Annexure
UNITED NATIONS WORLD CONFERENCE ON HUMAN RIGHTS, 1993 (Relevant Provisions)

VIENNA DECLARATION AND PROGRAMME OF ACTION

The World Conference on Human Rights,

Considering that the promotion and protection of human rights is a matter of priority for the international community, and that the Conference affords a unique opportunity to carry out a comprehensive analysis of the; international human rights system and of the machinery for the protection of human rights, in order to enhance and thus promote a fuller observance of those rights, in a just and balanced manner,

Recalling the Preamble to the Charter of the United Nations, in particular the determination to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, and in the equal rights of men and women and of nations large and small,

Deeply concerned by various forms of discrimination and violence, to which women continue to be exposed all over the world,

18. The human rights of women and of the girl-child are an inalienable, integral and indivisible part of universal human rights. The full and equal participation of women in political, civil, economic, social and cultural life, at the national, regional and international levels, and the eradication of all forms of discrimination on grounds of sex are priority objectives of the international community,

Gender-based violence and all forms of sexual harassment and exploitation, including those resulting from cultural prejudice and international trafficking, are incompatible with the dignity and worth of the human person, and must be eliminated. This can be achieved by legal measures and through national action and international cooperation in such fields as economic and social development, education, safe maternity and health care, and social support.

The human rights of women should form an integral part of the United Nations human rights activities, including the promotion of all human rights instruments relating to women.
The World Conference on Human Rights urges Governments, institutions, intergovernmental and non-governmental organisations to intensify their efforts for the protection and promotion of human rights of women and the girl-child.

**SPECIAL RAPPORTEUR ON VIOLENCE AGAINST WOMEN WARNS OF THREATS TO GAINS ON WOMEN’S HUMAN RIGHTS, 2004**

As Commission Continues Consideration of Women's Human Rights, Speakers Raise Issues on Human Trafficking, HIV/AIDS Infection, Domestic Violence

(Delayed in transmission.)

GENEVA, 5 April (UN Information Service) — The Special Rapporteur on violence against women this morning addressed the Commission on Human Rights, warning against alarming trends toward political conservatism and backlash which threatened the gains made thus far in the global women’s human rights agenda.

Yakin Erturk, Special Rapporteur on violence against women, said she had emphasized the universality of violence against women, the multiplicity of its forms and the intersectionality of diverse kinds of discrimination against women rooted in other systems of subordination and inequality in her report to the Commission. Thus, while recognizing positive developments, it must also be noted that great divisions among humankind were increasingly articulated along cultural lines and that the management of conflict based on cultural and religious specificities often resulted in the justification of violence against women both within and between conflicting groups.

On the subject of official visits undertaken in 2004, Ms. Erturk said she had been to both El Salvador and Guatemala in February. While both countries had the necessary legal framework in international human rights law, the challenges faced were grave as violence against women and girls continued to be widespread inside and outside the home. The official response to brutal murders of women had illustrated that violence against women was not seen as a serious crime. Moreover, women in both countries shared problems related to the armed conflicts and, more recently, related to the violence and exploitation linked with domestic and transnational criminal networks.

El Salvador, speaking as a concerned country, affirmed that the protection of women was a priority at both the national and
international levels and that efforts had been made to implement important projects for the modernization of organizations entrusted with oversight of violence against women.

Guatemala, also speaking as a concerned country, highlighted the priority accorded to combating the causes and consequences of violence against women. Among ongoing efforts, a new unit had been established within the national civil police to investigate crimes against women.

Switzerland, Canada, Cuba, Ireland (on behalf of the European Union) and Pakistan participated in the interactive dialogue that followed the Special Rapporteur’s presentation.

As the Commission continued with its general debate on the integration of women’s human rights and the gender perspective, it heard from national delegations who emphasized the need to ensure effective implementation into national legislation and practice of international agreements, the rising threat of trafficking in women and children and the interconnectedness of HIV/AIDS infection and the vulnerability of women due to traditional cultural and sexual roles.

Participating in the general debate were Representatives of the Dominican Republic, New Zealand (on behalf of Canada and Australia), Ireland (on behalf of the European Union), Lithuania (on behalf of the Baltic and Nordic States), Sri Lanka, Republic of Korea, South Africa, Cuba, China, India, Paraguay, Pakistan, Bahrain, Croatia, United States, Sudan, Indonesia, Nigeria, Bhutan and Chile.

Speaking in exercise of the right of reply were the Representatives of Japan, the United States and the Republic of Korea.

The Commission will resume its consideration of the integration of the human rights of women and the gender perspective at 3 p.m. this afternoon.

**DOCUMENTS ON WOMEN’S HUMAN RIGHTS**

Under this agenda item the Commission has before it the report (E/CN.4/2004/66 and Add.1) of Yakin Erturk, Special Rapporteur on violence against Women, its Causes and Consequences, which concludes that violence against women is a continuum of acts that violate women’s basic human rights, resulting in devastating consequences for women who experience it, traumatic impact on those who witness it, de-legitimization of States that fail to prevent it and the impoverishment of entire societies that tolerate it. Over the past decade, the problem has
gained recognition as a human rights violation that can be eliminated through political will and legal and civil action. On the other hand, increased trends towards militarization, armed conflict and global terrorism have naturally focused on violence in emergency situations, while the proximity of people of different cultures has drawn attention to the "other": both often result in a normalization of violence against women and have caused a depoliticization of public discourse on violence against women in certain areas.

The report cites among the critical issues requiring further attention promoting a constructive dialogue among civilizations and diffusing the adverse impact of religious extremism on women's human rights; the impact of transnationalism on women in terms of types of violence encountered, the multiplicity of normative systems at work and the multiplicity of State and non-State actors involved; strengthening the capacity of States to comply effectively with their obligations under international law; the intersection of violence against women and the HIV/AIDS pandemic; and "gender budgeting as a mechanism for monitoring State compliance with international law to eliminate violence against women.

The Addendum contains summaries of general individual allegations, as well as urgent appeals transmitted to Governments, and their replies. Such communications were carried out with Angola, Argentina, Australia, Azerbaijan, Bangladesh, Bhutan, China, Democratic Republic of the Congo, Egypt, Greece, India, Indonesia, Iran, Israel, Malaysia, Mexico, Myanmar, Nepal, Nigeria, Pakistan, Peru, Singapore, Spain, Sri Lanka, Sudan, Switzerland, Thailand, Turkey, United Arab Emirates and Uruguay.

There is also a report of the Secretary-General on the joint work plan of the Division for the Advancement of Women and the Office of the High Commissioner for Human Rights (E/CN.4/2004/65-E/CN.6/2004/7), which contains an assessment of the implementation of the current work plan and sets forth the joint work plan for 2004, including aspects for support for human rights bodies; support for intergovernmental bodies and special procedures; technical cooperation, advisory services and meetings; awareness raising and outreach; and inter-agency coordination.

VIOLANCE AGAINST WOMEN

YAKIN ERTURK, Special Rapporteur on Violence against Women, stressed that her report emphasized the universality of violence against women, the multiplicity of its forms and the intersectionality of diverse kinds of discrimination against
women rooted in other systems of subordination and inequality. She had also expanded upon the concept of violence against women to capture that wide spectrum of acts manifested "from the domicile to the transnational arena". New issues and concerns were continually emerging and transnational actors, including intergovernmental organizations, corporations and other business enterprises, among others, were implicated in the need for further standard setting and implementation.

Official missions had been undertaken to El Salvador and Guatemala in February 2004, she said, while noting that the final mission reports would be presented during the Commission's 2005 session. While both countries had the necessary legal framework in international human rights law, the challenges were grave as violence against women and girls continued to be widespread inside and outside of the home. The official response to the brutal murders of women who had been kidnapped and later found dead with signs of rape and torture illustrated that violence against women - whether domestic violence, rape or sexual harassment — was not seen as a serious crime. Women in both countries also shared problems related to the long years of armed conflict and to more recent problems of violence and exploitation linked to domestic and transnational criminal networks. Most crimes remained uninvestigated, resulting in impunity, reinforcing patterns of gender discrimination and constituting a source of perpetual terror in the everyday lives of women. However, among positive developments, legal reforms had been undertaken in El Salvador, while Guatemala and the United Nations had recently agreed to establish a Commission for the Investigation of Illegal Groups and Clandestine Security Organizations.

While violence against women persisted in all countries, the international women's movement and human rights advocates worldwide had made the issue a priority on the international agenda, the Special Rapporteur noted. The Declaration by women Ministers of Foreign Affairs and other dignitaries made at the beginning of the Commission's present session, and the high-level segment's focus on violence against women, were encouraging. However, concern must also be expressed over alarming trends toward political conservatism and backlash, which threatened the gains made thus far in the global women's human rights agenda. Noting that great divisions among humankind were increasingly being articulated along cultural lines, she warned that the management of conflict based on cultural and religious specificities often resulted in the justification of violence against women both within and between conflicting groups.
Stressing that HIV/AIDS had emerged as the single most devastating epidemic experienced in modern history, she noted that its interconnection with and impact on women's human rights had become a major area of concern as women and girls were particularly vulnerable to HIV/AIDS, owing not only to their biological conditions, but also to economic and social inequalities and culturally accepted gender roles that placed them in subordinate positions vis-a-vis men regarding decisions on sexual relations. The development of guidelines for the practical implementation of international law on the human rights of women, and enhancing understanding and developing strategies to respond to violence against women at the transnational, national, community and individual levels and security were among the priorities she envisaged addressing.

MARIO ERNESTO CASTRO GRANDE (El Salvador), speaking as a concerned country, said the visit of the Special Rapporteur showed the commitment of El Salvador to the special mechanisms of the Commission. The protection of women was a priority for the Government of El Salvador, both at the national and international levels. The report of the Special Rapporteur, which contained her preliminary conclusions and recommendations, was appreciated, but El Salvador regretted that conclusions were mixed with general observations about countries, without specificity. It was hoped that the final report would make a clear demarcation, including the specific realities of El Salvador. There was also concern for the Special Rapporteur's affirmation that the Government was not complying with its international obligations to investigate, prosecute and punish acts of violence against women, since this was incorrect.

The Government of El Salvador had passed laws on this subject. In 2003, decrees had been adopted to increase the penalties for offences against sexual liberty and regarding sexual exploitation, in particular trafficking of women and children. El Salvador had been making efforts to implement important projects for the modernization of organizations entrusted with the oversight of violence against women; had created a hotline for the victims of violence; and had set up an institute against violence with a wide-based nature and mandate, including oversight. The trend of brutal killings in the region was not a systematic trend in El Salvador, or a wide-scale one. This violence was being committed mainly by gangs. The Government was greatly concerned about these acts and was working to combat them. El Salvador appreciated that the Special Rapporteur had noted that much had been done to combat domestic violence, and it was recognized that much remained to be done. It was to be hoped
that the final recommendations of the Special Rapporteur would help in this respect.

LARS PIRA PEREZ (Guatemala), speaking as a concerned country, said that combating the causes and consequences of violence against women was a priority for his Government. Although the final report of the Special Rapporteur on her visit to Guatemala would only be submitted next year, the preliminary note had broadly explained the issues of importance for the Government. It was hoped that the problems described could be corrected, but above all, the aim was to eliminate the sources of the problems faced by women. There had been progress in that regard since the signing of the peace agreement in Guatemala, however, obstacles still remained to be overcome. The priority was to identify reasons why women were targeted. Among the Government’s ongoing efforts, a new unit had been established within the national civil police to investigate crimes against women. Guatemala also recognized the need for regional and international cooperation to combat issues of violence against women. Both the preliminary conclusions and the recommendations of the Special Rapporteur were being given serious attention.

INTERACTIVE DIALOGUE

JEAN-DANIEL VIGNY (Switzerland) said that he supported the work of the Special Rapporteur, and Switzerland’s policy on this issue was clear: it was against any form of violence against women. The Special Rapporteur should continue to develop the concept of violence against women.

