CHAPTER - 3

PROTECTION OF WOMEN UNDER DIFFERENT LAWS
CHAPTER - 3

PART - A

(I) INTERNATIONAL LAW
(II) CONSTITUTIONAL LAW
1. International Law

The first at the international level, prohibition against sex discrimination was first highlighted in the United Nation Charter of 1945 and later in the Universal Declaration of Human Rights of 1948. The International Covenant of Civil and Political Rights approved in 1966 guarantees equal protection of the law to both sexes.

World conference on women was held in Mexico City in 1975, which highlighted the themes of "equality, development". The second world conference on women convened in Copenhagen in 1980, added three sub themes: "education, employment and health". In Nairobi, the third world conference was held to review and appraise the achievements of the United Nations decade for women; equality, development and peace (1976-1985). The goal was set here for the adoption of "Forward looking strategies for the advancement of women to the year 2000". In its thirty third session which was held at Vienna, the commission stressed that a drastic effort must be made to revive a
flagging campaign for women’s advancement because there was sufficient evidence to indicate that advances towards women’s economic and political rights were slow or had actually stopped.

In its thirty seventh session, the commission urged the fourth world conference on women to consider women’s rights and concerns. This conference was held in the capital city of China, Beijing in September 1995. The Beijing conference, in a series of UN-sponsored global conferences on women laid the foundation in the field of human rights of women, who constitute nearly half of the world population.

'The Platform For Action' was the blueprint for women’s advancement in countries around the world. It was the main document of the conference. A draft document was approved at the Thirty ninth session of the UN Commission on the status of women for presentation in Beijing.

The Beijing conference further expanded the agenda for women’s empowerment. Issues once considered taboo, ideas earlier viewed as too
sensitive and actions ruled out as unacceptable were confronted head-on. The exercise led to the adoption of a platform for action, unanimously, by about 40 countries. The platform for action provides normative guidance for governments who bear the primary responsibility for implementing its strategic objectives.

Violence against women is a global problem. Historically men have dominated women and discriminated against them. Women's lack of access of legal information, aid or protection, the lack of knowledge of law and inadequate efforts by public authorities to enforce existing laws in some cases increases violence against them.

Action to be taken by government, employers, NGOs and others are:

(a) condemn violence against women and not use any custom, tradition or religious consideration to avoid their obligations to its elimination;

(b) Adopt measures to modify the social and cultural patterns of men and women;
(c) Provide well funded shelters and relief support for victims of violence;

(d) assist female victims of violence due to prostitution and trafficking, consider ratification and enforcement on trafficking and slavery;

(e) Develop programmes and procedures to eliminate sexual harassment and other forms of violence in all educational institutions, workplaces and elsewhere;

(f) Promote research on violence against women, encourage the media to examine the gender stereotypes and take measures to eliminate them.

The fourth world conference on women, held at Beijing just a few years back, has brought us further forward by reaffirming gender equality as a fundamental pre-requisite for social justice. The platform for action at the Beijing conference addressed eleven substantive areas of concern, poverty, education, health, violence, armed conflict,
economic structures and policies, decision-making, mechanisms for achievement of women, women’s human rights, mass media and the environment. The conference also attempted to strike a balance between local customs, traditions and cultures and indeed, Beijing went even so far as to demand that religious and cultural values should contribute to the realization of women enjoying full equality.

Convention on the elimination of all forms of discrimination against women (CEDAW), effective since 1981, provides that women be given rights equal to those of men on equal terms. The preamble maintains 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.”

Nothing 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.

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 pronouncement 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.

Violence against women is an obstacle to the achievement of the objective of equality, development and peace. Violence against women both violets and impairs or nullifies the enjoyment by women by their human rights and fundamental freedoms. The long-standing failure to protect and promote those rights and freedoms in the case of violence against women is a matter of concern to all states and should be addressed. Knowledge about its causes and consequence, as well as its incidence and measures to combat it, have been greatly expanded since the Nairobi Conference. In all societies, to a greater or lesser degree, women and girls are subjected to physical, sexual and psychological abuse that cuts across lines of
income, class and culture. The low social and economic status of women can be both cause and a consequence of violence against women.

The term “violence against women” means any act of gender based violence that results in, or is likely in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life. Accordingly, violence against women encompasses but is not limited to the following:

Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry related violence, martial rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence related to exploitation;

Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.
Acts or threats of violence, whether occurring within the home or in the community, or perpetrated or condoned by the state, instill fear and insecurity in women's lives and are obstacles to the achievement of equality and for development and peace. The fear of violence, including harassment, is a permanent constraint on the mobility of women and limits their access to resources and basic activities. High social, health and economic costs to the individual and society are associated with violence against women. Violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men. In many cases, violence against women and girls occurs in the family or within the home, where violence is often tolerated. The neglect, physical and sexual abuse, and rape of girl children and women by family members of the household, as well as incidences of spousal and non-spousal abuse, often go unreported and are thus difficult to detect. Even when such violence is reported, there is often a failure to protect victims or punish perpetrators.
Violence against women is a manifestation of the historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of women's full advancement.

