementioned Section can be sentenced up to seven years of imprisonment (Pornography Control Act, 2012). The Act has a separate Section for child pornography and any person below the age of 18 is a child, and any pornography recording, pictures with a child being filmed will carry a sentence of ten-years imprisonment and fine of five lac taka. The Pornography Control Act of 2012, however, has still to be widely and thoroughly implemented. Research conducted by the United Nations Office on Drugs and Crime, the United Nations Children Fund, the

European Commission' s Global Alliance against Child Sexual Abuse Online, the United Kingdom's Child Exploitation and Online Protection Center and the Internet Watch Foundation, the United States' International National Center for Missing and Exploited Children, and many other private sector Internet companies has shown that the combating of online child sexual abuse needs a much wider and a comprehensive approach. This call has been loudly articulated by the 2014 United Nations report on *Releasing Children's Potential and Minimizing Risks: ICTs, the Internet and Violence against Children.* The report claimed that policies with respect to combating child sexual abuse online should be "integrated as a core component of the national comprehensive, well-coordinated and well-resourced policy framework to prevent and address all forms of violence against children. The agenda requires the involvement of all stakeholders" (Office of the United Nations Special Representative of the Secretary-General on Violence against Children 2014, p. 55). While national legislation is a core requirement of this process, the report further noted, reliable data on online child sexual abuse should be gathered, effective policing should be ensured, police investigating competence should be modernized, different professional groups (i.e., social workers, teachers, police officials, and judges and prosecutors) should be mobilized, effective mechanisms to identify the child victims should be developed, and parents, guardians, and the leaders of the civil society should be brought on board. In summary, effective policy-making to combat online child sexual abuse should be approached legally, technologically, and socially. Legally, laws criminalizing all forms of online sexual abuse must be developed and implemented, and law-enforcement capabilities should be enhanced. The offenders must be tracked and prosecuted. Technologically, new software must be developed to control the creation and the spread of child sexual images. Socially, there is a great role of parents, families, schools, and all other sectors of the civil society to launch and spread a campaign to increase awareness of this crime of online child sexual abuse. In Bangladesh, some laws for child sexual abuse are in place, but there is the need for more innovations in software and technology, and more involvement of the civil society as a whole to control the spread of this destructive scourge of the emerging digital age on children. The International Telecommunication Union (2013–2015),

Guidelines for *Parents, Guardian, and Educators on Child Online Protection*, developed as part of the mandated by the World Summit on the Information Society, rightly noted that "Without proper dedication to creating a safe cyber environment, we will fail our children. Although there is increasing awareness of the risks related to the insecure use of ICTs, there is still a significant amount of work to do" (p. 59).

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Ishrat Shamim recently retired, after serving 40 years, from her position as professor of sociology at Dhaka University, Bangladesh. Her research specialties are in the areas of gender and development, human trafficking, and child abuse in an age of the Internet. She is the founder president of the Centre for Women and Children Studies (CWCS) and has been an activist to uphold women and child rights. She has more than two decades of professional research experience in the field of gender, children, and development, and has more than 20 publications on gender violence, human trafficking, gender dimension of international migration, violence against children, child abuse, women empowerment, and poverty reduction at national and international levels. She has conducted a number of evaluation and training projects on gender issues,

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7

Globalization and Reforms in Juvenile Justice in South Asia: A Comparative Study of Law and Legal Advances in India, Pakistan, and Bangladesh

Shahid M. Shahidullah and Shyamal Das

Introduction

One of the hallmarks of a modern system of criminal justice is the development of a separate system of juvenile justice. A modern system of juvenile justice explores the specific nature and patterns of juvenile offending and victimization, creates a special set of institutions and procedures for juvenile arrest and detentions, develop a separate system of juvenile trials

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and proceedings, and devise an alternative system of justice compatible with the minds and the age of the juveniles. The idea that children are different from the adults have been with us since the beginning of cities and civilizations. The English Common Law which dates back to the twelfth century in early medieval England defined that children below the age of 7 are not criminally culpable. English Jurist Sir William Blackstone in his *Commentaries on the Laws of England (English Common Law)* published in 1765 said that "The capacity of doing ill, or contracting guilt, is not so much measured by years and days, as by the strength of the delinquent's understanding and judgement." He further extended the Common Law argument and said that "under fourteen . . . if it appears to the court and jury, that he . . . could discern good and evil, he may be convicted and suffer death. Thus a girl of thirteen has been burnt for killing her mistress: and one boy of ten, and another nine years old, who had killed their companions, have been sentenced to death." With the birth of modernization in the context of the Age of Enlightenment in the eighteenth and nineteenth centuries, however, the English Common Law conception of a juvenile and juvenile justice began to change, and it first began to change in a country where the English Common Law has been historically the foundation of law and justice—the USA. The birth of a separate system of juvenile justice is primarily an American innovation. From its birth in America in the late nineteenth century, the concept of a separate system of juvenile justice spread to the whole of North and South America and to England and continental Europe from the early twentieth century. As one author described the history of juvenile justice in Europe: "Juvenile justice systems began in Europe at the turn of the century, shortly after the first juvenile court was established in Chicago in 1899. Children's courts were created between 1905 and 1912 in the Netherlands, United Kingdom, Belgium, France, and Germany" (Furbish 1999, p. 1). It is also this American model that is now expanding as a global movement for reforms and modernization in juvenile justice in all regions of the world.

Until the 1980s, there were no serious debates and discourses on juvenile justice in the countries outside the West. From the beginning of the 1990s, primarily in the context of the United Nations Convention on the Rights of the Child (CRC) in 1989, the concept of a separate system of juvenile justice began to emerge as a global movement in

almost all regions of the world. The United Nations CRC borrowed the American model, expanded it within the human rights framework, and then made it a part of a global movement for change and reforms in juvenile justice. The purpose of this chapter is to examine how this process of reform and modernization in juvenile justice has been advancing in South Asia, particularly in India, Pakistan, and Bangladesh. Some of the questions that this chapter examines and explores are: What are the philosophical, historical, and scientific contexts for the rise of a separate system of juvenile justice in the USA in the late nineteenth century? What are the key institutional and legal characteristics of the American model of juvenile justice that can be used as benchmarks for comparison of change and reforms in juvenile justice in other regions of the world? How is globalization creating a global movement for reforms in juvenile justice in all the world regions, particularly within the framework of the United Nations CRC? How are major countries of South Asia (India, Pakistan, and Bangladesh) responding to the global movement for modernizing juvenile justice, and what advances have been made in law and legal frameworks related to juvenile justice? One of the hypotheses is that a series of legal and institutional reforms in juvenile justice have been recently introduced in South Asia, and they are a part of the broader global movement for reforms and modernization in juvenile justice. Movements are underway in South Asia for reforms in juvenile justice in conformity with international norms and standards.

The American Model of Juvenile Justice: Philosophical, Historical, and Scientific Contexts

A separate system of juvenile justice was formally born in the USA through the enactment of the Illinois Juvenile Court Act of 1899 (amended in 1987). The Act of 1899 changed the English Common Law and made a provision that children below the age of 14 are not criminally responsible (the 1987 amendment defined juveniles as children who are below the age of 18). The Act of 1899 established separate

courts and correctional centers for the juveniles, made rehabilitation as the core mission of juvenile justice, and eliminated death penalty for the juveniles. By 1925, separate systems of juvenile justice were established in 48 of the 50 states of the USA. In more than one hundred years, the American juvenile justice system has grown as a unique model that is highly decentralized with a series of federal, state, and local laws, statutes, institutions, and programs. In terms of its structure and functionality, the juvenile justice system is highly differentiated from the system of adult criminal justice, but it is also deeply integrated to the US constitution. The American model of juvenile justice has evolved in the context of a number of philosophical concepts, historical events, and scientific movements and discoveries.

The doctrine of *parens patriae* is the philosophical foundation for a separate system of juvenile justice in America. It "means literally 'parent of the country' and refers traditionally to the role of the state as sovereign and guardian of persons under legal disability. Conceptually, the doctrine is derived from the king's royal prerogative as the general guardian of all infants, idiots, and lunatics" (Himes 2004, pp. 1–2). What it means is that a modern state has the responsibility and a moral obligation for the welfare of the children who are neglected, abandoned, deserted, ungovernable, and have conflicts with the law. Some of the other philosophical principles that are at the core of juvenile justice are rehabilitation, restoration, mediation, treatment, counseling, intermediate sanctions, prevention, early intervention, reintegration, and education. The doctrine of the "best interest of the child" is also one of the basic philosophical components of juvenile justice. Historically, the birth of a separate system of juvenile justice is related to the progress of modernization, industrialization, and urbanization. The progress of industrialization and urbanization brought a series of dislocations in the lives of families and children in Europe and in the New World of the Americas in the eighteenth and nineteenth centuries. In the process of great transformations from medieval Europe to modern industrial civilization, millions of children were abandoned, debased, deserted, and thrown into crime and violence. The imperative for a separate system of juvenile justice, so, began to be strongly felt, particularly in the emerging cities of America from the beginning of the nineteenth century. This was

the context of the birth of the Child Saving Movement in America, and juvenile justice partly owes its historical beginning to the Child Saving Movement of the late nineteenth century.

The birth of a separate system of juvenile justice is also rooted in modern scientific discoveries about the body, brain, and the mind of the children. The justification for a separate system of justice for the juveniles is not just because they are abandoned, debased, and deserted but also because they are very different in their body, brain, and the mind. Modern scientific research has established that adult and teen brains do not learn the same way, do not perceive the world from the same perspective, and do not understand the sanctity of the laws and morality in the same manner. Modern scientific research, with the help of modern brain scanning technology, has shown that the maturation process of the brain takes much longer time than it was previously understood. One of the studies conducted by the National Institutes of Health in the USA, on the basis of brain scans taken from more than 100 young people growing up in the 1990s, "showed that our brains undergo a massive reorganization between our 12th and 25th years . . . as we move through adolescence, the brain undergoes extensive remodeling, resembling a network and wiring upgrade" (Dobbs 2011, p. 1). The study has further shown that "This process of maturation, once thought to be largely finished by elementary school, continues throughout adolescence" (Dobbs 2011, p. 1). With the process of maturation of the brain, "The corpus callosum, which connects the brain's left and right hemispheres and carries traffic essential to many advanced brain functions, steadily thickens. Stronger links also develop between the hippocampus, a sort of memory directory, and frontal areas that set goals and weigh different agendas; as a result, we get better at integrating memory and experience into our decisions" (Dobbs 2011, p. 2). The study concluded that "When this development proceeds normally, we get better at balancing impulse, desire, goals, self-interest, rules, ethics, and even altruism, generating behavior that is more complex and, sometimes at least, more sensible. But at times, and especially at first, the brain does this work clumsily" (Dobbs 2011, p. 2). Similar observation was made by another study conducted by a team of scientists at the National Institute of Mental Health in the USA. The study found that:

"Contrary to the notion that the brain has fully matured by the age of 8 or 12, with the truly crucial wiring complete as early as 3, it turns out that the brain is an ongoing construction site. Maturation does not stop at age 10 but continues into the teen years and even the 20s" (Begley 2000, p. 1). On the basis of magnetic resonance imaging (MRI) of teen brains, this team of scientists observed that the frontal lobes of the brain responsible for such behaviors as "self-control, judgment, emotional regulation, organization, and planning, undergo the greatest change between puberty and young adulthood. They grow measurably between 10 and 12 . . . then shrink into the 20s as extraneous branchings are pruned back into efficient, well-organized circuitry" (Begley 2000, p. 1). These and many other startling discoveries about the development of teen brains in recent decades have created many new dimensions in thinking about juvenile crime and justice (Jones and Shen 2012; Scott and Steinberg 2008). It was on the basis of the brain studies that the US Supreme Court made a ruling in *Roper v. Simmons* in 2005 that the execution of a juvenile below the age of 18 is a violation of the Eighth Amendment (cruel and unusual punishment) of the Bill of Rights in the American Constitution. In writing the majority opinion, Justice Anthony Kennedy said: "When a juvenile offender commits a heinous crime, the state can exact forfeiture of some of most of the basic liberties, but the State cannot extinguish his life and his potential to attain a mature understanding of his own humanity." In any efforts for reforms and modernization in juvenile justice these philosophical, historical, and scientific dimensions need to be integrated to policy-making for defining juvenile crime, law, and punishment.

The American Model of Juvenile Justice: Institutional and Legal Innovations

The American model of juvenile justice during the last hundred years has made many institutional and legal innovations that are peculiarly local, but they also have global implications. The first is the systemic innovation. As mentioned before, the American juvenile justice system is a huge complex of federal, state and local laws, institutions, and organizations.

The system is highly integrated but at the same time, it is also highly decentralized. From the days of the Hoover Commission of 1929, there began a policy discourse in America to define and organize criminal justice as a "system" based on scientific research and innovations. Hoover "was the first president to assemble a team of practitioners and scholars to comprehensively investigate the conditions under which federal, state, and local governments administered justice" (Calder 1993, p. 3). One of the major recommendations of the Hoover Commission report "was to conceptualize justice administration as a system of interconnected and interdependent federal, state, and local justice institutions. The Commission strongly recommended the use of a scientific approach to design and reform the institutions of justice" (Shahidullah 2008, p. 63). The Commission report on *Penal Institutions, Probation, and Parole* "recognized rehabilitation as a model for criminal justice on the basis of the belief that science-based treatments can reform human behavior" (Shahidullah 2008, p. 63). The findings of the Hoover Commission were later translated into policy measures after the creation of the Commission on Law Enforcement and Administration of Justice in 1964 by President Johnson. The Commission's report "The Challenge of Crime in a Free Society" was published in 1967. "The Wickersham Commission recommended thinking of crime and justice as a 'system.' The President's Commission recommended the 'systems approach' as a new paradigm for crime and justice administration" (Shahidullah 2008, p. 65). From the Hoover Commission of 1929 to the President's Commission in 1967, "the dominant thinking in the policy arena in America was to create a national system of crime and justice organizationally and professionally competent to address the challenges of increased crime and violence" (Shahidullah 2008, p. 67). The birth of an interconnected system of juvenile justice in America today with a huge number of federal, state, and local laws, institutions, and programs is an extension of that process of modernization in criminal justice that began in the late 1960s after the publication of the Johnson Commission report "The Challenge of Crime in a Free Society."

Juvenile justice in the USA is primarily a responsibility of the states. In each of the 50 states in the USA, there is a state department of Juvenile Justice defined in different states in different ways such as the North

Carolina Department of Juvenile Justice and Delinquency Prevention, Florida Department of Juvenile Justice, Texas Department of Juvenile Justice, and Massachusetts Department of Youth Justice. But the federal government is also deeply involved in modernizing juvenile justice through the enactment of juvenile laws by Congress, enforcement of legal decisions made by the US Supreme Court, and the development of national juvenile justice policy strategies. The involvement of the federal government in juvenile justice formally began through the enactment of the Juvenile Justice and Delinquency Prevention Act (JJDP) of 1974. The Act created three major federal organizations and they are primarily responsible for federal policy-making in juvenile justice. These three organizations are the Office of Juvenile Justice and Delinquency Prevention (located within the Department of Justice), the Coordinating Council on Juvenile Justice and Delinquency Prevention (located within the Executive Office of the President), and the National Institute for Juvenile Justice and Delinquency Prevention (located within the Department of Justice). In addition to state and federal organizations, there are also city and county departments of juvenile justice such as the New York City Department of Juvenile Justice, Miami Dade-County Department of Juvenile Justice, and the Philadelphia Juvenile Justice Service Center.

Constitutionally, however, there is only one system of criminal justice in the USA. The constitution does not make a difference between adult and juvenile justice. During the last five decades, the US Supreme Court made a series of rulings and established that the constitutional laws and principles are equally applied to adults and juveniles. In *Re Gault* in 1967, the Supreme Court ruled that the due process clause of the Fourteenth Amendment is equally applied to adults and juveniles. "Neither the Fourteenth Amendment nor the Bill of Rights is for adults alone." According to the Court, both procedural and substantive due process laws are applied to juveniles. During the last decades, the Supreme Court ruled on many cases related to juvenile search and seizures, juvenile arrests, juvenile jails and detention, juvenile mandatory sentencing, juvenile transfer to adult courts, and juvenile records and case proceedings (*Re Winhip, 1970, McKeiver v. Pennsylvania, 1971, Breed v. Jones, 1975, Smith v. Daily Mail, 1979, Schall v. Martin, 1984, Yarborough v. Alvarado in 2004*). In all these cases related to procedural

due process, decisions of the Supreme Court were derived from the *Re Gault* of 1967, which is that the due process clause of the Fourteenth Amendment is applied to both adults and juveniles (Shahidullah 2008).

With respect to substantive due process cases, as in *Atkins v. Virginia* 2002, the Supreme Court said that executing a mentally retarded juvenile is a violation of the Eighth Amendment of the constitution (cruel and unusual punishment). In *Roper v. Simmons* in 2005, as mentioned earlier, the court said that executing a juvenile below the age of 18 is also a violation of the Eighth Amendment. In *Graham v. Florida* in 2010, the court decided that the imposition of life in prison without parole for juveniles who committed non-homicide offenses is a violation of the Eighth Amendment. In 2012, in *Miller v. Alabama*, the court extended the *Graham* decision and held that a sentencing of life without parole for juveniles who committed homicide offenses is also a violation of the Eighth Amendment. In 2016, in *Montgomery v. Louisiana*, the court made another landmark ruling that those who are serving a sentencing of life in prison without parole for crimes they committed when they were juveniles can retroactively apply for release from the prison.

Many legal innovations in the arena of juvenile justice in the USA came also through a number of enactments by Congress in recent decades. One of the most important enactments is the JJDP (Juvenile Justice and Delinquency Prevention) Act of 1974 (amended and reauthorized in 2015). The Act not only created the federal organizational structure of juvenile justice but also made a law that mandated the creation of a separate system of juvenile justice in all 50 states. Each state was also mandated by the Act to create a state advisory commission to oversee the implementation of the JJDP Act of 1974 and other national juvenile justice policy directives. By the 1980s, the USA has completed the creation of a hugely interconnected system of national juvenile justice comprised of the Office of Juvenile Justice and Delinquency Prevention, the Coordinating Council on Juvenile Justice and Delinquency Prevention, National Institute for Juvenile Justice and Delinquency Prevention, departments of juvenile justice of the 50 states, and juvenile justice advisory commissions of the 50 states. One of the major legal innovations of the JJDP Act of 1974 is the creation of a set of core requirements for the

administration of juvenile justice. These core requirements which are the overarching guidelines for the administration of juvenile justice in the USA are: (1) deinstitutionalization of status offenders, (2) separation of juveniles from adult offenders, (3) adult jail and lockup removal, and (4) disproportionately minority conviction. The JJDP Act made it mandatory for all 50 states to comply with the core requirements for the administration of juvenile justice. "The separation mandate of the OJJDP Act required the states to completely separate—without any sight or sound contact—the juveniles in secure facilities from incarcerated adults. The jail and lockup mandate established the same general rule for juveniles in jails and detention centers" (Shahidullah 2008, p. 130). Another major innovation made by the JJDP Act of 1974 is the law that mandated the modernization of the collection of juvenile justice data and information. The USA is probably the only country in the world that keeps and organizes a huge system of juvenile justice data collected by such organizations as the Uniform Crime Reports, National Incidence-Based Reporting System, National Monitoring Survey, Federal Justice Statistics Program, National Clearing House on Child Abuse and Neglect Information, Bureau of Justice Statistics, Juvenile Justice Clearing House, and National Criminal Justice Reference Services (Shahidullah 2008, p. 130). The OJJDP's biannual report on Juvenile Offenders and Victims, mandated by Congress, is the reservoir of a huge amount of data on trends and transformation in juvenile justice in the USA. Many other legal innovations in juvenile justice have also been made by a series of congressional legislation enacted after the JJDP Act of 1974. Some of the most notables include the provisions for the drug-free school zone, mandatory reporting of suspected child abuse cases, and televised testimony by juveniles (Crime Control Act of 1990); prosecution of violent juveniles as adults, lawful access to juvenile records, and creation of juvenile drug courts (Violent Crime Control and Law Enforcement Act of 1994); restorative justice program and child abuse training for judicial personnel (21st Century Department of Justice Reauthorization Act), and mandatory collections of DNA from violent juvenile offenders (Advancing Justice Through the DNA Act of 2003).

During the last hundred years, the American model of juvenile justice has made many great institutional and legal innovations that firmly

established a separate system of juvenile justice and vastly protected the rights of the children. But during the last four decades of the dominance of the conservative and "get-tough" policy model in criminal justice, the juvenile justice philosophy of rehabilitation was largely attacked and violated, and in many cases the boundaries of juvenile and adult systems of justice remained completely blurred (Tonry 2006). During the forty years of the expansion of the get-tough strategy when more than 3000 new federal criminal laws were enacted, the US prison population grew from about 200,000 in 1973 to about 2.2 million in 2014. A report published by the US National Academy Press in 2014 found that the US rate of incarceration is 5–10 times higher than that of the countries of the EU and other advanced democracies (Travis et al. 2014). Both Congress and state legislatures made a series of laws during the last four decades that increased juvenile incarceration, imposed mandatory sentencing on juveniles, and sent thousands of juveniles to adult courts and prisons. One of the major philosophical component of juvenile justice is the confidentiality of juvenile courts records. During the era of the get-tough strategy, most of the states "have moved away from this philosophy and enacted legislations to make juvenile court hearings open to public, to provide more public access to juvenile court records, share juvenile records among different federal and state law enforcement agencies, and to limit the destruction of juvenile records" (Shahidullah 2008, p. 140).

From the beginning of twenty-first century, after forty years of the dominance of the justice model or the punishment model, the rehabilitative trend, however, seems to be coming back in the agenda for policy-making in juvenile justice in the USA. This trend began particularly after a new model described as "Smart on Crime" strategy came to the forefront of the agenda for policy-making in criminal justice during the Obama Presidency (2008–2016). The new model began to emphasize on limiting the application of federal criminal laws only for violent criminals, reforming the federal sentencing guidelines, removing sentencing disparities, reducing prison overcrowding by limiting incarcerations, alternative sentencing for low-level nonviolent offenders, increasing diversion programs, strengthening the reentry initiatives to reduce recidivism, and renewed emphasis on community policing.

In pursuing the new model of Smart Crime Policy, Congress enacted a number of legislation during the Obama Presidency such as the Mathew Shepard and James Byrd Jr. Hate Crimes Prevention Act of 2009, Fair Sentencing Act of 2010, and the Smart Sentencing Act of 2014. In 2016, President Obama made an Executive Order and banned solitary confinement of juveniles in federal jails and prison.

This trend of change from the punitive to rehabilitative model of juvenile justice is also observed in many recent legislative and juvenile court activities of the states. One of the major studies conducted on changing trends in juvenile justice in the USA in recent years finds that "The recent shift in juvenile justice policy marks a clear departure from laws enacted 20 years ago" (Brown 2015, p. 2). By 2015, "state after state continues to re-examine its policies and rebalance approaches to juvenile justice to produce more effective responses to youth crime and improve overall justice systems" (Brown 2015, p. 2). The juvenile justice policy-makers both within the federal government and the states have recently been reconsidering the core philosophical assumptions and strategies of juvenile justice including such measures as reduction in juvenile transfer to criminal courts, diversion, reform detention, expansion of community-based alternative sanctions, expansion of mental health treatment and counseling, strengthening of the public defense for the disadvantaged youth, responding to disproportionately minority youth convictions, and expanding the reentry and aftercare programs (Brown 2015). Nine states (California, Hawaii, Massachusetts, Nevada, Texas, Utah, Vermont, West Virginia, and Wyoming) have recently eliminated the provision of the juvenile sentencing of life without parole. Many states "have amended their transfer laws in recent years to give more discretion to the juvenile court to make sentencing decisions. Between 2011 and 2013, seven states—Arizona, Indiana, Nevada, Missouri, Ohio, Vermont and Wisconsin—limited their transfer and waiver criteria" (Brown 2015, p. 4). Juvenile judges in many states are being reinstructed "to take into account factors such as age, physical and mental health, and the possibility of rehabilitation when considering transfer" (Brown 2015, p. 5). During the last five years (2011–2015), the state juvenile justice policy-makers have created many laws "that address delinquency prevention and intervention; reform detention; divert nonviolent youth, including status

offenders, from the system; and realign fiscal resources from state institutions to evidence-based community alternatives" (Brown 2015, p. 6). Shackling and solitary confinement of juveniles have been legislatively banned in many states including Pennsylvania, South Carolina, Indiana, Nebraska, Utah, Washington, Connecticut, Maine, Nevada, Oklahoma, Texas, California, and Alaska.

The US Supreme Court, through a number of decisions made in recent years, has also been a major trendsetter in the movement of juvenile justice from the punitive to the rehabilitative model. The Court decisions, as mentioned earlier, in *Roper v. Simmons* in 2005 (executing a juvenile below the age of 18 is unconstitutional), *Graham v. Florida* in 2010 (the punishment of life in prison without parole for a non-homicide offense by a juvenile is unconstitutional), *Miller v. Alabama* in 2012 (the punishment of life in prison without parole for a homicide offense by a juvenile is unconstitutional), and *Montgomery v. Louisiana* in 2016 (*Miller v. Alabama* can be retroactively applied) have taken into consideration the basic philosophical issues of rehabilitation, corrections, mental health, the science of the teen brain, and the cultural standards of decency in terms of juvenile justice. In writing the majority opinion in *Montgomery v. Louisiana*, Justice Anthony Kennedy said that "children are constitutionally different from adults in terms of their level of culpability" and "children's diminished culpability and heightened capacity for change" bring doubts for a sentencing of life in prison without parole.

Globalization and the Global Movement forReforms in Juvenile Justice

The demand for reforms and modernization in juvenile justice has recently become a global movement. There is hardly any country or a region in the world today where there is no demand and policy discourse for reforms in juvenile justice. Some of the important forces behind this globalization of the movement for reforms in juvenile justice are the rise of the human development approach to development; the expansion of the human rights approach to development, particularly the United Nations CRC in 1989; and the rise in juvenile delinquency in all countries of the world, particularly

of the developing world. From the beginning of the 1990s, human development began to be emphasized as a model for social and economic growth. One of the key concepts in the human development approach is the enlargement of the choices and opportunities of people of all ages, genders, class, colors, and creeds. Development is defined not merely as a process of growth in the Gross National Product (GNP) but also as a process of the enlargement of the boundaries of human growth and opportunities (United Nations Development Program 2015). Two of the major human development indicators are equal justice and access to justice related to the notion of human freedom. The core notion is that development, governance, democracy, and modernization will not mean much without equal justice and access to justice. The access to justice is needed for both adults and children, but it is particularly significant for children. Access to justice for children means that they must have access to legal institutions and legal resources to protect their human rights (Child Rights International Network 2016). From the beginning of the 1990s, justice reforms, so, has begun to expand to all countries and regions of the developing world. During the last forty years, different international development organizations including the World Bank and the United Nations Development Program (UNDP) planned and implemented hundreds of technical assistance programs for justice reforms and justice development in developing countries. One of the core notions of the World Bank today is that justice matters for development. "Since the early 1990s, the World Bank has funded more than 30 major loan projects, valued at over $850 million, dedicated specifically to assisting developing countries in establishing efficient and effective justice systems. Hundreds of smaller justice improvement activities have been funded over the same period as components of Bank loan projects in many sectors" (The World Bank 2012, p. 1). The World bank defines that "reform projects are usually concerned with producing improvements in the performance of justice institutions, focused primarily on improving the performance of courts. Most of these projects have supported training for justice sector actors, not only in courts but also in specialist tribunals, ministries of justice, bar associations and legal aid entities" (World Bank 2012, p. 1). As an extension of human development approach and the notion of justice improvement as an integral part of

development, criminal justice reforms from the beginning of the 1990s began to be dominant on the agenda for development and reforms in governance in almost all developing countries of the world. This contributed to the expansion of the movement for reforms in juvenile justice in developing countries from the beginning of the twenty-first century.

The second impetus for the globalization of the movement for juvenile justice in recent decades came from the United Nations CRC in 1989. More than 193 countries of the world have ratified the CRC, and made commitments for reforms in juvenile justice. Different United Nations organizations such as the United Nations Children Fund (UNICEF), UNDP, and the United Nations Office on Drugs and Crime (UNODC) are the major factors that are forcing the agenda for reforms in juvenile justice in developing countries within the broader framework of the CRC. Article 37 and Article 40 of the CRC provided clear directions for reforming juvenile justice. Section A of Article 37 of the CRC noted: "No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age." Section B of Article 37 contained: "No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time." Article 40 of the CRC mandates that the due process rights of the children in conflict with the laws must be protected; they must be presumed innocent unless proven guilty; their right to have a legal representation must be guaranteed; they should not be tortured or coerced for confessions; they should not be forced to testify to the court; the confidentiality of juvenile records and court proceedings must be protected; and the rehabilitative approach to juvenile justice emphasizing diversion programs, alternative sanctions, mental health treatment, counseling, alternative methods of adjudication, and restorative justice should be at the center for reforms in juvenile justice. A series of directives on reforms in juvenile justice are also contained in the United Nations Standard Minimum Rules for the Administration of

Juvenile Justice (Beijing Rules of 1985), United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines of 1990), and United Nations Rules for the Protection of Juveniles Deprived of Their Liberty (Havana Rules of 1990). One of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, Beijing Rules of 1985, noted that "Juvenile justice shall be conceived as an integral part of the national development process of each country, within a comprehensive framework of social justice for all juveniles." The Beijing Rules clearly mandated the areas that are important for reforms in juvenile justice. "The presumption of innocence, the right to be notified of the charges, the right to remain silent, the right to counsel, the right to the presence of a parent or guardian, the right to confront and cross-examine witnesses and the right to appeal to a higher authority shall be guaranteed at all stages of proceedings." The Beijing Rules further asserted that juvenile proceedings "shall be conducive to the best interests of the juvenile and shall be conducted in an atmosphere of understanding, which shall allow the juvenile to participate therein and to express herself or himself freely." The United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines of 1990) and United Nations Rules for the Protection of Juveniles Deprived of Their Liberty (Havana Rules of 1990) equally mandated that a comprehensive reform in juvenile justice within the framework of the CRC and the general rehabilitative framework must be considered as an integral part of development. During the last three decades, the movement for reforms in juvenile justice, so, has spread to all countries of the world including the countries of North America and Europe. One of the major trends, particularly in the West, is to reexamine, after years of following the punishment model, the ideas and the institutions of the rehabilitative model of juvenile justice. This is evidenced in the USA, as mentioned before, by many legislations introduced in different states and congressional enactments of the Fair Sentencing Act of 2010 and Smart Sentencing Act of 2014. A renewed direction toward the rehabilitative paradigm of juvenile justice in Canada is evidence by the enactment of the Youth Criminal Justice Act of 2003. Research has shown that under the Youth Criminal Justice Act of 2003 in Canada, diversion practices in

juvenile justice are being increasingly used, custodial sentencings are decreasing, and the number of juveniles refereed to criminal courts has significantly dropped.

A similar movement for reforms in juvenile justice has been spreading in the 27 countries of the EU. Juvenile justice systems in the countries of the EU are very different from country to country, and many of those systems still largely work within the assumptions of the punishment model for the control and prevention of juvenile delinquency (Dunkel et al. 2010; Jehle et al. 2008; Junger and Decker 2008; Tonry and Dobb 2004). In 2010, the EU, on the basis of the CRC and the fundamental principles of the European Court of Human Rights, developed a new model described as "Child-Friendly Justice" for future reforms in juvenile justice in all 27 member states of the Union. Child-Friendly Justice is defined as a system of justice "that is accessible, age appropriate, speedy, diligent, adapted to and focused on the needs and rights of the child, respecting the rights of the child including the rights to due process, to participate in and to understand the proceedings, to respect for private and family life and to integrity and dignity" (Council of Europe 2010). There are 83 directives in the model for the member states to apply and implement in reforming juvenile justice, and these include the core rehabilitative principles of juvenile justice such as the protection of the children's due process of rights (the right to a fair trial, the right to legal advice, the right to access to courts, and the right to appeal); application of the doctrine of the best interest of the child; protection of the views, rights, and needs of the child during and after judicial proceedings; rights of the children to be informed about their rights; confidentiality of juvenile records; and emphasis on diversion, treatment, and reentry initiatives. One of the provisions of the model described that "Any form of deprivation of liberty of children should be a measure of last resort and be for the shortest appropriate period of time. When deprivation of liberty is imposed, children should, as a rule, be held separately from adults" (Council of Europe 2010). The movement for reforms in juvenile justice in Europe is not confined to the 27 countries of the EU. It is also spreading in the countries of Eastern Europe (United Nations Office on Drugs and Crime 2016). In one of its

surveys on the progress of juvenile justice in Eastern Europe and Central Asia, the United Nations Children Fund (2009a) observed that "there have indeed been important advances in the spirit of the UN Convention. The police forces been reorganized, and trained to cope more adequately with young offenders. Specialized juvenile courts or special youth section of criminal courts have been established and judges have been educated in handling juvenile cases" (p. 5).

The globalization of the movement for juvenile justice is being advanced by many international development assistance organizations and nongovernmental organizations. One of the important roles is being played by the Brussels-based nongovernmental organization described as International Juvenile Justice Observatory (IJJO). The mission of the IJJO, which has a consultative status with the United Nations and the European Council "is to bring an international and integral vision of juvenile justice in order to create a future for minors and young people all over the world who are in situations of exclusion leading to infringements of the law." The IJJO's global organizational structure working to spread of the global movement for reform in juvenile justice includes the International Council for Juvenile Justice, North American Council for Juvenile Justice, European Council for Juvenile Justice, Latin American Council for Juvenile Justice, African Council for Juvenile Justice, and Asia-Pacific Council for Juvenile Justice. These organizations mobilize the juvenile policy-makers, experts, judges, legislatures, and other human rights groups of these respective regions and advocate for the planning and implementation of the international rules and standards in juvenile justice (International Juvenile Justice Observatory 2015, 2014, 2012).

The global movement for reforms in juvenile justice has been spreading in recent decades also because of the rise of juvenile delinquency in all countries and regions of the world. Most regions of the developing world today have been experiencing dislocations in the lives of millions of children because of expanding poverty, the rise of the underclass, and what the World Bank called "messy urbanization." In almost all regions of the developing world today including South Asia, the number of deserted children, street children, slum children, school dropouts, children not attending primary schools, boy prostitutes, and girl prostitutes are growing at a faster rate. Along with children of the marginalized

urban underclass, the rise of the global crimes of drugs, trafficking, sex, prostitution, and pornography are also affecting the lives of the children from middle and upper-class families. Out of these growing segments of marginalized children and the children of upper and middle classes exposed drugs, pornography, and the dark side of the social media, juvenile delinquency is exploding in all regions of the developing world. The United Nations Children Fund (2015a) report on the State of the World's Children observed that "Too many children remain excluded from the progress of the past 25 years. The cost of these inequities is paid most immediately—and most tragically—by children themselves. But the long-term impact affects generations to come, undermining the strength of their societies" (United Nations Children Fund 2015a, p. 4). The rise of juvenile delinquency in China is a case in point. During the last three decades, urbanization and industrialization in China have grown at a rate faster than any other market economies of the world. According to a report from the Chines Academy of Sciences, about 55 percent of the Chinese today live in cities. It is projected that by 2025, about 926 million Chinese will live in China's 221 cities with more than one million people. One of the problems of this massive urbanization and urban migration in china, like many other African and Asian countries, is the rise in juvenile delinquency (BBC News 2007). The juvenile experts in China believe that "The number of young offenders has more than doubled in 10 years. The offenders were getting younger, forming large gangs and committing a greater variety of crimes. . . . The number of juvenile criminals had risen from 33,000 in 1998 to an estimated 80,000 in 2007" (The Economist 2013; BBC News 2007, p. 1). Until 2007, China did not have a separate system of juvenile courts and juvenile justice. In 2007, the Supreme People's Court of China, for the first time, began a pilot program in 18 locations of the country to establish separate courts for juveniles. The imperative for reforms and modernization in juvenile justice in the West came as a result of great transformations related to industrialization and urbanization in the nineteenth century. The different regions of the developing world have been experiencing the same historical predicaments in the wake of the expansion of globalization and the market economy from the late twentieth century.

Juvenile Crime in South Asia: Trends and Patterns

The movement for reforms and modernization in juvenile justice in South Asia began from the beginning of the 1990s particularly in the context of the CRC and the rising rate of juvenile delinquency in all countries of the region (United Nations Children Fund 2015b, 2007, 2006). As one report noted: "During the 1990s, all South Asian countries ratified the CRC and thus agreed to respect, protect and fulfil the human rights of all children—and to report achievements and gaps to the Committee on the Rights of the Child on regular intervals" (Save the Children and Plan International 2013, p. 8). Except Pakistan, all South Asian countries have also ratified the Optional Protocols on protecting children from commercial sexual exploitation and saving children from armed conflicts. From the beginning of the 1990s, juvenile justice and the issues of ending violence against children have remained in the forefront of the agenda for justice policy-making in the countries of South Asia under a number of initiatives taken by the South Asia Association for Regional Cooperation (SAARC). Particularly important was the creation, within the framework of the CRC and the SAARC, a regional body titled South Asian Initiative for Ending Violence Against Children (SAIVAC) in 2010.

Along with the CRC, the impetus for reforms in juvenile justice in South Asia came also from the region's rising rate of juvenile crime and violence. One of the reports on India, for example, found that between 2012 and 2014, there was about 30 percent rise in the number of juvenile offenders (Press Trust of India 2015, p. 1). According to the India's National Crime Records Bureau, "In the year 2012, 39,822 juveniles were apprehended whereas in 2013, the number increased to 43,506 and further increased to 48,230 in 2014" (Press Trust of India 2015, p. 1). It is also observed that more juveniles are committing heinous violent crimes. Data from the National Crime Records Bureau show that from 2002 to 2012, there has been a 143 percent increase in the number of rapes by juveniles. In the same period, figures of murders committed by minors "went up by 87 percent while there

has been a whopping 500 percent increase in the number of kidnappings of women and girls by minors" (Bhatt 2013, p. 1). Data from the National Crime Records Bureau also show that "There has been a 132 per cent rise in incidents of crime committed by juveniles against women in 2013 over the previous year" (Z-News 2014, p. 1). According to data presented by India's Women and Child Development Minister, "50% all sexual crimes are committed by 16-year-olds." (Choudhury 2015, p. 1; Jain 2014). Data from the National Crime Records Bureau also show that "the number of rapes committed by juveniles showed a 60% increase in 2013, compared to 2012. The number of rapes committed by juveniles in 2013 was 2,074, compared to 1,316 in the previous year" (Jain 2014, p. 1). One child rights activist explained that these juvenile delinquents come mostly from broken homes where "Often there is no father, so the kids become school dropouts and their mother is at work whole day trying to make ends meet and what does the child do? They run errands for drug addicts for bootlegging, petty theft, selling stuff procured through theft. This is the training ground" (Bhatt 2013, p. 1).

Juvenile delinquency of different kinds is also growing in Pakistan and Bangladesh. Pakistan and Bangladesh do not have any nationally centralized data bank for collecting, organizing, and disseminating crime and juvenile delinquency information. There is, therefore, no reliable set of data from the governments of Pakistan and Bangladesh for the assessment of national crime trends and patterns, particularly in juvenile delinquency. In Pakistan, some crime data are recorded by the Pakistan Bureau of Statistics on the basis of information from the Bureau of Police Research and Development of the Ministry of Interior. The Bureau of Statistics classify crimes into eight major categories: murder, attempted murder, kidnapping and abduction, child lifting, dacoity, Robbery, Burglary, and Cattle theft. The trends and patterns of juvenile delinquency are not available from this classification of crimes recorded by the Pakistan Bureau of Statistics. In Bangladesh, some crimes are recorded by the Bangladesh Police, but there is no nationally organized system of crime survey for assessing national trends and patterns in crime, particularly in juvenile

delinquency. Bangladesh Police records monthly and yearly crime statistics in terms of ten major categories: decoity, robbery, murder, speedy trial, riot, women and child repression, police assault, burglary and theft, possession of explosives and narcotics, and smuggling. Some national trends and patterns in these categories of crime can be assessed, but there is still no reliable data on juvenile delinquency on crime statistics gathered and recorded by the Bangladesh Police. In 2006, the UNODC and the UNICEF, came up, in the context of the implementation of CRC, with a global set of indicators for reforms in juvenile justice in a publication titled *Manual for the Measurement of Juvenile Justice Indicators* (UNODC and the United Nations Children Fund 2006). The Manual noted that "An indicator provides a common way of measuring and presenting information that reveals whether standards are being met" (p. 2). The Manual described that there are 15 indicators of juvenile justice that have to be implemented to develop a system of juvenile justice comparable to international standards. Three of the core indicators for assessing national trends and patterns in juvenile delinquency are (1) number of children arrested during a 12-month period per 100,000 child population; (2) number of children in detention per 100,000 child population; and (3) number of children in pre-sentence detention per 100,000 child population (p. 5). In existing efforts for reforms in juvenile justice in South Asia in general, development of these and other global indicators by creating nationally organized systems of surveys for the assessment of trends and patterns in juvenile offending and victimization and the functioning of the juvenile justice system has remained considerably neglected. In India, the National Crime Records Bureau provides some information about juvenile offending but it is not a national survey on the functioning of the juvenile justice system in India. The United Nations Manual rightly observed that "When government officials and the institutions making up the juvenile justice system do not have information either about the functioning of the system or the children who are in contact with it, abuse, violence and exploitation can occur with impunity, and the experience of the child is unlikely to be in his or her best interests" (UNODC and the United Nations Children Fund 2006, p. 2).

Some amount of data on juvenile justice and juvenile delinquency in Pakistan and Bangladesh, however, are available from the surveys and research conducted by international assistance organizations such as the UNICEF and the UNODC, and regional and local nongovernmental organizations such as Save the Children, The World Consortium for Street Children, Human Rights Watch (New York), Penal Reform International, Child Rights International Network, Sahil in Pakistan, and Shishu Adhikar Forum in Bangladesh. A 2012 study on delinquency among the street children in Karachi, for example, found that delinquency among the street children was growing. "There are 87% SC [street children] who are using a variety of substances while 42.2% prefers Glue Sniffing. It is very difficult to survive alone on the street, so 88% SC lives in gangs. Among different gangs, 82.8% of SC have physical conflicts with each other or with other gangs. The possession of place is the commonest reason in 41% SC for gang conflict" (Ahmad et al. 2012, p. 145). A 2010 study on delinquency in the province of Sindh in Pakistan noted that the province is facing a high rate of delinquency and local jails and detention facilities are inadequate "to humanely accommodate them . . . for rehabilitation" (Malik and Shirazi 2010, p. 43). Juvenile crimes in Pakistan, like India, are also becoming increasingly violent. One study, based on an empirical analysis of 221 convicted juveniles in eight jails of the province of Punjab shows that 70.6 percent were convicted for murders, and 14.5 percent were convicted of rape and abduction in comparison to 4.5 for theft and kidnapping, 2.3 percent for narcotic possession, and 2.7 percent for smuggling and criminal assault (Mahmood and Cheema 2004, p. 137). Similar results on violent juvenile crimes were reported by another study of 90 convicted juveniles in Borstal Jail, Faisalabad, Pakistan. The study found that "out of 99 juveniles, 41.1 percent were convicted of murder, 14.4 percent for violence, 13.3 percent for dacoity, 7.8 percent for robbery, and 4.4 percent for kidnapping. Out of the 99 juveniles who committed these violent crimes, 91.1 percent were in the age group of 13–18" (Batool, Zafar and Hashmi, 2009, pp. 102–103). A 2015 report on Juveniles on Pakistan's Death Row produced by the Justice Project Pakistan and Reprieve (2015) claimed that "a large proportion of the 8,261 prisoners on Pakistan's death row may well have been juveniles at

the time of the offense for which they were sentenced to death. Using the more conservative 10% statistic, there could be an estimated 826 individuals on Pakistan's death row who were sentenced to death as children" (p. 4) and all of them were convicted of violent crimes.

Like India and Pakistan, juvenile delinquency is also on the rise in Bangladesh. Bangladesh has about 60 million children (2015 estimate) but as the United Nations Children Fund (2016) observed "In the absence of a proper functioning juvenile system, no accurate statistical information is available on the actual number of children in conflict with the law Bangladesh" (p. 1). A 2008 study (Hoque 2008) titled *Under-Aged Prison Inmates in Bangladesh: A Sample Situation of Youthful Offenders in Greater Dhaka* noted that in Bangladesh "with the advancement of industrialization and urbanization, juvenile delinquency is increasing" (p. 10). The study found that in 1996, a total of 44 juvenile crimes reported to law enforcement in the Metropolitan City of Dhaka. In 2008, the total number of juvenile crimes reported increased to 430. The study also observed that out of 144 under-aged inmates interviewed, 22.9 percent were convicted for theft, 18.05 were convicted for murder, 13.9 percent for the possession of narcotics, 12.11 percent for women and child repression, and 10.14 percent for the possession of arms and explosives (p. 38). One of the unique characteristics of juvenile crime in Bangladesh is that a considerable number of juveniles in urban areas commit crimes and delinquency during the time of political violence joining political processions, meetings, and picketing. The above study found that out of 144 juvenile inmates interviewed, 28.45 percent had some forms of connections in fueling political violence.

One of the expanding spheres of juvenile delinquency in Bangladesh in recent years, like many other countries including the USA, is what is locally described as "eve-teasing"—sexual harassment and sexual bullying of women and girls in public places (Shohel et al. 2014; United Nations Children Fund 2010). The United Nations Children Fund of Bangladesh (2010) described that "Eve teasing" has "become an often brutal form of sexual harassment that can result in permanent physical and psychological damage and profoundly alter the course of a girl's life. The harassment manifests itself in different ways, ranging from verbal abuse and sexual innuendo to abduction, acid-throwing and rape" (p. 1).

A study of 1000 eve teasing victims of 10–15 years of age, conducted by the Bangladesh National Woman Lawyers' Association (BNWLA) in 2010 "found that 91 percent of Bangladesh's women and girls are victims of sexual harassment at some point in their lives, and 87 percent of girls ages 10–18 years have been victims of eve-teasing and sexual harassment" (as quoted in Bakker 2013, p. 6), The study also observed that "60% women are eve-teased by mobile miss call and sexy massages. Some are adversely affected by internet pornography and the percentage of this group is 10.8%" (Hoque 2013, p. 2). A study conducted by a local Human Rights nongovernmental organization Adhikar in 2010 observed that "25 women and a father of a victim committed suicide and 10 women were saved from the attempts of suicide. 7 women and 14 men were also killed in stalking related incidents" (as quoted in Hoque 2013, p. 5). A similar study conducted by Odhikar in 2011 "shows that 29 girls committed suicide in 2011 because of Eve teasing" (as quoted in Hoque 2013, p. 5). A significant proportion of the eve-teasers are juveniles aged between 14 and 18.

Another growing problem in Bangladesh is the juvenile use of illicit drugs and narcotics. A recent report produced by the Bangladesh Shishu Adhikar Forum (2012), with support from the European Commission and the Government of the Netherlands, noted that in Bangladesh "children are gradually becoming involved with drugs every day" (p. 31). The report further observed that "children sometimes come in contact with drugs while they work at cigarette and bidi manufacturing factories" (p. 31.) It is estimated that there are about 6 million drug addicts in Bangladesh and they use about TK 700 million every day on drugs and narcotics (Mukul 2015, p, 1). A considerable portion of these addicts, drug dealers and suppliers are juveniles. "A trend of consuming drugs is higher in youth and teenagers . . . students are the most victims of drug abuse" (Mukul 2015, p, 2). A study conducted by the *Journal of Health, Population and Nutrition* of the International Center for Diarrheal Disease Research Center in Bangladesh found "that 64.8 percent drug users in the country are unmarried, while 56.1 percent either students or unemployed" (as quoted in Mukul 2015, p. 2). In 2002, the National Assessment of Situation and Responses to Opioid/Opiate use in Bangladesh (NASROB) conducted a survey on drug abuse in the 24 districts of Bangladesh. According to this

study, drug addicts and drug injectors were found in most districts. "Ten percent of all drug users who reported ever having smoked heroin started doing so at the age of 17 or earlier. Three percent of all injectors started injecting before the age of 18 years" (as quoted in United Nations Office on Drugs and Crime 2005, p. 13).

The urban slums in Bangladesh are also the hot spots of much juvenile crime and violence. Out of Bangladesh's 35 million urban population (24 percent of the total population), about 60 percent live in slums—the highest in South Asia. The population of urban slums comprises about 29 percent of the urban population in India, and 47 percent in Pakistan (Tribune Report 2014). According to a study by the Center for Environmental and Geographic Information Services (2015), there are about 15.5 million people in the five major cities of Bangladesh (Dhaka, Chittagong, Khulna, Rajshahi, Sylhet, and Barisal). Out of this 15.5 million people, 5.4 million live in 1 million slum households. Between 1996 and 2005, the total population living in the slums of Dhaka doubled. Different forms of juvenile crime and violence are committed by many of the children growing up in these slums. As one report revealed, "Dhaka's illegal slums have become a haven for crimes including extortion, drug supply, mugging, and child trafficking" (Khan 2013, p. 1). One of the empirical studies conducted in 2013 on juvenile crime and delinquency in one of the major slums in the city of Dhaka (Rayer Bazar slum) found that children of this slum were engaged in theft, mugging, robbery, rape, murder, drug dealing, human trafficking, gang activities, and sexual harassment. In the area of drug crimes, 86.6 percent of the people responded that they saw slum children selling marijuana, 31.6 percent saw children selling phensidyl, and 30 percent saw children selling yaba (methamphetamine). In the area of violent crimes, 85 percent of the people responded that they saw children engaged in violent crime and assault using weapons (Department of Sociology 2013). Similar trends and patterns of juvenile crime and violence are observed among the street children. It estimated that there are about 500,000 to 2 million street children in Bangladesh (Ali et al. 2012). In the city of Dhaka alone, there are about 680,000 street children. About 80 percent of the street children are boys, and about half of the street children are below the age of 10. A significant proportion of street children who are between 12 and 18 are engaged in theft, mugging,

robbery, drug crime, prostitution, pornography, and many other innovative forms of street crimes. The crimes of the street children are sometimes done in collaboration with adult and habitual offenders of the cities. A report produced by the United Nations Children Fund (2009b) on street children in Bangladesh observed that "Extensive criminal networks make substantial profits by engaging children in commercial sex work, smuggling, stealing, and the distribution of drugs and weapons" (p. 2).

All the three countries of South Asia—India, Pakistan, and Bangladesh—are facing some similar predicaments such as massy urbanization, rapid international migration, widening poverty, large urban underclass, massive growth of urban slums, explosive growth of street children (particularly in Pakistan and Bangladesh), arrival of global illicit drugs, high rates of children not attending schools (5.6 million children in Bangladesh, 24.4 million children in India, and 9.2 million children in Pakistan are not attending schools), and the rise of the information revolution. These social and economic forces have deeply affected the lives of millions of children who are becoming increasingly marginalized and completely separated from the mainstream economic dynamics of these societies. Juvenile crime and violence, so, are rapidly increasing and the boundaries of juvenile and adult crime and violence are increasingly becoming blurred. The new information revolution and the arrival of illicit drugs are also bringing a significant portion of juveniles from the middle and upper-class families of these countries into a new life of sex, drugs, and pornography. It is within these and other challenges associated primarily with globalization that policymakers in these countries are embarking on reforms and modernization in juvenile justice.

Reforms and Modernization of Juvenile Justicein India: Law and Legal Advances

Many significant reforms in juvenile justice have been introduced in South Asia in recent years by creating separate legislation for the juveniles in conflict with the law, establishing separate courts and judicial procedures for the juveniles, setting up special police units for the juveniles, making provisions for specialized procedures for the arrest of

the juveniles, making provisions for separating juveniles from adults in prisons and detention centers, and creating specialized requirements for the sentencing of the juveniles. But "as yet no country in the region," as the United Nations Children Fund (2006) observed, "has fully implemented a separate and distinct juvenile justice system to ensure that children in conflict with the law are treated in a manner substantially different than adults at all stages of the proceedings" (p. i). The same concerns have been echoed by a study produced by Save the Children and Plan International in 2013. The study concluded that in South Asia "much has been achieved in relation to aligning the national legal and policy framework with child-related-international standards. Domestic legislation in South Asia has especially in recent years, incorporated key aspects of the CRC. . . . However, despite laudable government vision enshrined in laws, policies, and institutions, the mechanisms of implementation have not always been effective" (p. 10).

In India, like the USA, juvenile justice is primarily a responsibility of the state governments and Union Territories (There are 29 states and 7 Union Territories in India). Policy-making for juvenile justice in India is based on two basic legal frameworks—the India Penal Code of 1860 introduced by the British colonial government and the Code of Criminal Procedure of 1973 built on the Code of Criminal Procedure of 1898. All of the Juvenile Justice legislations enacted in India during the last decade were built on the criminal justice foundation created by the India Penal Code of 1860 and the Code of Criminal Procedure of 1973. Historically, the birth of a separate system of juvenile justice in India can be traced back to the Apprentice Act enacted by the British colonial government in 1850. More legislations were created in the early twentieth century—around the same time when juvenile justice as a separate system was born in the USA. Some of the examples are the Madras Children Act of 1920 and the Bengal and Bombay Children Act of 1922. The first juvenile court was created in Bombay in 1927. The Government of India enacted the first juvenile justice legislation—the Children Act—in 1960. Under the Children Act of 1960, the juvenile courts were responsible for dealing with both delinquent children and neglected children. The Children Act of 1960 was amended in 1986 by enacting the Juvenile Justice Act (JJA) of 1986. The structure

of a separate system of juvenile justice in India began to be formally built and expanded with the enactment of the JJA of 1986. The JJA was also the beginning of aligning juvenile justice laws and principles of India to international standards (Bhatia 2012). The JJA of 1986 came after the adoption of the United Nations Standard Minimum Rules for the Administration of Justice in 1985. One of the novelties of the JJA of 1986 was that it made a legal separation between delinquent juveniles and neglected juveniles (Childline India Foundation 2006, p. 15). Under the JJA of 1986, juvenile courts were given the responsibility for dealing only with the juveniles who are in conflict with the law. "Juvenile courts under the JJA 1986, were supposed to consist of a Bench of Magistrates . . . two or more Magistrates, one of whom was to be designated as a Principal Magistrate. But in most cases, a single Magistrate constituted the juvenile court" (Childline India Foundation 2006, p. 36). The JJA of 1986 made a provision for the creation of separate Juvenile Justice Boards to deal with children who are in need for care and protection.

The JJA of 1986 was amended in 2000 by enacting the Juvenile Justice (Care and Protection of Children) Act of 2000. The Act of 2000 was the primary legal framework of juvenile justice in India for the last fifteen years. The Act of 2000 for the first time defined a juvenile who is below the age of 18, and widened the definition of the legal separation between "children in conflict with the law" and "children in need of care and protection." The legal philosophy behind the JJA of 2000 was that "juvenile lack the physical and mental maturity to take responsibility for their crimes, and because their character is not fully developed, they still have the possibility of being rehabilitated" (Bhatia 2012, p. 4). The structure of a separate system of juvenile justice in India began to further expand after the enactment of the JJA of 2000 (amended in 2006). Structurally, the Act of 2000 expanded the creation of juvenile courts, Juvenile Justice Boards, special juvenile police units, juvenile observation homes, special juvenile homes, and special juvenile shelter homes in each and every district of the country (The Government of India 2000). The JJA of 2000 gave Juvenile Boards the power "to deal exclusively with all proceedings . . . relating to juvenile in conflict with law." The Act also made a series of procedural

innovations in line with the international standards of juvenile justice. The Act made it mandatory for the juvenile courts and the Juvenile Justice Boards that the juveniles in conflict with the law are "treated differently as they are less culpable and less capable of looking after themselves" (Childline India Foundation 2006, p. 24). The procedures for governing juvenile justice, the Act mandated, should be applied "irrespective of the offenses they committed" (Childline India Foundation 2006, p. 26). The primary goal of treating juveniles separately within the juvenile courts and the juvenile Justice Boards, the Act claimed, is that juvenile cases require a "socio-legal approach" (Childline India Foundation 2006, p. 36) for reformation and rehabilitation (The Government of India 2000).

The JJA of 2000 was replaced by the Juvenile Justice (Care and Protection) Act in 2015. The Juvenile Justice (Care and Protection of Children) Act of 2015 is presently the primary legal framework for the administration of juvenile justice in India. It is clearly stated in the new law that it has taken into consideration of the "standards prescribed in the Convention on the Rights of the Child, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (the Beijing Rules) and other related international instruments" (The Government of India 2016, p. 2). The new law addressed and expanded two major areas related to juvenile justice: (i) apprehension, detention, prosecution, penalty or imprisonment, rehabilitation and social reintegration of children in conflict with law; and (ii) procedures and decisions or orders relating to rehabilitation, adoption, re-integration, and restoration of children in need of care and protection. The law divided juvenile crimes into three categories: petty offenses, serious crimes, and heinous crimes. Some of the general principles for governing juvenile justice included in the law are: the principle of the due process of law, the principle of the best interest of the child, the principle of the presumption of innocence, the principle of equality and nondiscrimination, the principle of the right to privacy and confidentiality, the principle of repatriation (right to be reunited with the family) and restoration (reentry), the principle of participation (right of the children to participate in all processes and decisions), and the principle of institutionalization as the last resort (The Government of India 2016).