ADRIAN NORFOLK (Canada) said as all were aware, violence against women was as multi-faceted as it was pervasive, and it needed to be attacked from many levels. This had been highlighted in previous reports. The impact of HIV/AIDS on women and girls was a grave concern, and the commitment of the Special Rapporteur was welcomed. How would research be undertaken to broaden understanding and how would a thematic approach help this?

MARIA DEL CARMEN HERRERA CASEIRO (Cuba) said in the conclusion of the report, the Special Rapporteur referred to and raised the need for global governance, indicating that the United Nations should carry out a constructive role to deal with the deficiencies of this. Did the Special Rapporteur have a specific idea as to what actions should be undertaken by the United Nations in this optic, bearing in mind that there were some organizations that lay outside the scope of the United Nations which dealt with this issue.
MARY WHILLAN (Ireland) said the emphasis placed on the cooperation between actors both between and within as well as outside of the United Nations was welcomed. How would the Special Rapporteur describe the cooperation between the special mechanisms and other branches of treaty bodies; what mandates did she see as most closely linked to her own, and how did she plan to coordinate with them.

TEHMINA JANJUA (Pakistan) said the ideas in the report were very interesting and created a thematic perspective on the mandate, which was strongly supported. The assessment that violence against women was a continuum of violence, and impoverished whole societies that tolerated it, was a message that needed to be taken seriously. The future work of the Special Rapporteur would take a thematic analysis of the full range of women's access to justice, and a question was asked as to how she intended to elaborate this. Violence against women under occupation required further elaboration.

YAKIN ERTURK, Special Rapporteur on Violence against Women, said in reaction to the comments that she appreciated the concerns expressed by El Salvador and Guatemala in relation to her report after her mission to both countries. She looked forward to contributing to their efforts in fighting violence against women. With regard to the question by Switzerland, she said that she was developing an index to show the efforts of States, and the index would indicate the level of compliance by each State. She would consolidate her expertise to develop the index that would be vital in measuring States' efforts in implementing the provisions of the Convention on women, for example. The collaboration between treaty bodies and Special Rapporteurs was also essential to advance the cause of women.

STATEMENTS ON WOMEN'S HUMAN RIGHTS

YSSET ROMAN MALDONADO (Dominican Republic) said the integration of women's rights and the gender perspective continued to be a priority in the Dominican Republic. Work plans and institutions had been set up, and at the same time, policies had been strengthened for women and their families. However, certain problems affecting the rights of women continued to prevail, for example in the increase of intra-familial violence and the trafficking of Dominican women. Ministers had made it clear that this first problem of intra-familial violence was, one that corroded families, and the principal victims of this violence were women. Statistical projections showed that if the escalation continued, there would be a 21 per cent increase compared to last year, and thus specific actions had been taken to promote policies that reduced this violence.
The Government was using training, the media and a documentation centre in the fight against this scourge in order to create greater awareness of the problem. Legal and psychological clinics had been set up to give treatment to the victims of this violence, and a pilot project had been set up for women and their surviving children. Policies had been set up from a multi-sexual viewpoint, and the implementation of organized social action based on consensus was one of the main goals. Efforts had also been made to limit smuggling of women. However, the decisive support of the international community was required to combat these scourges.

TIM CAUGHLEY (New Zealand), speaking also on behalf of Australia and Canada, noted that it had been more than 20 years since the Convention on the Elimination of Discrimination against Women had entered into force and nearly ten years since the adoption of the Beijing Declaration and Platform for Action. Underscoring the need for universal adherence to and implementation of those documents, he also noted that at a time when the international community should be moving forward with programmes to fulfill its commitments, some States had begun to question the common standards to which all had agreed. Furthermore, while the adoption by the General Assembly's Third Committee of resolutions on domestic violence against women and the preparation of an in-depth study on violence against women were welcomed, its inability to reach agreement on the omnibus resolution had been disappointing.

Increasing rates of trafficking and alarming increases in HIV/AIDS infection in women and children, fuelled by gender inequalities, stigmatization, violence and discriminatory attitudes, as well as the widespread use of sexual violence as a weapon of intimidation and war, amply demonstrated the continued relevance of international commitments to eliminate violence against women and the urgent need for concerted international action, he added. However, there had been some progress including, among others, the appointment of the Special Rapporteur on violence against women and the agreement of a set of conclusions on the role of men and boys in promoting gender equality. While the greatest achievements of the past decade in the struggle against violence had been awareness raising and standard setting, those of the second decade must focus on implementation of effective programmes and strategies to ensure that the prohibition against violence became a tangible reality.

MARY WHELAN (Ireland), speaking on behalf of the European Union, said that to ensure the full and equal enjoyment of human rights by women, it was essential that women and girls
participated fully and equally in all activities in society and in all decisions affecting them. Action to promote gender equality required a consistent and systematic approach, which presupposed the recognition of the differences between men and women and the willingness to establish a balanced distribution of responsibilities and obligations between women and men. Many countries had put in place the necessary policy framework to promote the rights of women and to ensure that those rights were not only recognized but were respected in practice. But one had also to acknowledge that in far too many cases, application was sketchy, and women were not able to enjoy full and equal human rights. States should incorporate provisions concerning non-discrimination of women into their national legislations and provide effective mechanisms to ensure the implementation of those standards. While the European Union acknowledged that there had been progress in many areas, many States continued to deny women the full and equal exercise and enjoyment of the rights to which all persons were entitled.

The provisions of the International Bill of Human Rights applied in full to women. That was the fundamental principle underpinning the 1979 Convention on the Elimination of All Forms of Discrimination against Women, which focused on the measures needed to make that principle a reality. The Union welcomed the resolve of the international community, confirmed at the highest level in the UN millennium Declaration, to strengthen efforts to implement that instrument. The optional protocol to the Convention was a further important step in that direction, because it provided a more effective monitoring mechanism of States' implementation of their commitments. The Union urged all States to sign, ratify and implement fully the Convention and its optional protocol. Nevertheless, the Union continued to be concerned at the very significant number and content of reservations, some of them regarding fundamental provisions of the Convention.

Harmful traditional or customary practices, including female genital mutilation and crimes committed in the name of honour, were forms of violence that prevented the full enjoyment of human rights. Social, cultural or religious factors could never be invoked as a justification for such violence. Domestic violence, which encompassed marital rape as well as other forms of physical, psychological and sexual violence, was one of the most common, least visible forms of violence against women and girls. States had an obligation to eradicate all forms of violence against women and the girl child in the family and to ensure the effective protection of women and girls.

ALGIMANTAS RIMKUNAS (Lithuania), speaking on behalf of the
Baltic and Nordic States, said that trafficking in women and children was a major human rights concern and that combating that phenomenon must figure high on the international agenda. No country or region was immune to the problem and failure of States to investigate, prosecute and punish the perpetrators prevented the victims of such trafficking from enjoying the human rights to which they were entitled. The absence of equal rights, gender-based discrimination and the denial of economic opportunities to women were factors that could lead to women's increased vulnerability to trafficking, which constituted the denial of the rights to liberty, freedom of movement and freedom from violence, torture and cruel and degrading treatment. Human trafficking had reached such unprecedented levels that it should truly be called a new form of slavery.

Well-coordinated national, regional and global action was imperative to prevent and combat trafficking in human beings, he continued. The global ratification and implementation of the United Nations Convention on Transnational Organized Crime and its Protocol on trafficking would constitute a significant achievement. Regionally, a new European Convention aimed to establish a comprehensive legal framework for protecting victims' human rights and providing assistance to victims and witness protection. Moreover, a common understanding of the scope and nature of the problem had led to common efforts by Baltic Governments, law enforcement personnel, educational institutions and non-governmental organizations. Among other initiatives, the Task Force on Organized Crime in the Baltic Sea Region and its operative committee constituted a core group for gathering, analysing and exchanging relevant data. There had also been efforts to increase public awareness about trafficking in its various forms, including holding seminars and meetings in Estonia, Latvia and Lithuania to provide information on recognizing victims and traffickers and to make available resources for assistance.

MANORI MALLIKARATCHY (Sri Lanka) said that among the most striking social, political and economic phenomena of the past century had been the emergence and integration of the discourse on women's rights at all levels. Women comprised more than half the world's population. Women represented 70 per cent of the world's poor, and two thirds of them had not been taught to read and write. Efforts to bring a gender perspective into the human rights debate as well as to address the most urgent issues facing women around the world were not only relevant to the Commission but also for global economic and social progress. The Government of Sri Lanka recognized the importance of gender perspective and the major role that women could play in peace building and post-conflict rehabilitation and
reconstruction. At the second round of peace talks held between the Government and the LITE in Oslo, a sub-committee was established to ensure the effective inclusion of gender issues in the peace process and its first meeting was held in March 2003. The priority issue identified by the sub-committee included the gender perspective on resettlement, personal security and safety, infrastructure and service, livelihood and employment, political representation, decision-making and reconciliation. As a result of two decades of armed conflict, surveys had shown the noticeable increase in women-headed households, which had been identified as an area requiring special attention.

During the past two decades, mainly as a result of economic liberalization, the influence of Sri Lankan women in social and economic spheres had grown significantly. Approximately half of the labour force in professional, semi-professional and middle-income level employment was composed of women. They also dominated the migrant labour force, and employment in the free trade zone and the tea plantation sector, which accounted for Sri Lanka's foreign exchange earnings.

HYUCK CHOI (Republic of Korea) said the human rights of women and girls were an inalienable, integral and indivisible part of universal human rights. In this regard, the promotion and protection of the full enjoyment of all human rights and fundamental freedoms by women was rightly a key concern of the Commission, and efforts to advance human rights as a universal goal should integrate the human rights of women and the gender perspective. Furthermore, equality between men and women, boys and girls was fundamental to a society where democracy and human rights were upheld for all. Domestically, the current focus was on fighting the sex trade and trafficking in persons, the predominant victims of which were women and girls. The issue of violence against women should be high on the global human rights agenda. As poverty and HIV/AIDS became increasingly feminised, their interplay with gender-based violence had plunged the most vulnerable of women and girls around the world into a state of marginal existence where their very survival and dignity as human beings were effectively denied. Under these circumstances, there was a pressing need to revisit and reframe the goal of ending violence against women, making it not just a goal in itself but also a vital part of strategies in fighting poverty and HIV/AIDS.

J. NDLOVU (South Africa) said President Mbeki had reiterated the importance of promoting human rights in general and in particular the rights of women, children and the disabled, if it were truly desired to sustain democratic values worldwide. This would also add impetus to ongoing efforts to enhance the
integration of gender equality and women's rights into the United Nations system. In the first decade of its democracy, South Africa had created an enabling legislative framework and awareness programmes to ensure transformation, and this was done due to acute awareness of how race, class and gender conspired to locate women, especially rural African women, at the very bottom of the rights hierarchy. Mindful of the important role that peace and security played in the promotion and protection of human rights, South Africa was involved in several initiatives aimed at a peaceful continent and a peaceful world, and in this context its engagement in the Democratic Republic of the Congo, Burundi and other places was in line with the values espoused in the Millennium Declaration. South Africa looked forward to a fruitful sharing of ideas in order to find sustainable solutions to problems impeding successful promotion and implementation of gender equality and women's rights.

MARIA DEL CARMEN HERRERA (Cuba) said that poverty had many faces and most of them were female. Women accounted for 70 per cent of the nearly two billion poor worldwide; two-thirds of the world's illiterate were women; and more than half of the 40 million HIV/AIDS patients worldwide were women, 95 per cent of whom lived in the Third World. Poor countries could not be blamed for this tragedy - they were not the ones who had conquered and plundered entire continents for centuries, neither had they established colonialism, slavery or imperialism. The national efforts of Third World States must be supplemented with a new climate of international cooperation to overcome the underdevelopment imposed upon them. Cuba proffered the example of a country where, within a framework of justice and the fight for equality, the situation of women could be radically transformed and their rights fully realized. In Cuba, women accounted for 44.9 per cent of labour in the state-run civilian sector. They represented 66.4 per cent of all mid- and high-level technicians and professionals, 72 per cent of the educational sector, 67 per cent of the health sector and 44.6 per cent of the scientific sector. Cuba today figured among the top ten countries worldwide with regard to the representation of women in Parliament, with 35.4 per cent. Such results were the outcome of the Cuban people's firmness and the Government's political will to carry out its social projects for the benefit of the whole population.