The world conference on Human Rights reaffirmed the solemn commitment of all states to fulfill their obligation to promote universal respect for, and observance and protection of, all human rights and fundamental freedoms for all, in accordance with the Charter of the United Nations, other instruments relating to human rights, and international law.

Bearing in mind the Programme of Action of the international Conference on population and Development and the Vienna Declaration and programme of Action adopted by the World conference on Human Rights, the Fourth World Conference on women reaffirms that reproductive rights rest on the recognition of the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of
their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health. It also includes their right to make decisions concerning reproduction free of discrimination, coercion and violence, as expressed in human rights documents.

Violence against women both violates and impairs or nullifies the enjoyment by women of human rights and fundamental freedom. Taking into account the Declaration on the Elimination of Violence against Women and the work of special Reporters, gender-based violence, such as battering and other domestic violence, sexual abuse, sexual slavery and exploitation.

In addressing the enjoyment of human rights, Governments and other actors should promote an active and visible policy of mainstreaming a gender perspective in all policies and programmes so that, before decisions are taken, an analysis is made of the effects on women and men, respectively.
Since the Vienna Conference on Human Rights in 1993, the slogan 'women's rights are human right's has come to be formally acknowledged and adopted at the inter governmental level. The increasing ratification of the Convention on the Elimination of All Forms of Discrimination against Women (referred to as CEDAW) following Vienna and Beijing has created the illusion that the state parties have indeed recognized that gender based violations constitute human rights violations and need serious intervention on their part to address it.

The barriers faced in claiming human rights for women, both in terms of the general and special human rights framework, and in conclusion outline some contentious issues that continue to confront women's human rights. Although India is a ratifying party to both general and special human rights standards set out in the ICCPR, and CEDAW, Women's rights continue to be marginalized from the normative framework of the human rights regime by the state. While the position set out here is by no means specific to India, and indeed
reflects the problem areas within international human rights order, the examples drawn upon here are from the Indian context.

Gender based human rights abuse would refer to denial or violation of rights on the ground of being female. Sex has been the basis for differentially attributing to men and women certain roles, relations and identities. The socialised roles thus attributed are based on assumptions about men and women, which are variously drawn from culture, tradition and religion. These underlying assumptions have been the justification for delineating different rights, responsibilities and resources to men and women in the family, the society; the market and the state. Although these roles are not static but vary over time and cultures, they have historically disadvantaged women in terms of fixing greater degree of responsibilities on them while allowing them lesser choices, lesser rights and subordinate status.

The gendered reality for women determines the nature and circumstances of the human rights
violations specific to women, as well as the availability and accessibility of remedies for them. It is therefore important to draw into the human rights framework, the impact of gendered social reality on the women's rights. For example, in a cultural context such as India, where women are perceived as custodians of culture, the violations of their right to life and bodily integrity is different from men in a situation of communal or caste violence. Although the sexual abuse of women of the victim group nearly always accompanies such violence, most documentation of such incidents, reflect, the numbers of those killed and injured, comprising largely of made victims. The capacity of human rights documentation frameworks to take into account such gender specific violations is severely limited.

An even more contentious area of discrimination has been the private sphere, given the power vested in the institutions of family and the community to arbiter women's rights and freedoms. Significant numbers of women "are routinely subject to torture, starvation, terrorism,
humiliation, mutilation; and even murder" within the family simply because they are female. “Crimes such as these against any group other than women would be recognised as a civil and political emergency as well as a gross violation of the victim’s humanity.” However the human rights discourse for most part of its existence, failed to recognise such violations as falling within its purview, despite its claims of universality.

There exist serious limitations in ‘extending’ human rights guarantees to women despite being framed as available without discrimination on the basis of sex. The general human rights framework adopted a normative male model of rights violations and as a result excluded in its application differently situated persons. Its primary focus has been the state sanctioned or condoned oppression in the public sphere, far removed from the private spaces where women’s lives are circumscribed. The application of these norms to persons in unequal situations has inflicted rather than alleviated discrimination against women, because its neutral
framework fails to take into account the historical discrimination against women.