About the confidentiality of juvenile records, the law stated that "No report in any newspaper, magazine, news-sheet or audio-visual media or other forms of communication regarding any inquiry or investigation or judicial procedure, shall disclose the name, address or school or any other particular, which may lead to the identification of a child in conflict with law." The new law defined a juvenile who is below the age of 18 and a "child in conflict with law" means a child "who is alleged or found to have committed an offence and who has not completed eighteen years of age on the date of commission of such offence" (The Government of India 2016, p. 3). The Act of 2015 clearly noted that "juveniles who are not treated as adults and who are sentenced to prison for serious crimes should be sent to a place of safety till [they] attain the age of twenty-one years and thereafter, [they] shall be transferred to a jail" (The Government of India 2016, p. 15). The Act further stated that "reformative services including educational services, skill development, alternative therapy such as counseling, behavior modification therapy, and psychiatric support shall be provided to the child during the period of his stay in the place of safety" (p. 15). The Act made juvenile courts responsible for overseeing the implementation of the rehabilitative services for the juveniles placed in safe homes (The Government of India 2006). The juvenile courts are defined as those courts that are "established under the Commissions for Protection of Child Rights Act, 2005 or a Special Court under the Protection of Children from Sexual Offences Act, 2012" (The Government of India 2016, p. 4). One of the more notable features of the JJA of 2015 is that it abolished the punishments of the juvenile death penalty and mandatory life in prison without parole. The new law stated that "No child in conflict with law shall be sentenced to death or to life imprisonment without the possibility of release, for any such offence, either under the provisions of this Act or under the provisions of the Indian Penal Code or any other law for the time being in force" (The Government of India 2016, 15). The new law, however, made a provision that juveniles who commit heinous crimes (i.e., rape and murder) and who are between 16 and 18 years of age can be tried as adults on the basis of the psychiatric evaluation and recommendation of the Juvenile Justice Board (The Government of India 2016, p. 13). It is believed that this amendment to the Juvenile

Justice (Care and Protection of Children) Act of 2015 about treating juveniles committing heinous crimes as adults were passed in the context particularly of the gang rape and murder of a woman in Delhi in 2012 where one of the accomplices was a juvenile below the age of 17. The juvenile who was involved in the rape and murder received a sentencing of three years in prison.

Reforms and Modernization of Juvenile Justice in Pakistan:Law and Legal Advances

Pakistan's federal system of government is comprised of four provinces—Punjab, Sindh, Balochistan, and Khyber Pakhtunkhwa. Juvenile justice is primarily the responsibility of these provinces. Historically, legislative efforts for juvenile justice in Pakistan began in the provinces through such enactments as the Punjab Borstal Act of 1926, Sindh Children Act of 1955, Sindh Borstal School Act of 1955 (The idea of borstal school as youth detention centers originally came from England. It was introduced in England in the late nineteenth century to establish separate centers of detention for the juveniles), Punjab Children Ordinance of 1983, and Punjab Youthful Offenders Ordinance of 1983. Until the year 2000, the federal government of Pakistan did not have any national juvenile justice legislation. Along with the above provincial enactments, Juvenile justice in Pakistan is still governed primarily on the basis of the India Penal Code of 1860 and the Code of the Criminal Procedure of 1898. In 2000, Pakistan for the first time, through a Presidential decree, introduced the Juvenile Justice System Ordinance (JJSO) of 2000. The JJSO made some notable legislative innovations. It defined a juvenile, in conformity with the CRC, as a child who is below the age of 18; made provisions for the creation of separate juvenile courts in all four provinces of the country; made it mandatory for all juvenile courts to provide legal assistance to juveniles in conflict with the law; made it mandatory to protect the confidentiality of juvenile court records; and created provisions for juvenile probation officers, parental notification of arrested juveniles, and juvenile release on bail and probation. It also made a provision of producing a juvenile who commits a non-bailable offense before a juvenile court within

24 hours. The JJSO prohibited the punishment of death penalty for juveniles below the age of 18.

The impacts of the JJSO for the creation of a separate and a functioning system of juvenile justice in Pakistan, however, remained very controversial. Research has shown that Pakistan is far from the mandates of the CRC and the philosophy and the architecture of juvenile justice enshrined in the Beijing Rules of 1985, Riyadh Guidelines of 1990, and the Havana Rules of 1990. In 2005, a full bench of the Lahore Court in Punjab declared the JJSO as "unreasonable, unconstitutional, and impracticable." The Lahore Court was of the opinion that "it was not possible to change the socio-legal culture of Pakistan with one quantum jump" (Sial 2016, p. 3). The Court said that lenient juvenile sentencing will increase juvenile crime, and the juvenile death penalty is a deterrent. The Court also said that the JJSO was not enacted by an elected parliament of the country. After it was struck down by the Lahore Court, JJSO remained completely ineffective. The different provinces of Pakistan have many child rights laws and child protection commissions, and the central government has a National Commission for Children but they do not constitute a separate system of juvenile justice.

One of the most reliable sources of data and information on the state of the children and the profile of juvenile justice in Pakistan is a report titled *State of Children in Pakistan* produced in 2015 in collaboration with Pakistan's National Commission for Children and the United Nation Children Fund in Pakistan. (Shujaat and Mirza 2015). This report observed that there are no special courts and no functioning special juvenile correctional centers in the provinces of Pakistan. In the province of Punjab which has the highest number of juvenile offenders, "There are no exclusive courts for juvenile offenders. The chief justice of the LHC [Lahore High Court] notified courts of sessions and all judicial magistrates of the first class as juvenile courts. These courts are functioning jointly as juvenile courts and are taking up other criminal cases also" (p. 159). There are 32 jails in Punjab, and only two of them are Borstal jails. In the province of Sindh which also has a large number of juvenile offenders, the report observed that "The Juvenile Justice System is not being implemented in letter and spirit. There is no functional panel of lawyers, no exclusive juvenile courts, and no allocations for these

provisions given in the JJSO. Most of the legal support for juveniles comes through civil society support" (p. 195). In the province of Balochistan, "the situation of children who come in conflict with the law is no different . . . as in other parts of the country. There is no borstal institute in the whole of Balochistan. . . . Children are trialed in the same courts as adults in the absence of exclusive juvenile courts. . . . Juveniles are transported to the courts in the same prison vans in which other criminals are transported" (p. 86). The report found a similar state of juvenile justice in the province of Khyber Pakhtunkhwa. "Despite the JJSO and the Khyber Pakhtunkhwa Child Protection & Welfare Act, 2010 which provide for exclusive juvenile courts, children are tried alongside adults without appropriate protection" (p. 125). There are also "no separate and exclusive Juvenile courts for children in Islamabad" (p. 220). The governance of the system of juvenile justice in Pakistan is also not based on the doctrine of the "best interest of the child." "There is little evidence," the above report observed, "that the principle of best interest is a primary consideration for the government or whether the principle is well understood by all professionals, particularly those who are directly working with and for children" (p. 57). In contrary to the principles of the CRC and the Beijing Rules of 1990, juvenile justice in Pakistan is also not based on the doctrine of the presumption of innocence. As the above report noted: "In Pakistan, child offenders are not innocent until proven guilty but vice versa. This attitude results in denial of their very basic human and child rights such as education, healthcare, kindness, compassion, and care, rehabilitation and reformation. They are excluded and isolated" (p. 126).

The issues of juvenile justice in Pakistan is more complex also because of the introduction of the Sharia Law and Islamic criminal justice by promulgating the Hudud Ordnances in 1979. Along with the modern judiciary, Pakistan also has a Federal Shariat judiciary comprised of a Federal Shariat Court and Shariat lower courts in different provinces of Pakistan. According to Shari Law, there are three different types of crimes: Hudud crimes (i.e., rape and incest), Qisas crimes (i.e., murder and physical assaults), and Tazir crimes (statutory crimes). The punishments for Hudud crimes and Qisas crime are defined by the Quran, and, hence, they are not changeable

(Shahidullah 2014). The Sharia Law defines a juvenile who has attained age of puberty, and death penalty is the Quranic punishment for rape, incest, and murder. The Sharia Law is incompatible with the principles of the CRC, and the Being Rules of 1985, Riyadh Guidelines of 1990, and the Havana Rules of 1990. The provisions of the Hudud Ordinances that are incompatible with the CRC, the Human Rights Watch (1999) noted, are the "establishment of disparate and subjective standards of majority for children according to sex; the inclusion of discriminatory provisions regarding the evidentiary value of testimony by girls and adult women; and the stipulation of whipping, amputation, and death by stoning as forms of punishment" (p. 10). Pakistan also apply the provision of trying juveniles in anti-terrorism courts created by the Anti-Terrorism Act of 1997. The anti-terrorism courts "denies accused persons' fundamental due process guarantees" (Human Rights Watch 1999, p. 10). The JSO of 2000 defined a juvenile who is below the age 18, but, under section 82 of Pakistan Penal Code (i.e., India Penal Code of 1860), the minimum age of criminal responsibility in Pakistan is still 7 which is contrary to the principles of the United Nations CRC.

Reforms and Modernization of Juvenile Justice in Bangladesh:Law and Legal Advances

Bangladesh has two major legislation related to juvenile justice, the Children Act of 1974 and the Children Act of 2013 (United Nations Children Fund 2016). The Children Act of 1974 was repealed after the enactment of the Children Act of 2013. The Children Act of 2013 was enacted primarily to harmonize the laws and rules of juvenile justice with those of the United Nations CRC (Ali 2010). Accordingly, a juvenile is defined as a child who is below the age of 18 (Article 1 of the CRC), and the age of minimum criminal responsibility was changed from 7 to 9. The new law made provisions to create a national system juvenile justice by establishing Child Welfare Boards, juvenile courts, juvenile helpdesks, and juvenile probation officers in all districts and sub-districts (upzilla) of the country. A provision was also made for a National

Child Welfare Board under the Ministry of Social Welfare with the responsibility "to monitor, coordinate, review and evaluate the activities of the Child Development Centers and of certified institutes. It has a responsibility to provide guidelines regarding rehabilitation and reintegration" (Ali 2014, p. 3). One of the most significant provisions of the Children Act of 2013 is about the creation of juvenile courts in all districts and sub-districts including the metropolitan areas of the country. "The new law provides that, for the purpose of the Act and for the trial of offenses thereunder, at least one court is to be established in every district headquarter and in every metropolitan area as the case may be. Such court shall be called Children's Court" (Ali 2014, p. 8). The new law also mandated (Section 17) that "where a child in conflict with the law or a child in contact with the law is involved under any law whatsoever, the Children's Court shall have the exclusive jurisdiction to try that case" (Ali 2014, p. 8). The Children Courts were given the power "of a Court of Sessions under the Code of Criminal Procedure; powers of a Civil Court in respect of service of summons, summoning witness and ensuring their attendance, production of documents or materials and receiving evidence on oath" (Ali 2014, p. 9). The new law also made a provision that children courts and criminal courts for adults should be completely separated. The children courts were also made responsible for using nondiscriminatory and non-threating language and providing legal assistance and witness protection. Section 36 of the new law described that "Apart from the terminologies used in this Act, when passing any order the court may not use the terms 'offender,' 'convicted' or 'sentenced' in relation to children" (Ali 2014, p. 16). The new law also made it mandatory that children courts consider and examine the mitigating circumstance before reaching a verdict such as age and gender, mental health conditions, educational attainment, social and economic background, ethnicity (Article 30 of the CRC), family background, and opinion of the children. The probation officers are made responsible for producing a confidential social inquiry report to the children courts describing the mitigating circumstances of a child in conflict with the law within 21 days from the date of his or her apprehension. In addition to laying out the structural components of juvenile justice, the Bangladesh Children Act of 2013 also introduced a

number of procedural developments related to the due process of law (Article 4 of the CRC). The new law made provisions also for diversion, victim compensation, victim-offender mediation, and restorative justice. About juvenile participation in the trial, for example, "Act provides that to participate in person at all stages of the trial shall be considered as a right of the child" (Ali 2014, p. 10). On the issue of diversion, the law clearly stated that "diversionary measures may be applied for a child in conflict with the law at any time after his arrest and during any stage of the trial upon consideration of his familial, social, cultural, financial, ethnic, psychological and educational background" (Ali 2014, p. 20). About confidentiality of juvenile trial and records, the law made a provision that on the basis of the principle of the best interest of the child in conflict with the law, the children courts must "ensure the safety and confidentiality of the child and . . . maintain secrecy of all information regarding the child . . . so that the child's identity may not be disclosed" (Ali 2014, p. 23). The new law also integrated the concept of alternative care for children in conflict with the law and put a ban on the juvenile death penalty and the punishment of life without parole for juveniles. It was also mandated by the law that incarcerated juveniles are kept completely separated from adult prisoners (Section 33). One of the important innovation in the Children Act of 2013 is about the expungement of juvenile criminal records and the removal disqualification upon conviction (Section 43). The law stated that guilty finding and the conviction records of a juvenile "shall not cause him [or her] to be disqualified when applying for employment in any government or non-government office or when contesting in any election" (Ali 2014, p. 18).

Conclusion

A modern system of juvenile justice legally and institutional separated from the adult system of justice was first born in the USA in the late nineteenth century, and then it spread to Canada and Europe in the first half of the twentieth century. The American model evolved on the basis of the philosophical principles of the *parens patrie*, the best interest of the child, the

presumption of innocence, the spirit of rehabilitation, the due process of rights, and the scientific understanding of the specificities in the evolution of teen brains and behavior. Having experimented with a get-tough strategy for almost three decades from the beginning of 1970s, the American juvenile justice system is presently exploring a balance between juvenile accountability and rehabilitation. The system is moving more toward diversion, alternative sentencing, restorative justice, offender-victim mediation, treatment, and rehabilitation. The US Supreme Court has banned death penalty for juveniles below the age of 18 (*Roper v. Simmons, 2005*), and declared life in prison without parole for committing both homicide and non-homicide offenses by juveniles as unconstitutional (*Graham v. Florida and Miller v. Alabama, 2012*). It is largely this American model of juvenile justice that is now in a process of globalization, particularly under the human rights framework of the United Nations CRC of 1989, United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules of 1985), United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines of 1990), and United Nations Rules for the Protection of Juveniles Deprived of Their Liberty (Havana Rules of 1990). More than 195 countries of the world are the signatures of the CRC and all of them have embarked on plans for reforms and modernization in juvenile justice. The European Commission has come up with a new model of child-friendly justice—a concept that is now spreading across the world as a model for designing juvenile justice. It is from these perspectives of the American model of juvenile justice, the United Nations CRC, and the European model of child-friendly justice that this chapter has examined the development of laws and legislation for reforms and modernization in juvenile justice in South Asia, particularly in India, Pakistan, and Bangladesh. The purpose was to see the extent to which juvenile justice reforms in these countries conform to the standards of international juvenile justice.

The study of the India's JJA of 1986, JJA of 2000, and the JJA of 2015 shows that India has considerably progressed in harmonizing the rules and principles of juvenile justice with those of the American model, the CRC, and the concept of child-friendly justice. Like in the USA, India has a federal system of government, and juvenile justice in India is primarily the responsibility of the states. A separate system of juvenile justice on the basis of separate juvenile courts, juvenile justice boards,

juvenile justice police units, and juvenile correction centers has been steadily growing in India. The emerging national and state juvenile systems are also based on the recognition of the due process of rights for the juveniles and the spirit of rehabilitation. The same trends of adapting to international standards and creating a separate national system of juvenile justice are observed in Bangladesh. The Bangladesh Children Act of 2013 made a series of legal advances to harmonize the laws, rules, and standards of juvenile justice with those of the American model, the CRC, and the concept of child-friendly justice such as the raising of the minimum age criminal responsibility to 9; defining a juvenile who is below the age of 18, the abolition of death penalty and the punishment for life in prison for juveniles, and the nation-wide creation of a separate system of juvenile justice including juvenile courts, juvenile justice boards, juvenile police units, and juvenile probation officers. Bangladesh Children Act of 2013 also made a series of procedural innovations related to the protection of the due process of rights of the juveniles, juvenile participation in the trial and adjudication process, confidentiality of juvenile records, and alternative sentencing and diversion. Out of the three countries, Pakistan is still far behind in harmonizing its laws and rules of juvenile justice with those of international standards. Pakistan's JJSO of 2000 remained utterly ineffective partly because it was struck down by a court that challenged its legitimacy and constitutionality. Pakistan is one of the earliest signatories of the CRC of 1989. But Pakistan still, after twenty-five years of its commitment to the United Nations, has not even begun to develop the legal and the institutional structures for a separate system of juvenile justice. There is no denying that there are many challenges for reforms and modernization of juvenile justice in South Asia—a region that contains about 200 million of the world's 2.2 billion children. Some of these challenges include the low rate of birth registration, cultural perception about the rights of the juveniles, and growing participation of juveniles in heinous crimes including murder, rape, robbery, drug trafficking, human trafficking, prostitution, and pornography. In the context of the rising rate of heinous crime by the juveniles, public support for get-tough strategies including death penalty is growing in all South Asian countries, and the India's Juvenile Justice (Care and Protection of Children) Act of 2015

that made a provision to try juveniles between 16 and 18 years of age as adults for committing heinous crimes is a case in point. The crafting of a balance between juvenile rehabilitation and juvenile offender responsibility has been a challenge in juvenile justice in the West since the 1970s. This is also a challenge today for the policy-makers of juvenile justice in all regions of the world including South Asia. One of the most positive aspects of this problem of reforming juvenile justice in South Asia, however, is that awareness to develop a separate system of juvenile justice in conformity with international norms and standards is growing among the policy-makers of crime and justice in South Asia.

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8

Revisiting Gender-Sensitive Human Security Issues and Human Trafficking in South Asia: The Cases of India and Bangladesh

M. Bashir Uddin

Introduction

Human trafficking today is recognized as one of the most expanding forms of transnational crimes. Human trafficking is also described as the rise of modern slavery. It is estimated that more than 20 million adults and children are the victims of human trafficking or modern slavery (United States Department of State, 2015). The United Nations 2000 *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, defines that "'Trafficking in persons' shall mean the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the

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giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation." The United Nations Protocol further stated that "Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs" (U.N. Doc. A/55/49 (Vol. I) (2001), *entered into force* December 25, 2003). As the definition implies, human trafficking involves a series of other crimes such as sex trafficking, child sex trafficking, forced labor, bonded labor, domestic servitude, forced child labor, and illegal use of child soldiers (United States Department of State, 2015). Among all the world regions, human trafficking is much more intense and widespread in South Asia. As the United Nations Office on Drugs and Crime (UNODC) (2016) reports: "In South Asia, human trafficking is often referred to as one of the fastest growing transnational organized crimes. Over 150,000 people are trafficked within South Asia every year for sex work, labor, forced marriages, organ trade and it is often the very economic state and conditions that contribute to the vulnerabilities of young people, women and children" (p. 1). The UNODC further reports that the South Asian countries "serve as prominent origin, transit and destination countries for women, children and men being trafficked. In South Asia, the largest numbers of women trafficked are within or from the region, and child trafficking is a major concern. Most of the trafficking takes place for commercial sexual exploitation where women are being forced into unprotected sexual acts with multiple partners" (2016, p. 1). It is with this problem of human trafficking, particularly the trafficking of women in and from South Asia that this chapter is concerned. The chapter particularly focuses on trafficking issues in India and Pakistan. The combating of human trafficking has become a major crime-policy concern for many countries because it is connected to many other forms of transnational organized crime. In Asia, in general, the focus is mostly centered on prostitution and global sex trafficking (Territo and Kirkham 2010; Kara 2009). The perspective of looking at human trafficking as an issue of human security did not get much prominence. This chapter addresses the problem of human trafficking in South Asia from the perspective of human security. The mobility of people within the countries of the region has been frequent for a long

period of time. Huge population growth producing the supply and the demand for cheap labor facilitates people's movement within and across the borders. Supply factors generally involve economic insecurity, structural inequality, corruption, and opportunities for a better livelihood, while the demand emerges from the need of cheap exploitative labor in the destination. Driven by this supply/demand nexus, many migrants from Bangladesh put themselves at risk of exploitation and sometimes are trafficked to India. The United States Department of States' 2015 Trafficking in Persons (TIP) report noted that women and girls from Bangladesh are subjected to labor and sex trafficking in major Indian cities, while boys are subjected to forced labor in coal mines. Research in this chapter focuses on how trafficking involves a human security dimension in South Asian countries. The chapter explores how the issues of human security intersect with gender and global political economy, and the issues of gender and political economy, in turn, create the root causes of trafficking. In recent years, human trafficking has been approached from the perspective of national security. At the European level, for example, Europol, border police, immigration, customs, and other organizations are involved in the management of trafficking as a security concern. (Aradau 2008). The Obama Administration in the USA also addressed human trafficking as a national security problem (Cable News Network 2012). In South Asia, the governments of the destination countries also treat trafficking as a security problem (Kempadoo 2005). They try to enforce their border to prevent illegal migration and trafficking. India is the main hub of trafficking in South Asia, while Bangladesh is known as one of the main sending countries. The geographical location of these two countries, especially the long porous border (longest in South Asia) enhances irregular movement. Daily cross-border activities for a livelihood from Bangladesh to India causes this irregular migration in which trafficking happens clandestinely. Irregular migration from Bangladesh has been always a security concern for India for a long period of time. The methodology of this research includes interviews with anti-trafficking NGOs, practitioners, scholars, government officials, local people, and trafficked survivors. Semi-structured interviews using close and open-ended questionnaire facilitated by a snowball method to collect firsthand information have been used. In-depth review of the academic and empirical literature

has been used for conceptual clarification to analyze the cases at the ground level. Research in this chapter explains the notion of gender-based human security, or gender-sensitive human security, as an effective approach to understanding the contemporary problematic of human trafficking in South Asia. The chapter also explores the relations between the problem of gender-sensitive human security and human trafficking in South Asia as an inviolable problem of the region's location within the structure of the global unequal economic system.

Gender-Sensitive Human Security: A Framework for Analysis

Within the realm of security studies, the traditional understanding of security has always been associated with security of the state. Throughout the Cold War, the dominating view (known as realism) was that security is all about the protection of a state's territory from military attacks, However, this realist view of state security came under significant attack in the early 1990s after the Cold War due to the changing nature of threats. The security debate has been substantially extended since then over the past 25 years through broadening and deepening of the concept. The idea of human security was first introduced by the United Nations Development Program's (UNDP) 1994 Human Development report. The report first time shifted the focus on security from state security to the security of the individual. The UNDP's 1994 Human Development Report defined the notion of human security basically from two perspectives. The first is the perspective of *freedom from fear* that emphasizes the protection of individuals from violence and war. The second is the broader perspective of *freedom from want* that sheds light on the issues of poverty, underdevelopment, environmental degradation, and public health, which threaten human lives and their dignity (UNDP Human Development Report 1994; Commission on Human Security 2003). Proponents of the first vision contend that *freedom from fear* has more utility in policy-making than *freedom from want*. On the other hand, it has also been argued that human security means the provision of basic material needs and the

realization of human dignity, including emancipation from oppressive power structures. By looking at human security from this viewpoint, it could be argued that *freedom from want* represents the holistic notion of human security based on the notion of humanity (Shani 2011; Thomas 2000).

In response to the debate on human security, the concept of securitization was invented in the late 1990s by then Copenhagen School scholars Barry Buzan, Ole Waever, and their associates. They suggested that security could be constituted by some certain actors who are able to present an issue that poses an existential threat to the survival of a referent object (traditionally the state, incorporating government, territory, and society). In securitization process, a threat is recognized legitimate by a specific audience, who then seeks and gains the approval of emergency measures to be taken against the threat (Buzan et al. 1998). Usually, the actors involved in securitization are the state leaders, in other words, states themselves, who securitize a threat that threatens their territorial integrity. It is worth mentioning here that securitization process fails to recognize the agency of some actors, which exacerbates their marginalization and silencing that may eventually lead to negative securitization. Hansen points out that the power of speaking is important to achieve security under the securitization framework but once established, the power positions of actors are not easily challenged using the framework, thus reinforcing the insecurity of those who lack the power to speak out against the system that oppresses them (Hansen 2000).

Looking at human security from a gender perspective helps us to think about the security of oppressed or neglected people in their everyday lives, who have traditionally been marginalized by the state-centric focus of security. Unfortunately, human security literature is not well concerned with such criticism. As Muthein argues regarding the report by Commission on Human Security that "[it] does not deal with the issue of gender critique of militarized security's fundamental incompatibility with human security" (Muthein 2010, p. 69). Peterson and Runyan define gender as socially learned behavior and prescribed social roles that distinguishes between the identities of masculinity and femininity, rather than biological sex identities that is determined by genetics. (Peterson and

Runyan 1999). Gender is thus a social construct based on a binary (masculine/feminine) and hierarchical (men in relation to women) power relation. If we consider the security of humans, it is important to incorporate powerless or oppressed humans in the analysis what we can call gender-sensitive-human security. Floyd argues that, unlike the securitization approach, from a human security perspective, proponents can highlight insecurities on behalf of other individuals representing the notion of *freedom from want*, especially for those individuals who are in no position to speak for themselves. In this way, bringing the marginalized back as referent object into the security agenda may result in positive securitization (Floyd 2007). The above discussion unpacks three important points. First, although securitization is an effective analytical tool to conceptualize security issues, it ultimately does so by emphasizing the state as the main referent object which may possibly lead to negative securitization through violation of people's rights. This brings to the question of more humane-based security if we think about the security of people in a broader sense, which may refer to positive securitization. At this point, I argue that the danger that is associated with securitization leading to negative consequences could be mitigated through the warning system of human security. Second, as argued by Hansen, gender is problematically omitted from the discussion of securitization, which could be an important analytical tool to look at human security. Third, the global political economy helps us to understand the intersectionality of all these issues and how they produce root causes of human trafficking.

Human Trafficking and Gender-Sensitive Human Security

There are three main elements in the definition of United Nations Trafficking Protocol: (i) the *process* through recruitment by moving, harboring, or transferring and controlling a person, (ii) the *means* through force, abduction, or coercion and, (iii) the *end* which entails exploitation through either sexual or forced labor, slavery, and organ removal. In the definition, movement of people and sexual exploitation may refer to two dominant approaches of trafficking: migration and

prostitution. The Protocol is a part of the United Nations Organized Crime Convention, which also defines trafficking as a form of organized crime (United Nations Office on Drugs and Crime 2004). The following discussion shows how these dominant approaches pave the way to the securitization of trafficking, and how they leave out the questions of the root causes or the supply/demand and the security of the trafficked individuals from the holistic notion of human security.

Trafficking and Migration

Migration has always been considered as a serious security concern for the destination countries. It could be argued that states usually impose strict immigration policy and border control to securitize trafficking considering it as a form of illegal migration. As Lobasz notes, "Traditional security solutions to human trafficking have focused primarily upon enhanced border security and swift deportation of trafficked persons, who are considered illegal immigrants" (Lobasz 2010, p. 214). Human rights activists would argue that while states may have particular reasons to protect themselves through securitizing migrants, they also violate their rights putting them in danger by doing so. This is what happens in the case of trafficking as trafficked persons are seen as illegal migrants, and thus a security threat to the receiving states. Combating trafficking through border enforcement could have diverse consequences. For example, it may divert irregular migrants into more dangerous and hidden migratory routes or toward new destinations. As Sanghera argues that lack of mobility rights may drive marginalized and vulnerable people to find illegal alternatives that eventually can increase their vulnerability to trafficking (Sanghera 2005). Kempadoo argues that securitizing trafficking as illegal migration overlooks the structural inequalities such as lack of access to education, healthcare, social security, and gender-based violence (Kempadoo 2005). Associating trafficking with migration does not produce any realistic solutions. Promoting or curbing migration, for example in sending countries, does not focus on the issues of root causes that lead to trafficking in the first place. On the other hand, securitization of

migration in destination countries may lead to human rights abuse through detention and deportation of the trafficked. Thus, it could be argued that both strategies are inadequate to properly address the problem of trafficking.

Trafficking and Prostitution

Since its inception, trafficking has been associated with prostitution. As Sanghera argues, "There has been a continued persistence among anti-trafficking players within the prevailing discourse to conflate trafficking with prostitution" (Sanghera 2005, p. 11). Many states prohibit prostitution considering it as a criminal offense, hence their anti-trafficking activities often focuses on criminalizing prostitution and rescue of victims in brothels. Equating trafficking with prostitution and thus its abolition is a late nineteenth-century phenomenon, which is known as abolitionist view in trafficking literature. Criminalization of prostitution may lead to the securitization of trafficking, for example, through police raid in brothels and arrest of persons working there as illegal migrants, border enforcement to stop cross-border prostitution and as such. As Bernstein pointed out that the US anti-trafficking measures have been useful in criminalizing oppressed people, enforcing the border, and measuring other countries' compliance with human rights norms based on the prohibition of prostitution that does not address the benefits of trafficked victims. Referring to Chapkis and Chuang, she argues that the TIP tier-ranking of other countries has led to the enforcement of borders globally and adoption of anti-prostitution policies in several countries (Chapkis and Chuang cited in Bernstein 2010). Securitization of trafficking in such a way confines the process itself to prostitution, which does not focus on the root causes of trafficking.

Trafficking and Organized Crime

Human trafficking conventionally falls into the category of organized crime as the concept defined in the UN Trafficking Protocol itself is a part of the UN Transnational Organized Crime Convention. Trafficking

as an activity of organized criminal groups has been evident in many parts of the world. Trafficking as a form of organized crime is identical to the notion of threat that prostitution and migration approaches represent. As Aradau mentions that through envisaging human trafficking as a form of organized crime, trafficking literature implicitly takes up the construction of this problem as a threat and interventions associated with it (Aradau 2008). In this fashion, the organized crime model enhances securitization of trafficking by enforcing legal initiatives to criminalize criminal syndicates—the traffickers. This becomes evident in international and regional anti-trafficking legal instruments. For instance, some of the main focuses of the UN Trafficking Protocol and South Asian Association for Regional Cooperation (SAARC) Trafficking Convention 2002 are border enforcement and criminalization of traffickers. Criminalizing perpetrators/traffickers only may not offer the solution in combating trafficking as it does not necessarily consider root causes and the insecurity of the victims who are sometimes treated as perpetrators by the law.

The Perspective of Global Political Economy

Human trafficking as a problem of gender-sensitive human security can be better explained through the perspective of global political economy. In international relations, political economy is a wide field of research. For the purpose of this research, the discussion will be limited to particularly neoliberal globalization, an important aspect of the global political economy. Neoliberalism is the political economic practice that focuses on the liberation of individual entrepreneurial freedom and skills in an institutional framework basically founded on the idea of free trade and the free market (Harvey 2005). Neoliberal globalization helps the expansion of free market through privatization and trade liberalization that mainly benefits transnational and multinational corporations by enhancing the capitalist market system. Human trafficking could be seen a new form of slavery in this capitalist global economy. The human becomes a product in the market where they are bought and sold and resold as a slave until they have the productive value that makes them purchasable to the customers and profitable for the recruiters.

As Bales argues, "In our global economy one of the standard explanations multinational corporation gives for closing factories in the 'first world' and opening in the 'third world' is the lower labor cost. Slavery can constitute a significant part of these savings. No paid workers, no matter how efficient, can compete with unpaid worker—slaves" (Bales 2004, p. 9). Human trafficking as modern day slavery has resulted from this global economic system imposed through neoliberal economic policy enhanced by multinational corporations. Neoliberal globalization has created the base for exploitation of economically disadvantaged and vulnerable people, especially women. The labor/sex market commoditizes humans, for example, women and girls. People are increasingly being commoditized and traded as sex slaves, or trafficking victims as globalization has produced an unprecedented growth in the sex industry (Poulin 2004). According to Kara, "As the process of economic globalization unfolded, it essentially manifested a singular dynamic: the net transfer of wealth, raw materials, commodities, and other assets from newly opened, developing nations into richer, developed ones. The resulting social strife and economic collapse, coupled with the same advances that promoted the freer exchange of goods, services, capital, knowledge, and people, catalyzed the ascent of human trafficking and contemporary slavery" (Kara 2009, p. 24). Along with the increasing supply factors in the global economy, demand for cheap labor in the destination countries exacerbates trafficking in humans. In the process of globalization, one could see that vulnerable person (such as poor women and girls) becomes more vulnerable when it intersects with gender inequality leading to the vicious cycle of insecurity. Advances in information technology, global media, and internet access provide the means to broadcast to even the most isolated communities the promise of better opportunities abroad. The prospect of any job is a strong demand factor for migrants. Economic insecurity, a flourishing sex industry accompanied by sex tourism and intersecting with the caste system, corruption, declining child sex ratio, cheap exploitative labor, and organ trade, which are directly or indirectly the outcomes of neoliberal globalization, are the root causes that eventually fuel human trafficking. The following table illustrates the issues discussed above with possible measures and their outcomes (See Table 8.1).

Table 8.1 Types of security and their interrelationship with human trafficking

Types of security	Referent object	Security threat	Measures	Expected outcome
State security	State	Migration, organized crime, prostitution (focus on fear)	Strengthening border control, immigration policy, and law enforcement agency	Negative securitization
Gender-sensitive human security	People (especially oppressed/ vulnerable)	Gender and structural inequality, neoliberal globalization (focus on want)	Addressing and eliminating root causes, reforming neoliberal policies, building agency of the oppressed/ vulnerable people through empowerment	Positive securitization

The Cases of India and Bangladesh

Magnitude of Human Trafficking

Due to the clandestine and deceptive nature of the crime, statistics regarding the magnitude of human trafficking widely varies. As a result, estimates of the trafficked persons remain as guesstimates. A study indicates that the number of women trafficked from Bangladesh is around 24,000–48,000 per year (Asian Development Bank, cited in Ali 2005). In the case of India, it has been argued that the country has the world's largest labor trafficking problem with hundreds of thousands of sex trafficking victims and millions of bonded laborers including forced child laborers (Ghosh 2009). The Indian Department of Women and Child Development stated that the number of individuals trafficked for commercial sexual exploitation in India are about 2.8 million (Institute of Social Sciences, National Human Rights Commission, UNIFEM cited in Joffres et al. 2008). The common methods used by traffickers in the countries of South Asia is usually a promise for better job opportunities, and particularly prospective marriage relationships for women who are economically and socially insecure. Sometimes traffickers appeared to be the close relatives or even parents of the victims. As an official of Bangladesh Women Lawyers' Association (BNWLA) points out, "It has been found from our experiences that most of the survivors were trafficked with the assistance of their close relatives, neighbors even parents. There are several trafficking syndicates in Bangladesh who are controlling the whole process of trafficking" (B. Hasan, personal communication, September 6, 2011). The TIP Report of 2010 states that 90% of trafficking in India is internal (United States Department of State, 2010). A recent report by National Crime Records Bureau (NCRB) of 2013 states that the number of registered human trafficking cases has increased 38.3% over five years from 2848 in 2009 to 3940 in 2013, while West Bengal, Tamil Nadu, Andhra Pradesh, Karnataka, and Maharashtra stood as top 5 states for trafficking (NCRB cited in Saha 2015). One of the studies conducted in 2005 stated there were 30,000 Bangladeshi women in prostitution in different brothels of Kolkata and another 10,000 were in various brothels of Mumbai and Goa (Sen and Nair 2005). The same study also mentioned that 13.5%, 9.2%, and

2.6% Bangladeshi women were found to be trafficked to Kolkata, Mumbai, and Delhi respectively (Joshi cited in Sen and Nair, 2005). The well-known cross-border trafficking route from Bangladesh is Benapole-Kolkata-Delhi-Mumbai-Karachi-Dubai (Staffs of Center for Women and Children Studies and BNWLA, personal communication, September 6–7, 2011).

Securitizing Human Trafficking from Bangladesh to India

India has its longest border with Bangladesh, which is around 4096.7 km. A report by the Government of India states that border enforcement is very important to maintain the territorial integrity of the country. As it notes, "In order to curb infiltration, smuggling, and other anti-national activities from across Indo-Bangladesh borders, the Government has undertaken the work of construction of fencing, floodlighting and roads along these borders" (Government of India 2010–2011). Securitizing border represents the notion of threat that migration from Bangladesh represents. Securitization of undocumented migration from Bangladesh to India could be explained from two perspectives. First, the migrants could be considered as a societal threat because they may create economic pressure on the local economy. Second, they could be treated as a security threat through their alleged connection with illegal activities (T. Siddiqui, Professor of Political Science, Dhaka University, personal communication, September 5, 2011). Migration from Bangladesh has been identified as a security threat to India for decades. The rise of Hindu nationalism led by the Bharatiya Janata Party (BJP) (current ruling party) during the 1990s established the view of illegal migration from Bangladesh as a security issue in India (P. Ghosh, former Professor of South Asian Studies, Jawaharlal Nehru University, personal communication, July 12, 2011). Since then BJP has been securitizing the issue as a political agenda. In 2003, then BJP leader L. K. Advani issued a national directive to identify irregular Bangladeshi migrants in India and deport them. The Indian government deported 18,801 Bangladeshis in that year (Government of India 2004–2005). In 2011, he again urged the West Bengal Chief Minister Mamata Banerjee to check the increasing influx of Bangladeshi migrants ("Advani urges Mamata to take up Bangla influx," 2011). The recent act of securitization could be observed in the speech of the present Prime Minister

Narendra Modi as he vowed to halt the unauthorized flow of citizens from Bangladesh into Assam ("Modi vows to halt illegal immigrants from Bangladesh," 2014). The BJP's campaign regarding Bangladeshi migrants as a security threat was criticized by a report, which revealed that BJP's estimate about the number of illegal migrants was not merely an exaggeration but an almost complete fabrication. According to the report, this issue was raised by the BJP to divert people's attention from the reality (Dalwai and Engineer n.d.). It argued that so-called infiltrators did not pose any threat and the perception of danger was a product of BJP-led propaganda.

The aforementioned securitization of migration could have a negative impact on trafficked persons from Bangladesh to India. Many trafficked women and children are arrested and filled as illegal migrants under India's Foreigners Act 1946, and treated as perpetrators, whereas they should be identified and treated as victims under the Immoral Traffic Prevention Act 1956 (ITPA) and other legal instruments. An official of public prosecution in Kolkata argued that it is not a problem when someone migrates from Nepal to India, but when someone crosses the border from Bangladesh they are usually arrested under the Foreigners Act; which is the real scenario (T. Mohammad, personal communication, July 20, 2011). This way it is assumed that the suspect/perpetrator who is crossing the border is a potential security threat for the country and needs to be interrogated. Thus, being securitized as illegal migrants, the trafficked persons lose their voice. While the securitization approach to migration dominates the real scenario, the human security approach underlying the root causes of trafficking is currently absent. A case illustrates an extreme example of the result of such securitization. In 2010, Bangladesh Country Report on human trafficking mentioned about a girl who was trafficked to India from Bangladesh and when she was rescued, social workers requested police to file a case against the traffickers, whereas the girl was arrested under section 14 of the aforementioned Foreigner's Act. While in detention, she was not given enough time for hearing and became a victim of exploitation, humiliation, and violence that led her to commit suicide (Ministry of Home Affairs 2010). This incident was given as an example of the failure of the state to protect trafficked persons, particularly by the NGOs during my fieldwork in India. A report from the UNODC also stated that often cases under the

Indian Foreigners Act are used against the victims (United Nations Office on Drugs and Crime 2007). The discourse of securitization of migration from Bangladesh, which has a long history and still remains strong in the mainstream socio-political context of the country, obstructs the state authority from viewing trafficked persons as victims rather than criminals.

Root Causes of Human Trafficking: Supply and Demand

Economic Insecurity

Rapid population growth has made both India (second largest country with 1.3 billion people) and Bangladesh (eighth largest country with 160 million people) two of the highest populous country in the world. The 2015 Global Multidimensional Poverty Index (MPI) indicates that more than 40% people in Bangladesh and India live on $1.25 a day (Alkire et al. 2015). Huge population growth combined with poverty, illiteracy, and lack of employment opportunities causes economic insecurity for many people in this region. Driven by poverty, the demand for employment and secure livelihood options is an important contributor to trafficking vulnerability. Poor people in Bangladesh and India tend to have low levels of education, have limited access to land, and are highly concentrated in low-paying and physically demanding jobs. Daughters are considered as a burden by their families due to possible dowry payment at the time of their marriage. Sarker and Pandey note that when opportunities appear, families willingly traffic women and girls with modest consideration for their rights or potential welfare (Sarker and Pandey 2006). Economic insecurity encourages many women and girls to grab the opportunity of better jobs whenever it appears. The following stories of trafficked survivors (remain anonymous to protect confidentiality) illustrate the scenario:

Rahima

> Rahima was trafficked to Mumbai on January 9, 2009. She was looking for a job after her husband left her. Her younger brother's friend offered

her a job in India. She, along with a few other girls, went to Bhomra border in order to go to India. The person then handed over the girls at the border to an unknown person who took them to Mumbai. After they reached Mumbai they were separated and Rahima was confined in a room. She was forced to do sex work every day with 4–5 men, and when the number increased to 8 she became seriously ill. With the help of a local shopkeeper, she was able to escape and come back home by herself on November 17, 2009 (Rahima, personal communication, September 5, 2011).

Saleha

Saleha, a 21-year-old girl from Jessore of Bangladesh, was trafficked to Mumbai. The poverty stricken environment in her family led her to decide to find a job. She was motivated by a local woman to work in India where she could earn good money. The 40-year old lady offered her a household job in Mumbai. They crossed the West Bengal border and went to Mumbai. She was confined and was sexually exploited there. Mumbai police rescued her along with other three girls in 2008. She was taken to a shelter home in Mumbai afterward (Saleha, personal communication, July 22, 2011).

The above stories may sound very typical, but deception and exploitation in such a way that the victims went through highlight the fact that economic insecurity remains a major supply factor that exacerbates the trafficking process. Nair argues that uneven economic situation, usually perceived as poverty, creates the vulnerability to trafficking in India (Nair 2010). He explains this situation through illustrating the story of Amy (an anonymous girl) where poverty led her own relative to sell her into forced prostitution. Manabendra Mandal of Action against Trafficking and Sexual Exploitation of Children (ATSEC), India points out that about 50% of the total population who are vulnerable to trafficking in India come from a poor socioeconomic background (M. Mandal, personal communication, July 15, 2011). In a three-day workshop on police training to combat trafficking in Ranchi, Jharkhand on July 27–29, 2011, many presenters mentioned that many people in the rural areas sell their own children because of acute poverty. They argued that unemployment, helplessness, and lack of available options push people to move to other places to find better options, and on the way of searching for better livelihood they become victims of trafficking.

Corruption and Human Trafficking

Corruption could be considered as one of the main supply factors of trafficking in Bangladesh and India. With regard to trafficking in India, TIP Report 2015 notes, "Some corrupt law enforcement officers protect suspected traffickers and brothel owners from enforcement of the law, take bribes from sex trafficking establishments and sexual services from victims, and tip-off sex and labor traffickers to impede rescue efforts" (United States Department of State 2015). The report also mentions that some NGOs in Bangladesh allege that officials on both sides of the India-Bangladesh border allow human traffickers to operate (United States Department of States 2015). According to the Corruption Perception Index (CPI) 2015 by Transparency International report, Bangladesh, and India ranked 139 and 76 having the score of 25 and 38 out of 167 countries (Transparency International 2015), which reveals that corruption is persistent in these countries. The report argues that corruption is rampant in Bangladesh alongside with human trafficking. In the years of 2004–2006, Bangladesh government prosecuted eight officials for trafficking-related corruption. Indian police arrested a member of the Border Security Force (BSF) for trafficking, who was released on bail as of December 2011, but there was no further information on that case. Sen and Nair argue that trafficking cannot be stopped as long as corrupt officials assist the criminals by their acts of omission and commission (Sen and Nair 2005). Paul and Hasnath point out that although many victimized families report the names of the traffickers or their agents to the police, unfortunately, police are often reluctant to arrest traffickers and prosecute them (Paul and Hasnath 2000).

Castes and Human Trafficking

Culturally sanctioned practices such as caste system have been prevalent in India. In particular, the cult is known as *Devadasi* and *Dalits* and their various forms still exist in today's India. The term *Devadasi* derives from Sanskrit language denoting "deva" as the God, and "dasi" as female slave, which literally means "female slave of the God." It is a form of religious practice found in Hindu communities particularly in South India, whereby

at puberty, a girl is married off and dedicated to a deity of a temple (Sithannan 2006). According to one estimate, about 250,000 girls were dedicated as Devadasis to Yellamma, Hanuman, and Khandoba temples on the Maharashtra-Karnataka border (Sen and Nair 2005). After their initiation as *Devadasi*, women either migrate to nearby towns or other cities to work as prostitutes. The National Commission for Women (NCW) indicated that 62% of commercial sex workers come from *Devadasi* group. In many instances, this culturally sanctioned system has become a model of enabling trafficking and exploitation (Sen and Nair 2005). *Dalits* are the lower caste people who are subjected to bonded labor exploitation, especially from the poorer states of India.

Declining Child Sex Ratio and Human Trafficking

India has been experiencing a declining child sex ratio over the decade, where the ratio fell from 927 to 914 girls for every 1000 boys of 0–6 years old (UN Women 2014). Because of the strong preference for sons in some of the states in India, baby girls are aborted. Anju Dubey of UN Women points out that in some states such as Haryana or Punjab where the sex ratio is low, girls are trafficked there as brides, since there are not enough girls for marriages. She notes that this a unique feature of trafficking which is the direct outcome of culturally sanctioned practices in India. The shortage of brides in villages and towns of Haryana and Punjab is being addressed by buying and trafficking of women from distant and poverty-stricken states like Assam, West Bengal, Jharkhand, Bihar, and Odisha (A. Dubey, personal communication, July 15, 2012).

Exploitative Labor and Human Trafficking

The field of exploitative labor is wide. However, three main categories could be identified: forced labor, bonded labor, and child labor. There has been a long tradition of men from Bangladesh and India working overseas as domestic, construction or factory workers, especially in Southeast Asia and the Middle East. TIP report 2015 indicates that some Indians who voluntarily involve in domestic work, construction,

and other low-skilled sectors in the Middle East are subjected to forced labor due to fraudulent recruitment and recruitment fees charged by Indian labor brokers, while some Bangladeshi migrants are coerced to forced labor in India through recruitment fraud and debt bondage (United States Department of State 2015). The report also mentions that men and women from Bangladesh also become a victim of fraud recruitment in Southeast Asia, Middle East, and other countries, while assuming debt and paying excessive fees charged by recruitment agencies, who end up in abusive working conditions through contract fraud, sexual exploitation, and debt bondage. In May 2015, mass graves and human trafficking detention camps of people from Myanmar and Bangladesh were found by Malaysian police in bordering villages of Thailand ("Malaysia Finds 30 Mass Graves of Trafficking Victims From Myanmar and Bangladesh," 2015). They were assumed to be stranded on the boat in the Bay of Bengal and Andaman Sea for a long time and landed near Thai border. Abuse of thousands of Myanmar and Bangladeshi people by smugglers and traffickers on boats and at Thai-Malaysian border received urgent attention of international community. India is known as the country of the highest number of bonded laborers. Some studies show that around 20–65 million people live on bonded labor in the country (Shelley 2010). The 2014 Global Slavery Index found that India ranks top in the world in slavery having around 14 million slaves in the country (Walk Free Foundation 2014). Bonded slavery in India could be found in agricultural sectors, carpet industries, and construction sites, brick kilns, and glass bangle factories where many bonded laborers are in debt bondage for generations. In 2014, BBC reported a tragic fact regarding bonded labor in India where two young men were forcefully taken to Hyderabad to work in brick kilns and when they tried to escape they were caught and their hands were cut off as punishment (BBC 2014). A speaker at the police training workshop at Ranchi revealed some rare cases about child labor. As she mentioned while visiting a glass bangle factory in 2009, she witnessed many 3–5-year-old children who had chains on their legs and many were placed inside cubicles. While inspecting the machine that produces glass, she witnessed a mutilated body of a child that came out of the machine at that time. She mentioned that most of these children are victims of

trafficking who end up in extreme labor exploitation. The cruel reality is that, as she argues, many parents sell their own children to pay off their debts and put their children in never-ending debt-bondage.

Organ Trade and Human Trafficking

Information regarding trafficking of the human organ was not available in Bangladesh until recently. Little research has been done on the causes and consequences of this inhumane trade. Shelley points out that with advanced medical facilities in India, trafficking of organs from poor people to those who can effort for organ transplantation is a reality in the region (Shelley 2010). Despite the lack of systematic research, it has been widely believed that there is a flow of organ trafficking from Bangladesh to India where poverty-stricken rural migrants or urban slum-dwellers are most likely the victims of organ trade. In 2011, Bangladesh police arrested a local organ trader who sold 36 kidneys since 2005 (Karmaker and Sarkar 2011). The Bangladeshi media observed that from 2006 to 2011, around 200 people in 18 villages of the country sold their kidneys because of acute poverty. Media also mentioned that doctors put a blind eye on this organ trade. It is assumed that many of the kidneys are taken to India and other countries for transplantation (Uddin 2014).

Public Policies toward Combating Human Trafficking

The governments of Bangladesh and India have initiated various measures to the response against human trafficking. A three-step method known as prevention, protection, and prosecution has been undertaken. Governments have made some progress in this process, for example, providing skills training for different officials through workshops, seminars, anti-trafficking materials (e.g., posters, publications) and initiating awareness raising programs (e.g., street dramas, anti-trafficking demonstrations), protecting trafficked victims through

providing care, rehabilitation, and reintegration (e.g., government/NGO-run shelter homes, empowerment programs through providing trainings and jobs), and prosecuting traffickers through arrest and conviction. Both Bangladesh and India have comprehensive anti-trafficking laws such as Human Trafficking Deterrence and Suppression Act (HTDSA) 2012 and Immoral Trafficking Prevention Act (ITPA) 1956, which define human trafficking. HTDSA includes debt bondage, forced labor, sexual exploitation, and other forms of slavery, while ITPA primarily focuses on prostitution. Both laws emphasize punishment of offenders, protection of victims, and cooperation of state parties to combat trafficking. Relevant national legislations also include the Bangladesh Children's Act 1974 (amended in 2013), Bangladesh Prevention of Oppression against Women and Children Act 2000 (amended in 2003), India's Bonded Labor System Act 1976, and Goa Children Act 2003.

At the international level, Bangladesh and India have ratified some important instruments such as Convention on the Rights of the Child (CRC) 1969, Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) 1979, and International Labor Organization (ILO) Convention 1999. All these instruments call for action against the violation of women and children's rights that is compatible with the UN Trafficking Protocol. India has ratified the protocol in 2011, but Bangladesh has yet to ratify it. In the regional level, SAARC convention on trafficking addresses the issue of trafficking and encourages bilateral efforts to fight against the problem. However, the scope of the Convention is mainly limited to prostitution and is not directly focused on other forms of exploitative labors, especially the root causes of trafficking. In 2015, leaders of these two countries have signed more than 40 years old 1974 Land Boundary Treaty, which helped to resolve the dispute of settlement of stateless people living in the enclaves across the border. They have also signed a Memorandum of Understanding (MoU) on human trafficking while having the agreement. The MoU comprehensively defines the term, emphasizes on prevention, rescue, recovery, rehabilitation, repatriation, and various other preventive and protective measures; and focuses on criminalization, strengthening cooperation, and

border enforcement to combat trafficking. However, the adopted definition does not address the issue of male trafficking. Neither does it address any reform of the SAARC Convention or root causes of trafficking. Joint efforts to stop trafficking through aforementioned measures are crucial, but they do not alone would help to eradicate the problem unless underlying vulnerabilities are properly recognized. According to the TIP Report, governments of both countries do not fully comply with the minimum standards to combat trafficking, but they are making efforts to make some progress. Both countries remain as tier-2 for the past three years. However, efforts to combat the problem still remain a far-reaching goal.

Conclusion

Human trafficking is a multifaceted challenge to human security. Broadly speaking, economic and social insecurities combined with gender inequality reinforce underlying causes of human trafficking that eventually increase insecurity of individuals. The holistic notion of human security, *freedom from want*, helps to understand these underlying causes that are driven by supply and demand. Supply/demand nexus as the root cause enhances insecurity in the entire process of trafficking. This could be evident from the case of the girl trafficked to India who later committed suicide that was discussed earlier. Under the auspices of the SAARC Convention, most of the South Asian countries have been concentrating on the issue of prostitution and trafficking. Trafficking for the purposes other than prostitution has been given little attention and the underlying causes of trafficking have been inadequately addressed. The recent anti-trafficking laws and the MoU address trafficking comprehensively, but merely focus on root causes and gendere-sensitive human insecurity of trafficked persons. Evidence shows that Bangladesh and India have yet to achieve gender equality. For example, both countries ranked 111 and 130 out of 188 countries in Gender Inequality Index (GII) of 2014 (United Nations Development Program 2014). This indicates gender disparity is persistent in these countries, which presumably reinforces vulnerability of people to exploitation. The approaches to trafficking have remained

contested. This contestation has given rise to a range of diverse policies and research without providing a coherent framework to deal with the problem. Indeed, there is a need for a more holistic approach that focuses on the underlying factors as well as the issues of human rights violations. A gender approach to human security holds a potential path to address human trafficking without necessarily being paralyzed by the debate on prostitution, migration, or organized crime. While both causes and consequences are gendered in nature, they have been ignored at the expense of the security of the state through securitization. Despite the fact that the human security project may seem to have more normative utility if it brings the issues of gender into the analysis, the potential of such analysis remains unrealized. A gendered analysis in relation to both men and women focusing on social power relations may provide a better understanding of human trafficking. However, women are often more at risk of exploitation, because they are, by reason of complex socioeconomic factors, in a less advantageous position to negotiate the conditions under which they cross international borders. Trafficking of women and girl children from Bangladesh and India could be well explained by this view. All the underlying reasons mentioned above affect women more than men in the society of these countries due to the uneven power relation of men and women produced and reproduced by the persistent patriarchal system that deepens the exploitation of women and girls in particular. While prostitution, migration, and legal perspective have been the main focus with regard to trafficking in South Asian countries, the research contends that economic insecurity, corruption, declining child sex ratio, caste system, various forms of exploitative labor and organ harvesting help flourishing the human trade, which could be better explained through the perspective of global political economy. A gender-sensitive human security approach also helps to understand how men who are oppressed or have less power also vulnerable to trafficking. When neoliberal globalization intersects with gender-sensitive human insecurity, it exacerbates the vulnerability to trafficking by fueling above-mentioned root causes. Future research and policy initiatives should focus on this intersection in order to properly address the problem of and fight against this human slavery.

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9

Modernization and Policing in South Asia: The Case of Bangladesh with Particular Reference to Women in Policing

R. Sadia Afroze

Introduction

From the middle of the 1990s, in the context of the human rights and human security approach to development, modernization, and reforms in criminal justice have remained at the top of the global agenda. Since the 1990s, the international development experts and international development assistance organizations began to redefine the concept of development. They began to argue that development is not merely an economic phenomenon. Development is also intimately connected to issues of human rights, human security, and the rule of law, democracy, and access to justice, equal justice, and good governance. From that time, two major issues have impacted the global agenda for development. The first is the rise of new human rights and

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human security approach to development. The second is the rise of a new generation of transnational crimes such as illegal human trafficking, global trafficking of illegal drugs, global terrorism, global money laundering, global trafficking of conventional weapons, organ trafficking, and the global spread of cyber crimes. Both these issues contributed to bringing the agenda for reforms in criminal justice at the center of global development, particularly from the beginning of the twenty-first century. When modernization and reforms in criminal justice came at the center for policy-making in development, the institution of policing emerged at the top of the agenda for modernization and reforms in almost all regions of the world. During the last two decades, the United Nations Development Program (UNDP), United Nations Office on Drugs and Crime (UNODC), European Union, Organization for Security and Cooperation in Europe (OSCE), Organization for Economic Cooperation for Development's Development Assistance Committee (DAC), the Asian Development Bank, and a number of other bilateral international assistance organizations such as the United Kingdom's Department of International Development, the United States Agency for International Development, and Canadian International Development Agency have planned and aided many significant police reform programs (PRPs) in developing countries (Swiss 2011). The purpose of this present chapter is to examine the history, nature, progress, and the problems of modernization and reforms in policing in Bangladesh with particular reference to the integration of women in policing. The chapter includes five major sections. First, it will describe the theoretical framework that is more relevant for studying police reforms in developing countries in general. Second, the chapter will examine some of the issues that have been raised as problems for reforms and modernization in policing in the region of South Asia. The third section will describe the existing structure and the organization of policing in Bangladesh. The fourth section is on various programs of reforms and modernization in policing in Bangladesh; and fifth, the nature and the progress of women and policing in Bangladesh. This study is primarily based on document analysis. The data are collected from Police Commission reports; reports from Police Headquarters and the Dhaka Metropolitan Police; legal documents such as the Police Act of 1861 and the Dhaka Metropolitan (DMP) Act of 1976;

Annual Reports from PRP and the German Cooperation for International Cooperation (GIZ); and other relevant governmental and nongovernmental research studies. One of the major arguments of this chapter is that during the last three decades of its modernization and reforms, Bangladesh Police has made significant organizational, professional, technological, legal, and ethical change and transformations including developments in gender diversity and women empowerment in policing. These developments have been achieved despite the fact that in its 45 years of existence, Bangladesh was under the military rule for almost 30 years, Bangladesh has experienced a sharp rise in Islamic radicalism, and political violence has remained an intractable problem of the political culture of Bangladesh.

