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**Transnational Abandonment of South Asian Women**  
A New Face of Violence against Women

*Shamita Das Dasgupta and Urjasi Rudra*

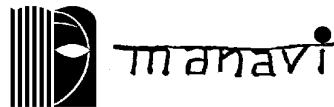


**working to end violence against South Asian women**  
**New Jersey, USA**  
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PO Box 3103  
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Phone: 732.435.1414  
Fax: 732.435.1411  
Email: [manavi@manavi.org](mailto:manavi@manavi.org)  
Website: [www.manavi.org](http://www.manavi.org)

## EXECUTIVE SUMMARY

In all societies, violence against women manifests in many forms, in national, and increasingly, in transnational spaces. Transnational abandonment of wives constitutes an emerging face of violence against women, both by its intent and effect. In this paper, we have defined abandonment as an individual left without resources by another on whom s/he is dependent for social and financial survival. In countries where there are no safety nets, abandonment of women takes on frightening proportions by jeopardizing women's social and economic survival. Immigrant women or women married to émigré men constitute a particularly vulnerable group. Even in countries where social and legal recourses may be available to abandoned women who are citizens, immigrant women may not be entitled to the same benefits or may find it difficult to access these provisions. However, when wives are abandoned transnationally, that is, in a different country than where their husbands live, their access to legal remedies as well as economic relief become severely compromised.

This paper explores various socio-legal aspects of abandonment of South Asian wives in their home countries by their immigrant husbands. Since in South Asia, marriage defines a woman and divorce is still culturally unacceptable, abandonment has debilitating and far-reaching consequences for married women. It profoundly affects financial, emotional, physical, and social conditions of South Asian women and renders their lives and livelihood virtually nonviable. Two important features of the type of abandonment of wives highlighted in the paper are deception and the deliberate infraction of women's legal rights.

Desertion of wives and children has grown significantly in the wake of increased worker mobility from South Asia. The magnitude of the problem is so tremendous that by a 2007 estimate, over 25,000 women were abandoned in only one state in India. The patterns of such abandonment of women can be separated into two categories: (a) women who were never sent visa sponsorship papers by their immigrant spouses; and (b) women who were living with their spouses abroad but were coercively or deceptively taken back to their natal countries and abandoned. Most frequently, desertion is followed up by the husbands starting divorce proceedings and obtaining *ex parte* divorces due to the women's inability to appear in courts abroad. As women fail to appear in court or secure legal representation from their natal countries, they lose out on furthering their own and their children's financial interests.

The major legal issue in transnational abandonment of women is that courts in two countries that are involved may have disparate laws. Furthermore, these courts may ignore each other's judgments and issue conflicting orders. Such jurisdictional disagreements and legal contradictions often jeopardize the financial and social rights of women who are not in the position to protect them. International laws, especially Hague Conventions have designed some guidelines to govern such conflicts, but the majority of these laws still need to be tested out and implemented.

Some efforts at the official and non-governmental levels are taking place to support the rights of abandoned women. This paper elaborates these endeavors and offers recommendations in the areas of advocacy, policy making, and legal representation in the recognition of the difficulties that South Asian women face in seeking legal redress and other forms of assistance from institutions and communities.

## INTRODUCTION

In the United States, the concept and action of abandonment has been associated with the young, elderly, and the infirm. Abandonment of children historically occurred when mothers disposed off their infants or young children due to their inability to take care of them or because the babies were unwanted.<sup>1</sup> In many nations even now, youthful mothers without physical and material resources and family support abandon their infants in desperation, frequently in life-threatening locations such as garbage bins, public toilets, and by the roadside. Women who give birth out of wedlock or after rape often discard their offsprings to escape social condemnation, stigma, and ostracism. In most societies, wars, political unrest, and natural disasters tend to increase abandonment of children, as such instabilities intensify women's economic and physical vulnerabilities, placing them at heightened risk of sexual assault and deepening their inability to take care of children. For example, in the 1940s during and after World War II, in the early 1970s after Bangladesh war of liberation, and in the 1990s after the disintegration of Yugoslavia, large numbers of infants of rape were abandoned when their victim-mothers walked out on them.<sup>2</sup> Around the world, many young children end up virtually abandoned, as their parents or caretakers are either dead or without resources to support them. By a 2003 estimate, approximately 150 million children under the age of eighteen were living on the streets worldwide due to poverty, abandonment, missing parents, and/or abuse at home.<sup>3</sup>

In addition to children, many elderly of both genders are abandoned by their caregivers every year around the world. According to the American College of

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<sup>1</sup> Abandoning children due to poverty is a common concept in many cultures. This theme appears in many folk tales and novels, such as *Hansel and Gretel* in Grimm's fairy tales and *Oliver Twist* by Charles Dickens.

<sup>2</sup> Chowdhury (N.D.); Ericsson & Simonsen (2005); Tamayo (1993, January 28).

Emergency Physicians, in the United States alone, 70,000 elderly were abandoned in 1991.<sup>4</sup> Many of the elderly who are left without caretakers are chronically ill, suffering from Alzheimer's disease, and/or lacking financial and social resources.<sup>5</sup> However, abandonment is not confined only to children or the elderly. Rather, all vulnerable populations are susceptible to being forsaken by those who are responsible for their welfare. For instance, India is infamous for turning out widows who lack family support, a phenomenon featured in films like *Water*, *White Rainbow*, and *The Forgotten Woman*.<sup>6</sup>

Although careless abandonment of vulnerable individuals is considered morally reprehensible, except in the case of children, most countries including the U.S. have no laws against such conduct. The abandonment of a child is a crime in the United States, for which typically mothers are prosecuted. To prevent deaths of infants abandoned in perilous sites, forty-five states in the U.S. have passed 'safe haven' or 'Baby Moses' laws which allow parents to leave infants in designated safe-care facilities without the threat of being prosecuted.<sup>7</sup> Moreover, instead of abandoning, parents so inclined are encouraged to hand over their children to state agencies for adoption or temporary foster care. In India, on the other hand, the state has moved to ensure the well-being of the elderly by passing The Maintenance and Welfare of Parents and Senior Citizens Act in 2007.<sup>8</sup> By this Act, adult children are legally responsible to provide holistic care for their elderly parents and grandparents.

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<sup>3</sup> Muranko (2003).

<sup>4</sup> *The New York Times* (1992, March 29).

<sup>5</sup> Ibid.

<sup>6</sup> Mehta (Dir.) (2005); Mandrayar (Dir.) (2005); Mehta (Dir.) (2008).

<sup>7</sup> For an example of 'Safe Haven' laws in the U.S., see, Fire Rescue (2004).

<sup>8</sup> Government of India (2007 August).

As mentioned earlier, women as a vulnerable group remain in danger of being abandoned by the people who are responsible for their care, particularly in countries that have no social safety nets. It is not only widows who are vulnerable to such rejection by their families, but also married women who may be discarded by their husbands. For example, in the U.S., numerous older women who spend their youths supporting and nurturing their husbands' careers are often peremptorily replaced by younger wives. Such abandonment is perhaps made tolerable only by laws that ensure women's economic viability with at least an equitable division of marital property at divorce. In countries where such legal provisions are not readily available to women, abandonment takes on frightening proportions by jeopardizing women's social and economic survival.

For example, a recent BBC article revealed the dire plight of Tajik wives abandoned without any economic support for themselves or their children. An estimated 30 percent of marriages in Tajikistan are not officially registered and therefore, legally unrecognized. As increasing number of Tajik men migrate to Russia in search of work, the number of abandoned wives is on the rise. These abandoned women and their children live at the edge of penury but cannot seek legal recourse even when their husbands refuse to pay for their maintenance and remarry in Russia. The women's religious marriages are not recognized in the courts in Tajikistan or Russia.<sup>9</sup>

As illustrated above, immigrant women or women married to men residing in a different country form a particularly vulnerable group. Even in countries where social and legal recourses may be available to women who are citizens, in cases of abandonment, immigrant women may not be entitled to the same benefits or may find it difficult to access these provisions. When her spouse abandons a woman transnationally,

that is, in a different country than where he lives, her access to legal remedy as well as economic relief is even more severely compromised.

### DISCUSSING TERMINOLOGY

A corollary concept of abandonment, desertion, has been associated worldwide with the military. “Desertion is where a member of the armed forces leaves his unit without permission and with no intention of returning.”<sup>10</sup> Desertion in the armed forces is treated as a grievous offence, punishable by imprisonment and even death. The justification for such extreme measures is based on the argument that individuals enlisted in the military do not have the right to renounce their public duties as such behavior might wreak havoc on a nation’s safety. Thus, reneging on one’s commitment to a military station is considered a crime with severe consequences.

In non-military situations and marriage, desertion is labeled as abandonment in many statutes. In the U.S. family law, it is a recognized concept defined as the “willful abandonment by one spouse in a marriage, without the consent of the other.”<sup>11</sup> In 1896, the Law of Domestic Relations of the state of New York classified abandonment of wives and children without adequate support as a disorderly conduct punishable by imprisonment.<sup>12</sup> In situations of grave physical needs such as when one spouse is in ill health or physically impaired, deliberate desertion is considered criminal conduct. Although not recognized in no-fault divorce law,<sup>13</sup> abandonment is deemed as reasonable

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<sup>9</sup> Qasim (2009, May 14).

<sup>10</sup> Answers.com (2009) Military history companion: Desertion.

<sup>11</sup> Answers.com (2009) Columbia encyclopedia: Desertion.

<sup>12</sup> Gilbert & Battershall (1902), pp. 260-263.

<sup>13</sup> Nearly all U.S. states have some form of no-fault divorce provision. In a no-fault divorce, the spouse seeking the divorce does not have to show that the other party is at fault. In 1970, California was the first state in the U.S. to institute no-fault divorce.

grounds for divorce in the majority of U.S. states, even if it does not change the outcome or influence the alimony or maintenance decisions in such divorce.<sup>14</sup>

The evasion of one's duties and responsibilities in violation of legal and moral obligations and without justifications constructs the basis of abandonment as grounds for divorce. Additionally, abandonment can be proven in court by the non-return of a spouse without ascertaining his/her intentions. It is important to note here that although abandonment may be considered morally reprehensible, it has never been included in the definition of domestic violence.

However, with the concepts being virtually indistinguishable, in this paper, we will be using the terms abandonment and desertion interchangeably.

#### DEFINING ABANDONMENT OF WOMEN

Abandonment, although not equated to physical violence, has tremendous and far-reaching consequences for married South Asian women. It profoundly affects financial, emotional, physical, and social conditions of a woman and renders her life and livelihood practically nonviable. To grasp the impact of marital abandonment on women, we have to first understand the power of marriage in South Asian women's lives.

Traditionally in South Asian cultures, men provide women with identity and social standing. Hindu scriptures prescribe that an Indian woman must be reliant in childhood on her father, in youth on her husband, and in old age on her son.<sup>15</sup> Never is she supposed to be independent or living alone. This general ideology guides all Indian societies, with negligible variability observed across class, religion, caste, and region. Thus, a female is denied an independent status throughout her life span. Although

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<sup>14</sup> Personal communications with attorneys Anish Joshi, 29 June 2009 and Sheetal Patel, 6 July 2009, New Jersey.

originating from Hindu traditions, this dictum has seeped into nearly all other South Asian religious communities, such as Muslim, Christian, Buddhist, Sikh, and Jain. Much of the codes of socialization of females are guided by similar rules.

As typical in traditionally patriarchal societies, gender roles in South Asia are stringently dichotomous with women being relegated to ‘home’ matters such as child rearing, cooking, cleaning, and house-keeping, whereas men are in charge of the ‘outside’ work such as earning a living, politics, and making all important decisions in the family. Due to such gender role prescriptions, a wife’s complete dependency on her husband is encouraged and often actively imposed by disallowing her to work or even forcing her to give up a job if she has held one before marriage. In general, South Asian women are socialized to place complete trust on their husbands and to be reliant on them for their financial and social well being.

For the largest part of her life, adulthood, women’s marital status characterizes their existence, thereby making marriage the most important social institution for women. A woman who remains unmarried in her maturity has little standing in society, regardless of her educational achievements or occupational role. An unmarried adult woman has no social position and is deemed a ‘problem’ by her relatives and society alike.

Consequently, family members try to get a daughter married as soon as possible and at all costs.<sup>16</sup> By the same token, maintaining a marriage is given utmost importance with the main responsibility of preserving it resting on the shoulders of women. Once married, South Asian women know very well that they have to keep their marriage intact,

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<sup>15</sup> Bühler (1886).

<sup>16</sup> Dasgupta & Warrier (1996).

regardless of the conduct of their husbands.<sup>17</sup> And for this, they have to be ready for any sacrifice.<sup>18</sup> Thus, when a South Asian husband abandons his wife, either by deception and/or coercion, or without any way of securing legal justice, he jeopardizes her social, economic, and emotional viability. Such desertion can make a woman's future seriously unstable, if not totally unhinged.

We recognize that desertion of adult women in other communities may not carry the same import or have the same effect. At the most, abandonment of wives in many communities might be recognized as an unanticipated or callous breakdown of marriage. Nevertheless, even in worst-case scenarios, the possibility of finding legal representation to uphold their legal rights, regardless of the quality of such representation, remains with women. The distinction of such heartless divorce from abandonment in South Asian transnational cases lies in the deliberate obstruction placed in women's access to legal recourses and financial resources. In fact, South Asian immigrant men tend to abandon their wives in home countries specifically to thwart the women's efforts to find justice and assert their economic rights. South Asian wives abandoned by their immigrant husbands rarely have the opportunity to protect their interests and rights in U.S. courts and are frequently only the passive recipients of whatever legal decisions their husbands extract from the legal system.

Thus, in this paper, we have defined abandonment or desertion as an individual left without resources by another on whom s/he is dependent for social and financial survival. In the South Asian context, abandonment would entail the endangering of a woman's welfare, safety, and future prosperity, particularly by her husband's design to

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<sup>17</sup> Ahmad, Riaz, Barata, & Stewart (2004); Pinnewala (2009).

thwart her access to legal recourses and by his deliberate attempt to deprive her of her rightful financial (marital) and social assets.

### PURPOSE OF THE PAPER

The main goal of this paper is to explore various socio-legal aspects of abandonment of South Asian wives in their home countries by their immigrant husbands. Although the problem may plague most immigrant communities, for the scope of this paper, we are concentrating only on South Asian communities; that is, populations that have migrated from Bangladesh, India, Pakistan, Nepal, and Sri Lanka to North America. Again, the phenomenon of wife-desertion is certainly not confined to immigrants to the United States; rather, it occurs in all countries that have large migrant residents. But for our purposes, we are limiting our analysis to the U.S. context, with only some references to information from other Western nations such as England and Canada. Two important features of the type of abandonment of wives we are highlighting are deception and the deliberate infraction of women's legal rights. We will argue that these characteristics make such abandonment of women abusive and thereby, must be recognized as violence against them. In addition, we will make the case that the domestic violence advocacy community must expand the definition of violence against women to accommodate the reality of abandonment. In conclusion, we will offer a set of recommendations for practitioners and advocates to address the problem of abandonment of women.