The historical context of the cold war separated the civil political rights from the socio economic and cultural, fragmenting for times to come, the indivisible bundle of rights. The debate on human rights thereafter has been ridden with dilemmas on prioritization of one set of rights over the other the civil political over the socio economic and cultural. That most persons exercising civil political rights in the public sphere are male, given their unhindered access to the public/political sphere in contract to the socio cultural barriers that hinder women's participation in the public sphere was not considered. This prioritization of the civil and political has impaired the recognition of women's rights given that often the attainment of right to life for women is conditional upon and mediated through the realm of socio cultural and economic rights. For example, the lack of full reproductive rights has been known to be life threatening to women in many parts of the world, as reflected in the high maternal mortality and
deaths from unsafe abortion services. Although reproductive rights may be of significance to men, they by no means have a direct impact on their life and survival.

Further, the violator in terms of the general human rights framework has always been the state acting through its agents. It has failed to and resisted taking note of private actors contributing to systemic forms of discrimination against women in the private sphere. Domestic violence is a case in point. This constitutes one of the most universal and systemic forms of gender based discrimination. While there may be instances of violence against individual men this does not constitute a pattern of violence experienced by men in any given society.

In response to critiques of the general human rights framework, it has often been argued that the increasing numbers of women are entering the political and public sphere are equally vulnerable to state abuse as reflected in cases of custodial rape and torture of women. Hence, it is asserted that the traditional model of human rights is valid
and inclusive of gender specific abuse. This position continues to invisibles conditioning that once married a woman belongs to her marital home and must exist it only the immutable power and control exercised by the family and the community over women, which is parallel only to that of the state in case of men. When socio cultural norms deny women both spaces and capacity of existing independently of marriage or family, their situation in domestic violence is similar to that of a victim of custodial violence. The reality that legal redress, however flawed, does exist is obscured by the social conditioning that once married a woman belongs to her marital home and must exists it only upon death. It is therefore not surprising that a high number of cases of domestic violence come to fatal conclusions. The state through the law has clearly enabled the social norms and the family to regulate women’s rights. Despite such evidence, the general human rights the community through public education and health care programmes along with programmes and laws that strengthen the status of the girl child and women generally. The effect of
the present law with its emphasis on policing individualizes the problem without implicating the larger structures, traditions and the discriminatory state laws that together contribute to the subordination of women.

India, like many other state parties, has ratified CEDAW with a declaration that limits its obligations relating to changing the discriminatory cultural practices within the community and the family. Hence in relation to Articles 5(a) 16(1), the Indian state declares that “it shall abide by and ensure these provision in conformity with its policy of non-interference in the personal affairs of any community without its initiative and consent”. Thus in Indian discriminatory provision for women within marriage and family continue to be asserted and defended as a cultural and religious right. In a similar vein, many other state parties to CEDAW have either in general terms or in relation to specific provisions limited their obligation on the ground of inconformity with the Sha’ria laws which govern rights in relation to the family and/or the criminal justices system.
Women's human rights remains a contentious area, given the high number of reservations, apathy in translating treaty obligations into express legislative enactment at home, the inadequate accountability and enforcement and the alienation of individual from accessing the treaty body for enforcement of these rights. At the level of setting normative standards, wide ratification of CEDAW is an achievement for women's human rights agenda. However until the issues of accountability, enforceability and individual redress remain unresolved human rights will remain far-fetched for women. This section takes an overview of the contentious issues in the context of women's human rights and the challenges emerging in relation to them.

International law is premised on the principal of state sovereignty that allows ratifying states to limit or modify their obligations under a treaty. Admittedly, state ratification, and the resulting obligation to eliminate discrimination against women, is an achievement both in terms of transforming human rights generally and in
validating a conceptual framework for women’s human rights. To that extent, reservations can be viewed instrumentally as an enabling device that facilitates state endorsement of normative standards on women’s issues of implementation and accountability are bound to arise and consensus building.

India’s declaration which limits its obligations under CEDAW, and other reservations of similar intent give rise to both technical and conceptual issues relation to tenability of such reservations. The Vienna law of treaties governing reservations permits only those reservations that are consistent with the object and purpose of the treaty in question. Further, the reservation is required to be specific and not vague, and be made in good faith by the state party. Reservations to CEDAW, such as that of India, amount to an unqualified exemption for the state from intervening in discriminatory cultural practices in the private sphere even though by ratification the state implicitly acknowledges the need for such intervention. Since India’s reservation fails to specify a time frame of
limit the nature of interventions envisaged by CEDAW, it is inconceivable for a state to completely disclaim it obligation to pro-actively transform discriminatory customary practices through at least one of the many forms of interventions at the programmatic, policy and legislative levels.