LIU ZHONGXIN (China) said women were movers of history, creators of wealth and participators in progress. However, their equal rights with men remained to be guaranteed. First, this was due to the out-dated gender stereotypes that should be discarded, as they prevented women from being aware of their own rights, and with them it was impossible to reshape their
lives. These stereotypes were frequently sources of violence and sexual aggression against women, and all Governments should take steps to gradually overcome them. Second, women's participation at the national level in policy formulation would improve the situation, forming proof of better democracy and the protection of women's rights. Training should be provided so as to help women acquire the skills and confidence vital for their full participation in political life.

The Government of China continued to formulate and implement policies that enhanced the situation of women at many levels, systematically promoting their rights. The year 2005 marked the tenth anniversary of the Beijing Conference, and this would be celebrated by reports on the implementation of its Plan of Action and other events. China was concerned about the situation of human rights of women in the United States, where they did not enjoy equal rights either in political life, income or daily life. Domestic violence and sexual harassment were serious problems and rampant in that country. China called upon the Government of the United States to take a hard look at the situation of women in the country, and called on the Special Rapporteur to visit that country.

MUKTA TOMAR (India) said the progress of any society was dependent on its ability to protect and promote the rights of its women. The guaranteeing of equal rights and privileges for women by the Constitution had marked the first step towards the transformation of the status of women in India. As a result of concerted efforts and a comprehensive policy framework over the last five decades, there had been significant advances in the socio-economic indicators for women. Empowerment for women was critical for the socio-economic progress of any country. The Government of India was convinced that education was the key for the advancement of women. The spread of liberal education and values had unleashed forces for social reform and created awareness about the need for increased participation of women in the educational, social, economic and political life of India. In addition to the role of the State and the Constitutional provisions that existed, the judiciary had also played a key role in the advancement of gender justice in India. The Supreme Court of India had delivered landmark pronouncements on matters such as the need for equal property rights for women, and grass roots groups organizing women had become agents of social change, enabling access to financial and material resources.

LORENA PATINO (Paraguay) said that her country had ratified the Convention on the Elimination of All Forms of Discrimination against Women and would this year be submitting its fifth periodic report to the related Committee. It was also a State
party to Inter-American Conventions guaranteeing women's rights. Among national efforts to integrate the issue of women's human rights, a national secretariat had been established to oversee the implementation of women's rights and the legal progress made in the international field had been accompanied by developments in national legislation. Among other assurances, the equality of women in all fields had been guaranteed in the Constitution. Moreover, legal instruments and actions undertaken by both governmental and non-governmental organizations had placed the serious problem of domestic violence front stage and there were efforts to make people increasingly aware that violations of women's rights were violations of human rights. Among the successes witnessed in this field, it could be seen that women were gradually acceding to key positions of political power. For example, among others, six women currently held

**STRATEGIC OBJECTIVE D.1. TAKE INTEGRATED MEASURES TO PREVENT AND ELIMINATE VIOLENCE AGAINST WOMEN**

**Actions to be taken By Governments:**

a. Condemn violence against women and refrain from invoking any custom, tradition or religious consideration to avoid their obligations with respect to its elimination as set out in the Declaration on the Elimination of Violence against Women;

b. Refrain from engaging in violence against women and exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons;

c. Enact and/or reinforce penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs done to women and girls who are subjected to any form of violence, whether in the home, the workplace, the community or society;

d. Adopt and/or implement and periodically review and analyse legislation to ensure its effectiveness in eliminating violence against women, emphasizing the prevention of violence and the prosecution of offenders; take measures to ensure the protection of women subjected to violence, access to just and effective remedies, including compensation and indemnification and healing of victims, and rehabilitation of perpetrators;

e. Work actively to ratify and/or implement international human rights norms and instruments as they relate to violence against

f. Implement the Convention on the Elimination of All Forms of Discrimination against Women, taking into account general recommendation 19, adopted by the Committee on the Elimination of Discrimination against Women at its eleventh session; [23]

g. Promote an active and visible policy of mainstreaming a gender perspective in all policies and programmes related to violence against women; actively encourage, support and implement measures and programmes aimed at increasing the knowledge and understanding of the causes, consequences and mechanisms of violence against women among those responsible for implementing these policies, such as law enforcement officers, police personnel and judicial, medical and social workers, as well as those who deal with minority, migration and refugee issues, and develop strategies to ensure that the revictimization of women victims of violence does not occur because of gender-insensitive laws or judicial or enforcement practices;

h. Provide women who are subjected to violence with access to the mechanisms of justice and, as provided for by national legislation, to just and effective remedies for the harm they have suffered and inform women of their rights in seeking redress through such mechanisms;

i. Enact and enforce legislation against the perpetrators of practices and acts of violence against women, such as female genital mutilation, female infanticide, prenatal sex selection and dowry-related violence, and give vigorous support to the efforts of non-governmental and community organizations to eliminate such practices;

j. Formulate and implement, at all appropriate levels, plans of action to eliminate violence against women;

k. Adopt all appropriate measures, especially in the field of education, to modify the social and cultural patterns of conduct of men and women, and to eliminate prejudices, customary practices and all other practices based on the idea of the inferiority or superiority of either of the sexes and on stereotyped roles for men and women;
l. Create or strengthen institutional mechanisms so that women and girls can report acts of violence against them in a safe and confidential environment, free from the fear of penalties or retaliation, and file charges;

m. Ensure that women with disabilities have access to information and services in the field of violence against women;

n. Create, improve or develop as appropriate, and fund the training programmes for judicial, legal, medical, social, educational and police and immigrant personnel, in order to avoid the abuse of power leading to violence against women and sensitize such personnel to the nature of gender-based acts and threats of violence so that fair treatment of female victims can be assured;

o. Adopt laws, where necessary, and reinforce existing laws that punish police, security forces or any other agents of the State who engage in acts of violence against women in the course of the performance of their duties; review existing legislation and take effective measures against the perpetrators of such violence;

p. Allocate adequate resources within the government budget and mobilize community resources for activities related to the elimination of violence against women, including resources for the implementation of plans of action at all appropriate levels;

q. Include in reports submitted in accordance with the provisions of relevant United Nations human rights instruments, information pertaining to violence against women and measures taken to implement the Declaration on the Elimination of Violence against Women;

r. Cooperate with and assist the Special Rapporteur of the Commission on Human Rights on violence against women in the performance of her mandate and furnish all information requested; cooperate also with other competent mechanisms, such as the Special Rapporteur of the Commission on Human Rights on torture and the Special Rapporteur of the Commission on Human Rights on summary, extrajudicial and arbitrary executions, in relation to violence against women;

s. Recommend that the Commission on Human Rights renew the mandate of the Special Rapporteur on violence against women when her term ends in 1997 and, if warranted, to update and strengthen it.

By Governments, including local governments, community organizations, nongovernmental organizations, educational institutions, the public and private sectors, particularly
enterprises, and the mass media, as appropriate:

a. Provide well-funded shelters and relief support for girls and women subjected to violence, as well as medical, psychological and other counselling services and free or low-cost legal aid, where it is needed, as well as appropriate assistance to enable them to find a means of subsistence;

b. Establish linguistically and culturally accessible services for migrant women and girls, including women migrant workers, who are victims of gender-based violence;

c. Recognize the vulnerability to violence and other forms of abuse of women migrants, including women migrant workers, whose legal status in the host country depends on employers who may exploit their situation;

d. Support initiatives of women's organizations and non-governmental organizations all over the world to raise awareness on the issue of violence against women and to contribute to its elimination;

e. Organize, support and fund community-based education and training campaigns to raise awareness about violence against women as a violation of women's enjoyment of their human rights and mobilize local communities to use appropriate gender-sensitive traditional and innovative methods of conflict resolution;

f. Recognize, support and promote the fundamental role of intermediate institutions, such as primary health-care centres, family-planning centres, existing school health services, mother and baby protection services, centres for migrant families and so forth in the field of information and education related to abuse;

g. Organize and fund information campaigns and educational and training programmes in order to sensitize girls and boys and women and men to the personal and social detrimental effects of violence in the family, community and society; teach them how to communicate without violence and promote training for victims and potential victims so that they can protect themselves and others against such violence;

h. Disseminate information on the assistance available to women and families who are victims of violence;

i. Provide, fund and encourage counselling and rehabilitation programmes for the perpetrators of violence and promote research to further efforts concerning such counselling and rehabilitation so as to prevent the recurrence of such violence;
j. Raise awareness of the responsibility of the media in promoting non-stereotyped images of women and men, as well as in eliminating patterns of media presentation that generate violence, and encourage those responsible for media content to establish professional guidelines and codes of conduct; also raise awareness of the important role of the media in informing and educating people about the causes and effects of violence against women and in stimulating public debate on the topic.

By Governments, employers, trade unions, community and youth organizations and non-governmental organizations, as appropriate:

a. Develop programmes and procedures to eliminate sexual harassment and other forms of violence against women in all educational institutions, workplaces and elsewhere;

b. Develop programmes and procedures to educate and raise awareness of acts of violence against women that constitute a crime and a violation of the human rights of women;

c. Develop counselling, healing and support programmes for girls, adolescents and young women who have been or are involved in abusive relationships, particularly those who live in homes or institutions where abuse occurs; d. Take special measures to eliminate violence against women, particularly those in vulnerable situations, such as young women, refugee, displaced and internally displaced women, women with disabilities and women migrant workers, including enforcing any existing legislation and developing, as appropriate, new legislation for women migrant workers in both sending and receiving countries. By the Secretary-General of the United Nations:

Provide the Special Rapporteur of the Commission on Human Rights on violence against women with all necessary assistance, in particular the staff and resources required to perform all mandated functions, especially in carrying out and following up on missions undertaken either separately or jointly with other special rapporteurs and working groups, and adequate assistance for periodic consultations with the Committee on the Elimination of Discrimination against Women and all treaty bodies.

By Governments, international organizations and non-governmental organizations:

Encourage the dissemination and implementation of the UNHCR Guidelines on the Protection of Refugee Women and the UNHCR Guidelines on the Prevention of and Response to Sexual Violence against Refugees.
STRATEGIC OBJECTIVE D.2. STUDY THE CAUSES AND CONSEQUENCES OF VIOLENCE AGAINST WOMEN AND THE EFFECTIVENESS OF PREVENTIVE MEASURES

Actions to be taken

By Governments, regional organizations, the United Nations, other international organizations, research institutions, women's and youth organizations and nongovernmental organizations, as appropriate:

a. Promote research, collect data and compile statistics, especially concerning domestic violence relating to the prevalence of different forms of violence against women, and encourage research into the causes, nature, seriousness and consequences of violence against women and the effectiveness of measures implemented to prevent and redress violence against women;

b. Disseminate findings of research and studies widely;

c. Support and initiate research on the impact of violence, such as rape, on women and girl children, and make the resulting information and statistics available to the public;

d. Encourage the media to examine the impact of gender role stereotypes, including those perpetuated by commercial advertisements which foster gender-based violence and inequalities, and how they are transmitted during the life cycle, and take measures to eliminate these negative images with a view to promoting a violence-free society.

STRATEGIC OBJECTIVE D.3. ELIMINATE TRAFFICKING IN WOMEN AND ASSIST VICTIMS OF VIOLENCE DUE TO PROSTITUTION AND TRAFFICKING

Actions to be taken

By Governments of countries of origin, transit and destination, regional and international organizations, as appropriate:

a. Consider the ratification and enforcement of international conventions on trafficking in persons and on slavery;

b. Take appropriate measures to address the root factors, including external factors, that encourage trafficking in women and girls for prostitution and other forms of commercialized sex, forced marriages and forced labour in order to eliminate trafficking in women, including by strengthening existing legislation with a view to providing better protection of the rights of women and girls and to punishing the perpetrators, through
both criminal and civil measures;

c. Step up cooperation and concerted action by all relevant law enforcement authorities and institutions with a view to dismantling national, regional and international networks in trafficking;

d. Allocate resources to provide comprehensive programmes designed to heal and rehabilitate into society victims of trafficking, including through job training, legal assistance and confidential health care, and take measures to cooperate with non-governmental organizations to provide for the social, medical and psychological care of the victims of trafficking;

d. Develop educational and training programmes and policies and consider enacting legislation aimed at preventing sex tourism and trafficking, giving special emphasis to the protection of young women and children.