Modernization and Police Reforms in Developing Countries: Some Theoretical Issues

The issues of modernization and reforms in policing in developing countries are both global and local in nature. Globally, the issues are to conform to international norms and standards of policing; understand the problem of human rights and human security in terms of police accountability, transparency, and respect for human rights and equal justice; integrate the state-of-the-art of innovative police technology for crime control and prevention; learn the lessons from best-practiced examples of police reforms in other countries, and acquire knowledge about the emerging nature and the challenges of global crimes. The policy-makers and leaders of police reforms in any country, for example, must be knowledgeable about the United Nations Universal Declaration of Human Rights of 1948, United Nations Convention on the Rights of the Child of 1990, United Nations Convention on Rights of Persons with Disabilities of 2006, and United Nations Convention on the Elimination of all Forms of Discrimination against Women of 1979. Some of the

United Nations Rules and Standards more relevant to police reforms are included in the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, United Nations Standard Minimum Rules for the Administration of Juvenile Justice, and the United Nations Human Rights Commission's International Human Rights Standards for Law Enforcement. A number of directives for police reforms are also given by such international bodies as the International Committee of Red Cross's International Rules and Standards for Policing and the European Code of Police Ethics from the Council of Europe. The International Human Rights Standards for Law Enforcement, for example, noted that everyone has the right to have a fair trial, everyone has to be presumed innocent unless proven guilty, no one shall be compelled to confess guilt, and no one shall be subjected to torture and other inhuman or degrading treatment. The police must not impose unlawful attacks on the reputation and honor of an individual, and criminal investigation must be based on the principles of the due process of law. The International Human Rights Standards for Law Enforcement further stated that "Everyone has the right to liberty and security of the person and to freedom of movement. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law" (United Nations High Commission for Human Rights 1997; p. 5). The modernization of police reforms in developing countries depends on the extent of understanding and the integration of these and other international rules and standards for policing. These rules and standards are particularly important for Bangladesh because Bangladesh Police plays an important role within the United Nations Police (UNPOL). The policy-makers and leaders of police reforms of a country must also be knowledge about how policing in the twenty-first century is changing as result of the integration of modern science and technology and the development of various social and organizational innovations (United Kingdom Home Office 2010; President's Task Force on 21st century Policing 2015). The nature of modern police investigation, for example, has been fundamentally changing as a result of the advent of the DNA and the development of a series of innovations in forensic science and forensic criminology. The nature of policing crime has also been fundamentally changing as a result

of the integration of the new information and communication technology. Many innovations such as crime mapping, predictive policing, community policing, and problem-oriented policing are driving major changes in policing in the twenty-first century. Police reform in developing countries, so, definitely needs a perspective of modernization and globalization—a perspective to understand the issues, progress, innovations, norms, standards, and challenges that are a part of the global movement for modernization and reforms in policing across the world societies.

The issues and challenges of police reforms at the same time are also local in nature. The institution of policing in any country is deeply embedded in its history, culture, and creeds. Policing in all countries are intimately connected to their structures of the government; the nature of the economy; racial, ethnic, and religious diversities; and political ideology and culture. In the United States, for example, the organization of policing is highly decentralized. There are three major tiers of policing in the United States: federal, state, and local. Federal policing led by the Federal Bureau of Investigation is responsible primarily for the investigation of federal crimes and the enforcement of federal laws. The state police are responsible for the investigation of state crimes and the enforcement of state laws. In the United Kingdom, on the other hand, which has a unitary form of government, policing is the responsibility of the central government. The national system of policing in the United Kingdom has three major components: metropolitan policing in London, known as Scotland Yard; territorial police forces; and special police forces. One of the peculiarities in recent police reform in the United Kingdom is that the police and crime commissioners of 43 police areas in England and Wales, like those of the Sheriffs in the United States, are locally elected by people in every four years. The spirit of this reform is "the expansion and strengthening of local participation in police governance" (Shahidullah 2014, p. 202). Policing in the Federal Republic of Germany also is very different from that of the United States and the United Kingdom. The Federal Republic of Germany has three types of policing: the Federal Criminal Police, the Federal Police, and State Police. The Federal Criminal Police, like the United States Federal Bureau of Investigation and the Royal Canadian Mounted Police, is the

elite police force, and they are responsible mainly for the control and prevention of the emerging global crimes. There are two competing perspectives of police reforms in Germany. One group of advocates is in favor of more militarization, professionalization, and "super policing" in the context of the emerging threats from globalization and global crimes. Another group of advocates is in favor of more demilitarization, decentralization, and democratization in policing in Germany. This group is against the reincarnation of policing that characterized the Third Reich of Hitler. Along with diversities in the structure and organization of policing in different countries and regions of the world, there are also specific local issues and challenges that need to be addressed in policy-making for reforms and modernization in policing. In the United States, for example, race-based police brutality is currently a major challenge for reforms in policing. In Latin America, one of the key issues for police reform is the control and containment of criminal violence related to global trading of illegal drugs and global illegal human trafficking. In Africa and the Middle East, one of the dominant concerns for police reform is the growth of professional policing to enhance police accountability and police respects for human rights, democracy, and equal justice. Theorizing police reforms, therefore, needs a comparative perspective through which global and local issues and challenges can be understood, examined, and integrated for police development and police modernization.

Modernization and Police Reforms in South Asia: Issues and Challenges

The birth of modern policing in South Asia goes back to the middle of the nineteenth century. In 1858, the British colonial government created in all of the colonial territories in South Asia a new system of criminal justice through the enactment of the Government of India Act of 1858. The creation of the Government of India Act of 1858 was followed by the development of five major legal documents: India Police Act of 1861, the India Penal Code of 1862, the India

Evidence Act of 1872, the India Code of Criminal Procedure of 1882, and the India Code of Criminal Procedure of 1898. The modern criminal justice system including the structures of modern policing, modern court, and the modern prison was built in South Asia on the basis of these colonial enactments. With the beginning of decolonization in 1947, India was divided into two states: India and Pakistan. After 1971, Pakistan again was dived into two states: Pakistan and Bangladesh. The Eastern wing of Pakistan, known as East Pakistan, became the state of Bangladesh through a liberation war in 1971. After 1947, these three major countries of South Asia—India, Pakistan, and Bangladesh—has gone through many significant political, economic, and social change and transformations. But in all these countries and in South Asia in general, the basic foundation of criminal justice laid by British colonial government more than 150 years ago has still remained unchanged despite many genuine efforts for reforms and modernization. Many crimes such as rape and violence against women and children are still defined on the basis of the India Penal Code of 1862. The Police Act of 1861 is still the core reference for police law in South Asia. Some of the major significant challenges for professional and democratic reforms in policing in South Asia are embedded in the Police Act of 1861.

The Commonwealth Human Rights Initiative (CHRI), an international nongovernmental organization (NGO), recently conducted some major studies on policing in South Asia. Some of the important of these include *Feudal Forces: Democratic Nations-Police Accountability in Commonwealth South Asia* (Commonwealth Human Rights Initiative 2007); *Feudal Forces: Reforms Delayed- Moving from Force to Service in South Asia Policing* (Commonwealth Human Rights Initiative, 2010a); *Police Organizations in Pakistan* (Commonwealth Human Rights Initiative 2010b); and *Rough Roads to Equality: Women Police in South Asia* (Commonwealth Human Rights Initiative 2015). These studies have examined the regional problems and profiles of policing in South Asia, and the issues and challenges for reforms and modernization in South Asian policing. One of the major issues raised by these studies is the lack of political will for modernization and democratization in policing in South Asia. In 2006, the Supreme Court of India, for

example, made a landmark ruling that reforms in policing in India must be implemented for ending political interference in police work, improving police accountability, ensuring police autonomy in matters of police administration, establishing a system of fixed tenures for high-ranking police officers, securing autonomy in police investigation, and creating a National Security Commission. The CHRI's 2010 study on *Feudal Forces: Reform Delayed* observed that the implementation of these directives from the Supreme Court of India remained slow and some states have even enacted laws not to comply with the Supreme Court directives. The study noted that "Ever since the Supreme Court issued its directives, state governments throughout India, have been committed to not implementing them in letter or spirit. From Andhra Pradesh arguing that the establishment of Police Complaint Authorities would demoralize police, to Uttar Pradesh contending that the creation of State Security Commissions would undermine the power of the elected government" (Commonwealth Human Rights Commission 2010a, p. 39). It was further observed by this study that "Those states that are looking to delay implementation have either permitted legislative drafting to stall, or they have passed a bill that runs contrary to the directives" (Commonwealth Human Rights Initiative 2010a, p. 39). Similarly, Pakistan embarked on a major plan for reforms in policing in 2002 by promulgating an Executive Order described as the Police Order of 2002. The reform plan was based on the ideas of democratic policing based on accountability, professionalization, police autonomy, and many other international norms and standard for law enforcement. The implementation of the Police Order of 2002 in Pakistan, even after 14 years of its inception, remained incomplete because of the fear of devolution and the intrusion of the central government on the powers of the provincial governments to control and lead the institution of policing on the basis of their vested political interests (Commonwealth Human Rights Initiative 2010b). Despite the fact that the implementation of reforms in policing in South Asia has remained slow and inadequate, the region's march toward modern democratic and professional policing, however, continues to progress. The efforts of the international assistance organizations, the region's democratic political leadership, and local civil

society and human rights groups to keep South Asia within the global movement for reform and modernization in policing in terms of the values, norms, and standards of human rights and democracy remained unabated, and Bangladesh is a case in point.

Bangladesh Police: The Structure and Organization

Colonial Heritage: The Irish Constabulary Model

The current structure of policing in Bangladesh, as mentioned before, is based primarily on the British colonial law—the Police Act 1861—which bears much of the British heritage. If we look back to the history of the enactment of Police Act 1861, we can see its inner dynamics and understand how much it was based on the philosophy of colonial control and subjugation of the natives in India. The Police Act of India was promulgated immediately after the Indian Rebellion against the British colonial government in 1857. Immediately after the rebellion, the colonial government embarked on a plan for police reform, and the Police Act of 1861 was the inevitable outcome of that initiative. The Police Act of 1861 was based on the Irish Constabulary model which was the militaristic style in contrast to the people-centered London Metropolitan Police model introduced in England in 1829. The Irish militaristic constabulary model was chosen for the obvious goal of strengthening the control of the colonial regime on the subcontinent of India. The Irish constabulary model was characterized by the intake of officers placed in barracks segregated from the local community and patrolled in an armed quasi-military style whose main focus was to control and subjugate large populations by a relatively small force. Because of its long heritage in the Police Act of 1861 and because its structure is based on the Irish constabulary model, Bangladesh Police perceive itself as one of the most powerful and dominant forces within the government. These issues of dominance and authoritarianism limit police accountability and stifle the progress of democratic policing.

Organizational Structure and the Legal Framework

Bangladesh Police is a centralized institution headquartered in Dhaka—the capital of Bangladesh. There are several major branches of the Bangladesh Police such as the Criminal Investigation Department (CID), Rapid Action Battalion (RAB), Special Branch (SB), Metropolitan Police, and Range Police. The CID is a specialized central investigation agency and is headed by an Additional Inspector General of Police (IGP). It takes up investigation of heinous, sensational, and complicated cases requiring sustained investigation, particularly the crimes committed by professional criminals whose operation extends beyond the jurisdiction of a single district. The RAB is headed by an Additional Inspector General of Police. The RAB is comprised mainly of the members of the Bangladesh Police and Bangladesh Armed Forces. The main functions of RAB are to oversee special and serious crimes like terrorism, organized crimes, transnational crimes, and complex murder cases. The SB of the Bangladesh Police is headed by an Additional Inspector General of Police. It is a centralized special agency for the collection and dissemination of information related to internal security. In each district of the country, there is a District Special Branch (DSB) which functions under the administrative control of the district Superintendent of Police (SP) and the operational control of the Additional Inspector of Police (SB). The SP of a district also functions as SP of the District Special Branch. The Metropolitan Police is also an important component of the Bangladesh Police. There are six metropolitan units in six metropolitan areas—Dhaka, Chittagong, Rajshahi, Khulna, Sylhet, and Barisal. These metropolitan police units are governed by separate acts and are headed by their respective police commissioners in the rank of Deputy Inspector General (DIG) of police or Additional Inspector General of Police. For overall policing of the country, Bangladesh is divided into seven ranges: Dhaka, Chittagong, Rajshahi, Khulna, Sylhet, Barisal, and Rangpur. Each Range is headed by a DIG of police. The DIG of police is responsible for overseeing the roles and responsibilities of SP of the districts under his/her jurisdiction. Range Police are subdivided into districts, circles, thanas (police

stations), and outposts. There is also another important component of the Bangladesh Police described as the Armed Police Battalion. It is the reserve force of the IGP headed by an Additional Inspector General of Police, and it is established in line with the Infantry battalions of the Army. It is formed to perform internal security duties; recover unauthorized arms, ammunitions, and explosives; apprehend armed gangs of criminals and assist other law enforcement agencies. An officer in the rank of SP is the commanding officer of each Armed Police Battalion. All of these branches and divisions of the Bangladesh Police are headed by an IGP. The IGP and the Bangladesh Police as a whole are under the control of the Bangladesh Ministry of Home Affairs. The educational and training functions of the Bangladesh Police are performed mainly by the Bangladesh Police Academy, Police Training Centres, and the Police Staff College of Bangladesh.

Bangladesh Police has 14 rank structures ranging from (bottom to top) Constables, Assistant Sub Inspector/Nayak, Sub Inspector/Sergeant, Inspector, Assistant Superintendent, Senior Assistant Superintendent, Additional Superintendent, Superintendent, Additional Deputy Inspector General, DIG, Additional Inspector General, and Inspector General. There are three entry points of recruitment in the police department: (i) Assistant Superintendent of Police (ASP), (ii) Sub-Inspector (SI)/Sergeant, and (iii) Constable. Direct recruitment is made at all recruitment levels. Recruitment of ASP is conducted by the Public Service Commission through combined nationwide competitive examination named Bangladesh Civil Service (BCS) examination, and they must have at least four years of college education. The ASPs who are recruited through BCS are called as cadre officers. SIs and Sergeants are recruited directly by the Police Headquarters through competitive examinations and they must have at least 2–3 years of college education. The Constables, on the other hand, must pass a physical test, oral and a written examination. The recruitment of Constable's is done by the district SP. The Constables require Secondary School Certificate or equivalent degree.

Bangladesh Police is governed mainly by the Police Act of 1861, the Code of Criminal Procedure of 1898, the Bengal Police Regulations Act of 1943, the Armed Police Battalions Ordinance of 1979, and the DMP

Act of 1976. The Police Act 1861 is the prime legislation governing Bangladesh Police. It outlines the structure of policing including its all facets of administration human resource management. The administration of the police is entrusted to the IGP who is responsible for the efficiency and discipline of the entire police establishment. The Bangladesh Police, as mentioned before, is under the direct control of the Bangladesh Ministry of Home Affairs. The Ministry has the power to control Bangladesh Police in many ways. It assumes the power of appointing class I police officers, promoting inspectors and class I police officers as well as transferring the police officers in the rank of SP and above. The Police Act granted powers to the government and the politicians to exercise control and superintendence over police functionaries. The Police Act of 1861 (Section 4) said that "The administration of the police throughout the local jurisdiction of the Magistrate of the district shall, under the general control and direction of such magistrate, be vested in a District Superintendent and such Assistant District Superintendents as the Government shall consider necessary." There is no defined parameter of this power under the law, and there are no prescribed guidelines to ensure the legitimacy of exercising this power. It is generally assumed that this power of superintendence, in fact, enables the government to use the police with partisan interests of the regime in power (Joshi 2007). One of the reports on police reforms in Bangladesh from the International Crisis Group (2009) noted that there is an ample scope to get benefitted from the weakness of the present legal structure of policing, which may facilitate corruption and abuse of power thereby creating a strong influence resistant to reform. Furthermore, external influence may be involved in the appointment of the IGP who is appointed by the government and who can be removed from the post without any explanation. As a result, it is always a possibility that the incumbent police leadership will act according to the will of the government. Daruwala et al. (2005) stated that this kind of political patronage can cause double-barreled problems. Those who enjoy this political expediency having very lucrative positions would harm or manipulate crime statistics and create unsecured and discriminatory situations for the public, while those who oppose this type of undue dominant

influence are very vulnerable to the subject of frequent transfer, false departmental, or even legal proceedings (Daruwala et al. 2005). Similarly, the Police Act gives enormous arbitrary and discretionary power to the superiors and that sometimes limits shared governance and innovations in policing. The Police Act of 1861 also limits the growth and the practice of democracy. It regulates public assemblies and processions (Section 30) and imposes repressions on the citizens by describing them as "disturbed or dangerous" (Section 15). Because of this legal authority enshrined in the Police Act of 1861, authoritarianism, regimentation, and militarism is endemic within the ranks, hierarchy, and the police culture of Bangladesh. Among the other components of the legal framework governing the Bangladesh Police, the DMP Act of 1976 is most notable. In the DMP Act of 1976, the power, functions, responsibilities, and administrations of the police are described under seven broad categories containing about 109 sections. It is observed that some progress toward democratic policing has been made in the DMP Act of 1976. It abolished the duality of control (Asian Development Bank 2006) and put more independent powers in the hands of the Metropolitan Police Commissioners for decision-making about police roles and responsibilities. The DMP Act also limits the power of the Magistrates to control police matters.

Police Reforms in Bangladesh: Achievements and Challenges

Like other South Asian countries, plan for modernization and reforms in policing in Bangladesh began in the 1970s. One of the earliest efforts for reforms came, as described above, through the DMP Act of 1976. The DMP ACT of 1976 created a new and a modern police force, and new laws for the cities of Dhaka, Chittagong, Khulna, and Rajshahi. The new metropolitan police laws were based on the policing styles in the major cities of India such as Mumbai, Calcutta, and Madras (Asian Development Bank 2006). In the 1970s, the other police reforms included the creation of the Armed Police Battalions,

establishing a Police Training Committee, and formally making a new law for recruitment and inclusion of women in the Bangladesh Police (the Police Commission of Bangladesh 1988–1989). Another major initiative for police reform was taken in 1988 through the establishment of a Police Reform Commission under the leadership of Justice Amin-ur-Rahman Khan (the Police Commission of Bangladesh, 1988–1989). Some of the major changes came on the basis of the recommendations of the Police Commission of 1988–1989 include the creation of a separate Police Division within the Home Ministry; establishment of separate Police Directorates for administration, finance, human resource management, and crime control and prevention; creation of a post of an Additional Deputy Inspector General of Police for each Police Range; separation of police investigation from law and order; and the establishment of a Police Staff College.

A more systematic and a serious plan for reforms in Bangladesh Police began from 2003 with the introduction of the PRP by the Bangladesh Ministry of Home Affairs in collaboration with the UNDP, European Union, and the United Kingdom Department of International Development. The core mission of the PRP was "to develop a safer and more secure environment based on respect for human rights and equitable access to justice through police reform, which is more responsive to the needs of poor and vulnerable people including women" (as quoted in Commonwealth Human Rights Initiative 2010a, p. 20). The PRP aimed to modernize and professionalize the Bangladesh Police by bringing change and transformations in several key areas. Most important of them were: Crime Prevention; Investigations, Operations, and Prosecutions; Human Resource Management and Training; Strategy and Oversight; Program Management; Communication; and Trafficking in Human Beings (Commonwealth Human Rights Initiative 2010a). The implementation of the goals of the PRP progressed in two phases: Phase I (2005–2009) and Phase II (2009–2015). One of the major goals of the PRP was to change the basic philosophy of policing from a traditional force to a more service-oriented policing, and it was proposed through the drafting of the police ordinance of 2007. The key goal was to replace the Police Act of 1861. The Police Ordinance of

2007 recommended the establishment of a National Police Commission to improve police efficiency by primarily increasing transparency in the human resource aspects of policing. The ordinance also proposed to create a Public Complaints Commission (PCC) to improve and ensure accountability and ethicality in police activities (The Police Ordinance of 2007 has still not received the assent of the parliament). Some of the major achievements of the PRP, however, include the modernization of police investigation by improving criminal intelligence and criminal forensic capabilities (to instill a new philosophy of moving from confession to physical evidence); establishment of 35 model police stations (out 635 police stations in Bangladesh) to experiment democratic, gender-sensitive, proactive, and community policing strategies; implementation of the strategy of separating police investigation from law and order through the creation of separate posts and roles for police inspectors in each police station; creation of new police units such as Police Internal Oversight (PIO) to reduce police corruptions and Trafficking in Human Being (THB) unit to investigate and prosecute human trafficking cases; expansion of the strategy of community policing through the creation of Community Police Forums; and improvements in police education and training. In some of these areas of reforms, the PRP has made some remarkable achievements. Evaluation studies have shown that crime reporting rate, particularly from women and children, is much higher in PRP-designated model police stations. Between 2006 and 2008, the model police stations showed reduced amount of police corruption (International Crisis Group 2009). A Public Attitude Baseline Survey for the PRP conducted by the United Nations Development Program (2007) showed that PRP-supported model police stations performed stronger than that of non-PRP-supported police stations, and public acceptance of the model stations was significantly higher (2007). The survey also depicted that outside influence on the PRP-supported police stations decreased from 72 percent in 2006 to 55 percent in 2008. The Commonwealth Human Rights Initiative's 2010 study recognized that "The philosophy underpinning MTs [Model Thanas] is to ultimately reform the police at the most basic level. The organizational strategy of MTs focuses on committing the requisite

funds necessary to improve the delivery of police services. A visit to both a regular *thana* and a Model *Thana* in Dhaka revealed the differences between the two and the impact of those differences ultimately have on service delivery." (Under the PRP, 53,000 police Community Police Forums have been established to improve police-community relations, and these forums have important effects on crime reduction, crime prevention, and police image-building).

Integration of Women in Policing in Bangladesh: Progress and Challenges

Reforms to integrate women into policing in Bangladesh began from the 1970s, and the major areas included the inclusion of women into policing, empowerment women policing, and creating a safe and secure environment for reporting and investigating violence against women and children. Among the countries of South Asia, the success of Bangladesh in the area of integrating women in policing has been remarkable. Bangladesh embarked on a policy of integrating women in policing in 1973 when 14 women police were recruited to look after the security of the wives of the President and Prime Minister of the country. In 2016, the number of women police in Bangladesh reached to about 10,000 (Statistics from PHQ, March 2016). Pakistan started to recruit women police in 1952. Women police in Pakistan is still less than 1 percent of the entire police constabularies (Sheikh 2015). In India, women constitute only about 6.11 percent of the entire police force (105,325 women out of 17,22,786 police officers). The policy of the inclusion of women in India began in 1933 in the Travancore Royal Police in Kerala.

In Bangladesh, the quota system is an important contributing factor for the increased numbers of women in policing. In Bangladesh, 10 percent quotas are reserved for women in policing at the supervisory level of recruitment (in the rank of ASP), and 15 percent for the other entry levels. Apart from that, separate special recruitments are arranged from time to time for the middle and junior rank women police

categories (Sergeants SIs and Constables), and this also significantly contributes to the growth of women police in Bangladesh. In addition, the government also has taken many initiatives for the retention and satisfactory work environment for women police in the workplace. Some of these initiatives are: increasing the maternity leave from four to six months, establishing a committee in each government unit to look after the matter of sexual harassments at the workplace, establishing child care centers in major cities of the country, and giving priority to family issues at the time of posting. In line with gender-sensitive policing, Dhaka Metropolitan Police has taken many initiatives. It has set up a separate unit named "Women Support and Investigation Division" in 2009 with the support of the PRP to address exclusively the issues of violence against women and children in Bangladesh. The unit is run by all women police and is headed by a female SP. The PRP has established eight victim support centers in eight major cities of Bangladesh. These centers partner with many NGOs to provide a better response to women and children victims. Reserving 33 percent seats for women in the Community Police Forum established by the PRP, and the Bangladesh Police Women Network, a platform for women's voice in policing, created and funded by the PRP, are also two of the major institutional innovations for women police in Bangladesh.

From 2005 to 2014, there was about 500 percent growth in women police in Bangladesh (see Table 9.1). Between 2007 and 2014, around 5030 women police were recruited as a result of expansions in many programs and organizations under the new reform initiatives of the PRP (Police Reform Program 2011 & 2013). Table 9.1 shows the gradual increase of women police in percentage by year since 1973. The maximum increase was observed in 1976 (1100 percent) as a result of the reform initiatives undertaken in that year through the enactment of the DMP Act of 1976. In 2014, almost after a decade, the influx was again significant (488 percent) indicating the positive influence of the PRP. From 2005 to 2014, the rise was remarkable, nearly 500 percent. Women participation is visible in almost every unit of Bangladesh Police: traffic police, detective police, investigation, supervision, operational units,

Table 9.1 Growth in women police in Bangladesh

Year	No. of increase/Unit	Increase by percentage
1973	14/Special Branch (SB)	Started inclusion
1976	4/SB	29
1976	90 + 60 = 150/DMP	1100
1979–1980	195 (other metros)	190.3
1990	182/newly established districts	162.2
1997	301/newly established districts	163.4
2005	184/various units	163.9
2014	5030 (total no. 6857)/various units	488
March 2016	4917 (total no. 9947)/various units	71

Source: Compiled by the author on the basis of information from Bangladesh Police Reports and Manuals

court police, and to the UN Peacekeeping Mission. This wider participation indicates the reflection of the country's growing acceptance of women in policing.

The majority of the women police work at the DMP which is followed by CID and Armed Police Battalion. The DMP is the largest and most active operational unit of Bangladesh Police. DMP has as many as 26 different internal units within the organization. Of them, women are posted to 15 units (almost three-fifth of the total positions). Most of the posts are related to road duties (traffic). It accounts for one-fourth of the posts (25 percent). Very few women are working in the power policing (appointments at DB and crime zone areas are seen as power-centric considering the gravity of the posts), where the percentage is estimated to 19. A considerable number of women police of the DMP are also working in UN Mission or studying abroad (13 percent). The rest (43 percent) are engaged in the administrative type of jobs in areas such as finance, workshop and training, and logistics (see Fig. 9.1). Although the Districts in Ranges/Divisions are considered to be the central operational units and the power positions in police, they show a less representation of women police (only 4 percent). Even who are working in those operational units are assigned mostly to desk/administrative jobs (Silvestri 2003). One of the issues about women in work in general and women in policing, in particular, is about their rank and status within the organizational

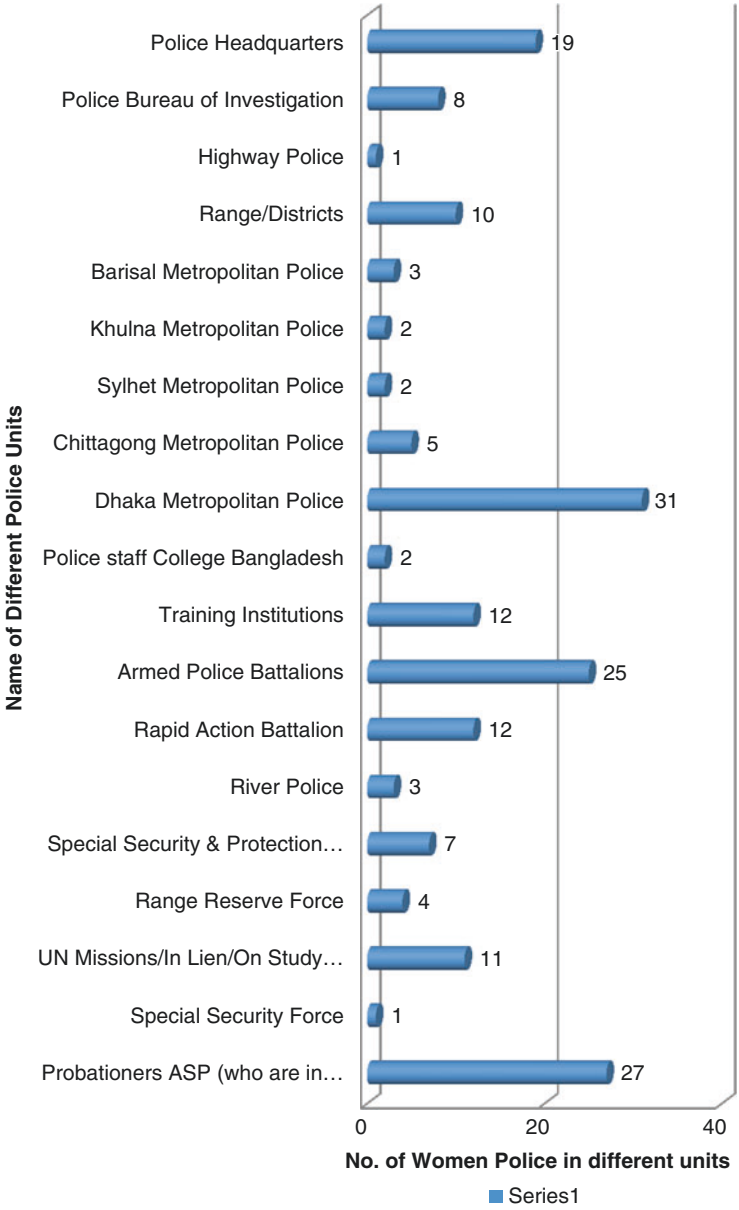

Fig. 9.1 Number of women police corresponding to different police units. (*Source*: Compiled by the author on the basis of information from the Bangladesh Police Headquarter, 2016)

hierarchy and leadership. This indicator is important to measure gender equality in the workplace. Although the number of women police in Bangladesh is rapidly increasing, studies have shown that increase is mainly concentrated to the lowest rank of police that is the Constables (around 86.5 percent of total) while the mid-level ranks (Inspector, SIs, Sergeants, Assistant SI) are comprised of 1110 in number, only one-tenth of the total. It should be noted that the mid-level ranks are considered to be the backbone of policing as these ranks (SI of Police and Assistant SI of Police) are responsible for main policing works such as investigation, operation, and the general maintenance of law and order. It is estimated that women comprise about 2.3 percent of the police officers engaged in the supervisory role in the Bangladesh Police.

Research on women policing has shown that there are many barriers which make the full integration of women in policing a challenging task (Heidensohn 1992). The barriers come from several sources. Women police may be rejected by the stereotype views of their male counterparts (Helen 2014), they may be affected by the wider societal attitudes and beliefs that policing is the male's job, they may be discriminated because of their physical capabilities (Nataranjan 2014; Melchor and Frank 2004; Brown 1998). There are also many cultural barriers within the domain that limits the integration of women in policing such as gender bias and workplace harassment (Somvadee and Morash 2008). Sometimes, harassment contributes to the underrepresentation of women at academic excellence and a position of power (Yousaf and Schmiede 2016). Studies have also shown that the negative attitudes of the male police counterparts sometimes work as impediments to the recruitment, posting, promotion, and performance of women police officers (Hunt 1990; Martin and Jurik 1996). Even though some of these issues and challenges exist, the increased representation of women in the police service, their broad exposure to a wide range of duties, and their successful leadership roles at home and abroad suggest that women are being rapidly integrated to the Bangladesh Police (see Table 9.2).

Table 9.2 Number of women police in different ranks

Women police by rank	Number currently working	Percentage (%)
Additional Inspector General of Police (Addl. IGP)	01	230 (2.31%)
Deputy Inspector General (DIG)	02	
Additional DIG (Addl. DIG)	02	
Superintendent of Police (SP)	19	
Additional Superintendent of Police	66	
Senior Assistant Superintendent of Police (Senior ASP)	7	
Assistant Superintendent of Police (ASP)	133	
Inspector (Unarmed)	90	1110 (11%)
Sub Inspector (SI) Unarmed	480	
Sergeant	28	
Assistant Sub Inspector (ASI)	512	
Constable	8607	86.5%
Total	9947	

Source: Compiled by the author on the basis of information from the Bangladesh Police Headquarter, 2016

Conclusion

From the beginning of the 1990s, modernization and reforms in criminal justice became one of the major global agendas for development. Two major issues impacted the emergence of criminal justice as an integral part of international development. The first is the rise of new human rights and human security approach to development. From the beginning of the 1990s, development began to be defined not merely as an economic phenomenon but also as a process of change and transformation for human rights, human security, the rule of law, democracy, transparent governance, and equal justice. The second is the rise of a new generation of transnational crimes such as illegal human trafficking, global trafficking of illegal drugs, global terrorism, global money laundering, global trafficking of conventional weapons, organ trafficking, and the global spread of cyber crimes. Both these issues contributed to bringing

the agenda for reforms in criminal justice at the center of international development, particularly from the beginning of the twenty-first century. When modernization and reforms in criminal justice came at the center for policy-making in development, the institution of policing emerged at the top of the agenda for modernization and reforms in almost all regions of the world. This chapter has examined the nature and the progress of police reforms in Bangladesh with particular reference to the integration of women in policing. The chapter began with the idea that in theorizing police reforms in developing countries, both global and local issues must be examined within the framework of a comparative perspective. Police reforms and modernization in developing countries must be pursued to conform to the international standards for law enforcement. At the same time, police reforms must also be based on the consideration of local political, economic, and cultural issues and dynamics. Having examined police reforms and modernization in Bangladesh from a comparative perspective, this study has found that in comparison to many other countries of South Asia, particularly India and Pakistan, Bangladesh has achieved some remarkable change and modernization in the institution of policing. This process began particularly with the development of the PRP by the Bangladesh Ministry of Home Affairs in collaboration with the UNDP, European Union, and the United Kingdom's Department of International Development in 2005. Some of the notable achievements of the PRP include the modernization of police investigation by improving criminal intelligence and criminal forensic capabilities (to instill a new philosophy of moving from confession to physical evidence); establishment of 35 model police stations (out 635 police stations in Bangladesh) to experiment democratic, gender-sensitive, proactive, and community policing strategies; implementation of the strategy of separating police investigation from law and order through the creation of separate posts and roles for police inspectors in each police station; creation of new police unit titled Police Internal Oversight (PIO) to reduce police corruptions, and Trafficking in Human Being (THB) unit to investigate and prosecute human trafficking cases; expansion of the strategy of community policing through the creation of Community Police Forums; and improvements in police education and training. The PRP has introduced a new culture and a new philosophy of policing in

Bangladesh. One of the most remarkable areas of reforms in Bangladesh policing in recent years—a process that began from the beginning of the 1970s and that further advanced in the context of police expansion under the PRP—is the integration of women in policing. Bangladesh embarked on a policy of integrating women in policing in 1973 when 14 women police were recruited to look after the security of the wives of the President and Prime Minister of the country. In 2016, the number women police in Bangladesh reached to about 10,000. From 2005 to 2014, there was about 500 percent growth in women police in Bangladesh. Between 2007 and 2014, 5030 women police were recruited as a result of expansions in many programs and organizations under the new reform initiatives of the PRP (Police Reform Program 2011). Women participation is visible in almost every unit of Bangladesh Police: traffic police, detective police, investigation, supervision, operational units, court police, and to the UN Peacekeeping Mission. Even though the representation of women in the higher ranks of policing is still much lower (less than 2.3 percent), their rapid entrance into the police service, their broad exposure to a wide range of duties, and their successful leadership roles at home and abroad (UN Peacekeeping Mission and Study Abroad Programs for higher training) suggest that women are being rapidly integrated to the Bangladesh Police. There is no denying that the full implementation of some of the key goals of the PRP will take some time, but the PRP's many reform initiatives taken in conformity with the new philosophy of development and international norms and standards of the rule of law and law enforcement have certainly brought some major structural and cultural transformations within the policing in Bangladesh.

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10

Issues and Challenges of Police Investigative Practices in Bangladesh: An Empirical Study

Mohammed B. Kashem

Introduction

A criminal investigation is one of the major functions of policing in all criminal justice systems. Criminal investigation attempts to link an offender to an offense through evidence acceptable in the court of law (Lyman 2016). As the United Nations Office on Drugs and Crime's 2006 study puts it: "In essence, crime investigation is the process by which the perpetrator of a crime, or intended crime, is identified through the gathering of facts (or evidence)" (p. 1). "Investigation can be reactive, i.e. applied to crimes," the study says, "that have already taken place, or proactive, i.e. targeting a particular criminal or forestalling a criminal activity planned for the future" (p. 1). The

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aim of the criminal investigation is to solve crimes and bringing offenders to justice. Criminal investigations can also have an impact on crime through incapacitation. At the same time, wrongful convictions based on police investigations can lead to miscarriages of justice (Drew and Prenzler 2015; Leo 2009). In the countries with the Common Law tradition, like India, Pakistan, and Bangladesh, a criminal investigation is mainly the responsibility of the police. In countries with the Civil Law tradition like France and Germany, a criminal investigation is conducted by the prosecutors. The significance of criminal investigation is based on two major doctrines or principles of modern criminal justice: the "presumption of innocence," and the doctrine of the "beyond a reasonable doubt." In criminal justice systems based particularly on the Common Law tradition, the doctrines of the presumption of innocence and beyond a reasonable doubt are at the core of the due process of law. The doctrine of the presumption of innocence implies that a defendant is innocent unless proven guilty by the prosecution beyond a reasonable doubt. The doctrine of the beyond a reasonable doubt implies that it is a violation of the due process of law if the charged offenses are not proven beyond a reasonable doubt. The United States Supreme Court in *re Winship* (U.S. 358, 1970), for example, argued that "The requirement of proof beyond a reasonable doubt has this vital role in our criminal procedure for cogent reasons. The accused, during a criminal prosecution, has at stake interests of immense importance, both because of the possibility that he may lose his liberty upon conviction and because of the certainty that he would be stigmatized by the conviction." The court further said that "Accordingly, a society . . . that values the good name and freedom of every individual should not condemn a man for commission of a crime when there is reasonable doubt about his guilt." Both the doctrines of the presumption of innocence and beyond a reasonable doubt signify the vital need of legally acceptable criminal evidence in the court of law based on the effective criminal investigation. The United Nations Office on Drugs and Crime's 2006 study correctly recognized that "a well-developed legal framework that clearly stipulates and defines the roles and responsibilities involved in crime investigation is a pre-requisite for a criminal justice system that

functions properly. The investigation is the gateway to the courts and unless it performs adequately, the quality of subsequent justice will be poor" (p. 5).

The modernization and reforms of criminal justice system in a country is crucially based on the modernization and reform in policing, and one of the vital areas of modernization and reforms in policing is a criminal investigation. The Commonwealth Human Rights Initiative (CHRI), an international non-profit think-tank based in Delhi, conducted two major studies in recent years (2008, 2007) on policing and police reforms in the countries of South Asia. The first study is titled *Feudal Forces: Democratic Nations-Police Accountability in Commonwealth of South Asia* (2007), and the second study is titled *Feudal Forces: Reform Delayed—Moving from Force to Service in South Asian Policing* (2008). These studies have noted that the lack of accountability is one of the major problems of policing in South Asia and closely related to the issue of police accountability is the problem of police investigative practices. A similar study conducted by the United Nations Development Program (UNDP) (2003) reported that in Bangladesh, many investigators lack skills in conducting scientific investigations based on forensic evidence. As a result, they are too reliant on confessional evidence from the suspect and witness testimonies. The report further stated that "improving investigative effectiveness and efficiency in this regard would significantly enhance community confidence in their ability and overall perceptions of the police" (p. 45). The purpose of the present chapter is to examine this problem of police investigative practices in Bangladesh. The chapter is divided into five major sections. Section 1 describes the historical context of police investigations and the nature of present investigative procedures in Bangladesh. Section 2 examines police investigative practices including major issues related to interrogation practices and the key challenges to improving police investigative practices. Section 3 examines the effectiveness of some of the existing investigation methods measured by clearance and conviction rates. Section 4 presents an overview of the criminal investigations in South Asia. Section 5 provides a brief overview of the modernization and reforms in the area of criminal investigation in Bangladesh achieved under the Police Reform Program (PRP) supported by the UNDP and other international assistance organizations. The conclusions of the study are presented in Section 6.

Data for this study were collected from two sources: (i) in-depth interviews, and (ii) content analysis of police records and relevant PRP documents. The sample is a non-random convenience sample consisting of police investigators (Sub-Inspectors (SIs)), supervising officials such as Officer-in-Charge (OC) (Head of the police station), Inspector—Investigation (Head of the investigation branch), and senior police executives. In addition, Inspectors and senior level officers of Criminal Investigation Department (CID) were interviewed. A total of 30 respondents comprising 15 SIs, ten Inspectors including head of police station and head of investigation, and three supervising officers (Assistant Commissioner, Circle in-charge) attached to the police stations, two senior police executives (Additional Inspector General of Police and Deputy Inspector General of Police) were interviewed. The SIs working in the investigative branch were chosen as the main subjects, as they are the primary investigators at the police station level. The participants were assured anonymity and confidentiality of the information provided in the interview. At the beginning of the interview, the purpose of the study was explained to the respondent and informed consent was obtained. The research used "non-probability sampling method" in the selection of respondents because of the problem of limited accessibility. Therefore, some systematic biases may exist because of the adopted sampling procedures.

Criminal Investigation: The Historical Context

The practices of a criminal investigation in Bangladesh need to be understood in the context of the colonial police as the Bangladesh Police inherited a system of criminal investigation inherited from the British that include legacies such as the Police Act of 1861 and the Evidence Act of 1872. Review of research suggests that "remand" is a long-standing practice in conducting criminal investigations, which can be traced back to a history of the colonial police. The Indian Police Commission Report (1902–1903) also known as "Fraser Commission" highlighted the problems of the criminal investigations. Citing strong evidence of corruption

and inefficiency in police investigations, the Commission noted that "The police officer, owing to want of detective ability or to indolence, direct his efforts to procure confessions by improper inducement, by threats and by moral pressure" (Frazer Report 1902–1903, p. 27). It was further observed that such force and coercions in investigations led to "an innocent person being prosecuted through police mistakes. More often perhaps it leads to guilty persons escaping through the suspicion thrown on the police evidence. Many a good case has been ruined in this way" (Fraser Report, p. 27). In other words, "historically police officers have been accused of employing third-degree methods, fabricating evidence, manipulating records, tutoring witnesses and, misrepresenting the facts before the courts" (Vadackumchery 1998). The Frazer Report further stated that "the police officer should be discouraged in every way from relying on the statements or confessions of accused persons as evidence against them." In this context, the commission observed that "remand is not essential for the success of an investigation, rather, a criminal case has to be proved by evidence and independent witnesses" (Frazer Report, p. 184). Therefore, the commission recommended the amendment of Section 167 of the Criminal Procedure Code and related legislation in the Evidence Act that allows a suspect to be remanded in police custody (Vadackumchery 1998; Walker and Archbold 2013; Punch 2009).

Current Police Investigative Methods and Procedures

The SIs of police working at the police stations are the primary investigators of reported crimes within their respective jurisdictions. In addition, CIDs, which are specialized investigative units of the police, also conduct investigations into reported schedule offenses including homicides. The Detective Branch, (DB) another unit of the police, also assists in investigations. It is learned that an estimated 20 percent of the police personnel are engaged in criminal investigative functions at different levels across the country. At the police station level, the investigation into reported crime begins with a First Information Report (FIR) usually lodged by the family members of the victim or a complainant. In fact,

FIRs play a vital role in the subsequent investigation and trial. After preliminary information is recorded by the police, the head of investigation/officer-in-charge assigns a SI as an investigating officer (IO) to conduct an investigation. The IO then visits the crime scene, collects physical evidence, records witness testimony, and makes an arrest where possible. If arrest ensues, then the IO conducts a preliminary interview with the suspect(s). After initial questioning, if the investigator has a clear reason to believe that the suspect was involved in the offense requiring further interrogation, then the IO seeks to remand the suspect(s) at a Magistrate court within 24 hours of arrest. After a remand hearing, under Section 167 of the Criminal Procedure Code, the Magistrate may grant remand for a maximum period of 15 days in police custody or send the arrestee to jail as a pretrial detainee where he/she could be further interrogated if necessary. Based on the information secured from the arrestees, the investigators collect physical/oral evidence and frame charges under the Section 173 of the Criminal Procedure Code (CrPC) in the form of a "charge sheet" and submit it to the concerned Public Prosecutor's Office for trial. Alternatively, the IOs can submit a "final report" stating that they are unable to prove the case for reasons that include insufficient evidence, noncooperation of the victim's family or, witnesses, and external pressure (Kashem and Rahman 2012).

Police Interrogation Practices: Detention in Police Custody and Questioning

Interviewing is one of the primary methods used by police to obtain information from suspects of crime, and it plays a significant role in the majority of the police investigations (Birch and Herrington 2011). The suspect interview allows the police to ascertain an individual's level of involvement in an offense potentially leading to the identification of new leads, new information, or even the exoneration of suspects (Gudjonsson 2003). As Gudjonsson (2003) points out, traditionally, the main aim of interviewing suspects was to obtain a confession to secure a conviction. However, police officers often conduct suspect interviews under intense pressure in a hope of obtaining information

quickly. Gudjonsson (2003) argues that suspect interviews involve risks, with some interview practices leading investigators to obtain poor, misleading, and unreliable information that can lead to a miscarriage of justice (Ahsan 2013). Interview data from the present study suggest that the main purpose of interrogation is to obtain a confession. Respondents believed that the information obtained from the suspect(s) helped them to secure a conviction in many cases. In fact, the confession was seen as an effective tool as such investigators heavily relied on oral testimony in building cases for prosecution (Kashem 2015). It was reported that the police routinely use "remand" as a tool to prepare suspects for interrogation. The extent of the use of remand can be best illustrated by a press report when police sought a total of 180 days for questioning a suspect in 12 separate cases. The majority of police investigators maintained that remand was very important and a central part of police investigation. Interview data revealed that suspects routinely made confessions and admissions that often lead to the collection of evidence including weapons and or the recovery of stolen property.

The interrogation of suspects often appeared to be conducted in a threating and non-supportive environment with a strong presumption of guilt. In this respect, there have been widespread allegations that police use "third-degree" methods of interrogation—inflicting physical or mental torture to extract confessions and other information from suspects. The confessional evidence subsequently forms the basis for investigators to arrest and prepare investigation reports (charge sheets) for prosecution. In this context, one senior police officer pointed out that despite the corroboration rules, which requires that confessions be corroborated by independent evidence, there are many instances where suspects were convicted solely on the basis of confessional evidence. Perhaps, that influences the IOs in the adoption of oral evidence-based investigation methods which appeared to be quick and easy (Kashem 2015). Though police regularly interrogate a suspect(s), it was revealed that none of the SIs interviewed had received training on investigative interviewing. Due to a lack of interviewing skills, most investigators use coercive tactics to extract confessions from suspects. All the investigators and senior police officials emphasized the necessity of training to undertake this task

ethically and efficiently. Senior police officials believed that investigative interviewing training would be extremely beneficial to enhance interviewing skills of investigators and help reduce cases of abuse when eliciting confessions from suspects.

Key Challenges to Improve Police Investigative Practices: The Use of Criminal Forensic Evidence

Over the last two decades, advancements in forensic science have significantly changed police investigation methods around the world. The application of fingerprint and DNA technologies are the most significant scientific innovations in criminal investigations that increased the possibility of identifying and convicting offenders (Julian and Kelly 2009; Fraser 2007). The literature pertaining to the use of forensic evidence in criminal investigations reveals that when physical evidence is collected and used, both clearance and conviction rates are significantly improved (Paterson et al. 1984; Horvath and Meesig 1996). In this respect, a study conducted in the United States by Roman et al. (2008) reported that "Property crime cases where DNA evidence is processed have more than twice as many suspects arrested, and more than twice as many cases accepted for prosecution compared with traditional investigation" (p. 3). In Bangladesh, the level of forensic awareness and knowledge of many criminal forensic innovations are limited. Interviews with police investigators revealed that, except in highly publicized cases, fingerprints and DNA evidence are rarely collected and used.

Problems in the Use of Criminal Forensic Evidence

The majority of police investigators thought that forensic evidence is important in the criminal investigation. However, confessional evidence obtained from the suspect or accused during police interrogation while in remand was still considered important. Respondents identified the following problems in using forensic evidence: the management of crime scenes, lack of support services for the collection and preservation of physical evidence, resource constraints, lack of cooperation from victims

and witnesses, and the lack of proper supervision of police investigation practices. Securing and isolating the crime scene are critical steps in an investigation. As Saferstein (1995, p. 31) stated, "if physical evidence is to be effectively used for aiding the investigator, its presence first must be recognized at the crime scene." Thus, the skill of crime-scene investigators in recognizing and searching evidence is very important for the successful processing of the crime scene. Interview data revealed that due to a lack of skills, many officers appeared to be unable to conduct forensic assessments of the scene. Hence, the protection and containment of the crime scene in its original state is a big challenge for the police. In the context of collecting physical evidence from a crime scene, Williams and Johnson (2007) pointed out that "The work of finding and recovering fingerprint marks is a skilled task that involves the use of background technical knowledge, a number of interpretive and manual skills, and a willingness to organize and sustain close visual attention to a range of material surfaces over an extended period of time" (p. 364). Admitting the poor management of crime scene, one OC of a police station pointed out that SIs who primarily attend the crime scenes are not well trained in crime scene management. Interviews with the head of police stations (OCs) further indicated that in the absence of SIs, often line officers (i.e., Constables and Assistant Sub-Inspectors) would attend the crime scene as first responding officers without any training to manage a crime scene.

All of the OC and heads of investigation interviewed reported that the support services for the collection and preservation of forensic evidence at the police stations were inadequate. They argued that the lack of support services was one of the main reasons for the low use of physical evidence. Since most officers lack skills in the proper collection of physical evidence, they are not capable of managing crime scenes and tend to rely heavily on the specialized teams of CID to collect forensic evidence from the crime scene. Interviewees reported that on many occasions, the CID team rarely arrived crime scenes in a timely manner because of their workload. IOs reported that transportation problems also caused delays in attending crime scenes. They pointed out that in many cases police could not promptly attend the crime scene due to a lack of available vehicles. One SI narrated the impact of a late response in the following way: "Most of the time police cannot arrive at the crime scene promptly

because of the transportation problem. As a result, sometimes evidence from the crime scenes is collected long after the commission of a crime. If a murder occurred at a distant place in our jurisdiction by the time police arrive at the crime scene many relevant pieces of evidence such as firearms/knives, blood, clothing, tool marks are contaminated by curiosity seekers." In other words, respondents felt the necessity of improving the response time which they believed would improve the quality and quantity of evidence collected from crime scenes. Further, it was stated that if collected, the proper preservation of physical evidence is an additional problem. One head of a police station (OC) mentioned that in the absence of an adequate storage facility, they cannot properly preserve recovered evidence. Therefore, they emphasized the need for better facilities to preserve physical evidence as improper storage also leads to destruction or mishandling of evidence.

In general, the police are under-resourced in Bangladesh. Virtually there is no operating budget for the police station. It was stated that on numerous occasions that officers were not receiving the required financial support for necessary investigative functions. Some respondents believed that due to financial constraints they were unable to conduct proper criminal investigations resulting in weak investigation reports. They pointed out that, for conducting pathological or radiological examinations of the poor victims (e.g., a rape victim, unidentified corps) the IOs had to bear all expenses related to the investigation. Hence, this was seen as a burden on the IO. Respondents further highlighted that an increased budget allocation for each police station would develop and support a more efficient investigation system based on physical evidence. Resource constraints is an important factor that limits the efficiency of police investigating practices. Many research studies have shown that witness' and victims' cooperation with a police investigation is important for collecting reliable criminal evidence (Maguire et al. 2010). A study by Kashem and Saadi (2007) reported that noncooperation of victims and an unwillingness of witnesses to testify before the courts were the principal reasons for "high fall out" rates of police investigation reports (charge sheets) in Bangladesh. IOs also argued that due to the absence of "Witness Protection" and "Victim Support" mechanisms, many victims and witnesses of crime are vulnerable in their communities. As a result, fear

of retaliation results in a reluctance to assist police in the investigation of crime and provide evidence at court. Frequent postponement of court dates and the lengthy trial process were reported to be a further discouraging factor. Many respondents argued that the implementation of a witness protection program would significantly enhance investigative processes.

The management and supervision of investigations by senior officers have important impacts on their quality and efficiency. To conduct an effective investigation, the IO needs leadership, supervision, and management (Neyroud and Disley 2007). In Bangladesh, the vast majority of investigations are conducted by lower-ranking officers (SIs) where effective supervision is essential. Clearly, the supervision of individual officers by senior officers in the preparation and management of case for prosecutions can have a significant impact on crime investigations. Senior police officers such as the Assistant Superintendent of Police (ASP)/Assistant Commissioner (AC) (Zonal head) have a role of constant supervision and monitoring of investigative officers and finally the investigation reports (charge sheets). In this light, an ASP/AC (zonal head) provides an important oversight overseeing role of police investigations at individual police stations. However, it was stated that due to heavy workloads it is not always possible for them to closely supervise the investigative functions of the SIs. In this vein, there appeared to be an absence of extensive guidance from supervising officers as to how investigations should be conducted.

The Effectiveness of Existing Investigation Methods: Clearance and Conviction Rates

Clearance and conviction rates are the two major performance indicators of police investigative effectiveness. In the present study, clearance rates were measured by the number of crimes cleared in relation to total charge sheet and final reports. While conviction rates were measured as a percentage of police investigation reports that resulted in a conviction. Table 10.1 presents the disposition of CID-controlled investigations for the period 2002–2015.

Table 10.1 shows that between 2002 and 2015 the clearance rate (based on charge sheet and final report (FR)) ranges from 29.18 to 51.28

Table 10.1 Disposition of CID-controlled investigations, 2002–2015 (all offenses)

Year	Total no. of cases including the cases of the previous year	Charge sheet	Final Report (FR)	No. of cases solved	Clearance rate (in percent)
2002	**2600**	*572*	*273*	**845**	32.50
2003	**2762**	*809*	*393*	**1202**	43.52
2004	**2235**	*692*	*375*	**1067**	47.74
2005	**1813**	*528*	*245*	**773**	42.63
2006	**1573**	*314*	*145*	**459**	29.18
2007	**1767**	*423*	*182*	**605**	34.24
2008	**2120**	*631*	*338*	**2036**	45.71
2009	**1936**	*367*	*249*	**1904**	31.82
2010	**2281**	*391*	*318*	**709**	31.08
2011	**2368**	*581*	316	**897**	37.88
2012	**2503**	*986*	611	**375**	39.39
2013	**5353**	*2095*	1428	**667**	39.14
2014	**5963**	*3058*	2144	**914**	51.28
2015	**5722**	*2451*	1778	**673**	42.83

Source: *Police Headquarters, Dhaka, Bangladesh* [The annual clearance rate is the percentage of total number of cases solved. More precisely, the number of cases solved is divided by the total number of cases, and multiplied by 100 to calculate the clearance rate. Note that, total number of cases solved is comprised of charge sheet and final report]

Table 10.2 Court outcomes of CID-submitted charge sheets (2002–2014)

Year	Charge sheet	Total no. of cases Disposed	Conviction	Acquittal	Conviction rate (in percent)
2002	572	**85**	*26*	*59 (69.41)*	**30.59**
2003	809	**89**	*29*	*60 (67.42)*	**32.58**
2004	692	**103**	*30*	*73 (70.87)*	**29.13**
2005	528	**88**	*29*	*59 (67.04)*	**32.95**
2006	314	**215**	*80*	*135 (62.79)*	**37.20**
2007	423	**151**	*57*	*94 (62.25)*	**37.75**
2008	631	**163**	*71*	*92 (56.44)*	**43.56**
2009	367	**46**	*13*	*33 (71.74)*	**28.26**
2010	391	**82**	*23*	*59 (71.95)*	**28.04**
2011	541	**151**	*64*	*87 (57.62)*	**42.38**
2012	611	**198**	*58*	*140 (70.70)*	**29.29**
2013	1428	**49**	*17*	*32 (65.31)*	**34.69**
2014	2142	**64**	*11*	*53 (82.81)*	**17.19**
2015	–		–		–

Source: *Police Headquarters, Dhaka, Bangladesh* (The annual conviction rate is the percentage of total number cases disposed. More precisely, the number of cases ended in conviction is divided by the total number of cases disposed, and multiplied by 100 to calculate the conviction rate)

percent with an average of 36.44 percent. On the other hand, court outcomes data (see Table 10.2) indicate that during the period 2002–2014, the conviction rate ranges from 17.19 to 43.56 percent with an average of 32.56 percent. In more than two-thirds (an average of 67.41 percent) of investigation reports (charge sheets) the police failed to win convictions and defendants were acquitted. When asked about the high rates of acquittal, senior CID officials argued that a high reliance on oral evidence, lack of witness and victim cooperation, and external pressures were the main reasons for low conviction rates.

In this respect, one senior police officer pointed out that "though successful investigation requires good case preparation by the police, it also depends on the efficiency of the prosecutors to present cases in the courts. That is, it is a shared responsibility of the police and the prosecutors. There are many instances where many good cases were ruined due to the inefficiency of public prosecutors" (Motiar Rahman, Personal communication, February 15, 2016). Hence, police officials highlighted the need to improve the existing prosecutorial services where

team members are politically controlled. One of the major problems of this political appointment is that in many cases younger and less experienced lawyers are being appointed on the basis of personal and political consideration (Kashem 2010).

Criminal Investigations in South Asia: An Overview

The UNDP's 2003 study, *Towards Police Reform in Bangladesh: Need Assessment Report*, emphasized the critical need for improving the efficiency and effectiveness of police investigative practices in Bangladesh. In terms of forensic capability of the Bangladesh Police, the report stated:

> Important physical evidence is largely being ignored or goes unnoticed. However, when it is collected it is also being contaminated or lost due to poor practices in its collection, preservation, storage, evaluation and analysis' (p. 15). The report further observed that forensic evidence, such as fingerprints and detailed crime scene sketching or photography, is rarely used to support investigations and prosecutions, partially because of a lack of zeal, but also because of a lack of training, capacity and resources (p. 15).