Underlying the issue of reservations is the sovereign right of a state to limit its obligations in relation to other states. Generally, international treaties constitute an exchange of obligations between states and allow for reservations to enable states to limit or modify their obligations in certain areas. However, human rights treaties are differently placed, in that they relate to the rights guaranteed to persons, which upon ratification the state undertakes to protect. Many of these rights are non-derivable, and accountability of the state flows regardless of ratification of the treaty containing the same. This therefore puts human rights treaties on a different footing from other treaties under international law, justifying a more stringent scrutiny of its reservation. Hence, it can be argued that the treaty constituted for monitoring
human rights treaties need to have the power to scrutinize reservations to examine their compatibility with the object and purpose of the treaty, and its effect on the integrity of the concerned treaty. In the event a reservation is found unacceptable, the treaty body ought to sever the same, while continuing the operation of the treaty against the state party without the benefit of the reservation.

The issue of validity of cultural relativist arguments to justify state derogation from its human rights obligations in relation to women’s rights is critical given the large number of reservations made on this basis. The retreat from such responsibility condones and re-affirms the patriarchal control of communities over their women. India’s reservation to CEDAW, casts aside discrimination against women as an issue for the community to resolve autonomously. This position continues to sustain and re-construct the false dichotomies of public/private, civil political/socio economic and individual/collective that women’s rights movement and more recently, the
international human rights law has tried hard to erode.

In notable contrast, women's movements have explored issues of cultural specificities to assert the multiplicity of identities and diversity of the struggles that constitute it. Cultural contexts have not been used by women to waive their rights to equality and dignity, as is reflected in the history of the making of CEDAW. In the debates leading to the adoption of the Convention, Afghanistan had said that overcoming discrimination would require "combating of traditions customs and usages which thwart the advancement of women... (and) intense educational efforts...designed to enlighten public opinion". The drafting committee for the Convention itself constituted representatives from Iran, Egypt, Philippines, Ghana and other countries known for their strong traditional and cultural moorings. When the draft Convention was finally put to vote at the Commission on the Status of Women, the representatives from different cultural context collaborated across geo-political boundaries to retain the Convention's mandate on
state obligation to eliminate discriminatory cultural and traditional practices. In contrast, the reservations by the state parties have used cultural relativism to uphold discriminatory cultural practices even when these violate women's human rights. This view tends to project culture as being fixed and homogenous, with no democratic space for plurality of interpretations or practice, which in fact is incorrect since diversity in norms and practice has always existed. Given that women as a social group have suffered the maximum human rights violation in the name of culture, it is important to begin investigating and exposing the primary beneficiaries of such claims and their politics. In such instances it is important for women's and human rights groups to begin questioning the status of the speaker, and the participation of the affected social group in formulating a reservation that curtails their human rights.

Most other human rights treaties can be invoked for individual redress and for instituting inquiry against systemic violations through their
respective optional protocols. CEDAW however, is yet without one. Although women's rights groups have been able to lobby for considerable support for an optional protocol, but it has yet to be adopted by the General Assembly and transformed into a treaty. It remains to be seen whether state parties consider women's rights issue serious enough to strengthen international mechanisms for their enforcement, at least to a stage equivalent to the other human rights treaties. The optional protocol if passed, would allow the CEDAW however, is yet without one. Although women's rights groups have been able to lobby for considerable support for an optional protocol, but it has yet to be adopted by the General Assembly and transformed into a treaty. It remains to be seen whether state parties consider women's rights issues serious enough to strengthen international mechanisms for their enforcement at least to a stage equivalent to the other human rights treaties. The optional protocol if passed, would allow the CEDAW Committee to entertain individual petitions and enquire into issues of systematic and mass
discrimination, only upon a separate ratification of the protocol by the state in addition to its ratification of CEDAW.

Although international human rights order has transformed itself conceptually in response to repeated challenges from women's rights movement, the conclusive test of its effectiveness lies in its enforceability in the municipal arena. The jurisprudence on municipal enforcement of international human rights law has evolved. Rather than making enforcement conditional strictly upon legislative enactment, there is a growing tendency to read international human rights law into the constitutional law in areas where the domestic laws are vague or even silent.