F. WOMEN AND THE ECONOMY

There are considerable differences in women's and men's access to and opportunities to exert power over economic structures in their societies. In most parts of the world, women are virtually absent from or are poorly represented in economic decision-making, including the formulation of financial, monetary, commercial and other economic policies, as well as tax systems and rules governing pay. Since it is often within the framework of such policies that individual men and women make their decisions, inter alia, on how to divide their time between remunerated and unremunerated work, the actual development of these economic structures and policies has a direct impact on women's and men's access to economic resources, their economic power and consequently the extent of equality between them at the individual and family levels as well as in society as a whole.

In many regions, women's participation in remunerated work in the formal and non-formal labour market has increased significantly and has changed during the past decade. While women continue to work in agriculture and fisheries, they have also become increasingly involved in micro, small and medium-sized enterprises and, in some cases, have become more dominant in the expanding informal sector. Due to, inter alia, difficult economic situations and a lack of bargaining power resulting from gender inequality, many women have been forced to accept low pay and poor working conditions and thus have often become preferred workers. On the other hand, women have entered the workforce increasingly by choice when they have become aware of and demanded their rights. Some have
succeeded in entering and advancing in the workplace and improving their pay and working conditions. However, women have been particularly affected by the economic situation and restructuring processes, which have changed the nature of employment and, in some cases, have led to a loss of jobs, even for professional and skilled women. In addition, many women have entered the informal sector owing to the lack of other opportunities. Women's participation and gender concerns are still largely absent from and should be integrated in the policy formulation process of the multilateral institutions that define the terms and, in cooperation with Governments, set the goals of structural adjustment programmes, loans and grants.

CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN, 1979

The States Parties to the present Convention,

Noting that the Charter of the United Nations reaffirms faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of man and women,

Noting that the Universal Declaration of Human Rights affirms the principle of the inadmissibility of discrimination and proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, including distinction based on sex,

Noting that the States Parties to the International Covenants on Human Rights have the obligation to ensure the equal right of men and women to enjoy all economic, social, cultural, civil and political rights,

Considering the international conventions concluded under the auspices of the United Nations and the specialized agencies promoting equality of rights of men and women,

Noting also the resolutions, declarations and recommendations adopted by the United Nations and the specialized agencies promoting equality of rights of men and women,

Concerned, however, that despite these various instruments extensive discrimination against women continues to exist,

Recalling that discrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and
the family and makes more difficult the full development of the potentialities of women in the service of their countries and of humanity,

*Concerned* that in situations of poverty women have the least access to food, health, education, training and opportunities for employment and other needs,

*Convinced* that the establishment of the new international economic order based on equity and justice will contribute significantly towards the promotion of equality between men and women,

*Emphasizing* that the eradication of apartheid, of all forms of racism, racial discrimination, colonialism, neo-colonialism, aggression, foreign occupation and domination and interference in the internal affairs of States is essential to the full enjoyment of the rights of men and women,

*Affirming* that the strengthening of international peace and security, relaxation of international tension, mutual co-operation among all States irrespective of their social and economic systems, general and complete disarmament, and in particular nuclear disarmament under strict and effective international control, the affirmation of the principles of justice, equality and mutual benefit in relations among countries and the realization of the right of peoples under alien and colonial domination and foreign occupation to self-determination and independence, as well as respect for national sovereignty and territorial integrity, will promote social progress and development and as a consequence will contribute to the attainment of full equality between men and women,

*Convinced* that the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields,

*Bearing* in mind the great contribution of women to the welfare of the family and to the development of society, so far not fully recognized, the social significance of maternity and the role of both parents in the family and in the upbringing of children, and aware that the role of women in procreation should not be a basis for discrimination but that the upbringing of children requires a sharing of responsibility between men and women and society as a whole,

*Aware* that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women,
Determined to implement the principles set forth in the Declaration on the Elimination of Discrimination against Women and, for that purpose, to adopt the measures required for the elimination of such discrimination in all its forms and manifestations,

Have agreed on the following:

PART I

Article 1

For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Article 2

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

(a) to embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;

(b) to adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;

(c) to establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;

(d) to refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;

(e) to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;

(f) to take all appropriate measures, including legislation, to
modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;

(g) to repeal all national penal provisions which constitute discrimination against women.

Article 3

States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

Article 4

1. Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.

2. Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory.

Article 5

States Parties shall take all appropriate measures:

(a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;

(b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.

Article 6

States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.
PART II

Article 7

States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:

(a) to vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;

(b) to participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;

(c) to participate in non-governmental organizations and associations concerned with the public and political life of the country.

Article 8

States Parties shall take all appropriate measures to ensure to women, on equal terms with men and without any discrimination, the opportunity to represent their Governments at the international level and to participate in the work of international organizations.

Article 9

1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.

2. States Parties shall grant women equal rights with men with respect to the nationality of their children.

PART III

Article 10

States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:

(a) the same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in
educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in preschool, general, technical, professional and higher technical education, as well as in all types of vocational training;

(b) access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality;

(c) the elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods;

(d) the same opportunities to benefit from scholarships and other study grants;

(e) the same opportunities for access to programmes of continuing education including adult and functional literacy programmes, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women;

(f) the reduction of female student drop-out rates and the organization of programmes for girls and women who have left school prematurely;

(g) the same opportunities to participate actively in sports and physical education;

(h) access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.

Article 11

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

(a) the right to work as an inalienable right of all human beings;

(b) the right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;

(c) the right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of
service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;

(d) the right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;

(e) the right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;

(f) the right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:

(a) to prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;

(b) to introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;

(c) to encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;

(d) to provide special protection to women during pregnancy in types of work proved to be harmful to them.

3. Protective legislation relating to matters covered in this Article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary.

Article 12

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.

2. Notwithstanding the provisions of paragraph 1 of this Article, States Parties shall ensure to women appropriate services in
connexion with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

Article 13

States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular:

(a) the right to family benefits;

(b) the right to bank loans, mortgages and other forms of financial credit;

(c) the right to participate in recreational activities, sports and all aspects of cultural life.

Article 14

1. States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetized sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of this Convention to women in rural areas.

2. States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:

(a) to participate in the elaboration and implementation of development planning at all levels;

(b) to have access to adequate health care facilities, including information, counselling and services in family planning;

(c) to benefit directly from social security programmes;

(d) to obtain all types of training and education, formal and non-formal, including that relating to functional literacy, as well as, *inter alia*, the benefit of all community and extension services, in order to increase their technical proficiency;

(e) to organize self-help groups and co-operatives in order to obtain equal access to economic opportunities through employment or self-employment;
(f) to participate in all community activities;

(g) to have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes;

(h) to enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

**PART IV**

**Article 15**

1. States Parties shall accord to women equality with men before the law.

2. States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.

3. States Parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void.

4. States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.

**Article 16**

1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:

(a) the same right to enter into marriage;

(b) the same right freely to choose a spouse and to enter into marriage only with their free and full consent;

(c) the same rights and responsibilities during marriage and at its dissolution;

(d) the same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;
(e) the same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;

(f) the same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;

(g) the same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;

(h) the same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

PART V

Article 17

1. For the purpose of considering the progress made in the implementation of the present Convention, there shall be established a Committee on the Elimination of Discrimination against Women (hereinafter referred to as the Committee) consisting, at the time of entry into force of the Convention, of eighteen and, after ratification of or accession to the Convention by the thirty-fifth State Party, of twenty-three experts of high moral standing and competence in the field covered by the Convention. The experts shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution and to the representation of the different forms of civilization as well as the principal legal systems.

2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.

3. The initial election shall be held six months after the date of the entry into force of the present Convention. At least three months before the date of each election the Secretary-General of
the United Nations shall address a letter to the States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.

4. Elections of the members of the Committee shall be held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. At that meeting, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

5. The members of the Committee shall be elected for a term of four years. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these nine members shall be chosen by lot by the Chairman of the Committee.

6. The election of the five additional members of the Committee shall be held in accordance with the provisions of paragraphs 2, 3 and 4 of this Article, following the thirty-fifth ratification or accession. The terms of two of the additional members elected on this occasion shall expire at the end of two years, the names of these two members having been chosen by lot by the Chairman of the Committee.

7. For the filling of casual vacancies, the State Party whose expert has ceased to function as a member of the Committee shall appoint another expert from among its nationals, subject to the approval of the Committee.

8. The members of the Committee shall, with the approval of the General Assembly, receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide, having regard to the importance of the Committee's responsibilities.

9. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

Article 18

1. States Parties undertake to submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on the legislative, judicial, administrative or other measures
which they have adopted to give effect to the provisions of the present Convention and on the progress made in this respect:

(a) within one year after the entry into force for the State concerned; and

(b) thereafter at least every four years and further whenever the Committee so requests.

2. Reports may indicate factors and difficulties affecting the degree of fulfillment of obligations under the present Convention.

Article 19

1. The Committee shall adopt its own rules of procedure.

2. The Committee shall elect its officers for a term of two years.

Article 20

1. The Committee shall normally meet for a period of not more than two weeks annually in order to consider the reports submitted in accordance with Article 18 of the present Convention.

2. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee.

Article 21

1. The Committee shall, through the Economic and Social Council, report annually to the General Assembly of the United Nations on its activities and may make suggestions and general recommendations based on the examination of reports and information received from the States Parties. Such suggestions and general recommendations shall be included in the report of the Committee together with comments, if any, from States Parties.

2. The Secretary-General shall transmit the reports of the Committee to the Commission on the Status of Women for its information.

Article 22

The specialized agencies shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their activities. The Committee may invite the specialized agencies to submit reports on the implementation of the Convention in areas falling
within the scope of their activities.

PART VI

Article 23

Nothing in this Convention shall affect any provisions that are more conducive to the achievement of equality between men and women which may be contained:

(a) in the legislation of a State Party; or

(b) in any other international convention, treaty or agreement in force for that State.

Article 24

States Parties undertake to adopt all necessary measures at the national level aimed at achieving the full realization of the rights recognized in the present Convention.

Article 25

1. The present Convention shall be open for signature by all States.

2. The Secretary-General of the United Nations is designated as the depositary of the present Convention.

3. The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

4. The present Convention shall be open to accession by all States. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 26

1. A request for the revision of the present Convention may by made at any time by any State Party by means of a notification in writing addressed to the Secretary-General of the United Nations.

2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such a request.

Article 27

1. The present Convention shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the
United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying the present Convention or acceding to it after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.

Article 28

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.

2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.

3. Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General of the United Nations, who shall then inform all States thereof. Such notification shall take effect on the date on which it is received.

Article 29

1. Any dispute between two or more States Parties concerning the interpretation or application of the present Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State Party may at the time of signature or ratification of this Convention or accession thereto declare that it does not consider itself bound by paragraph 1 of this Article. The other States Parties shall not be bound by that paragraph with respect to any State Party which has made such a reservation.

3. Any State Party which has made a reservation in accordance with paragraph 2 of this Article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 30

The present Convention, the Arabic, Chinese, English, French, Russian and Spanish texts of which are equally authentic, shall be deposited with the Secretary-General of the United Nations.
An Act to provide for more effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Fifty-sixth Year of the Republic of India as follows:—

CHAPTER 1
PRELIMINARY

1. Short title, extent and commencement.—(1) This Act may be called the Protection of Women from Domestic Violence Act, 2005.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

COMMENTS

This section provides for the short title, extent and commencement of Act. The Act extends to the whole of India except to the State of Jammu and Kashmir in the area of protection of women who are victims of violence of any kind occurring within the family. As adequate steps have to be taken for administering the provisions of this Act, provision has been made empowering the Central Government to appoint the date of commencement of the Act, by notification in the Official Gazette.