The high reliance on confessions, the UNDP report noted, is a contributory factor for the poor perception of police and low conviction rates. The use of forensics can significantly reduce the pressure on IOs to obtain forced confessions and can enhance the success of investigations and prosecutions. In recognition of the needs for reform in this and other areas identified by the UNDP, the government undertook a PRP in January 2005 under the technical and financial support from the UNDP and the Department for International Development (UK) (DFID). The PRP was comprised of six major areas of reforms. One of the areas included improving police investigation and prosecution aimed at shifting police investigations from predominantly oral to physical evidence. To implement this evidence-based investigation, the PRP undertook a capacity development program for the police investigators for improved understanding and management of crime scenes and the

preservation of physical evidence. The key elements of the PRP protocol included contemporary methods of investigation based on DNA and fingerprints and crime scene management. According to the PRP, the use of forensics will divert police away from "confessions"-based investigations to evidence-based investigations. To enhance the investigative capabilities of the Bangladesh Police, PRP established an Automated Fingerprint Identification System (AFIS), created DNA Laboratories, and set up an Integrated Ballistics Identification System (IBIS). Additionally, existing forensic laboratories have been modernized and five more forensic laboratories were established at five divisional headquarters. PRP also provided technical and financial support to reorganize the CID and created a new Forensic Training Institute and Police Bureau of Investigation (PIB) (PRP Annual Report 2012). Part of this reform also involved an amendment to the Evidence Act of 1872 in relation to the collection, presentation, and admissibility of physical evidence in court as a way of changing police practices. Review of its documents revealed that PRP developed a National Forensic Science Strategy for the Bangladesh Police for improving it's criminal forensic capabilities. It was stated that this strategy will guide the police in dealing with the use of forensic evidence efficiently and sustainably (PRP Annual Report 2011). To facilitate the use of forensic evidence, the PRP supplied crime scene kits to police stations across the country. A total of 2650 police investigators were trained in crime scene management. As of 2013, 500 fingerprint packs and crime scene kits were distributed to police stations across the country enabling trained investigators to collect evidence from crime scenes (PRP Annual Report 2013). The following section provides an overview of criminal investigations in South Asia.

Reform of Police Investigative Functions under the PRP: An Overview

The prevailing criminal investigative practices in South Asian countries such as India, Pakistan, and Bangladesh has its roots in the colonial police system founded by the British in 1861. Police investigative functions are still governed by the Evidence Act of 1872 and CrPC in India and Bangladesh. In general, investigations are being conducted by lower-ranked officers who

lacked skills and technical knowledge to conduct scientific investigations based on forensic evidence in these countries. Thus, the principal method of investigation is almost still entirely based on suspect's confession and witness testimony (Verma 1999; Kashem and Saadi 2007). As noted earlier, to secure this confessional evidence from the suspect(s) police indiscriminately use "remand" as a main investigative tool that often leads to involuntary and unreliable confessions. Although the constitution recognizes due process protections of the suspect, for example, right to counsel, in reality, no such rights existed in these countries. In this context, Baral (2015) argues that despite the signatories to the "UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984" which prohibits the use of any forms of torture, physical or mental, for the purpose of obtaining information or confession from the person held in detention, the use of force is a common phenomenon to extract confession from the accused persons in Nepal (Baral 2015). While Article 25 of the interim constitution states that holding of a suspect more than 24 hours is illegal but frequently suspects are arbitrarily and capriciously held until confessions are "extracted" or enough evidence is secured to incriminate the person (Baral 2015). A similar situation was also found to exist in Pakistan. A survey conducted by the Punjab and Sindh provincial police in 2007 reported that of the 300 IOs interviewed 270 admitted that they used both mental and physical torture to obtain confessions (Sahito 2009). Given this, the general public seems to have a low level of confidence in the ability of the police and prosecution agencies to solve and prosecute crimes. Many forms of investigative corruption appear to exist in these countries. In the context of police investigations in India, it was found "the middle ranking officers, junior inspectors and inspectors who do most of the investigation work, prey upon the common people by misusing their powers to extort money from the complainants, witnesses and naturally the accused" (Verma 1999, p. 267). In 2015, the Pakistan government undertook a police reform program under the technical and financial support from the German government aimed at enhancing the investigative capacity of the Sindh and Punjab Police. This capacity development program involves training in modern methods and techniques of investigation, evidence collection, and crime scene management. Evidence from Bangladesh suggests that these reform initiatives have not resulted in any significant development in improving police investigative practices

largely due to a lack of political commitment of the government, the absence of supportive structures, low institutional capacity, and existing police culture (Kashem 2015). In all countries of the South Asia, there is a number of constitutional protections for the defendant. These protections, however, fail to ensure suspect's due process rights largely because of a lack of political commitment of the governments. Even court instructions were often found to be ineffective in changing the police investigative practices in South Asia. In the absence of a legal requirement for the police to electronically record interrogations, the present police interrogation practices can lead to a misleading and unreliable information that results in poor case outcomes and low conviction rates. Indeed, the conviction rate has been very low in South Asia. In Bangladesh, the rate of conviction is about 30 percent which can be attributed to over-reliance on confessional evidence. Despite the fact that the use of remand to secure evidence appears to be ineffective in terms of case outcomes (e.g., conviction rates), police investigators have continued to use this tool as central part of police investigations.

Conclusions

Review of existing police investigative process and interview data indicate that police investigators in Bangladesh appear to follow the "case construction" theory. According to this theory, the main focus of police investigation is case construction rather than truth-finding. Case construction suggests that, as soon as someone is suspected, the investigation becomes a search for information that will support suspicion rather than a continuing search focused on what actually happened (Maguire and Norris 1992). Following this model of investigation, police investigators in Bangladesh adopt a "confession—seeking" approach and the investigation are largely centered on oral evidence from the suspects during police interrogations (Kassin 2008). The senior police officials of Bangladesh suggest that a lack of skills in the collection and processing of physical evidence and the existing cultural norms about the use of oral and physical evidence are the major impediments to the use of forensic evidence in criminal investigations. As noted earlier, most investigations are conducted by the SIs and Inspectors. In addition to investigations, these

officers are also required to perform public order duties, protocol and VIP protection duties. These multiple responsibilities severely distract them from learning the art and the science of investigative functions. Research suggests that the methods employed by the police during interrogations can have a substantial impact upon the admissibility of evidence including confessions, and may even result in the acquittal of suspects at the court (Birch and Herrington 2011; United Nations Office on Drugs and Crime 2006). Studies have shown that police abuse during interrogations often leads to involuntary and unreliable confessions (Sherrin 2004; Gudjonsson 2006; Roach 2007). In Bangladesh, there is a widespread belief that most of the information and confessions extracted while suspects were placed on remand are involuntary. In the Western World, the recording of interrogations allows the judges to evaluate the reliability and voluntariness of the confession. It is important to note that in Bangladesh, there is no legal obligation for the police to make audio-tape/electronic recording of interrogations. Police investigation literature suggests that court decisions have significant impacts on the investigative process (Dixon 1997). Accordingly, many developed countries have set out clear guidelines based on legislation and case law as to how police officers should treat the suspects during investigative interviews. Some of the examples include the Police and Criminal Evidence Act 1984 in the United Kingdom, the Fourth and Fifth Amendments of the Bill of Rights in the United States, and the Crimes Act 1914 in Australia (Birch and Herrington 2011). Essentially, all of these legislations prohibit inhumane or degrading treatments, threats, violence, or oppressive behaviour in criminal investigations. They stress on the rights of the suspects when in custody and during an interview such as the right to legal counsel and the right to remain silent during a police interview (i.e., Miranda Rights in the United States). In Bangladesh, the Evidence Act of 1872 clearly specified police powers and legal requirements of fairness about how evidence should be obtained from suspects during an interrogation. But it appears that often police investigators do not comply with the legal regulations, rather they employ coercive tactics that in many cases lead to false confessions. Despite the growing concern about the reliability of confession evidence and allegations pertaining to police behavior during the questioning under remand—police interrogations in Bangladesh

are yet to endure significant legal scrutiny. There are specific court rulings with respect to police interrogations under remand. But the court directives appeared to be ineffective in controlling police behavior during interrogations in police custody.

The introduction of DNA has greatly enhanced the investigative capacity of the police in the twenty-first century. The use of DNA in a criminal investigation has brought many important changes in police investigative practices around the world (William and Johnson 2007). The DNA technology has not only merely enhanced existing police capacity but has even begun to replace "the slow, tedious and expensive traditional investigative methods of police interviews" (Watson 1999, p. 325). Under the PRP, an AFIS and a DNA laboratory have been established in Bangladesh. However, the National DNA database is yet to be constructed. As discussed earlier, the goal of PRP's reform was to shift police investigative practices from oral to evidence-based procedures. As part of this reform initiative, the PRP implemented the evidence-based investigation in selected police stations (model police stations) to enhance police investigative practices. Interview data from SIs and the head of police stations, however, suggest that very little change had occurred in police investigative practices due to the PRP. It can, therefore, be argued that despite many attempted reforms, the colonial police investigative practices in Bangladesh have remained largely unchanged. There is still a high reliance on confessions and oral evidence in constructing cases for prosecution. Police investigators in Bangladesh seem to follow the "crime control model" (Paker 1968) that dictates presumption of guilt by the professional judgment of the police.

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11

Criminalization of Violence against Women and Laws against Domestic Violence: A Comparative Study of the United States and South Asia (Pakistan and Bangladesh)

Melody G. Brackett and Kim S. Downing

Introduction

Gender equality is one of the hallmarks of modernity. With the progress of modernization, issues of gender equality became prominent in the agenda for social and economic development in almost all countries of the world. As an extension of gender equality, a number of women's rights in recent decades, particularly in advanced countries, have been established such as women's right to vote (19th Amendment to the United States Constitution), women's right to abortion (*Roe v. Wade*, 410 U.S. 113,1973), women's right of access to contraceptive devices (*Griswold v. Connecticut*, 381 U.S. 479.1965), and women's right to equal

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pay (the United States Equal Pay Act of 1963 and the Lilly Ledbetter Fair Pay Act of 2009). From the time of the establishment of different rights of women in the 1960s and 1970s in the United States and other advanced countries, there also began a global process of criminalization of violence against women (VAW) at the behest of the United Nations. The 1979 United Nations Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), which is sometimes defined as the international Bill of Rights for Women, has been the catalyst for the expansion of the global movement for the criminalization of VAW. More than 200 member states of the United Nations are the signatories of this international treaty, and this made them obligated to criminalize violence and discrimination against women by developing laws and legal institutions. "By accepting the Convention, States commit themselves to undertake a series of measures to end discrimination against women in all forms, including to incorporate the principle of equality of men and women in their legal system" (UN-Women 2016a, p. 1). The convention further stated that state parties "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; and to ensure elimination of all acts of discrimination against women by persons, organizations or enterprises" (UN-Women 2016a, p. 1). The present chapter will address these issues of the criminalization of VAW. The chapter will focus particularly on the nature and the progress of laws against domestic and intimate partner violence in the United States (signatory of the CEDAW in 1980) and South Asia with particular reference to Pakistan (signatory of the CEDAW in 1996) and Bangladesh (signatory of the CEDAW in 1984). The United States and South Asia belong to different cultural regions of the world, but ending VAW is a global problem. The process of the criminalization of VAW is presently advancing all over the world irrespective of the differences in cultures, countries, regions, and religions. This chapter will have four major sections. In Section 1, this chapter will describe the global profile of the nature and extent of VAW. Section 2 will examine law and legal advances in ending VAW in the

United States. The third section of the chapter will explore the nature and extent of VAW in South Asia in general. Finally, the chapter will examine, in comparison to the United States, advances in law and legal institutions in ending VAW in Pakistan and Bangladesh. One of the key arguments of the chapter is that modernization or modernity is an irreversible social and cultural force, and it is presently in a process of globalization. The issues of gender equality are no longer the issues of any specific culture, a specific region, or a specific religion. VAW is a crime, and this process of criminalization has been rapidly spreading in this first decade of the twenty-first century all over the developed and the developing world. For a student of criminology and criminal justice, it is intriguing to explore how the dynamics of this process of the criminalization of VAW are unfolding in different countries, cultures, and regions.

The Global Profile of the Nature and Extent of Violence against Women

Article 1 of the United Nations' CEDAW defines that the term "discrimination against women": "shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field." VAW is a form of or a manifestation of discrimination against women. The United Nations Division on the Advancement of women defines that the "many forms of violence to which women are subject include battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation, and other traditional practices harmful to women, killings in the name of 'honor', non-spousal violence and violence related to exploitation, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women, forced prostitution and violence perpetrated or condoned by the state".

Domestic violence or intimate partner violence is one of the most pervasive forms of VAW all over the world. The World Health Organization's 2002 World Report on Violence and Health defined that "Intimate partner violence refers to any behavior within an intimate relationship that causes physical, psychological or sexual harm to those in the relationship. Such behavior includes Acts of physical aggression.... Psychological abuse.... Forced intercourse and other forms of sexual coercion... [and] Various controlling behaviors" (World Health Organization, 2002, p. 89). The United States Department of Justice similarly defines that domestic violence or intimate partner violence is a "pattern of abusive behavior in any relationship that is used by one partner to gain or maintain power and control over another intimate partner. Domestic violence can be physical, sexual, emotional, economic, or psychological actions or threats.... This includes any behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure, or wound someone" (United States Department of Justice 2005, p. 1). In 2013, the World Health Organization, the London School of Hygiene and Tropical Medicine, and the South African Medical Research Council (2013) conducted a major study on the global nature and prevalence of two forms of VAW: intimate partner violence and sexual violence by someone other than a partner (non-partner sexual violence). The study finds that "overall, 35% of women worldwide have experienced either physical and/or sexual intimate partner violence or non-partner sexual violence. While there are many other forms of violence that women may be exposed to, this already represents a large proportion of the world's women" (p. 2). The study noted that "most of this violence is intimate partner violence. Worldwide, almost one-third (30%) of all women who have been in a relationship have experienced physical and/or sexual violence by their intimate partner. In some regions, 38% of women have experienced intimate partner violence; globally, as many as 38% of all murders of women are committed by intimate partners" (2013, p. 2). The study further observed that women who are physically and sexually abused by their partners "are 16% more likely to have a low-birth-weight baby. They are more than twice as likely to have an abortion, almost twice as likely to experience depression, and, in some regions, are 1.5 times more likely to

acquire HIV, as compared to women who have not experienced partner violence" (2013, p. 2). According to this study, among all the world regions, the prevalence of intimate partner violence is highest in the Southeast Asian region (37.7%), in comparison to 29.8% in the American region, 25.4% in the European region, 37% in the Eastern Mediterranean region, 36.6% in the African region, and 24.6% in the Western Pacific region. Within the Southeast Asian region, intimate partner violence is highest in South Asia (41.73%).

In 2014, the European Agency for Fundamental Rights conducted a survey on intimate partner violence on the basis of interviews of 42,000 women from the 28 member states of the European Union (EU). The survey "asked women about their experiences of physical, sexual and psychological violence, including incidents of intimate partner violence ('domestic violence'), and also asked about stalking, sexual harassment, and the role played by new technologies in women's experiences of abuse" (European Agency for Fundamental Rights 2014, p. 3). The survey found that "One in three women (33%) has experienced physical and/or sexual violence since she was 15 years old. Some 8% of women have experienced physical and/or sexual violence in the 12 months before the survey interview. Out of all women who have a (current or previous) partner, 22% have experienced physical and/or sexual violence by a partner since the age of 15" (European Agency for Fundamental Rights 2014, p. 21). The survey further observed that "An estimated 13 million women in the EU have experienced physical violence in the course of 12 months before the survey interviews. An estimated 3.7 million women in the EU have experienced sexual violence in the course of 12 months before the survey interviews" (European Agency for Fundamental Rights 2014, p. 21). There are, of course, some variations within the 28 countries of the EU with respect to the extent and prevalence of intimate partner violence (see Table 11.1).

In addition to physical and sexual violence, the EU-survey also measured intimate partner psychological violence, stalking, and sexual harassment. The survey shows that "Overall, 43% of women have experienced some form of psychological violence by an intimate partner, which includes other forms of abuse alongside psychologically abusive behavior. . . . The most common forms of psychological violence involve a partner belittling or humiliating a

Table 11.1 Intimate partner violence in Europe: Results from some of the selected countries

- A survey of 10,000 randomly sampled women in Germany by the German Federal Ministry of Family Affairs, Senior Citizens, Women, and Youth reported that 37% of all women interviewees have experienced at least one form of physical attack or threat of violence by a partner or a non-partner since the age of 16.
- Figures from the Crime Survey for England and Wales (formerly the British Crime Survey) for a 12-month period based on self-completion responses from a sample of 46,000 women and men, found that 18% of women have experienced some form of stalk ing since the age of 16 (in comparison with 10% of men).
- In Sweden, a postal survey carried out in 1999–2000 found that, among 6926 women, 35% had experienced physical or sexual vio lence by a previous male partner since the age of 15.
- In Finland, a 2005 postal questionnaire to 4464 women found that 29% had experienced physical or sexual violence, or threat from a non-partner, since the age of 15.
- In Denmark, a telephone survey of 3552 women found that 50% of women had experienced physical or sexual violence, or threat from a partner or a non-partner, since the age of 16.
- In Italy, a telephone survey of 25,065 women in 2006 found that 32% of women had experienced physical violence, sexual violence or threats by a partner or a non-partner since the age of 16.

Source: European Agency for Fundamental Rights (2014)

woman in private, insisting on knowing where she is . . . and getting angry if she speaks to other men" (European Agency for Fundamental Rights 2014, p. 71). About stalking, the survey found that "In the EU-28, 18% of women have experienced stalking since the age of 15, and 5 % of women have experienced it in the 12 months before the survey interview. This corresponds to about 9 million women in the EU-28 experiencing stalking within a period of 12 months" (European Agency for Fundamental Rights 2014, p. 81). According to the same survey, sexual harassment is equally pervasive in the EU countries.

> Depending on the number of different forms of sexual harassment that were asked about in the survey, an estimated 83 million to 102 million women (45 % to 55 % of women) in the EU-28 have experienced sexual harassment since the age of 15. An estimated 24 million to 39 million women (13% to 21%) in the EU-28 have experienced sexual harassment

in the 12 months before the survey interview alone. (European Agency for Fundamental Rights 2014, p. 95)

Data from the surveys of the World Health Organization, the EU-survey, and surveys of various other international development agencies thus clearly show that VAW, particularly intimate partner violence, is a global problem (see Table 11.2). Because it is a global

Table 11.2 A global profile of violence against women (VAW)

- It is estimated that 35% of women worldwide has experienced either physical and/or sexual intimate partner violence or sexual violence by a non-partner at some point in their lives. However, some national studies show that up to 70% of women have experienced physical and/or sexual violence from an intimate partner in their lifetime.
- It is estimated that of all women who were the victims of homicide globally in 2012, almost half were killed by intimate partners or family members, compared to less than 6% of men killed in the same year.
- In 2012, a study conducted in New Delhi found that 92% of women reported having experienced some form of sexual violence in public spaces in their lifetime, and 88% of women reported having experi enced some form of verbal sexual harassment (including unwelcomed comments of a sexual nature, whistling, leering, or making obscene gestures) in their lifetime.
- Worldwide, more than 700 million women alive today were married as children (below 18 years of age). Of those women, more than one in three—or some 250 million—were married before 15. Child brides are often unable to effectively negotiate safe sex, leaving them vulnerable to early pregnancy as well as sexually transmitted infections, including HIV.
- Around 120 million girls worldwide (slightly more than one in 10) have experienced forced intercourse or other forced sexual acts at some point in their lives. By far the most common perpetrators of sexual violence against girls are current or former husbands, partners, or boyfriends.
- Adult women account for almost half of all human trafficking victims detected globally. Women and girls together account for about 70%, with girls representing 2 out of every 3 child trafficking victims.
- One in 10 women in the EU report having experienced cyber harass ment since the age of 15 (including having received unwanted, offensive sexually explicit e-mails or SMS messages, or offensive, inappropriate advances on social networking sites). The risk is highest among young women between 18 and 29 years of age.

Source: UN Women (2016b)

problem, there is therefore presently spreading a global movement for ending VAW. This movement formally began, as mentioned before, from the birth of the United Nations CEDAW in 1979. The rise of the Feminist Movement and the global expansion of the International Women's Movement from the 1970s, and a renewed understanding of the human rights approach and the centrality of women empowerment in international development from the 1980s provided further impetus for the expansion of the global movement for ending VAW from the beginning of the twenty-first century. The birth of the United Nations Secretary-General's Campaign titled *UNITE to End Violence against Women* in 2008 signified this new phase of the global expansion of the movement to end VAW (see Table 11.2)

Extent and Prevalence of Domestic Violence in the the United States: Law and Legal Developments

In the United States, a woman is physically abused every 9 seconds and 3 women are murdered daily by an intimate partner. On a given day, approximately 37,519 victims of domestic violence in the United States reside in shelters and another 5686 victims have turned away due to staff and funding shortages. The Center for Disease Control's National Center for Injury Prevention and Control, in collaboration with the United States Department of Justice and the Department of Defense, conducted one of the most comprehensive surveys on intimate partner violence in the United States in 2010. One of the unique characteristics of this survey is that it "provides the first-ever simultaneous national and state-level prevalence estimates of violence for all states" (National Center for Injury Prevention and Control 2011, p. 1). This is "the first survey in the United States that measured different types of VAW that have not previously been measured in a national population-based survey, including types of sexual violence other than rape; expressive psychological aggression and coercive control, and control of reproductive or sexual health" (National Center for Injury Prevention and Control 2011, p. 1). Data

Table 11.3 The 2010 national intimate partner and sexual violence survey, United States: Major findings

- Nearly 1 in 5 women (18.3%) and 1 in 71 men (1.4%) in the United States have been raped at some time in their lives, including completed forced penetration, attempted forced penetration, or alcohol/drug-facilitated completed penetration.
- More than half (51.1%) of female victims of rape reported being raped by an intimate partner and 40.8% by an acquaintance; for male victims, more than half (52.4%) reported being raped by an acquaintance and 15.1% by a stranger.
- Approximately 1 in 21 men (4.8%) reported that they were made to penetrate someone else during their lifetime; most men who were made to penetrate someone else reported that the perpetrator was either an intimate partner (44.8%) or an acquaintance (44.7%).
- An estimated 13% of women and 6% of men have experienced sexual coer cion in their lifetime (i.e., unwanted sexual penetration after being pressured in a nonphysical way); and 27.2% of women and 11.7% of men have experi enced unwanted sexual contact.
- Most female victims of completed rape (79.6%) experienced their first rape before the age of 25; 42.2% experienced their first completed rape before the age of 18 years. More than one-quarter of male victims of completed rape (27.8%) experienced their first rape when they were 10 years of age or younger.

Source: National Center for Injury Prevention and Control (2011)

were gathered from complete interviews of 16,507 adults (9086 women and 7421 men). The findings of the study suggest that intimate partner violence in the United States is widespread (see Table 11.3). Out of 9086 women interviewed, 35.6% said that they have experienced rape and physical violence and/or stalking by an intimate partner in their lifetime.

The survey observed that 30.3% of women in the United States (about 36.2 million) have been slapped, pushed or shoved by their intimate partners at some points in their lifetime. "Approximately 1 in 4 women in the United States (24.3%) has experienced severe physical violence by an intimate partner in her lifetime, translating to nearly 29 million women. An estimated 17.2% of women have been slammed against something by a partner, 14.2% have been hit with a fist or something hard, and 11.2% reported that they have been beaten by an intimate partner in their lifetime" (National Center for Injury Prevention and Control 2011, p. 43). The extent of sexual violence by

an intimate partner is also alarming. The survey noted that "Nearly 1 out of 10 women in the United States (9.4% or approximately 11.1 million) has been raped by an intimate partner in her lifetime. More specifically, 6.6% of women reported completed forced penetration by an intimate partner, 2.5% reported attempted forced penetration, and 3.4% reported alcohol/drug facilitated rape" (National Center for Injury Prevention and Control 2011, p. 42).

And the nature of psychological aggression is equally shocking. The survey found that "Nearly half of all women in the United States (48.4% or approximately 57.6 million) have experienced at least one form of psychological aggression by an intimate partner during their lifetime" (National Center for Injury Prevention and Control 2011, p. 45). It has been established by almost all studies on intimate partner violence that there are many adverse effects of intimate violence on women. The above survey also found that "With the exception of high blood pressure, the prevalence of adverse mental and physical health outcomes was significantly higher among women with a history of rape or stalking by any perpetrator, or physical violence by an intimate partner" (National Center for Injury Prevention and Control 2011, p. 62). Some of the adverse health effects include "a higher reported prevalence of asthma, irritable bowel syndrome, diabetes, frequent headaches, chronic pain, difficulty sleeping, and activity limitations. The percentage of women who considered their physical or mental health to be poor was almost 3 times higher among women with a history of violence compared to women who have not experienced these forms of violence" (National Center for Injury Prevention and Control 2011, p. 62).

In the United States, the issue of domestic intimate partner violence was not acknowledged until the late 1960s–early 1970s (see Table 11.4). Prior to this timeframe, domestic violence was considered a private family matter without any criminal repercussions. However, within the last 50 years, this problem has gained national and international attention. Feminist and other social action groups have advocated for victims/survivors of domestic violence and championed the cause for legislation to end all forms of VAW. In the 1970s, the "Battered Women's Movement" gained momentum and activists were the agents of change (Hackett, McWhirter, and Lesher 2016). Within the last four decades,

Table 11.4 Movement to end domestic violence in the United States: Timeline

- In 1966, beating, as cruel and inhumane treatment, became grounds for divorce in New York, but the plaintiff had to establish that a "sufficient" number of beatings had taken place.
- In1968, the Harris Poll interviewed 1176 American adults in October. They found that one-fifth of the population approved of slapping one's spouse on "appropriate" occasions.
- In 1969, California adopted a no-fault divorce law by which either partner could request and obtain a divorce without fear of being contested by the other party.
- In the 1960s and 1970s, women could openly discuss being physically assaulted, refer to themselves as being battered, and hotlines and crisis centers were available to offer services.
- In the 1970s, women developed a united voice with the theme, "We will not be beaten" became the mantra of women across the country organizing to end domestic violence. A grassroots organizing effort begins, transforming public consciousness and women's lives.
- In 1975, wives were allowed to bring criminal action against her spouse for physical injury.
- In 1976, Del Martin published Battered Wives, a major source of information and validation for the movement.
- In 1976, the first domestic violence shelter opened in New York City.
- In 1981, there were over 700 shelters in operation nationwide serving 91,000 women and 131,000 children per year.
- In 1985, The National Assault Prevention Center was formed by Sally Cooper, which helps children deal with different forms of abuse.
- In 1990, 48 states enacted or revamped injunctions that enabled courts to refrain men from abusing, harassing and assaulting the women with whom they live.
- In 1992, the U.S. Surgeon General ranked abuse by husbands to be the leading cause of injuries to women aged 15–44.
- In 1992, the American Medical Association released guidelines suggesting that doctors screen women for signs of domestic violence.
- In 1994, the federal VAWA created the first legislation.

Source: Compiled by the authors from www.aapci.org/pdf/women_movement.pdf

the Battered Women's Movement galvanized the nation, and it became more forceful in the context of the global movement to end VAW led by the United Nations CEDAW.

The genesis of domestic violence laws in the United States have been traced to 1871 in Alabama, with it being identified as the first state to repeal the legal right of men to beat their wives (U.S. Department of Health and Human Services 2012). Maryland joined in the efforts to

combat VAW through the enactment of legislation in 1882 that made wife-beating a crime and the potential penalty of 40 lashes or a year of incarceration. By the mid-1970s, Oregon enacted even tougher laws to prevent and respond to domestic violence as evidenced by being the first state to enact legislation that mandated arrest in cases involving domestic violence. The continued rallying of policy-makers by battered survivors, advocates, and activists, eventually led to changes in the response to VAW in the United States. Currently, all 50 states have some type of domestic violence legislation in place (Mahserjian 2016). Although Alabama, Maryland, and Oregon were at the forefront of efforts to enact laws to prevent and respond to VAW, and the untiring efforts of advocates, activists, and formerly abused women which brought public awareness and outrage about the effects of domestic violence, it still took more than 100 years before there would be federal legislation enacted to address the burgeoning problem of domestic violence (Fernandes-Alcantara 2015).

The Family Violence Prevention and Services Act (FVPSA) was the first federal law enacted to address domestic violence in the United States (Fernandes-Alcantara 2015). The FVPSA was initially signed into law by Congress as part of the Child Abuse Amendment of 1984 (P.L. 98–457) and Title I of the FVPSA amended the Child Abuse Prevention and Treatment Act (CAPTA). The FVPSA was enacted to serve a dual role, which was to provide core domestic violence services and enforcement of the law (Fernandes-Alcantara 2015). Specifically, the FVPSA helped states to: (1) increase public awareness and understanding of domestic violence; (2) prevent domestic violence; and (3) establish, maintain, and expand programs and services for victims of domestic violence and their children (Sacco 2015; United States Department of Health and Human Services 2012). The FVPSA is the main source of funding for local domestic violence programs and has been reauthorized 7 times. The most recent reauthorization of the FVPSA was in 2015 (Sacco 2015). The core services provided to victims of domestic violence and their children include shelter, 24-hour crisis hotline, crisis intervention, safety planning and preparedness, advocacy, violence prevention programs and activities, information and referral services, and legal assistance (Sacco 2015). FVPSA

programs are generally administered by the Department of Health and Human Services' (DHHS), the Administration for Children and Families (ACF), and the Centers for Disease Control and Prevention (CDC). However, the ACF tends to administer most FVPSA programming, including grants to states, territories, and Indian tribes to support community-based organizations that provide emergency shelter and related assistance for victims of domestic violence and their children.

The Violence Against Women Act (VAWA) was signed into law by Title IV of the Violent Crime Control and Law Enforcement Act of 1994 (P.L. 103–322). It was drafted by then-Senator Joe Biden and is often considered one of the most significant legislations enacted to combat VAW as it provided a more comprehensive approach to addressing domestic violence. According to the United States Department of Justice (2014), the VAWA changed the legal environment by its creation of tough criminal and civil enforcement tools for holding offenders accountable for their violent behaviors and for offering victims access to safety, programs, services, and justice. Specifically, the VAWA aimed to improve the national criminal justice response to VAW by improving investigations and prosecutions of sex offenses. The VAWA also developed grant programs to provide numerous angles to tackle domestic violence. It has been argued that one of the greatest accomplishments of the VAWA was its collaborative response to VAW with special emphasis on domestic violence, dating violence, sexual assault, and stalking (United States Department of Justice 2014). Community serving groups and organizations that have been called upon to join forces to combat VAW include police officers, prosecutors, judges, probation officers, victim advocates, survivors of violence, interfaith community leaders, and other public and private service providers (United States Department of Justice 2014). The VAWA was reauthorized in 2000, 2005, and most recently in 2013 to strengthen domestic violence laws and to expand programs and services to victims of violent crime (United States Department of Justice 2014; Sacco 2015). The 2000 reauthorization sought to strengthen the original VAWA by improving federal domestic violence, dating violence, and stalking sentences. It also sought to increase protections for other vulnerable groups such as abused

immigrants, older victims, and those with disabilities. In addition, the 2000 reauthorization enabled vital grant programs to be expanded and some new programs such as legal support for victims, stalking, elder abuse, abuse of the disabled, and child protection were established (United States Department of Justice 2014). The 2005 reauthorization sought not only to reapprove programs under the VAWA, but it went a step further by strengthening penalties for repeat stalking offenders, adding extra protections for battered and trafficked immigrants, establishing programs for sexual assault victims and Native American victims of domestic violence and similar crimes, and establishing programs that sought to enhance the public health response to domestic violence (United States Department of Justice 2014). The 2013 reauthorization of VAWA sought to close major gaps in support services and justice by broadening services for all victims of domestic violence, sexual assault, dating violence, and stalking, particularly those who were underserved or not previously protected under the VAWA such as Native American women, immigrants, lesbian, gay, bi-sexual, and transgender victims, youth, teenagers, and college students (Sacco 2015). In addition, reauthorization granted Native American tribes power to enforce domestic violence laws and related crimes against non-Native individuals and created a nondiscrimination provision for VAWA grant programs (Sacco 2015). Another noteworthy accomplishment of the VAWA of 2013 was its improvement of the Higher Education Act of 1965 (HEA). Specifically, the VAWA created new mandatory grant guidelines for colleges and universities in their incident response procedures and development of programs to prevent different types of violence such as domestic violence, sexual assault, stalking, and dating violence. Under the VAWA, mandatory crime reporting and safety procedures on college campuses were developed (Sacco 2015).

In order to implement the VAWA, the Office on Violence Against Women was established in 1995. The mission of the Office on Violence Against Women is to combat and ultimately end VAW (United States Department of Justice 2014). Through federal funding, the Office on Violence Against Women provide a wide range of programs and services to victims of domestic violence, dating violence, sexual assault, and stalking. In addition, the Office on Violence Against Women continue to develop

and strengthen policies and practices to prevent VAW. To that end, the Office on Violence Against Women is a testament of a permanent federal response to VAW in the United States (Modi, Palmer, and Armstrong 2014). The enactment of state and federal legislation is an ideal approach to help prevent domestic violence. However, the enactment of legislation alone is not enough to eradicate VAW (Mahserjian 2016). Legislation must be enforced in order to have a greater impact. While the enactment of state and reauthorization of federal legislation to combat VAW as well as the creation of the Office on Violence Against Women to implement the VAWA has changed many attitudes about domestic violence and has also reduced the number of incidences of VAW due to stringent laws and punishment for perpetrators, it has not however been successful in eradicating VAW altogether. Research suggests that poor enforcement of domestic violence legislation contributes to the continuation of VAW in the United States (Mahserjian 2016). With new legislation, there has been a decrease in the incidences of domestic violence and an increase in the arrest and prosecution of perpetrators of domestic violence. But the real issue of how to protect women from violence is far from being answered (Elias 2015). In the United States, the acts of domestic intimate partner violence are criminal offenses. There is, however, some inconsistency between the definition of domestic violence and the behavior. The traditional definitions of criminal law address the intent of the behavior to cause harm. However, the essence of domestic violence remains "uncriminalised" because nonphysical methods of power and control are still not criminalized (Douglas 2015).

Extent and Prevalence of Domestic Violence in South Asia: Pakistan and Bangladesh

Unlike the United States, there are very limited empirical evidence of VAW, particularly domestic intimate partner violence in the countries of South Asia (The World Bank, 2012). However, the outcomes of some of the studies show similar risk factors for VAW in South Asia. Some of the demographic factors include age, lower household income, less education,

belonging to a lower caste, women that are unemployed, and partners that abuse drugs or alcohol (Mahapatro, Gupta, and Gupta 2012). South Asian countries have traditions and practices that perpetuate VAW. Two such practices are "close family ties and high degrees of secretiveness and self-blame due to karma or one's actions in previous lives." As well, the patriarchal structure of the culture and religious beliefs further legitimatize the degradation of women (Mahapatra 2012). In Asian cultures as a whole, the family relationship can have a direct influence on the woman's response regarding violence within the home. Some of these factors include: "glorification of suffering and sacrifice; valuation of the family; and negation of a woman's self-interest in favor of familial interest." In addition, the most senior male in the household has the ultimate power and control within the family. The women do not have any authority within the family, but they are charged to protect the honor of the family. Therefore, if the wife is vocal about the abuse, she disgraces her entire family. This is a societal expectation that women are to suffer in silence and accept this behavior as an acceptable norm (Kapur et al. 2015).

As mentioned before, the prevalence of intimate partner violence, among the world regions, is highest in the Southeast Asia region (37.7%). Within the Southeast Asian region, intimate partner violence is highest in the South Asia (41.73%). This has been further confirmed by a study recently conducted by the World Bank titled *Joining Forces to Overcome Violence against Women in South Asia*. The World Bank study finds that "Every week in Bangladesh, more than 10 women suffer from an acid attack; In India, 22 women are killed every day in dowry-related murders; In Sri Lanka, 60% of women report having suffered physical abuse; In Pakistan, more than 450 women and girls die every year in so-called 'honor killings'; And in Nepal, the practice of enslaving young girls, whereby parents sell their young daughters—typically age 6–7—to be girl servants is still widely practiced" (The World Bank 2016, p. 1). The study also finds that 77% of the episodes of VAW [in South Asia] are reported as being within the family (The World Bank 2016, p. 1). The World Bank's 2014 study, which is based on an extensive review of literature available from feminist research, economics, sociology, anthropology, public health, demography, and law, contains some of the empirical evidence on VAW and girls in South Asia. Following an

ecological model, the study described "that women and girls in South Asia face the risk of multiple forms of violence throughout their lives, from birth through old age" (The World Bank 2014, p. xxv). In their childhood, "girls face high rate child mortality, physical and sexual abuse; when they are adolescents before marriage, they are victimized by sexual harassment, and non-marital intimate partner violence; and once they are married, they face dowry-related violence and intimate partner and domestic violence" (The World Bank 2014, p. xxv).

Extent and Prevalence of Violence against Women in Pakistan

Among the countries of South Asia, VAW in Pakistan is widespread, pervasive, and persistent. As one criminologist noted "The World Economic Forum's Global Gender Gap 2014 report places Pakistan as the second lowest performing country in the world in terms of gender equality. In Pakistan's rural areas instances of VAW in the form of so-called 'honor' killings, child marriages, acid attacks, and domestic and sexual abuse are frequent" (Munshey April 24, 2015, p. 1). According to a survey conducted by the Human Rights Commission of Pakistan on the basis of interviews of 1000 women from the province of Punjab, 35% of the women admitted in the hospitals reported being beaten by their husbands. The survey reported that on an average, at least two women were burned every day in domestic violence incidents and approximately 70–90% of women experience spousal abuse. In 1998, 282 burn cases of women were reported in only one province of the country. Of the reported cases, 65% died of their injuries (Ali and Gavino 2008, p. 1). Studies have shown that all forms of VAW in Pakistan are increasing. In 2012, "A local women's rights group in Pakistan says the number of incidents of VAW in Pakistan has increased at least seven percent over the past year" (Behn October 25, 2012, p. 1). The same Women's Rights Group further added that "Thousands of women are kidnapped, murdered and raped in Pakistan every year, says Pakistan's Aurat Foundation, a group that monitors media reports of acts of violence against women"

(Behn October 25, 2012, p. 1). The 2012 report of the Aurat Foundation of Pakistan, a local nongovernmental organization (NGO), claimed that in 2011, sexual assault cases increased by 48.65%, acid throwing cases increased by 37.5%; "honor" killings by 26.57%, and domestic violence increased by 25.51%. "Aurat Foundation . . . in its annual report on VAW, stated that 827 and 822 cases of rape and gang rape were reported in 2011 and 2012 respectively. . . . It must be kept in mind that majority of cases of rape are not reported . . . actual cases may be 60% to 70% higher" (Zaman and Zia 2016, p. 2). Anis Haroon, Chairwoman of the National Commission on the Status of Women Pakistan did confirm "that violence and discrimination against women in Pakistan have increased over the last 3 decades. She attributes the trend in part to the increasing Islamization of the nation and the rise of violence as a whole" (Behn October 25, 2012, p. 1), The World Bank (2014) study found that:

> Annual qualitative assessments of reported rape in Pakistan, conducted by the Aurat Foundation, show that in the period 2008–12 rape consistently comprised 10 percent to 11 percent of total reported violent crimes against women and has been among one of the top three to five categories of violence against women thus estimated. . . . A quarter (25 percent) of married girls and women surveyed in six districts in Pakistan reported having been forced to perform a sexual act by men other than their husband. (pp. 56–57)

In the words of a Pakistani human rights advocate "There are two key reasons behind why the country [Pakistan] is a most dangerous place for women: a) the existence of a legal basis to commit violence against women in legislation such as the Hudood Ordinance, Qisas and Diyat law, law of evidence and honour killing law that makes honour killing a compoundable offence" (Bari October 31, 2014, p. 1). The second reason is the:

> culture of impunity in cases of violence against women. The conviction rate in gender-based crimes is negligible. Justice is even denied in the most high-profile cases of violence such as in the case of Mukhtaran Mai [Mukhtar Mai was gang-raped on the orders of a tribal court in

Table 11.5 Examples of norms and beliefs that support violence against women (VAW)

• A man has a right to assert power over a woman and is considered socially superior
• A man has a right to physically discipline a woman for "incorrect" behavior
• Physical violence is an acceptable way to resolve conflict in a relationship
• Sexual intercourse is a man's right to marriage
• A woman should tolerate violence in order to keep her family together
• There are times when a woman deserves to be beaten
• Sexual activity (including rape) is a marker of masculinity
• Girls are responsible for controlling a man's sexual urges

Source: World Health Organization and London School of Hygiene and Tropical Medicine (2010). Preventing intimate partner and sexual VAW: taking action generating evidence. Geneva and London: WHO

> Pakistan in 2002] and the Kohistan video [Four women were sentenced to death by a triable court in Kohistan, Norther Pakistan for singing and dancing in a wedding party]. This clearly signals the state's unwillingness to protect women from the oppression of private patriarchy. (Bari October 31, 2014, p. 1)

In the words of another Pakistan journalist, "The spurt in crimes against women has shocked liberal Pakistanis. The statistics of a leading human rights organization show that on average nine women are killed daily across the country in what are termed 'honor crimes'. The ratio is higher in the northern tribal areas, with cultural affinity to Afghan tribal practices. Not only that, two women are raped every hour. The suicide rate among women is spiking alarmingly. Last year (2001) close to 500 women committed suicide. This is just one indicator of the depression characterizing the lives of women [in Pakistan]" (Javeria 2002, p. 1). The Human Rights Commission of Pakistan reported that in 2013, 56 women were murdered in Pakistan for giving birth to girls (see Table 11.5). A journalist rightly commented that:

> This is indicative of the deep disdain held for women by larger society. This disdain frequently translates into physical violence—150 women were burned

> in acid attacks, incidents of gas leakage and stove burning. 389 incidents of domestic violence were reported in the media with husbands being the most common perpetrators. According to Punjab police crime statistics, 2576 cases of rape of women were registered in that province alone in 2013. These statistics illustrate the oppression that women suffer in Pakistan. (Munshey April 24, 2015)

The Pakistan's Progressive Women's Association (PWA), based in Islamabad, recently reported that "up to 4000 women are burnt each year [in Pakistan], almost always by husbands or in-laws, often as 'punishment' for minor 'offences' or for failure to bring in a sufficient dowry" (Integrated Regional Information Network March 28, 2008, p. 1). The Progressive Women's Association "collected details of nearly 8000 such victims from March 1994 to March 2007, from three hospitals in the Rawalpindi-Islamabad area alone" (Integrated Regional Information Network March 28, 2008, p. 2). While many such statistics on VAW in Pakistan are revealing, the episodes of real violence reported in the media are much more horrible and appalling, and these episodes are not isolated events. They magnify the very patriarchal, authoritarian, and fundamentalist nature of the Pakistani society with respect to the problematic of VAW. As Journalist Javeria (2002) wrote:

> Try measuring the scale of excesses and crime against women in Pakistan, and you are sure to emerge more benumbed than bewildered. Early this year, Zainab Noor, a young rural woman, was brutalized by her husband in a manner that shocked people across Pakistan and the world. Since he was an imam in a mosque, the crime acquired a particularly sharp dimension. Doctors treating Zainab Noor said her husband subjected her to vaginal electrocution, a new term in the lexicon of criminology. What did she do to be thus punished? It turned out that she wanted to escape a life of endless physical abuse, so her husband tied her to a bed and shoved a metal wire with 220 voltages in her. (p. 1)

In 1999, Samira Imran, a young woman of 27 was shot and killed in her attorney's office because she filed a petition for divorce from her drug-addict abusive husband. In the same year:

> a man killed his daughter and her lover after finding them in a "compromising situation," the euphemism that the Pakistani media uses when they wish to describe a sexual act. The man initially received a life sentence but was subsequently acquitted by an appeals court. In his verdict, a high court judge observed: "A father can't see his daughter in such a situation." (Javeria 2002, p. 1)

A recent episode of VAW in Pakistan is the brutal killing of Farzana Parveen, young pregnant women of 25 years of age, outside the entrance of Lahore Court On May 27, 2014. Farzana stoned to death, in front of the court and in front of law enforcement by her father and ex-husband for marrying someone without the consent of the family. And, of course, there is the tragic episode of Mala Yousafzai. Malala, a 14-year-old schoolgirl was shot in the head by Taliban gunman in 2012 for advocating education for female children in Pakistan. Even though Pakistan seems to be a country that values a high sense of morality and religiosity, sexual harassment of women in Pakistan, in addition to other forms of domestic and intimate partner violence, is pervasive. The World Bank (2014) study noted that "Studies in Pakistan of women in different professions report that 58 percent of women nurses faced sexual harassment by patients and their relatives, colleagues, and doctors, whereas almost all women (93 percent) working in private and public sectors were sexually harassed by supervisors or senior colleagues" (p. 53).

Extent and Prevalence of Violence against Women in Bangladesh

The World Bank (2014) study finds that among all South Asian countries, "Bangladesh has the highest prevalence of intimate partner sexual and physical violence. . . . Among the 15 countries with the highest global prevalence of physical intimate partner violence, Bangladesh ranks second only to the Republic of Congo. . . . India is seventh on this list, with Pakistan and Nepal 11th and 14th, respectively" (The World Bank 2014, p. 35). The World Health Organization's 2005 Multi-Country Study on Women's Health and Domestic Violence,

based on interviews of 24,000 women from 10 countries (Bangladesh, Brazil, Ethiopia, Japan, Namibia, Samoa, Serbia-Montenegro, Thailand, and Tanzania) found that intimate partner violence is widespread in Bangladesh, particularly in rural areas (the sampled regions include Dhaka and Matlab). The study observed that "Among ever-married women, 40% in Dhaka and 42% in Matlab reported physical violence; 37% in Dhaka and 50% in Matlab reported sexual violence by their husband, ever in their lifetime" (World Health Organization 2005, p. 1). The study further noted that "19% of ever-married women in Dhaka and 16% in Matlab had been physically abused within the past year, while 20% and 24%, respectively, were sexually abused during that period. Combining data for physical and sexual violence, 53% of ever-married women in Dhaka and 62% in Matlab had ever experienced physical or sexual violence" (World Health Organization 2005, p. 1). With respect to injuries caused by intimate partner violence, the study found that in both Dhaka and Matlab, "one in four women who had experienced physical abuse by a husband reported that they had been injured at least once in their lifetime; a third of them in the past 12 months. Among women who had been injured, 68% in Dhaka and 80% in Matlab needed health care at least once as a result of their injuries" (World Health Organization 2005, p. 1). The study observed that "high proportions of sexual violence . . . were reported by abused women in Bangladesh (33%)," and "The proportion of women physically forced into intercourse varied from 4% in Serbia and Montenegro to 46% in Bangladesh . . . a greater than tenfold difference" (World Health Organization 2005, p. 31). With respect to physical violence during pregnancy, the survey noted that "10% of ever-pregnant women in Dhaka and 12% in Matlab were physically abused during at least one pregnancy. Of these, 37% in Dhaka and 25% in Matlab were punched or kicked in the abdomen. More than 80% of the women who were beaten during pregnancy had also been beaten by the same person before their pregnancy" (World Health Organization 2005, p. 2). The study, however, noted that in Bangladesh "woman-initiated violence was exceedingly rare" (World Health Organization 2005, p. 39). The results of the first nationally representative survey on VAW in Bangladesh, conducted by the Bangladesh Bureau of Statistics, are more alarming.

> The result of VAW Survey 2011 identified that as many as 87% of currently married women have ever experienced any type of violence by current husband and 77% reported any type of violence faced during the past 12 months from the survey time. . . . Almost 90% of those who have ever violated by current husband has the past 12-month experience of violence which implies the persistence nature of violence by the spouse. (Hossen 2014, p. 5)

The 2011 VAW survey also found that "More than one-third (36.5%) of women experienced sexual violence perpetrated by their current husbands in their lifetime. The recent prevalence is also high as one-fourth of married women reported such violence experienced during past 12 months. Among the married women, age group of 20–34 seems to be more vulnerable to spousal sexual violence compared to other age groups" (Hossen 2014, p. 6). Emotional violence "against married women is extremely common and persistently practiced by their husbands in Bangladesh, as over 80% have ever experienced it in their lifetime with 72% in the past 12 months. The prevalence seems slightly higher in rural areas than urban. Insulting is the most commonly reported act as 27% of women ever experienced" (Hossen 2014, p. 6). Similar results of high incidence of domestic and intimate partner violence in Bangladesh were found by a survey conducted by the International Center for Research on Women and United Nations Population Fund (2009). The survey was based on the study of three countries: Morocco (n = 2122 women), Uganda (n = 1272 women), and Bangladesh (n = 2003 women). The study found that in all three countries surveyed both "the lifetime and the current experience (in the last 12 months) of intimate partner violence are high. While psychological violence is the most common form in all three countries, lifetime and current sexual violence in Bangladesh and Uganda also are high—61 percent and 38 percent in Bangladesh" (p. 7). Research showed that women who are socially and economically vulnerable and marginalized are more like to be victimized by physical and sexual abuse by their partners. The World Bank (2014) study similarly found that violence the "women sex workers, lesbian women, and disabled women in Bangladesh, India and Nepal face because of their marginalized status is exacerbated by social stigma and large gaps in their

awareness of and access to services" (p. 117). A similar observation was made by a study on intimate partner violence among women living in slums in Bangladesh. The study was conducted by the International Centre for Diarrheal Disease Research (ICDDR) of Bangladesh on the basis of interviews of 4456 women and 1617 men living in the slums of three areas (Mohakhali, Mohammadpur and Jatrabari) of the city of Dhaka. The study observed that the "prevalence of any current physical violence was 60% as experienced by the women and 61% as perpetrated by the men" (Naved and Amin 2012, p. 7), The study concluded by saying that "The survey results revealed universality of gender inequitable attitude among the women and men in Dhaka slums. A high proportion of the women and men supported multiple gender inequitable statements, accompanied by high levels of spousal VAW during the past 12 months, and low rates of help-seeking behavior of the abused women" (p. 16).

Law and Legal Developments to End Violence against Women: Pakistan and Bangladesh

Law and Legal Developments in Pakistan

As mentioned before, both Pakistan and Bangladesh, under the mandate of the United Nations CEDAW, are obligated to criminalize all forms of VAW through the development of new law and legislations. This obligation is beyond any choice and preference by a country for its indigenous customs, creeds, religion, and traditions. The criminalization of all forms of VAW in a member country of the United Nations is an international legal obligation. As one of the United Nations report noted, "States have clear obligations under international law to enact, implement and monitor legislation addressing all forms of violence against women" (United Nations Division for the Advancement of Women 2010, p. 1). In the eyes of international law, domestic violence is a violation of the international law. "Although early international treaties only provided protection against domestic violence implicitly, in the 1990s domestic violence

began to receive more explicit attention with the passage of the General Comment No. 19 by the Committee on the Elimination of Discrimination against Women (1992) and the Declaration on Elimination of Violence Against Women" (The Advocates for Human Rights 2016, p. 1). The United Nations Secretary-General's UNITE to end VAW campaign "recognizes the power of the law: one of its five key goals are for all countries to adopt and enforce, by 2015, national laws that address and punish all forms of such violence, in line with international human rights standards" (United Nations Department of Social and Economic Affairs 2010, p. iv). During the last three decades of the globalization of the movement to end VAW, new laws and legislation to criminalize VAW have been made and enacted in almost all countries of the world including Pakistan and Bangladesh. Pakistan has three major national legislations (enacted by the federal or central government) that specifically addressed the issues of VAW: the Protection of Women Act (Criminal Law Amendment) Act of 2006, the Acid Control and the Acid Crime Prevention Act of 2010 (amended in 2011), Protection against Harassment of Women at the Workplace Act of 2010, and the Domestic Violence (Prevention and Protection) Act 2012. The Protection of Women Act (Criminal Law Amendment) Act of 2006 made a provision to prosecute rape cases under the criminal law based on the English Common Law tradition. Criminal Justice in Pakistan is hybrid system governed by the English Common Law and the Sharia Law introduced in 1979. After the introduction of Sharia Law, rape cases began to be ligated and prosecuted by the Sharia courts. Under the Sharia Law, the burden of proof in rape cases is on the defendant. The defendant will have to produce four male witnesses, socially honorable and reputed in the community, who have actually observed the act of rape. The Sharia Law includes a provision that if a defendant fails to produce four witnesses, she will be tried and convicted under the false imputation of rape. Under the Sharia Law, thousands of women victims of rape were convicted in Pakistan on the basis of the provision of the *Offense of Qazf* (false imputation of rape). This was the context of the enactment of the Protection of Women Act (Criminal Law Amendment) Act of 2006, and after this enactment, rape cases again began to be prosecuted under the English Common Law. This was possible, of course, because of a major

social movement galvanized by the human rights and women groups against the introduction of the (enforcement of the *Hudud*) Ordinance—*the Offence of Zina.*

The Acid Control and the Acid Crime Prevention Act of 2010 (amended in 2011), criminalized acid attacks and imposed mandatory punishments for acid attackers. The new law said that "Whoever voluntarily causes hurt by means of fire or by any heated substance, or by means of any poison, or any corrosive substance or acid . . . shall be called to have caused hurt by dangerous means or substance." (The Gazette of Pakistan 2010a). The law further said that "Whoever by doing any act with intention of causing hurt to any person, by dangerous means or substances . . . shall be punished with imprisonment for a term which may extend the whole of life, or with fine, which may not be less than five hundred thousand rupees, or both." The law also contains provisions for court-ordered victim compensation, and the regulation of the manufacture, distribution, sale, and import of acid and other corrosive substances dangerous for public health. The amendment of the Acid Control and the Acid Crime Prevention Act in 2011 made a provision for a minimum punishment of 14 years for acid attackers and increased the fine up to one million rupees.

The Protection against Harassment of Women at the Workplace Act of 2010 criminalized sexual harassment in Pakistan—a form of VAW that was criminalized in the United States on the basis of a series of decisions made by the United States Supreme Court in the 1980s. The new law in Pakistan defines sexual harassment as any "means any unwelcome sexual advance, request for sexual favors or other verbal or written communication or physical conduct of a sexual nature or sexually demeaning attitudes, causing interference with work performance or creating an intimidating, hostile or offensive work environment, or the attempt to punish the complainant for refusal to comply with such a request or is made a condition of employment" (The Gazette of Pakistan 2010b, p. 3). The law imposed 2 forms of penalties for the sexual harassment offenses: major and minor penalties. The major penalties include measures such as "(a) reduction to a lower post or time-scale, or to a lower stage in a time-scale; (b) compulsory

retirement; (c) removal from service; (d) dismissal from service; and (e) fine. A part of the fine can be used as compensation for the complainant. In the case of the owner, the fine shall be payable to the complainant" (The Gazette of Pakistan 2010b, p. 6). The minor penalties include (a) censure; (b) withholding, for a specific period, promotion or increment; (c) stoppage, for a specific period, at an efficiency bar in the time-scale, otherwise than for unfitness to cross such bar; and (d) recovery of the compensation payable to the complainant from pay or any other source of the accused" (The Gazette of Pakistan 2010b, p. 6). The law made it mandatory for all public and private organizations including the federal and provincial ministries and the departments to set Inquiry Committees within 30 days of the enactment of the act. It is mandated by the law that the Inquiry Committee is comprised of "three members of whom at least one member shall be a woman. One member shall be from senior management and one shall be a senior representative of the employees or a senior employee. . . . A Chairperson shall be designated from amongst them" (The Gazette of Pakistan 2010b, p. 4). The law also set up a procedure for inquiry and mandated that inquiry begins within three days after a written complaint is received. The Inquiry Committee was entrusted with the task of:

> communicate to the accused the charges and statement of allegations leveled against him, the formal written receipt of which will be given; (b) require the accused within seven days from the day the charge is communicated to him to submit a written defense. . . . C) enquire into the charge and may examine such oral or documentary evidence in support of the charge or in defense of the accused as the Committee may consider necessary and each party shall be entitled to cross-examine the witnesses against him. (The Gazette of Pakistan 2010b, p. 5)

The Inquiry Committee was mandated to submit "its findings and recommendations to the Competent Authority within thirty days of the initiation of inquiry. If the Inquiry Committee finds the accused to be guilty it shall recommend to the Competent Authority for imposing one or more of the following penalties" (The Gazette of Pakistan 2010b, p. 5).

The Pakistan's Domestic Violence (Prevention and Protection) Act of 2012 is a landmark legislation like that of the United States' VAWA of 1994. The law defines domestic violence broadly that includes not just physical and sexual abuse but also emotional and psychological abuse, harassment, stalking, and abandonment. The concept of sexual abuse is defined to include "any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of the aggrieved person." Emotional and psychological abuse is defined to mean a pattern of degrading or humiliating conduct toward the victim including, but not limited to, "repeated exhibition of obsessive possessiveness . . . insults or ridicule, threat to cause physical pain, threat of malicious prosecution, blaming of spouse immorality, threats of divorce, baseless blaming . . . and bring false allegation upon the character of a female member or any member of the shared household." (The Gazette of Pakistan 2012, p. 4). All these forms of domestic violence are also defined as criminal and civil offenses. The new law made provisions for counseling and victim compensation, protection orders, residence orders, and custody orders for children. The law mandated that:

> if the court finds that there is an act of domestic violence, the court will issue a protection order to prohibit the respondent from committing any act of violence, entering the place of employment of the aggrieved person, attempting to communicate in any form, whatsoever, with the aggrieved person, and causing violence to the dependents, other relatives, or any person who gives the aggrieved person assistance against domestic violence. (The Gazette of Pakistan 2012, pp. 6–7)

The court was also given the authority under the new law that if there is act of domestic violence, the court can "restrain the respondent from dispossessing or any other manner disturbing the possession of the aggrieved person from the household; restrain the respondent or any of his relatives from entering the household; and direct the respondent to secure alternative accommodation for the aggrieved person" (The Gazette of Pakistan 2012, pp. 7). The new law imposed a number of sanctions for the violation of protection orders and made the offence cognizable, non-bailable, and compoundable. The law said that "A breach of protection order, or of the interim

protection order, by the accused shall be an offence and shall be punished with imprisonment which shall not be less than six months and with fine which may not be less than one hundred thousand rupees" (The Gazette of Pakistan 2012, p. 9). For the repeat violators of protection orders, the law imposed a mandatory punishment of minimum of two years in prison and a fine of not less than two hundred thousand rupees. Provisions were also made, for the effective implementation of the law, for training of the judges and law enforcement, formation of Protection Committees, and the appointment of Protection Officers, Service Providers. The National Commission on the Status of Women in Pakistan was given the responsibility for overseeing the implementation of the law. Following the federal framework, separate domestic violence legislations have also been enacted in the three major provinces of Pakistan—Sindh (enacted in 2013), Punjab (enacted in 2016), and Baluchistan (enacted in 2014). The new law of Punjab established "district-level panels to investigate reports of abuse, and mandated the use of GPS bracelets to keep track of offenders" (Hashim 2016, p. 1). All provincial laws criminalized domestic violence and defined it broadly to include physical, sexual, emotional, psychological, and economic abuses.