### WOMAN ABUSE IN SOUTH ASIAN AMERICAN CONTEXTS

To argue for the recognition of transnational abandonment as a tactic of abuse by intimate partners, we need to elaborate the extent and nuances of domestic abuse in the

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<sup>18</sup> Although increasing at a rapid rate in recent years, India is supposed to have the lowest divorce rate in the world with only 1 percent marriages being legally terminated. See, *I Love India*. (2007, December 18).

South Asian American community in the U.S. Violence against women in South Asian immigrant communities came into focus in the mid-1980s. Although South Asian migration to the U.S. began in earnest in the early 1970s, the attitude of the community toward all internal problems particularly woman-abuse can only be described as oblivion and denial.<sup>19</sup> However, with the forming of *Manavi* in 1985 and many other similar organizations subsequently to attend to violence against women, the community's somnambulance came to an end. For the first time, such agencies began to highlight the fact that many women in South Asian American communities are subjected to physical, emotional, economic, and sundry abuses in their families and not only by their spouses. Family members, who arrive in this country and often reconfigure joint families on the U.S. soil, also participate in abuse of women, particularly of young brides.<sup>20</sup>

In addition to day-to-day battering of women, South Asian immigrant communities are not exempt from the specter of domestic violence related fatalities and near fatalities. Between 2000 and May 2009, there were 117 domestic violence related fatalities, near fatalities, and suspicious deaths of women, children, and men in South Asian American communities.<sup>21</sup>

Fatality and Near Fatality in the South Asian American Community  
(2000-May 2009)

	Murder	Murder/ Suicide	Attempted Murder	Attempted Suicide w/DV	Suspicious Death	Total
Women	41	2	14	3	2	62
Men	15	8	3	3	-	29
Children	20	-	6	-	-	26
TOTAL	76	10	23	6	2	117

<sup>19</sup> Bhattacharjee (1992); Dasgupta (2000); DasGupta & Dasgupta (1996).

<sup>20</sup> Men tend to be the primary immigrants in South Asian communities. According to virilocal or patrilocal rules, it is men's family members such as fathers, mothers, and brothers, who join them in the U.S. and reconstruct extended families in the new country.

<sup>21</sup> Collected by Shamita Das Dasgupta from news reports.

The common brutalities women suffer in the hands of their intimate partners and family members tend to take on different importance and nuances in South Asian cultural contexts. The abuse may occur across continents such as affinal family members living in the natal country might instigate their immigrant son to keep his wife ‘in line’ by denying her financial independence, taking away her children, or throwing her out of the home. Or, a man’s family members in the home country may directly harass his wife’s family there to put pressure on her in the U.S.

Many South Asian battered women frequently experience cultural contexts as barriers to disclosing abuse or seeking outside intervention, because they view their situations as predestined by ‘fate’ and/or their bid to escape abuse as a negative reflection on their families and religious traditions. Their ignorance of the laws that might protect them, services available to battered women, as well as discomfort with English language might also erect extra hurdles in their path to liberty. The recent immigration policies intended to track and deport undocumented individuals have also adversely impacted domestic violence survivors in the immigrant communities including the South Asian Americans. Due to these policies, battered women in general fear that if they report abuse, their spouses’ immigration process or statuses might be jeopardized, which may place their existence in danger also. Furthermore, women realize that such reporting would make the men including their sons and brothers in their own families vulnerable to deportation raids and expose them to their community’s wrath. Unfamiliar with the intricacies of legal procedures and rights in the host country, women also fear losing their children to state custody.

Conversely, not all forms of violence against women are universal. Even though most feminist theoretical perspectives accept that violence by male intimate partners is about exerting power and control over women, the tactics of such abuse materialize from the socio-cultural contexts of a nation. For example, gossiping and spreading rumors about a woman's character may not have the same impact in Euro-American cultures as it would in many Islamic and South Asian societies.<sup>22</sup> Vicious gossip might not only stigmatize a woman in these cultures, it might subject her to actual physical violence or even death. Murder of girls and women by family members in South Asian cultures as well as Islamic societies, popularly known as 'honor killing',<sup>23</sup> often occur because of swirling rumors about them rather than real transgressions. Other esoteric examples of woman-abuse may be found in immigrant populations.<sup>24</sup> For instance, among U.S. immigrants, a man's refusal to sponsor his wife's permanent residency papers is a commonly used method to exact her subservience. Such a threat has little meaning in other communities.<sup>25</sup> Thus, a valid definition of woman-abuse must emerge from a community's socio-cultural backgrounds and by taking into account women's lived realities.<sup>26</sup> The definition of abandonment we will be utilizing in this paper has surfaced organically from the lives of women in South Asian nations, whose husbands have migrated to foreign countries, particularly to North America.

#### UNDERSTANDING THE PROBLEM

*Savita and Kumar were married four years ago. Both had worked for the same multinational IT company in India but after their marriage, Kumar*

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<sup>22</sup> Dasgupta (2000), op.cit.

<sup>23</sup> Amnesty International (1999).

<sup>24</sup> Chin (1994); Shapiro (2002); Shetty & Kaguyutan (2002, February).

<sup>25</sup> Dasgupta (1998); McFarlane, et al. (2002); Shetty & Kaguyutan op.cit.

*insisted that Savita quit her job and concentrate on taking care of his parents and keeping house. About two years ago, his company transferred Kumar to the U.S. and provided him with a non-immigrant temporary worker visa (L1). Kumar left India with promises to sponsor Savita as soon as he settles down in the new country. A year went by but Savita did not receive sponsorship papers from Kumar. After a year and a half, Kumar visited India for two weeks and again promised to send papers for Savita's visa as soon as he returns to the U.S. After Kumar left, Savita's in-laws started to verbally abuse her and on couple of occasions, slapped and pulled her hair. Kumar's phone calls and E-mails also became less frequent. Within six months, Savita received a notice of divorce from a U.S. court but the time to respond to it had already passed. Savita realized she would be divorced within a short time. Kumar's parents insisted that she simply accept her fate and leave the home since their son does not want her anymore. Savita parents were not in a position to financially support her and the job market was quite difficult. Savita was virtually penniless, as she had transferred all her money in Kumar's name at his insistence. She wanted to travel to the U.S. to seek at least some alimony if not a good financial settlement. But Savita did not have a visa or money to travel to the U.S. She did not know how she could retain an attorney in the U.S. from India who would protect her interests. In desperation, Savita appealed to Indian courts and received a judgment for a small amount of interim spousal support. Even after delivering the court decree to her in-*

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<sup>26</sup> Erez, Adelman, & Gregory (2009); Narayan (1995).

*laws and sending the papers to Kumar by courier, she received no response. Instead, her in-laws became more hostile and started spreading rumors about her infidelity and quarrelsome nature in the community. Savita became severely depressed about the injustice being meted out to her. She also realized that her financial survival was at stake.*<sup>27</sup>

Desertion of wives and children has grown significantly in the wake of increased global worker mobility. Central to the success of globalization is migration of labor across national borders that were created to corral a country's citizenry within a distinct geographical space. Globalization, by definition, seeks to promote free movement of financial as well as human capitals rendering historically rigid boundaries porous at best. While finances are moved around the globe to capitalize on the best profit making opportunities, humans are assumed to travel on their own volition to seek out better job prospects and associated benefits. Proponents of globalization underscore the possibility of such uninhibited exchange encouraging rapid industrial growth in developing nations and generally ignore any inkling of harm generated by it. Although such 'free' movement allows women to seek their fortunes on more solvent grounds, it also places them in harms way, abandonment being not the least of these. Indeed, the changes globalization has brought into societies have also generated new forms of abuse of women.

Nonetheless, women's migration in the world is on the rise. According to United Nations (UN), there were around 100 million migrant women across the globe in 2005.<sup>28</sup> The number of immigrant women entering the U.S. has also been rising steadily between 1990 and 2007, increasing from 10.1 in 1990 to 18.9 million in 2007. Among the women

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<sup>27</sup> All case studies in this paper are composites from *Manavi's* files. Names and identifying information have been changed to protect individual confidentiality.

migrating to the U.S. in 2007, 27 percent was from Asia, including India and other South Asian countries.<sup>29</sup> In a 2009 study of 1002 immigrant women, including 30 percent undocumented residents, *New America Media* found that 74 percent of Asian Indian respondents to their survey had entered the U.S. between the ages of eighteen and thirty-five and 55 percent with their families.<sup>30</sup>

Furthermore, of all women entering the U.S. on non-immigrant visas in 2004, 73.2 percent<sup>31</sup> were issued derivative or dependent visas in the United States.<sup>32</sup> The ‘dependent’ or derivative visas impose serious restrictions on women. The women who have ‘dependent’ visas cannot earn in the U.S. by law.<sup>33</sup> That is, these women would have to rely upon the principle visa holders (read: their husbands), their visa sponsors, for economic survival.

The above statistics indicate that even though international policy dialogues primarily deal with migrant women as workers or refugees, a significant proportion of women traverse national boundaries as dependent fiancées; spouses of students, skilled, and unskilled workers; as well as wives of men permanently residing in the U.S.<sup>34</sup> Women who receive family-based visas as dependent of non-immigrant temporary workers, are literally required by United States Citizenship and Immigration Services (USCIS) to be ‘reliant’ on the men who sponsor them; a requisite that reinforces

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<sup>28</sup> New America Media (2009, February).

<sup>29</sup> Ibid.

<sup>30</sup> Ibid.

<sup>31</sup> Pearce (2006).

<sup>32</sup> Dependent visa is derived from the primary visa holder who has been issued a non-immigrant temporary worker permit.

<sup>33</sup> Exceptions are women on L-2 and conditional Green Cards.

<sup>34</sup> United States Citizenship and Immigration Services (USCIS) has several ‘family based’ visa categories such as H-4, F-2, O-3, J-2, M-2, and L-2. These visas are derived from family members, mainly spouses, who have temporary work-permits in the U.S. Furthermore, spouses of permanent residents are issued

stereotypical gender roles and women's subservience to their husbands.<sup>35</sup> As policy discussions typically focus on issues of workers of both genders and ignore the needs and difficulties of women on dependent visas, these women remain invisible and unheard in the U.S. society.<sup>36</sup>

As men and women migrate to foreign countries, the enjoyment and infringement of their rights occur in transnational spaces. By dictionary definition, transnational means, "extending or going beyond national boundaries."<sup>37</sup> By transnational space we mean a location that extends beyond the borders of a unitary country and encompasses psychological, legal, emotional, cultural, and economic areas spanning different nations. Due to such straddling of boundaries, special issues and problems arise for individuals and families who live in transnational domains. Consider for instance, the man who lives and works in the U.S. while his wife lives in India; the immigrant who travels back and forth between his natal and host countries and interacts in complex ways with people in both nations; or the expatriate who resides for prolonged periods in another country. The problems and harm that might arise due to the actions of such transnational actors in a different country than where they reside is difficult to define and resolve due not only to split jurisdiction but also differences in law, culture, and social mores. Anyone who has dealt with international parental kidnapping and the contradictory verdicts of two different court systems will easily understand the complications generated in transnational spaces.<sup>38</sup>

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conditional 'green cards' for two years, after which time and proof that the marriage is bona fide, the conditionality is removed.

<sup>35</sup> Char (2005, July); Kalita (2005, October 2); Shah (2005, September 2).

<sup>36</sup> Shah (2008); Bhuyan (2008).

<sup>37</sup> Merriam-Webster Dictionary (2009).

<sup>38</sup> CNN (2009, June 4); VOANews (2009, April 27).

Thus, transnational abandonment of wives is a particularly challenging issue because of the legal complications it generates, the difficulties in arriving at a just and appropriate solution, and the complexities in dealing with cultural expectations of different nations. In the South Asian American community, abandonment of wives in their natal countries by their immigrant spouses has been increasing steadily, making the phenomenon a critical transnational problem. The magnitude of the problem has alarmed service-providing agencies in both South Asia and the U.S. The problem has not gone under official radar either. At least one South Asian government, Government of India (GOI), has begun to take steps to address the problem even though the efforts are at a preliminary stage. Albeit all immigrant women, or women married to men who maintain habitual or permanent residency in the U.S., are considered to be particularly at risk, law, regulations, and service providing agencies have just started to deal with the realities of transnational abandonment.

#### EXTENT OF THE PROBLEM

Harpreet Kaur of Gurdaspur married Manjit Singh on April 26, 2000.

After staying with his bride for just two months, he left for California and never returned. He has since remarried and lives in the U.S. under a new name. Harpreet has been abandoned by her in-laws.<sup>39</sup>

Anecdotal evidence suggests that abandonment of wives is an issue that affects women worldwide. However, service providers, policy makers, and practitioners have just begun to wake up to the problem.<sup>40</sup> There is little systematic research in this area and most of the information that we have about South Asia comes from news reports and

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<sup>39</sup> Melwani (2005, February 28).

service providing experiences of non-governmental organizations (NGO) in both South Asia and the U.S. Even such data do not cover South Asia comprehensively. Much of what we know about the phenomenon emerges from India and the community of immigrants from India.

The reported number of transnationally abandoned women in India has reached staggering proportions. Nearly every Indian state has women deserted by nonresident Indian (NRI) husbands although not all such men are immigrants to the U.S. A significant number of men who have migrated to other countries including Canada, U.K., Europe, and the Middle East have also deserted their wives and children in India. By a 2004 estimate, approximately 12,000 women were abandoned in the state of Gujarat,<sup>41</sup> and according to a 2007 study, an estimated 25,000 women have been left behind in the state of Punjab.<sup>42</sup> In 2008, India's minister for Overseas Indian Affairs, Vayalar Ravi, stated that in Punjab alone, at least 20,000 legal cases were pending against NRI husbands, presumably for abandoning their wives.<sup>43</sup> In Canada, there may be as many as 10,000 runaway grooms.<sup>44</sup> However, the official estimates do not necessarily tally with the non-governmental numbers. According to Government of India's estimate, émigré husbands have abandoned at least 30,000 women in India, a number significantly less than what newspaper reports and NGOs suggest.<sup>45</sup>

Between 2004 and 2007, during my (Shamita) several stints of consultation with law enforcement in Punjab, the U.S. state departments in Chennai, Delhi, and Kolkata,

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<sup>40</sup> Khosa (2006, October 19); National Commission for Women (2006); The Times of India. (2008, July 14); UNI (2007, February 21).