Since human rights treaties once ratified by a state, secures to individuals a universal standard of human dignity (rather than mere inter state obligations), the ratification creates a legitimate expectation in individuals for securing the rights guaranteed under the treaty.
In Vishakha & ors. V. State of Rajasthan & ors, the supreme court upheld the rights of working women against sexual harassment in working places relying on the provisions of the Convention on the Elimination of All Forms of discrimination Against Women (CEDAW) and the fundamental rights conferred by articles 14, 15, 19(1) (g) and 21 of the Constitution of India. The court declared:

"In the absence of domestic law occupying the field, to formulate effective measures to check the evil of sexual harassment of working women at all workplaces, the contents of international covenants and norms are significant for the purpose of interpretation of the guarantee of gender equality, right to work with human dignity in Articles 14, 15, 19(1)(g) and 21 of the constitution and safe guards against sexual harassment implicit thereon. Any international convention not inconsistent with the fundamental rights and in harmony with its spirit must be read into these provision to enlarge the meaning and content thereof, to promote the object of the constitutional guarantee." \(^5\)
The rights of women are Central to our vision of a democratic society. But the fine works of these documents and of the Vienna Declaration in 1993 and the declaration of Beijing in 1995 stand in sharp contrast to the dully reality of life for millions of women. Of the 1.3 billion people living in poverty, 70 per cent are women; the majority of the world's refugees are women: female illiteracy is invariably higher than male illiteracy. Women and girl-children are treated as commodities in cross-border prostitution rackets and the pornography industry. Millions of girls are still subject to genital mutilation, while women in every country are regular victims of domestic violence. In many countries, women lack access to reproductive health care and every day women are targeted in armed conflicts. Women's economic, social and cultural rights continue to be neglected.

There can be no peace, security or sustainable economic development in societies, which deny human rights, including the human rights of women. This is gradually being understood by governments and their willingness to discuss with
the United Nations the application of international instruments, including the Convention on the Elimination of Discrimination Against Women.

Fighting for women's human rights is a positive struggle which recognizes the quality of a woman's contribution in every aspect of the community:

Over the last decade, the concept of gender has increasingly informed policy programming and treaty interpretation both within and outside the United Nations system. Much of the impetus came from the consensus on the need to regress gender inequality that was reached at the United Nations' global conferences of the 1990s. But the global conferences were only one step in a long process of considering the concept of gender within the UN system.

The principle of the equal rights of women and men was recognized in the Center of the United Nations, and is contained in the Universal Declaration of Human Rights and all subsequent major international human Rights and all
subsequent major international human rights instruments. Confirmation of the principle of equality in these instruments was an important step in the recognition of the rights of women. Yet traditional exclusion of women from the public domain has persisted in many countries-relegating women to the private domain.

The need for women's participation in all spheres of society-in both the public and the private domains and the recognition of inequality and discrimination in the private domain, led to the creation of specific standards for the protection of women's rights. In 1979, the United Nations General Assemble adopted the Convention on the Elimination on All Forms of Discrimination Against Women (CEDAW). CEDAW establishes women's right to non-discrimination on the basis of sex, and affirms equality in international law. It provides that women and men are entitled to the equal enjoyment and exercise of human rights and fundamental freedoms in civil, cultural, economic, political and social fields.
The 1993 Vienna Conference on Human Rights, the 1994 Cairo Conference on Population and Development and the 1995 Beijing Women' World Conference, recognized the need to build on these principles to assert women's rights. These global conferences promoted the review of policies and programmes from the perspective of their impact on women and men in other words, a re-evaluation of policies and programmes from a gender perspective.

The incorporation of a gender perspective in the work of the United Nations is fundamental to the process of mainstreaming gender. Mainstreaming gender is an acknowledgement of the different ways in which gender roles and gender relations shape women's and men's access to rights, resources and opportunities, within and between cultures, and at different stages in their life cycles.

Its aim is to achieve the advancement of women through correcting disparities in different
policy sectors and ensuring their enjoyment of civil, cultural, economic, political and social rights.

As the lead United Nations organization for the follow-up and implementation of the Vienna Programme of Action, OHCHR is fully committed to maintaining a policy dialogue on human rights and gender mainstreaming with its UN Partners (particularly UNDP, UNICEF, UNHCR, UNFPA and the Division for the Advancement of Women), as well as with government, development banks, bilateral aid agencies, NGOs and civil society. The objective is to build common understanding of the fundamental link between gender issues and the human rights of women and girl-children.

The persistence of unequal outcomes suggests that women’s as well as men’s experiences require explicit attention in terms of the protection and promotion of human rights. While great progress has been made in recent years in the collection of data disaggregated by sex. Such data are not yet consistently used as a basis for legal and policy
measures in promoting the enjoyment of human rights.

Access to, and control of, productive resources, particularly land, are key factors in addressing women's poverty. Although women's right to own land is often legally established, gender asymmetry in access to and control over land is one of the main obstacles to the full participating of women in rural development. Because of continuing exclusion of women from, and discrimination against women in, acquiring land, security of tenure and inheritance rights to land and property, women also face particular constraints in securing their right to housing. The continued discrimination women face in all matters relating to land and property has been identified as the single most critical factor in the perpetuation of gender inequality and poverty.