[Notes on Clauses]

2. Definitions—In this Act, unless the context otherwise requires,—

(a) "aggrieved person" means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent;

(b) "child" means any person below the age of eighteen years and includes any adopted, step or foster child;

(c) "compensation order" means an order granted in terms of
(d) "custody order" means an order granted in terms of section 21;

(e) "domestic incident report" means a report made in the prescribed form on receipt of a complaint of domestic violence from an aggrieved person;

(f) "domestic relationship" means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family;

(g) "domestic violence" has the same meaning as assigned to it in section 3;

(h) "dowry" shall have the same meaning as assigned to it in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961);

(i) "Magistrate" means the Judicial Magistrate of the first class, or as the case may be, the Metropolitan Magistrate, exercising jurisdiction under the Code of Criminal Procedure, 1973 (2 of 1974) in the area where the aggrieved person resides temporarily or otherwise or the respondent resides or the domestic violence is alleged to have taken place;

(j) "medical facility" means such facility as may be notified by the State Government to be a medical facility for the purposes of this Act;

(k) "monetary relief" means the compensation which the Magistrate may order the respondent to pay to the aggrieved person, at any stage during the hearing of an application seeking any relief under this Act, to meet the expenses incurred and the losses suffered by the aggrieved person as a result of the domestic violence; (1) "notification" means a notification published in the Official Gazette and the expression "notified" shall be construed accordingly;

(m) "prescribed" means prescribed by rules made under this Act;

(n) "Protection Officer" means an officer appointed by the State Government under sub-section (1) of section 8;

(o) "protection order" means an order made in terms of section 18;

(p) "residence order" means an order granted in terms of sub-
section (1) of section 19;

(q) "respondent" means any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act:

Provided that an aggrieved wife or female living in a relationship in the nature of a marriage may also file a complaint against a relative of the husband or the male partner.

(r) "service provider" means an entity registered under sub-section (1) of section 10;

(s) "shared household" means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned c. tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household.

(t) "shelter home" means any shelter home as may be notified by the State Government to be a shelter home for the purposes of this Act.

**COMMENTS**

This section defines the various expressions occurring in the Act. The definitions of "aggrieved person", "domestic relationship", "domestic violence", "monetary relief", "Protection Officer", "protection order", "residence order", "respondent", "service provider" and "shared household" are some of them. As per the Act, any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to act of domestic violence by the respondent is an aggrieved person. The expression "domestic relationship" means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are members of a family living together as a joint family. The word "respondent" means any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under the Act provided
that an aggrieved wife or female living in a relationship in the nature of marriage may also file a complaint under the Act against a relative of the husband or male partner. [Notes on Clauses]

CHAPTER II

DOMESTIC VIOLENCE

3. Definition of domestic violence.—For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it—

(a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or

(b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or

(c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or

(d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person.

Explanation I.—For the purposes of this section,—

(i) "physical abuse" means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;

(ii) "sexual abuse" includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;

(iii) "verbal and emotional abuse" includes—

(a) insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and

(b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested.
"economic abuse" includes—

(a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance;

(b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and

(c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

Explanation II.—For the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes "domestic violence" under this section, the overall facts and circumstances of the case shall be taken into consideration.

COMMENTS

This section defines the expression "domestic violence". Any act, omission or commission or conduct of the respondent shall amount to domestic violence in certain circumstances. It includes causing physical abuse, sexual abuse, verbal and emotional or economic abuse which are also explained in the section. In determining whether any act, omission, commission or conduct of the respondent constitutes "domestic violence", the overall facts and circumstances of the case shall be a guiding factor. [Notes on Clauses]

CHAPTER III

POWERS AND DUTIES OF PROTECTION OFFICERS, SERVICE PROVIDERS, ETC.

4. Information to Protection Officer and exclusion of liability of informant.—(1) Any person who has reason to believe that an act of domestic violence has been, or is being, or is likely to be
committed, may give information about it to the concerned Protection Officer.

(2) No liability, civil or criminal, shall be incurred by any person for giving in good faith of information for the purpose of subsection (1).

COMMENTS

This section seeks to provide that any person who has reason to believe that an act of domestic violence has been or is being committed, such person may inform the Protection Officer. It also lays down that the person who is providing the information in good faith shall be exempt from any civil or criminal liability for giving such information. [Notes on Clauses]

5. Duties of police officers, service providers and Magistrate.—A police officer, Protection Officer, service provider or Magistrate who has received a complaint of domestic violence or is otherwise present at the place of an incident of domestic violence or when the incident of domestic violence is reported to him, shall inform the aggrieved person—

(a) of her right to make an application for obtaining a relief by way of a protection order, an order for monetary relief, a custody order, a residence order, a compensation order or more than one such order under this Act;

(b) of the availability of services of service providers;

(c) of the availability of services of the Protection Officers;

(d) of her right to free legal services under the Legal Services Authorities Act, 1987 (39 of 1987);

(e) of her right to file a complaint under section 498A of the Indian Penal Code (45 of 1860), wherever relevant:

Provided that nothing in this Act shall be construed in any manner as to relieve a police officer from his duty to proceed in accordance with law upon receipt of information as to the commission of a cognizable offence.

COMMENTS

This section lays down the duties of a police officer, Protection Officer, service provider and the Magistrate to inform the aggrieved person of her right to make an application for one or more reliefs under the Act, the availability of services of service providers;
providers and Protection Officers, her right to avail free legal services under the Legal Services Authorities Act, 1987 and her right to file a complaint under section 498A of the Indian Penal Code, wherever relevant. It is also envisaged that this section shall not relieve any police officer from his duty to proceed in accordance with law on receipt of information as to commission of a cognizable offence. [Notes on Clauses]

6. **Duties of shelter homes**—If an aggrieved person or on her behalf a Protection Officer or a service provider requests the person in charge of a shelter home to provide shelter to her, such person in charge of the shelter home shall provide shelter to the aggrieved person in the shelter home.

**COMMENTS**

This section seeks to provide that the person in charge of a shelter home shall be bound to provide shelter to the aggrieved person on being requested by the aggrieved person or, on her behalf by a Protection Officer or a service provider. [Notes on Clauses]

7. **Duties of medical facilities.**—If an aggrieved person or, on her behalf a Protection Officer or a service provider requests the person in charge of a medical facility to provide any medical aid to her, such person in charge of the medical facility shall provide medical aid to the aggrieved person in the medical facility.

**COMMENTS**

This section seeks to provide that the person in charge of the medical facility shall be bound to provide medical aid to the aggrieved person if requested by her or on her behalf by a Protection Officer or a service provider. [Notes on Clauses]

8. **Appointment of Protection Officers.**—(1) The State Government shall, by notification, appoint such number of Protection Officers in each district as it may consider necessary and shall also notify the area or areas within which a Protection Officer shall exercise the powers and perform the duties conferred on him by or under this Act.

(2) The Protection Officers shall as far as possible be women and shall possess such qualifications and experience as may be prescribed.

(3) The terms and conditions of service of the Protection Officer and the other officers subordinate to him shall be such as may be prescribed.
COMMENTS

This section empowers the State Government to appoint, by notification in the Official Gazette, such number of Protection Officers in each District as it considers necessary and also to notify the area in which such Protection Officer shall exercise the powers conferred and discharge the duties imposed under the Act. It also provides that the Protection Officers shall, as far as possible, be women and shall possess such qualifications and experience as may be laid down by the Central Government, by rules. The terms and conditions of service of the Protection Officer and the other officers subordinate to him may also be regulated by rules. [Notes on Clauses]

9. Duties and functions of Protection Officers.—(1) It shall be the duty of the Protection Officer—

(a) to assist the Magistrate in the discharge of his functions under this Act;

(b) to make a domestic incident report to the Magistrate, in such form and in such manner as may be prescribed, upon receipt of a complaint of domestic violence and forward copies thereof to the police officer in charge of the police station within the local limits of whose jurisdiction domestic violence is alleged to have been committed and to the service providers in that area;

(c) to make an application in such form and in such manner as may be prescribed to the Magistrate, if the aggrieved person so desires, claiming relief for issuance of a protection order;

(d) to ensure that the aggrieved person is provided legal aid under the Legal Services Authorities Act, 1987 (39 of 1987) and make available free of cost the prescribed form in which a complaint is to be made;

(e) to maintain a list of all service providers providing legal aid or counselling, shelter homes and medical facilities in a local area within the jurisdiction of the Magistrate;

(f) to make available a safe shelter home, if the aggrieved person so requires and forward a copy of his report of having lodged the aggrieved person in a shelter home to the police station and the Magistrate having jurisdiction in the area where the shelter home is situated;

(g) to get the aggrieved person medically examined, if she has sustained bodily injuries and forward a copy of the medical report to the police station and the Magistrate having jurisdiction in the area where the domestic violence is alleged to
have been taken place;

(h) to ensure that the order for monetary relief under section 20 is complied with and executed, in accordance with the procedure prescribed under the Code of Criminal Procedure, 1973 (2 of 1974); (i) to perform such other duties as may be prescribed. (2) The Protection Officer shall be under the control and supervision of the Magistrate, and shall perform the duties imposed on him by the Magistrate and the Government by, or under, this Act.

COMMENTS

This section lays down the duties and functions of the Protection Officers. The Protection Officer may assist the Magistrate in the discharge of his functions under the Act, make a domestic incident report to the Magistrate, make an application to the Magistrate if the aggrieved person so desires praying for issuance of a protection order, ensure legal aid to the aggrieved person under the Legal Services Authorities Act, 1987, maintain a list of service providers, make available a safe shelter home if the aggrieved person so requires, get the aggrieved person medically examined if she has sustained bodily injuries, ensure that the order for monetary relief under section 20 of the Act is complied with and executed in accordance with the provisions of the Code of Criminal Procedure, 1973, and perform such other duties as may be laid down by the Central Government, by rules. It also stipulates that the Protection Officer shall be under the control and supervision of the Magistrate and perform the duties assigned to him by the Magistrate and the Government by or under the Act. [Notes on Clauses]

10. Service providers—(1) Subject to such rules as may be made in this behalf, any voluntary association registered under the Societies Registration Act, 1860 (21 of 1860) or a company registered under the Companies Act, 1956 (1 of 1956) or any other law for the time being in force with the objective of protecting the rights and interests of women by any lawful means including providing of legal aid, medical, financial or other assistance shall register itself with the State Government as a service provider for the purposes of this Act.

(2) A service provider registered under sub-section (1) shall have the power to—

(a) record the domestic incident report in the prescribed form if the aggrieved person so desires and forward a copy thereof to the Magistrate and the Protection Officer having jurisdiction in the area where the domestic violence took place;

(b) get the aggrieved person medically examined and forward a
copy of the medical report to the Protection Officer and the police station within the local limits of which the domestic violence took place;

(c) ensure that the aggrieved person is provided shelter in a shelter home, if she so requires and forward a report of the lodging of the aggrieved person in the shelter home to the police station within the local limits of which the domestic violence took place.

(3) No suit, prosecution or other legal proceeding shall lie against any service provider or any member of the service provider who is, or who is deemed to be, acting or purporting to act under this Act, for anything which is in good faith done or intended to be done in the exercise of powers or discharge of functions under this Act towards the prevention of the commission of domestic violence.

COMMENTS

This section provides for the registration of certain entities with the State Government as a service provider for the purposes of the Act. Any voluntary association registered under the Societies Registration Act, 1860 or a company registered under the Companies Act, 1956 or under any other law, having the objective of protecting the rights and interests of women by lawful means including providing legal aid, medical, financial or other assistance shall be eligible to be registered under the Act as per the procedure bid down by rules. This section also enumerates the powers of a service provider. Such powers include the power to record the domestic incident report, to get the aggrieved person medically examined and to ensure that the aggrieved person is provided shelter in a shelter home, if she so requires. This section further provides immunity to the service provider or any member of the service provider for anything done or intended to be done in good faith under the Act, from any suit, prosecution or other legal proceeding. [Notes on Clauses]

11. Duties of Government.—The Central Government and every State Government, shall take all measures to ensure that—

(a) the provisions of this Act are given wide publicity through public media including the television, radio and the print media at regular intervals;

(b) the Central Government and State Government officers including the police officers and the members of the judicial services are given periodic sensitization and awareness training on the issues addressed by this Act;
(c) effective co-ordination between the services provided by concerned Ministries and Departments dealing with law, home affairs including law and order, health and human resources to address issues of domestic violence is established and periodical review of the same is conducted;

(d) protocols for the various Ministries concerned with the delivery of services to women under this Act including the courts are prepared and put in place.