<sup>41</sup> NRI Internet. (2004, November 23).

<sup>42</sup> Malhotra & Malhotra (2007, February 14).

<sup>43</sup> Joseph (2008, October 3).

<sup>44</sup> Ward (2005, April 23); Ward (2005, April 22).

<sup>45</sup> Singh (2007, October).

India, a major topic of conversation with officials, media, activists, and community members was the plight of abandoned women.<sup>46</sup> The complaints swirled around the insensitivity of the U.S. legal system to the preservation of women's rights and its inability to hold absconding husbands accountable. By the accounts of the Punjab police at the time, there was at least one abandoned woman in every household in a number of villages in the state. Regardless of the actual figures, there is little doubt that the number of wives abandoned by NRI husbands is appallingly high. An added outrage is that the overwhelming majority of these women have had to withstand their husband's desertion without legal help or social recognition. Many are forced to live with their in-laws as virtual servants to avoid destitution and suffer social indignities as well as abuse silently.<sup>47</sup> Some women are bringing up children who have never seen their fathers<sup>48</sup> and a few have committed suicide to avoid social shame and resultant uncertainties.<sup>49</sup>

South Asian women's agencies in the U.S. have also begun to receive large numbers of requests for assistance from women abandoned in India as well as other countries in South Asia. Such appeals usually come from the women directly or from advocacy agencies that are working with them. Most South Asian American women's advocacy organizations guess that between 10 and 20 percent of their work now involves women deserted transnationally. Although all countries in South Asia have abandoned women, the majority of pleas are from nations that send large numbers of immigrants to the West: India, Pakistan, and Bangladesh. As immigration from Nepal increases, the

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<sup>46</sup> I (Shamita) was a consultant with the Punjab Police on the development of Community Policing (June 2004), and with the U.S. State Department in Chennai, Kolkata, and Delhi on domestic violence issues (October 2006, October & November, 2007, and November 2008).

<sup>47</sup> Abraham (2003, July 27).

<sup>48</sup> The Telegraph (Calcutta) (2007, October 31); Melwani op.cit.; Singh (2003, January 10).

<sup>49</sup> Human Rights Tribune (2007, August 22); NRI Internet (2004, November 24).

country is also witnessing a rise in abandoned women.<sup>50</sup> Between 2006 and 2008, approximately 5 percent of all cases handled by *Manavi* was of transnationally abandoned women and of these, 90 percent originated in India, and 10 percent from other South Asian countries including Pakistan and Bangladesh.

#### PATTERNS OF ABANDONMENT

Transnational abandonment of wives tends to fall into two different categories:

1. Desertion of women who are already married before their husbands migrate and women who marry immigrant men returning to their home countries to find a bride. Both groups may never receive visa sponsorship papers and are abandoned in their home countries. Thus, they are never allowed to join their husbands abroad; and
2. Women married to immigrant men and living in the U.S. with their husbands who are deceptively and/or forcibly taken back to the home country and deserted without permits to re-enter the U.S.

In the first situation, women who are already married may be left behind in the home country by their migrant husbands with the promise that they will send their wives travel papers as soon as possible. The couple may keep in touch for a while and the wife might receive periodic financial support. However, both the contact and financial support dwindles as time goes by and ultimately dry up completely. At this point, the men may disappear altogether leaving no clue for their wives to find them in the U.S. Alternately, some husbands may even visit their wives a few times on vacation, placate them with fresh assurances of sending visa sponsorship, and leave again.<sup>51</sup>

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<sup>50</sup> Personal communication with Ms. Sapana Pradhan Malla, attorney and member of Nepal's Constituent Assembly at the first conference of Nepali Women's Global Network (NWGN), August 9, 2008, University of Connecticut, Storrs, CT.

<sup>51</sup> ANI. (2004, March 19).

A variation of the above setting is the immigrant man who returns to his home country to marry and leaves with promises to send for his wife soon. Again, no visa sponsorship papers arrive for the women. Most of these marriages are quick arrangements, as the men arrive in their home countries on short holidays and get married in split second decisions. Hence, these women have acquired the label ‘holiday brides’.<sup>52</sup> In both the above scenarios, women are left in limbo without any way of contacting their husbands or knowing what to do next. Many women keep waiting with the assumption that their husbands may be in difficulties beyond their control.

The second pattern of abandonment entails women who are already living in the U.S. with their husbands and are deceived into returning to the home country for a visit either alone or accompanied by their husbands. They may also be tricked into trusting their husbands with their travel papers. Once in the home country, the men may destroy their wives’ passports and visas to intentionally block their re-entry into the U.S. and depart without notifying their spouses. Without valid travel documents, these women are helpless and trapped in their home countries without any reliable recourse. Once the husbands are back in the U.S., they routinely withdraw sponsorship for their wives’ dependent visas, diminishing the women’s options further and leaving them virtually no way of returning to the U.S. Women are often so flabbergasted by this betrayal that they do not know how to repair not only the relational rift but also the problem of uprooted residency.

*Naaz accompanied her husband Javed, a skilled temporary worker on H-1B visa, to the U.S. two years ago. As a ‘dependent’ H-4 visa holder, Naaz*

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<sup>52</sup> Ghosh (2005 March 6); The Asian Pacific Post. (2004, October 21); Vohra & Nagarajan (2004, December 3).

*was not entitled to apply for a social security number or authorization to work. Even as the relationship turned abusive, Naaz felt that she had very little option but to endure, especially since her family insisted that she should try to save her marriage. When Javed proposed that they return to their home country for a visit and to mend their relationship, Naaz agreed readily. After reaching their destination airport, Javed asked her and their daughter to wait while he rented a car. When hours passed, Naaz became worried and only after distressing inquiries found that Javed had taken the flight back to the U.S. leaving them behind. Her and her child's passports, visas, as well as all money were with Javed.*

Of course, women who are on dependent visas in the U.S. do not necessarily have to be taken back to their home countries to be abandoned. Many women on dependent visas are evicted from or surreptitiously locked out of their homes in the U.S. by their husbands and/or their families. At times, men may disappear without notice and leave their wives with multiple financial obligations but no resources, and no possibility of making it on their own due to visa related employment restrictions.<sup>53</sup> Additionally, husbands may withdraw their sponsorships and render the women out of status and thereby, deportable. Although the plights of women abandoned in the U.S. and in South Asia look similar at first glance, there is a profound difference between the two situations. The option of seeking legal actions, divorce, and financial settlement under the U.S. family law remains open to women abandoned in the U.S. This is not the case with

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<sup>53</sup> Although Violence Against Women Act (VAWA) reauthorized in 2005 (PL. 109-162) allows battered individuals on H-4 visa to apply for work authorization on the basis of abuse by their H-1B visa holder spouses, abandonment has not been included in the list of brutalities.

women who have been abandoned in their home countries. For these women, seeking appropriate legal intervention in either the U.S. or their home countries is a chimera.

Dowry, Desertion, Divorce, and Barriers to Justice

A prospective groom carries great status in India if he is a permanent resident or citizen of a Western country... After the bride's family pays an initial dowry and the wedding takes place, the groom usually returns to the West, promising to file papers for his new wife so she can join him. But in growing number of cases, once the groom is safely back home, he or his family typically demand a new dowry ranging from \$5,000 to \$50,000 (or more). The woman's chances of joining her husband are tied to her parents' response to the extortion, who are typically unable to comply. In most cases, the women wait, and not only do the papers never come, but all contact with their husbands is lost.<sup>54</sup>

South Asian women are often abandoned in the contexts of domestic violence and dowry extortion. The threat or the act of abandonment itself may be means to extort dowry from the bride's parents. Often the amounts of dowry demanded are exorbitant<sup>55</sup> and never ending. Many husbands abscond after extorting dowries repeatedly and leave their wives in their home countries to search for them in vain.

Along with coercion for dowry, the problem of transnational abandonment of wives is integrally linked to the termination of marriage. In the majority of cases, after abandoning their wives in their natal countries, men initiate divorce proceedings in the

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<sup>54</sup> CBC: The passionate eye (2005, April 20).

<sup>55</sup> Abraham op.cit.; Khan (2004, October 15); Ward (2005, April 23) op.cit.

U.S.<sup>56</sup> The process of such divorce is fraught with problems for women who are deserted outside the country. In many cases, the women may never receive the notice of filing, a copy of complaint, and the notice of appearance. Although service of such notices is a necessary step for valid divorce in the U.S., men's families or other hostile parties may suppress such notices and/or forge the recipient's signature to indicate legally binding acceptance. Frequently, the divorce notices are served improperly; that is, not personally. Even when the notice is served properly, it may reach a woman late with only a couple of weeks at hand to respond. Most women tend to be ignorant of the U.S. laws and often do not have easy access to legal advice in their home countries. The majority of local attorneys may also be unfamiliar with the U.S. family law and its intricacies. In countries like India where family law allows one party of a married couple to contest divorce petitions, even after receiving the divorce notice, a woman may not comprehend that by refusing to receive or respond to a divorce notice from the U.S. court, she allows the divorce to be concluded by default and ex-parte after the required elapse of time. Used to the slow moving Indian legal system, many attorneys do not anticipate the fast pace of the U.S. courts. One attorney in Kolkata, India, whose client had been abandoned by her NRI husband and then served with a divorce notice, expressed surprise at the speed at which courts work in the U.S. By the time her client had contacted her and she had made time to complete an intake, the six weeks allowed to her client by the U.S. court to respond had already expired. Before they could design a response strategy, her client received an ex-parte divorce decree.<sup>57</sup>

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<sup>56</sup> In the U.S., modern law entitles a resident individual to seek divorce on grounds of 'irreconcilable differences' without finding faults with the other spouse. U.S. law recognizes that it is enough for one spouse to seek to end a marriage, for the marriage to end, without stating reasons for divorce.

<sup>57</sup> Personal communication with attorney Madhupurna Ghosh, October 2007, Kolkata, India.

Receiving ex-parte divorce<sup>58</sup> is a rule for women abandoned outside the U.S., rather than an exception. It is more than likely that immigrant men abandon their wives in their home countries to privilege their own interests and ensure women's nonparticipation in the divorce proceedings. Without adequate financial resources to travel to the U.S., any means of obtaining a travel visa, or with their traveling papers destroyed,<sup>59</sup> women have little chance of responding to the court notice of appearance in person.<sup>60</sup> Neither can they hope to retain an attorney in the U.S. who would represent their interests and legal rights in court.<sup>61</sup> Thus, most women are forced to accept an ex-parte divorce without protest. By their non-response, the women are perceived by the U.S. courts to forego spousal support, equitable property settlement, as well as child support.<sup>62</sup> For the women, the barriers to demanding reasonable justice in the U.S. seem so convoluted and formidable that the majority relinquish after ineffectually knocking on many doors.

However, the repercussions of such ex-parte divorce are far reaching on South Asian women's lives. The consequences of abandonment and subsequent divorce extend to women's social, economic, and emotional disenfranchisement. The stigma of divorce is still profound in South Asia, particularly on women. When a waiting bride is never allowed to join her émigré husband, she may be socially branded as a total failure and

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<sup>58</sup> Ex-parte divorce occurs when only one party participates in the divorce proceedings. By Full Faith and Credit Clause of the U.S. Constitution, a divorce granted in one U.S. state is recognized in all other.

<sup>59</sup> If a woman has Conditional Green Card and her papers have been destroyed, she can reapply without assistance from her husband. If the abandoning spouse has permanent residency or U.S. citizenship, the abandoned woman can self-petition for permanent residency under VAWA by proving abuse. Unfortunately, none of these options are available to women who are on dependent visas.

<sup>60</sup> Ghosh (2005, May 30), op.cit.

<sup>61</sup> Even if a woman can retain an attorney in the U.S. to represent her interests in a divorce case, it is not enough. It is important to appear in person otherwise the other party has a better chance of bargaining and negotiating. Personal testimonies are important in presenting one's side of the story and persuading the judge. Sometimes the woman can call in on preliminary matters but not substantive ones. Personal communication with attorney Anish Joshi, op.cit.

<sup>62</sup> In some states such as New Jersey, abandonment/desertion constitute grounds for divorce but not for seeking alimony or maintenance. Ibid.

someone who cannot please her husband and in-laws. The divorce only adds fuel to this maligning of reputation. For women who have been living in the U.S. and brought back to their home countries and discarded, the consequences might be even worse. Away from the community's eyes, relatives and neighbors might decide that the women may have transgressed badly from their 'good wife' roles, and hence been rejected. In both cases, women's social standings and their safety are placed at risk. As women unwanted by their husbands, they are considered disposable by the rest of the society.

The effect of such public disgrace is emotionally calamitous on South Asian women. Most are traumatized by their husband's duplicity and at loss about their present and future status. Many do not quite understand the proceedings in a foreign land that have rendered them divorced and their own powerlessness to effect any change. One of the burning questions for the women is, "Why was I abandoned?" Most believe that by no fault of their own, they have forever lost the chance to lead a fulfilling life as a woman, wife, and mother. Preeti Sandhu, a mother of two who had been abandoned at the New Delhi international airport by her NRI husband, stated to a reporter, "Where will I go?... Can I be a burden on my brother? Who will marry me at this age?"<sup>63</sup> A young wife whose husband sent her an ex-parte divorce judgment out of the blue after promising to take her to the U.S., forlornly lamented to me (Shamita), "My life is now finished." In addition to personal distress, the women view the U.S. legal system as unjust and biased with no intention of exacting accountability from men who have cruelly treated and fraudulently divorced their wives. In a rather unique case, an abandoned woman in India who received an ex parte notice of divorce managed to secure a temporary worker visa to the U.S. and sought consultation with a lawyer. When she realized that she was entitled

only to a paltry sum of alimony since her marriage was of short duration and she was a workingwoman, she broke down in tears and asked me (Urjasi), “So, he can simply get away with it after ruining my life? Where is my justice?”

A significant number of wives abandoned by their husbands in their home countries in South Asia end up financially dependent on their in-laws and parents. Often, they have to exchange servitude for the survival of their children and themselves. Others, who may be educationally qualified and become financially independent, are also not spared social ostracism. Such financial dependence and emotional strain prevent women from seeking legal justice locally and transnationally.

Muslim women, on the other hand, have to deal with an added burden and complication. In South Asian Islamic societies, polygamous marriages are recognized. But when men immigrate to Western countries where multiple marriages are illegal, they may be able to sponsor only one of their wives while the others, second, third or subsequent wives, become vulnerable to abandonment and resultant socio-economic deprivation. Once deserted by their immigrant husbands, these women’s children may grow up without knowing their fathers.