Law and Legal Developments in Bangladesh

The Constitution of Bangladesh prohibits all types of discrimination, including sexual discrimination. It also recognizes the fundamental right to equality before the law and equal protection under the law (Begum 2014). Despite the guarantee of equality and equal protection, the constitution has fallen short of its promise to women as evidenced by the continued violence against them and the lack of justice due to them. During the last 3 decades, Bangladesh has enacted a number of legislation to curb and control VAW. Some of the most notable of these legislations include the Dowry Provision Act of 1980, the Suppression of Violence against Women and Children Act of 2000, the Acid Control Act of 2002, and the Acid Crimes and Control Act of 2002. Dowry refers to the age-old tradition of giving property, money, jewelry, or other possessions to the perspective husband or groom as a consideration

of marriage (Begum 2014). The dowry system developed as a result of the high ratio of women to men of marriageable age, therefore, the shortage of marriageable men increases the risk of dowry. It is reported that dowry has been one of the primary causes of abuse of women in Bangladesh (Begum 2014). Battering, marital rape, acid throwing, threats of divorce, economic deprivations, and eviction are some of the most common forms of dowry violence. The dowry system is said to make women more vulnerable as they are treated like a commodity and the men often feel more superior as a result of the dowry. Some men have been known to increase their demands throughout the marriage and the women in turn, are continuously subjected to harassment, beatings, and possibly death if they are unable to meet the new demands. Men have also been known to marry and divorce frequently to receive dowry. To that end, dowry is simply a tool used to acquire money and other resources (Begum 2014). The sanctity of marriage is absent and the bride and her family are exploited. The Dowry Prohibition Act of 1980 is the main legislation that addresses dowry in Bangladesh as it sought to protect women from exploitation, abuse, and even death by her husband or in-laws (Begum 2014). Under the act, dowry is considered a criminal offence. The laws stated that "every offence under this Act shall be non-cognizable, non-bailable, and compoundable," and "if any person, after the commencement of this Act, gives, or takes or abets the giving or taking of dowry, he shall be punishable with imprisonment which may extend to five years and shall not be less than one year, or with fine, or with both." The landmark legislation with respect to VAW in Bangladesh is the Prevention of Repression against Women and Children Act of 2000. The act criminalized many major forms of VAW and noted that "All offences punishable under this Act shall also be cognizable; all offences under this Act shall be non-bailable, and subject to other provision under this Act, no accused or punishable person shall be released on bail" (The Parliament of Bangladesh 2000, p. 7). The Prevention of Repression against Women and Children Act of 2000 imposed death penalty for 12 different kinds of offences including death by corrosive substance, causing physical injury by corrosive substance, rape, rape with murder, rape with attempted murder, gang rape,

gang rape with murder, dowry death, and women trafficking. About sexual oppression, the law stated that "Whoever, to satisfy his sexual urge illegally, touches the sexual organ or other organ of a woman or a child with any organ of his body or with any substance, his act shall be said to be sexual oppression and he shall be punished with imprisonment . . . which may extend to ten years but not less than two years of rigorous imprisonment" (The Parliament of Bangladesh 2000, p. 4). It was further stated that "Whoever, to satisfy his sexual urge illegally, assaults a woman sexually or makes any indecent gesture, his act shall be deemed to be sexual oppression and he shall be punished with imprisonment . . . which may extend to seven years but not less than two years of rigorous imprisonment and also with fine" (The Parliament of Bangladesh 2000, p. 4). The act made a provision for the creation of Special Courts and Tribunals in each district of the country for the speedy trial and prosecution of domestic violence cases (Shahidullah 2009). The law stated that "There shall be a Tribunal in each District . . . to try offences under this Act and the Government may, if it thinks necessary, establish more than one Tribunal in that district; such tribunal shall be called as Nari o Shishu Nirjatan Daman Tribunal; and the Tribunal shall consist of one Judge and the Government shall appoint the Judge among the District or Session Judges" (The Parliament of Bangladesh 2000, p. 9). The act made provisions for victim support and compensation, victim medical care, safe custody, police accountability, judicial training, and the confidentiality of the records of domestic violence cases and trials. The Prevention of Repression against Women and Children Act of 2000 was amended in 2003, and the "2003 amendment requires the Special Courts and tribunals to complete their trial procedures within 180 days from the submission of the cases" (Shahidullah 2009, p. 217).

Research documents that Bangladesh witnessed an alarming increase in violence caused by throwing acid in the mid-1990s which created the need for the enactment of legislation to combat this new type of VAW (Yasmin 2014). The Acid Control Act and the Acid Crimes Control Act of 2002 laws were enacted to: (1) control acid crimes by enforcing stringent punishments, (2) control the import, production, sale, and use

of acid, and (3) provide needed treatment, rehabilitation and legal support services to victims. Some of the important provisions of these laws include the establishment of a National Acid Control Council Fund; establishment of a rehabilitation center for victims of acid crimes, treatment for victims of acid crimes, provision of legal aid for victims of acid crimes, locking up shops to prevent the sale of acid and banning transport engaged in carrying acid, temporary cancellation of acid selling licenses, capital punishment of the acid thrower, judgment in special tribunals, and judgment in the absence of the criminal (UN-Women 2002, p. 1).

Conclusion

From the beginning of the 1980s, in the contexts of the United Nations CEDAW, the rise of the feminist movement in the United States and other Western countries, the spread of the International Women's Movement, and the rise of a new paradigm of human rights approach to international development, a global movement began to end VAW all over the world. The movement galvanized the agenda to criminalize all forms of violence including domestic and intimate partner violence by developing new laws and legal instruments. The last 3 decades have seen the development of hundreds of laws and legislations all over the world to curb and control VAW. Within the last 3 decades, VAW also became a new and a prominent agenda in criminal justice all over the world. This chapter was concerned with this theme, and it examined and compared the domestic violence laws and legislation in the United States and South Asia, with particular reference to Pakistan and Bangladesh. The study finds that all 3 countries, who are the signatories of the United Nations Convention on the Elimination of all Forms of Discrimination Against Women, introduced a number of legislations to address the issues of domestic and intimate partner violence. Some of the major legislation include the United States' VAWA of 1994 (reauthorized in 2013); Pakistan's the Protection of Women (Criminal Law Amendment) Act of 2006), the Acid Control and the Acid Crime Prevention Act of 2010 (amended in 2011), Protection against

Harassment of Women at the Workplace Act of 2010, and the Domestic Violence (Prevention and Protection) Act 2012; and Bangladesh's Dowry Provision Act of 1980, the Suppression of Violence against Women and Children Act of 2000, the Acid Control Act of 2002, and the Acid Crimes and Control Act of 2002. In these legislations of the 3 countries, the study finds 2 common provisions. The first is that these 3 countries defined domestic violence in terms of the norms of international standards which is that domestic violence is not just physical and sexual in nature. Emotional, psychological, and economic abuses are also a part of domestic and intimate partner violence. This conceptual notion has been clearly laid out in the domestic violence legislations of these countries. Second, these countries have criminalized the acts of domestic violence and directed their criminal justice systems to deal with the new crimes and criminality of domestic and intimate partner violence. Commonalities in these legislations are also found in the areas of protection orders, victim support, and the confidentiality of domestic and intimate partner case records. In terms of punishment for the crimes of domestic and intimate partner violence, there are, however, many differences. Bangladesh probably has one of the toughest laws of domestic violence in the world. The Bangladesh Law (the Suppression of Violence against Women and Children Act of 2000) imposed death penalty for 12 different kinds of crimes related to VAW.

In 2008, the United Nations Division of the Advancement of Women and the United Nations Office on Drugs and Crime developed a model framework of legislation on VAW on the basis of evidence-based practices all over the world. The United Nations Model mandated that good legislations on domestic violence must be comprehensive, gender sensitive and based on the philosophy of human rights. "Acknowledge," according to the model, "that violence against women is a form of discrimination, a manifestation of historically unequal power relations . . . [and] provide that no custom, tradition or religious consideration may be invoked to justify violence against women" (United Nations Division for the Advancement of Women 2010, p. 13). The United Nations Model recommends that legislation should "Be Comprehensive and multidisciplinary, criminalizing all forms

of violence against women, and encompassing issues of prevention, protection, survivor empowerment and support (health, economic, social, psychological), as well as adequate punishment of perpetrators and availability of remedies for survivors" (United Nations Division for the Advancement of Women 2010, p. 14). The model further recommends that good legislations must be a part of a national plan of action, and should have provisions for specialized courts, specialized police and prosecutorial units, training and capacity-building for public officials, budgetary allocations, removal of conflicting laws, time limit on achieving legislative provisions, penalties for non-compliance by relevant authorities, effective monitoring and evaluation procedures, and research and data collection. Domestic violence legislations of the United States, Pakistan, and Bangladesh reflect some of the principles of this United Nation's Model. They all define domestic violence broadly to include not just physical and sexual violence but also emotional, psychological, and economic abuse. They are all criminalized forms of VAW. Except for the United States' VAWA of 1994, no legislation of Pakistan and Bangladesh, however, contains provisions for effective research and data collection and budgetary allocations. Of these three countries, Pakistan has some serious issues of conflicts of its domestic violence legislations with the ideals and principles of the Sharia Law. The Islamic Ulemas and the advocates of the Sharia Law in Pakistan have vehemently rejected the existing domestic violence legislations of Pakistan and this puts limits on their implementations (Pakeeza 2013). As one of the influential Islamic clerics of Pakistan said, "Women's rights protection bill was a secular move in direct conflict with Shariah . . . it is a Western conspiracy. . . . Today we are again made a colony of the Americans and the British" (Khan June 20, 2016, pp. 1–2). The legal system of Bangladesh, like that of the United States, is based on the English Common Law. The Sharia Law, like in Pakistan, is not a part of the Bangladesh's legal and criminal justice system, even though there are many Islamic fundamentalists in Bangladesh who are opposed to domestic violence legislations and the general issues of gender equality. The legislations of Bangladesh comply with most of the principles of the United Nations Model. But they need to address the issues of research and data collection, provide more budgetary allocations, and develop rules and guidelines for training

and capacity building for public officials. In its 2011 report on Bangladesh, the Committee on the Elimination of Discrimination against Women of the CEDAW noted that:

> While commending the State party for the range of efforts to address violence against women, including the enactment of the Domestic Violence Act, Prevention of Cruelty to Women and Children Act, Acid Crime Control Act, Child Marriage Restraint Act and the Dowry Prohibition Act, the Committee remains concerned that the prevalence of violence against women and girls, including domestic violence, rape, acid throwing, dowry-related violence, fatwa instigated violence, and sexual harassment in the workplace persist in the country. (Committee on the Elimination of Discrimination against Women 2011, p. 4)

The Committee Report further added, "The Committee also notes with concern that despite the High Court's decision that the extra-judicial punishments fatwas are illegal, there are reports of illegal penalties being enforced through shalish rulings. . . . The Committee also regrets the absence of data and information on all forms of violence against women as well as the absence of studies and/or surveys on the extent of such violence and its root causes" (Committee on the Elimination of Discrimination against Women 2011, p. 4). The major domestic violence legislation of Pakistan, the Domestic Violence (Prevention and Protection) Act 2012 is less than 4 years old. Its implementation and impacts on domestic violence in Pakistan have remained to be seen. Research on domestic violence, however, has shown that legislation is only a part of the global problem of VAW. This problem is also economic, social, and cultural in nature, and, hence, in each and every country it needs a social and cultural revolution from within—a revolution that can bring more economic empowerment to women, more participation of women in development, and more recognition of gender equality as human rights issues and issues of modernity and globalization. On the basis of some of the data and analysis of the legislation presented in this chapter, it seems that a social and cultural revolution for ending domestic VAW is under way not just in the United States of the advanced world but also

in the developing world of Pakistan and Bangladesh. The global movement for ending VAW is an ongoing process, and the globalization of this process is irreversible and incontrovertible.

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12

The Problem of Domestic Violence in India: Advances in Law and the Role of Extra-Legal Institutions

Sesha Kethineni

Introduction

Domestic violence is pervasive in many societies and India is no exception. Although some progress has been made in women entering the workforce and gaining economic independence, they still face abuse and exploitation. A survey by the Thomson Reuters Foundation conducted in 2012 reports that women in India are still trapped in dark ages because of patriarchal beliefs that restrict women to traditional roles (Bhalla 2012). Even before a girl is born, many face foeticide. After birth, they have to endure being married as a child and face dowry harassment, and death. Modernization of laws against domestic violence in India can be said to have begun from the colonial time, particularly from 1832 when the

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practice of *sati* was formally banned by Lord William Bentinck, then Governor-General of Bengal, in the whole of Bengal Presidency (historical data have shown that in 1817 alone, 700 widows were burned alive in Bengal). Contemporary modernization of laws to combat violence against women in India began from the beginning of independence in 1947. After independence in 1947, the Constitution was adopted in 1950. Article 14 provided equality of women before the law and various subsections of Article 15 promoted equality for women and men. Although Article 15(1) prohibits discrimination of any citizen in India on the basis of religion, race, caste, sex, or place of birth, Article 15(3) admits the unequal status of women and children and specifically warrants the need for an affirmative action on the state's part offering a "special provision to rectify their inequality" (MacKinnon 2006, p. 189). The framers of the Constitution and influential social reformers recognized the importance of preserving the welfare of children and women (Basu 2003). Article 15(7) grants the government the right to make provisions for securing humane working conditions and maternity relief for working women. Article 15(10) prohibits practices that are considered derogatory to the dignity of women. Other subsections of Article 15 lay out the rules for women's political participation in local *panchayats* and municipal elections. Some of the major legislations enacted to combat domestic violence in India include the Dowry Prohibition Act of 1961 (amended in 1986) and the Protection of Women from Domestic Violence Act (PWDVA) of 2005. This chapter will examine the impacts and the limits of some of these laws to combat violence in India. One of the key arguments of this study is that domestic violence in India is socially and culturally rooted. The caste system, the dowry system, the practice of child marriage, and other social evils continue to limit the impacts of the laws to control and combat domestic violence. The legislators changed the existing laws to punish perpetrators of domestic violence and provide protection to women. Modernization, meaning the recognition of the equal rights of women and violence against women as issues of human rights, human dignity, and equal justice, however, is needed to spread to all domains of the society, development, religion, and the whole spectrum of the emotive culture of India.

Role and Status of Women in India: Some Historical Notes

To understand the problem of domestic violence in India, it is important to review the historical, cultural, and contemporary views of the role and status of women. The definition of domestic violence typically covers acts such as physical, sexual, economic abuse; psychological/emotional abuse; or threats of violence against women by an intimate partner. In the Indian context, the definition includes culturally specific offenses such as dowry harassment and dowry death. At certain stages in history, Indian women were treated as equal to men and enjoyed considerable freedom and privileges (Tharakan and Tharakan 1975). For example, during the *Vedic* period (1500–500 BCE), women were educated, able to choose their mates, and held prominent positions (Kethineni and Srinivasan 2013). In addition, women distinguished themselves in science and learning, and even participated in philosophical debates and wrote some of the *Vedic* hymns. Women from the *Kshatriya* caste received training in martial arts and the use of arms. In particular, the *Rig Veda* (1100–500 BCE) says that wife and husband are equal in every aspect, and, therefore, should take part equally in religious and secular affairs (Laungani 2015). Women had the same rights as their male siblings in their father's property and were considered to symbolize knowledge, foresight, prosperity, and brilliance. Therefore, the society must respect women so that they destroy evil tendencies and hatred in society (Laungani 2015).

This era was progressive in its treatment of women. Although monogamy was the rule, the society accepted widows remarrying (Kumari 1994), and did not indulge in *sati* (self-immolation by women) or child marriage. Over time, however, the status of women gradually deteriorated. For instance, in the *Smriti* period (after 500 BCE), the most significant lawmaker was Manu. According to Manu, a woman should never be allowed to assert her independence. Girls must be in the custody of their fathers when they are young; women must be in the custody of their husbands after marriage; when a woman is a widow, she must be under the custody of her son. Women experienced further discrimination

in the period that followed Manu. For example, child marriages, *sati* (Yang 2008), and a ban on widows remarrying continued in some parts of India. With the Muslim conquest of India, women experienced a further deterioration of status. The practice of wearing veils became common among Muslim women. Hindu women also wore concealing clothes from head to toe and lived behind high walls, curtains, and screens within the home (Blackemore and Jennett 2001). This system, called *purdah*, was a way to prevent Muslim men from molesting or capturing Hindu women. According to one version, *sati* was used as a way to preserve the honor of Hindu women from the warrior caste whose husbands were captured in war; however, some evidence suggests that the practice existed in western and southern parts of India well before Mulsim rule (Yang 2008). During the colonial era, Indian social reformers such as Raja Ram Mohan Roy (1772–1833 C.E.) fought to abolish *sati*. The efforts of Ishwar Chandra Vidyasagar resulted in the Hindu Widow Remarriage Act of 1856 (Singh 2008). The crusade against the caste system was led by religious organizations arguing against the practice.

Nature and Extent of Domestic Violence in India

India is ranked the worst for women among the G-20 major economies (Bhalla 2012). The National Family Health Survey (NFHS) conducted a study that included an extensive list of questions on domestic violence in general and wife beating in particular. According to the survey, more than half (54 percent) of women believed that it is justifiable for a husband to beat his wife. About 41 percent considered it justifiable if a woman is disrespectful to her husband, and 35 percent said that it is acceptable if she neglects her house or children. About 51 percent of men believed that wife beating is justified, and about 37 percent said it is justified if a woman disrespectful to her in-laws. Women also reported experiencing domestic violence. More than one-third (34 percent) of women between the ages of 15 and 49 reported experiencing physical violence, 9 percent reported sexual violence, and 16 percent reported

emotional violence. The most common form of physical violence reported was slapping. Women also reported cuts, bruises, eye injuries, sprains, dislocations, broken bones, broken teeth, and burns (some severe). They found that spousal violence tends to occur early in the marriage. The problem was exacerbated because only one in four women who experienced domestic violence ever sought help. About 85 percent of women who experienced sexual violence had never told anyone, and only a small percentage (8 percent) had sought help (International Institute for Population Sciences 2007). Because many women do not report sexual or domestic violence, that "the NCRB database suffers from severe under-reporting and that the problem is deeper than even those data suggest" (Mathur and Slavor 2013, p. 2).

Mathur and Slavor (2013) studied the link between women's empowerment and domestic violence. They used two sources of data—The Indian Human Development Survey (IHDS) and the NFHS. The empowerment measures included whether a woman worked in the previous year, hours worked per year, earnings from work, and independent wealth, taking into consideration the state inheritance laws. Prior to 2005, only a handful of states had inheritance laws that gave daughters the same inheritance rights as sons. About 94 percent of their sample had been married once and about half had been married before the age of 18. The results showed that "wife beating is less likely to be reported with higher levels of earnings than women with lower levels of earnings" (p. 18). In addition, the study found that states that amended the inheritance laws "significantly reduced the likelihood of abuse for women" (pp. 18–19).

In addition to the above surveys, the National Crime Records Bureau (NCRB) of the Ministry of Home Affairs, the agency that compiles official crime statistics in India, documented 337,922 incidents of crimes against women in 2014. These crimes fall under the Indian Penal Code (IPC) and Special and Local Laws (SLL). The number of these crimes has risen continuously since 2006. Crimes against women showed an increase of 9.2 percent over 2013 and an increase of 58.2 percent over 2010 (see Table 12.1). Of these crimes, IPC crimes against women accounted for 96.3 percent; the remaining 3.7 percent were reported under SLL crimes against women (National

Table 12.1 IPC crimes against women: 2010–2014 and percentage variation in 2014 compared to 2013

		Year					Percentage Variation
	Incidents of IPC Crimes	2010	2011	2012	2013	2014	in 2014 over 2013
1	Rape	22,172	24,206	24,923	33,707	36,735	9.0
2	Attempted Rape*				4234		–
3	Kidnapping and Abduction	29,795	35,565	38,262	51,881	57,311	10.5
4	Dowry Deaths	8291	8618	8233	8083	8455	4.6
5	Assault on Women with Intent to Outrage her Modesty	40,613	42,968	45,351	70,739	82,235	16.3
6	Insult to the Modesty of Women	9961	8570	9173	12,589	9735	–22.7
7	Cruelty by husband or his relatives	94,041	99,135	106,527	118,866	122,877	34
8	Importation of girl from foreign country	36	80	59	31	13	–58.1
9	Abetment of suicide of women					3734	–
Total		205,009	219,142	232,528	295,896	325,329	9.9

*Newly included crime category in 2014
Source: National Crime Records Bureau (2014)

Crime Records Bureau 2014). Among IPC crimes, cruelty (i.e., torture) by husbands and relatives, assault with intent to outrage the modesty of women, kidnapping and abduction, and rape were the top four offenses reported to police in 2014. There were 122,877 reported incidents of cruelty by husband and relatives in 2014, an increase of 3.4 percent over 2013 (n = 118,866). Assaults with intent to outrage a woman's modesty increased by 16.3 percent (n = 70,739) over 2013 (n = 82,235). Kidnapping and abduction in 2014 (n = 57,311) showed an increase of 10.5 percent over 2013 (n = 51,881). Rapes increased by 9 percent (n = 36,735) over 2013 (n = 33,707). In addition, dowry death cases increased by 4.6 percent in 2014 (n = 8445), compared to 2013 (n = 8033).

SLL crime statistics are recorded under five specific acts: the Dowry Prohibition Act, 1961; the Indecent Representation of Women (Prohibition) Act, 1986; the Commission of *Sati* Prevention Act, 1987; the PWDVA, 2005; and the Immoral Traffic (Prevention) Act, 1956. The crimes covered under the PWDVA (2005) were compiled for the first time in 2014. Crimes under SLL showed a decline in 2014 over 2013 (See Table 12.2). The most common crime category reported under SLL was dowry harassment.

Although the official statistics are useful in identifying trends in crimes, the number of unreported incidents of domestic violence is undoubtedly much higher than official reports because many Indian women from rural and disadvantaged communities do not report these crimes to the police. In addition, the low conviction rate of cases under the Dowry Prohibition Act and Section 498A of IPC (which deals with cruelty by husbands or his relatives) act as barriers to reporting these cases to police. In addition to attitudes and beliefs about gender role expectations, women were reluctant to report abuse because many feel that the police, who are predominantly male, will not take their concerns seriously (Natarajan 2006). To address these concerns, a few states have set up special women's units, known as All-Women Police Stations (AWPS). In the southern state of Tamil Nadu, there were more than 200 women's police stations, each handling a caseload of 1000–1500 cases per year (Jones 2006). The female police officers handle complaints of abuse ranging from physical abuse to emotional abuse (e.g., taking

Table 12.2 SLL crimes against women: 2010–2014 and percentage variation in 2014 over 2013

	Incidents of SLL Crimes	Year					Percentage Variation in 2014 over 2013
		2010	2011	2012	2013	2014	
1	Commission of *Sati* Prevention Act	0	0	0	0	0	0
2	Indecent Representation of Women Act*	895	453	141	363	47	–87
3	The Dowry Prohibition Act	5182	6619	9038	10,709	10,050	–6.2
4	Protection of Women from Domestic Violence Act*					426	–
5	Immoral Traffic (prevention) Act**	2499	2436	2563	2579	2070	–
Total		8576	9508	11,742	13,650	12,593	7.7

*Newly included crime category; **Modification made in 2014 and includes only women
Source: NCRB (2014)

children away from the women) to burning with hot water or hot coffee, pouring acid, or setting the victim on fire. When the case is serious, a First Information Reports (FIR) is filed. Once the FIR is filed, the official investigation starts. The Criminal Procedure Code (1973) lays out requirements for police conducting investigations in domestic violence cases. For example, Section 174 of the code requires police to investigate and report to the district magistrate when a woman commits suicide within seven years of her marriage, dies within seven years of her marriage (and there is a reasonable suspicion that some person committed the offense), or there is doubt regarding the cause of her death.

In nonserious cases, an officer has options, including register a criminal complaint; refer to family court; withdraw or drop the case; transfer

the case to FIR; offer formal counseling; provide mediation; or restoring *sridhana* (private property; Kethineni and Srinivasan 2009). As of 2011, there were 442 women police stations. In total 13 states and the Union Territories have no separate women police stations (Joshi 2012). In a court case in 2015, the Bombay High Court laid down guidelines for police officers and service providers on how to conduct prelitigation counseling in domestic violence cases (Bhasin 2015).

Modernization of Domestic Violence Laws in India

The Government of India has adopted the United Nations Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) of 1979, and the United Nations Universal Declaration of Human Rights of 1948. Under this international law, the Government of India is obligated to develop, modernize, and implement laws and institutions for preserving the rights of women and eliminating all forms of discrimination and violence against women. In order to comply with these and other international legal norms and standards, the government of India in recent years amended many existing laws and enacted a number of new legislations. Some of the major amendments include amendments to the Indian Evidence Act of 1872 (amended in 1983), the Indian Penal Code (IPC) of 1860 (amended in 1983), the Dowry Prohibition Act of 1961 (amended in 1986); and the Indian Code of Criminal Procedure of 1973 (amended 1988). The major legislation includes the PWDVA of 2005 (Government of India 2006).

The Indian Penal Code

Section 304B of the IPC (1860, amended in 1983) was added in order to make dowry death a specific offense punishable with a minimum of seven years of imprisonment and a maximum of life. If the death of a woman (i.e., the bride) is caused by burns or bodily injury or occurs in within seven years of her marriage, and there is evidence that before her death she was subjected to cruelty or

harassment by her husband or his relatives, then it is presumed that her death was caused by her husband or relatives of the husband. Section 304B of IPC and Section 113B of the Evidence Act have been used to convict those who were able to escape prosecution under the Dowry Prohibition Act. Although abetting suicide is an offense under Section 306 of the IPC, Section 113A of the Evidence Act makes a similar presumption if the death of a married woman occurs within seven years of her marriage (Nalwa and Kohli 2011). Section 498A of the IPC primarily addresses cruelty by a husband or his relatives. The section defines "cruelty" as any willful conduct that drives a woman to commit suicide or cause grave bodily injury; danger to life, limb, or health; or harass a woman or her relatives to meet the demands of dowry. Offenses under this section are nonbailable (i.e., bail is not guaranteed), compoundable (i.e., the complaint cannot be withdrawn), and cognizable (i.e., it is considered a serious offense and, therefore, the case must be registered and investigated). Any person who is convicted of committing such acts shall be punished with an imprisonment up to three years and a fine.

The Dowry Prohibition Act of 1961

The Dowry Prohibition Act (1961; amended in 1986) bars any person from taking and/or giving dowry a punishable offense with a sentence, at least, five years in prison and a fine not less than ₹15,000 or the value of the dowry given. The act, however, does not prohibit giving a gift at the time of the wedding by the parents or close relatives out of affection. Some states amended the provision by reducing the penalties for taking or giving a dowry. The eastern state of Bihar limited imprisonment to six months and a fine of ₹5000. The northern state of Himachal Pradesh limited the sanction to one year of imprisonment and a fine of ₹5000 (Dowry Prohibition Act 1961). In dowry death cases, if the dead woman's husband or his family members are considered responsible for her death then they can be punished with imprisonment for seven years to "life" (usually 20 years).

The Protection of Women from Domestic Violence Act of 2005

The PWDVA of 2005 recognizes domestic violence as a violation of human rights. According to the act, a domestic relationship includes persons who currently live together or lived together in a shared household in the past and are related by marriage, blood relation, adoption, or are family members living together in a joint family. The act covers a broad range of abuses such as physical abuse; sexual abuse; verbal and emotional abuse (insults ridicule, humiliation, especially for not being able to give birth to a male child); and economic abuse (restricting access to resources in a shared household, deprivation of financial resources, or disposal of assets). In addition, the act was intended to provide a speedy disposition of cases (within 60 days). The PWDVA provides guidelines for police officers, service providers, and magistrates. When a domestic violence complaint is received, the victim should be informed of her rights to obtain an order of protection, an order for monetary relief, a residence order, a compensation order, or a combination of these. Residential orders prohibit the perpetrator from entering the home where the victim is residing, even if the house is a shared home. In addition, the victim should be informed of the availability of services, including services from protection officers (PO), nongovernmental organizations (NGOs), and other service providers; free legal services from the Legal Services Authorities; and her right to file a formal complaint under section 498A of the IPC. The PO serves as a liaison among the magistrate, the police, service providers, and the victim. The act states that the PO shall be a female when possible, and will be given the responsibility of providing a list of service providers (e.g., legal aid, counseling) to the victim.

Nevertheless, laws dealing with domestic violence have had only a limited impact on the timely disposition of cases. The PWDVA, considered as a landmark victory for the women's movement in India, has faced problems, such as a lack of enforcement mechanisms to implement the provisions of the act. For example, many women who sought protection under the act were turned away by the courts because several

states failed to appoint protection officers, or there were delays in the disposition of the cases. Despite legislative efforts to address domestic violence, these efforts have been criticized as being ineffective: either the statutes have been too vague or law enforcement organizations and the judiciary have been too lax in enforcement. Because these formal mechanisms have had limited success in addressing violence against women in general, and women in rural India in particular, women's organizations throughout India have made a concerted effort to address the issue.

The Social and Cultural Roots of Domestic Violence in India

Many studies have reported that men and women in India tend to justify domestic violence (Madan 2013). These attitudes are indicative of the fact that domestic violence is not based on just the nature of the relationship between the victim and the perpetrator, but also "the norms of acceptable behavior" in a society (Visaria et al. 1999, p. 4). Other reasons for domestic violence include dissatisfaction with the dowry brought by the new bride, a husband's alcoholism, and a wife's inability to give birth to a son (Kumar 2010). Traditionally, the family structure in India is a joint or extended family. The extended family is often multigenerational, and grandparents, married sons and their spouses, and unmarried grandsons and granddaughters all live under one roof (Stern 2003). Although the extended family structure provides stability and support, newly married brides learn gender role expectations in the new home early on. Studies have shown that "gender role conditioning and cultural norms both contribute to domestic violence" (Kimuna et al. 2012, p. 773). Others studies have linked domestic violence with the number of family members, the type of marriage, the husband's education, menstrual problems (Kumar 2015), belief in traditional gender roles (Malamuth et al. 1995), low educational level and poverty (Gerstein 2000), and marriage at a young age (Hindin 2002). A study of abused women in Chennai city in the southern state of Tamil Nadu found that 62 percent of the 90 respondents were

married before they were 20 years of age, and in two-thirds of the cases, the marriages were arranged by their families. In the remaining 35.6 percent of the cases, the women had selected their partners themselves (Panchanadeswaran and Koverola 2005). The majority of women in the study reported that the abuse started soon after they were married, and in 44 percent of cases it began within a month of being married. The abuse came not only from her husband but also from her in-laws. The type of abuse included slapping, beating, kicking, acute battering during pregnancy, threatening with knives, attempt to burn or choke, psychosocial abuse, and sexual abuse by male relatives. They also reported factors that triggered abuse, which included sexual jealousy, alcohol/drug abuse by the perpetrator, dowry issues, economic stressors, and the abuser's own sexual issues (Anchanadeswaran and Koverola 2005). According to Gerstein (2000), men who had extramarital or premarital sex, sexually transmitted diseases (STD), and/or men whose wives had an unplanned pregnancy were more likely to abuse their wives than other men.

Compared to women in urban areas, rural women tended to experience domestic violence at a much higher rate and they are also the least likely to report abuse. Studies have shown that women living in rural and remote areas are one and half times as likely to experience domestic violence than those living in urban areas (Women's Services Network 2000). A higher percentage of rural women reported experiencing physical abuse as well as psychological abuse (Duvvury 2000). A qualitative study of 15 women from Begunkudor village in West Bengal, India, reported that poor economic conditions, alcohol abuse, the prevalence of dowry system, male ego, and conflict with in-laws were found to be related to an increased incidence of domestic violence (Dhar 2014). In some instances, mother-in-laws and sister-in-laws encourage or instigate violence in order to maintain control over the finances in a joint family living situation. In addition to women from rural areas, women from urban slums have reported higher rates of physical and psychological abuse than women from urban non-slum areas (Duvvury 2000). The study by Ackerson and Subramaniun (2008) found variations in reporting patterns and socioeconomic status. Women from low socioeconomic status were more

likely to report lifetime domestic violence than those coming from wealthiest families; women married to men with no formal education are more likely to report lifetime interpersonal violence than women who were married to men with at least 13 years of education; and women working outside the home were more likely to report violence than those who did not work.

Women's Movement in India: Can It Be a Catalyst For Combating Domestic Violence?

In India, the "women's movement has a long and rich history linked to the social reform movements of the nineteenth century" as a political challenge to the British colonialism in India (Ray 1999, p. 3), resulting in the formation of first all-India women's organization in 1927. In 1940, the Indian National Planning Committee created a subcommittee to examine the status of women and to make Hindu inheritance laws more equitable. The All-India Women's Conference called for the elimination of gender inequality in inheritance laws, and customs such as child marriage, the *purdah* system, temple prostitution (the *devadasi* tradition), and polygamy (Forbes 1996; Ray 1999). After independence in 1947, the Constitution was adopted in 1950. Article 14 provided equality of women before the law and various subsections of Article 15 promoted equality for women and men. Although Article 15(1) prohibits discrimination of any citizen in India on the basis of religion, race, caste, sex, or place of birth, Article 15(3) admits the unequal status of women and children and specifically warrants the need for an affirmative action on the state's part offering a "special provision to rectify their inequality" (MacKinnon 2006, p. 189). The framers of the Constitution and influential social reformers recognized the importance of preserving the welfare of children and women (Basu 2003). Article 15(7) grants the government the right to make provisions for securing humane working conditions and maternity relief for working women. Article 15(10) prohibits practices that are considered derogatory to the dignity of women. Other subsections of Article 15 lay out the rules for women's political participation in local *panchayats* and municipal elections.

At the national level, the National Commission for Women (NCW), established in 1992 under the National Commission for Women Act (1990), has the mandate of protecting and empowering women. Apart from reviewing laws such as the Dowry Prohibition Act and the IPC, the NCW has been instrumental in developing innovative ideas and models for providing speedy justice for women. The commission has organized, with the help of NGOs, *parivarik mahila lok adalats* (people's courts for women), legal awareness programs, and programs for police and other criminal justice professionals on ways to implement laws pertaining to women. In 2013, the NCW organized a conference, "Engaging Male Politicians from Youth and Student Organizations on Violence against Women." The participants discussed various issues, including the role of mothers-in-law and sisters-in-law, play in causing violence against other women. One of the themes that emerged from the discussions was that "[I]n cases of domestic violence and dowry, women do seem to participate in causing exploitation of other women. This is because in a patriarchal society women tend to internalize their subordinate status" (National Commission for Women 2013, p. 11).

In addition to the NCW, every state (n = 29) and the Union Territories (n = 7) have established a state-level women's commissions. For example, the State Commission for Women in the eastern state of Odisha has made its mission to protect and safeguard the rights and dignity of women and to address atrocities committed against women in the state (State Commission for Women, Odisha 2016). The following interview conducted with the chairperson of the commission provides a clear picture of the role of these organizations. When we asked her, "What were the goals and objectives of the commissions?" the chairperson reported that raising awareness of issues pertaining to women, finding amicable settlements, and helping petitioners through the legal aid process are the key goals. In addition, the commission is trying to maintain a balanced society. She stated, "I cannot listen to just one side of the story. I want both sides of the story so that I can assess the truth. If we find that a woman has been really harassed, we take her side." When asked about her role in the Camp Court, she stated that the counselors from her organization recommend a solution after gathering necessary information. She then reviews the counselors' recommendations before making a final decision. Sometimes, she conducts

review hearings and certifies the final decision. When asked about the commission's role as a change agent, she replied, "[M]any rural people look forward to our arrival. Cases come from all over Odisha. We can also recommend cases to other states." In response to the question, "What is the commission's relationship with other states commissions?" the chairperson stated, "All commissions meet to share information. We also share case decisions. If we handled a case one way, we can share that with them or they can share with us. This is the coordination we have among states." When asked about how the commission settles cases, the chairperson provided an example: "sometimes we say if you have to respect your mom and dad, you should respect your spouse's parents as well." The response to the question, "Do you think that the Camp Courts are parallel to the legal system?", the chairperson responded, "No, I can't say that it is parallel. If you can settle it here, then do it. It is an easy mode of settlement. Final divorces, for example, must go to court. We give documents that show maintenance and decisions and the courts tend to agree with our recommendations." The chairperson also commented on the positive and negative aspects of Camp Courts by stating that "we try to be informal in our process and better able to understand difficulties faced by women, especially from rural areas. Sometimes, due to lack of awareness about the functions of the women commission, women come to us requesting assistance in getting job transfers or settling land disputes [i.e., civil cases]."

Other notable women's organizations dedicated to empowering women are the *Mahila Samakhya* Society (education for women's equality; MSS); Ahmedabad Women's Action Group (AWAG); International Center for Research for Women, *Jagori* (awaken women); Society for Nutrition Education, and Health Action (SNEHA); and *Swayam* (oneself). Although the MSS is an autonomous agency, it is funded by the Indian Ministry of Human Resource Development. The MSS started in 1989 in three states—the southwestern state of Karnataka, northwestern state of Gujarat, and the northern state of Uttar Pradesh (Iyengar 2007). As of 2011, *Mahila Samakhya* is operating in 11 states. They develop and implement programs to empower women and girls, specifically from rural and marginalized populations. One area of focus for these organizations is violence against women (Kethineni et al. 2016), which is addressed through village women's collectives or *sanghas*. "These

collectives are an ideal mechanism for raising awareness about and contending with the problem of domestic violence" (International Center for Research on Women 2002, p. 2). *Nari adalats* (women's courts), *Mahila Panchs* (women's councils), *Sahara Sanghs* (village-level collectives), and *Shalishi* (mediation or arbitration) are all initiative under the MSS. At first, these self-help groups mobilized around issues of water, health, and education for women. Through their efforts, they were able to achieve social status and expanded their work to address controversial issues such as violence against women. *Nari adalats* were initially created in Baroda district and *Mahila Panchs* in Rajkot district of the western state of Gujrat. The *Sahara Sangh* serves as the support mechanism for arbitration in the Tahri Garhwal district of the northern state of Uttarakhand. In West Bengal, the traditional system of arbitration, known as *Shalishi*, is being used to address cases of domestic violence (Bhatla and Ranjan 2008; International Center for Research on Women 2002). These grassroots organizations have been very accessible and have been able to provide visibility to women's issues.

Conclusion

Violence against women has been a serious concern in India. The customary practices of dowry, child marriages, and attitudes toward wife beating all play a role in domestic violence in India. Many studies of spousal abuse in India point to the effects of dowry and how it reinforces the image of women as property, which limits women's status within the family and society. Women of lower socioeconomic status, and from rural areas and urban slum areas tend to report a higher level of intimate partner violence. Dowry harassment, physical, verbal, and emotional abuse, and other forms of cruelty by husbands and in-laws over dissatisfaction with dowry payments are ignored by society. Despite changes in laws, such as the Dowry Prohibition Act, section 498A of the IPC, and the PWDVA, incidents of cruelty by husband and relatives in 2014 increased 3.4 percent over 2013. Other forms of violence, such as dowry deaths, continue to increase. For example, dowry deaths increased by 4.6 percent in 2014 compared to 2003. Although the PWDVA was considered progressive legislation,

scholars, as well as women activists, have expressed concern over the inadequate implementation of the law. There are repeated references to the urgent need to implement the laws properly. In particular, it was suggested that Justice Verma's committee's recommendations be implemented. Some of the recommendations include removal of the exception to marital rape (currently nonconsensual sex by a husband is considered an exception to rape), ensure equality of women in all areas, and make sure that all marriages be registered in the presence of a magistrate to ensure that there was no demand for dowry (Verma et al. 2013).

In addition to these legal reforms, the police, and the judiciary need to be sensitized to the issues of violence against women. High schools and universities should offer educational programs to bring awareness to this issue. Concerns were also raised against Camp Courts for their failure to ensure timely justice. In one case, the woman had filed a complaint about dowry harassment with the commission in 2013 and had visited its office six times and attended the Camp Court twice, but her problem had not been resolved as of February 2015 (Ganguly 2015). Increased funding to NGOs and grassroots organizations to improve services for victims of domestic violence, including temporary shelters and legal assistance, should be provided. In essence, it all depends on how society perceives the status of women.

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13

Rape Law Reforms in India: Catalyst to Gender Justice or Modernization in Legal Reforms?

Bula Bhadra

Introduction

The constitution of India explicitly enshrines formal equality for women with its edict of equality (Article, 14), nondiscrimination on the basis of sex (Article, 15); positive discrimination in favour of women (or affirmative action) (Article, 15); equality and nondiscrimination in employment and service conditions (Article, 16); and right to life and liberty (Article, 21). There are also some protective legislations which were enacted in the first 30 years after the constitution came into being, but it is only during the last five decades starting with United Nations International Women's Decade (1976–1985) that women's concerns were highlighted in the official discourse of post-independent India.

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In reality, the legal reforms in post-independent India in regard to violence against women began in the context of the Indian Women's Movement in the late 1970s. The result of the public campaigns initiated by women's organizations was legislative reforms which received rather a speedy response from the states. The lawmakers, judiciary, and the states became somewhat sensitive to issues like rape, dowry, and domestic violence. If atrocities were to be tackled by enacting laws, then the decade of the 1980s could easily be declared as an exultant era for Indian women. During this period most issues concerning violence against women taken up by the women's movement were transformed into legislative reforms. The enactments apparently conveyed a positive picture of a feat, but the numbers revealed a depressing story. Each year the number of reported cases of rapes and unnatural deaths of married women increased. The rate of convictions under the new and laudable legislation was dismal. Hence the deterrent value was never really realized. On the other, as Uberoi aptly points out that social legislation in India is "so ineffective on a range of issues that it can only cast doubt on the sincerity of the lawmakers, who sometimes seems to have been more concerned to present a progressive face, to disarm criticism, and co-opt certain classes to their support than to challenge the existing social order of gender relations" (1996: p. x).

The last one and half decade or so, the incidence of brutal rapes where women suffered or lost their lives have witnessed a steady increase in India. The official statistics annually published by the National Crime Records Bureau (NCRB) of the Government of India is itself a testimony to this stark reality. According to the NCRB data, during the period of 2001–2013, a total of 2,72,844 cases were reported from across the 28 states and seven Union Territories (UTs) in India. On an average, a little more than 57 rapes are reported to have occurred every day across the country during this 13-year period which averages to more than 2 rapes across the country, every hour, every day, during the last 13 years. In December 2012, a 23-year-old college student, who was given the pseudonym "Nirbhaya" (fearless), was lethally gang-raped on a private bus in Delhi, India. This event galvanized the country and brought the issues of violence against women in India into the international spotlight. Although assault and rape cases have made India

infamous for its high volume of crimes against women, the reaction to this particular incident was much different from the past. Immediately after news of the gang rape spread, protests erupted in Delhi and all over the country. Since the incident became a global phenomenon within a matter of days in the political sphere, two Commissions of Inquiry, the Justice Verma Committee, and the Usha Mehra Committee, were constituted almost as a direct consequence of this ghastly rape and subsequent outrage about the incident. The Criminal Law (Amendment) Act of 2013 was passed as a result of the Verma Committee Report and the new law made a series of amendments to the Indian Penal Code of 1860, the Indian Code of Criminal Procedure of 1973, and the Indian Evidence Act of 1872. In spite of all these legislative reforms and amendments, has the rate of rape of women in India gone down? Or, it is indubitably possible to cite several gruesome rapes where the women succumbed to injury after the 2013 amendment. There was a 9 percent increase in rape in 2014 after the legal amendments in 2013. It is in this context that the present chapter will examine whether laws, especially in the case of rape, are adequate to provide gender justice. In other words, are legislative reforms catalysts to gender justice, or the modernization of the legal system is merely an integral facet of the neoliberal social order of contemporary India?

The Indian Scenario at Large: Stock Taking of the Awakening Phase

The real primary catalyst for the campaign against rape and for subsequent legal reforms in post-independent India was a judgment made by the Supreme Court of India in the *Mathura* rape case of 1979 (*Tukaram v State of Maharashtra AIR* 1979 *SC 185*). Mathura, a 16-year-old, illiterate, orphan, tribal girl was raped by two policemen while they were on duty. The rape took place in the vicinity of the police station. But since the young girl had eloped with her boyfriend and was brought to the police station due to a complaint filed by her brother, she was viewed as a woman of loose moral character. Since there were no visible marks of injury, the court termed Mathura a liar. Her evidence regarding the rape was disbelieved. The Supreme Court overruled the Bombay High Court decision and acquitted

the policemen. The judgment triggered off a campaign for changes in rape laws. Redefining consent in a rape trial was one of the major thrusts of the campaign. The Mathura judgment highlighted the fact that in a rape trial it is extremely difficult for a woman to prove that she did not consent beyond all reasonable doubt as was required under the criminal law. The government responded to the campaign by asking the Indian Law Commission to look into the demands and consequently prepared a report incorporating the major demands of the antirape campaign. The government accepted the pretrial procedural recommendations of the Law Commission that women should not be arrested at night, a policeman should not touch a woman when he is arresting her, that the statements of women should be recorded in the presence of a relative, friend, or a social worker and that a police officer's refusal to register a complaint of rape should be treated as an offence. But the bill government brought did not include any of the positive recommendations of the Law Commission regulating police power or about women's past sexual history. The demand that the onus of proof regarding consent should be shifted to the accused was accepted partially, only in cases of custodial rape (i.e., rape by policemen, public servants, managers of public hospitals, remand homes, and wardens of jails). The prominent features of the 1983 amendments were that in selective cases of custodial rapes (such as in police lockups, prisons, hospitals, rescue homes, remand homes, and so on), the burden of proving consent, once the sexual intercourse was proved, shifted to the accused. The minimum required punishment was imposed: seven years for ordinary rape and 10 years for rape of an aggravated nature, such as gang rapes, custodial rapes, rape of children under the age of 12 years, and rape of pregnant women. The amendments also introduced a new offence and made consensual sexual intercourse in certain custodial situations punishable. In the following years, India witnessed a steady increase in reported cases and sexual assaults continued to dominate in public discourses.

The National Crime Record Bureau of the Ministry of Home Affairs, in its annual publication titled *Crime in India*, reported an increase of 92.5 percent increase in crimes against women in India between 1990 and 1998. There was an alarming increase of over 65 percent in reported cases of rapes within a decade from 1988 to 1998 according to the same source. Even more alarming is the fact that these figures reflect only the tip of the iceberg as a large number of cases remain unreported due to the

stigma attached to rape and to its victim. Despite some positive provisions, most cases ended in acquittals and rape trials continued to be harrowing experience for the victim. The significance of the victim's moral character and sexual history was a controversial point. Despite the demand from the women's movement for its removal, the specification that a victim's past sexual history can be used as a defence for the accused was retained, thus providing the scope for the defence lawyers to harass the victim at will. In every rape trial the woman goes through a verbal rape in the name of judicial verification and the judicial discourse objectifies and sexualizes the body by humiliating the victim in a packed courtroom through offensive cross-examination; and a criminal lawyer generally displays the legal acumen and obtains an acquittal for the client, or so it seemed. In a judicial trial "a whole topology of signs is created to move on the surface of the body, territorialize it, and constitute it as a sexual body, fit or unfit for exchange. The body is objectified in ways that became a kind of judicial pornography" (Das 1996, p. 2415). Baxi (2013) who has worked on rape trials for many years, told in an interview "that law reform has not paid attention to the way power is deployed through language when survivors of rape testify to rape in courtrooms" and "Defence lawyers periodically use legal textbooks during trials to humiliate rape survivors: to ask them how long they were penetrated, how much and how did they know whether they were penetrated." The antirape campaign subscribed to the traditional notion of rape as the ultimate violation of a woman and a fate worse than death. Marital rape, non-penetrative sexual abuse, and other forms of sexual assault remained outside of its ambit. The enactment focused on stringent punishment rather than plugging procedural loopholes, evolving guidelines for strict implementation, adequate compensation to the victims and timely trials. In a way, the campaigns were severely restricted and neither the basic questions of the power imbalance between men and women were questioned nor the women's often subordinate role in the family and the larger society. The stock-in-trade notions of chastity, virginity were not questioned and the discourse on rape did not transcend the traditional definition of forcible penis penetration of the vagina by a man who is not her husband (Agnes 1998, p. 2). After the amendment, the campaign lost its vigour and vigilance. There were hardly any efforts to systematically monitor its impact in rape trials. So the Supreme Court

judgment in 1989 in a case of custodial rape by policemen (popularly known as the Suman Rani rape case) came as a serious blow. The Supreme Court had reduced the sentence from the minimum of 10 years to five years. The review petition filed by women's groups against the reduction of sentence was also rejected. This brought into focus the need to review judicial trends in rape trials since the amendment. The amendment also did not bring about much change in the attitude of the judiciary despite the well-publicized campaign. The judiciary often viewed rape as an offence of man's uncontrollable lust rather than as an act of sexual violence against women, consequent of unequal power relations. The attitude of the judiciary in India can be described in the words of a distinguished feminist legal activist: "there are many in the rank and file of the judiciary who consider women as subordinate to men, women as instruments of man's comfort and pleasure. So when they see a woman filing a petition for maintenance or seeking shelter from the husband who batters her, he immediately becomes hostile to her" (quoted in Stewart 2001). The crux of the definition of rape in section 375 IPC before the amendment of 2013 was that rape involves coercive non-consensual sexual intercourse between a man and a woman. There are six circumstances that can be said to be the constituents of rape. The primary condition necessary for rape to be committed is that there must be the commission of sexual intercourse between the man and the woman. It is widely believed that rape can only be committed if the sexual intercourse has been done without the consent of the victim, but this is not always the case, rape can be committed even after consent has been obtained if the age of the woman is below the age of 16 years.

Indian Scenario in the Twenty-first Century and the Rape Law Amendments of 2013

Numbers are generally elusive and often do not tell the full story. But sometimes numbers do indicate the trend to decipher the success or failure of social fact like legislative reform. As Fig. 13.1 shows, Delhi alone accounted for 8060 reported incidents of rape during this period of 2001–2013. A total of 16,075 cases of rape were reported in 2001 from across all the Indian states and the UTs. In 2013, the figure

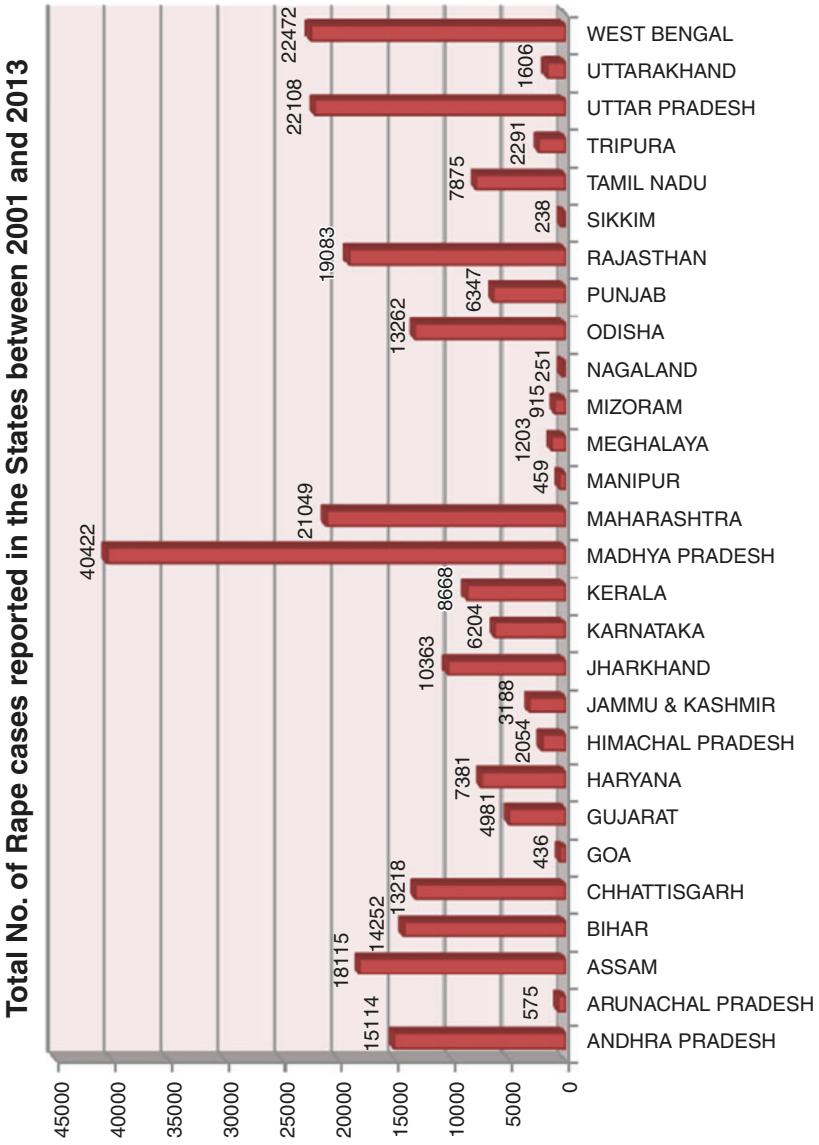

Fig. 13.1 Total number of rape cases reported in the states, 2001–2013. (*Source:* National Crime Records Bureau 2015.)

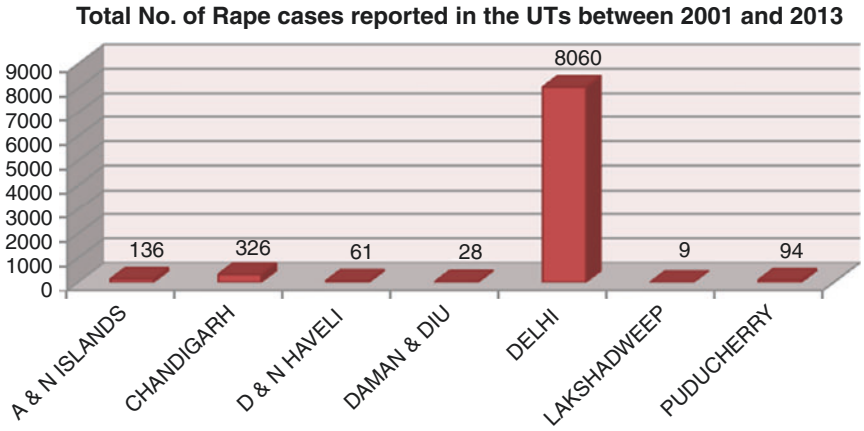

Fig. 13.2 Total number of rape cases reported in the Union Territories, 2001–2013. (*Source:* National Crime Records Bureau 2015.)

jumped to 33,707—indicating an increase of 52.30 percent. However, if the figures for 2013 are omitted, then the increase is 35.5 percent. During the 13-year period, the total figure for the 28 states alone rose every year, except in 2003, when it dipped by a little less than 4 percent.

The total figures in the UTs dipped during the years 2006–2008 but have risen in all subsequent years (see Fig. 13.2). This is due to the dip in the total figures for Delhi during the same time period. Delhi alone had an average of 1.69 rapes per day during the 13-year period. In terms of absolute number of cases reported from each state in 2012, Madhya Pradesh (3425) topped the list followed by Rajasthan (2049), West Bengal (2046), Uttar Pradesh (1963), Maharashtra (1839), Assam (1716), Odisha (1458), undivided Andhra Pradesh (1341), Chhattisgarh (1034), and Kerala (1019) in descending order. The dismal rate of conviction in relation to the rape cases registered region wise of those four years wherein the last two years there was a massive increase in rape. The expansion of the list of offences that constitute rape through the *Criminal Amendment Act, 2013* has had its impact on the figures reported in 2013. The highest percentage rise amongst the 28 states and UTs was in Delhi (329 percent) as compared to the figure reported in 2001. In view of

the figures reported in Maharashtra, in 2013, the rise in the number of cases was more than three times the figure reported in 2001. In the states of Karnataka, Rajasthan, Gujarat, Haryana, Jharkhand, and Himachal Pradesh the figures are more than double the figures reported in 2001. Another reason for the increase in the number of cases reported in 2013 would be due to the fear of punishment in the minds of the police officers to whom cases of rape are reported. Under the criminal law amendments of 2013, if an officer refuses to register a case of rape upon receiving a complaint, he/she commits an offence and may be punished with rigorous imprisonment for a period of six months to two years and will also be liable to pay a fine. West Bengal is the only state where fewer cases of rape were reported after the 2013 amendments were enforced. The absolute numbers fell from 2046 in 2012 to 1685 in 2013. In the case of West Bengal, fewer offences of rape were reported because police were not taking complaints of rape in many places. The reason is that the ruling Trinamool Congress Party wanted to portray the situation in a positive light than it was in earlier Left Front Regime. During the 13-year period, Madhya Pradesh reported the most number of rapes at 40,422. This figure is 44 percent higher than that of West Bengal which stands second on this list. The average figure for Madhya Pradesh is more than eight rapes per day during the 13-year period. West Bengal reported the second highest number of rapes at 22,472 during the 13-year period. This averages to almost five incidents of rape per day across the state during this period.