COMMENTS

This section stipulates the duties of the Central Government and the State Governments. These duties are to give wide publicity to the provisions of the Act, to give sensitization and awareness training on the issues addressed by the Act to Government officers including police officers and members of judicial service, to ensure effective coordination between Ministries and Departments dealing with law, home affairs, law and order, health and human resources in the services provided by them on the issues of domestic violence and to put in place protocols for the Ministries and courts concerned with the delivery of services to women under the provisions of the Act.

[Notes on Clauses]

CHAPTER IV

PROCEDURE FOR OBTAINING ORDERS OF RELIEFS

12. Application to Magistrate.—(1) An aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person may present an application to the Magistrate seeking one or more reliefs under this Act:

Provided that before passing any order on such application, the Magistrate shall take into consideration any domestic incident report received by him from the Protection Officer or the service provider.

(2) The relief sought for under sub-section (1) may include a relief for issuance of an order for payment of compensation or damages without prejudice to the right of such person to institute a suit for compensation or damages for the injuries caused by the acts of domestic violence committed by the respondent:

Provided that where a decree for any amount as compensation or damages has been passed by any court in favour of the aggrieved person, the amount, if any, paid or payable in pursuance of the order made by the Magistrate under this Act shall be set off
against the amount payable under such decree and the decree shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), or any other law for the time being in force, be executable for the balance amount, if any, left after such set off.

(3) Every application under sub-section (1) shall be in such form and contain such particulars as may be prescribed or as nearly as possible thereto.

(4) The Magistrate shall fix the first date of hearing, which shall not ordinarily be beyond three days from the date of receipt of the application by the court.

(5) The Magistrate shall endeavour to dispose of every application made under sub-section (1) within a period of sixty days from the date of its first hearing.

**COMMENTS**

This section lays down that the aggrieved person or Protection Officer or any other person on behalf of the aggrieved person may present an application to the Magistrate seeking one or more reliefs under the Act including order for payment of compensation or damages without prejudice to the rights of such person to institute a suit for compensation or damages for the injuries sustained in the act of domestic violence committed by the respondent. While disposing of an application under sub-section (1), the Magistrate shall take into consideration any domestic incident report received by him from the Protection Officer or the service provider. The amount paid or payable to the aggrieved person by an order made by the Magistrate under the Act shall be set off against the amount of decree of compensation or damages passed by any court in favour of the aggrieved person. Sub-section (3) provides that the format and particulars of the application under this section shall be as nearly as possible to the format laid down by the Central Government by rules. Sub-sections (4) and (5) provide that the Magistrate shall fix the first date of hearing of the application ordinarily within three days of its receipt and shall endeavour to dispose of every application within sixty days of the first hearing.

[Notes on Clauses]

13. **Service of notice.**—(1) A notice of the date of hearing fixed under section 12 shall be given by the Magistrate to the Protection Officer, who shall get it served by such means as may be prescribed on the respondent, and on any other person, as directed by the Magistrate within a maximum period of two days or such further reasonable time as may be allowed by the Magistrate from the date of its receipt.
(2) A declaration of service of notice made by the Protection Officer in such form as may be prescribed shall be the proof that such notice was served upon the respondent and on any other person as directed by the Magistrate unless the contrary is proved.

**COMMENTS**

This section provides that a notice of the date of hearing of an application for relief shall be given by the Magistrate to the Protection Officer who shall get it served by such means as may be prescribed by the Central Government on the respondent and on any other person within a maximum period of two days or such further reasonable time as may be allowed by the Magistrate. A declaration of service of notice made by the Protection Officer in the form set out by the Central Government by rules shall be a proof of service of notice. [Notes on Clauses]

14. **Counselling.**—(1) The Magistrate may, at any stage of the proceedings under this Act, direct the respondent or the aggrieved person, either singly or jointly, to undergo counselling with any member of a service provider who possess such qualifications and experience in counselling as may be prescribed.

(2) Where the Magistrate has issued any direction under sub-section (1), he shall fix the next date of hearing of the case within a period not exceeding two months.

**COMMENTS**

This section empowers the Magistrate to direct at any stage of the proceedings, the respondent or the aggrieved person either singly or jointly to undergo counselling with any member of a service provider. The member of the service provider providing the counselling shall possess such qualifications and experience as may be laid down by the Central Government, by rules. Where any counselling has been ordered under this section, the Magistrate shall fix the next date of hearing of the case within a period not exceeding two months. [Notes on Clauses]

15. **Assistance of welfare expert**—In any proceeding under this Act, the Magistrate may secure the services of such person, preferably a woman, whether related to the aggrieved person or not, including a person engaged in promoting family welfare as he thinks fit, for the purpose of assisting him in discharging his functions.

**COMMENTS**
This section stipulates that the Magistrate may secure the services of a suitable person preferably a woman whether related to the aggrieved person or not, including a person engaged in promoting family welfare for the purposes of assisting the court in the discharge of its functions. [Notes on Clauses]

16. Proceedings to be held in camera.—If the Magistrate considers that the circumstances of the case so warrant, and if either party to the proceedings so desires, he may conduct the proceedings under this Act in camera.

COMMENTS

This section provides for proceedings to be held in camera at the discretion of the Magistrate or if either party to the proceedings so desires. [Notes on Clauses]

17. Right to reside in a shared household.—(1) Notwithstanding anything contained in any other law for the time being in force, every woman in a domestic relationship shall have the right to reside in the shared household, whether or not she has any right, title or beneficial interest in the same.

(2) The aggrieved person shall not be evicted or excluded from the shared household or any part of it by the respondent save in accordance with the procedure established by law.

COMMENTS

This section lays down that irrespective of any contrary provision in any other law, every woman in a domestic relationship shall have the right to reside in the shared household and the aggrieved person shall not be evicted or excluded from the shared household by the respondent except in accordance with the procedure established by law. [Notes on Clauses]

18. Protection orders.—The Magistrate may, after giving the aggrieved person and the respondent an opportunity of being heard and on being prima facie satisfied that domestic violence has taken place or is likely to take place, pass a protection order in favour of the aggrieved person and prohibit the respondent from—

(a) committing any act of domestic violence;

(b) aiding or abetting in the commission of acts of domestic violence;

(c) entering the place of employment of the aggrieved person or, if the person aggrieved is a child, its school or any other place frequented by the aggrieved person;
(d) attempting to communicate in any form, whatsoever, with the aggrieved person, including personal, oral or written or electronic or telephonic contact;

(e) alienating any assets, operating bank lockers or bank accounts used or held or enjoyed by both the parties, jointly by the aggrieved person and the respondent or singly by the respondent, including her stridhan or any other property held either jointly by the parties or separately by them without the leave of the Magistrate;

(f) causing violence to the dependants, other relatives or any person who give the aggrieved person assistance from domestic violence;

(g) committing any other act as specified in the protection order.

COMMENTS

This section provides that the Magistrate may, after giving the aggrieved person and the respondent an opportunity of being heard and on being prima facie satisfied that domestic violence has taken place or is likely to take place, may pass a protection order in favour of the aggrieved person. A protection order may contain an order prohibiting the respondent from committing any act of domestic violence or aiding or abetting therein, entering the place of employment of the aggrieved person or if the person aggrieved is a child its school, or any other place frequented by the aggrieved person or attempting to communicate in any form whatsoever with the aggrieved person without the leave of the Magistrate, alienating any assets, operating bank lockers or bank accounts belonging to both the parties jointly or to the respondent singly, including her stridhan or any other property held jointly or separately by them, causing violence to the dependents, other relatives or any person giving the aggrieved person assistance from domestic violence or committing any other act as specified in the protection order.

[Notes on Clauses]

19. Residence orders.—(1) While disposing of an application under sub-section (1) of section 12, the Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order—

(a) restraining the respondent from dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared household, whether or not the respondent has a legal or equitable interest in the shared household;
(b) directing the respondent to remove himself from the shared household;

c) restraining the respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides;

d) restraining the respondent from alienating or disposing off the shared household or encumbering the same;

e) restraining the respondent from renouncing his rights in the shared household except with the leave of the Magistrate; or

f) directing the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so require:

Provided that no order under clause (b) shall be passed against any person who is a woman.

(2) The Magistrate may impose any additional conditions or pass any other direction which he may deem reasonably necessary to protect or to provide for the safety of the aggrieved person or any child of such aggrieved person.

(3) The Magistrate may require from the respondent to execute a bond, with or without sureties, for preventing the commission of domestic violence.

(4) An order under sub-section (3) shall be deemed to be an order under Chapter VIII of the Code of Criminal Procedure, 1973 (2 of 1974) and shall be dealt with accordingly.

(5) While passing an order under sub-section (1), sub-section (2) or subsection (3), the court may also pass an order directing the officer-in-charge of the nearest police station to give protection to the aggrieved person or to assist her or the person making an application on her behalf in the implementation of the order.

(6) While making an order under sub-section (1), the Magistrate may impose on the respondent obligations relating to the discharge of rent and other payments, having regard to the financial needs and resources of the parties.

(7) The Magistrate may direct the officer-in-charge of the police station in whose jurisdiction the Magistrate has been approached to assist in the implementation of the protection order.

(8) The Magistrate may direct the respondent to return to the
possession of the aggrieved person her stridhan or any other property or valuable security to which she is entitled to.

COMMENTS

This section provides that the Magistrate may on being satisfied that domestic violence has taken place pass a residence order restraining the respondent from dispossessing or disturbing the possession of the aggrieved person from the shared household, directing the respondent to remove himself from the shared household, restraining the respondent or his relatives from entering the shared household, restraining the respondent from alienating or disposing of or encumbering the shared household, restraining the respondent from renouncing his rights in the shared household except with the leave of the Magistrate, or directing the respondent to secure alternate accommodation for the aggrieved person of the same level as enjoyed by her in the shared household or to pay rent for the same. It is also provided in this section that no order shall be passed against any person who is a woman directing her to remove herself from the shared household. Sub-section (2) empowers the Magistrate to impose additional conditions and pass any other direction in order to protect the safety of the aggrieved person or her child. Sub-section (3) provides for execution of a bond by the respondent for prevention of the domestic violence. Sub-section (5) empowers the Magistrate to pass an order directing the officer-in-charge of the concerned police station to give protection to the aggrieved person or to assist in implementation of the residence order. It is also provided in this section that the Magistrate may impose on the respondent an obligation to discharge rent and other payments and to direct the respondent to return to the aggrieved person her stridhan or any other property or valuable security to which she is entitled. [Notes on Clauses]

20. Monetary reliefs.—(1) While disposing of an application under subsection (1) of section 12, the Magistrate may direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence and such relief may include, but is not limited to,—

(a) the loss of earnings;

(b) the medical expenses;

(c) the loss caused due to the destruction, damage or removal of any property from the control of the aggrieved person; and

(d) the maintenance for the aggrieved person as well as her children, if any, including an order under or in addition to an
order of maintenance under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force.

(2) The monetary relief granted under this section shall be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed.

(3) The Magistrate shall have the power to order an appropriate lump sum payment or monthly payments of maintenance, as the nature and circumstances of the case may require.

(4) The Magistrate shall send a copy of the order for monetary relief made under sub-section (1) to the parties to the application and to the in-charge of the police station within the local limits of whose jurisdiction the respondent resides.

(5) The respondent shall pay the monetary relief granted to the aggrieved person within the period specified in the order under sub-section (1).