When deserted for a long time, some women seek intervention of Indian courts, particularly to receive some sort of financial support from their NRI husbands. Some women file lawsuits against their abandoning spouses on the basis of dowry extortion (IPC 304b) and matrimonial cruelty (IPC 498a), but the cases remain pending when non-resident husbands do not respond to court issued notices to appear in person.<sup>64</sup> Given the reluctance of Indian women to expose ‘private’ information to the ‘public’ world and the

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<sup>63</sup> Vij (2005, June 10).

<sup>64</sup> Ghosh, T. (2005, May 30), op.cit; National Commission for Women, op.cit.

historical mistrust of law enforcement and the legal systems, such lawsuits are rare events rather than widespread phenomenon. Unless a woman's family utterly supports such a move both financially and emotionally, it is highly unlikely that she can even initiate such a step. Although Indian courts are more likely to quickly allocate a small amount of interim maintenance for the women, implementation of these judgments are apt to be impossible in another country.<sup>65</sup> Allotment of permanent maintenance or divorce in Indian courts also tend to be unattainable as the NRI men do not appear in court by seeking continuance interminably and the incredible backlog of cases congesting the Indian legal system.<sup>66</sup> On the other hand, women who dare to take their husbands to court, may become more vulnerable to abuse and harassment not only from their affinal families but also their communities.

#### CITIZENSHIP AND TRANSNATIONALLY ABANDONED WOMEN

Although the extent of the physical, legal, and emotional repercussions abandoned South Asian women face has been explored to some degree, we have not ventured into the issues of the changing characteristics of citizenship and consequent problems massive human migration has generated. Traditionally, citizenship is defined as a claim of a nation-state on individuals either born on its soil or historically living within its borders. Furthermore, children of a nation's citizens can also attain the same through their parent/s' status. Thus, children of a Pakistani parent (even if born outside of Pakistan)

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<sup>65</sup> Often, divorce cases can be reopened within a year by proving lack of proper service. At that point, courts might ask whether the decision has to be vacated or a modification of the final judgment would be adequate. Courts tend not to give up jurisdiction if proper notification has taken place. The validity of a foreign decree would have to be certified by the embassy/consulate before being registered in a U.S. court.

<sup>66</sup> Indian court system is supposed to have a backlog of nearly 30 million cases, which have virtually clogged up the system irrevocably. See, Lal (2008, June 29).

will automatically be considered a Pakistani citizen.<sup>67</sup> A nation-state is supposed to bestow certain rights and privileges equally to all its citizens without being requested and withhold the same from non-citizens. Thus, the relationship of a citizen to the nation-state is that of membership, an in-group as opposed to the out-group of non-citizens. But citizenship is not only about rights and privileges; it also has an emotional component, where citizens feel a belongingness and identity, often mixed with pride. For instance, a citizen of Sri Lanka not only enjoys the rights of being a member of the nation-state Sri Lanka, but also feels an emotional identity of being Sri Lankan. Whether a person discharges his/her civic duties of voting, military services, etc., unless these are mandatory, s/he remains a citizen of a country and may always enjoy the rights bestowed by the nation-state upon him/her. Ultimately, citizenship is a rights-giving institution and a legal status.<sup>68</sup>

A nation-state retains claim on its citizens by punishing or rehabilitating the individual for illegal activities and contravention of its laws. The state, and only the state, is the legitimate dispenser of authoritative justice via its legal system. Consider the case of a citizen thief who violates the state's laws against appropriating others' properties. The state is the unquestionable authority to punish the person according to its laws and by a well-recognized process. In fact, this singular right to manage its citizenry without outside interference speaks of a nation-state's sovereignty, an integral part of being a rights-giving institute.

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<sup>67</sup> This is generally true with some notable exceptions. For example, women in Nepal cannot confer citizenship to their spouses or offspring in contrast to Nepali men. Thus, one cannot acquire citizenship through a Nepali mother or wife but needs to be sponsored for citizenship by a Nepali male.

<sup>68</sup> Hobbs & Chernotsky (2007); Lagos (N.D.).

But problems arise when citizens of a nation-state are on the move, leaving its geographical boundaries and scattering all over the globe. Who, then, becomes the ultimate legal and rights providing authority? Traditionally, a nation-state is assumed to retain sovereign claim over its citizens regardless of where they reside until an individual citizen chooses to formally relinquish his/her citizenship and accept that of another state. But the host nation-state also asserts claims over all individuals within its geographical boundaries to ensure that its resident population abides by the laws of the land. Although this position is unambiguous in regards to criminal conduct of an individual,<sup>69</sup> it remains imprecise when dealing with family law, particularly when jurisdiction is split between the host and the home countries. Consider the situation of a married couple with one person living in the U.S. and the other in Nepal. If one of the parties decides to seek divorce, which jurisdiction should take primacy – Nepal or the United States? The problem becomes treacherous if the person living away, notwithstanding where the divorce has been filed, can neither appear in court nor retain an attorney due to financial insolvency and/or unavailability of a travel permit.<sup>70</sup>

Thus, when large numbers of citizens leave the borders of one state and enter that of another as non-citizens, the quandary of who has the right over their behaviors not only in the country of their residence but also in the country of their origin, becomes intense. Consider the case of a person who leaves India, his country of origin, and

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<sup>69</sup> In most cases of criminal behavior, the laws of one's domicile tend to take precedence over that of one's country of origin. However, this is not without confusion and controversy as witnessed in many cases involving immigrants. Let us take the example of physical disciplining of children by parents. Every nation-state has laws and mores about who can discipline, how much is tolerable, and up to what age of the child such disciplining is acceptable. Many South Asian immigrant parents end up in criminal court and with child protection services due to conflicts between the laws of the U.S. and their countries of origin.

<sup>70</sup> Women can obtain B-2 (tourist) visa to come to the U.S. for short stay by showing the Notice of Appearance to the U.S. Consulate. In addition, they have to show the ability to maintain themselves in the U.S. during their stay. The maximum length of the stay allowed under B-2 visa is six months.

migrates to the U.S. where he has a job. Even though he makes good money in the U.S., he refuses to financially support his indigent parents, thus endangering his elderly parents' well-being. By Indian law, his conduct is punishable but in his country of residence, this is not a legal infraction that is susceptible to prosecution. In this instance, which set of laws has claim over this person? In effect, laws and policies are playing catch-up to the rapid changes in migration and its ensuing tribulations. The emergence of dual or multiple citizenship and overseas citizenship are efforts to accommodate the members of a nation-state who live outside its designated territory. In essence, mass migration and its concomitant issue of jurisdictional control has rendered modern citizenship non-national.<sup>71</sup>

Nonetheless, coexisting citizenships tend not to operate equally at all times. The citizenship of a person's resident state generally takes precedence over the other/s. That is, the laws and rules of a person's habitual domicile are given dominance even when he has dual citizenship or his legal citizenship remains with another country. However, which state (resident or of origin) has rights over regulating a person's conduct, which has affected another person's safety and living when the latter is residing in another country, remains an open question. Which structure of law should bring the first person, who has imperiled the life of another in a different country, to justice? By the same token, which citizenship rights should be in effect when a person's spouse, who resides in a country other than where this person lives, invokes the rights of that nation-state against him? Could the spouses enjoy equal citizenship rights of both their countries of residency or would they have to be satisfied with the rights of their individual country of residence even when one's exercise of rights (in one country) is damaging the rights of the other (in

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<sup>71</sup> Hernández-Truyol & Hawk (2005); Hernández-Truyol & Rush (2000).

another country)? For example, consider the case of a NRI living in the U.S. who seeks to divorce his wife in India and due to her inability to appear in court (not by her intentions), he receives an ex-parte decision. The wife receives no financial settlement or support, as she is unable to appear in court and defend her interests. How should the courts deal with this situation? By disallowing this woman to come to the U.S. and represent her interests, whether due to immigration and/or financial obstacles, the U.S. courts have practically chosen to trample on her human and legal rights. In such a situation, how could the wife's rights be preserved without forcing the man to remain married? How can we settle these contradictions and safeguard human rights, particularly in cases of the traditionally disempowered, the poor, the minorities and marginalized, and women?

Thus, it is important to recognize that when abandonment is transnational in nature, it poses multiple and inter-related barriers that are legal, social, and systemic. The primary issue to resolve is that of split jurisdiction. That is, when women are abandoned in one country and their husbands reside in another, which nation's laws should make decisions about the dissolution of their marriages, maintenance obligations, and child custody? In the U.S., the assumption that family law jurisdiction must be based on the residency of the petitioner has become manifestly inadequate as it is founded on a now obsolete notion that both parties in a marriage live in the same state. Today's couples do not necessarily live in the same country, let alone the same state.

#### SPLIT JURISDICTION AND ABANDONED WOMEN

The issue of split jurisdiction becomes even more pronounced when the courts in the two countries involved have disparate laws and pass conflicting judgments. For example, an abandoned wife in India may seek legal remedy by filing for the restitution

of her conjugal rights. The ‘Restitution of Conjugal Rights’ law in India stipulates that when one spouse withdraws from the marriage without “reasonable” excuse, the aggrieved party may petition in court to restore the marital relationship under Section 9 of the Hindu Marriage Act of 1955. The expectation is that the couple must give the marriage another try by living together in their matrimonial home. The burden of proof that the withdrawal from marriage was reasonable rests with the party who withdrew from it.

When either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, the aggrieved party may apply, by petition to the district court, for restitution of conjugal rights and the court, on being satisfied of the truth of the statements made in such petition and that there is no legal ground why the application should not be granted, may decree restitution of conjugal rights accordingly.<sup>72</sup>

Indian courts have interpreted withdrawal from marriage as cessation of cohabitation by a married couple and provide for periodic payments by the withdrawing spouse to the holder of the conjugal rights petitioner if the decree is disobeyed, thereby ensuring some degree of financial support for the abandoned spouse.

However, in cases of transnational abandonment, an abandoned wife may file for restitution of conjugal rights in India and receive a decision in her favor, while a U.S. court may concurrently grant an ex-parte divorce in response to the U.S. resident husband’s petition.<sup>73</sup> In the U.S. case, the wife may end up without any monetary awards

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<sup>72</sup> Net Lawman. (N.D.).

<sup>73</sup> In the U.S., courts would generally stop divorce proceedings if there were a similar case already pending in another country. Such considerations become problematic when the cases are not exactly parallel such as restitution of conjugal rights versus divorce. Personal communication with attorney Sheetal Patel, op.cit.

and maintenance based on her non-participation in the proceedings. Case laws from Indian High Court and Supreme Court further highlight this conflict of jurisdiction.

In *Harmeeta Singh v Rajat Taneja* (102 (2003) DLT 822), the Indian High Court passed an order of restraint against the husband to stop him from continuing with divorce proceedings in the U.S. while a maintenance case was going on in India filed by the abandoned wife. The High Court asked the husband to present a copy of this order to the U.S. court and observed that if he still obtained a divorce from the U.S. courts, such a divorce would not be recognized in India. Since under Section 44A of the Indian Civil Procedures Code (CPC) the United States was not a “reciprocating territory,” orders issued by a U.S. court would not be automatically recognized by the Indian court.<sup>74</sup> As per CPC, foreign decrees from non-reciprocating countries must be filed in Indian District courts to seek recognition and enforcement.<sup>75</sup>

Section 44A of the CPC provides for execution of decrees passed by courts in a reciprocating territory. It lays down that where a certified copy of decree of any of the superior courts of any reciprocating territory has been filed in a District Court, the decree may be executed in India as it has been passed by the District Court. Government of India has notified Singapore, Malaysia, UK, New Zealand, Hong Kong and Fiji as reciprocating territories.<sup>76</sup>

In a similar case, the Supreme Court of India refused to recognize a divorce decree obtained by the abandoning spouse from a Circuit Court in Missouri. The Circuit Court in Missouri had issued the decree on the basis that the marriage was “irrevocably

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<sup>74</sup> National Commission for Women, op.cit.

<sup>75</sup> [Vakilno1.com](http://Vakilno1.com) (2000-2007).

broken” and the petitioner had fulfilled the minimum requirement of residence having lived there for ninety days prior to filing for divorce. The Supreme Court of India observed that “habitual residence” should not mean a temporary residence that can merely serve the purpose of obtaining a divorce decree and ruled, “The jurisdiction assumed by the foreign court as well as the grounds on which the relief is granted must be in accordance with the matrimonial law under which the parties are married.” The court itself laid down the only three exceptions to this rule:

- (i) Where the matrimonial action is filed in the forum where the respondent is domiciled or habitually and permanently resides and the relief is granted on a ground available in the matrimonial law under which the parties are married;
- (ii) Where the respondent voluntarily and effectively submits to the jurisdiction of the forum as discussed above and contests the claim which is based on a ground available under the matrimonial law under which the parties are married;
- (iii) Where the respondent consents to the grant of the relief although the jurisdiction of the forum is not in accordance with the provisions of the matrimonial law of the parties.<sup>77</sup>

Unfortunately, the problems of jurisdictional conflict and legal contradiction are not resolvable by unilateral ruling about choice of applicable law for dissolution of marriage and establishment of maintenance obligation. Rulings such as the Indian Supreme Court decision quoted above can only go so far, and its enforcement in the

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<sup>76</sup> Embassy of India (N.D.).

<sup>77</sup> National Commission for Women, *op.cit.*, pp. 22-24.

transnational context will remain elusive if the abandoning spouse refuses to submit to Indian jurisdiction and cannot be extradited. When abandonment and dissolution of marriage occur in transnational arenas, bi-lateral, multilateral, and/or international agreements are required to clarify the choice of applicable laws that protect the rights of both the petitioner and the respondent.

#### FINANCIAL SUPPORT AND ABANDONED WOMEN

The enforcement of support/maintenance judgments in the country of their residence is of crucial importance to deserted South Asian women. Without court ordered alimony or maintenance, most abandoned women and their children slide to the edge of poverty. Professor Barbara Stark states about enforcement of maintenance obligations,

On the national level, Western States have established sophisticated data banks to track obligors. A creative range of enforcement mechanisms, from attaching tax refunds to revoking driving licenses, have dramatically improved compliance. Internationally, however, there is no coordinated support system. States have developed very different approaches to the matter, which complicate efforts to create such a system.”<sup>78</sup>

As we have discussed above, in South Asian societies, dissolution of a marriage poses severe economic and social burden on women. The parents of the abandoned women may have given substantial amounts of dowry in cash and kind to grooms and their families during the marriage with the cultural expectation that they would henceforth be free of their daughters’ responsibilities. Furthermore, women may have renounced their careers or higher studies to fulfill traditional matrimonial duties. The economic burden imposed by divorce on women, however short the marriage, is therefore

significant in the socio-economic context of South Asia. South Asian courts are cognizant of this social condition and are usually responsive to the needs of abandoned wives who request legal intervention to obtain maintenance from their reneging husbands.

