

velopment would inevitably tend to express themselves, through bifurcation whether these contradictions run parallel to class contradictions or not.

To conclude I wish to raise certain questions, which I feel to be of importance in the current socio-political conjuncture, where South Asian social formations are located. Is it possible that one is situated in a modern conjuncture where non-traditional macro groups such as macro castes; ethnic groups; linguistic communities etc. are in formation, which, overcome old parochial and kin-group

loyalties, while blunting class consciousness. These perhaps would have been at a higher level three or four decades back? Class contradictions, (intensified in a period of accentuated social differentiation) in the absence of class consciousness are being reflected through segmenting divisions, such as ethnicity, religious groups, macro-castes and provincial loyalties. Thus they question all social theories that lay down a unilineal and uni-directional path of change, which in the last analysis derives from Comte's positivism.

PUNISHING THE VICTIM

Rape and Mistreatment of Asian Maids in Kuwait

Since the restoration of the Kuwaiti regime in March 1991, to the present, nearly two thousand women domestic servants, mainly from Sri Lanka, Bangladesh, India and the Philippines, have fled the homes of abusive Kuwaiti employers and sought refuge in their embassies. This mass exodus of maids is the culmination of a longstanding problem: the abuse of Asian women domestic servants occurs at a time of general hostility towards foreigners that has escalated since liberation.

Large numbers of Sri Lankan women have sought employment in the Middle-East including Kuwait. The abuses that some of these women have been subjected to have been highlighted in the press but the general framework of law and custom that makes such abuse possible has not been brought to light. Neither has this situation received adequate attention from the government.

In April 1992, *Middle East Watch* and the *Women's Rights Project*, both divisions of *Human Rights Watch*, conducted a two-week fact-finding mission in Kuwait to investigate reports of abuse of Asian women domestic servants.

We reproduce below excerpts from the report.

The abuse and mistreatment suffered by Asian maids in Kuwait is occurring in the context of hostility towards expatriates that has increased since liberation in 1991. By 1990, prior to the Iraqi invasion of Kuwait, foreign workers and their dependents, also referred to as expatriates, accounted for nearly 62% of Kuwait's population. Large numbers come from India, Sri Lanka, Bangladesh and the Philippines.

Until the mid-1970s, Asian women came to Kuwait as dependents of their husbands, fathers or other male relatives, but were not themselves a significant percentage of the foreign labor force. Since then, increasing numbers of Asian women have joined Kuwait's labor force in their own right, growing from 1,000 in 1965 to over 72,000 in 1985. By 1992, the number of Asian maids reached roughly 75,000 to 100,000, approximately one for every seven Kuwaiti citizens (men, women and children).

In the wake of its liberation, Kuwait has embarked upon a concerted campaign to rectify what it sees as a dangerous imbalance in its population. A report prepared by the government's Higher Planning Council concluded that the high numbers of expatriates are "a threat to national security" because they outnumber Kuwaiti citizens. The government, by taking steps to limit immigration of foreign workers and curtail employment benefits for expatriates, is actively seeking to invert the pre-war population ratio so that by 1995 Kuwaitis will constitute 60% of the population.

New politics restricting immigration of foreign workers include women domestic servants. The government has reportedly stopped granting permission to bring over more maids to families that already have one or more. However, this new restructuring apparently has yet to significantly affect the number of Asian maids in Kuwait. Asian women domestics are in increasing



demand as more Kuwaiti women enter the work force or choose to employ a maid and much of Kuwait's social structure remains dependant upon the presence of domestics who care for the homes and children of Kuwaiti families.

To some degree, however, these new policies do reflect what the maids we interviewed perceived as a sea change in the way their employers treated them. Of the women who spoke to us, those who worked in Kuwait both prior to and following the Iraqi invasion cited a marked deterioration in their treatment after the war's end. This heightened abuse may have accounted, in part, for the flight of the maids to their embassies, a phenomenon that occurred in pre-invasion Kuwait, but increased dramatically in the post-war period.

We found that while not all domestic servants in Kuwait suffer at the hands of their employers, there exists a significant and pervasive pattern of rape, physical assault and mistreatment of Asian maids that take place often with impunity.

One third of the sixty cases we investigated directly involved rape or sexual assault, including kicking, beating with sticks and pipes, slapping, punching and pulling hair. Almost without exception the women we interviewed spoke of non-payment of salary, passport deprivation and near total confinement in their employer's homes. All of these abuses are illegal under Kuwaiti law, but have gone unheeded by the government.