(6) Upon the failure on the part of the respondent to make payment in terms of the order under sub-section (1), the Magistrate may direct the employer or a debtor of the respondent, to directly pay to the aggrieved person or to deposit with the court a portion of the wages or salaries or debt due to or accrued to the credit of the respondent, which amount may be adjusted towards the monetary relief payable by the respondent.

COMMENTS

This section empowers the Magistrate to pass orders for grant of monetary relief to the aggrieved person from the respondent to meet the expenses incurred and losses suffered including loss of earnings, medical expenses, loss to property and maintenance of the aggrieved person and her children including maintenance under, or in addition, to section 125 of the Code of Criminal Procedure, 1973 or any other law for the time being in force. Sub-section (2) provides that the monetary relief shall be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed. This section also empowers the Magistrate to order lump sum or monthly payments for maintenance. Sub-section (6) provides that on the failure of the respondent to make payments of the monetary relief, the Magistrate may direct the employer or a debtor of the respondent to directly pay to the aggrieved person or to deposit with the court a portion of the wages or salaries or debt due to or accrued to the respondent. [Notes on Clauses]

21. Custody orders.—Notwithstanding anything contained in any
other law for the time being in force, the Magistrate may, at any stage of hearing of the application for protection order or for any other relief under this Act grant temporary custody of any child or children to the aggrieved person or the person making an application on her behalf and specify, if necessary, the arrangements for visit of such child or children by the respondent:

Provided that if the Magistrate is of the opinion that any visit of the respondent may be harmful to the interests of the child or children, the Magistrate shall refuse to allow such visit.

**COMMENTS**

This section lays down that notwithstanding anything contained in any other law for the time being in force the Magistrate may, at any stage of hearing of the application for grant of any relief, grant temporary custody of any child to the aggrieved person or to the person making an application on her behalf and specify the arrangements for visit of such child by the respondent. However, the Magistrate may refuse to allow such visits if in his opinion such visits may be harmful to the interests of the child.

[Notes on Clauses]

22. Compensation orders.—In addition to other reliefs as may be granted under this Act, the Magistrate may on an application being made by the aggrieved person, pass an order directing the respondent to pay compensation and damages for the injuries, including mental torture and emotional distress, caused by the acts of domestic violence committed by that respondent.

**COMMENTS**

This section lays down that in addition to other reliefs which may be granted under the Act, the Magistrate may, on an application by the aggrieved person, pass an order directing the respondent to pay compensation or damages or both to the aggrieved person for the injuries including for the mental torture and emotional distress caused to her by domestic violence by the respondent. [Notes on Clauses]

23. Power to grant interim and ex parte orders.—(1) In any proceeding before him under this Act, the Magistrate may pass such interim order as he deems just and proper.

(2) If the Magistrate is satisfied that an application prima facie discloses that the respondent is committing, or has committed an act of domestic violence or that there is a likelihood that the respondent may commit an act of domestic violence, he may
grant an *ex parte* order on the basis of the affidavit in such form, as may be prescribed, of the aggrieved person under section 18, section 19, section 20, section 21 or, as the case may be, section 22 against the respondent.

**COMMENTS**

This section provides for grant of interim orders by the Magistrate. He may also pass *ex parte* orders on the basis of affidavits given by the aggrieved person. [*Notes on Clauses*]

24. Court to give copies of order free of cost.—The Magistrate shall, in all cases where he has passed any order under this Act, order that a copy of such order, shall be given free of cost, to the parties to the application, the police officer-in-charge of the police station in the jurisdiction of which the Magistrate has been approached, and any service provider located within the local limits of the jurisdiction of the court and if any service provider has registered a domestic incident report, to that service provider.

**COMMENTS**

This section provides for supply of copies of orders passed by the Magistrate free of charge to the parties to the application, the concerned police officer and the service provider. [*Notes on Clauses*]

25. Duration and alteration of orders.—(1) A protection order made under section 18 shall be in force till the aggrieved person applies for discharge.

(2) If the Magistrate, on receipt of an application from the aggrieved person or the respondent, is satisfied that there is a change in the circumstances requiring alteration, modification or revocation of any order made under this Act, he may, for reasons to be recorded in writing pass such order, as he may deem appropriate.

**COMMENTS**

This section lays down that a protection order given under the Act shall be in force till the aggrieved person applies for its discharge, fn case there is a change in the circumstances of a case, the Magistrate may, on application made by the aggrieved person or the respondent pass an order altering, modifying or revoking any order made under the Act. [*Notes on Clauses*]

26. Relief in other suits and legal proceedings.—(1) Any relief available under sections 18, 19, 20, 21 and 22 may also be sought in any legal proceeding, before a civil court, family court
or a criminal court, affecting the aggrieved person and the respondent whether such proceeding was initiated before or after the commencement of this Act.

(2) Any relief referred to in sub-section (1) may be sought for in addition to and along with any other relief that the aggrieved person may seek in such suit or legal proceeding before a civil or criminal court.

(3) In case any relief has been obtained by the aggrieved person in any proceedings other than a proceeding under this Act, she shall be bound to inform the Magistrate of the grant of such relief.

**COMMENTS**

This section provides that any relief available under the Act may also be sought in any legal proceeding before a civil court, family court or a criminal court and that any relief which may be granted under the Act may be sought for in addition to and along with reliefs sought for in a suit or legal proceeding before a civil or criminal court. Sub-section (3) lays down that the aggrieved person shall be bound to inform the Magistrate of the reliefs obtained by her in any proceeding other than proceedings under the Act. [Notes on Clauses]

27. Jurisdiction.—(1) The court of Judicial Magistrate of the first class or the Metropolitan Magistrate, as the case may be, within the local limits of which—

(a) the person aggrieved permanently or temporarily resides or carries on business or is employed; or

(b) the respondent resides or carries on business or is employed; or

(c) the cause of action has arisen,

shall be the competent court to grant a protection order and other orders under this Act and to try offences under this Act.

(2) Any order made under this Act shall be enforceable throughout India.

**COMMENTS**

This section lays down that the Magistrate, within the local limits of whose jurisdiction the aggrieved person permanently or temporarily resides or carries on business or is employed or the respondent resides or carries on business or is employed or the cause of action has arisen, shall be the competent Magistrate to
grant protection orders and other orders and to try offences under the Act. Sub-section (2) provides that any order made under the proposed legislation shall be enforceable throughout India.

[Notes on Clauses]

28. Procedure.—(1) Save as otherwise provided in this Act, all proceedings under sections 12,18,19, 20, 21, 22 and 23 and offences under section 31 shall be governed by the provisions of the Code of Criminal Procedure, 1973 (2 of 1974).

(2) Nothing in sub-section (1) shall prevent the court from laying down its own procedure for disposal of an application under section 12 or under subsection (2) of section 23.

COMMENTS

This section provides that proceedings under the Act relating to application and orders for reliefs and offence of breach of protection order or interim protection order by the respondent shall be governed by the provisions of the Code of Criminal Procedure, 1973. Sub-section (2) envisages that the court may lay down its own procedure for disposal of applications for any relief or for ex parte order. [Notes on Clauses]

29. Appeal.—There shall lie an appeal to the Court of Session within thirty days from the date on which the order made by the Magistrate is served on the aggrieved person or the respondent, as the case may be, whichever is later.

COMMENTS

This section provides that an appeal from the order made by the Magistrate shall lie to the Court of Session within thirty days from the date of service of the order on the aggrieved person or the respondent, whichever is later. [Notes on Clauses]

CHAPTER V

MISCELLANEOUS

30. Protection Officers and members of service providers to be public servants.—The Protection Officers and members of service providers, while acting or purporting to act in pursuance of any of the provisions of this Act or any rules or orders made there under shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860).
COMMENTS

This section seeks to provide that the Protection Officer and members of service providers shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code while acting or purporting to act under any of the provisions of the Act or the rules or orders made thereunder.

[Notes on Clauses]

31. Penalty for breach of protection order by respondent.—(1) A breach of protection order, or of an interim protection order, by the respondent shall be an offence under this Act and shall be punishable with imprisonment of either description for a term which may extend to one year, or with fine which may extend to twenty thousand rupees, or with both.

(2) The offence under sub-section (1) shall as far as practicable be tried by the Magistrate who has passed the order, the breach of which has been alleged to have been caused by the accused.

(3) While framing charges under sub-section (1), the Magistrate may also frame charges under section 498A of the Indian Penal Code (45 of 1860) or any other provision of that Code or the Dowry Prohibition Act, 1961 (28 of 1961), as the case may be, if the facts disclose the commission of an offence under those provisions.

COMMENTS

This section provides that a breach of protection order or an interim protection order by the respondent shall be an offence under the Act punishable with imprisonment of either description which may extend to one year or with fine which may extend to twenty thousand rupees or with both. Sub-section (2) provides that the offence of breach of protection order or interim protection order shall be tried as far as practicable by the Magistrate who had passed the order which is alleged to have been breached. Sub-section (3) provides that the Magistrate, while framing charges regarding breach of order, may also frame charges under section 498A or any other provision of the Indian Penal code or the Dowry Prohibition Act, 1961 in case the facts disclose the commission of any offence under those provisions.

[Notes on Clauses]

32. Cognizance and proof.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the offence under sub-section (1) of section 31 shall be cognizable and non-bailable.

(2) Upon the sole testimony of the aggrieved person, the court
may conclude that an offence under sub-section (1) of section 31 has been committed by the accused.

COMMENTS

This section lays down that the offence of breach of protection order by the respondent shall be a cognizable and non-bailable offence and the court may conclude on the sole testimony of the aggrieved person that the offence has been committed.

[Notes on Clauses]

33. Penalty for not discharging duty by Protection Officer.—If any Protection Officer fails or refuses to discharge his duties as directed by the Magistrate in the protection order without any sufficient cause, he shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to twenty thousand rupees, or with both.

COMMENTS

This section provides that any Protection Officer who fails or refuses to discharge his duties as directed by the Magistrate in the protection order shall be punished with imprisonment of either description which may extend to one year or with fine which may extend to twenty thousand rupees or with both.

[Notes on Clauses]

34. Cognizance of offence committed by Protection Officer.—No prosecution or other legal proceeding shall lie against the Protection Officer unless a complaint is filed with the previous sanction of the State Government or an officer authorised by it in this behalf.

COMMENTS

This section provides that no prosecution or other legal proceeding shall lie against the Protection Officer except on a complaint filed with the previous sanction of the State Government or an officer authorised by the State Government for the purpose. [Notes on Clauses]

35. Protection of action taken in good faith.—No suit, prosecution or other legal proceeding shall lie against the Protection Officer for any damage caused or likely to be caused by anything which is in good faith done or intended to be done under this Act or any rule or order made there under.
COMMENTS

This section provides that no suit, prosecution or other legal proceeding shall lie against the Protection Officer for any damage caused or likely to be caused by anything done or intended to be done in good faith under the Act or any rule or order made thereunder. [Notes on Clauses]

36. Act not in derogation of any other law.—The provisions of this Act shall be in addition to, and not in derogation of the provisions of any other law, for the time being in force.

COMMENTS

This section stipulates that the provisions of the Act shall be in addition to and not in derogation of the provisions of any other law. [Notes on Clauses]

37. Power of Central Government to make rules.—(1) The Central Government may, by notification, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the qualifications and experience which a Protection Officer shall possess under sub-section (2) of section 8;

(b) the terms and conditions of service of the Protection Officers and the other officers subordinate to him, under sub-section (3) of section 8;

(c) the form and manner in which a domestic incident report may be made under clause (b) of sub-section (1) of section 9;

(d) the form and the manner in which an application for protection order may be made to the Magistrate under clause (c) of sub-section (1) of section 9;

(e) the form in which a complaint is to be filed under clause (d) of sub-section (1) of section 9;

(f) the other duties to be performed by the Protection Officer under clause (i) of sub-section (1) of section 9;

(g) the rules regulating registration of service providers under sub-section (1) of section 10;

(h) the form in which an application under sub-section (1) of section 12 seeking reliefs under this Act may be made and the
particulars which such application shall contain under sub-section (3) of that section;

(i) the means of serving notices under sub-section (1) of section 13;

(j) the form of declaration of service of notice to be made by the Protection Officer under sub-section (2) of section 13;

(k) the qualifications and experience in counselling which a member of the service provider shall possess under sub-section (1) of section 14;

(l) the form in which an affidavit may be filed by the aggrieved person under sub-section (2) of section 23;

(m) any other matter which has to be, or may be, prescribed.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any

THE DOWRY PROHIBITION ACT, 1961 (28 of 1961)

[20th May, 1961]

An Act to prohibit the giving or taking of dowry.