Conversely, the U.S. courts tend to typically grant spousal support based on age,<sup>79</sup> the length of marital cohabitation, and women making a case for their needs.<sup>80</sup> Although there is a concept of rehabilitative alimony for short-term marriages in most of the U.S. states, it is not easy to obtain. The person claiming such maintenance must justify the need and explain how the money will be used to enable him/her to become self-sufficient.<sup>81</sup> South Asian wives abandoned in their home countries, living only for short periods with their husbands, and powerless to appear in U.S. courts to plead their interests are likely to be losing out on any sort of financial maintenance or compensation agreements.<sup>82</sup> They are especially disadvantaged in the U.S. legal system unless the courts are fully informed of South Asia's unique cultural perspectives and socio-economic realities. Furthermore, maintenance decisions made in women's favor in Indian courts are nearly impossible to execute in the U.S., often because the men have disappeared without a trace and also because the U.S. legal system tends to ignore

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<sup>78</sup> Stark (2006, November 1).

<sup>79</sup> U.S. courts typically assume that healthy individuals under the age of forty should be able to earn a living and therefore, not entitled to permanent spousal support. Spouses over the age of forty or incapacitated in some way may receive permanent maintenance to uphold their standards of living during marriage. Courts are also inclined to provide rehabilitative alimony instead of permanent ones for spouses to learn marketable skills after which, they are supposed to earn an income.

<sup>80</sup> The American Law Institute has proposed to reconceptualize alimony as compensation for (financial) loss rather than need-based relief. Such compensation will be most relevant when the marriage has been sufficiently long, the divorce will impact the standard of living, and when one spouse has incurred financial loss by not investing in career building and being the primary caregiver of children. See, Stark (2005), p.195.

<sup>81</sup> Personal communications with attorneys Anish Joshi and Sheetal Patel, op.cit.

<sup>82</sup> Abandonment may be considered grounds for divorce but has no impact on financial award. Also, there is no fixed formula for calculating alimony but there is one for calculating child support. While none of the attorneys we interviewed gave a precise definition of a short-term marriage, but anything between one and three years may be considered a short-term marriage. Ibid.

decisions of Indian courts. Ambalika Roy, attorney and coordinator of Human Rights Legal Network in Kolkata, India, stated that they have nearly always failed to implement court decisions for maintenance and child support against NRI men in the U.S.<sup>83</sup>

A few attorneys we interviewed in the U.S. remarked that U.S. courts might recognize a foreign decree related to divorce or maintenance if it is presented in the prescribed and timely manner and interpreted clearly as a judgment on a parallel issue.<sup>84</sup> Ms. Sheetal Patel, an attorney in New Jersey, explained that when there are equivalent cases filed on the same issue, the jurisdiction of the country where the first case was initiated takes precedence.<sup>85</sup>

However, a serious complication arising out of women's economic marginality is their inability to access legal representation during divorce proceedings in the U.S. Even if women can obtain a visa to enter the U.S., which is indeed a substantial hurdle, they have to find money for airlines tickets and expenses for their board and lodging for the duration of the legal proceeding. The majority of women abandoned in South Asia are too poor to accomplish this objective. Furthermore, women's impoverished conditions continue to compromise their attempts to retain attorneys in the U.S. Unfamiliar with the country and its legal system, overcome by language barriers, daunted by finding adequate resources to travel to the U.S. and living expenses for the duration of the legal proceedings, and overwhelmed by the task of finding a trustworthy and affordable lawyer, women give up all hopes for securing just treatment in U.S. courts.<sup>86</sup> In spite of

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<sup>83</sup> Personal communication with attorney Ambalika Roy, HRLNKol, 23 June 2009, Kolkata, India.

<sup>84</sup> Personal communication with Joshi, *op.cit.*

<sup>85</sup> Personal communication with Patel, *op.cit.*

<sup>86</sup> Attorneys in the U.S. also find that working on cases of women living outside the country difficult. According to attorney Shelly Agarwala, these difficulties include not having steady and easy contact with clients, working on long distance calls, lack of language interpretation and accessibility, as well as finding relevant information. Personal communication with attorney Shelly Agarwala, 26 June 2009, New York.

such crushing odds, abandoned women in South Asia try hard to defend their rights and seek justice. Unfortunately, when women are unable to exercise their right to representation during dissolution of their marriage in the U.S., they miss out on obtaining spousal and/or child support that is rightfully theirs.<sup>87</sup>

In addition, there is no specific immigration relief available for transnationally abandoned wives. There have been only a few cases where women have successfully secured immigration relief under the Violence against Women Act (VAWA) since their abandonment was accompanied by compelling evidence of domestic violence. For most abandoned women, obtaining a visa (generally tourist/visitor) to come into the U.S. is an intimidating proposition, since they may not be able to meet the documentation requirements for the visa and the prohibitive cost.

#### DOES INTERNATIONAL LAW HAVE A ROLE TO PLAY?

Indubitably, the foremost legal challenge that transnationally abandoned women face is the problem of jurisdiction when the habitual residences of the spouses are in different countries, thus rendering judicial or administrative decisions virtually unenforceable. A woman may be abandoned in India, and claim maintenance there, while her husband may file for and obtain an ex-parte divorce in the U.S. without providing her with any maintenance. Which court has jurisdiction over his behavior? How will legal decisions about maintenance and support be enforced? This is precisely where private international law, including international family law has a role to play.

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<sup>87</sup> Conversations with attorneys in New Jersey and New York confirmed that if a divorce is largely uncontested, it is simpler for attorneys to represent clients who live in another country. But for contested matters, the abandoned women's inability to appear in the court can tip the alimony negotiations and decisions in the favor of the abandoning spouse who is in the country.

Private international law is distinct from public international law that governs disputes among nation states by providing relevant choice of laws and rules to resolve legal conflicts concerning private individuals and companies. The American Society of International Law (ASIL) defines private international law as, “[T]he body of conventions, model laws, national laws, legal guides, and other documents and instruments that regulate private relationships across national borders.”<sup>88</sup> The Hague Conference on Private International Law (popularly known as the Hague Conference),<sup>89</sup> an intergovernmental organization of nearly seventy member states, serves as one of the primary reference points for multilateral conventions governing international family law disputes.<sup>90</sup> In this section, we will explore a few international conventions, particularly of the Hague Conference that are relevant to the legal challenges faced by transnationally abandoned women. Our discussion is by no means an exhaustive brief on international legal options; rather it offers a sample of possibilities for addressing the issues of split jurisdiction and transnational enforcement of legal decisions concerning divorce, support, and maintenance. Furthermore, it sets the stage for a future comprehensive analysis of domestic and international provisions that may improve access to legal remedies for transnationally abandoned women.

#### Convention on Recovery Abroad of Maintenance<sup>91</sup>

The 1956 Convention on Recovery Abroad of Maintenance, also known as the New York Convention, is a United Nations Convention that has been ratified by Pakistan and Sri Lanka and by United Kingdom as well as a host of other European, African, and

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<sup>88</sup> The American Society of International Law (N.D).

<sup>89</sup> Hague Conference on Private International Law (HccH) (1951-2009).

<sup>90</sup> India accepted the Statute of the Hague Conference on 13 March 2008 and became its 69<sup>th</sup> member.

<sup>91</sup> UNHCR (1956).

Latin American countries, but not by Canada or the U.S. The Convention that came to force on 25 May 1956, aims to facilitate recovery of maintenance when the claimant [recipient] and respondent [person obligated to pay] are in different countries through agencies that are designated as transmitting/ receiving agencies. The treaty also provides for execution of maintenance order by the receiving agency.

Convention Abolishing the Requirement of Legalisation for Foreign Public Documents (the Apostille Convention)<sup>92</sup>

This Convention facilitates the circulation of public documents across state boundaries by replacing cumbersome formalities of authenticating signatures and seal/stamps on public documents by Consular or diplomatic agents with the issuance of an Apostille Certificate.<sup>93</sup> It is relevant to our topic at hand to the extent that “public documents” include court rulings can be authenticated simply and easily. Both India and the U.S. have ratified this Convention, along with several European and Latin American states. However, the full implication of this Convention on transmission and recognition of judicial orders, including divorce and maintenance orders in contracting states, need to be explored in the light of the specific challenges that occur in legal cases of transnational abandonment.

Convention on the Service Abroad of Judicial and Extra Judicial Documents in Civil and Commercial Matters<sup>94</sup>

Canada, India, Sri Lanka, U.K. and the U.S. as well as a host of other countries have ratified the 1965 Convention. It provides for channels of transmission of legal and

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<sup>92</sup> HccH (1961, October 5).

<sup>93</sup> By this Convention, contracting countries can legalize documents that have been issued within the territory by certifying the authenticity of the signature and the seal upon it.

other documents from one contracting state to another. Although it does not cover substantive rules of service, the Convention protects a defendant (read: woman) from a default judgment by ensuring that if the defendant cannot appear before the court, judgment is not issued unless the document was served properly. That is, the service is valid by a method approved by the laws of the defendant's country or the document is actually delivered to the defendant's residence by another method prescribed by the convention. In addition, proper service entails providing the defendant with sufficient time to respond to the notice.

The Convention also protects the defendant after a default judgment is passed by allowing him/her to appeal beyond the permitted period so far as the defendant, (1) appeals within a reasonable time after the default decision is issued; (2) was not notified properly, and/or (3) was not allowed sufficient time to respond to the notice.<sup>95</sup> The protection of a defendant's right to a fair trial provisioned by this Convention is extremely useful for transnationally abandoned South Asian women as they tend to have very little prior knowledge of the proceedings and/or access to legal services to seek meaningful representation in North American courts. By establishing systematic channels and processes of transmission of judicial and extra judicial documents, which include divorce notices and decrees, the Convention attempts to amend the system that allows ex-parte divorces without properly notifying the defendant spouse in another country. Furthermore, by allowing the defendant spouse to appeal even after the permissible time for appeal has expired, the Convention provides abandoned women, who may remain ignorant of the proceedings and judgment until the case is over, with access to justice.

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<sup>94</sup> HccH (1965, November 15), Convention on the service abroad of judicial and extrajudicial documents in civil or commercial matters.

Although most states have limited the time for such appeals to one year from the date of the judgment, the Convention still offers hope to deceptively abandoned wives.

According to Article 10 of the Convention, contracting states have the freedom to send judicial documents through postal channels directly to the defendant if the destination state does not raise objections.<sup>96</sup> However, this leniency might be counterproductive as the service documents (such as a notice for a divorce proceeding) might not reach the respondent woman on time via normal post and stands the chance of being intentionally intercepted. Thus, it is imperative that the U.S. and South Asian countries that are signatories to this Convention examine and collaborate on the rules regarding transmission of service documents.

The Convention on the Recognition of Divorces and Legal Separations<sup>97</sup>

The 1970 Convention facilitates the recognition of divorce and legal separation obtained in one member state of the Hague Conference by another member state. Its relevance lies in situations where one country refuses to recognize and enforce a divorce decree obtained in another country. This treaty does not govern maintenance or support obligations. The most relevant aspect of this treaty is the basis upon which recognition of divorce and legal proceedings can be granted or denied. Article 2 of this Convention stipulates that a divorce decree or legal separation obtained in a contracting state will be recognized by another contracting state if at the time of the proceedings, it was the respondent or the petitioner's habitual residence. It further states that if only the petitioner had his/her habitual residence in the state where the divorce was obtained, such residence

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<sup>95</sup> Ibid.

<sup>96</sup> Ibid.

<sup>97</sup> HccH (June 1, 1970), The Hague convention on the recognition of divorce and legal separations.

must be for more than one year, or it must have been the last habitual residence where the spouses had cohabited.<sup>98</sup>

Recognition of a divorce may be refused if adequate steps were not taken to duly inform the respondent of the proceedings and if “the divorce or legal separation is incompatible with a previous decision determining the matrimonial status of the spouses, provided that the decision is in effect or recognisable in the State where recognition of the divorce or legal separation is sought.”<sup>99</sup> Clearly, the conditions were designed to protect both parties of a couple from conflicting judgments and to safeguard the rights of the respondent to be notified about the divorce/separation proceedings.

Unfortunately, none of the South Asian countries, North America, or Canada has ratified this treaty, whereas several European nations, including UK and Australia have acceded to the Convention.

Convention on the Law Applicable to Maintenance Obligations<sup>100</sup> and Convention on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations<sup>101</sup>

These two Conventions apply to the choice of laws and rules for recognition and enforcement of legal decisions regarding maintenance obligations generated by marital relationship, parentage, and affinity. In cases of split jurisdiction, both Conventions provide guidelines to the determination of which country’s laws would apply to maintenance obligations arising from a marriage and parentage, as well as how such decisions will be recognized and enforced by member states.

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<sup>98</sup> Ibid.

<sup>99</sup> Ibid; HccH (September, 2008), Outline of the convention.

<sup>100</sup> HccH (October 2, 1973 and October 1, 1977), Convention on the law applicable to maintenance obligations.

<sup>101</sup> HccH (October 2, 1973), Convention on the recognition and enforcement of decisions relating to maintenance obligations.

Article 4 of the Convention on the Law Applicable to Maintenance Obligations<sup>102</sup> asserts that the internal law of the state where the potential recipient<sup>103</sup> resides will apply when determining maintenance obligations. In the case of transnationally abandoned women, it provides women with a chance to pursue maintenance for themselves and their children in the states where they reside. Additionally, it allows women to avoid the numerous barriers that they would typically encounter if they have to file maintenance claims in the states of their spouses' residence. The Convention also offers an alternate solution if the recipient is unable to obtain maintenance according to the provisions in article 4 by permitting the laws of the state of common nationality rule over maintenance obligations.

However, Article 8 of the same Convention presents an interesting contradiction. It states that irrespective of the previously mentioned provisions on applicable law, “[T]he law applied to a divorce shall, in a Contracting State in which the divorce is granted or recognised, govern the maintenance obligations between the divorced spouses and the revision of decisions relating to these obligations.”<sup>104</sup> This ruling would, therefore, apply to legal separations and annulment of marriages.

It is obvious that the motivation of men to desert their South Asian wives in the natal countries is to take advantage of the default divorce provisions in North America and obtain ex-parte decisions, which would allow them to escape without paying maintenance and/or child support. The ascendancy of Article 8 would mean that the recipient spouse (read: abandoned women) must appeal for maintenance and child

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<sup>102</sup> Ibid.

<sup>103</sup> Hereafter, ‘recipient’ means the person who is entitled to receive alimony or maintenance and ‘obligated’ means the person who is supposed to pay the alimony or maintenance.