Education is also a prerequisite for effective economic participation. Education and training for women and girls yields high social and economic returns, and is a precondition for the empowerment
of women. While enrolment ratios for boys and girls at the primary level are approaching equality everywhere, differences persist at the regional level and for different age groups and levels of schooling, especially at higher levels. Two thirds of the world’s illiterate adults are women, with illiteracy highest among older women who never had the opportunity to go to school.

Although women’s participation in various aspects of economic and community life has increased, it remains lower than that of men. The female economic activity rate is now nearly 70 per cent of the male rate in developing countries, ranging from 86 per cent in East Asia to 50 per cent in Latin America and the Caribbean. A large part of women’s work is in low-paid or unpaid occupations. In agriculture, family enterprises and the informal sector, women have little possibility for savings, credit or investment, and limited security. Women’s work is poorly measured in official statistics in spite of its tremendous importance for the well-being of families.
Women work in different jobs and occupations than men, almost always with lower status and pay. In the industrialized countries, unemployment is higher among women than men, and women account for 75 per cent of unpaid family workers. In many parts of the world, women who are poor remain unable to exercise their right to loans and credit, even though this right is established under the Convention on the Elimination of all Forms of Discrimination against Women and is considered to be a powerful toll in overcoming poverty and economic dependence.

Analysis of the content and nature of human rights, as well as of measures to ensure their enjoyment, should be informed by gender-based considerations. There are many processes at the domestic and international levels through which the content of human rights is clarified and their implementation occurs. The systematic integration of gender factors into these processes, into measures for implementation and into domestic and international monitoring, remains to be achieved.
In the enjoyment of rights, women face constraints and vulnerabilities, which differ from those that affect men and which are of significance relevance to the enjoyment of these rights. At the same time, these variables mean that women may be affected by violations of rights in ways that are different from men. Women are disproportionately affected by poverty and social marginalization. Women suffer systemic and systematic discrimination, which result in deep patterns of inequality and disadvantage. The overall level of development and of resources available to countries, women's literacy levels and women's access to information and to legal remedies also have an impact on women's enjoyment of their rights.

Many women experience multiple barriers in gaining access to rights such as employment, housing, land, food and social security. Women's social position, marital status, class, or membership in particularly vulnerable groups, such as refugee or migrant women, rural or urban poor
women, are often linked to de facto, and sometimes also to *de jure*, discrimination.

International human rights instruments, the Beijing Platform for Action and the Vienna Declaration and programme of Action provide a solid basis for promoting women's enjoyment of their human rights. Including those related to economic development and resources, and the alleviation of women's poverty. The Platform for Action recognizes the impact of gender on the enjoyment of human rights, including access to rights, opportunities and resources, and with regard to treatment in many areas. Together with international human rights instruments, the platform for Action emphasizes that such gender-based inequalities and disadvantage need to be addressed explicitly in all actions of governments and of other actors entrusted with their implementation.

In our country we have implemented the provisions of CEDAW and other international conventions including Beijing convention into our
municipal law. Supreme Court has played a significant role in this direction one the leading case decided by the Supreme Court is Vishakha Vs state of Rajasthan.

The judgment of the court was delivered by J.S. Verma, C.J. on behalf of Sujata v. Manohar and B.N. Kirpal, J.J. on a writ petition filed by Vishaka, a non-governmental organization working of “gender equality” by way of PIL seeking enforcement of fundamental rights of working women under Art. 14, 19 and 21 of the constitution. In holding so the court relied on international conventions and norms, which are significant in interpretation of guarantee of gender equality, right to work with human dignity in Articles 14,15,19 (1) (a) and 21 of the constitution and the safeguards against sexual harassment implicit therein. The immediate cause of filling the petition was alleged brutal gang rape of social worker of Rajasthan. The Supreme Court, in absence of enacted law to provide for effective enforcement of basic human rights of gender
equality and guarantee against harassment, laid down the following guideline.

1. All employers persons in charge of work place whether in the public or private sector, should take appropriate steps to prevent sexual harassment without prejudice to the generality of his obligation, he should take the following steps:

(a) Express prohibition of sexual harassment which include physical contact and advance; sexually colored remarks showing pornographic or any other unwelcome physical, verbal or non-verbal conduct of sexual nature should be noticed, published and circulated in appropriate ways.

(b) The rule of regulation of Government and public sector bodies relating to conduct and discipline include rules prohibiting sexual harassment and provide for appropriate penalties in such rules against the offender.
(c) As regards to private employers, steps should be taken to include the aforesaid prohibition in the standing orders under the industrial employment (Standing order) Act, 1946.