To our knowledge, only a handful of the charges against abusive employers have ever been investigated or prosecuted. We have submitted formal requests for information of cases in which allegedly abusive employers have been prosecuted, but the Kuwaiti Government has yet to respond to those requests. Rather than investigate or prosecute alleged abusers, Kuwaiti authorities often detain maids seeking to report crimes to the police or simply return them to their employers. Worse, there have also been credible reports of abuse of women domestic servants in police custody that likewise goes unpunished.

In addition to failing to provide abused domestic servants with justice under applicable criminal and civil law, the government of Kuwait has explicitly excluded them from the country's labor law. Kuwait's Private Sector Labour Law No.38 of 1964 governs working conditions for most workers—including expatriates—in the private sector. The labor law contains rules governing the maximum daily and or weekly hours an employee can be required to work, employees' entitlement to overtime, and provisions for weekly and annual leave. If employers violate these requirements, the labor law provides workers with access to the Ministry of Social Affairs and Labour to air

their grievances about working conditions and have them investigated or arbitrated by the Ministry.

The exclusion of domestic servants from this protection has created a widespread attitude that the maids are not entitled to the same rights as other workers. This renders them not only especially vulnerable to the abuses but also largely powerless to combat them. As a group, women domestic servants have no right to organise, no power to bargain for fair employment terms or to enforce the terms their employers agreed to when they were hired. Nor do they have access to the government facilities for arbitration of employment disputes. This has clearly created an atmosphere in which the maids can be, and often are, overworked and ill-treated by their employers at whim with little expectation that the state will intervene.

Ultimately, abused maids had little alternative but to flee to their embassies or to shelter with friends. Many sought to settle their disputes or to find new jobs or return home. Initially, the AL-Sabah government flatly denied exit visas to many maids seeking to leave. The result was that, unless the maids could find informal means to resolving their difficulties, they languished in their embassies in ever increasing numbers.

Eventually, in the week prior to our mission, Kuwait deported over 8006 maids, mostly from their embassies. The deportation while relieving an immediate problem, raised a number of prominent concerns. Prior to deportation, the Kuwait government made no systematic effort to document abused women's criminal complaints or civil claims. Upon investigation, we found these had been effectively dropped. In addition, for those women desiring to remain in Kuwait, alternatives to deportation like job transfer, were never made available, despite the fact that they had had a legitimate rationale for leaving their employers. Finally, deportation seems to have allowed the Kuwaiti government to wash its hands of the maids' problems without addressing the underlying causes of their abuse. The government has yet to punish known abusers or implement the legal and practical reforms necessary to ensure that the pattern of abuse and mistreatment of Asian maids with impunity does not recur. According to sources in Kuwait, new maids seeking refuge appear daily at the Asian embassies.

According to information we obtained from embassies, Asian diplomatic officials, journalists, the U.S. Department of State and Kuwaiti government officials, over 1,400 Filipinos—between 14—20% of the estimated number of Filipino maids—fled their employers between May 1991 and April 1992. During the first four months of 1992, we determined that at least 300 Sri Lankan maids ran away from their employers to the Sri Lankan



embassy, most of them complaining of rape and mistreatment. The Bangladesh embassy sheltered 20 women a day, while there were ten to twenty women at the Indian embassy at any given time.

One third of the sixty cases we investigated directly involved the rape or sexual assault of maids by their employers or a man with access to the employer's house. Well over two thirds involved physical assault. Almost without exception the women we interviewed spoke of non payment of salary, passport deprivation and near total confinement in their employer's homes. Asian embassy officials and other sources reported to us that these findings held true across the larger population of maids who fled their employers.

We found every indication that such abuses are under-reported. Impediments to the maids' reporting abuse or mistreatment, such as confinement in the homes of their employers or police refusal to investigate their complaints, as well as the social stigma attached to certain types of abuse, particularly sexual assault, present serious disincentives to reporting employer abuse to the authorities.

The abuse of Asian maids is not limited to sexual or physical assault. Underlying abuses, such as debt bondage, passport deprivation and confinement are also common and create conditions for the maids to suffer assault in near total isolation from the outside world.