Justice J. S. Verma, Gopal Subramaniam, and Ex-Justice Leila Seth comprised the Justice Verma Committee which was formed to gather public opinion and make recommendations for reforms in rape laws. It was a 631-page report consisting of 14 chapters that consolidated more than 80,000 public responses to the decree including recommendations on laws related to rape, sexual harassment, trafficking, child sexual abuse, medical examination of victims, and police. The technical committee was so proactive with its working that during its short duration it received as many as 80,000 suggestions over which deliberations were done. These suggestions were sent by various activists, lawyers, nongovernmental organizations (NGOs), and other persons representing the "civil society." Since the legislature was adjourned and there was no session, the committee's recommendations were

introduced via an ordinance. The offence rape was now amended or given a broader meaning which was comprehensive enough to include any kind of penetration and also in any body part of the woman or girl. This was the most important change because earlier section 375 of the IPC only stipulated the penile–vaginal penetration as rape. The fact that the new recommendations added that any penetration would be considered as rape was the most efficient tool in widening the ambit of the term rape which was being demanded earlier on the basis of the recommendations of the fifth law commission report. There was also the inclusion of registering complaints and medical examination. The report categorically mentioned, "Any officer, who fails to register a case of rape reported to him, or attempts to abort its investigation, commits an offence which shall be punishable as prescribe" (Verma et al. 2013, p. 416). The committee gave extensive recommendations with regards to avoiding marital rape as well as rapes committed via the commission of void marriages. This was very important as marital rape is a loophole that is very explicit and on the face in nature. It is a concern that is not very hidden that direct legislations are not being made on the issue of marital rape. This is why it is such an important thing since everyone knows about it and yet the effort to include it under the definition of rape has only begun recently. To include this fact and observation, the committee mentioned compulsory registration of marriages so as to provide legal sanctity to solemnization of marriage. This may though in future open a new Pandora's Box in cases of live-in relationships. Furthermore, in a demonstration of how Indian society accepted and nurtured a culture of domestic violence, the maximum punishment for marital rape was two years before the new law was enacted. Now, the crime is punishable by at least two years in prison and punishment may extend up to seven years. In addition, other rape-related offenses have been legislated such as failure to record a report of rape, refusal to treat a rape victim, and insensate questioning by counsel. It also called for speedy justice for rape victims, which means a trial for rape cases should be completed within a period of two months from the date of the filing of the charge sheet. The all-encompassing Criminal Law (Amendment) Act of 2013, passed as a result of the Verma Committee Report, strengthened antirape laws and punishments for

sexual violence. Under the new antirape laws, the death penalty is provided for in two situations: where the victim is left in a vegetative state and where there is a repeat offense. The word "rape" itself was also amended; to reflect the circumstances of the Nirbhaya crime, a man is now guilty of rape "if he inserts, to any extent, any object or a part of the body . . . into the vagina, urethra or anus of a woman" (Talwar 2013, p. 40). Gang rape has become a new offense, the age for statutory rape is now raised to 18 years old for a woman, and minors, women, and senior citizens are now no longer required to go a police station to report a rape; the police are required to go to their residence to file a report. Before the introduction of the new law, the old section provided that a man guilty of having committed rape could be sentenced to no less than seven years but possibly for life in prison, with the option of judges to reduce the sentence to less than seven years on the basis of a valid reason. Under the new law, there is an escalation of the punishment; judges no longer have the option of decreasing the length of the sentence. However, some legal scholars argue that by removing this option, judges may be inclined to hand over an acquittal if they do not want to punish the accused with a sentence of more than seven years (Talwar 2013, p. 54). The new law also escalated the punishment for custodial rape, or rape that takes place at a police station, inside a jail, etc., from just a minimum sentence of 10 years that may be for life, to a term that cannot be less than 10 years and can be extended to imprisonment for life. Therefore, the difference is that under the previous law, there was a possibility to have a life sentence shortened to a lesser period, but now this possibility no longer exists. Apart from all these, a new crime that was introduced and was not provided for in the country's earlier legislations was "voyeurism" which means the recording or viewing images, movies, or any such media material without the permission of the person portrayed or screened in them would result in penal punishment. A "voyeur" is defined as a person who derives sexual gratification from the covert observation of others as they undress or engage in sexual activities. Voyeurism is a criminal act which creates apprehension for society and is an infringement of expectations of privacy that all citizens have about their body which they do not wish to expose it to others (Rothenberg 1999, p. 1127).

But there are several recommendations made by the Verma Committee that have not been accepted by the government; it is estimated that approximately 10 percent of these recommendations have not yet been implemented (Talwar 2013, p. 134). What has not been accepted includes the committee's recommendations of marital rape, prosecuting members of the armed forces who may have committed crimes against women in "disturbed areas," directions contained in many Supreme Court decisions, and debarring politicians from contesting elections if they have been charged with crimes against women, the last one having been a major topic of contention for legal reformation over the past few decades. Likewise, the Criminal Law (Amendment) Ordinance of 2013, was criticized by the public and women's groups for sidestepping vital recommendations regarding "reforms in Constitution, governance, policing and education" and for not recognizing rehabilitation of rape survivors as a state responsibility (Naqvi 2013; Shakil 2013; *The Hindu* 2013). Similarly, Justice Mehra's proposals for increasing safety for women and repairing the legal system, which so far has not been legally implemented, included: (1) mobile phones with a special button to alert the police of a crime; (2) separation of powers within the police to ensure a fair and quick probe; (3) a "one stop center" in one hospital in each zone of the cities to provide comprehensive medical attention to a rape victim; (4) better coordination between the police and the transport department to track illegal public transportation licenses; and (5) lowering the age of juveniles to 16 (Talwar 2013, pp. 130–131). The last one has now been accepted under public pressure as one of the rapists of Nirbhaya was a minor who brutally raped her. The juvenile was convicted of rape and murder and given the maximum sentence of three years' imprisonment in a reform facility; he was released in December 2015 after which the revision of Juvenile Justice (Care and Protection of the Children) Act of 2015 was enacted. Keeping in view the increasing number of serious offences being committed by persons in the age group of 16–18 years and recognizing the rights of the victims as being equally important as the rights of juveniles, special provisions were proposed to tackle heinous offences committed by individuals in this age group and guilty would be tried as adults if they commit heinous crimes. It is necessary to mention in this connection that detailed dataset about rape trials is available on the Data Portal of NCRB only for the year 2012. The data for the remaining years lies scattered in the NCRB's published annual reports.

Can Rape Law Reform Deliver Gender Justice?

"Law reform for women . . . generally, tends to accept patriarchal constructs of law by reallocating interest within existing frameworks. As part of liberal legalism reform—even when it is used to promote women's interests tends to fall short of addressing the material condition women's actual inequality. It can therefore even become part of the problem" (Lahey 2002, p. 100). The tryst between law and women's rights has always unquestionably travelled a jagged road as women's engagement with law mostly overlooked the bare fact that the material conditions of women's existence are still marked by gross inequality. Contemporary feminists have felt that rights might not be the best "instrument" to protect women from discrimination. According to Kiss, international women's movements have even reached a consensus that human rights are subordinating women. (1997, pp. 1–2) Even though the social and legal benefits women derive from rights cannot be totally denied, a few feminists have argued that rights do not have a positive image at all (Fox-Genovese 1991; Rifkin 1993) and for some it may even be detrimental (Smart 1987, p. 139). Therefore, while applying to laws on rights, "rights" do indeed disadvantage women. Finlay (1989) has examined how laws are characterized by maleness from their claim to be authoritative, objective, and rational. She stressed that, even though law presents itself as gender neutral, the analysis reveals that law is far from that. Interestingly, what is regarded as objective in society reflects a set of assumptions that are valued above competing considerations and are considered by many feminists to be "masculine" (McKinnon 1987) and reproducing bias in favour of men (Lacey 1995). Thus, it is perhaps easy to say that this analysis suggests that objective criteria applied in laws are masculine and feminists consider it essential to reject these criteria in order for a legal system to work. Dawson (1993) highlighted that the objective masculine criteria of laws are due to the fact that they interact differently with women than with men. Mackinnon, a feminist lawyer has shown that so-called ideals of neutrality and objectivity, which are cornerstones of legal and juridical systems, are in effect celebration of masculinity and maleness which have taken for granted as universal values.

According to her, when the state is neutral, "it will be most male; when it is sex-blind, it will be most blind to the sex of the standard being applied" (MacKinnon 1983, p. 658). Smart has provided a typology of law where "law in the first phase as sexist, in the second phase law as male and also in the third phase law as gendered" (Smart 1995, pp. 187–190). In the first phase, the law was sexist because it differentiated between men and women and actively discriminated the latter in relation to the access to equal opportunities. For example, in colonial India law permitted men to marry more than one woman at a time but women were forbidden to do that. Laws regarding prostitution have been always sexist, as they never penalize the customers who are still predominantly male. In fact, all laws relating to prostitution are regarding women, who still form the majority in that business, but there is no law as far as the customers, who are dominantly male are concerned. Canadian women continued to be non-persons well into the 1920s. In 1930, overruling the Supreme Court of Canada, the Privy Council in England ruled that women were persons in the eye of law (cited in Lahey 2002, p. 108). The notion that law as male arises from the crude empirical reality that most lawmakers and lawyers are male. The law as the male has affected women adversely from all aspects. For example, law utilized pregnancy to discriminate women in contradictory ways. In a vital way, in comparison to the law as sexist, the law as male approach suggests "that when a man and a woman stand before the law, it is not that law fails to apply objective criteria when faced with the feminine subject, but precisely that it does apply objective criteria and these criteria are masculine. To insist on equality, neutrality, and objectivity is thus, ironically, to insist on being judged by the values of masculinity" (Smart 1995, p. 189). That is why in rape trial if the trial is committed to so-called, neutrality and objectivity and evidence beyond a reasonable doubt it will be well-nigh impossible to prove rape. The whole notion of eyewitness in rape is nothing but claptrap. The reality remains such that though patriarchal institutions can incorporate and co-opt certain amount of legal reform for women, men as judges and legislators continue to dominate the system and even formal equality gets the narrowest possible application. It must be mentioned here that feminists are not uniform in their position on this. A group of feminists criticizes both "law as male and

law as sexist" approaches as they perpetuate the idea of law as a homogeneous system and a unity without internal contradictions. According to them, by now it is apparent that neither men nor women are undifferentiated, homogeneous categories and, therefore, it is impossible for the law to act on the basis of a homogeneous masculine norm and uphold a uniform male value system although most of the time hegemonic male domination has ascendancy. Another group points out that women are not even considered in the international laws as the United Nations have failed to declare all women's human rights concerns to be part of international human rights laws and have not integrated women's human rights into the mainstream human rights agenda (Stamatopoulou 1995, p. 36). This exclusion actually testifies that law is sexist and male as it still enjoys hegemonic male domination. The so-called neutral principles of international laws are nothing but embedded male perspectives.

Finally, Smart presented a reformulated construction of law as gendered as a more substantive conceptual category which she believes needs to be read in conjunction with the law as a gendering strategy which is being structurally incapable of delivering gender justice. In the former one does not require to have a fixed category or empirical referent of man and woman. This allows us to focus on how law insists on specific versions of gender differentiation. In this regard, it is worthwhile to mention the views of a feminist like Allen who asserts that legal discourse "incorporates a sexual division not only into what the law can legitimately do, in terms of particular provisions and procedures, but also, more profoundly, into what it can reasonably argue.... Ultimately legal discourse simply cannot conceive of a subject in whom gender is not a determining attribute: it cannot think such a subject" (Allen 1987, p. 30). "Instead of asking 'How can law transcend gender' the most productive question should be, 'How does gender work in law and how does law work to produce gender?'" (Smart 1995, p. 192). What is of significance here is the abandonment of objective of gender neutrality. It is now necessary to explain law as a gendering strategy which needs to be read in conjunction with the idea of law as gendered. In 1803 in England, abortion was criminalized in all stages of pregnancy brought more women into the web of inescapable motherhood. "If they attempted to escape through the

use of contraception or abortion they were condemned as prostitutes or virtual murderers" and they were subjected to "newer forms of discipline in the shape of philanthropy and mental health legislation/provision" (Smart, p. 196). This is a very subtle social way of materially constructing heterosexual motherhood in the end of the nineteenth and early part of the twentieth century which subsequently became the dominant norm and legally recognized. In this sense, the category of the development of legal subject of unwed mother came into existence which, in its turn, made man's presence as a husband in the life of a woman compulsory as the man signifies "stability, legitimacy, and mastery which is not only absent in her but inverted" (Smart, pp. 195–197). The law as a gendering strategy has mostly considered women mainly "in terms of whether they produce legitimate children and whether they care for children adequately" except when the mothers started demanding certain rights from the legal system "the parameters of the debate change" (Smart 1987, p. 115). Machado (2008) in a study on the Portuguese legal systems' efforts to determine paternity of children born outside legal marriage argued that the judicial practices, in the specific context of courtroom investigation of paternity, reinforce gender inequalities. That legal attempt to establish the paternity of children born outside marriage though based on novel technical and supposedly objective procedures tend, nevertheless, to reproduce the prevailing patriarchal structures. Here also marriage retains a privileged place as the preferred way of attributing paternity (Sheldon 2005, p. 541). In fact, surrogacy arrangements also have their origin in marriage as the legal idea of the consummation of marriage is in the reproduction of offspring. So, by hook or by crook married couple need children legally so the question of inheritance can be settled amicably. The notion of marital rape took a long time, therefore, to be accepted in legal parlance. Law's capacity to provide any justice, let alone gender justice is severely restricted as the law is not an autonomous field by itself. "The significance of interconnectedness with the law with other social forms is that law will inevitably contain the self-expressions of power that create the crime that is subsequently omitted from its definition" as "law is a very partial list of harms". Celebrating uncritically therefore with the rule of law would be mere to "constitute and reconstitute existing power relations, suffering and pain in more insidious

forms" rewarding the more powerful from otherwise perceived free contractual relations (Henry and Milovanovic 1994, p. 119). In other words, a legal reform must take into account that rape is a crime because rape utilizes power to create harm (pain) and that harm is not carried under the guise of law by questioning women's presence in public space at nights/wee hours, or her dispositions and dresses or her obligations to satisfy the husband's sexual desires without her consent.

Law as Legislation and Law as Practice: "After 2013/Nirbhaya"

Gruesome gang rapes did not disappear after 2013 legal reform. A twenty-nine year old Dalit Law student was brutally raped and murdered on April 28, 2016 near Kochi in Kerala and the Autopsy Report confirmed that the victim was savagelly beaten after the rape and her intestines were pulled out using a sharp edged weapon. "When attempts to improve the status of women are made through incremental reforms that are not grounded in an understanding of how women's oppressions are constructed, *Reform of rape laws* will not materially improve the status of women when the point of rape laws is their non-enforcement" (Lahey 2002, p. 114). To be explicit, "No amount of alteration in the legal system will deliver unless it is supported by the sanction of society" (Justice J. S. Verma, former Chief Justice of India, March 2, 2013, at Aligarh Muslim University, Aligarh, India). Rape as violence and infliction of harm and expression of power relation is acknowledged only after women's movement with which legal reforms and practices have not been able to keep pace with. Rape trials before and after 2013 amendments along with corresponding judgments imply that even when the conviction is secured the legal discourse continues to reflect patriarchally and misogynist values. That is why "in India, the feminists view concern judgments which even take a progressive position on the issue of corroborative evidence in rape trials, are in the end based on notions of women's 'chastity' and so-called 'traditions of Indian society'" (Mennon 1999, p. 284). After Nirbhaya was raped, India's quick action and timely changes to the criminal law is surely commendable; however, passing a law does not guarantee action. India's court system is absolutely inundated with

cases while also being severely short staffed for the population of 1.23 billion people. The court system is said to be backlogged for 466 years, working with an average of 14 judges per one million people. As *The Guardian* reported, of the 706 rape cases filed in New Delhi in 2012, only one ended in conviction: Nirbhaya's. Also, while the Indian Finance Commission decided to reform the fast-track court system until March 2015 to prosecute the Delhi gang rape defendants, only half of the fast-track courts set up in 2000 are still functional as of August 2014 due to their ineffectiveness and a lack of funds (Rukmini 2014). Feminists/women's activists gradually grew disenchanted by the role of law reform to deter or prevent rape or sexual assault from happening for they saw a disconnection between enactment of new laws and their implementation that is between Law as Legislation and Law as Practice. This disappointment did cause a shift in how women's organizations chose to engage with law. Instead of focusing on demanding law reform, some organizations focused on taking up individual women's cases in courts, while others focused on the lack of institutional support for women and created women's centers to provide women with legal assistance, health services, and counselling (Kapur and Cossman 1996). Ganguly (2007) argues that while feminists have continued to look at the state with scrutiny for their role in perpetuating women's oppression, they nevertheless have to maintain their engagement with the state for legislative reforms. Such was the case after the Nirbhaya rape; women's rights organizations knew they had to set the path for others to follow and petition the government for overhauling legal change. The discourse on women's bodily integrity and dignity continued to be propagated in public spaces as well as in private homes. The emerging voices from the people especially youth reflected changing ideologies that violence against women is as much of a men's issue as it is a women's, as evident from a demonstrative poster which said, "Don't tell your daughter not to go out, tell your son to behave properly." The shifting ideologies were also reflected in the motto "Don't get raped," which was revolutionized to "Do not rape" to place the emphasis on men's actions instead of women's. The other slogans raised were, "*Mahilaein mange azadi, sadak pe chalne ki, raat mein nikalne ki, kuch bhi pehenne ki*" (Women demand freedom, to walk on the streets, to go out at night, to wear anything they like) and placards were equally expressive—"nazar teri buri, chehra main chupaun?" (you are the one giving the bad eye, why should I hide my

face?) (Shakil 2013). Many slogans were based on the principle that a woman's dress, mobility, or her disposition had nothing to do with getting raped. There were posters and placards that carried the slogans "Don't teach us how to dress, teach men not to rape," "My voice is higher than my skirt," and "Your gaze is the problem so why should I cover myself up?" (Shakil 2013). The protests, therefore, raised larger questions relating to sexual violence and discrimination against women. The electronic and digital media platform also provided a space to express concerns regarding rape and constituted a movement within itself in the months following the Nirbhaya incident. Social media sites like Facebook and the mobile messaging app, WhatsApp, were used to articulate anguish about the brutal gang rape. Online petitions were signed to demand justice in the case. In fact, during the general election campaign of 2014, every major political party vowed to commit to women's security issues, though it is a different issue altogether that none of these parties nominated adequate number women candidates in the election.

It is now widely acknowledged by the feminists of all persuasions that failure of the law to achieve desired change for women is also linked to larger socioeconomic and cultural scenario. That is, the law reform contains within it distinct limitations. Kapur and Cossman are right when they wrote that "legal system itself contributes to the gap between the formal guarantees of gender equality and the substantive equality that plague women's lives" (1999. p. 197). In fact, instead of law, it is patriarchy and its ensembles as pervasive as they are as social phenomenon need to be changed/reconstituted. As the law is one locus of male supremacy, only "legal efforts to end women's subordinate status cannot effectively change or cripple patriarchy unless they are undertaken in the context of broader economic, social, and cultural changes" (Polan 1982, pp. 301–302).

Conclusion

In a growing juridification of life, law and justice are an integral part of lived experiences of men and women in today's world. That is, differences in women and men's social, economic, and legal conditions affect the way they encounter law and justice in their lives, and their everyday experience

of law and justice simultaneously shapes the patterns of social, economic, and legal rewards and miseries. This chapter has shown that law and criminal justice system are somewhat crippled to provide gender justice to women in need as the very nature of law and its functioning has made deliverance of gender justice structurally to a great extent a pipedream or a castle in the sky. The so-called legislative reforms are not catalysts to gender justice but are just a simple modernization of the legal system as critical part of the neoliberal social order of contemporary India. To put it differently, the "success" of rape law reform is, in significant part, an illusion created by the presence of laws on the books rather than a reality for rape victims on the ground in contemporary Indian society. The logical query in this regard is why "Rape law reform is not a feminist 'success' story?" (Larcombe 2011, p. 27). The question then is not only how inert, declining and even "record low" rape conviction rates are to be understood or explained, but also, and perhaps more urgently, what is to be done about them? Should it be a waiting for patriarchy with all its entourage to start changing and leave the arena of law and legal reform as far as women are concerned? Or, some truth lays in the statement of Justice Verma, the Chairman of the Report of the Committee on Amendments to Criminal Law, 2013, who categorically stated that "No amount of alteration in the legal system will deliver unless it is supported by the sanction of society" (Speech delivered on March 2, 2013, at Aligarh Muslim University, Aligarh, India). DeCrow, President of the National Organization for Women in America wrote way back in the 1970s that that for women equality will be only possible when statutes, state constitutions, and legislative interpretations will be written by feminist women and feminist men (1975, p. 3). To conclude, it can be said that the solution is however embedded in the movement for the introduction of Feminist Lawmaking rather than Modernization in Legal Reform. Gender justice may not be then that much of a castle in the sky. Since increasing conviction rates are not in itself a valid objective of law reform and "Feminist Lawmaking" is the need of the time. It "begins with women's oppression—whether by law or by social, economic, or political arrangements enforced by law—and seeks to articulate remedies for those harms while radically challenging the structures that produce them" (Lahey 2002, p. 107).

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14

Social Tolerance of Rape in India: An Analysis of the Case of Jyothi Singh

Evanka Swampillai and Laurel Mazar

On the night of December 16, 2012, in South Delhi, a 23-year-old physiotherapy student Jyothi Singh and her friend Awindra Pandey had just watched Life of Pi together and headed home after the movie around 8 P.M. (Matharu 2015). They were not able to find an auto to their home, so both of them settled for a ride to the Munirka bus stop. They boarded a private bus with other fellow passengers already seated. As one man approached the pair to collect the ticket fee, three other men made their way to the front of the bus, where they started an altercation with Awindra Pandey (Ma 2015). Soon after, the men locked the door and turned off the lights and grabbed the two victims' belongings. The conflict then escalated, and during the altercation, Awindra Pandey was hit on the head—knocking him unconscious.

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They then dragged Jyothi Singh to the back of the bus where she was brutally raped by all six men aboard the bus. She endured 84 minutes of pure torture where she was repeatedly penetrated by a blunt object, later described as a rusty iron rod that caused considerable damage to her genitals, uterus, and intestines (Gayle 2015). Both victims were then thrown out of the bus. Awindra Pandey had pulled through, but after many attempts to revive Jyothi Singh in India, she was later transported to a hospital in Singapore for emergency treatment. About 13 days after the incident she died of cerebral edema—unable to recover from the attack. This particular case ignited societal outrage with many demanding a speedy trial and a timely resolution. One of the convicted men, Ram Singh, was found hanging in his cell—many questioning whether it was a suicide or a murder from within. The juvenile defendant Mohammad Afros was tried separately from his accomplices in a juvenile court where he was found guilty of rape and murder—a conviction that only carried a three-year sentence (Phukan 2015; Blake 2013). He was released in December of 2015. The four remaining adult defendants were convicted of rape, murder, kidnapping, destruction of evidence, and unnatural offenses. All of them were sentenced to death by hanging (Singh et al. 2013). Using facts from the Jyothi Singh case, this chapter intends to examine how rape is conceptualized within the broader culture of India, how the justice system deals with the victims of rape, how victims' family and friends respond to rape, and how rape culture plays a role in perpetuating sexually violent crimes, specifically rape, in India.

Rape and Sexual Violence against Women: A Global Problem and a Global Agenda

Rape and sexual violence is a crime that is global in nature. Although the incidence of rape varies from country to country, it is common to each and every country of the world. "Gender-based violence (GBV) is a global, pervasive, public health and development issue. The WHO reports that almost 35 percent of women worldwide have experienced physical and/or sexual intimate partner violence or non-partner sexual violence" (The World Bank 2014, p. 1). According to

data from the United Nations, "Around 120 million girls worldwide (slightly more than 1 in 10) have experienced forced intercourse or other forced sexual acts at some point in their lives." According to a report by the World Health Organization (2013), "overall, 35% of women worldwide have experienced either physical and/or sexual intimate partner violence or non-partner sexual violence. While there are many other forms of violence that women may be exposed to, this already represents a large proportion of the world's women" (p. 2). The same report also observed that "globally, 7% of women have been sexually assaulted by someone other than a partner" (p. 2). The United Nations in 2010–2012 conducted a major scientific study on rape on the basis of interviews of 10,178 men from six countries: Bangladesh, China, Cambodia, Sri Lanka, Indonesia, Guatemala, and Papua New Guinea (Jewkes et al. 2013). The study finds that 20 percent of the men included in the study said they raped somebody at some point in their lives. About 10 percent of the men said that they raped someone with whom they did not have romantic relations (the male respondents were asked whether they forced a woman who was not their wife or girlfriend at the time to have sex). "The prevalence of female non-partner rape perpetration", the study found, "varied between 4% (in urban Bangladesh) and 41% (in Papua New Guinea), but on most sites was between 6% and 8%" (Jewkes et al. 2013, p. 213). The study further observed that "The prevalence of multiple perpetrator rape perpetration was mostly between 1% and 2%, but was substantially higher in Cambodia (5%), Jayapura in Indonesia (7%), and Papua New Guinea (14%). Only in Cambodia was multiple perpetrator rape perpetration more common than single perpetrator rape perpetration" (Jewkes et al. 2013, p. 213). The study reveals that across the region, "the most common reason for the most recent rape expressed sexual entitlement (statements endorsed by 73% of men across the region; followed by entertainment seeking (59%), anger or punishment (38%), and alcohol or substance use (27%)" (Jewkes et al. 2013, p. 213). In terms of the consequences of rape, "only 55 percent of men had felt guilty, and 23 percent had been sent to prison for rape of a partner or non-partner woman, or man"

(Jewkes et al. 2013, p. 213). The study also shows that "Men who were poor (indicated by present food insecurity), or had no high school education (compared with any high school or higher education) were more likely to have raped with multiple perpetrators" (Jewkes et al. 2013, p. 214.). Childhood sexual victimization is also positively connected to rape. "Men with a history of victimization, especially child sexual abuse and having been raped or otherwise sexually coerced . . . were more likely than were those without such a past to have perpetrated either type of rape. Exposure to childhood physical abuse was associated with a greater likelihood of single perpetrator rape" (Jewkes et al. 2013, p. 214).

In 2014, the European Union Agency for Fundamental Rights conducted a study on violence against women based on the interviews of 42,000 women from all across the 28 countries of the European Union (this is the "first survey of its kind to capture the scope and nature of violence against women in all 28 EU Member States"). The study, titled *Violence against Women: An EU Survey*, reveals that "An estimated 13 million women in the EU have experienced physical violence in the course of 12 months before the survey interviews; and an estimated 3.7 million women in the EU have experienced sexual violence in the course of 12 months before the survey interviews" (European Union Agency for Fundamental Rights 2014, p. 21). The study further noted that "In total, 11 % of women have experienced some form of sexual violence since they were 15 years old, either by a partner or some other person. One in 20 women (5 %) has been raped since the age of 15" (p. 21). One of the intriguing facts revealed by the EU study is that women who are educated and professionals are more likely to be the victims of non-partner physical and sexual violence.

> Considering women's experiences of *non-partner* physical or sexual violence since the age of 15 by their present occupational position reveals that physical and/or sexual non-partner violence is highest among women who are managers or directors, professionals (such as lawyers, doctors, accountants and architects) or supervisors. Depending on the category, 28 %– 30 %

> of women in these positions have experienced violence by a non-partner since the age of 15. (p. 37)

Like the United Nations study (Jewkes et al. 2013), the EU study also finds that level of education has some impacts on rape. "The prevalence of physical and sexual current partner violence since the age of 15 is 16 % among women whose partner has not completed primary education, compared with 6 % for women whose partner has tertiary education" (p. 38). Analysis shows that "The direction of this effect is consistent across education groups: the higher the partner's education, the lower the prevalence of physical and sexual violence perpetrated" (p. 38). According to the EU study, like that of the United Nations' 2013 study (Jewkes et al. 2013), economic status in general and occupational status in particular, is also positively connected to rape and sexually violent behavior. "The prevalence of physical and/or sexual violence since the age of 15 by a current partner is somewhat higher than the overall prevalence of 8 % when the current partner is working in agriculture or fishing (13 %) or unskilled manual labor (15 %)" (p. 38). A report published by the International Business Times noted that among the European countries "Sweden has the highest rate of rape in Europe, with the UN reporting 69 rape cases per 100,000 inhabitants in 2011. . . . Swedish police recorded the highest number of offenses—about 63 per 100,000 inhabitants—of any force in Europe. That was the second-highest in the world after Lesotho" (Lacciono 2014, p. 1). The report further described that "According to a study published in 2003, and other later studies through 2009, Sweden has the highest sexual assault rate in Europe, and among the lowest conviction rates" (Lacciono 2014, p. 1). A 2010 Amnesty report said, "In Sweden, according to official crime statistics, the number of reported rapes has quadrupled during the past 20 years. In 2008, there were just over 4000 rapes of people over 15, the great majority of them girls and women" (as quoted in Lacciono 2014, p. 1). According to the United States' National Intimate Partner and Sexual Violence Survey of 2010, over 22 million women in the United States have been raped in their lifetime and 18.3 percent of women in the United States have survived a completed or attempted rape. The survey further observed that of the 18.3 percent

of women who have survived rape or attempted rape, 12.3 percent were younger than age 12 when they were first raped, and 29.9 percent were between the ages of 11 and 17. The survey also showed that there were regional variations in the incidence of rape. "The proportion of women who report having been raped ranges from 11.4 % in Virginia to 29.2 % in Alaska" (as quoted in Europen Union Agency for Fundamental Rights 2014, p. 23). The 2012 National Crime Victimization Survey conducted by the Bureau of Justice Statistics of the Department of Justice in the United States noted that every 90 seconds, somewhere in America, someone is sexually assaulted.

Solotaroff and Pande (2014) conducted a major study in 2014 on violence against women and girls in South Asia. The study finds that "Violence against women and girls in South Asia is particular by virtue of its unrelenting pervasiveness throughout a woman's life—from childhood through adolescence, adulthood, and eventually to old age. It is a persistent part of their lives, throughout their lives" (p. 27). The study further noted that "The efficiency with which violence is perpetrated system-wide is also startling, such that women are constantly and daily vulnerable, not just to the threat of violence by individual intimate partners or family members, but also by strangers . . . whole communities . . . and the state" (Solotaroff and Pande 2014, p. 27). A report published by the Oxfam International in 2004 similarly observed that "Due to the sharp gender bias . . . there has been a higher rate of mortality among women in South Asia than in many other parts of the world. Currently, an estimated 50 million women are 'missing' from the population due to gender-discriminatory practices" (Oxfam International 2004, p. 4). The Oxfam study found that "In Pakistan, 80 percent of women experience violence within their homes. Despite the fact that many incidents of 'honor killing' are not reported, in 2002, more than 450 Pakistani women or girls were killed by relatives in so-called 'honor killings,' and at least as many were raped" (p. 3). The Oxfam study further noted that "Forty-seven percent of Bangladeshi women experience some physical violence at the hands of their intimate partners" and "60 percent of women suffer domestic violence in Sri Lanka" (p. 3).

Ending sexual and domestic violence against women is presently a global agenda for reforms and modernization in criminal justice in

all across the world societies. The 185 member states of the United Nations, who participated at the Fourth Conference on Women (Beijing Plan of Action) in Beijing in 1995, have an obligation under the international law to prevent violence against women by enacting new laws and developing a new culture of respect for human rights and the dignity of women. The Beijing Plan of Action declared that the states should "Enact and/or reinforce penal, civil, labor and administrative sanctions in domestic legislation to punish and redress the wrongs done to women and girls who are subjected to any form of violence, whether in the home, the workplace, the community or society" (United Nations 1995, p. 51). The Beijing Plan also made a declaration that "Refrain from engaging in violence against women and exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons" (United Nations 1995. P. 51). The Beijing Plan of Action recognized that violence against women is deeply a cultural phenomenon. "Violence against women is a manifestation of the historically unequal power relations between men and women, which have led to domination over and discrimination against women by men. . . . Violence against women throughout the life cycle derives essentially from cultural patterns" (United Nations 1995, p. 49). Violence against women "is exacerbated by social pressures, notably the shame of denouncing certain acts that have been perpetrated against women . . . the lack of laws that effectively prohibit violence against women; failure to reform existing laws; inadequate efforts on the part of public authorities to promote awareness of and enforce existing laws" (United Nations 1995, p. 49). The culture of violence against women is reinforced by "Images in the media of violence against women, in particular those that depict rape or sexual slavery as well as the use of women and girls as sex objects, including pornography, are factors contributing to the continued prevalence of such violence" (United Nations 1995, pp. 49–50). Data from the United Nations noted that since the Beijing Plan of Action in 1995, "At least 119 countries have passed laws on domestic violence, 125 have laws on sexual

harassment and 52 have laws on marital rape" (United Nations Economic and Social Affairs 2015). After the Jyothi Singh Case in 2012, renewed debates and discourses began to grow in India about how to modernize the rape laws in particular, and how to change the culture of violence against women in general. The global movement for ending violence against women became a local movement for major legal and cultural transformations in India in the context of the tragedy of Jyothi Singh case.

Prevalence of Rape and Sexual Violence in India

According to data from India's National Crime Records Bureau (NCRB), the number of rapes has been steadily increasing in India since the 1970s. In 1971, according to the NCRB, a total of 2487 rape cases were reported to law enforcement. In 2010, the number of rape cases reported to law enforcement jumped to 22,170. Between 1971 and 2010, the incidence of rape in India increased by 791.5 percent (National Crime Records Bureau 2010). During that time, rape increased at a rate more than other forms of violent crime such as murder (240.1 percent), kidnapping and abduction (630.7 percent), and robbery (173.3 percent). In 2010, a total of 22,172 rape cases was reported to law enforcement. The number increased to 24,923 in 2012 to 33,707 in 2013, and to 36,735 in 2014 (Pereira 2015). The NCRB noted 2014 that a total of 1,32,939 cases of sexual offences (comprising of rape, attempt to commit rape, assault on women with intent to outrage her modesty and insult to the modesty of women) were reported during 2014, out of which assault on women with intent to outrage her modesty accounted for 61.9 percent of total such incidents (82,235 cases). India's capital city of Delhi is described as the "rape capital" of the country. The number of reported rape cases in the city alone doubled from 706 cases in 2012 to 1636 rape cases in 2013, and 1813 in 2014. On average, about four rape cases were reported a day in Delhi. More recent reports reveal that Delhi police registered 300 first incident reports in the first two months of 2015. Other regions of the country have also recorded higher incidents of rape in 2014 such as Madhya Pradesh (5076), Rajasthan (3759),

Uttar Pradesh (3467), and Maharashtra (3438). These four states had a higher incidence of rape also in 2010, 2011, 2012, and 2013. Data from the NCRB also show that in India, like in many other countries, the perpetrators of rape are mostly known to the victims. In 2010, in the 29 states of India 21,017 rapes were committed by those who were known to the victims, and they included parents of close family members (267), relatives (1290), neighbors (7569), and other known persons (11,891). This is also true of the 70 cities on which data are recorded by the NCRB. There are two different set of crimes against women in India: crimes under the India Penal Code such as rape, attempt to commit rape, kidnapping and abduction of women, dowry deaths, assault on women with the intent to outrage her modesty; and crimes under Special and Local Laws such as the Dowry Prohibition Act of 1961, the Indecent Representation of Women (Prohibition) Act of 1986, the Commission of Sati Prevention Act of 1987, and the Protection of women from domestic Violence Act of 2005. What is alarming, as indicated above, is the rapid rise of the incidence of rape in recent times, among all other forms of violence against women in India.

Law and Legal Transformation in Rape Laws in India

The term "rape" derives from the Latin word "rapere" which means, "to snatch" (Saunders 2001, p. 20). The use of the term has evolved throughout centuries and is defined with variations in different parts of the world, but the underlying premise is common: "to seize and to take away by force." The definition of rape is outlined in Section 375 of the Indian Penal Code (IPC) under the following circumstances: A man is said to commit "rape" who has sexual intercourse with a woman under circumstances falling under any of the six following descriptions: against her will; without her consent; with her consent under the threat of death; with her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married; with her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him

personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent; and sixth, with or without her consent, when 16 years of age (Kalra and Barupal 2013, p. 1). In the context of the Jyothi Singh Case in 2012, renewed debates and discourses began to emerge in India for reforming and modernizing the India's rape laws. A week after the gang rape incidence of Jyothi Singh, the Government of India set up a committee under the chairmanship of Justice J. S. Verma (a former Chief Justice of India) to make recommendations for amendments to India's existing criminal law related to rape and sexual violence against women. Some of the major recommendations made by the Verma Committee included police reforms to ensure police efficiency, police accountability, and police autonomy; accountability of the lower judiciary; enforcement of the fundamental human rights by the higher judiciary; court reforms for the speedy trial of rape cases; and victim support. In 2013, in the context of the Jyothi Singh incidence, and on the basis of some of the recommendations of the Verma Committee, India enacted a new legislation—the Criminal Law (Amendment) Act of 2013 (Government of India 2013). The new act amended the India Penal Code of 1860, the Indian Evidence Act of 1872, the Code of Criminal Procedure of 1973, and the Protection of Children from Sexual Offences Act of 2012. The new act amended Sections 100, 228A, 354, 379, 370A, 375, 376A, 376B, 376C, 376D, and 509 of the IPC of 1860 to strengthen the investigation and prosecution of sexual crimes and violence against women including acid-crime, sexual harassment, rape, stalking, voyeurism, and women trafficking. One of the major goals, the act said, is to "widen the definition of rape; broaden the ambit of aggravated rape, and enhance the punishment thereof" and to "prescribe for punishment extending to the sentence of death, for an offence wherein the course of commission of an offence of rape, the offender inflicts any injury which causes the death of the victim or causes the victim to be in a persistent vegetative state." The act inserted some new sections related to those crimes in the IPC (Sections 166A, 166B, 326A, 326B, 354A, 354B, 354C, and 354D).

In broadening the definition of rape, Criminal Law (Amendment) Act of 2013 stated that a man:

> commits a rape if he (*a*) penetrates his penis, to any extent, into the vagina, mouth urethra or anus of a woman or makes her to do so with him or any other person; or (*b*) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person.

A man also commits a rape if he "(*c*) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her do so with him or any other person; or (*d*) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person." The new law no longer defines rape as a gender-neutral concept which means that only a man can commit the offense of rape on a woman. According to the new law, a rape occurs when the acts described above take place against the will of woman, without her consent, when her consent is given under the threat of death of bodily harm, with her consent when the man knows that he is not her legal husband, with her consent given in a state of intoxication, with or without her consent when she is 16 years of age, and she is incompetent to communicate consent (the new law changed the age of consent from 16 to 18 years of age).

The Criminal Law (Amendment) Act of 2013 provided a new sentencing structure for different types of sexual offenses and violence against women including rape. Under the IPC of 1860, the rape and murder were treated as two separate crimes, and rape carries a punishment of seven years, and murder carries a punishment of life imprisonment or death penalty. Under the new law, rape and murder are treated as one crime and it carries a punishment of at least 20 years of imprisonment or death penalty. The new law noted that "Whoever . . . commits rape shall be punished with rigorous imprisonment of either description for a term which shall not be less than seven years but which may extend to imprisonment for life." Under the IPC of 1860, the punishment for gang rape is 10 years to life imprisonment. The Criminal Law (Amendment) Act of 2013, imposed 20 years to life

imprisonment for gang rape. The new law described that "Where a woman is raped by one or more persons constituting a group . . . each of those persons shall be deemed to have committed the offence of rape and shall be punished with rigorous imprisonment for a term which shall not be less than 20 years, but which may extend to life which shall mean imprisonment for the remainder of that person's natural life." The IPC of 1860 does not have a special provision for repeat offenders for rape and sexual offenses. The new law imposed life imprisonment or death penalty for repeat violent sex offenders. The new law stated that "Whoever has been previously convicted of an offence punishable under section 376 or section 376A or section 376D and is subsequently convicted of an offence punishable under any of the said sections shall be punished with imprisonment for life which shall mean imprisonment for the remainder of that person's natural life, or with death." Under the IPC, there was no special provision for rape by armed personnel including the military and the police. The new law imposed a punishment of minimum seven years to life imprisonment for rape by armed personnel. The IPC does include a provision for punishment of rape by persons of authority. The Criminal Law (Amendment) Act imposed a punishment of 5–10 years for rape by persons of authority. The IPC did not have specific punishments for stalking, sexual harassment, demand for sexual favor, and assault to disrobe a woman. Under the new law, these are specific and punishable sexual offenses (Jamil 2013; Khazan 2013; Mandhana 2013). The Criminal Law (Amendment) Act of 2013 also made a series of changes in the areas of criminal prosecution and criminal evidence related to rape and other forms of sexual violence cases (Amendments to the Criminal Procedure of 1973 and Amendments to the India Evidence Act of 1872). The new law made a provision that when a complaint is made by a woman about rape and other forms of sexual victimization, information should be recorded by a woman police officer or a woman officer, and information should be video-graphed. "Provided that if the information is given by the woman against whom an offense . . . is alleged to have been committed or attempted, then such information shall be recorded, by a woman police officer or any woman officer." The law also directed law enforcement and the courts to complete a rape trial within two months from the filing of the charge sheet. In the area of criminal evidence, the Criminal Law (Amendment) Act of 2013 said that in the prosecution of the offense of

rape, "where the question of consent is in issue, evidence of the character of the victim or of such person's previous sexual experience with any person shall not be relevant to the issue of such consent or the quality of consent." The law further added "where the question of consent is an issue, it shall not be permissible to adduce evidence or to put questions in the cross-examination of the victim as to the general immoral character, or previous sexual experience, of such victim with any person for proving such consent or the quality of consent." The new law further stated that "where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and such woman states in her evidence before the court that she did not consent, the court shall presume that she did not consent."

The Culture and the Social Tolerance of Rape in India

The Criminal Law (Amendment) Act of 2013 is definitely a milestone in the progress of ending violence against women in India. The amendments to the IPC, the Criminal Law Procedure of 1973, and the Criminal Evidence Act of 1862 have expanded the definition of rape and provided a set of new laws in the hands of law enforcement, prosecutors, and judges for effectively dealing with the crimes of rape and violence against women. The issues of rape and violence against women in India, however, are not issues that are merely legal in nature. They are also deeply cultural and sociological in nature. The cultural values, beliefs, and creeds of a society are also intimately connected to how gender relations, gender roles, and gender equality are perceived. In any society, violence against women needs to be seen both in terms of the demands of modernity and the constraints of tradition. The issues of human rights, human dignity, and gender equality—the issues that the Verma Committee has so forcefully put on the agenda for change and reforms in India's law and criminal justice—are the issues of modernity. The progress of modernity in all societies has brought a new set of ideas, values, and institutions such as universal human rights, gender equality, democracy, individualism, the rights of the children, and the freedom of spirituality. These values of modernity are presently in a process of globalization—they

are reaching to each and every part of the planet. This process of the globalization of modernity, however, has been creating many new foci of cultural conflicts between the old and the new ways of looking at the culture and the humanity in all across the world societies. The recent debates and discourses on rape in India and the broader issues of gender equality and human rights are a part of this conflict between modernity and tradition in India. It this in this context that the following section will examine some of the culture dimensions of rape in India (Pande 2015).

Two ancient Hindu texts contain some of the cultural ingredients related to the role and status of women in India. One is the ancient Hindu text called the *Law Code of Manu* (Olivelle 2009) and the other is the ancient Hindu text called the *Kautilya's Arthasastra* (Shamasastry 2012). Both texts offer "rules" for how women should act and be treated by men and their husbands. Traditional gender roles and patriarchy in Indian culture are set up by these texts. The *Law Code of Manu* has a section of "Laws on Women" that strictly prohibits any form of independence of women. The code said that:

> Even in the own home, a female—whether she is a child, a young woman, or an old lady—should never carry out any task, independently. As a child, she must remain under her father's control, as a young woman under her husband's, and when her husband is dead, under her sons. She must never seek to live independently. (Olivelle 2009, p. 96)

The Code further said that a woman who controls her mind, speech, and body and is never unfaithful to her husband attains the world of her husband, and virtuous people call her a "good woman" (Olivelle 2009, p. 97). The Code of Manu made a strict declaration that women from the lower class—the Sudras—should be completely avoided by the Brahmins. The Code said that when the Brahmins "foolishly marry low-caste wives, they quickly reduce even their families and children to the rank of Sudras . . . by taking a Sudra woman to bed, a Brahmin will descend along the downward course, and by begetting a son through her, he falls from the very rank of Brahmin" (Olivelle 2009, p, 44). The Code of Manu has been described to be responsible for the suffering of women in India. The Code of Manu boldly described women have no right to education, independence, or

wealth. The Code justified viewing women solely as a sex object, prescribed child marriage, and justified violence against women, particularly those who are from the lower class—the Sudras. The Code of Manu equates the murder of a woman to be the same as the murder of an animal (Mahey 2003). Similarly, *Kautilya's Arthasastra* prescribed when it is acceptable to beat one's wife and encourages early marriage (Jaiswal 2001). This ancient text prescribed that "Women of refractive nature should be taught manners" by corporal punishment, or by "using three beats either with a bamboo bark or with a rope or with the palm of the hand, may be given on her hips. The same kind of punishments shall be meted out to a woman who, moved with jealousy and hatred, shows cruelty to her husband" (Shamasastry 2012, p. 176). Any romantic gesture from a woman, except in a marriage, was a punishable crime in Kautilya's world of a good government. For women holding "secret conversations in suspicious places, whips may be substituted for fines. In the center of the village, an outcaste person (handle) may whip such women five times on each of the sides of their body" (Shamasastry 2012, p. 177). In Kautilya's world of a good society, women must always remain confined to their homes either of the parents or the husband. "If a woman goes beyond her neighboring house," the text said, "she shall be fined six panas. . . . If she goes beyond the surrounding houses . . . she shall be fined 24 panas. If under any excuse than danger, she takes into her house the wife of another man, she shall be fined 100 panas" (Shamasastry 2012, p. 178). There should be little surprise about the status of women in India and the violence committed against them given the centrality of the Code of Manu within the religion of Hinduism combined with the historical significance of *Kautilya's Arthasastra* in Indian culture and civilization.

Culture in India has been rooted in patriarchy for centuries. This patriarchy has contributed to deeply ingrained beliefs in gender roles for men and women in India. So important is the male gender in India that over 50 million girls are unable to be accounted for due to female infanticide and abortion of female fetuses (Khan 2013). Female children are seen as a financial burden due to the existence of the dowry system and the family having to pay for a husband to wed the female child and the expectation that female children will be wives and mothers, not educated people with careers. Likewise, male children are seen as a financial benefit, in that they will be employed and receive a dowry when they wed. The preferential treatment

and differing expectations of male children in India reinforce patriarchal values (Bhat and Wodda 2013). Further examining the role of patriarchy in India, it is important to discuss the marriage of children and the underlying implications of forced and dowry marriages for young girls. Marriage is viewed as a rite of passage in India, however, it means drastically different things for each gender and there are different expectations for the female in marriage. Girls are expected to be virgins and have no sexual experience, which is why they are often married off as children. Even if a relationship has no sexual experiences, simply a girl associating with a male can damage her and her family's reputation (Bhat and Wodda 2013). These are not expectations which are placed on males.

As is common in patriarchy, women are viewed as the property of their birth family and then of their husband. While India's constitution recognizes equality between men and women, this is not accepted or practiced culturally (Hornbeck et al. 2007). They are expected to bear children and care for the household while the husband is expected to work and provide for the family. Because of the view of woman as property, marital rape is not a crime in India. While India does have a domestic violence law in place, it is more of a civil in nature than criminal and mostly allows for protection orders (Hornbeck et al. 2007). As one author stated, "misogyny shows its virulent forms in many oppressive practices like female feticide, honour killing, child marriage, rape, sexual harassments, assaults, coercion, beatings, bodily harm, murders before or after birth and strictures issued to control sexuality and reproduction among women to maintain social order" (Nigam 2016, p. 3).

Patriarchy cannot be ignored when examining the gang rape of Jyothi Singh. Gang rape is not a rare occurrence in India, yet rarely are cases as widely publicized as Jyothi Singh. What is unique about Jyothi Singh is that her gang rape garnered international attention. Her and her family's beliefs being contradictory to the larger patriarchal culture are probably part of it. Jyothi believed women and girls should have the same opportunities as men and not only be expected to be wives, mothers, and familiar caretakers. The Singh family released Jyothi's name, defying typical behavior of Indian families who do not say rape victims' names in order to protect the victim and the family from shame and reputation

damage. The family supported Jyothi's beliefs that women should be treated equal to men and used their small savings to send her to medical school. In a culture which still largely values male life over female; the Singh family is certainly unique. Perhaps the international community took such a strong interest in this case because of the uniqueness of the Singh family and their alignment with the culture of modernity. This case touches on both the ingrained patriarchy in India and those who are fighting against it. While the backlash against Jyothi's attackers erupted in protests and calls for laws and societal changes; changing the deeply entrenched Indian patriarchy is going to take a long time. Patriarchy is a global phenomenon and even in countries where women appear to have more equality with men; oppression still exists and inequalities are still pervasive (Henry and Powell 2014; Madan and Sinha 2013).

A glaring example of tolerance for rape is when a victim is blamed for an assault. Victim blaming comes from different sources: family, friends, perpetrators, justice system employees, and people not even connected to the victim, perpetrator, or case. Some of the most common types of victim blaming are the ideas that women should not go out by themselves at night (a behavior prescribed for women by *Kautilya's Arthasastra* some 2000 years ago) and blaming rape on what a woman is wearing. In India, women who spend time with men who are not family are blamed when they are assaulted. Those who actively try to fight their attackers are still held to blame for their assaults. One of Jyothi Singh's rapists, Vile Singh, recently stated, "she should just be silent and allow the rape . . . a girl is far more responsible for rape than a boy" (Shammas 2015). This highlights one way in which perpetrators are able to justify their violence. Perpetrators of sexual violence typically believe in and subscribe to rape myths (Hersh and Grey-Little 1998). However, many members of a society—not just those who have committed or have a proclivity to commit sexual violence—often hold a belief in rape myths. Many members of law enforcement and the justice community equally share the rape myths and contribute to the permeation of these myths within the culture. It is important to note that rape is very much underreported in India. There are several reasons for the underreporting of this crime. The shame brought upon victims is one reason. Victim blaming certainly plays a role in responses from the legal system when

and if a rape victim reports her assault (Harris 2013). Knowing that she may be questioned or blamed for what has happened to her upon reporting her attack may keep women from reporting in the first place. Another contributing factor related to underreporting is the stigma and shame a victim may face from being deemed impure and thereby unfit to be married. Not only is the victim stigmatized, but it may bring her family undue hardship as the family may have to pay a massive dowry or engage in a very quick arranged a wedding in order to ensure their daughter is married. Unmarried adult women are viewed as a financial burden to Indian families (Hornbeck et al. 2007). Further, the high rates of acquittals in rape cases discourage women from reporting their assaults. Even in cases where an offender is convicted, judges often engage in victim blaming and question how victim behavior contributed to the assault (Singh 2004).

After a two-week investigation, after the Jyothi Singh's incidence, the journalists uncovered some shocking attitudes of senior police officers in Delhi. The overwhelming pattern among the different officers interviewed is that women who report rape are after financial gain or were dressed and behaving in a way in which they should expect to be raped. Seventeen senior police officers made comments blaming victims for rapes and the majority of officers held the opinion that the woman is always at fault for being raped. Comments regarding alcohol use by women, women who work with men, the clothing a woman is wearing, and a woman having a boyfriend were all given as reasons for why women are raped (Bhalla and Vishnu 2012). The officers believed that women who are actually rape victims never approach the police and those who do are simply trying to extort money or fame from their perpetrators and assault (Bhalla and Vishnu 2012). Some police even felt that if a woman is having consensual sex with a man, then there is no reason why his friends should not be allowed to join in. This attitude makes sense given the high frequency with which gang rape occurs in India. As Bhalla and Vishnu (2012) boldly asked, if these are the attitudes among officers in larger cities, which are supposed to be more sensitive to victims' rights, then what can possibly be expected of police in rural areas of India? The majority of perpetrators from rapes reported in 2011 are still at large, leading to a lack of trust in the ability

of police to investigate and apprehend suspects of rape (Fisher 2013). Moreover, police may not even take this crime seriously. Jyothi Singh's male friend, who was also beaten in the attack, reported that police argued for 20 minutes over jurisdiction before giving either him or Jyothi any attention. He further reported that police refused to call for medical help for either of them, and they refused to assist him in helping Jyothi to get into his car so he could take her for medical treatment. The police chief's response to these accusations was typically what was contained in Kautillya's *Arthasastra*: that women should not go out at night. After two brutal gang rapes, Delhi police went on record stating that they believed a curfew for working women would solve this problem—putting the onus of responsibility for stopping rape on the victims and absolving the perpetrators of responsibility. In the gang rape of a minor, police released her name to the public, which is punishable by up to two years in prison. However, no one was prosecuted for this blatantly illegal act. In that same press conference, the police chief inferred the minor girl's character was what caused the attack (Bhalla and Vishnu 2012). Secondary victimization is common among victims of sexual violence in India (Bhat and Wodda 2013). Secondary victimization refers to victimization experienced while moving through the reporting and court process. Police ask vulgar details about the assault and refuse to file reports of assaults. In another case, police pressured a victim to marry one of her rapists or at least accept a financial settlement from the perpetrator (Bhalla and Vishnu 2012). While there is a law in India, which requires female officers to take reports from rape and domestic violence victims, this law is rarely enforced. Further, when police officers or court employees violate the statutes designed to protect rape victims, they are rarely held accountable.

The rate of conviction for cases of rape in Delhi is about 35 percent according to the NCRB. Cases are acquitted for a number of reasons; many are related to the India's police culture. Initial reports of rape in India must be filled out. These are called First Information Reports (FIRs) and police often delay filling them out or fill them out erroneously. The procedures to collect medical evidence are flawed and investigation, in general, is poor. When a FIR is actually filed and the case moves forward through the court system, a conviction is highly

unlikely. Even though it is not required by law, medical evidence, especially evidence of injury which indicates force, is often necessary for a conviction. One of the Human Rights Watch (2010) studies found that there is widespread use of the archaic and medically inaccurate "finger test" during a forensic rape examination. During the finger test, a doctor inserts fingers into the woman's vagina to determine if the hymen is intact and the elasticity of the vagina. This test is not supported by medical science, and it furthers victim blaming by questioning the woman's virginity (Human Rights Watch 2010). If a woman is not a virgin, then certainly she could not have been raped. Moreover, courtroom actors rarely act with empathy or sensitivity toward the victim, and defense lawyers often use aggressive cross-examination techniques including the same victim blaming behaviors shown by police officers. One of the lawyers in defense of Jyothi Singh's rapists is on record as stating were his own daughter to be out with an unrelated man that he would burn her alive for being a disgrace (Merelli 2015).

Conclusion

The case of Joythi Singh's brutal rape and murder in Delhi in India on the night of December 16, 2012, has ignited new debates and discourse on rape and violence against women both at home and abroad. Although the rate of rape and violence against women varies from country to country, it is universal across the world societies. The United Nations 1948 Convention of the Universal Declaration of Human Rights of 1948, the United Nations 1979 Committee on the Elimination of All forms of Discrimination against Women (CEDAW), the United Nations Secretary-General's 2008 declaration to UNiTE to End Violence against Women and a number of international and regional instruments have given birth to a global movement to end violence against women. One of the core directives of this movement is the criminalization of all forms of violence against women and the development of new legislation to ensure human rights, social and political equalities, and equal justice for women. This chapter has examined the broader context of this

movement and argued that the issues of human rights, social and political equalities, and equal justice for women are the issues of modernity. As these issues are spreading around the world societies through the process of globalization, they are creating new debates and disputes about the cultural and civilizational frames of reference on the role of women in different localities of the world. The issues of modernity with respect to women have brought many cultural challenges to the traditional worldview of the role and the rights of women. It is some of these challenges of the issues of human rights and gender equality and gender justice that are being newly debated in India in the context of the case of Joythi Singh. One of the major arguments of this chapter is that rape and the issues of violence against women in India are not merely legal in nature. The Criminal Law (Amendment) Act of 2013, enacted after a year of the incidence of Joythi Singh's incidence, has criminalized many facets of violence against women, made provisions for tougher sentencing and penalties, and brought many legal reforms for effective investigation and prosecution of rape and other cases of violence against women. The many impacts of the Criminal Law (Amendment) Act of 2013 remain to be seen. The issues of rape and violence against women in India are also deeply cultural in nature. We argue in this chapter that there is a generalized culture sense of "Social Tolerance of Rape" in India. The notion of the social tolerance of rape can be described as an Indian worldview or a cultural paradigm about the role and status of women in India. At the core of the social tolerance of rape is the perspective of victim blaming. Victim blaming is both external and internal in nature. Externally, it is characterized by negative reactions. Women are blamed and perceived as responsible for their own victimization by rape and other forms of violence. A number of remarks made by law enforcement and justice officials in the case of Joythi Singh exemplified this generalized notion of victim blaming within the Indian culture. This negative reaction exists in the minds of the parents, families, neighbors, communities, and legal and mental health professionals. Internally, victim blaming leads to the internalization of a sense of guilt and shame in the mind of the victims. This leads to the lower reporting of rape, sexual

harassment, and other forms of crimes against women. The perspective of victim blaming thus keeps rape and other forms of violence common to a patriarchal culture deeply in the dark world of human consciousness and sexuality. Reforms in law and legislations are needed to end rape and violence against women in India. But changes in the worldview and the cultural paradigm of the social tolerance of rape will probably need more fundamental social and cultural transformations.