(d) Appropriate work conditions should be provided in respect of work leisure health and hygiene to further ensure that there is no hostile environment towards women at work place and no woman should have reasonable grounds to believe that she is disadvantaged in connection with her employment.

2. Where such conduct amounts to specific offences under the Indian Penal Code or under any other law, the employer shall initiate appropriate action in accordance with law by making a complaint with the appropriate authority.

3. The victims of sexual harassment would have the option to seek transfer of the perpetrator or their own transfer.
When, however instances of sexual harassment resuming in violation of fundamental rights of women workers under Arts, 14, 19 and 21 are brought before the Court of redressed under Art 32 of the constitution ineffective redressed requires that some guidelines should be laid down for the protection of these rights to fill the legislative vacuum, Mr. Justice Verma said

A STUDY OF THE CASE OF APPAREL EXPORT PROMOTION COUNCIL v. A.K. CHOPRA

Harassment at the work place by the males is the reality of the working woman's life. In a historic blow for gender justice, the Hon'ble Supreme Court, upheld the removal of an employee from services of the Apparel Export Promotion Council on charges of sexual harassment, quashing an earlier verdict of the Delhi High Court., the Apex Court. The Apex court observed that lenient action in such cases was bound to have a de-moralizing effect on working women.
Apparel Export Promotion, Council v. A.K. Chopra, is the first case in which the Supreme Court applied the law laid down in the case of Vishaka v. State of Rajasthan and upheld the dismissal from service of superior officer of the Delhi based Apparel Export Promotion Council who was found guilty of sexual harassment of a subordinate female employee at the place of work on the ground that it violated her fundamental right guaranteed by Art 21 of the Constitution.

The Hon'ble Supreme Court said that the observations made by the High Court that since Mr. Chopra did not 'actually molest' the woman, rebelled against realism and had no credibility. Mr. Chopra's conduct was unbecoming of good conduct and behavior 'expected from a superior officer and amounted to sexual harassment. The Hon'ble Supreme Court observed that there is no gain saying that each incident of sexual harassment at the place of work, results in violation of fundamental right to gender equality and the right to life and liberty the two most precious
fundamental right guaranteed by the Constitution of India.

The above provisions, rather than providing a remedy for female harassed at the place of work, actually prove counter productive. This is because "outrage to the modesty of a woman" is an essential ingredient of the offence, the entire trial is devoted to determine whether the woman had any modesty to speak of. In this way, the victim is put on trial not the offender. It has been observed that the accused cannot be convicted of this offence where the victim had no modesty to mention or it was not such as to be outraged by the act attributed to the offender.

One may contend that the term "condition of work" would take within its fold harassment at work place and the complaint procedures provided under the Act would be sufficient to deal with sexual and gender based harassment claims. This however cannot be accepted because it requires special attention. It cannot be dealt with as one among many issues.
Thus, existing laws do not serve the purpose. Actually, the Employers must have a duty to provide a suitable working environment. It can be observed that:

1. A certain and detailed company policy regarding sexual and gender based harassment should be adopted and such policy must be well publicized.

2. An institutionalized but informal complaint procedure should be set up with high ranking female officials to hear complaints.

3. Secrecy must be ensured to the victim.

4. Special investigative agency must exist comprising both male and female officials to investigate the compliant

5. appropriate disciplinary action must be taken against the offender.

6. immediate action must be taken on every compliant in this regard.
Employers must be liable for sexual or gender-based harassment caused to female Employees by supervisors with or without actual delegated authority, with or without knowledge of the employer. However, the employer may be discharged from such liability if she or he, as the case may be, had (i) created a real and responsive avenue of complaint; (ii) an express policy against harassment at workplace; and (iii) meticulously implemented it. Against the growing social menace of sexual harassment of women at the workplace, Hon'ble Supreme Court has issued certain guidelines in Vishaka v. State of Rajasthan.

It is a matter of national and international concern that not withstanding the Universal Declaration of Human Rights and the International covenants and other Declarations of Rights and the permeation of human rights philosophy into municipal law, violations of women rights are on the increase in many countries including India. Human rights activists all over the world have a challenging task before them. Spreading awareness of human rights is important, but more important
is promotion of universal respect for human rights among the instrumentalities of states and citizens alike and prevention of violations of these precious rights.
Reference:

1. Mamta Rao, “Law relating to women and children” p. 43

2. Special rapporteur on violence against women 2004


5. OHCHR Journal


7. AIR 1999 SC 328
The Preamble of the Constitution emphasizes on the ultimate authority of the people from whom the Constitution emerges. There is no sex discrimination. The words "WE THE PEOPLE OF INDIA" include both males and females.