Debt bondage, prohibited under international human rights law, is a situation in which a debtor pledges her or his personal services against a debt she or he owes, but the person to whom he or she owes it fails to deduct the value of the debtors services from the debt, or the length and nature of those services are not respectively limited or defined. Kuwait's labor law requires that no more than ten per cent of wages due may be deducted for settlement of debts owed the employer. However, because domestic servants are excluded from this law, they cannot invoke this provision. The result is that employers often do not honor the ten per cent limitation. In many cases investigated, large percentages or, in some cases, the entirety of the maid's salaries had been withheld by employers, allegedly to settle the maids debts. The women workers appeared to have no say in the amount attributed as loaned to them or in the decision regarding salary proportions to be deducted towards their debt. In many cases we investigated, debt had the effect of placing women in bondage to their employers. It was used as a means of forcing the women to endure prolonged working hours, inadequate food and sleep, no days off, and no time to attend a place of worship, for fear of never getting paid or of losing their jobs.

The effective bondage of the women workers is further enforced through the taking of their passports. Almost every maid's passport is taken from her by her employer upon arrival in Kuwait. Passport deprivation by employers is illegal, but the government appears to see this practice when applied to Asian maids, as benign. However while the government tolerates the taking of the maids' passports, it rigorously enforces the Aliens Residence Law specifically requiring foreigners to carry their passports at all times or be subject to immediate arrest and fine or detention. Thus if a maid flees without her passport, she is very likely to be arrested or detained. Passport deprivation was also a barrier to a maid's ability to leave Kuwait. The Kuwaiti government requires an exit visa to be stamped on the passport of all departing aliens. Most maids who fled abusive employers did not have their passports and could not obtain the necessary exit visa. Thus, the government at first prevented them from leaving Kuwait, in violation of the internationally guaranteed right to leave any country.

Debt bondage coupled with the taking of the woman's passport, often result in the illegal confinement of Asian maids by their employers. Confinement may be limited or total. Limited confinement has meant that a maid may be permitted to accompany the family on an excursion, or to go to a public place of worship. In total confinement, employers have refused maids any contact whatsoever with the outside world, including by phone or mail. In many of the cases we investigated, the abused woman had experienced such total confinement, sometimes including being locked in the room in which she slept. One woman described to us how her employers ensured that she would not be able to communicate with anyone about her situation. When they left the home, they unplugged the phones and locked her into one room. Then they locked all the windows and the front door behind them. The woman eventually escaped early morning by climbing over the wall of the garden when her employers were just getting up.

The effect of isolating the maids from the outside world is that no one is aware of the of the employers' abusive practices and it is nearly impossible for a woman to report abuse to the police — presuming they would be responsive — or to her embassy, unless she is able (and courageous enough) to take the drastic step of running away. In some cases, the maids became so desperate they went to any lengths to escape. Some women jumped out of windows or off balconies two or more stories high to get away, while others tried to commit suicide following intolerable abuse. These women often ended up at hospitals, with injuries typically associated with jumping from a great height, such as broken ankles and heels, fractured pelvises and broken vertebrae.



Rape and Physical Assault

It is impossible to say what percentage of all the maids working in Kuwait have been sexually assaulted by their employers. As a result of the pervasive use of debt bondage, passport deprivation and confinement, no one outside the family would necessarily know what is happening to the maid and it would be extremely difficult for her to escape. Even if she does manage to escape, this act brings with it the risk of arrest for being out without her passport or for other offenses. Increasingly, it also involves the possibility of deportation. Furthermore, even if the maids do manage to overcome all these obstacles, they may be reluctant to report that they had been raped or sexually assaulted.

Nonetheless, our investigation of reported cases revealed a disturbing prevalence of rape and sexual assault claims that demands the immediate attention of the Kuwaiti authorities. Some of the Asian maids we interviewed were subjected to a number of forms of extreme violence in connection with being raped or sexually assaulted, including being beaten during a rape by their employer. Others were beaten when they refused to consent to sex with an employer or his male relative. Still others were subjected to violence or its threat to coerce them into sexual intercourse.

In the most egregious cases, the rape itself was violent enough to require the woman's hospitalisation. In several of these instances, the physical and emotional trauma was so severe that the women became catatonic and psychologically, as well as physically, damaged. In some cases, the woman received appropriate medical care, but a number of escaped maids in the embassies or the government deportation center, whom we interviewed, showed unmistakable signs of trauma that had not received any medical attention.

Physical Abuse

As noted, physical abuse was more widely reported by maids than sexual assault and appears to be pervasive. Over two-thirds of the cases we investigated involved complaints of physical assault, including kicking, beating with sticks and pipes, slapping, punching and hair pulling. Asian embassy officials, Western diplomatic sources and local human rights activists independently corroborated this finding, noting that the vast majority of the Asian women who have run away to their embassies since May 1991 claim to have been beaten or otherwise physically assaulted in some manner. In some cases physical assault was severe enough to require hospitalization of the woman victim.