Be it enacted by Parliament in the Twelfth Year of the Republic of India as follows:—1. Short title, extent and commencement.—(1) This Act may be called the Dowry Prohibition Act, 1961."

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date2 as the Central Government may, by notification in the Official Gazette, appoint.

J2. Definition of 'dowry'.—In this Act, "dowry" means any property or valuable security given or agreed to be given either directly or indirectly—

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parent of either party to a marriage or by any other person, to either party to the marriage or to any other person,
at or before [or any time after the marriage] [in connection with the marriage of the said parties, but does not include] dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies.

Explanation 11.—The expression "valuable security" has the same meaning as in section 30 of the Indian Penal Code (45 of 1860).

COMMENTS

(i) The word 'dowry' should be any property or valuable given or agreed to be given in connection with the marriage. The customary payments in connection with birth of child or other ceremonies are not involved within ambit of dowry; *Satbir Singh v. Stats of Punjab*, AIR 2001 SC 2828.

(ii) "Dowry" in the sense of the expression contemplated by Dowry Prohibition Act is a demand for property of valuable security having an inextricable nexus with the marriage, i.e., it is a consideration from the side of the bride's parents or relatives to the groom or his parents and/or guardian for the agreement to wed the bride-to-be. But where the demand for property or valuable security has no connection with the consideration for the marriage, it will not amount to a demand for dowry; *Arjun Dhondibha Kamble v. State of Maharashtra*, 1995 AIHC 273.

(iii) Any property given by parents of the bride need not be in consideration of the marriage, it can even be in connection with the marriage and would constitute dowry; *Rajeev v. Ram Kishan Jaiswal*, 1994 Cri LJ NOC 255 (All).

(iv) The definition of dowry is wide enough to include all sorts of properties, valuable securities, etc., given or agreed to be given directly or indirectly; *Vemuri Venkateswara Rao v. State of Andhra Pradesh*, 1992 Cri LJ 563 AP HC.

(v) There had been no agreement between either parties to give any property or valuable security to the other party at or before or after the marriage. The demand of T.V., refrigerator, gas connection, cash of Rs. 50,000 and 15 tolas of gold are not demand of dowry but demand of valuable security in view of section 2; *Shankar Prasad Shaw v. State*, 1(1992) DMC 30 Cal.

(vi) While dowry signifies presents given in connection with marriage to the bridal couple as well as others, *Stridhan* is confined to property given to or meant for the bride; *Hakam Singh v. State of Punjab*, (1990) 1 DMC 343.

(vii) Dowry, means, any property given or agreed to be given by...
the parents of a party to the marriage at the time of the marriage or before marriage or at any time after the marriage in connection with the marriage. So, where the husband had demanded a sum of Rs. 50,000 some days after the marriage from his father-in-law and on not being given became angry, tortured the wife and threatened to go for another marriage, it was held that the amount was being demanded in connection with the marriage and it was a demand for dowry though it was demanded after the marriage; Y.K. Bansal v. Anju, All LJ 914.

(viii) The furnishing of a list of ornaments and other household articles such as refrigerator, furniture, electrical appliances, etc., at the time of the settlement of the marriage amounts to demand of dowry within the meaning of section 2 of the Dowry Prohibition Act, 1961; Madhu Sudan Malhotra v. K.C. Bhandari, 1988 BLJR 360 (SC).

(ix) A sum of money paid by a Mohemmadan in connection with his daughter's marriage to prospective bridegroom for the purchase of a piece of land in the joint name of his daughter and would-be son-in-law is not 'dowry' within the meaning of the Act; Kunju Moideen v. Syed Mohamed, AIR 1986 Ker 48.

(x) Where the demand was made after the marriage for the purchase of a car, it was held that it did not fall within the definition; Nirdosh Kumar v. Padma Rani, 1984 (2) Rec Cr R 239.

(xi) Where the demand was made at the time when marriage ceremony was in progress and was repeated after the marriage, it was held that it fell within the definition of dowry; L.V". Jadhav v. Shankar Rao, (1983) 2 Crimes 470.

(xii) Definition of 'dowry' is not restricted to agreement or demand for payment of dowry before and at the marriage but also includes demands made subsequent to marriage; State of Andhra Pradesh v. Raj Gopal Asawa, AIR 2004 SCW 1566.

(xiii) Demand of dowry in respect of invalid marriage would not be legally recognisable; Reena Aggarwal v. Anupam, AIR 2004J5C 1418.

3. Penalty for giving or taking dowry.—[(1)] If any person, after the commencement of flu's Act, gives or takes or abets the giving or taking of dowry, he shall be punishable [with imprisonment for a term which shall not be less than [five years, and with fine which shall not be less than fifteen thousand rupees or the amount of the value of such dowry, whichever is more]:

Provided that the Court may, for adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment
for a term of less than five years. [(2) Nothing in sub-section (1) shall apply to, or in relation to,—

(a) presents which are given at the time of a marriage to the bride (without any demand having been made in that behalf):

Provided that such presents are entered in a list maintained in accordance with the rules made under this Act;

(b) presents which are given at the time of a marriage to the bridegroom (without any demand having been made in that behalf): Provided that such presents are entered in a list maintained in accordance with the rules made under this Act:

Provided further that where such presents are made by or on behalf of the bride or any person related to the bride, such presents are of a customary nature and the value thereof is not excessive having regard to the financial status of the person by whom, or on whose behalf, such presents are given.]

COMMENTS

(i) Section 3 does not contravene articles 14, 19, 21 and 22 of the Constitution and therefore this section is not ultra vires of the said articles; Indrawati v. Union of India, 1 (1991) DMC 117.(All).

(ii) The offence is founded in the relationship of the property demanded as abettor with the nature of demand. It should not bear a mere connection with marriage; Madan Lal v. Amarnath. (1984) 2: Rec Cr 581.

(iii) Abetment is a preparatory act and connotes active complicity on the part of the abettor at a point of time prior to the actual commission of the offence; Muthummal v. Maruthal, 1981 Cr LJ 833 (Mad).

[4]. Penalty for demanding dowry.—If any person demands, directly or indirectly, from the parents or other relatives or guardian of a bride or bridegroom, as the case may be, any dowry, he shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to two years and with fine which may extend to ten thousand rupees:

Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months.

COMMENTS

(i) The mere demand of dowry before marriage is an offence;

(ii) The offence of demanding dowry stood committed even before the marriage was performed and also when the demand was repeated again and again after the performance of marriage in respect of the same items of dowry; Harbans Singh v. Smt. Gurcharan Kaur alias Sharan Kaur, 1993 Rec Cr R 404 (Del).

(iii) The deceased had before being set on fire by her in-laws written a letter to her father that she was being ill-treated, harassed and threatened of dire consequences for non-satisfaction of demand of dowry. Thereby proving that an offence of demanding dowry under section 4 had been committed; Bhoora Singh v. State of Uttar Pradesh, 1993 Cri LJ 2636 All.

(iv) There had been no agreement between either parties to the marriage nor their relations to give any property or valuable security to the other party at or before or after the marriage. Held that the demand of TV, refrigerator, gas connection, cash of Rs. 50,000 and 15 tolas of gold will not amount to demand of dowry but demand of valuable security and the said offence does not attract section 4 of the Dowry Prohibition Act; Shankar Prasad Shaw v. State, I (1992) DMC 30 Cal.

(v) Furnishing of a list of ornaments and other household articles at the time of settlement of marriage amounts to demand of dowry and accused are liable to be convicted under section 4; Raksha Devi v. Arum Devi, I (1991) DMC 46 (P&H).

(vi) Section 4 of Dowry Prohibition Act is not ultra vires nor does it contravene articles 14, 19, 21, 22 of the Constitution; Indrawati v. Union of India, 1 (1991) DMC 117 All.

[4A. Ban on advertisement.—If any person,—

(a) offers, through any advertisement in any newspaper, periodical, journal or through any other media, any share in his property or of any money or both as a share in any business or other interest as consideration for the marriage of his son or daughter or any other relative;

(b) prints or publishes or circulates any advertisement referred to in clause (a),

he shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to five years, or with fine which may extend to fifteen thousand rupees:

Provided that the Court may, for adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment
for a term of less than six months.]

5. Agreement for giving or taking dowry to be void.—Any agreement for the giving or taking of dowry shall be void.

6. Dowry to be for the benefit of the wife or her heirs.—(1) Where any dowry is received by any person other than the woman in connection with whose marriage it is given, that person shall transfer it to the woman—

(a) if the dowry was received before marriage, within 2[three months] after the date of marriage; or

(b) if the dowry was received at the time of or after the marriage, within [three months] after the date of its receipt; or

(c) if the dowry was received when the woman was a minor, within [three months] after she has attained the age of eighteen years, and pending such transfer, shall hold it in trust for the benefit of the woman.

[(2) If any person fails to transfer any property as required by sub-section (1) within the time limit specified therefore, [or as required by sub-section (3),] he shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to two years or with fine [which shall not be less than five thousand rupees, but which may extend to ten thousand rupees] or with both.]

(3) Where the woman entitled to any property under sub-section (1) dies before receiving it, the heirs of the woman shall be entitled to claim it from the person holding it for the time being:

[Provided that where such woman dies within seven years of her marriage, otherwise than due to natural causes, such property shall,—

(a) if she has no children, be transferred to her parents; or

(b) if she has children, be transferred to such children and pending such transfer, be held in trust for such children.]

[(3A) Where a person convicted under sub-section (2) for failure to transfer any property as required by sub-section (1) [or sub-section (3)] has not, before his conviction under that sub-section, transferred such property to the woman entitled thereto or, as the case may be, [her heirs, parents or children] the Court shall, in addition to awarding punishment under that sub-section, direct, by order in writing, that such person shall transfer the property to such woman or, as the case may be, [her heirs, parents or children] within such period as may be specified in

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the order, and if such person fails to comply with the direction within the period so specified, an amount equal to the value of the property may be recovered from him as if it were a fine imposed by such Court and paid to such woman or, as the case may be, [her heirs, parents or children].

(4) Nothing contained in this section shall affect the provisions of section 3 or section 4.

**COMMENTS**

(i) Since the woman had died issueless, the articles constituting dowry are to be returned to her parents and not to her husband; *Rajeev v. Ram Kishan Jaiswal*, 1994 Cri LJ NOC 255 (All).

(ii) The wife had died within less than three months of her marriage, therefore not leaving behind any issue and the contention of the husband that he was the heir of the dowry articles was negatived and dowry articles were transferred to the parents of the wife; *Prithichand v. Des Raj Bansal*, II (1990) DMC 368 P&H; see also *Manas Kumar Dutt v. Alok Dutta*, II (1990) DMC 115 (Ori).

(iii) Dowry items are required to be transferred to the parents and not to husband of the deceased; *Pradeep Kumar v. State of Punjab*, 1990 (1) CC Cases 594. ,


(a) no Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence under this Act;

(b) no Court shall take cognizance of an offence under this Act except upon— (i) its own knowledge or a police report of the facts which constitute such offence, or

(ii) a complaint by the person aggrieved by the offence or a parent or other relative of such person, or by any recognized welfare institution or organisation;

(c) it shall be lawful for a Metropolitan Magistrate or a Judicial Magistrate of the first class to pass any sentence authorised by this Act on any person convicted of an offence under this Act.

**Explanation.**—For the purposes of this sub-section, "recognized welfare institution or organisation" means a social welfare institution or organisation recognized in this behalf by the Central or State Government.

[(3) Notwithstanding anything contained in any law for the time being in force a statement made by the person aggrieved by the offence shall not subject such person to a prosecution under this Act.]