<sup>104</sup> HccH (October 2, 1973), Convention on the law applicable to maintenance obligations, op.cit.

support in the U.S. court where the divorce was granted even if she resides in another country. For women abandoned in South Asian countries, the possibility of seeking justice in the U.S. is virtually impossible due to its exorbitant cost as well as immigration and other systemic barriers.

However, the reservations allowed under this Convention include the ability of signatory states to restrict the application of it only towards maintenance obligations between spouses and/or towards unmarried persons below the age of twenty-one, and not towards others related collaterally or by affinity. The utility of this Convention for transnational abandonment cases could be rather limited due to a provision under Article 14 that allows the contracting states to reserve the right not to apply the Convention to maintenance obligations when “the decree of divorce, legal separation, nullity or annulment has been rendered by default in a State in which the defaulting party did not have his habitual residence.”<sup>105</sup>

Convention on the Recognition and Enforcement of Maintenance Decisions<sup>106</sup>

This Convention allows for reciprocal recognition and enforcement of maintenance decisions by a judicial or administrative authority in one state by another contracting state. Furthermore, the procedure for enforcement or recognition is based on the internal laws of the state where such recognition or enforcement is sought. The Convention also applies to the modification of previous decisions related to maintenance obligations. The jurisdiction of the state where the decision originated is recognized for the purpose of enforcement and recognition of maintenance obligations if the marital parties habitually resided in that state, were nationals of that state when the legal

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<sup>105</sup> Ibid.

proceedings started, or if the party obligated to pay accepts the jurisdiction of that state. Article 5 of the Convention<sup>107</sup> states that a contracting state may refuse to recognize or enforce such a decision, (1) if it does not agree with its public policy; (2) if the decision was obtained fraudulently; (3) if there is a pending legal proceeding for the same purpose and between the same parties that was initiated first; and (4) if the decision is incompatible with a prior decision for the same purpose and between the same persons that was rendered in either state where the marital parties reside, as long as the prior decision fulfills the conditions for recognition and enforcement in the state addressed. Furthermore, states can also reserve the right to not recognize maintenance decisions unless they allow periodical payments.

The utility of this Convention in facilitating maintenance and support for a transnationally abandoned woman depends on many variables: (1) whether a prior decision on maintenance obligations was passed by default in a state where her husband resided; (2) whether her husband started legal proceedings related to maintenance in his state of residence first; and (3) whether the maintenance decision was passed in a state which is her or her husband's habitual residence. This Convention replaces the 1956 Convention on the Law Applicable to Maintenance Obligations in Respect of Children<sup>108</sup> and the 1958 Convention on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations in Respect of Children.<sup>109</sup> None of the South Asian countries or the U.S. has ratified the 1973 Conventions, although UK and several other European

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<sup>106</sup> HcCH (October 2, 1973), The convention on the recognition and enforcement of decisions relating to maintenance obligations, op.cit.

<sup>107</sup> Ibid.

<sup>108</sup> HCCH (October 24, 1956), Convention on the law applicable to maintenance obligations towards children.

<sup>109</sup> HcCH (1958, April 15). Convention concerning the recognition and enforcement of decisions relating to maintenance obligations towards children.

states are signatories. However, both of these Conventions can be replaced by the Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations and the Convention on the International Recovery of Child Support and Other Forms of Family Maintenance elaborated below.

The Protocol on the Law Applicable to Maintenance Obligations<sup>110</sup> and Convention on the International Recovery of Child Support and Other Forms of Family Maintenance<sup>111</sup>

The 2007 Protocol and the Convention are the most recent of the Hague Conventions that provide applicable choice of law and provisions to ensure recognition, enforcement, and recovery of maintenance arising from parental relationship, marriage, and affinity. The Convention has not yet come into full force. The U.S. has signed but not yet ratified the Convention.

Under the Protocol, the general rules of applicable law assert that the laws of the state of habitual residence of the recipient will apply for determining maintenance obligations unless one of the spouses objects. In such a case, the law of the state of their last common habitual residence would apply. Article 8 of the Convention allows the person who is obliged to pay and the recipient to designate the applicable law, but only by a written agreement signed by both parties.<sup>112</sup> The provisions offer significant protection to all parties and are particularly helpful to a recipient (read: transnationally abandoned woman), who can claim maintenance in the state of her habitual residence. The Protocol also replaces the Hague Convention of 24 October 1956 on the Laws Applicable to Maintenance Obligations Towards Children.

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<sup>110</sup> HccH (November 23, 2007), Protocol on the law applicable to maintenance obligations.

<sup>111</sup> HccH (November 23, 2007), Convention on the international recovery of child support and other forms of family maintenance.

<sup>112</sup> Ibid.

The 2007 Convention aims to establish a co-operative system between contracting states and provides rules for recognition and enforcement of maintenance obligations arising from parental relationship towards a person under twenty-one years of age and for spousal support when claimed in conjunction with child support. Chapters II and III of the Convention<sup>113</sup> allow the designation of central authorities by the contracting states in order to transmit, process, and enforce maintenance decisions and provide or facilitate legal assistance where necessary and help to locate the person obligated to pay. This Convention has certain provisions that are particularly helpful for protecting the rights of the recipient such as through its emphasis on “effective access” to legal procedures, including linguistic access; provision of free legal assistance for claiming child support and possibilities of extending such assistance for claiming other forms of support; and by preventing the person obligated to pay from arbitrarily starting legal proceedings to modify an existing decision in a contracting state that is not his habitual residence. Furthermore, the Convention states that maintenance decisions will be enforced according to the internal laws of the state of the habitual residence of the obligated and such measures may include wage withholdings, deductions from social security payments, and tax refund withholdings.<sup>114</sup> Unfortunately, the provisions under Chapter II and III do not apply to decisions and maintenance claims that are exclusively toward a spouse and not in conjunction with child support. The clause weakens the full potential of the Convention to alleviate the burdens faced by transnationally abandoned women for claiming and recovering spousal support by tying it to having children.

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<sup>113</sup> Ibid

<sup>114</sup> Ibid.

However, any contracting state can make a declaration stating that it “will extend the application of the whole or part of the Convention to any maintenance obligation arising from a family relationship, parentage, marriage or affinity, including in particular obligations in respect of vulnerable persons.”<sup>115</sup> The Convention defines “vulnerable persons” as persons who are unable to support themselves due to impairment or insufficiency of their personal faculties.<sup>116</sup>

The bases for recognition and enforcement under Article 20 of the Convention<sup>117</sup> and the reservations permitted can create ambiguity and limit the potential for protecting the rights of the recipient spouse, especially in the case of transnationally abandoned women who are mainly recipients of maintenance obligations. For example, Article 20 provides that a decision made in one contracting state will be recognized in another, if (1) the recipient spouse is a habitual resident in the state where the decision was passed; (2) the recipient spouse has submitted to its jurisdiction explicitly or by defending the merits of the case; (3) the recipient spouse was at the time of the proceedings, a habitual resident of the state where the decision was passed; (4) there has been a written agreement between the parties except in the case of child support; (5) the child was a habitual resident of the state where the decision was passed; and (6) “the decision was made by an authority exercising jurisdiction on a matter of personal status or parental responsibility, unless that jurisdiction was based solely on the nationality of one of the parties.”<sup>118</sup>

Although the Convention permits the contracting states to limit the conditions to the recognition of the recipient’s habitual residence, written agreement between the

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<sup>115</sup> Ibid.

<sup>116</sup> Ibid.

<sup>117</sup> Ibid.

<sup>118</sup> Ibid.

parties as well as Article 20 attempts to safeguard the interest of the recipient by stating that if a state exercises any of these reservations and the obligated to pay is a habitual resident of that state, the contracting state will “take all appropriate measures to establish a decision for the benefit of the creditor [recipient].”<sup>119</sup>

The bases on which recognition of a decision related to maintenance obligation could be refused include situations where legal proceedings are pending in a state where recognition is sought between the same parties and having the same purpose (i.e., maintenance/support obligations arising from marriage, parentage or affinity), provided such proceedings were initiated in that state before any other; and if such a decision is incompatible with a decision that has already been rendered in another state.<sup>120</sup> These rules may be relevant to transnational abandonment cases since under the present circumstances, an abandoning spouse may obtain a divorce decree from the state of his habitual residence, while maintenance claims initiated by the abandoned spouse are pending in another country. Furthermore, there have been instances where maintenance decisions have been rendered in favor of the abandoned spouse by the competent judicial authority of her state of habitual residence, but another proceeding has been initiated and completed in a U.S. court by the abandoning spouse that does not provide alimony, spousal support, or child support.

The 2007 Convention replaces the 1973 Convention on Recognition and Enforcement of Decisions Relating to Maintenance Obligations between contracting states as well as the 1956 New York Convention on recovery of maintenance. However, it does not affect the relationship between contracting states that have ratified the 1965

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<sup>119</sup> Ibid.

<sup>120</sup> Ibid.

Convention on Service Abroad of Judicial or Extra-judicial Documents and the Apostille Convention.

Summary of Treaties Relevant to Transnationally Abandoned Wives

<b>Name of the Convention</b>	<b>Relevant States/ Ratification Year</b>	<b>Provisions Relevant to Transnational Abandonment</b>
UN Convention on Recovery Abroad of Maintenance (New York Convention), 1956	Pakistan/ 1959 Sri Lanka/ 1958	Facilitates recovery of maintenance through agencies and offices set up by the member states as transmitting and receiving agencies when the recipient and the person obligated to pay are in different countries.
Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents (the Apostille Convention), 1961	India/ 2004 U.S./ 1980 U.K./ 1964	Facilitates the circulation of public documents across state boundaries by replacing the formalities of authenticating signatures and seal/stamps on public documents such as a degree, divorce decree, and court judgments with the issuance of an Apostille Certificate by Consular or diplomatic agents.
Hague Convention on the Service Abroad of Judicial and Extra Judicial Documents in Civil and Commercial Matters, 1965	Canada/ 1988 India/ 2006 Sri Lanka/ 2000 U.K./ 1967 U.S./ 1967	Provides for channels of transmission of legal and other documents from one member state to another and protects a defendant prior to a default judgment by ensuring that if the defendant cannot appear before the court, judgment is not issued unless the service of the document is valid as per the laws of the defendant's country of residence. The Convention protects the defendant after a default judgment is passed by allowing him/her to appeal beyond the permitted period so long as the defendant, (a) appeals within a reasonable time after the default decision is issued; (b) was not notified properly; and/or (c) was not allowed sufficient time to respond to the notice.
Hague Convention on the Recognition of Divorces and Legal Separations, 1970	UK/ 1974	Provides rules for the recognition of divorces and legal separations obtained in one member state by another. Article 2: A divorce decree/ legal separation obtained in a contracting state will be recognized by another if at the time of the proceedings, it was the respondent or the petitioner's habitual residence. If it was the habitual residence of only the petitioner, such residence must be for more than one year or it must have been the last habitual residence where the spouses had cohabited. Recognition of a divorce may be refused if adequate steps were not taken to duly inform the respondent of the proceedings and if the divorce or legal separation is incompatible with a previous decision determining the matrimonial status of the spouses.
Convention on the Law Applicable to Maintenance Obligations, 1973	Mostly European states	Provides guidelines to the determination of which country's laws would apply to maintenance obligations arising from a marriage and parentage.

Name of the Convention	Relevant States/ Ratification Year	Provisions Relevant to Transnational Abandonment
		Article 4: The internal law of the state where the potential recipient resides will apply when determining maintenance obligations. Article 8: The law of the country where the divorce was granted will govern the maintenance obligations between the divorced spouses and/or modification of such decisions.
Convention on the Recognition and Enforcement of Maintenance Decisions, 1973	U.K./ 1979 & mainly other European states	Provides for reciprocal recognition and enforcement of maintenance decisions by a judicial or administrative authority in one state by another contracting state. The enforcement of decisions is based on the internal laws of the state where the enforcement is sought. Article 5: A contracting state may refuse to recognize or enforce a maintenance related decision if, (a) it does not agree with its public policy; (b) it was obtained fraudulently; (c) there is a pending legal proceeding for the same purpose but initiated first; (d) the decision is incompatible with a prior decision for the same purpose and between the same persons; and (e) if there are no periodic payments allowed.
Protocol on the Law Applicable to Maintenance Obligations, 2007	Not ratified	This replaces the 1973 Convention on applicable law and provides rules for applicable of law for recognition, enforcement, and recovery of maintenance arising from parental relationship, marriage, and affinity. It states that the law of the state of habitual residence of the recipient will apply for determining maintenance obligations unless one of the spouses objects. In case of such objection, the law of the state of their last common habitual residence would apply. Article 8: The person who is obliged to pay and the recipient can designate the applicable law, but only through a written and signed agreement.
Convention on the International Recovery of Child Support and Other Forms of Family Maintenance, 2007	U.S. signed. Ratification and EIF pending	Establishes a system of cooperation between contracting states and provides rules for recognition and enforcement of maintenance obligations arising from parental relationship towards a person under 21 years of age and for spousal support when claimed in conjunction with child support. The internal laws of the state where the person obligated to pay will apply towards enforcement of maintenance decisions. It emphasizes “effective access” to legal procedures including linguistic access, provision of free legal assistance for claiming child support, and possibilities of extending such assistance for claiming other forms of support. Article 20 attempts to safeguard the interest of the recipient by stating that if a state exercises a reservation and recognition is based on the law of the state of habitual residence of the person who is obligated to pay, the contracting state

Name of the Convention	Relevant States/ Ratification Year	Provisions Relevant to Transnational Abandonment
		will take appropriate measures to grant a decision for the benefit of the recipient.

In addition to the multi-lateral Hague treaties discussed here, there may be relevant bi-lateral treaties and international human rights treaties that should be examined to explore whether they can address and ameliorate the situation of transnationally abandoned women. Among other Hague Conventions, the Convention on the Law Applicable to Maintenance Obligations towards Children,<sup>121</sup> the Convention Concerning the Recognition and Enforcement of Decisions Relating to Maintenance Obligations towards Children,<sup>122</sup> and the Hague Convention on International Child Abduction<sup>123</sup> are highly relevant, since child support issues are often integral to the challenges faced by abandoned wives. International child abduction can be an intended or unintended consequence of deceptive abandonment. It is apparent from the above discussion that although a few Hague Conventions explicitly address choice of court and enforcement of foreign judgments in the case of international civil or commercial matters, their scope does not comprehensively address family law issues such as maintenance and support obligations.

Globalization and the increased international movement of workers is an unfolding reality that demands international and collaborative responses to women's rights and needs within and outside the family. The issue of transnational abandonment of women indicates an urgent need for clarity and legal guidance regarding choice of

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<sup>121</sup> HCCH (October 24, 1956), Convention on the law applicable to maintenance obligations towards children, op.cit.