Some women who had not run away from their employers who also reported being slapped in the face, hit on the

back of the head with a shoe, or kicked in the shins for "transgressions" as minor as not moving fast enough. Male and female employers of every social background were cited as assaulting their maids.

Conclusions and Recommendations

This report documents a pervasive problem of rape, physical assault and mistreatment of Asian women domestic servants by their employers. The Kuwaiti government has both failed to investigate and punish such abuse and to ensure that maids receive adequate protection from it under the law. As a result of the government's failure to enforce — and in some cases, to reform — the law, abused Asian maids have been left with little alternative to enduring abusive employers but to flee, largely to their embassies. From there, they have usually been deported.

While deportation appears to have resolved the immediate problem of maids languishing in their embassies, the present deportation procedure does nothing to address the abuse that caused maids to flee. Nor is it an adequate substitute for ensuring that the pattern of abuse and mistreatment with impunity does not recur.

The al-Sabah administration should undertake the following steps to eliminate unpunished abuse and mistreatment of Asian women domestic servants and meet its international human rights obligations to guarantee the Asian maids due process and equal protection of the law:

1) Law Enforcement

We call on Kuwait to enforce existing laws fully and fairly, by

- * Investigating and prosecuting all reports by Asian maids of rape and assault;
- * Punishing debt bondage, passport deprivation, and confinement as required by law;
- * Ceasing the wrongful arrest and detention of Asian maids who complain about or flee from abusive employers;
- * Honoring the provision of the Aliens Residence Law that allows temporary travel documents and replacement passports to be issued by embassies when a woman is unable to retrieve the passport that was unlawfully taken from her; and
- * Preserving the testimony or evidence regarding abuse or mistreatment, in such a manner that police and prosecutors can follow-through the investigation and pursue the maids' cases irrespective of whether the woman is still present in Kuwait.



2) Legal Reform

We call on Kuwait to reform existing laws to guarantee Asian maids adequate protection against abuse, by

- * Amending the Aliens Residence Law to include abuse by an employer as cause for proper termination of an employment contract, giving rise to the employer's duty to bear the cost of the employee's repatriation;
- * Amending the Aliens Residence Law to provide that maids abused by employers can seek alternative employment, should they so desire, without the need to obtain their first employer's permission or running the risk of deportation;
- * Amending the Private Sector Labor Law to remove all undue restrictions on expatriates' freedom of association;
- * Enacting the proposed employment agency regulation law; ensuring that it will regulate the fees employment agencies can charge employers, and forbid employers from recouping those fees by deducting them from the salaries of their domestic servants without a signed prior agreement by the employee;
- * Promulgating standardized employment contracts for domestic servants that can be enforced in the courts of Kuwait or through other official administrative channels, such as the Ministry of Social Affairs and Labour; and
- * Amending the private sector labor law to include domestic servants within its protections, which include limits on hours, days off, deductions from salary and other working conditions and provide for formal arbitration of employment disputes. Short of amending the labor law to include

domestic servants, the government should provide otherwise effective and simple legal mechanisms for Asian maids to resolve employment disputes and utilize the legal system where necessary.

3) International Obligations

We call on the government of Kuwait to demonstrate its commitment to eliminating abuse and providing Asian women domestic servants with due process and equal protection by

- * Signing the International Covenant on Civil and Political Rights and the Convention to End All Forms of Discrimination Against Women; and

4) Social Assistance

We urge Kuwait to assist all maids in resolving employment disputes and working under safe, unoppressive conditions by

- * Establishing a shelter for maids who experience abuse or mistreatment where women can stay while their status is being determined so that maids do not have to choose between remaining with an abusive employer, being held in jail, or languishing in their embassies; and
- * Allowing women who are staying in the shelter full freedom to contact their embassies, the police or any other authority they may deem necessary for the full resolution of their situation. Kuwaiti authorities may wish to post officials from the Ministry of Social Affairs and Labor and the Ministry of Interior Department of Investigations in such a shelter to facilitate resolution of abuses or problems experienced by Asian maids.

There is an important UN Convention that has recently come into force - the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. This Convention seeks to establish international standards to be observed by all states with regard to the rights of migrant workers.

We call upon the government of Sri Lanka to accede to this convention and then to work to persuade the countries of the Middle-East also to accede to it. To establish international standards and then make it incumbent on states to observe those standards is the only possible way to reduce the abuses that have been chronicled in this article.

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