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Bangladesh and the Banality of Violence: Civility, Culture, and Crime

Habibul Haque Khondker

Introduction

On February 8, 2015, the *Huffington Post* published a chilling article, written by Zyma Islam, a freelance journalist of Bangladesh. In that article, titled "The Morbid Accomplishments of Bangladesh's Vigilantes," Islam reminded us of a pivotal idea from a 1954 novel by Noble Laureate English author William Golding's *Lord of the Flies*—an idea that suggests "that the institution of civilization is the only wall between humans and savagery" (Islam 2015a). It is estimated that "Violence causes more than 1.6 million deaths worldwide every year. More than 90% of these occur in low- and middle-income countries. Violence is one of the leading causes of death in all parts of the world for people's ages 15–44" (World Health

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Organization 2002, 2010). The homicide rate is one of the common and leading indicators of violence. The United Nations' 2011 study on Global Violence noted "Globally, the total number of annual deaths estimated by UNODC to be homicides in 2010 was 468,000. More than a third (36 percent) of those are estimated to have occurred in Africa, 31 percent in the Americas, 27 percent in Asia, 5 percent in Europe and 1 percent in Oceania" (United Nations Office on Drugs and Crime 2011, p. 9). The study also observed "that homicide rate in Africa and the Americas (at 17 and 16 per 100,000 population, respectively) is more than double the global average (6.9 per 100,000), whereas in Asia, Europe and Oceania (between three and four per 100,000 population) it is roughly half" (United Nations Office on Drugs and Crimes 2011, p. 9). Asia has the lowest rate of violence (homicide), which is 3.1 per 100, population. However, there are significant regional variations within the Asian region. Within the Asian region, South Asia has the highest rate of violence measured by the rate of homicide. Within South Asia, the rate of violence is highest in Pakistan (8.1 homicide per 100,000 population) followed by India (4.5 homicide per 100,000 population) and Bangladesh (3.5 homicide per 100,000 population). However, if measured by data from public health sources alone, Bangladesh has the highest rate of violence (8.5 homicide per 100,000 population, higher than the global average) within the region of South Asia (United Nations Office on Drugs and Crime 2011, p. 23). The World Health Organization's World Report on Violence and Health defines violence as "the intentional use of physical force or power, threatened or actual, against oneself, another person, or against a group or community, that either results in or has a high likelihood of resulting in injury, death, psychological harm, maldevelopment, or deprivation." From this broader perspective, the rate and the incidence of violence in Bangladesh, taking into account the incidence of different forms of violence such as corporal violence in different settings, interpersonal violence, intimate partner violence, sexual violence, political violence, religious violence, and community violence, would be much higher than what is estimated by United Nations Office on Drugs and Crime's homicide data. It is not, therefore surprising, that in recent years there is a growing discourse on violence emerging from the rise of violent crimes in Bangladesh. The most alarming is that violence in Bangladesh is becoming increasingly brutal, barbaric, cruel, unkind,

and vulgar (Mehreen 2015). The violence the world has seen from the rebellious Bangladesh Border Forces in 2009 is a case in point. More than 50 army officers were killed and their dead bodies were burnt and dumped in sewage canals. Decomposed bodies were found that were mutilated, bayoneted, and had eyes gouged out. Some of the wives of the army officers were raped, and their breasts were cut-off. On July 1, 2016, a gang of Islamic extremists went into a restaurant in the capital city of Dhaka and shot and hacked 20 men and women, most of them foreigners.[1] Violent crimes are not unusual and they happen across the world with various levels of intensity, yet some of the reported violent cases in Bangladesh seem to be extremely brutal. The level of atrocity is comparable to the tortures and punishments more befitting the middle ages or as meted out and publicized worldwide via social media by hyper-radical groups such as ISIS to some extent. Some of the acts of atrocities in Bangladesh too have been circulated via social media giving it certain transparency. It is, therefore, also not surprising that author Zyma Islam has reminded us of the *Lord of Flies*' description that civilization is the only wall between humanity and savagery.

Why is Bangladesh becoming increasingly violent, and why is Bangladesh's violence is becoming increasingly brutal and barbaric? This is the theme of this chapter on "Bangladesh and the Banality of Violence: Civility, Culture, and Crime." The thesis of this chapter is that both the brutal nature of violence and the readiness to engage in violence are linked to the lack of civility in the broader culture of Bangladesh. A particularly worrying trend is that in recent years there has been a general decline of civility and the erosion of moral and ethical values in Bangladesh. Based on the analysis, the chapter argues that in the long term, Bangladesh culture has to change to reinstate ethical values, cultivate and spread civility. The social institutions such as the state, criminal justice, administration of law, judicial system, and media are embedded in a culture. Without transforming the culture, institutional changes are not possible and will not be sustainable. A violence-friendly culture and

[1] Of the victims of this terror attack for which the so-called Islamic State (IS) claimed responsibility, there were two Bangladeshis, one Indian, one American of Bangladeshi origin, nine Italians, and seven Japanese.

generalized condition of incivility will defeat any attempt to change the institutions that might control violence in Bangladesh. In order to examine this thesis, the present chapter will propose a broad hypothesis that violence in general has declined with the progress of civility and civilization. Having stated such a broad hypothesis, we would qualify it by stating that it is quite possible to find some cultures that showed a high degree of politeness and tolerance and avoided violence without the benefit of civilization. Hence, we need to define at the outset our notion of civilization. By civilization in the context of this chapter means a polite society, and a polite society is where people use reasoned arguments to settle disputes within the bounds of civility. Certain values and social institutions that are based on the dignity of humans as well as all sentient beings characterize a polite society. A polite society is a decent society. Philosopher Avishai Margalit defines a decent society "is one in which the institutions do not humiliate people" and a civilized society as one "whose members do not humiliate one another" (Margalit 1996, p. 1). In a polite society, social interactions are based on the principle of non-humiliation. That is, one human being must not humiliate a fellow human being and a sentient being. In May 2015, the New Zealand parliament declared that animals are sentient beings (Carson 2015). "To say that animals are sentient is to state explicitly that they can experience both positive and negative emotions, including pain and distress," said Chair of the National Animal Ethics Advisory Committee, Virginia Williams (McIntyre 2015). The Animal Welfare Amendment Act (No. 2) of 2015 stated that "animals, like humans, are 'sentient' beings" (New Zealand Legislation 2015). While, this chapter is focused on interpersonal interactions, individual actions, and behaviors, it will not neglect the institutions that a society creates to ensure that social transactions take place in a polite way. Politeness and respect are the antitheses of violence and harm. The core of civilization, in so far as the remit of this chapter is concerned, is civility. A society must accept, what philosophers call the first principle argument, that polite conduct based on non-humiliation is the core of civilization. In terms of this definition both Japan in the twenty-first century and Arapesh people in New Guinea or Iquitos people in the Amazonian forest of Peru are highly civilized because they are predominantly nonviolent people. People in

these societies are not only highly respectful of each other, and polite and non-threatening to each other, but they also avoid harm and strong language. The case of Japan is illustrative because historical records indicate that Japan during the Tokugawa or Edo period was highly violent. During the Meiji period as Japan modernized it also became less violent. The civilizing experience in Japan played an effective role in restraining violence and promoted self-restraint and self-control. In Japan during the Edo period (1603–1867) Samurai, a class that served aristocracy with weapons became "Shi" or "man of learning and virtue" or "Civilized gentleman" (Ikegami 1996). The taming of the Samurai was the outcome of Japan's modernization. Once known for public display of violence, violence is almost absent in the present-day Japan. Anyone with familiarity of Japan would notice the high level of politeness and regard for others in the everyday life of the Japanese society.

Civility, Culture, and Violence: Some Theoretical Notes

Sociologists and several other social scientists have discussed the relationship between the lack of civility or incivility and crime and violence. The discourse began with the general theories of social disorganization and the rise of crime and delinquency. The earlier analysis focused on the way city life disrupted the traditional social order. Comparing and contrasting city life to folkways, Louis Wirth and other Chicago school sociologists argued that density, heterogeneity, increased mobility, and insecurity accounted for instability and disorganization in the modern urban life. The rapid growth of urbanization and the arrival of new communities yet to be integrated with the new environment were thought to be plausible explanations for rising trends in crime and delinquency. Although these studies were informative about urbanization and social transformation in the cities in the 1950s and 1960s, they are inadequate in explaining the continued prevalence of crime and violence. Several writers from Hunter (1974), Lewis (1996) to Taylor (1999) provide a plausible explanation linking incivility with crime and violence.

At the same time, there is a strong tradition that suggests that improved policing and governance is decisive in arresting violent crimes such as homicide, arson, rape, and robberies. In the short run, strict enforcement of laws and improved policing may play a role in controlling crime rate, but to sustain a low level of violence and criminality, an increase in civility is imperative. In a comparative study of crime reduction between two crime-infested cities, New York City and Bogota, Colombia, Beckett and Godoy (2010) showed that enhancement of civility played an effective role in bringing down the crime rate in Bogota. Crime rates in New York City dropped steeply in the 1990s for which Mayor Giuliani and his police team took credit, especially for its zero tolerance policy. In New York, "The homicide rate dropped precipitously, from a high of 30 per 100 000 residents in 1990 to a low of 8.5 per 100 000 in 1998" (Karmen 2000, p. 826 as quoted in Beckett and Godoy 2010 p. 291), a drop of nearly 72 percent (Beckett and Godoy 2010 p. 291) An enhancement of the quality of life in the city of New York in the 1990s also played an important role. This chapter, however, will use the sociological theory of Norbert Elias in order to explain the broader phenomenon of the gradual reduction, routinization, and rationalization of violence in modern civilizations. The writings of Norbert Elias (1996; 1982; 2000; 2008), who is a German sociologist and historian, shed valuable light in explaining how societies became civilized by tackling and reducing violence over the long haul. Elias looked at the relations between the evolution of violence and the progress of modern civilization in Europe and argued that the rise of the modern state with the exclusive monopoly of using violence has been an important factor in the gradual decline of violence in modern democratic states. Elias, echoing Max Weber, saw the rise of the modern state as the controller of violence. A modern state, as Weber defined, is "an organization, which successfully upholds a claim to successful rule-making over a territory, by virtue of commanding a monopoly of the legitimate use of violence" (Weber 1978 p. 54). Elias's theory is both comprehensive and complicated. He is often misread and simplified as projecting a unilinear theory of civilization that would create a civilized and humane world. One of the merits of his theory was that he spoke of both civilization and civilization or break down of civilization at the same time. Elias also

envisaged not one civilization but multiple civilizations under the frame of a global human civilizational process, which combines what is commonly referred to as micro with macro perspectives. The following quote from one of the last writings of Elias makes his position clear. "Because of human beings . . . are wholly dependent on mobilizing their natural disposition for self-regulation through the personal learning of drive and affect controls in the form of society-specific patterns of civilization, in order to be able to live with themselves and with other human beings. The social constraint towards self-constraint and the learning of individual self-regulation in the form of changeable social patterns of civilization are *social universals* (emphasis added)" (Elias 2008; as quoted in Mennell 2009, pp. 3–5). Elias further explains that "If one surveys the development of humanity, one encounters a comprehensive, humanity-wide process of civilization. Up to now, that is, from the Stone Age to our time, this process has remained dominant in a continuous conflict with countervailing, decivilizing processes. There is no basis for assuming that it must remain dominant . . . Inseparable from the humanity-wide process of civilization, but distinguishable in thought, are the particular processes of civilization which vary from tribe to tribe, from nation to nation" (Elias 2008; as quoted in Mennell 2009, pp. 3–5).

Elias at once develops a general theory of civilization by referring to the formation of habitus, or the second nature where one can find the influence of the Freudian idea of "superego" and mindful of the particularities of each civilization. The particular or specific civilization that Elias refers to can be thought of as nation state or national societies in the present world. One of the foremost students of Elias, Stephen Mennell uses Elias's theory in the context of the United States. By drawing upon the criminological literature, Mennell shows that the geography of violence in the United States can be explained not just by the wide availability of handguns but also by a lack of restraint on emotional impulses underpinned by the peculiarity of its state formation (Mennell 2009). For Elias, civilizing process entailed the embodiment of violence at the state level and the "taming the Warriors," which pacified violence among people at the societal level. The civilizing process was a continuous, progressive change in social standards governing aggressiveness, violence, and cruelty. It is important to remember that Elias viewed civilization, not as a final stage

and thought it could be endangered if there is an erosion of civilizational standards due to lack of individual self-discipline. The lessons can be transposed to other modern societies as well. The works of Rene Girard (1977), a philosophical anthropologist, provide an explanation of violence in human society as an aspect of "mimetic" (imitation) desire deeply embedded in culture, which may have some relevance here. Elias, a German sociologist and Girard, a French philosopher have one point in common that they both draw upon Sigmund Freud whose ideas provide the essential backdrop of their discussions. We should, however, remember Hannah Arendt's thesis that even the so-called civilized people are capable of violent acts depending on the circumstances (Bergen 1998). The idea of the banality of violence, as defined by Arendt (1970), is that violence is ordinary and not exceptional. This idea is thus a warning that no one should take civility for granted. The breakdown of the nation states may lead to the breakdown of a social order and plunging of functioning societies into utter turmoil and violence. Examples are Iraq and Syria in the first decade and a half in the twenty-first century; and Central Europe and Rwanda and Burundi in the last decade of the twentieth century. This chapter examines violence in Bangladesh in terms of its both institutional and cultural failures. The institutional failures are the failures of governing crime and violence, and culture is responsible for increased violence because it produces, sustains, and tolerates violence.

A Typology of Violence: Bangladesh Context

The diversity of violence is itself an evidence and justification for invoking a cultural interpretation. There are different kinds of violence in Bangladesh (see Table 15.1). Violence in language or speeches is common in everyday society. Some violent acts take place in response to stimuli, which may be universal; however, gratuitous violence, that is, unprovoked violence is also quite common in Bangladesh, often viewed in people—animal relationships. The corporal punishment in school is another example. Domestic servants and children are often subjected to physical punishment in the name of discipline. Justified or legal versus unjustified or illegal violence is not always clear-cut as in addition to legal,

Table 15.1 A typology of violence

Types of Violence	Nature of Violence
Individual level of violence	Individual being violent to himself/herself; (in extreme cases, suicide). One can also include hard-core addiction of drugs in this category. We will not dwell on it here because this is outside the scope of the present chapter
Interpersonal violence	One person hurting another person physically, or using abusive language in interpersonal relations is common in Bangladesh. This ranges from the relationship between workers and supervisors, employees and employers, customers and service providers.
Family or domestic violence	It is a subcategory of interpersonal relationship. The following case, reported in the newspaper, provides an example. On May 28, 2016, *Prothom Alo*, a popular newspaper in Bangladesh ran the following story under the caption: "Tortured domestic-help dies at DMCH" (Dhaka Medical College Hospital). It was reported that: A minor domestic help, who was tortured allegedly by her employers at Mohammadpur in the capital, died at Dhaka Medical College Hospital (DMCH) on Friday, reports news agency UNB. . . . Hasina had been working as a domestic help at the house of Shafiqul Islam at Kathpatti in Mohammadpur of the capital for the last three months. . . . Talking to reporters, victim's mother Salma alleged that the couple—Shafiqul Islam and his wife Rejia Begum Rija—used to torture her daughter Hasina physically. Hasina was found lying injured at the kitchen market by Mohammadpur Town Hall on 20 May. (*Prothom* Alo 2016) Hasina was taken to the hospital by a police officer where she later succumbed to her injuries. The victim, Hasina was 11 years old. Hasina is not the only domestic help who will be a victim of cruelty and death in 2016 in Bangladesh. In the first three months of 2016, ten domestic workers have been killed by their employers; seven of them were 18 years old or below. In 2015 according to Ain Salish Kendra (ASK), a leading Human Rights organization dedicated to the protection of women's rights, 32 domestic workers were killed by their employers; 23 of them were aged 18 or below; 13 of them were minor aged 7–12.

(*continued*)

Table 15.1 (continued)

Types of Violence	Nature of Violence
	In most cases, they were tortured to death (Ain Salish Kendra 2016). In 2015, according to ASK, there were 373 incidents of domestic violence leading to the death of 212 women in the hands of their husbands, and another 54 committed suicide (Ain Salish Kendra 2015). In the first three months—from January to March 2016 48 women were killed by their husbands (Ain Salish Kendra 2016)
Violence within extended families	Mostly brides and wives (and children) left behind by husbands who are stationed overseas for work; sometimes other vulnerable members of family are subjected to variety of violence ranging from physical abuse to unnecessary scolding, verbal abuse, censure, group criticism, and so on that inflict hurt to individual members of the extended family. The tensions and implicit violence often explode into physical violence with fatal consequences. Many of these incidents of violence originate from the issue of property ownership or sharing of inheritance
Community-led violence	In Bangladesh, it is quite common to see acts of violence with deadly consequences over trifle matters where the entire neighborhoods or villages get involved. And finally, societal or state-level violence, which we discuss below. We do not concern with the inter-state violence here. In each of this level, we find both formal and informal violence. At individual or family level there is a preponderance of informal violence. While at the inter-state level, it is mostly formal with few examples of informal or extra-legal violence. Extra-legal is judged in terms of certain standards of legality; hence it is not completely informal

Source: Compiled by the author

cultural justification is often advanced. In Pakistan, according to *Dawn*, a local newspaper, "The Council of Islamic Ideology (CII) is deliberating on its proposed 'model' women's protection bill, which allows a husband to 'lightly' beat his wife 'if needed' and prohibits mixing of the genders in schools, hospitals and offices" (Dawn 2016). Not only the proposed law in Pakistan is against the constitution of Pakistan, such law is contrary to

even the constitution of Saudi Arabia, which is strictly based on Islamic laws and traditions. In Saudi Arabia "in 2013, the government issued the first law that criminalized domestic violence in an attempt to illuminate the issue of family violence. The Protection from Abuse Act criminalizes negligence, physical, sexual, or psychological abuse against any family member" (Alhabdan 2015, p. 1).

First, we need to distinguish between interpersonal (personal violence included) violence and impersonal violence at one level and interactional violence and institutional violence at another. Interpersonal violence whether between known people or strangers involves two or several individuals or groups who look eye to eye or share a common space and are proximate and commit violence to each other. Psychological triggers or circumstances that create a tense situation giving way to violence can explain some violence. A terrorist throwing a bomb or detonating a suicide vest or belt, killing people indiscriminately is an interpersonal violence for which there is no immediate or proximate trigger. This is a premeditated act of terror with a cause (however, unsubstantiated that cause may be). For example, the series of attacks on passenger buses and even transports ferrying innocent cows were attacked by political activists or goons hired by politicians in 2014 to protest allegedly unfair practices in a national election in Bangladesh. The mission was to inflict harm to a third party in order to express a grievance against a second party. An analysis of this act of violence will reveal what Hannah Arendt calls the banality of evil. The politicians involved in the leadership of these wanton acts of violence are normal people living a normal life, the throwers of bombs were only doing a job—not carrying out a mission out of conviction—for a fee. This ominous development indicates a decivilizing process in Bangladesh.

At a very elementary level, impersonal violence is inflicting physical harm, even death to a stranger from a distance. It is not uncommon to see young boys on the side of railway tracks throwing stones at the passing trains hitting unsuspecting passengers. Here no political protest is involved, no political message is conveyed, and no one claims responsibility. The throwers of stones see such conduct as playful mischievous behavior. Similar conducts prompted by political activists are also not widely supported except the political parties at the root of such actions provide some weak justifications. This sort of violent

behavior is particularly difficult to explain except to attribute to a violent political culture born in the womb of Bangladeshi culture. In Bangladesh it is not uncommon to see young boys throwing stones at an alleged lunatic on a village street. The author remembers such an incident as a small boy and often wondered the motivation of those boys. These boys–now with hindsight—as grown men are capable of hurling bombs at passenger buses. The question to ask: what sort of society produces people who are capable of inflicting physical harms to strangers, who are also fellow citizens, without any remorse. One can explain this in terms of poor or lack of socialization or habitus formation of these children to the extent that their behaviors lack moral restraints. Another case that would fit this kind of conduct is the mob violence against a suspect, or what is often wrongly described as "instant justice." The Elias theory of reduction of public violence applies well to the relative absence, and in some case, complete disappearance of mob justice in many societies. It is in the reduction of public violence and banishment of cruelty; we see the vindication of Elias's theory. The soccer violence seems to provide some exceptions, which, in closer inspection, can be explained by uneven habitus formation in society. And of course one should not underestimate the role if alcohol and other intoxicants to fuel soccer violence. The police brutality or violence in many advanced societies are raw expressions of state's monopoly over the means of violence.

Another example of impersonal violence is dropping a bomb from a high altitude without regard for the lives lost 36,000 feet below, whether the bomb kills a combatant, a bad guy, or a kid on her way to school or a recovering patient in a hospital. An extreme example of an impersonal violence is a drone operator or handler sitting in his office or war room in a desert town in Nevada. He looks at the large sized video screen, examines the coordinates, some maps beamed to the screen by some satellites overseeing a remote region in Waziristan, he clicks on the joystick (an inappropriate name in this context) as if it is a video game. But this has different consequences; may be some suspects are killed along with their innocent family members. These are not the thoughts that would occupy the mind of the remote-controlled warrior who will return home to a waiting wife and on his way home would

pick up his daughter from school. For him, this is all in the day's work. For the decision-makers, experts, and the academics those were "collateral damages" nothing more than that. In twenty-first-century warfare, violence is hidden for the warrior. Historian, Eric Hobsbawm (2007) has shown that twentieth century has been the most violent century. We are in the second decade of the twenty-first century and so far, humanity has not shown a respite in violence, cruelty, and atrocity spanning local, national and global level. In Bangladesh society, there are at least five levels of violence where violence in one form or other is present (see Table 15.1).

Political and Ideological Violence in Bangladesh

Bangladesh was born in a violent war in 1971. The early decades of Bangladesh were marked by political violence from below as well as above. The most heinous political violence was the murder of the founding leaders of Bangladesh in 1975. The murder of Sheikh Mujibur Rahman, the father of the nation and his family members in August of 1975 and the murder of four national leaders in custody in November of 1975 marked a new high in brutality and violence (Khondker 2008, 1986). A military-backed government not only condoned the violence, it also indemnified the murderers of the President of the Republic and his family so that no legal action could be taken against the perpetrators until that shameful clause was repealed two decades later. Thus justice was delayed and the endorsement of a heinous crime came from the highest level of political authority setting a dangerous precedent for the nation. Due to space limitation, we limit our focus on the events in the second decade of the twenty-first century in this chapter. In the last week of May 2016, the fifth phase of local government election, known as Union Parishad or UP election, took place in Bangladesh. About the local government election violence, local newspaper reports put it in the following way:

> Unprecedented bloodshed has marred Bangladesh's first endeavor at allowing political parties to contest seats in elections for Union

> Parishads, the lowest tier of local government, observers say. Since staggered voting got under way in late March in more than 4,000 UPs that dot the country, 101 people have been killed and more than 8,000 have been hurt in violence associated with the polls through its first four phases, said Badiul Alam Majumder, secretary of *Sushashoner Jonno Nagorik* (SUJON), a Bangladeshi poll-monitoring group. (Chowdhury 2016)

Violence in politics in Bangladesh has grown over the years, and ominously, it is being normalized. According to SUJON, there was no reported casualty in the UP elections held in 1973, 1977, 1983, and 1992. In 1997 UP polls, 31 people were killed, while 23 people lost their lives in 2003. In 2011, 10 people were killed in poll-related violence (Chowdhury 2016). Violence in pre- and post-national elections also attracted a great deal of international attention. At the level of national elections, violence in Bangladesh was overshadowed by the post-elections violence in Kenya in 2007, which claimed 1133 lives (Halakhe 2013). In the Kenyan case, political divide was superimposed on an ethnic divide that made the violence more vicious. But without the ethnic or other primordial factors, Bangladesh violence was quite significant. Besides, following the policy reforms electoral violence was curtailed in the 2013 national elections in Kenya.

Violence reached a new height in Bangladesh in 2013, particularly in the context of the controversial national election boycotted by the main opposition party—Bangladesh Nationalist Party. The opposition party had valid reasons to boycott the election but they went a step further trying to prevent the election from happening by resorting to a new form of violence. The Human Rights Watch reported that:

> one of the most horrific aspects of the violence in Bangladesh are petrol bomb attacks, often hurled indiscriminately at private vehicles attempting to pass through strikes and transport blockades called by the opposition. Since most Bangladeshis rely on daily wages, they end up at risk of attack while traveling for work. On February 3, 2015, seven people died when a petrol bomb was thrown at a night bus carrying about 60 people from Cox's Bazaar to Dhaka. Sixteen others were injured in the attack, and the bus was completely charred. On February 5, the driver and passenger of a truck in Bogra died when their vehicle was petrol bombed.

> A police officer injured in a separate petrol bomb attack on January 17 died on February 5 as a result of his injuries. Since early January 2013, human rights activists put the estimate of dead at the hands of opposition members at 41, many due to such arson attacks. In addition to the dead, several hundred have been injured over the course of the last month. Journalists report that the burn units in Dhaka hospitals are filled beyond capacity with victims of these attacks. An estimated 17 other people have died at the hands of security forces, with the majority belonging to the BNP and the Jamaat-e-Islami parties or their student wings. (Human Rights Watch 2015)

In recent years, the ideological difference has been one of the causes of violence. Over a period of two years between 2013 and 2015, a number of liberal writers and activists were killed by radical Islamic groups with alleged links with the so-called Islamic State or IS. On January 14, 2013, Asif Mohiuddin, a free-thinker who wrote atheist blogs was attacked by a group of young men with machetes in the capital city. He survived the attack. In April 2013 he along with three other bloggers were picked up by police and were warned that through their writings they were "hurting religious sentiments." Mohiuddin, whose name appeared on the hit list circulated by the radical Islamist groups left for Germany. The others on the list were not so lucky. On February 15, 2013, Ahmed Rajib Haider, an active participant of the Shahbag movement who campaigned against Islamist leaders accused of war crimes, was hacked to death by machete-wielding attackers near his home in a middle-class suburb of Dhaka. In February 2015, the celebration of language day by a month-long book fair was eclipsed by the murder of a free-thinking writer, Avijit Roy. Roy, an American-Bangladeshi writer and the moderator of "Muktomona" a "free-thinking" blogging website, and his wife Rafida Ahmed came from the United States to attend the fair. As they were leaving the premise on February 26, 2015, radical Islamic party assailants attacked them with machetes just meters away from the book fair. Roy died and his wife survived with severe injuries. Another secular blogger Washiqur Rahman, 27, was hacked to death in broad daylight near his home in Dhaka's Tejgaon area on March 30, 2015. Two of the attackers, both students at an Islamic seminary, were arrested at the

scene. Another blogger Ananta Bijoy Das, 33, a banker and a founder of a group called the Science and Rationalist Council, was hacked to death near his home in the northeastern city of Sylhet on May 12, 2015. Secular blogger Niloy Chakrabarti, 40, who wrote online under the pen name Niloy Neel, was hacked to death in his home in central Dhaka on August 7, 2015. Publisher Faisal Arefin Dipan, 43, who published a bestselling book by murdered writer Avijit Roy, was murdered at his office in a market in central Dhaka, not too far from Shahbag intersection on October 31, 2015. Dipan's father is a professor of political science at Dhaka University who was so overwhelmed by the loss that he refused to file a police case on the ground that police would not confront the Islamic radicals. This was more a reaction generated by the shock of the tragedy but also a gesture of "no-confidence" in the administration of justice in Bangladesh.

The role of the government was dubious—if not complicit—because of its lethargic action in arresting the suspects. It appeared that the government was not too keen on confronting the religious extremists for political fallouts. The link between violence and state is nothing new in Bangladesh. During the Bangladesh Nationalist Party government, the government used extremist groups to intimidate the opposition parties, especially of secular and liberal persuasions. In the early 2000s so-called Islamic extremist groups carried out mayhems and public tortures of ordinary people. Even when these brutalities committed by Siddiqul Islam, also known as Bangla Bhai, the leader of JMJB or *Jagrata Muslim Janata of Bangladesh* (Awakened Muslim Masses of Bangladesh) were reported in the media, (Manik 2004) one of the government ministers termed him as a character "created by media" (The Daily Star 2004). Eventually, Bangla Bhai was arrested in March 2006 (Roggio 2006). The institution of state is built on violence. According to Max Weber's definition, state has the monopoly over the legitimate means of violence, but government in Bangladesh sometimes tend to use both legitimate and illegitimate forms of violence to attain political ends. Charles Tilly's contention that state-making and war-making are inseparably linked takes a new form in Bangladesh where war-making is inverted rendering the state as a predatory institution.

The Banality of Violence in Bangladesh

The banality of violence in Bangladesh has probably been correctly observed by Bert Suykens, a Belgian researcher on political violence in Bangladesh. In his interview with a local English Newspaper, *Daily Star* (February 16, 2015), Suykens asked with a deep sense of disconcertment that "We are becoming increasingly brutalized, insensitive, apathetic and nonchalant about the human rights abuses. Everyday a story of violent crime is in the news. So are we becoming a violent, unscrupulous nation that cannot protect its most vulnerable citizens?" Bangladesh is not only a blatantly violent society; violence is featured on live television for everyone to watch. Media reports of violence are often graphic. Especially, during an opposition political rally called by the Bangladesh Nationalist Party in December 2012, a groups of pro-government students brutally attacked Mr. Biswajit Das, a young tailor who was mistaken as an opposition activist and was hacked to death. The detective branch filed a case based on video footage on March 5, 2013 and the court finally indicted them in June 2013 and eight of the perpetrators of crime were given death sentence in December 2013 a year after the crime. (*The Daily Star* 2013b). The spread of violence, the language of violence, acceptance of violence, and the practice of violence at all levels of society are quietly ignored and normalized. Mr. Delawar Hossain, brother of Shahid Nur Hossain who was killed while protesting the military rule of General Ershad in 1990 in a phone call to a talk show commented, that having seen the brutal murder of Biswajit on television, he felt like leaving this country, nay the world—he felt like setting himself on fire in protest and in disgust, a disgust the whole nation shares. Bengalis in Bangladesh like to describe themselves as poetic, romantic, but rarely as violent. In another incident, in Aminbazar, a village near Dhaka, a group of ordinary villagers took a group of six college students for robbers, bludgeoned them to death. That violent incident of a Shab-e-Barat (the night of the blessings) was neither videotaped nor was it on live television and did not go viral on cyberspace. The incident was reported in *The Daily Star*, on July 19, 2011 with a matter-of-factly headline, "6 Beaten to Death" (*The Daily Star* 2011a). A newspaper report does not give a graphic imagery of violence or a sense of disgust, yet the intensity of violence is no less. The shock to the parents who

lost their children that day is no less hurtful. Consider a mob that beat a mentally-impaired woman to death in the presence of police on suspicion of her being a kidnapper (*The Daily Star*, January 21, 2013a) Or, consider the incident of an angry mob that dragged a woman out of a police van and clobbered her to death on suspicion of being a child-trafficker (*The Daily Star* September 21, 2012a). The police acted bravely and tried to save her life but were overpowered by the mob. In another incident, the police acted deplorably when they handed over a 16-year-old youth to a mob in Tekerhat, Noakhali to be beaten to death on suspicion of being a robber (*The Daily Star* July 27, 2011b). The brutalities carried out by the men in uniform during the Bangladesh Rifles (BDR) uprising against their officers and their families in Pilkhana, Dhaka in February 2009 led to a death toll of 74 which included 57 army officers (*The Daily Star* October 21, 2012b). Some of the officers and their families were tortured and subjected to unspeakable brutalities perpetrated by people known to them (Khondker 2009). The common villagers, many of them family men with children, tend to play the role of accusers, judges, and executioners all at the same time. In July 2015, Samiul Alam Rajon, a 13-year-old boy was tied to a pole and beaten to death by a mob in Sylhet on suspicion of a bicycle theft. The lynching was captured in video and was posted on Social Media (Islam 2015b). The posting of this spectacle of violence on television and graphic images in the newspaper revealed the banality of violence in Bangladesh. The video footage generated a national uproar and the administration took swift action in prosecuting the culprit, who slipped out of the country by bribing officials. With the help of expatriate community in Jeddah, the main culprit, Kamrul Islam, was brought back from Saudi Arabia (Chowdhury 2015). "Once considered unthinkable here, the murder of children has become increasingly commonplace in Bangladesh. In just the first two months of this year, 49 children were murdered. Over the last four years, 1084 children were murdered", according to data from the Bangladesh Shishu Adhikar Forum (BSAF) (Khan 2016). There has also been reported filicide or the murder of a child by its parents. The murder of two young siblings in a Dhaka neighborhood in early 2016 created a lot of soul searching.

The responsibility of violence has to be taken collectively and understood sociologically. Norbert Elias postulated that civilizing process involved "the taming of the warriors." Violence was ever present in the

medieval and early modern Europe. Advancement of civilization meant state acquiring the monopoly over taxation and violence. Max Weber saw the state as an institution with a monopoly over the means of violence. The complacency of Europe with civilization was shattered with the brutalities of the state-sponsored violence by the Nazi state against its own people. Following the historic violence of the Nazi state when one was tempted to put the blame on the brutal SS forces, or to the psychosis of Hitler, Hannah Arendt reminded us of the banality of evil. One does not have to be a fanatic or a sociopath to be evil; an ordinary human being can become as brutal and vicious under certain circumstances. For Elias, that was an example of the breakdown of civilization, which he sought to explain in terms of historical antecedents (Elias 1996). The problem at one level is the failure of the state in monopolizing the means of violence as well as the regulation of violence. At another level, the state and its institutions become complicit in the privatizing and outsourcing violence. Rather than "taming the warrior" and punishing the murderers, sometimes the state and its institutions (political parties in a broad sense are the components of the state) indulge in a deadly game of unleashing the murderers and violence on the public. In a deadly instance in Narayangang, a city close to Dhaka, three members of Rapid Action Battalion, an elite strike force of the government were involved in murdering a political opponent at the instruction of a local party boss, Nur Hossain who bribed them a hefty Tk 60 million (US$750,000). The uniformed men acted as guns for hire killing seven innocent men (Bdnews24.com 2015). Although arrests were made in April 2015 the accused are still awaiting trial. This was a rare incident even for Bangladesh when officers of the armed forces who were deployed in the elite security force were involved in a palpably criminal act.

Conclusion

The government of Bangladesh, in recent years, has taken steps toward modernization of law and policing, which alone is not going to help if there are no cultural transformations in the larger domain of civility, morality, and decency. Modernization has brought some institutional

change in the character of the state, but more fundamental changes are needed in the sphere of culture, education, and the collective sense of civility. While the first task of the government would be strengthening law enforcement and administration of justice, the long-term objective would be to create a civilized society in the sense of Norbert Elias where people will be socialized into restraining their emotional impulses. This can be achieved by promoting civilizing experience through education and social mobilization. It is of great importance to work toward deepening and expansion of civil society and institutionalizing democracy based on the rules of impersonal and civilized law. Here an important lesson can be drawn from Emile Durkheim who demanded that society must restrain egoistic individuals and ensure the emergence of moral individualism. It is the moral individualism that would help Bangladesh reinstate a civilized society that Bangladesh used to be. Civility needs to be defined as a broad cultural code and as a social compact where values of tolerance, responsibility, and respect will be the core values. As Backett and Godoy (2010) remind us: "More narrow constructions of the term tend to reduce civility to mannerliness, while broader conceptualizations highlight the importance of generating and supporting formal and informal practices that communicate and support moral equality across diverse groups". As scholars such as Richard Boyd (2006) and Ash Amin (2006) argue, "civility may be thought of not only a means of reducing conflicts between citizens, also as a means of fostering the pluralism and equality necessary for democracies to work" (as quoted in Beckett and Godoy 2010 p. 278). In other words, cultivation of tolerance is of the essence in (re)building the norms of civility. In building a civil and tolerant society, it may be useful to abandon judging each other and consider the importance of mutual indifference. In a study of an Indian village, "Bisipara" in Orissa, India while thinking about inter-ethnic violence in Bosnia-Herzegovina, Central Europe, Bailey (1996) explained the lack of violence and tolerance in that village due to polite indifference and apathy rather than attempts at promoting inter-religious and inter-ethnic peace. Similarly, Anne Raffin (2008) has also underscored the importance of mutual indifference as a factor in promoting civility. Polite indifference can help build a more pluralistic and tolerant society in Bangladesh.

A comprehensive social repair is a national priority in Bangladesh. A national consensus on restraining violence and promoting civility at all levels of society is a necessary, if not sufficient, steps for building a democratic society based on tolerance and respect for human rights of all. Nelson Mandela rightly said that "Violence thrives in the absence of democracy, respect for human rights and good governance" (World Report on Violence and Health: Summary 2002). Democracy has to be conceived broadly beyond the routines of elections and orderly change of governments, it also has to be viewed as a culture of toleration of difference, and polite transaction among contending and competing for political parties and interest groups—in all a civil and polite society.

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16

The Birth of Modern Academic Criminology in Bangladesh: Directions for Future Research and the Growth of the Science of Criminology

Shahid M. Shahidullah and Mokerrom Hossain

Introduction

A modern system of criminal justice in Bangladesh with a differentiated set of institutions of police, court, and corrections is more than 150 years old. It began to evolve in Bangladesh from the middle of the nineteen century under the administration of the British colonial government. After India formally became a part of the British Empire under the rule

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of Queen Victoria in 1858, a new system of governance with a modern set of bureaucratic structures was established in India. As an extension of this new system of governance, a new structure of criminal justice including the institutions of the police, court, and prison also began to evolve. The promulgation of the India Penal Code of 1860, India Police Act of 1861, the India Evidence Act of 1872, the India Code of Criminal Procedure of 1882, and the India Code of Criminal Procedure of 1898 created the foundation of a modern system of criminal justice in Bangladesh (Bangladesh, described as Eastern Bengal, was a part of India until 1947; from 1947 to 1971, it was part of Pakistan described as East Pakistan). After more than 150 years, these legal codes and procedures are still the foundations for the governance of crime and criminal justice in Bangladesh. After Bangladesh became independent from Pakistan in 1971, a new constitution was created, many new statutes have been enacted, many judicial laws have been made, and many changes in the structure of policing, court, and prison has been introduced, but the basic foundations of criminal law and procedures created by the British colonial government remained largely unchanged. One of the most intriguing parts of this narrative of the history of criminal justice in Bangladesh is that it evolved and expanded for more than 150 years without the modern science of criminology. There were some studies on crime and criminal gangs, and law and justice during the colonial and post-colonial days, but until the beginning of the twenty-first century, academic criminology was entirely nonexistent in Bangladesh. By the beginning of the twenty-first century, the science criminology in Europe was more than 250 years old, modern academic criminology in the West was about 100 years old, and the expansion of modern criminology in South Asia was about 60 years old (the first department of criminology in South Asia was opened at the Tata Institute of Social Science in Mumbai in 1954). The science of criminology was academically recognized and the first Master of Social Science in Criminology Program was formally introduced within the Department of Sociology at Dhaka University in Bangladesh in 2010. The purpose of this chapter is twofold: first, it will expand the narrative of how academic criminology arrived in Bangladesh. What was the context of the acceptance of this specialty within the Bangladesh

academia in the first part of the twenty-first century, and who were the catalysts for introducing this new science of criminology in Bangladesh? Second, this chapter will examine the future directions of research for the advancement of the science of criminology and further modernization of criminal justice in Bangladesh.

The Birth of Academic Criminology in the West and the Globalization of Modern Criminology

Any scientific specialty, to be recognized and to be accepted in the world of academia, goes through a process of evolution and maturation. This process of maturation evolves through the accumulation of scientific theories and discoveries, development of competing paradigms, and the growth of competing paradigmatic communities with competing research programs, academic societies, and scientific journals and publications (Kuhn 1970). It is true of physics, true of chemistry, and true of astronomy as it is true of economics, sociology, and psychology. The physics of the twenty-first century is vastly different from the physics of the nineteenth century as economics of the twenty-first century is vastly different from the economics of Adam Smith and David Ricardo of the eighteenth century. Modern criminology of the twenty-first century is also vastly different from the whole body of knowledge of classical criminology that evolved through the publications of French Philosopher Montesquieu's *The Spirit of Laws* in 1748, British jurist Henry Fielding's *An Enquiry into the Causes of the Increase of Robberies* in 1751, Italian Jurist Cesare Beccaria's On *Crimes and Punishments* in 1764, British philosopher Jeremy Bentham's I*ntroduction to the Principles of Morals and Legislation in 1789*, and Italian psychiatrist and criminal anthropologist Cesare Lombroso's *Criminal Man* in 1876. For almost 200 years, the classical criminology of Montesquieu, Fielding, Beccaria, and Bentham and the experimental criminology of Lombroso, however, made no significant theoretical and academic advances.

During the expansion of modern social science in the nineteenth century, the academic advancement of criminology was relatively slower

than such specialties as economics, political science, psychology, and sociology (Rafter 2012) Each of these social science specialties rapidly emerged in the world of the academia in the nineteenth century with a distinctive body of theories and concepts, a distinctive group of scientific scholars, and a distinctive scope and boundary of scientific research and analysis. Sociology, for example, began to enter into the academic world of France, Germany, and England from the middle of the nineteen century in the context of an expansive body of theories developed by Karl Marx, Max Weber, Durkheim, Simmel, Ferdinand Tonnies, Karl Mannheim, and many others. Criminology lagged far behind other social sciences in the race for entering into the academic world in the nineteenth century. Lawrence Sherman, a prominent American criminologist, probably rightly said that "Criminology was born in a crime wave, raised on a crusade against torture and execution, and hibernated for two centuries of speculation" (Sherman 2005, p. 1). "After a useful beginning in the eighteenth century Enlightenment as both an experimental and analytic social science," Sherman observed, "criminology sank into two centuries of torpor" (2005, p. 1). Modern criminology, however, reincarnated and rapidly advanced in the twentieth century (Maguire, Morgan and Reiner 2012). This was primarily because of the growth of an expansive body of theories of crime and criminality from the beginning of the twentieth century such as Merton's strain theory, Sykes and Matza's theory of neutralization, Sutherland's theories of social disorganization and differential association, Hirschi's theory of social bonding, Bandura's social learning theory of aggression, Acker's social learning theory of Crime, Godfriedson and Hirshi's social control theory and the general theory of crime, Shaw and McKay's theory of crime and the ecology of social disorganization, Cloward and Ohlin's theory of subculture and delinquency, and Braithwaite's theory of crime and the reintegration of shaming.

The academic recognition and acceptance of a scientific specialty, however, is not merely a matter of an accumulated body of scientific theories. It is a social and a bureaucratic process as well. For the academic growth of a scientific specialty, the social, political, and economic contexts must be favorable, a scientific community must play the role of an advocate and agenda setting, and some groups of scientists must be able

to "speak truth to the power." By the middle of the twentieth century, the social, political, and economic contexts for the academic expansion of criminology in both sides of the Atlantic were becoming increasing favorable. In the United States, for example, crime rate was rapidly growing from the middle of the 1960s. By the 1970's, a definite plan to modernize the America's criminal justice on the basis of scientific research on crime and justice was at the forefront of policy-making by the federal government (Calder 1993; Shahidullah 2008). President Johnson set up a Commission on Law Enforcement and the Administration of Justice in 1964. The commission's report, *The Challenge of Crime in a Free Society* published in 1967 led to the development of a series of enactments for the modernization of criminal justice in America in the decades of the 1970s and 1980s such as the Crime Control and the Safe Street Act of 1968, Comprehensive Drug Abuse and Control Act of 1970, Juvenile Justice and Delinquency Prevention Act of 1974, and the Comprehensive Crime Control Act of 1980. These and other federal enactments contributed to the rapid growth of academic criminology in America from the beginning of the 1970s. The growth of academic criminology in some of America's elite universities, however, began much before the 1970s. The Florida State University in Tallahassee opened a College of Criminology and Criminal Justice in 1951; the American Society of Criminology was established in 1958, the journal of "Criminology" was launched in 1966, the Sam Houston State University in Texas created a Department of Criminology in 1963; John Jay College of Criminal Justice in New York was established in 1965; the University of Maryland, College Park established a Department of Criminology in 1969; Rutgers University in New Jersey established a Department of Criminology and Criminal Justice in 1972; Harvard University created a Program on Criminal Justice Policy and Management in 1980; and Jerry Lee Center of Criminology at the University of Pennsylvania was established in 2000. By 2015, there were more than 250 universities that offered master programs and more than 40 universities that offered doctoral programs in criminology and criminal justice in America. There are also more than thousands of undergraduate programs in criminology and criminal justice.

On the other side of the Atlantic in Europe, the progress of academic criminology began even before the United States (Bosworth and Hoyle 2012).

The Paris Institute of Criminology at the University of Paris was established in 1922, the International Society of Criminology which organizes the World Congress in Criminology every four years was created in 1937, the Institute of Criminology at Cambridge was established in 1959, the Oxford Center for Criminology within the Oxford University was created in 1966, and the Mannheim Center for Criminology within the London School of Criminology was opened in 1990. By the end of the twentieth century, there emerged a global knowledge system of criminology and criminal justice comprising of such institutions as the United States Bureau of Justice Statistics' World Fact Book on Criminal Justice System, United Nations Interregional Crime and Justice Research Institute (UNICRI), World Criminological Directory (UNICRI), United Nations Office on Drugs and Crime (UNODC), United Nations Commission on Crime Prevention and Criminal Justice, International Center for Criminal Law Reform and Criminal Justice Policy (Canada), European Institute for Crime Prevention and Control, European Sourcebook on Crime and Criminal Justice Statistics, African Institute for the Prevention of Crime and Treatment of Offenders, and the Transparency International (Crimes of Corruptions) (Shahidullah 2009).

By the middle of the twentieth century, the academic growth of criminology and criminal justice was also in a process of globalization. Criminology and criminal justice began to enter increasingly into the academic world of the developing countries (Liu et al., 2013; Wong 2008). In 1957, the United Nations Scientific, Educational, and Cultural Organization's (UNESCO) report on criminology (International Society of Criminology 1957) strongly appealed for the teaching of criminology in the universities throughout the world. In response to this call in general, criminology began to spread to all regions of the world (United Nations Scientific, Educational, and Cultural Organization (2010)). In Japan, for example, an academic society of Sociological Criminology was established in 1974; in China, criminology began to be taught in Chinese Universities from 1979; in South Korea, the Korean Institute of Criminology, an organization within the Office of the Prime Minister, was established in 1989; and the Graduate School of Criminology at the

National Taipei University in Taiwan was opened in 2001. The globalization of academic criminology and criminal justice became more imperative in the developing world from the late 1990s in the context of a new paradigm of development adopted by the World Bank and other international development agencies that made the issues of human rights, access to justice, equal justice, judicial accountability, and the movement to end all forms of violence against children and women central to reform for development, democracy, and governance.

The Birth of Academic Criminology in Bangladesh: the Global and Local Nexus

Academic criminology was formally opened in Bangladesh through the introduction of a Master of Science in Criminology and Criminal Justice at Dhaka University in 2010. Research and education in crime and justice in Bangladesh in some forms started probably from the beginning of the creation of modern criminal justice under the British colonial government. The Criminal Tribe Act of 1871 that was created by the colonial government in the Bengal Presidency and other areas to track and control a separate category of professional criminals led to the growth of a considerable amount of research on crime and criminality in Bengal in the late nineteenth and early twentieth centuries (Brown 2014; Schwartz 2010). One of the earliest centers for police training and education in colonial India was established in Sardah, Bangladesh in 1912. After Bangladesh became independent from Pakistan, a series of reforms, particularly for the modernization of policing and the judiciary were introduced. A major Police Reform Program (PRP) is presently underway in Bangladesh that started in 2005 with support from the United Nations Development Program (UNDP), European Union (EU), and other international assistance organizations. In 2001, a major judicial reform program also started in Bangladesh funded by the World Bank. The project created a new Law Commission in Bangladesh to oversee the progress in judicial reforms. Under the leadership of the UNDP, another judicial reform program titled Judicial

Strengthening Project (JUST) has started in Bangladesh in 2013. In 2006, the Asian Development Bank (ADB) made a major plea for comprehensive reforms in criminal justice in Bangladesh through its regional workshop on "Strengthening the Criminal Justice" held in Dhaka.

The birth of academic criminology in Bangladesh came in the context of the nexus of the globalization of academic criminology particularly in Asia in the later part of the twentieth century and the rise of a new movement for reforms in criminal justice in Bangladesh in the first part of the twenty-first century. In 2008, there was a paper presented at the South Asian Sociology Conference titled "Global-Local Nexus and the Emerging Field of Criminology and Criminal Justice in South Asia: Bangladesh Case" (Hossain and Shahidullah 2008). The authors of this article, both of whom were Professors of Sociology and Criminal Justice at Virginia State University in the United States, made a specific case and justification for the introduction academic criminology and criminal justice in Bangladesh. The paper argues that the imperative for introducing and expanding academic criminology in South Asia is based on two competing developments in the area of crime and justice in the region. The first is the "event of the rapid integration of South Asia within the global culture, politics, and economy. This rapid integration . . . is creating new demands for human rights, reform of penal institutions, modernization of law, and the growth of equal and effective systems of justice" (2008, p. 51). The second factor that is shaping the discourse for modern criminal justice in South Asia, the paper argued "is the emergence of new types of global and transnational crimes such as illegal human trafficking, trafficking of illegal drugs, illegal trading and trafficking of human organs, illegal trading of conventional and nuclear materials, and global terrorism" (2008, p. 51). In South Asia by that time, academic criminology was more than 50 years old. Academic criminology was established in India, as mentioned before, in the 1950s. Criminology was also formally opened as an academic discipline in Pakistan in 2008. Only in Bangladesh, which is one of South Asia's major countries, criminology was yet to be formally recognized as an academic specialty within the academia (Shahidullah and Khondker, March 3, 2009).

The formal acceptance of a scientific specialty in the academia, however, is also a matter of what is called policy advocacy and policy entrepreneurship. For the adoption of a policy or the formal acceptance of an academic specialty, there is needed a group of advocates to take advantage of the "windows of opportunities." This particular role was played by the authors of this present chapter (hereafter Dr. Shahid and Dr. Hossain). Both of them are expatriate Bangladeshi sociologists turned criminologists in the United States. Informal discussion for academic criminology in Bangladesh began from early 2000 after criminology and criminal justice was formally opened at Virginia State University. Discussion widened after the creation of a local nongovernmental organization (NGO) titled Center for Development and Governance (CDG) in Washington DC in 2006. Dr. Shahid, as an Executive Vice-President and Dr. Hossain as Vice-President for Program Development of the CDG, brought the issue of establishing academic criminology in Bangladesh as one of the major agendas of the CDG. In March of 2008, at the time of the South Asian Sociology Conference in Dhaka, Dr. Hossain held a meeting at Dhaka University's Department of Sociology about the possibility of establishing a Department of Criminology and Criminal Justice. Following that meeting in 2008, Dr. Shahid in 2010 requested and received a funding from the American Institute of Bangladesh Studies (AIBS) in the United States for a project titled "Improvement of Criminal Justice Education, Research, and Training in Bangladesh" (Shahidullah 2010). The project included three major objectives: (1) to introduce a Master of Science Program in Criminology and Criminal Justice at Dhaka University; (2) to organize a Center or a Bureau of Criminal Justice Statistics within the Ministry of Home Affairs or the Bangladesh Police Headquarters in Dhaka; and (3) to create a Biannual Crime and Justice Colloquium within the School of Liberal Arts and Social Science of the Independent University of Bangladesh (IUB). Before the project started in 2010, some of the major stakeholders in Bangladesh were contacted and informed including then Chair of the Department of Sociology and the Inspector General of Police of Bangladesh. In July of 2010 in Dhaka, Dr. Shahid, organized a series of meetings and work sessions involving the administrators, faculty, and students of Dhaka University and the IUB. In addition, a number of

meetings were held at the Bangladesh Police Headquarters in Dhaka with the Additional Inspector General of Police (N. B. K. Tripura), Assistant Inspector General of Police (M. Shah Alam), and former Inspector General of Police and UNDP Consultant, Bangladesh PRP (Muhammad Nurul Huda). Meetings were also held with A. S. M. Shahjahan (Former Inspector General of Police and Senior Adviser UNDP in Bangladesh), Firoz Ahamed (Director, Governance Program, Asian Development Bank), Professor Ishrat Shamim (President, Center for Women and Children Studies and Human Trafficking Research in Bangladesh), and Abdul Khaleque (Secretary, Bangladesh National Commission for UNESCO). A seminar on criminal justice education in the United States and other Western countries was presented by Dr. Shahid in the Department of Sociology, Dhaka University. The seminar was attended by the Dean of the Faculty of Social Sciences, Dean of the Faculty of Law, members of the Department of Sociology, and about 300 students from sociology and other departments of Dhaka University. In these meetings and workshops, different issues related to criminal justice reforms in Bangladesh were highlighted and the need for academic criminology was discussed. On July 6, Dr. Shahid and the social science leadership team of Dhaka University met with Professor Dr. A. A. M. S. Arefin Siddique, the Vice-Chancellor of Dhaka University, (*The Daily Star*, July 8, 2010). Along with Dr. Shahid, the meeting with the Vice-Chancellor was attended by A. I. Mahbub Uddin Ahamed, Professor and Chairperson, Department of Sociology, Dhaka University; S. Aminul Islam, Professor of Sociology, Dhaka University; and Habibul Haque Khondker, Professor of Sociology, Zayed University, Abu Dhabi. Following the results of the meeting with the Vice-Chancellor, Dr. Shahid, in collaboration with the Faculty of the Department of Sociology, developed a proposal and a curriculum for a new program on Master of Social Science in Criminology and Criminal Justice. Within the next few months, the new program was approved by Dhaka University's Council of the Faculty of Social Sciences, Faculty Council, and the Curriculum Committee. The Department of Sociology launched a new Master of Social Science in Criminology and Criminal Justice from the Spring of 2011 (the program was approved by the University Grants Commission of Bangladesh in 2012). At the inaugural meeting of the new program held at the

Teachers-Student Center of Dhaka University on October 23, 2010, then Minister of Law, Mr. Shafique Ahmed, was the Chief guest and Vice-Chancellor of Dhaka University, Dr. A. A. M. S. Arefin Siddique was a special guest of honor (bdnews24.com, October 23, 2010). A meeting was also held in late July of 2010 with the faculty of Social Sciences and the Faculty of Law at Dhaka University and some local criminal justice practitioners to set up a professional society on criminology and criminal justice in Bangladesh. The meeting decided to pursue the project and a new academic association was created—Society for the Study of Criminology and Criminal Justice in Bangladesh (SSCCJB). To pursue the registration of the association, a formal meeting was organized, a constitution was drawn, and Dr. Shahid sent an application to the Ministry of Social Welfare of Bangladesh.