<sup>122</sup> HCCH (April 15, 1958), Convention concerning the recognition and enforcement of decisions relating to maintenance obligations towards children, op.cit.

applicable laws and courts, as well as recognition and enforcement of decisions regarding spousal maintenance, child support, and child custody. This necessitates a thorough examination of existing international family law instruments and bi-lateral agreements relevant to the problem. The international and bi-lateral treaties governing recognition of divorce and judicial decisions related to spousal maintenance and child support obligations are directly relevant to the challenges faced by transnationally abandoned women. Advocacy must be focused toward influencing Governments of the impacted countries to ratify appropriate international treaties and/or negotiate new agreements, as well as introduce national laws and provisions aligned with such international agreements.

The U.S. has so far ratified only the 1965 Convention on Service Abroad of Judicial and Extrajudicial Documents, the Apostille Convention, and the Convention on International Child Kidnapping. However, its signature to the 2007 Convention on Recovery of Child Support and Maintenance Obligations is a significant opportunity to address the practical application of such international instruments to the problem of transnationally abandoned women. Among the South Asian states, India, Pakistan, and Sri Lanka are parties to some relevant Hague Conventions, but have not signed or ratified en masse any of the Hague Conventions on recovery of maintenance (Pakistan and Sri Lanka being exceptions). Nepal and Bangladesh are notable for not signing any of the relevant Hague Conventions. The accession of UK and Canada to some of these Conventions is also significant, since a large number of abandoning spouses are permanent or habitual residents of these countries.

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<sup>123</sup> HCCH (October 25, 1980), Convention on the civil aspects of international child abduction.

Existing treaties such as the 2007 Convention on International Recovery of Child Support and Maintenance provide for “Special Commissions” to be convened where the practical application of the Convention is reviewed. A Special Commission on the implementation of the 2007 Convention and the Protocol on Applicable Law has been tentatively scheduled for November 2009 in Hague.<sup>124</sup> Such reviews may present opportunities for advocacy and feedback to the member states and the Hague Conference on the emerging needs of transnationally abandoned women. There is also need for more awareness about the relationship between international family law, human rights obligations, and domestic family law. For instance, conversations with practicing family law attorneys in the U.S. reveal that they have limited knowledge of international family law and how such laws might affect cases where the spouses reside in different countries.

#### WOMEN’S REALITIES AND ADVOCACY

*Baljeet’s husband, Surinder, had come to India specifically to get married to a woman from his Pinda (village). At the time, he had been living in the United States for five years and by all reports, held a lucrative job.*

*Baljeet’s parents paid a hefty sum of cash to Surinder’s family as dowry for the match and believed that they were ensuring a financially stable future for their daughter. Surinder went back to the U.S. after spending a six-weeks vacation with Baljeet, leaving his elderly parents in her care.*

*He promised Baljeet that he would send for her as soon as possible.*

*Baljeet was completely taken by Surinder’s gentle nature, sweet words, and the expensive gifts he bought her. They corresponded regularly and Surinder called every month at a neighbor’s home to speak with Baljeet*

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<sup>124</sup> HCCH (1951-2009), Calendar 2004-2010.

*and his parents. Within a couple of months, Baljeet discovered that she was pregnant and gave the news to Surinder over the telephone. Shortly after that, Surinder stopped calling and writing to Baljeet. When she tried to call him, she found that his phone had been disconnected and her letters were returned undelivered. Although she was worried, Baljeet found her parents-in-law dismissed her anxiety calmly. She suspected that Surinder was in touch with them secretly. Now, after seven years, Baljeet is still taking care of her elderly parents-in-law and raising a daughter who has never seen her father. Baljeet has not received any child support or maintenance from her husband. She believes her parents-in-law receive money from their son furtively through a third party. Her own parents do not want her and her daughter with them, as they cannot afford to feed two more mouths. Moreover, they believe that if she returns, the marriage prospects of her siblings will be ruined. Baljeet continues to live like a servant at her in-law's home. She has heard rumors that her husband has married again in the U.S.*

Although most of the information we have about abandoned women is from India, we believe that the situation for women in other South Asian countries is quite similar. Furthermore, we know most about NRI men living in the U.S. and can only conjecture about émigrés from other countries. We recognize that there must be national and regional variations to the abandonment scenario, but cannot speak to this variation with any authority. Below is a summary of the information we have about the circumstances of abandoned wives in India:

- The majority have been abandoned after a few days, months, or years of living together with their husbands or coercively/deceptively brought back to India and deserted;
- Many have paid hefty sums of dowry and continue to be harassed by their in-laws and spouses for more. Often, the men and their families extort dowries by connecting it to visa sponsorship papers for the women;
- Most live without any financial support from their husbands. The majority of children are also deprived of financial support from their fathers;
- Many are divorced ex-parte in the U.S. and others are still married as far as they know;
- Many live in virtual servitude with their in-laws according to patrilocal traditions and because the natal families are reluctant to accept them back into the family; and
- Many do not have their husbands' current addresses or other contact information.

The brief summation above indicates how dismal the situation is for women abandoned by their husbands.

During my (Shamita) work in Punjab in 2004, I had the opportunity to speak with approximately fifty abandoned women and their families. The women had gathered specifically to urge South Asian women's organizations in the U.S. to actively take up the cudgel for women abandoned by their NRI husbands. Many young children accompanied their mothers to this meeting; children who could not remember their fathers' faces or had never met them at all.<sup>125</sup> Although the majority of women were seeking individual

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<sup>125</sup> Melwani, op.cit.

solutions to their problems, almost everyone recognized that a permanent solution could only be reached by a change in policies and increased public awareness about the phenomenon of transnational desertion. They believed foreign and Indian governments must take actions and pass legislation or regulations to address abandonment of women by NRI men. From the discussions at the meeting, the following demands emerged:

- The most important desire the women expressed were to understand why their husbands had abandoned them. Since the majority of women were deserted without notice and after their spouses had promised to send visa sponsorships, they were completely bewildered about the Volte-face;
- Many women wanted to find out where their husbands were since the men had suddenly stopped all communication with them and seemingly dropped off the face of the earth. Some women recounted that they found out that their husbands had absconded only when their letters were returned stamped ‘addressee unknown’ and they found their husbands’ phone numbers had been disconnected. If the in-laws were aware of their sons’ whereabouts, they did not share it with their daughters-in-law;
- Many women still hoped to reconcile with their husbands. Some believed that their husbands were in situations beyond their control and would return to them if circumstances improve;
- The women badly needed and sought financial support for their children and themselves and if possible, compensation for the mistreatment meted out to them;
- Each and every woman wanted justice for themselves and their children. Accountability for their husbands’ cruel behaviors was included in this idea of

justice. In addition, many women were eager to use their situations as warnings for others, so that other women would not fall into the same trap; and

- The women's strongest demand was for a life with dignity and respect.

Although a number of women had received *ex parte* divorce, many others had lost touch with their husbands who had deliberately disappeared from their lives. This was particularly problematic for women who had decided to seek maintenance, child support, or/and sue their husbands for divorce in Indian courts. Without contact addresses, they could not hope to deliver court notices to the respondents. Many of these women felt that without any contact with their husbands, financial support, and social standing, they were practically condemned to exist in a state of limbo. Ambalika Roy, an attorney with the Human Rights Legal Network in Kolkata, reiterated this sentiment. According to Ms. Roy, even if legal notices are served through publication and the Indian courts issue a favorable decision for the women, it is nearly impossible to execute it in the U.S. The U.S. courts tend to ignore decisions by Indian courts, thus thwarting any possibility of executing maintenance and child support decisions in the U.S. Even bench warrants are impotent against NRIs, particularly if the men decide not to return to India since they tend to be non-implementable in the U.S.<sup>126</sup> Thus, the whole legal process in India is rendered useless for abandoned women.

Regardless of their abilities to eke out justice, women who had received divorce notices from their NRI husbands or who were certain that their husbands had abandoned them, tried extremely hard to find effective help. Many had gone from lawyer to lawyer to ask for advice and also to non-governmental organizations (NGO) to request advocacy. The intensity of their search and the continuous failure they faced in finding competent

services was indeed heart wrenching. Frequently, they received incorrect information about U.S. laws and the legal system; misleading assurances from attorneys; and erroneous advice that would land the women in further difficulties. For example, many women said that their attorneys advised them to ignore notices from U.S. courts in the belief that the divorce proceedings could not go forward without their consent.

A number of women who had been in the U.S., remarked that they had not been aware of South Asian Women's Organizations (SAWOs) or the availability of any domestic violence related help in the country. Thus, even when they had suspected that they might be abandoned or coerced to return to their natal countries, they had not known how to counter the pressures, violence, or at least gather resources for later survival. When women came to know about availability of help and decided to take actions, often it was too late for them, as the divorces might have happened more than a year ago and the men had remarried and/or moved away from their last known addresses. Thus, the women ended up with virtually nothing to show but a few shattered years of their lives and a bleak future.

#### A History of Transnational Advocacy

SAWOs have been advocating for battered women and their children with transnational issues for nearly as long as they have existed. However, the majority of the earlier cases revolved around parental kidnapping of children or the threat of it. Immigrant women, who were experiencing violence in the family, were often threatened with international child abduction unless they toed the abusers' lines. Abusive in-laws also frequently threatened to take away their 'family's child' if the daughters-in-law were showing signs of resistance or autonomy.

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<sup>126</sup> Personal communication with attorney Ambalika Roy, op.cit.

In an early case handled by *Manavi*, a battered mother who was sharing custody with her separated spouse discovered that the noncustodial parent had abducted their two young daughters and was on his way to India. When the mother informed the police after receiving a letter from the children's father, the police collaborated internationally to apprehend him in mid way and bring him and the children back to the U.S.<sup>127</sup> Such kidnappings by fathers, although rare, were often either settled out of court with the return of the children or by the mothers yielding to the abuser-fathers' demands.<sup>128</sup>

SAWOs also assisted a handful of women who were deceptively/coercively sent back to their natal countries for a visit. While away from the country, the women were often divorced ex parté or the men told them that they were not welcome back into the family any more. Women often signed away their rights to all financial support and even child visitation in shell shock and away from their habitual residence.

The trickle of transnational cases in the early days increased significantly around the turn of the millennium when large numbers of temporary workers from South Asia began to migrate to North America. By the mid 2000s, the problem of abandoned women drew attention of the Government of India, the U.S. State Department in India, SAWOs in the U.S., and non-governmental organizations (NGOs) in India. As the SAWOs received requests for help from larger and larger numbers of women, they realized that there was a need to address the issue in a systematic manner. In 2005 and 2008, two sessions were held in *Aarohan*, a conference for South Asian Women's Organizations in

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<sup>127</sup> The New York Times (1998, April 25).

<sup>128</sup> International child abduction still is a significant problem in all immigrant communities. Fortunately, many organizations are working on the issue. See, National Center for Missing and Exploited Children (2009); Weiner (2008); HccH (1980, October 25), Convention on the Civil Aspects of International Child Abduction, op.cit.

the U.S. to analyze the issue and design strategies for amelioration.<sup>129</sup> Simultaneously, SAWOs that were dealing with the problem, consulted with each other, and worked on devising a way of collaborating with NGOs in South Asia.

Despite this collective effort, much of the work with transnationally abandoned women entailed individual advocacy that was most successful when organizations had direct connections with individuals in positions to influence the outcomes of the situations at hand. Often such help entailed tracing the absconding husbands, working with the U.S. consulates to issue reentry visas, finding short-stay shelters for women in the U.S., and collaborating with the U.S. state department to implement decisions from foreign courts. However, only women who were financially solvent enough to travel to the U.S., support themselves for the duration of the legal case, hire an attorney, and be aware of how the various relevant systems work there were the only ones who could hope to pursue justice for themselves. Consequently, only a lucky few could avail of the option of appearing in U.S. courts and plead their cases.

*Aman: Global Voices for Peace in the Home*

One of the opportunities of international collaboration emerged when Anuradha Kapoor, Executive Director of *Swayam* in Kolkata, India, approached *Manavi* with the proposal of joining a network of NGOs in India to collaborate on advocacy for transnationally abandoned women. The network was named *Aman* ('peace' in Urdu): Global Voices for Peace in the Home and was established on 7 December 2006 during the Fortnight Campaign to combat violence against women and girls. The goal of the network is to end violence against women at all levels of society through collaborations with other agencies in South Asia and elsewhere. By 2007, the network members had

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<sup>129</sup> Dasgupta, Gurnani, Kaushal, & Lodhia (2005); Rudra & Dasgupta (2008).

increased from eighteen to thirty two with members in fifteen Indian states, the U.S., UK, and Canada. The network held seminars, meetings, and strategy sessions in subsequent years to increase awareness among advocates, attorneys, and general public regarding nuances of domestic violence laws and transnational issues affecting South Asian women and devise appropriate assistance for victims. In the U.S., *Manavi*, and for a brief time, *Sakhi* took the initiative to inform and gather other SAWOs in the network while *Swayam* did the same with NGOs in India, UK, and other South Asian countries. Both organizations shared resources and referred women seeking assistance to each other.

As the network began to operate, the difficulties in working across continents and discrepant legal systems became clear. The problems often did not just span two jurisdictions but three or four. For example, consider the case of a Bangladeshi woman who married a Muslim Indian and went to live with him in the U.S., where she found that she was his third wife. The previous two wives also shared the same household with her. She objected to this arrangement and after a period of severe abuse, the man brought her back to India and left her there after destroying her travel documents. Her husband subsequently moved to Ireland on work and has been residing there for the past year.<sup>130</sup> In which country should this woman seek legal assistance and under which legal system? Although she was married in India, she is a citizen of Bangladesh, stranded in India without valid visa or passport. She had lived in the U.S. for a short while on fiancé visa (K) but her status as a married woman there was invalid as she was the third wife of a man, married under Islamic law. Her husband is now a resident of Ireland. The

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<sup>130</sup> All identifying information has been changed to protect individual confidentiality.

Government of India is ready to deport her to Bangladesh where polygamy is invalid,<sup>131</sup> which would automatically render her marriage null and void and strip her of all legal claims against her husband. The problem is sticky indeed!

Currently, Aman is still recruiting women's organizations to widen and strengthen its network. Simultaneously, it is providing assistance to affected women individually and attempting to create strategies and suggestions for change at the policy level.