Between 2010 and 2013, the CDG funded three conferences on criminology and criminal justice at Dhaka University, and they were planned and organized by Dr. Hossain and Dr. Shahid in collaboration with the Department of Sociology at Dhaka University. Some of the members of CDG's Executive Board, in addition to Dr. Hossain, were also present in those conferences in Dhaka (Dr. Mizanur Rahman Mia, Dr. Shafiqur Rahman, Dr, Habibul Haque Khondker, and Dr, Zakir Hossain). The First Annual Conference, organized under the banner of the SSCCJB, was held on December 30, 2010 in the Nawab Ali Chowdhury Senate Bhavan of Dhaka University. Barrister Shafique Ahmed, Minister of Law, Justice and Parliamentary Affairs, Government of the People's Bangladesh was the Chief Guest and Advocate Qamrul Islam, State Minister for Law, Justice and Parliamentary Affairs, Government of the People's Bangladesh, and Dr. A.A.M.S. Arefin Siddique, Vice-Chancellor, University of Dhaka, Bangladesh were the Special Guests at the conference. Dr. Hossain was the keynote speaker and Professor K.A.M Saaduddin, Department of Sociology, Dhaka University presided at the Inaugural Session. Dr. A.I. Mahhub Uddin Ahmed, Chairperson, Department of Sociology, Dhaka University delivered the introductory speech. Barrister Ahmed, in his speech at the conference "stressed the importance of [criminology] for a better understanding of crimes and why they are committed. Social behaviors like eve-teasing which weren't previously considered crimes have now become a criminal offense. He said that the study of this subject would help

the formulation of laws to protect people" (bdnews24,com, October 23, 2010, p. 1). The first annual conference included three sessions covering the following areas; (1) Politics, Violence and Crime; (2) Crime and Criminal Justice in Bangladesh; (3) Crime, Sex Work, and Health: Emerging Issues.[1]

The Second Annual Conference of the SSCCJB, funded by the CDG, was held at Dhaka University on January 4, 2014. By 2012, the title of the SSCCJB was replaced with title Bangladesh Society of Criminology (BSC). Dr. Hossain received a Fulbright Senior Specialist Award in 2012 and went to Dhaka to further improve the curriculum of the new Master of Science in Criminology and Criminal Justice Program, and complete the groundwork of the Second Annual Meeting of the

[1] The paper presenters in the First Conference were: (1) Dr. Habib Haque Khondker, Professor of Humanities & Social Sciences, College of Arts & Science, Zayed University; (2) Dr. A.I. Mahbub Uddin Ahmed, Professor and Chairperson, Department of Sociology, Dhaka University' (3) Dr. Sumaiya Khair, Professor and Chairperson, Department of Law, Dhaka University; (4) Dr. Shahadat Hossain, Associate Professor, Department of Sociology, Dhaka University; (5) Mr. Sheikh Hafizur Rahman, Associate Professor, Department of Law, Dhaka University; (5) Mr. Naim Ahmed, Additional Inspector General of Police and Rector, Police Staff College, Dhaka; (6) Mr. Mohammad Bin Kashem, Associate Professor, National University, Dhaka; (7) Ms. Salma Safi, Center for Urban Studies, Dhaka; (8) Md. Saidur Rashid Sumon, Lecturer, Department of Sociology, Rajshahi University; (9) Dr. A.S. Abdul Quadir, Epidemiologist, Center for Disease Control, Atlanta, USA; (10) Mr. Omar Faruk, Assistant Professor, Department of Criminology & Police Science, Maulana Bashani Technology University, Tangail; and (11) Ms. Ishrat Shamim, Professor, Department of Sociology, Dhaka University. The discussants in the First Conference were: (1) Dr. Mizanur Rahman Mia, Professor, Department of Sociology and Social Work, Southern Illinois University, USA; (2) Mr. Nurul Huda, Inspector General of Police, Bangladesh (Retired); (3) Dr. Borhan Uddin Khan, Professor, Department of Law, Dhaka University; (4) Dr. Iftekharuddin, Professor, Department of Sociology, Dhaka University; (5) Dr. Kazi Tobarack Hossain, Professor, Department of Sociology, Rajshahi University; and (6) Dr. Shah Ehsan Habib, Associate Professor, Department of Sociology, Dhaka University. The moderators in the First Conference were: (1) Dr. Bazlul Mobin Choudhury, Vice-Chancellor, IUB; (2) Mr. A.S.M. Shahjahan, Inspector General of Police, Bangladesh (Retired), Senior Advisor, UNDP-Bangladesh; and (3) Mr. K.A.M. Saaduddin, Professor, Department of Sociology, Dhaka University. Review of the papers presented at the First Conference in 2010 suggest that even without a formal academic discipline in place to pursue the study of crime and criminology, many in Bangladesh were exploring significant criminal justice issues. The papers presented at the conference suggest that some of the criminal justice issues that were dominant in the minds of the criminal justice experts and other scholars included state violence, white collar crime, children in conflict with the law, politics of urban violence, growth of urban underclass and violence in the neoliberal era, law and human trafficking, sexual exploitation of children, relations between health and violence, and crime patterns in Bangladesh.

Bangladesh Society of Criminology. The theme of the Second Annual Conference was "Criminology and Criminal Justice in Bangladesh: Issues and Challenges." The conference took place at the Teacher-Student Centre (TSC), University of Dhaka. Dr. A.I. Mahbub Uddin Ahmed, Chairperson, Department of Sociology, Dhaka University made the opening remarks. Barrister Shafique Ahmed, Minister of Law, Justice and Parliamentary Affairs, Government of the Peoples Republic of Bangladesh, was the Chief Guest. The conference included five sessions and they were: (1) Corruption and Governance, (2) Criminal Behavior, (3) Crime and Terrorism, (4) Criminal Justice Policy and Research, (5) Criminal Justice Reform.[2]

The Third Annual Conference of the BSC, organized by the CDG in collaboration with Dhaka University, was held on January 4–6, 2013. There were four major sessions. and they were: (1) Perspectives on Crime, (2) Modernization and Crime, (3) Development, Policing and

[2] The following were the paper presenters at the Second Annual Conference of the Bangladesh Society of Criminology held on January 4, 2012: (1) Mr. K.A.M. Saaduddin, Professor, Department of Sociology, Dhaka University; (2) Dr. A.I. Mahbub Uddin Ahmed, Chairperson, Department of Sociology, Dhaka University; (3) Dr. Abdul Hakim Sarker, Professor, Institute of Social Work and Research; (4) Ms. Shegufta Tabassum and Mr. Lokman Hossain, Graduate Students, Department of Criminology and Criminal Justice Dhaka University; (5) Ms. Rawshan Sadia Afroze, Graduate Student, Department of Criminology and Criminal Justice, Dhaka University, (6) Ms. Shamim Ara, Assistant Professor, Department of Law, Dhaka University; (7) Mr. Bimalendu Kishore Pal, Graduate Student, Department of Criminology and Criminal Justice, Dhaka University; (8) Ms. Kazi Tuney Zinnat, Graduate Student, Department of Criminology and Criminal Justice, Dhaka University; (9) Ms. Ishrat Shamim, Professor, Department of Sociology, Dhaka University; (10) Dr. Abu S. Abdul-Quader, Center for Disease Control, Atlanta, USA; (11) Mr. Naim Ahmed, Additional Inspector General of Bangladesh Police; (12) Mr. Nabil Ahmed, Syed Masud Reza, and Ashrafuzzaman, Graduate Students, Department of Criminology and Criminal Justice, Dhaka University; (13) Dr. Shafiqur Rahman, Professor, Department of Journalism and Communications, South Carolina State University, USA; (14) Dr. Shahdeen Malik, Director, School of Law, BRAC University; (15) Dr. Sadeka Halim, Professor, Department of Sociology, University of Dhaka; (15) Mr. Rokon Uddin, Graduate Student, Department of Criminology and Criminal Justice, Dhaka University; and (16) Mr. Mujib Ahmmad Patwary, Graduate Student, Criminology and Criminal justice Program, Dhaka University; The following were the Session Chairs in the Second Annual Conference of the BSC: (1) Dr. Mokerrom Hossain, Professor, Department of Sociology and Criminal Justice, Virginia State University, USA; (2) Mr. K.A.M. Saaduddin, Professor, Department of Sociology, Dhaka University; (3) Mr. S. Aminul Islam, Professor, Department of Sociology, Dhaka University; (4) Dr. Mizanur Rahman Mia, Professor and Director, School of Social Work, University of Southern Illinois, Carbondale, USA; and (5) Mr. Muhammad Nurul Huda, Inspector General of Bangladesh Police (Retired).

Crime, and (4) Corporate Crimes in Bangladesh. At the Third Annual Conference of the BSC, A. I. Mahbub Uddin Ahmed, Director, Criminology and Criminal Justice, Dhaka University was the keynote speaker, Dr. Fariduddin Ahmed, Dean of the Faculty of Social Sciences was the chief guest. Professor K.A.M. Saaduddin, Department of Sociology, University of Dhaka presented the President's speech, and Professor M. Imdadul Haque, Chair, Department of Sociology, Dhaka University made the concluding remarks. Some of the major topical areas presented at the Third Annual Conference of the BSC included: (1) Development and Social Disorganization in the City of Dhaka; (2) Anthropological Perspective on Crime and Deviance; (3) Social Class and Access to Criminal Justice in Bangladesh; (4) Crime and Development in Bangladesh; (5) Crime Trends in Bangladesh, 1951–2011; (6) Modernity and Post-Election Violent Crimes in Bangladesh, 2001–2005; (7) Modernization, Family Detachment, and Criminality; (8) Microcredit and White-Collar Crime in Bangladesh; (9) Development and Community Policing in Bangladesh; (10) Technology, Development, and Cyber Crime in Bangladesh; (11) Bangladesh Stock Market Crash of 1996; and (12) Garment Industry and Crime in Bangladesh.[3]

[3] The four Sessions of the Third Annual Conference were chaired by (1) Professor K.A.M. Saaduddin, Department of Sociology, University of Dhaka; (2) Dr. Mokerrom Hossain, Professor and Chair of the Graduate Program in Criminal Justice, Virginia State University, Virginia, USA; (3) Dr. Mizanur Rahman Miah, Professor and Director, School of Social Work, University of Southern Illinois, Carbondale, USA; and (4) Professor M. Imdadul Haque, Chairperson, Department of Sociology, Dhaka University. The four discussants of the sessions were; (1) Dr. Shafiqur Rahman, Professor, Department of Journalism and Communication, South Carolina State University, USA; (2) Dr. Zia Rahman, Associate Professor, Department of Sociology, Dhaka University; and (3) Mr. Shaikh Abdul Baten, Graduate Student, Binghamton University, New York, USA. The following were the paper presenters at the Third Annual Conference of the BSC: (1) Dr. Mokerrom Hossain, Professor, Department of Sociology and Criminal Justice, Virginia State University, USA; (2) Dr. H.K.S. Arefeen, Professor, Department of Sociology, Dhaka University; (3) Dr. Zakir Hossain, Dean of Social Sciences, Lock Have University, Pennsylvania, USA; (4) Ms. Shegufta Tabassum Ahmed, Graduate Student, Department of Criminology and Criminal Justice, Dhaka University; (5) Dr. Md. Shajahan, District and Session Judge, Narsingdi, Bangladesh; (6) Professor S. Aminul Islam, Department of Sociology, Dhaka University; (7) Mr. Lipon Kumar, Lecturer, Department of Sociology, Dhaka University; (8) Ms. Tuney Binte Zinnet, Graduate Student, Department Criminology and Criminal Justice, Dhaka University; (9) Mr. Syed Masud Reza, Assistant Professor, Department

Future Directions of Research for the Advancement Criminology and Criminal Justice in Bangladesh

Modern criminology of the twenty-first century has vastly expanded on the basis of the theories and ideas borrowed from a vast number of scientific specialties including sociology, psychology, law, public administration, political science, economics, philosophy (ethics and philosophy of punishment, justice theories), physics (use of radiation technology for detecting criminal behavior), chemistry (forensic criminology), biology (use of the DNA and biometrics), neurology (brain and violent behavior), geography (global positioning system and crime mapping), and computer science (computer forensics for detecting cybercrime). Because of this hybrid nature of the field, there has emerged many competing paradigms and paradigmatic communities in modern criminologies such as structural criminology, cultural criminology, developmental criminology, psychological criminology, biological criminology, feminist criminology, critical criminology, environmental criminology, humanistic criminology, and peace criminology. Modern criminology is located at the crossroads of different streams of knowledge that are based on different grounds of evidence and different forms of validity: religion, philosophy, morality, law, and science. There is hardly any scientific specialty that is based on the confluence of so many facets of knowledge. In addition to this versatility of the science of criminology, there is also its practical significance for shaping criminal justice reforms and modernization in a developing country like Bangladesh. There is a vast and an uncharted field of research in criminology and criminal justice in Bangladesh (Shahidullah 2015).

of Law, Samford University, Dhaka; (10) Mr. Abdur Razzak, Assistant Superintendent of Police, Bangladesh Police; (11) Mr. Ziauddin Ahmed, Senior Assistant Secretary, Ministry of Information and Communication, and Technology, Government of Bangladesh; (12) Mr. Safiullah Al Mamun, Additional Superintendent of Police, Bangladesh Police; (13) Dr. Tureen Afroz, Associate Professor, School of Law, BRAC University, Bangladesh; and (14) Ms. Anindita Islam, Women's Rights Activist, Dhaka, Bangladesh.

All of them, however, cannot be adequately addressed within the scope of this chapter. Some of the more important areas of research are discussed below.

New Criminology in Bangladesh: Theoretical Research

As criminology is a new science in Bangladesh, one of the challenging tasks for the Bangladeshi criminologists is the discovery of new theories of crime and criminality in Bangladesh. This process may begin by developing a comparative research agenda for theory development and theory validation. Modern criminology, as mentioned before, has a rich legacy of biological, psychological, and sociological theories and hypotheses, such as brain and violence connections, crime and testosterone connections, depression and crime connections, crime and brain chemistry, crime and IQ connections, psychopathic theory of violent crime, crime and social disorganization, crime and poverty connections, crime and deprivations, crime and class connections, crime as a learning behavior, crime and modernization, crime and family breakdown, crime and single parenting, crime and fatherlessness, and crime and life cycle relations (developmental criminology). The empirical evidence for the validity of these theories, however, have been drawn largely from the West. In recent years, in the wake of the globalization of criminology, many of those theories of criminology are being reexamined and retested with cross-national data and empirical validation. Merton's strain theory, for example, is one of the oldest and one of the important hypotheses in criminology. Using the notion of anomie and social behavior developed by French Sociologist Durkheim, Merton theorized that when there exists a gap "between rising expectations and the socially legitimate ways to translate them into reality, individuals are more like to be frustrated and crimes are more likely to increase. Groups and individuals who experience blocked social and economic opportunities feel deprived. The deprivations generate strains and stress, and stress and strains generate crime" (Shahidullah 2014, p. 41). Many criminologists believe that this is generally true of many the developing countries that are undergoing rapid economic and technological growth as a result of the spread of marketization, urbanization, and

globalization. The World Bank projects that if the present economic growth rate continues, Bangladesh will reach the status of middle-income countries by 2021. But at the same time, crime and violence have also rapidly increased in Bangladesh. Is it because of the widening gap between the rising expectations of the millions of people and the available socially legitimate opportunities to meet them in terms of jobs, housing, health-care, and educational opportunities. One of the major experiments of the relevance of Merton's strain theory was done in the context of rising crime in transitional China by Zhao (2008). Zhao found that growth of the market economy within the framework of an authoritarian communist state in China has blocked many social and economic opportunities and generated a generalized sense of deprivation for millions of Chinese. He concludes that the "The analysis of distinct patterns of crime rates in contemporary China [rising rate of property crimes and public corruptions] demonstrates that anomie theory and its extensions continue to hold strong theoretical power beyond the context of the West" (2008). Bangladesh equally can be a good case to test the validity of Merton's strain theory.

Another strongest hypothesis in criminology is that family breakdown is intimately connected to crime and delinquency. Sociologists have long argued that modernization and urbanization are positively associated with the breakdown of the family, and family breakdown is positively connected to crime and criminality. During the last four decades after independence in Bangladesh, "messy urbanization" has created a large class of marginalized population migrated from rural areas, and "it is reflected in the widespread existence of slums and sprawl" (Ellis and Roberts 2016, p. 2). It is estimated that out of Bangladesh's 50 million of the urban population, about 30 million live in slums. The millions of slum children are not only poor, school dropouts, and deprived of the basic necessities of life. They are also abused by their families and deprived of parental love and care. Many of these slum children of broken families choose crime as a means for survival or sometimes crime as a career. Are children from broken and fragile families more likely to commit crime and violence? Reputed American criminologist, Freda Adler, conducted a major study to examine this hypothesis in the context of 10 countries (Switzerland, Ireland, Bulgaria, East Germany,

Costa Rica, Peru, Saudi Arabia, Algeria, Japan, and Nepal) selected from five regions of the world. On the basis of crime date collected from the *United Nations Survey on Crime Trends and the Operation of Criminal Justice Systems*, Adler theorized that low rate of crime is positively connected to family solidarity and vice versa. Adler found that all the countries under study had a low rate of crime because of "little disruption in their strong family systems" (Adler 1983, p. 103). The high rate of crime and delinquency among the slum and street children of Bangladesh is an area for major research and experiment in Bangladesh criminology.

One of the most alarming aspects of recent crime waves in Bangladesh is the rise of violent crimes including murder, rape, robberies, abduction, kidnapping, and contract killing. On April 27, 2014, a mayor of a big city and his six associates were abducted, killed, and thrown into a river. On March 16, 2015, a father was brutally killed for resisting the abduction of her 17-year-old daughter by a criminal gang. In July 2015, a 13-year-old boy was beaten to death by a gang, and later on, a video of the beating was posted on the Internet. In April 2016, a teenage girl was gang-raped in a moving bus by the bus driver and two of his associates, and the victim was left alone in an unknown location. Thousands violent crimes of this kind are being committed every year in Bangladesh. It is estimated that about 70 percent of these crimes, particularly violent sex crimes against women and children in rural areas are not reported to law enforcement. In 2010, Bangladesh Police reported 3,988 cases of murder, 1,059 cases of robberies, 870 cases of kidnapping, and 17,752 cases of violence against women and children (Women and Child Repression). In 2015, according to the Bangladesh Police, a total number of murders increased to 4,036, robberies increased to 933, and violence against women and children increased to 21,220. In South Asia in general, rape rate is lower (less than 3 per 100,000 population) than many other regions of the world, particularly, Southern Africa and Central America. But within South Asia, according to the 2010 *International Statistics on Crime and Justice* published by the United Nations Office on Drugs and Crime and the European Institute for Crime Control and Prevention, Bangladesh has highest rates of rape in South Asia (7.5 per 100,000 population). Similar observation was

made by a recent study conducted by the United Nations. In 2013, the United Nations conducted a study on rape on the basis of data collected from 10,000 men sampled from Bangladesh, China, Cambodia, Indonesia, Papua New Guinea, and Sri Lanka in 2013. "The survey," according to the United Nations, "represents the world's largest scientific project into the subject so far, aimed to investigate the 'under-researched' area of male-perpetrated rape" (Culp-Ressler 2013, p. 1). The study finds that "one in eight men in rural Bangladesh admit to having committed rape" (defined by the study as forced sex). The International Center for Diarrheal Research Center (ICDDR) and the United Nations Population Fund (UNFPA) of Bangladesh conducted a study in 2011 on "Men's Attitudes and Practices Regarding Gender and Violence Against Women in Bangladesh." The study observed that "men who have negative attitudes toward women are more likely to use violence, affecting not only the women who experience abuse, but also children, families and the community at large" (Partners for Prevention 2016, p. 1). It was also found that "men who have been abused as a child are at least two times more likely to use violence against women later on in life" (Partners for Prevention 2016, p. 1). In addition, there is also an escalation in recent years of political and religious violence in Bangladesh. Within the last two years, a number of secular bloggers and Hindu priests were brutally killed in different parts of the country. On July 1, 2016, five college students, allegedly radicalized by the ideas of the extremist version of Islam, brutally shot and beheaded a score of natives and foreigners in a restaurant in Bangladesh's capital city of Dhaka. The United Nations Office on Drugs and Crime (2011) *Global Report on Homicide: Trends, Contexts, and Data* found that "there is a clear link between violent crime and development: crime hampers human and economic development; this, in turn, fosters crime. Improvements to social and economic conditions go hand in hand with the reduction of violent crime" (2011, p. 5), The study further observed that "The largest shares of homicides occur in countries with low levels of human development, and countries with high levels of income inequality are afflicted by homicide rates almost four times higher than equal societies" (United Nations Office on Drugs and Crime 2011, p. 10). The understanding of the nature, patterns, and the magnitude

of violence is essential for developing violence prevention methods and strategies. "Knowledge of the patterns and causes of violent crime," the study noted, are crucial to forming preventive strategies (United Nations Office on Drugs and Crime 2011, p. 5). It is imperative for the new generation of criminologists in Bangladesh to examine the biological, psychological, social, political, economic, and the cultural contexts for the rise of violent crime and the escalation of religious extremism in the Bangladesh society. Norbert Elias (1994) in his book on *Civilizing Process: Sociogenic and Psychogenetic Investigations* theorized that the decline of violence in Western societies, in general, came as a result of the rise of modern states as agents of repression. The rise of modern states, in turn, came as a result of both sociological evolutions (the rise of a culture of shaming, tolerance, and decency) and psychological evolution (a development of an internalized sense of self-control and morality) in the lives of the people. "The core of his theory is that the control and containment of violence in a society must proceed with the progress of 'civilizing processes'—strong states and social and psychological transformations in the manners and behaviors of people" (Shahidullah 2014, p. 64). Pratt and Godsey (2002) conducted a study of homicide rates in 46 countries taking data from the World Health Organization and United Nations Statistics Division. They wanted to examine whether the violent crime (homicide rates) is related to the social support system of a country (measured in terms percentage of GDP spent on education and health care). The authors found that "an inverse relationship between social support and crime rates does, in fact, exist—at least in the cross-national setting" (2002, p. 20). They further affirmed the "notion that increases in levels of social support are associated with decreases in crime rates" (2002, p. 22). On the basis of these and other theories that exist in the literature on violent crimes, and many ideas and hypotheses that were examined in different world reports and research studies such as the United Nations Office on Drugs and Crime's 2011 *Global Report on Homicide* UN-Habitat's 2007 *Global Report on Human Settlements: Enhancing Urban Safety and Security*, and United Nation's 2013 *Multi-Country Study on Men and Violence in Asia and the Pacific*, Bangladeshi criminologists can develop a major research agenda on crime and violence.

New Criminology in Bangladesh: Crime Measurement Research

One of the weakest areas of crime and justice in Bangladesh is the lack of reliable crime data. This issue has been repeatedly raised by international development organizations working in the field of reforms in crime and justice in Bangladesh. Presently, Bangladesh does not have a national crime-data gathering organization like that of the National Crime Records Bureau (NCRB) of India, or the Uniform Crime Reporting (UCR) System of the United States, or the British Crime Survey (BCS) of the United Kingdom, or the Japanese White Paper on Crime Series. The NCRB of India was established by an Act of the Parliament in 1985. The NCRB in India is a hierarchical and nationally coordinated organization. There are District Crime Records Bureaus, State Crime Records Bureaus, and the NCRB. The police reported crime data and criminal justice information flow from the police stations to the District Crime Records Bureau, to the State Crime Records Bureau, and then to the NCRB located within the Ministry of Home Affairs in Delhi. The NCRB works as the central repository and a clearing house for crime date in India. The NCRB publishes a report titled "Crime in India" every year on the basis of the information collected from local, district, and state crime data. It also publishes a yearly report on "Prison Statistics India". These two yearly reports published by the NCRB present a significant amount of information on crime trends and patterns in India. Bangladesh does not have a comparable system of a national survey on crime and criminal justice data, and this is one of the areas that must remain at the forefront of the agenda for reforms in crime and criminal justice in Bangladesh.

Each and every nation also has a system of crime classification. Crime reporting, crime recording, understanding of crime trends and patterns, and the organization of crime data—all depend on crime classification. Crime classification defines the boundary of criminal law and criminal laws are translated into measurable units of observation and analysis through the development of a system of crime classification. If the law of a country, for example, defines eve-teasing or indecent exposure or

sexual harassment as a crime, it must be a part of its crime classification. Crime classification is not done once and for all, it is an evolving process, and it depends on the change and evolution of new laws. The task of modernizing crime classification is an important challenge for the new science of criminology in Bangladesh. The existing crime classification of Bangladesh is relatively archaic and it needs a serious overhauling. Crime data in Bangladesh are currently collected monthly and yearly by six metropolitan police organizations comprised of 84 police stations, and eight Police Range composed of 516 police stations. Data are compiled by the Bangladesh Police in Dhaka and are posted on the police website. There is no national report like Crime in India produced by India's NCRB. Crime is classified in Bangladesh Police in terms of 14 major categories: dacoity, robbery, murder, speedy trial, riot, women and child repression, kidnapping, police assault, burglary, theft, arms act, explosives, narcotics, and smuggling. There is a separate category of data collected monthly on human trafficking in terms of the number of victims of trafficking, the number of victims recovered, the number of victims received rehabilitations, the number of trafficking offenders, and the number of traffickers convicted. The NCRB of India classify crime data in terms of 10 major categories including violent crimes, a crime against women, a crime against children, human trafficking, property crime, economic crime, juvenile crime, cyber crime, railway crime, and crime committed against foreigners. The Indian crime classification system also needs to be modernized but it at least includes some important categories of crimes such as juvenile crime, economic crime, and cyber crime. In the United States, the UCR System started in the 1930s, collects data in terms of two major categories: Part I offenses and Part II offenses. Part I offenses include 8 types of violent crimes including criminal homicide, forcible rape, robbery, aggravated assault, burglary, theft, motor vehicle theft, and arson. Each of these crimes again has different subcategories. Criminal homicide, for example, has two major types: non-negligent manslaughter, and manslaughter by negligence. Rape data are collected in terms of rape by force and attempts to commit forcible rape. Part II offenses of the UCR include 29 types of crimes and some of the major of those crimes include forgery and counterfeiting, fraud, embezzlement, vandalism, carrying and possession

of illegal weapons, prostitution and commercial sex, sex offenses, drug crimes, gambling, violence against women and children, driving under the influence of alcohol, liquor law violation, and disorderly conduct in public places. One of the important recent innovations in the UCR crime data is the inclusion of the hierarchy rule. The hierarchy rule is the scoring of criminal offenses in terms of their severity and this scoring has to be done by the reporting agencies. In Part I offenses of the UCR, murder, and non-negligent manslaughter, for example, gets scoring of 1a while manslaughter by negligence gets a scoring of 1b; rape by force get a scoring of 2a, and attempted forcible rape gets a scoring of 2b; burglary by forcible entry gets a scoring of 5a, and burglary of without the use of force gets a scoring of 5b. Another recent innovation in the UCR system is the inclusion of the notion of expanded offense and homicide data. The United States Federal Bureau of Investigation (FBI) defines an expanded homicide data that: "provide supplemental details about murders, such as the age, sex, and race of both the victim and the offender, the weapon used in the homicide, the circumstances surrounding the offense, and the relationship of the victim to the offender. In addition to these types of details, expanded data include trends (for example, 2-year comparisons) and crime rates per 100,000 inhabitants" (United State Federal Bureau of Investigation 2012, p. 1). In addition to these and many other innovations in national crime classification systems, there is also a framework for the International Classification of Crime for Statistical Purposes (ICCS) developed by the United Nations Office on Drugs and Crime in 2014. The international crime classification system is a hierarchical classification of criminal offenses. "On the basis of internationally agreed on concepts and principles, the ICCS consists of a framework to assign criminal offenses to hierarchical categories that have a certain degree of similarity in relation to conceptual, analytical and policy areas. The purpose of the ICCS is to enhance consistency and international comparability of crime statistics" (United Nations Office on Drugs and Crime 2014, p. 5). In addition, there is also a crime survey conducted by the United Nations titled United Nations Survey of Crime Trends and Operations of the Criminal Justice Systems (UN-CTS) started in 1970. The UN-CTS collects data on crime and operation of the criminal justice system (police, prosecution, courts, and

prison) on the basis of responses received from the member states. The applicability of the ICCS and the UN-CTS in modernizing the crime classification system of Bangladesh can form an important research agenda for the new criminology of Bangladesh.

There are police-recorded crime surveys in all major countries of the world such as the UCR system of the United States, UCR System of Canada, Police-Recorded Crime Survey of the United Kingdom, German Police-Recorded Crime Survey, and the Indian NCRB. But police-recorded crimes surveys have inherent limitations because of the fact that most crimes are not reported to law enforcement. The United States Bureau of Justice Statistics found in a report that, between 2006 and 2010, about 50 percent of the violent crimes (about 3–4 million violent crimes) were not reported to law enforcement in each of those years. The report also found that about 65 percent of sexual assault crimes (about 200,000 sexual crimes) and 67 percent of property crimes were not reported to law enforcement in each of those years. This is by and large true of police-recorded crime surveys in both developed and developing countries. In order to complement police-recorded crime surveys and to overcome the limitations of poor crime reporting, most major countries of the world in recent years have come up with alternative methods of crime measurement such as criminal victimization survey and self-reporting crime surveys. In the United States, the *National Crime Victimization Survey* (NCVS) was introduced in 1992. The NCVS data are collected by the United States Census Bureau every year on the basis of a sample of 76,000 households. The NCVS estimates the likelihood of victimization by rape, sexual assault, robbery, theft, burglary, and motor vehicle theft for the population as a whole and also in terms of the different segments of the population such as women and the elderly (Shahidullah 2014). The NCVS is based on self-reporting of victimization. In Canada, *Statistics Canada* conducts a criminal victimization survey every five years. The survey is conducted on the basis of "telephone interviews of about 25,000 individuals aged fifteen or older drawn from the households of all ten provinces on the basis of Random Digital Dialing" (Shahidullah 2014, p. 99). The survey measures self-reported victimization in eight areas: sexual assault, robbery, assault, breaking and entering, theft of personal property, theft of

household property, theft of motor vehicles, and vandalism. The British Crime Survey started in 1981 is the National Crime Victimization Survey of the United Kingdom which also measures public opinion about crime and justice (British Home Office 2011). Germany started a criminal victimization survey as a part of *Police Recorded Crime Survey* in 2000. The European Commission in 2005 started a survey of criminal victimization in the countries belonging to the EU titled *The European Crime and Safety Survey*. The International Crime Victimization Survey (ICVS), conducted by the EU in collaboration with the UNODC, is also one of the major innovations in the area of crime measurement. It collects data on international criminal victimization trends on the basis of the self-reporting of about 2000 households from each of the member states belonging to the United Nations. Data on different countries on self-reporting of victimization are analyzed by the United Nations Office on Drugs and Crime (Shahidullah 2014).

There is another form of self-reporting crime survey conducted in the United States and many other countries, particularly for the juveniles, that is based on the self-reporting of offending behavior. Two of these major self-reporting juvenile surveys are the *Monitoring the Future Survey* (MTF) survey conducted by National Institute on Drug Abuse and the *Youth Risk Behavior Surveillance System* conducted by the Centers for Disease Control and Prevention. These surveys are conducted on such juvenile offending issues as the use of illegal drugs, under-age drinking behavior, unwanted sexual behavior, smoking, and school crime (the major juvenile crime and delinquency and juvenile justice survey titled *Juvenile Offenders and Victims* in the United States is done by the Office of Juvenile Justice and Delinquency Prevention of the Department of Justice). Many major European countries also conduct Self-Reporting Delinquency Surveys (SRD).

These various examples of national and international crime measurement and crime classification systems suggest that the development of criminal victimization and self-reporting of crime surveys is one of the important trends in modernizing crime statistics in most major countries of the world. Crime measurement and crime classification are intimately connected to evidence-based crime control and prevention strategies. In a country like Bangladesh, where police-recorded crimes

are inherently flawed and limited, and where the reporting of certain types of crimes such as rape, sexual assault, rape of a boy children, spousal violence, and child abuse are taboos, it is imperative to overcome the limits of police-recorded crimes by developing criminal victimization and self-reporting crime surveys for reliable assessment of crime trends and patterns. Bangladesh criminology can make a significant stride in crime measurement by developing a system of national criminal victimization survey initially on rural crime. About 70–75 percent of people in Bangladesh live in rural areas, and there is a widespread victimization of rural people by crimes that are not reported to law enforcement. The reporting of crime to law enforcement in rural areas is significantly lower than that of urban areas. Some of the common rural crimes include murder, robbery, property crimes, illegal land-grabbing, petty theft, physical assault, rape, sexual assault, wife-beating, acid crime, dowry death, spousal violence, sexual harassment, and eve-teasing. Physical and sexual violence in homes and schools against young women and children in rural areas are rampant, and corporal punishment in rural schools is widespread. Although self-reporting of crime surveys in Bangladesh are few and far between, there is a considerable number of studies done by local and international NGOs on criminal victimization in different areas such as the Odhikar's 2012 study on *The Battle Continues: Aspects of Violence against Women in Bangladesh*; the Association for Community Development's 2008 study on *Assessment of Vulnerability of Boys: A Situational Analysis on Prostitution of Boys* in Bangladesh; and End Child Prostitution, Child Pornography, and Trafficking of Children for Sexual Purposes (ECPAT) and INCIDIN's 2006 study on *The Boys and the Bullies: A Situational Analysis Report on Prostitution of Boys in Bangladesh*. One of the important self-reporting surveys on the lives of the street children in Bangladesh was done by Plan International in 2010 through a project titled "Through Our Own Eyes." The caveat, however, is that the development and improvement of a national crime measurement system in a country is not a matter of research and analysis alone. This is primarily a legal processes and changes in these areas are brought usually by an act of the parliament as it happened in the establishment of the NCRB of India in 1985. In addition to

research and innovations in these areas of crime measurement, it is important for Bangladeshi criminologists to work as policy advocates for putting this agenda at the top of policy-making for reforms in criminal justice, particularly in criminal justice reform agenda of the Bangladesh Ministry of Homes, Ministry of Law and Parliamentary Affairs, and the Bangladesh Police.

New Criminology in Bangladesh: Crime Analysis Research

Closely connected to the problem of crime measurement is the problem of crime analysis. In recent years, crime analysis has become an important task of criminology and law enforcement agencies in almost all advanced countries of the West. There are two broad assumptions in criminology about crime and criminality. The first assumption is that crime is the work of the individuals who are mentally sick, delusional, and depressed. Crime is related to psychopathic personality, abnormal brain structure, abnormal brain waves, abnormal brain chemistry, or even genetic disorder. The second assumption is that crime is a matter of rational choice. The individuals who commit crimes and break the rules are mostly the individuals who can rationally plan, organize, and execute criminal events. The task of crime analysis is based on the assumption that crime is a matter of rational choice and rational will. The planning and the execution of a criminal event involve the use of knowledge and intelligence. The criminals want to discover new paths and patterns of crime, they make innovative criminal devices and technology, they understand the profile of policing, they calculate the cost and rewards, and they make an assessment of the law and legal implications. Crime analysis is primarily a task of intelligence gathering and developing a pattern of analysis of how the criminals plan, organize, and execute criminal events and what are their discoveries and innovations in the paths to criminality.

The second task of crime analysis is the discovery of the structure and the complexity within which criminal events are born, grown, and spread. Each and every criminal event involves a set of actors, organizations, and networks. Human trafficking or the trafficking of illegal

drugs in Bangladesh, for example, is the work of a set of actors who also have a set of organizations and communicative networks. Each and every criminal event has a space boundary. It is planned and organized in the context of a particular place. It is more common in some places than others—a phenomenon described as "hot spots" in crime analysis. The search for a pattern in the hot spots of crime and criminality is the task of crime analysis. Crime also has a time dimension and a sessional dimension. Crime analysis can show how crime varies depending on the month of a year, or a particular time of a day, or a particularly season. The understanding of the time dimension of crime and criminality can be a valuable intelligence for law enforcement. Crime and criminality also involve a motif or an ideology. The motivations of criminal activities could be economic, political, social, and cultural. Most global crimes such as human trafficking, trafficking of illegal drugs, and organ trafficking are primarily economic in nature. There are some crimes, on the other hand, that are purely political or based on hate and hatred, and these kinds of crimes are not few and far between in Bangladesh. There are also some crimes such as child maltreatment, dowry deaths, and spousal violence that are based on cultural tradition, power, and a sense of entitlement. In Bangladesh, a school teacher, for example, thinks that he or she is entitled to beat up a school child. Many parents have a sense of right and entitlement that they can beat up their child for disciplining, and many husbands do not see any violation of the law and human rights in beating up their wives. Power and a sense of entitlement to control are endemic in the abuse of those who are in domestic servitude in Bangladesh. Exploring and debunking of some of these inner sense power, ideology, and hate behind many crimes and criminality can be immensely valuable both for law enforcement and for those who are in policy-making for law and justice. The pursuit of crime analysis in the West in recent years have given birth to a series of law enforcement innovations such as community policing, crime mapping, predictive policing, and problem-oriented policing. Many of these strategies, particularly community policing, are also being experimented in many developing countries including Bangladesh.

New Criminology in Bangladesh: Research on New Criminal Law and Judicial Modernization

The criminologists have historically played a crucial role in thinking about law and legal developments. The core of Beccaria's mission in *On Crimes and Punishments* was to reform and modernize the medieval criminal law based on the perspective of demonology and the canonical law of the medieval catholic church. The expansion of modern academic criminology in the West came partly in response to the study and development of modern law. In many major universities in the West, the study of law remains an integral part of the academic departments of criminology such as the Department of Justice, Law and Society at American University in Washington DC; Department of Criminology, Law and Society at the University of California, Irvine; Department of Law, Society and criminology at George Mason University; Department of Sociology, Criminology and Law at Florida State University; Department of Sociology, Crime, Law and Justice at Pennsylvania State University, State Park; LLB in Law and Criminology at the University of Liverpool in the United Kingdom; and the LLB in Law and Criminology at the University of Leicester in England. The history of the sociological study of law and the relations between law and criminology goes back to Montesquieu's *The Spirit of Laws* published in 1748. In his *The Spirit of Laws*, Montesquieu "pioneered the idea of what is in modern jurisprudence called legal positivism. The Sprit of Laws made a sharp distinction between law and morality and accepted the principle of judicial discretions" (Shahidullah 2014, p. 139). The notion of legal positivism conceptually opened the door of doubts and uncertainty in legal reasoning. The crucial role of a government, according to Montesquieu, is the defense of individual liberty. What Montesquieu argued, in other words, is that a rationally devised structure of law legitimated by an elected parliament is the foundation of modern government. In the same way, Beccaria, in his *On Crimes and Punishments*, argued that a modern criminal justice system must be based on some "fundamental principles such as the separation between secular and canon law, a rational system of law made by people's representatives,

equal law and justice for all, equality of law enforcement, proportionality between crime and punishment, a humanized system of penology, and protection against cruel and unusual punishment" (Shahidullah 2014). Similarly, Jeremy Bentham, another pioneer of modern criminology in the eighteenth century, argued in his book, *Introduction to the Principles of Morals and Legislation* published in 1789, that the fundamental task of a government is the development of a rational set of laws that can bring the "greatest benefit for the greatest number of people" (Shahidullah 2014, p. 141). Bentham was a great advocate for judicial reforms such as decentralized court system, the discovery of evidence, provision for cross-examination in criminal trials, open and fair trial, and judicial accountability. (Shahidullah 2014, p, 141).

The new generation of criminologists in Bangladesh can play a vital role in reforming criminal justice through research on both procedural and substantive laws. The foundation of the criminal procedural laws in Bangladesh is built on the Code of Criminal Procedure enacted by the British Colonial government (Act Number V) in 1898 and the Constitution of the Peoples Republic of Bangladesh promulgated in 1972. Some of the basic principles of the due process of law such as protection against unusual search and seizure, fair and public trial, speedy trial, and protection against cruel and unusual punishment are contained in the Code of Criminal Procedure of 1898, and enshrined in the constitution. Section 27 of the constitution declared that "All citizens are equal before law, and are entitled to equal protection of law." Section 33 of the constitution said that "No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest, nor shall he be denied the right to consult and be defended by a legal practitioner of his choice." Section 33 also said that "Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest." Section 35 of the constitution further extends the due process laws by promulgating that "No person shall be prosecuted and punished for the same offence more than once," "every person accused of a criminal offence shall have the right to a speedy and public trial by an independent and impartial Court," "no person accused of any offence shall be compelled to be a witness against himself," and "no

person shall be subject to torture or to cruel, inhuman, or degrading punishment or treatment."

The Bangladesh judicial services, particularly the lower courts, however, have remained largely ineffective in translating these "Bill of Rights" into reality. The Bangladesh Transparency International (2010) in one of its reports, based on the survey of 6,000 households, found that about 88 percent of Bangladesh households are the victims of corruption within the judiciary. The same survey found that about 79.7 percent of the households are the victims of corruptions within the police and law enforcement agencies. The survey found that "Usually lawyers, court employees, court clerks, and brokers take the money to hasten or postpone hearings, for withdrawing and destroying case documents and influencing the judgment." The survey concluded that the judiciary and law enforcement are two of the most corrupt service institutions of Bangladesh. In a similar survey of law enforcement agencies in 2002, based on the study of 2,500 households, the Bangladesh Transparency International found that "one-half of the complainants (49.5%) made prior arrangement with the police for disposal of their cases; a majority (55%) of the prior arrangements was not to send the disputes to the court . . . About 71% of the respondents reported that police deliberately delayed sending the cases to the court" (Hasan 2002, p. 1). The survey also observed that "More than two-thirds (68.1%) of the complainants reported to have payments to the police for filing complaints as First Information Report (FIR)" (Hasan 2002, p. 1). The same survey found rampant corruptions within the judiciary. The survey noted that "The proportion of rural households paying bribe money to court officials was 63.6% compared to that of 57.1% of urban households. Cash for the bribe was paid to the court employees by 73.1% of households, followed by 16.3% of households to opponent's lawyer" (Hasan 2002, p. 2). In the same survey, "53.9% of the accused/plaintiffs reported that they were uncertain about the period when a settlement would be reached. About 79.8% of them reported that delays in reaching a settlement were deliberate" (Hasan 2002, p. 2). The magnitude of this corruption suggests that the Bangladesh "Bill of Rights" enshrined in the constitution are grossly violated by law enforcement and justice agencies. A report published in 2013 noted that in Bangladesh there was "A huge backlog of around 2.3 million cases . . . pending with the courts across the

country including the Appellate Division and High Court Division of the Supreme Court (SC)" (Sarker, March 18, 2013, p. 1). The report further observed that as of 2011, about 1.7 million cases remained pending in District and Session Judge courts, and 763,518 cases remained pending in Magistrate courts. In 2012, the total number of cases remained pending in the Bangladesh High Court was 212,393, and in the Appellate Division of the Supreme Court was 16,648 (Sarker 2013). The issues of judicial backlogs, judicial accountability, judicial corruptions, judicial transparency, access to justice, fair and speedy trial, torture for confessions under custody, and many other related procedural issues can become important research agendas for the new criminology of Bangladesh.

The lack of the implementation of the existing laws is also a major challenge in Bangladesh. During the last two decades, Bangladesh enacted a number of crime and justice legislations such as the Anti-Dowry Prohibition Act of 1980, the Cruelty to Women Ordinance of 1983, the Suppression of Immoral Traffic Act of 1993, the Prevention of Oppression Against Women and Children Act of 2000, the Acid Control Act of 2002, and Children Act of 2013. These and other crime and justice legislations can form an important research agenda for the new criminology of Bangladesh. The Prevention of Oppression Against Women and Children Act of 2000, for example, developed many new sentencing guidelines for a crime of oppression against women and children. The law made provisions for death penalty, transportation for life, life imprisonment, and long-term imprisonment for serious crimes related to the oppression of women and children including acid attack, rape, trafficking of women and children, and sexual oppression. The law also made a provision for the creation of special tribunals for the trial of cases related to the oppression of women and children. After more than a decade of its enactment, it is an important agenda for the criminologists of Bangladesh to examine the impact and progress of this landmark Act of Prevention of Oppression Against Women and Children of 2000. The Children Act of 2013, similarly made a series of provisions to create the foundation of a separate system of juvenile justice in Bangladesh such as the creation of juvenile courts, juvenile help-desks, and juvenile probation officers in all districts and sub-districts (upzilla) of the country. The Children Act

of 2013 also introduced a number of procedural developments related to the due process of law (Article 4 of the CRC) such as the rights of the children to participate and represent themselves in all stages of the trial and adjudication process (CRC Articles 12–14); rights of the children to be released on bail and probation; rights of the children for speedy trial (Article 37 of the CRC); rights of the children for the protection of privacy and the confidentiality of court records; and rights of protection from cruel and unusual punishment (Article 37 of the CRC). The extent of implementation of these legal provisions need to studied and examined.

The spread of many new global crimes in Bangladesh such as cybercrime, human trafficking, trafficking of children and women for sexual exploitation, trafficking of illegal drugs, trafficking of conventional weapons, organ trafficking, money laundering, and global terrorism have brought many significant legal challenges. These challenges are mostly in the areas of developing new laws to criminalize these acts and to effectively investigate and prosecute those criminal activities. These laws must address the specific nature of these global crimes in Bangladesh, but at the same time they should also be in harmony with international laws and standards. In recent years, new laws for combatting global crimes have been enacted in almost all countries of the West. New laws, guidelines, and research surveys have been developed also by many organizations of the United Nations, EU, and other international development assistance organizations. Some of the most prominent of these international protocols, guidelines, and surveys include the United Nations' 2001 *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*; the United Nations Office on Drugs and Crime's *World Drug Report*; the United Nations' 2006 *Global Counterterrorism Strategy*; the United Nations' 2002 *International Convention for the Suppression of the Financing of Terrorism*; the UNODC and International Monetary Fund's 2006 study on *Model Legislation on Money Laundering and Financing of Terrorism*; the EU's 2013 study on *International Cyber Space Policy*; and International Telecommunication Union's 2010 study on *International Cyber Crime Legislation.* These international protocols and guidelines can provide important directions for developing a research agenda on legislations

combatting global crimes. Bangladesh created a Law Commission through the enactment of the Law Commission Act of 1996. Section 6 of the act noted that one of the core responsibilities of the Law Commission is to recommend amendments to the existing laws, recommend sentencing guidelines, and create new laws for the effective functioning of the criminal justice system. Legal reforms are recommended by the Law Commission to the Ministry of Law and Parliamentary Affairs, and the Ministry of Law and Parliamentary Affairs review and further recommend them as bills for enactment by the Parliament. Bangladesh criminologists interested in legal reforms would do better working in collaboration with the Bangladesh Law Commission as well as other legal advocacy groups and human rights organizations.

New Criminology in Bangladesh: Crime Prevention Research

Research, discoveries, and innovations in criminology broadly pertain to two areas. The first is about the laws, institutions, and procedures of criminal justice. This is about how crime has to be defined and how effective institutions and procedures are to be designed for governing criminal justice. In this sphere of crime and criminal justice, criminologists theorize about systemic improvement, systemic management, procedural developments, deterrence issues, and alternative methods of justice and punishments. In this domain, the major concern is not about crime causation and the larger social ecology of crime. The major concern is about effective governance crime and justice. During the last four decades, criminology in the West has grown to focus mostly on this sphere of governing crime and justice. The dominant crime control philosophy was described as "get-tough" approach. The assumption was that punishment is a deterrence for the crime. As a part of the get-tough approach, along with death penalty, many new methods of punishments were discovered such as mandatory sentencing, juvenile transfer, three strikes and you are out, felony disenfranchisement, sex offender registration, truth-in-sentencing laws, GPS tracking, and home

incarceration. As a part of the get-tough approach, criminology began to borrow ideas from physics, biology, chemistry, geography, and computer science. Modern technology of the DNA and modern information technology became an inviolable part of governing crime and justice. During the get-tough era, professionalization, bureaucratization, and the rationalization of criminal justice became the hallmarks of modern criminology (Shahidullah 2008; Garland 2002; Shahidullah 2002) For the new criminology of Bangladesh, this is definitely an expanding domain of research—the domain of reforming and modernizing the governance of criminal justice.

The second broader domain of research in criminology is on crime prevention. It is a domain of theorizing about the context of crime and criminality—the social ecology of crime. It is a domain of research to theorize about the methods, models, and strategies for crime prevention. Crime prevention has multiple meanings. It means reducing the number of criminal events and criminal offenders. It means reducing harm and criminal victimization. Crime prevention is also defined as a way of reducing risk factors of crime such as reducing the rate of poverty or rate of high school drop-outs. The core of crime prevention is that the impacts of the preventive methods and the strategies must be empirical and observable in nature. Since crime and development and crime and democracy are connected, crime prevention has been at the top of the agenda for international development for a long time. The United Nations has two sets of guidelines on crime prevention in the member countries: the United Nations Social and Economic Council's Guidelines of 1995 (Guidelines for Cooperation and Technical Assistance in the Field of Urban Crime Prevention) and the United Nations Guidelines for the Prevention of Crime of 2002/2013. (United Nations Office on Drugs and Crime 2010). The 2002/2013 guidelines defines that "Crime prevention comprises strategies and measures that seek to reduce the risk of crimes occurring, and their potentially harmful effects on individuals and society, including fear of crime, by intervening to influence their multiple causes" (p. 9). The guidelines noted that "there is clear evidence that well-planned crime prevention strategies not only prevent crime and victimization but also promote community safety and contribute to the sustainable

development of countries" (p. 2). The prevailing thought about the role of criminology in Bangladesh is about its contribution to systemic reform and modernization to improve the governing of crime and justice. Research should also begin to focus on varying methods of crime prevention, and research on the United Nations Guidelines on crime prevention can be a good starting point. Crime prevention research is based on the understanding that crime and victimization are multidimensional in nature. "They are the result of a wide range of factors and circumstances which influence the lives of individuals and families as they grow up, and of local environments, and the situations and opportunities which facilitate victimization and offending" (United Nations Office on Drugs and Crime 2010, p. 9). The risk factors of crime are partly global, partly regional, and partly local in nature such as the rise of illegal human trafficking, illegal drugs, cybercrime and money-laundering in Bangladesh. The rise of these new organized and transnational crimes is related to globalization, global migration, rapid urbanization, the rise of urban poverty, rapid and uneven economic growth, and environmental disasters of different kinds. Locally, these crimes are connected to the disruption of families and communities, the rise of urban slums, the growth of street children, the rise of new gangs, the arrival of the new information technology, and the spread of a new culture of materialism and consumerism. The understanding of these and other global, regional, and local risk factors associated with crime and victimization is crucial for developing crime prevention strategies. The United Nations Guidelines, so, described, that "Crime prevention strategies, policies, programs, and actions should be based on a broad, multidisciplinary foundation of knowledge about crime problems, their multiple causes and promising and proven practices" (United Nations Office on Drugs and Crime 2006, p. 5). Crime prevention must be approached from a holistic point of view and all sectors of society must be mobilized for developing crime prevention strategies. Crime prevention "is the responsibility of all levels of government to create, maintain and promote a context within which relevant governmental institutions and all segments of civil society, including the corporate sector, can better play their part in preventing crime" (United Nations Office on Drugs and Crime 2006, p. 4). It is

explained by the UN guidelines that crime prevention must be seen from four major perspectives: social development, community development and empowerment, situational crime prevention, and social reintegration. In addition to the United Nations Guidelines, knowledge on crime prevention can be drawn also from research done in almost all advanced industrialized countries of the world including the United States, Canada, England, Japan, and the EU. Crime prevention programs have recently been undertaken also by many developing countries. The Crime Prevention Foundation of Indonesia, for example, "undertakes national coordination of crime prevention initiatives with the ministries of Justice and Human Rights, Social Affairs, and the Interior" (United Nations Office on Drugs and Crime 2010, p. 37). In 2006, Chile established a "National Public Safety Strategy under the responsibility of the Ministry of the Interior, and working in partnership with other key departments including justice, education, labor, health, urbanization, defense, planning, and the national women's and youth services" (United Nations Office on Drugs and Crime 2010, p. 32). After the unprecedented event of violence in Dhaka on July 1, 2016, the government of Bangladesh has also been forcefully arguing that prevention must be at the top of the agenda for the containment of domestic radicalism and violence through the grassroot mobilization of all stakeholders such as parents, teachers, schools, families, relatives, mosques, and madrasas.

Review of recent research on crime prevention has shown that there are three major approaches to crime prevention: (1) technological approach, (2) innovative law enforcement strategies, and (3) social and economic development. The use of modern science and technology is emerging as one of the most promising ways of crime prevention such as the development of DNA databanks by collecting DNA from crimes scenes and violent criminals, electronic surveillance through the use of CCTV cameras, video streaming capabilities in police vehicles, improved street lighting, metal detectors in offices and schools, baggage screening at airports, use of biometric passports, bulletproof teller windows at banks, security systems at homes and business, video surveillance of traffic rules, GPS tracking of sex offenders, and electronic incarceration programs (Byrne and Marx 2011). Among the innovative law enforcement

strategies for crime prevention, most notables are the strategies of community policing, crime mapping, hot-spots policing, predictive policing, and crime prevention through environmental designing (CPTED). Crime prevention through social and economic development includes programs for reducing poverty and strengthening families, communities, schools, business, and religious institutions. The United Nations Guidelines noted that "Crime prevention considerations should be integrated into all relevant social and economic policies and programs, including those addressing employment, education, health, housing and urban planning, poverty, social marginalization and exclusion. Particular emphasis should be placed on communities, families, children and youth at risk" (United Nations Office on Drugs and Crime 2006, p. 5). There is a huge scope for developing research programs on crime prevention in Bangladesh focusing on different facets of these technological, law enforcement, and social development perspectives of crime prevention.

Conclusion

Academic criminology was formally introduced in Bangladesh with the establishment of a Master of Science in Criminology and Criminal Justice within the Department of Sociology at Dhaka University in 2010. The project began in 2008 with the leadership of two expatriate criminologists from Virginia State University in the United States. As a part of this project, a paper titled "Global-Local Nexus and the Emerging Field of Criminology and Criminal Justice in South Asia: Bangladesh Case" was presented at the South Asia Sociology Conference in Dhaka on March 10–11, 2008. In 2010, the project received a funding from the American Institute of Bangladesh Studies. The project included three major objectives: (1) to introduce a Master of Science Program in Criminology and Criminal Justice at Dhaka University; (2) to organize a Center or a Bureau of Criminal Justice Statistics within the Ministry of Home Affairs or the Bangladesh Police Headquarters in Dhaka; and (3) to create a Biannual Crime and Justice Colloquium within the School of Liberal Arts and Social Science of the IUB. Before

the project started in 2010, some of the major stakeholders in Bangladesh were contacted and informed including then Chair of the Department of Sociology and then Inspector General of Police of Bangladesh. In July of 2010 in Dhaka, Dr. Shahid, organized a series of meetings and work sessions involving the administrators, faculty, and students of Dhaka University. In addition, a number of meetings were held at the Bangladesh Police Headquarters in Dhaka with the Additional Inspector General of Police (N. B. K. Tripura), Assistant Inspector General of Police (M. Shah Alam), and former Inspector General of Police and UNDP Consultant, Bangladesh PRP (Muhammad Nurul Huda). Meetings were also held with A. S. M. Shahjahan (Former Inspector General of Police and Senior Adviser UNDP in Bangladesh), Firoz Ahamed (Director, Governance Program, Asian Development Bank), Professor Ishrat Shamim (President, Center for Women and Children Studies and Human Trafficking Research in Bangladesh), and Abdul Khaleque (Secretary, Bangladesh National Commission for UNESCO). A seminar on criminal justice education in the United States and other Western countries was presented by Dr. Shahid in the Department of Sociology, Dhaka University. The seminar was attended by the Dean of the Faculty of Social Sciences, Dean of the Faculty of Law, members of the Department of Sociology, and about 300 students from sociology and other departments of Dhaka University. In these meetings and workshops, different issues related to criminal justice reforms in Bangladesh were highlighted and the need for academic criminology was discussed. On July 6, Dr. Shahid and the social science leadership team of Dhaka University met with the Vice-Chancellor of Dhaka University (Professor Dr. A. A. M. S. Arefin Siddique). Along with Dr. Shahid, the meeting with the Vice-Chancellor was attended by K. A. M. Saaduddin, Professor of Sociology, Dhaka, University; A. I. Mahbub Uddin Ahamed, Professor, and Chairperson, Department of Sociology, Dhaka University; S. Aminul Islam, Professor of Sociology, Dhaka University; and Habibul H. Khondker, Professor of Sociology, Zayed University, Abu Dhabi. Following the results of the meeting with the Vice-Chancellor, Dr. Shahid, in collaboration with the Faculty of the Department of Sociology, developed a proposal and a curriculum for a

new Program on Master of Social Science in Criminology and Criminal Justice. Within the next few months, the new program was approved by Dhaka University's Council of the Faculty of Social Sciences, Faculty Council, and the Curriculum Committee. The Department of Sociology launched a new Master of Social Science in Criminology and Criminal Justice from the Spring of 2011 and an undergraduate program in criminology and criminal justice from 2012 (the University Grants Commission of Bangladesh approved these programs in 2012).

A meeting was also held in late July of 2010 with the faculty of Social Sciences and the Faculty of Law at Dhaka University and some local criminal justice practitioners to set up a professional society on criminology and criminal justice in Bangladesh. The meeting decided to pursue the project and a new academic association was created—SSCCJB. To pursue the registration of the association, a formal meeting was organized, a constitution was drawn, and an application was made to the Ministry of Social Welfare of Bangladesh in July of 2010. In 2012, the name of the SSCCJB was replaced with a new name, Bangladesh Society of Criminology (BCS). Between 2010 and 2013, the CDG funded three major conferences on criminology and criminal justice at Dhaka University, and they were planned and organized by Dr. Hossain and Dr. Shahid from Virginia State University in collaboration with the Department of Sociology at Dhaka University. By 2016, academic criminology became firmly established at Dhaka university with the development of a modern curriculum, recruitment of a highly talented group of professors, enrollment of hundreds of students in both undergraduate and graduate programs, approval of the programs by the University Grants Commission, and the creation of the Bangladesh Society of Criminology.

Modern criminology of the twenty-first century has vastly expanded on the basis of the theories and ideas borrowed from a vast number of scientific specialties including sociology, psychology, law, public administration, political science, economics, philosophy (ethics and philosophy of punishment and justice theories), physics (use of radiation technology for detecting criminal behavior), chemistry (forensic criminology), biology (use of the DNA and biometrics), neurology (brain and violent behavior), geography (GPS (Global Positioning System) and crime mapping), and computer science (computer forensics for

detecting cybercrime). Because of this hybrid nature of the field, there has emerged many competing paradigms and paradigmatic communities in modern criminologies such as structural criminology, cultural criminology, developmental criminology, psychological criminology, biological criminology, feminist criminology, critical criminology, environmental criminology, humanistic criminology, and peace criminology. The future growth of criminology in Bangladesh will depend on the understanding of its hybrid nature of knowledge production, the vastness of its scope of research, its centrality for development and governance, and its significance for a society based on the rule of law, democracy, and equal justice. Some of the important areas of future research for criminology in Bangladesh may include theory development, modernization of crime measurement and crime classification, development of surveys on criminal victimization, crime analysis, development of new laws related to the emerging global crimes, the nature of implementation of some of the existing laws, application of the due process of law in law enforcement and the judiciary, and crime prevention. In pursuing research in these and other areas, the local contexts and peculiarities and global issues and challenges, however, need to be explored, observed, and examined. At the same time, criminology in a developing country like Bangladesh must be empirical, data-driven, and policy relevant.

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