#### Government of India's Response to the Problem

In response to the rising number of abandoned women, the Government of India (GOI) convened several workshops and in 2006, the National Commission for Women released a report on the problem of wives abandoned by NRI grooms.<sup>132</sup> The concern for women left high and dry by NRI men ultimately led the GOI to create a fund that awards \$1000 to abandoned Indian wives towards legal and counseling services. "The objective of the scheme is to provide some financial assistance to needy women in distress who have been deserted by their overseas India spouses for obtaining counseling and legal services."<sup>133</sup> The services were to be provided with the help of women's organizations empanelled with the Indian Missions in the U.S., UK, Canada, Australia, New Zealand, and the Gulf countries. The eligibility criteria for this assistance were:

1. The women were Indian passport holders;
2. The marriage was held, solemnized, and registered in India;
3. The women were deserted in India or within five years of reaching the host country;

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<sup>131</sup> Bangladesh does not recognize polygamy even under Islamic law whereas India allows a Muslim man to marry up to four wives.

<sup>132</sup> National Commission for Women, op.cit.

<sup>133</sup> Consulate General of India (N.D.).

4. The divorce proceedings had been initiated within five years of marriage;
5. Ex parte divorce had been obtained within ten years of marriage and a case of alimony and maintenance was to be filed; and
6. There were no criminal charges pending against the woman.

The total amount of assistance was intended for initial cost of filing and documentation fees.

Unfortunately, the amount of individual assistance allocated by the GOI is pitifully insufficient for meaningfully pursuing any legal case in the U.S. Furthermore, the bureaucratic requirements to access this assistance are too complicated for women or NGOs to pursue it successfully. Consequently, the implementation of this scheme has been slow or nonexistent. South Asian women's groups in the U.S. have provided feedback to the Indian Consulate on how the scheme could be improved to cater to the unique and special needs of abandoned Indian women.

In addition to the assistance fund, the GOI has instituted a uniform registration process to record marriages solemnized in India. The registration process is to track overseas grooms who desert their wives and initiate legal proceedings against them. A recent news report quotes a high official in the Ministries of Overseas Indian Affairs (MOIA) stating:

“In most cases deserted wives are unable to provide much detail of their husbands. The new registration form will have columns for social security number of the overseas husband, passport details and ID/labour card details...”<sup>134</sup>

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<sup>134</sup> ExpressIndia. (2008, August 22).

Lying on the registration form is punishable under the Indian Penal Code. Furthermore, this registration is to be followed up with a database of all marriages to deter habitual offenders. The effectiveness of the registration is yet to be tested.

In addition to such countrywide efforts, local governments are also trying to curb the rash of immigrant husbands abandoning their wives. Many of the police officers of local precincts in Punjab stated that they looked out for complaints against NRI men who had allegedly abandoned their wives. In cases of such complaints, they would hold issuance of police clearance for the passports of their relatives (particularly parents) or the renewals of the men's travel documents until the problems with their wives were addressed. However, such unofficial and vigilante approaches cannot produce the desired effect of protecting all abandoned women.

#### Other NGO Efforts

Women's organizations in South Asia and elsewhere have long been concerned about how to protect women who are abandoned by their immigrant spouses. Most groups believe that women and their parents have to be aware of the risks involved in marrying an immigrant and living in an unfamiliar country far away from the family. Unfortunately, men living abroad are still viewed as coveted grooms for the daughters and women themselves are enamored by the prospect of living in a Western country.

One way of advocacy is seen as alerting women about their legal rights in a new country and informing them of where to seek help in an emergency. To this end, various agencies in Germany, USA, and India have published self-help books such as the *Guidebook on Legal Rights for Female Foreign Nationals*,<sup>135</sup> *A Little Book of Tips and*

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<sup>135</sup> Frevel, A. (2001, March).

*Tricks*,<sup>136</sup> and *Know Your Rights*.<sup>137</sup> Although there are many such brief manuals available, dissemination is limited and lacking where it is most needed, to women newly married to immigrant men. Many of the agencies believe that the best way to reach women who are traveling abroad is to access them through the visa issuing consulates, but such access has hitherto been denied.

## CONCLUSION

The substance of violence against women is affected by a community's culture, history, and the intricacies of the realities it faces. Thus, violence is never a static phenomenon but a dynamic one that engenders different forms to fit the cultural, institutional, and individual actualities of the time. Thus, in understanding abandonment as abuse of women, we have to place it on the backdrop of today's globalizing world and constantly traveling populations. We need to recognize that at the macro level, issues of mass migration, economy, and the power differential between global North and South interact in complex ways with cultural traditions of dowry, arranged marriage, patrilocality, and gender roles, which play out in abusive ways in South Asian women's lives. Deserting their wives in a different country than where they live and depriving them of all economic and social viability, émigré husbands not only condemn women to a life of social shame and poverty, but also deliberately trample on their right to legal recourse and fair dealings. When a South Asian woman is abandoned by her immigrant husband, structural barriers in both natal and host countries interlock with legal, cultural, and individual difficulties to restrict her access to assistance and justice, often making her life intolerable.

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<sup>136</sup> CREA. (2006).

<sup>137</sup> *Manavi*. (2006).

In our discussion above, we have attempted to describe South Asian women's experiences of abandonment and the realities they face when abandoned. We have elaborated the rising magnitude of the problem as global migration increases. We have also illustrated the difficulties that South Asian women face in seeking justice, advocacy, or any other form of assistance from institutions and communities. Neither in legal nor in domestic violence advocacy does abandoned women merit high attention, as they are considered parties to unsuccessful marriages and nothing more. As a result, abandoned women truly fall through the cracks of service and policy while the perpetrators continue acting with impunity.

The incidents of forced marriages in South Asia are often blamed for the mounting numbers of wives abandoned. While it is true that South Asian parents frequently pressure their sons to marry women of their choice to prevent them from marrying someone they might consider unsuitable, sons are also given more leeway to reject or resist such choice and emotional coercion. At times, grooms collude with the parents to gather passage money by demanding dowries, find an easy caregiver for the elderly parents, and/or change their minds regarding their brides once in the new country. If a South Asian man has been coerced into marriage, he can rectify it by divorce or nullity but for a woman, who has entered a marriage in full faith, there is no restitution or justice. She ends up being helplessly at the receiving end of a man's wrong choice and whim, without any compensation for her loss of time, emotion, faith, and social standing. But it is not only in coerced marriages that women are transnationally abandoned; it can also happen in relationships that started off with meaningful consent. Regardless of the reasons for marriage, most men abandon their wives in the natal country for the single

most reason of denying them financial rights and access to legal recourse. This deliberate act makes transnational abandonment a systematic violation of women's rights and dignity. When infringement of rights occurs in a systematic manner, it requires a comprehensive response from advocates, judiciary, service providers, and policy makers.

Keeping in mind the specific legal, systemic, and cultural challenges that we have discussed in this paper, and drawing upon the collective experiences of domestic violence advocates, as well as the expressed needs of transnationally abandoned women, we offer a few recommendations in the realms of advocacy, legal intervention, and policy making.

#### Suggestions for Advocacy

- Deliberate abandonment that deprives women of financial and social rights must be included in the definition of domestic violence. As we understand it now, domestic violence is not necessarily about physical and sexual abuse only, but about the perpetrator having power and control over the victim and rendering her helpless in relation to him. Abandonment of wives by their émigré husbands is clearly for this purpose. Desertion of wives in their natal countries while their husbands reside in different jurisdictions, effectively erects barriers around women to prevent them from accessing legal and financial justice. Thus, it is imperative that domestic violence be reconceptualized to accommodate such abuse of women. Once recognized as domestic violence, advocates' and popular awareness can be heightened and resources mobilized to address the complexities that underlie desertion of women.
- Parts of the domestic violence advocacy community in India and the U.S. (as well as other affected countries like UK, Canada, Bangladesh, Nepal, and Pakistan to

some extent) have begun to address abandonment of wives by building informal networks of women's organizations. The focus of the networks is to provide access to legal counsel, interpretation, and supportive counseling to transnationally abandoned women. However, the scale and intricacies of the issues involved demand the formation of strong regional/international networks of agencies that can collaboratively provide referrals, share information across national borders, and improve access to legal resources and social services for transnationally abandoned women. The Aman network offers a model of such a network but more such networks, for single as well as multiple purposes, need to be established across regions, states, and countries to take up the cause of transnationally abandoned wives.

- Transnationally abandoned women frequently lose track of their husbands as their husbands deliberately end all contact with them. Women tend not to have the ability to locate their absconding spouses in a foreign land and bring them to justice. Consequently, women and their children lose out on financial support and the right to know where their husbands and fathers are. Often, the first step to hold abandoning men accountable for their actions is to locate them. The Indian government's efforts to include personally identifiable information during registration of marriages would be useful in this respect. Advocacy agencies in the U.S. can also help in locating the men through 'people search' on the Internet at a small cost. However, to successfully complete such searches, at least some preliminary information such as name, age, and possible location is necessary. The U.S. State Department could also be primed for such assistance.

We would like to insert a note of caution here. We must recognize that any policy decision that agencies take about locating men might have unintended consequences on battered women. Instituting such services might encourage perpetrators and/or their female relatives to feign victimization to search for women who are trying to hide from their batterers.

- Transnationally abandoned women need services such as temporary housing, emergency shelter, linguistic access, and financial assistance to undertake legal proceedings against their abandoning husbands. Frequently, they need to travel to foreign countries to appear in courts when their spouses file for divorce outside the women's habitual residences. Advocacy agencies must step up to support women's bid to find justice by providing various services including shelter, legal consultancy, and court accompaniment.
- While a few publications exist in some nations to alert women migrating to foreign countries of their rights and locally available services, the information does not readily trickle down to mainstream audiences, unsuspecting parents and their daughters who are mostly caught unawares when immigrant men desert their wives. Increased public awareness about transnational abandonment is long overdue. The problem should be featured in mainstream media and community awareness building campaigns. Many women who have been in the U.S. and then taken back deceptively to their natal countries and abandoned have mentioned that although they suspected something like this might happen, they did not know where to look for help. Thus, it is important that South Asian women's agencies in the U.S. reach out more and penetrate deeper into the community.

- Creating and maintaining a comprehensive and easily accessible database of international resources and services relevant to transnationally abandoned women would be extremely useful. Networks of women's organizations in collaboration with legal experts and service providers can build such a resource website and make it accessible to member organizations.

#### Suggestions for Legal Work

- First, we must acknowledge that one of the biggest hurdles transnationally deserted women face is their inability to access legal resources and recourses in a foreign country. The majority of women accept ex parte divorce decisions because of their inability to appear in U.S. courts to plead their interests and testify on their experiences of personal and social hardships. Even when women are eager to find representation for themselves in court, they tend to fail due to insufficiency of funds available to them for travel, room and board in the U.S., and attorney fees. Some of this burden might be eased if women's organizations can collaborate to develop a pool of attorneys who will take on these cases pro bono or for nominal fees. Furthermore, the attorneys who would give their services need to be familiar with local and international laws that might provide abandoned women with justice and a fair legal hearing.
- While no one can and should force individuals to remain married, legal proceedings must take into account cultural conditions to provide abandoned women with a semblance of justice. For most of South Asian abandoned wives, their lives as they knew it would end after desertion and divorce. Although such emotional and social degradation can hardly be compensated by money, attorneys

representing women must seek financial recompense regardless of the lengths of their marriages. Such demands can be made based on the hardship and privation divorced women face in South Asian countries rather than the length of the relationship. The general assumption in the U.S. courts that women should be able to find work to maintain themselves after divorce needs to be modified in the context of high unemployment rate, lack of social safety net, barriers to women finding jobs, and the social ostracism that divorced women face in South Asian countries. It might also help if the maintenance money is requested in lump sum or a very few installments to spare women who live outside the country the difficulties resulting from nonpayment.

- In the case of Muslim women and Islamic marriages, attorneys need to seek the *mehr* that has been promised to a woman during her wedding. In Islamic weddings, grooms have to promise their brides certain amount of money which is payable to the women on demand or during divorce. This is known as *mehr*. This pledge by grooms is recorded in the marriage contract and presided over by religious leaders. If a divorce takes place in a man and woman's natal country in South Asia under religious or civil law, this pledge would have to be fulfilled. However, in an ex parte divorce in the U.S., the women stand to lose both maintenance and *mehr*.
- Attorneys who are interested in safeguarding the rights and interests of abandoned women may think about utilizing the concept of desertion, as in the military, in transnational cases. Desertion in the military culture is punishable by law, as the personnel surrender their right to renounce the public duties that they have sworn

to discharge when they join the armed forces. Although such extreme measures do not need to be evoked, we can draw a somewhat mild parallel between the military culture and the commitment to marriage in South Asian cultures. When a man reneges on the duties he has undertaken in marriage, a highly structured and rigid institution in South Asia, he devastates the life of the other party engaged in it with him. Such destruction must be recognized and compensated for.

- Laws cannot work for women until their needs and realities, as well as the impact of legal provisions or absence thereof are not explained and understood by attorneys and the judiciary. Women's advocates in the U.S. and South Asia, along with their respective governments, can play a crucial role in informing and educating the law enforcement and the judiciary about the barriers and opportunities for legal redress in transnational abandonment cases.

#### Suggestions for Policy Change

- As reflected in our paper, there is a clear and urgent need for a comprehensive review of existing national laws, international human rights instruments, multilateral, and bilateral agreements impacting family law. Upon completion of such a thorough review, affected states should consider ratifying bilateral or multilateral agreements that address the issue of transnational abandonment, split jurisdiction, and recognition and enforcement of decisions related to divorce, maintenance obligations, and child custody.
- Laws that are relevant to marriage, divorce, spousal maintenance and alimony, child support and custody, and recognition of judicial decisions originating in foreign courts must also be implemented properly. Setting up cooperative

international systems for enforcement of judicial decisions related to transnational abandonment and/or divorce, custody and maintenance obligations is also crucial for remedying the sufferings of abandoned women.

- Since one of the most important issues for abandoned women accessing legal recourse and representation is financial insolvency, a policy could be set that the person who initiates the court case must pay for the defendant's travel, room and board during the proceedings, and attorney fees. This would not only allow women to appear in court in person to plead their cases, it might discourage men from believing that they can get away with ex parte divorces without any repercussions.
- Courts could install a procedure of checking directly with the defendant whether divorce papers and notice of appearances have been properly served. Women often receive these papers too late to respond or these are served improperly.
- Consulates could begin a practice of requiring all women who receive visas to travel to the U.S. to go through a seminar where they are informed of their legal rights and social services available in the U.S. During this time, they could be given a package of printed information to help them in future if something untoward happens.

The suggestions for change are certainly not exhaustive. As we advocate for transnationally abandoned women, we are certain to learn from their experiences and needs. In the mean time, there is no doubt that a group of South Asian women are suffering in silence, their social, economic, and individual rights to live in dignity and

DRAFT: DO NOT CIRCULATE

peace destroyed without compunction. The women need our efforts at advocacy to ensure not only their safety and well-being but also all women's right to a viable and just life.

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