The Preamble outlines four objectives of the Indian Republic, viz. justice, liberty, equality and fraternity. 'Justice' implies reconciliation of individual conduct with the general welfare of the society. The essence of justice lies in the attainment of the common good. It embraces as the preamble proclaims the entire social, economic and political spheres of human activity.

The word 'liberty' in the Preamble, signifies not only the absence of any arbitrary restraint on the freedom of individual's action but also for the creation of conditions which would provide for the necessary ingredient required for the proper development of the personality of the individual. Since society consists of individuals social progress depends on the progress of individuals. Hence, it is
in the interest of the society to ensure the maximum liberty of thought and action of the individual consistent with the circumstances and social conditions.

The two words 'liberty' and 'equality' are complimentary. Equality does not mean that all human beings are mentally and physically equal. It signifies equality of status and equal opportunity.

Emphasis has been laid on the objective of 'fraternity' in order to ensure two things, viz. the dignity of the individual and unity and integrity of the country. It is the spirit of brotherhood that is emphasized by the expression 'fraternity'. In a country like ours with diverse religion, language, culture and social system, unity can be achieved through the spirit of fraternity.

**Right to Equality:**

"Art 14¹, Equality Before Law: The State shall not deny to any person equality before law or equal protection of laws within the territory of India."

The Constitution of India guarantees equality before law or equal protection of laws to every
person irrespective of the fact that he is, or he is not the citizen of India. Both the phrases aim to establish what is called the equality of status and of opportunities as envisaged in the Preamble. Article 14 of the Constitution prevents any arbitrary discrimination.

**Interpreting the scope of this Article**

A technical pedantic or doctrinaire approach should not be made and the doctrine should not be involved even if different scales of pay, service conditions, leave etc. are introduced in different or dissimilar posts. Article 14 forbids hostile discrimination but not reasonable classification. Art, 14 certainly applies where equals are treated differently without any reasonable basis. Where equals and unequal are treated differently, Art, 14 would have no application.

In its struggle for social and political freedom, mankind has always tried to move forward to the idea of equality for all. The urge for equality and
liberty has been the moving force of many resolutions.

However, fulfillment of complete equality between men and women in all spheres of life is a distant dream. The laws of a country can at best assure to its citizens only a limited measure of equality. The Constitution makers mind only political and legal equality and the status of a fundamental right. Aspects like economic and social equality were included within the scope of Directive Principles of the State Policy. Article 15(1) of the Constitution ensures prohibition of discrimination on grounds of religion, race, caste, sex or place of birth. Stated in words, it stands as follows:

The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them be subject to any disability, liability, restriction or conditions with regard to:
Access to shops, public restaurants, hotels and places of public entertainment; or the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of state funds or dedicated to the use of general public.

Nothing in this Article shall prevent the State from making any special provision for women.

Art. 15, however, has provided a couple of exceptions in its application Art. 15 (3) allows the state to make any special provision for women and children, Art, 15(4) permits the state to make any special provision for the advancement of socially and educationally backward classes or for the Scheduled Caste or Scheduled Tribes. The treatment meted out to women and children is in the larger and longer-range interest of the community.

Art, 15(4) was included in the Constitution as a result of the First Constitutional Amendment in 1951.
Article 16

This Article guarantees equality of opportunity in matters of public employment. It is stated in the following words:

16(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them be ineligible for, or discriminated against in respect of any employment or office under the state.

16(3) Nothing in the Article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment to an office (under the Government of, or any local or other authority within a state or Union Territory, any requirement as to residence within that State or Union Territory) prior to such employment or appointment.

Art. 16(2) prohibits discrimination to any citizen in respect of appointment on grounds of religion, caste, race, sex, descent, place of birth or residence, should that appointment he under the State.
What Art. 15 (1) and 16(2) prohibit is that discrimination should not be made only on the ground of sex. However, these Articles do not prohibit the state from making discrimination on the ground of sex coupled with other considerations, to be a permissible classification. While dealing with this aspect of the matter, the Supreme Court remarked as under:

"Art. 14 is general and must be read with the other provisions which set out the ambit of fundamental rights. Sex is a sound classification and although there can be no discrimination in general on that ground, the Constitution itself makes special provisions in respect of women and children. The two Articles when read together validate the impugned chance in Sec.497 I.P.C."

Justice Krishna Iyer in M/S C.S. Muthatma Vs. Union of India expressed somewhat similar views in the following words:

"We do not mean to universalize or dogmatize that men and women are equal in all occupations and all situations and do not exclude the need
where the requirement of particular employment, the set of sex or the peculiarities of social sectors or the handicaps of either sex may compel sensitivity. But save, where the differentiation is demonstrable, the rule of equality must govern.”

In case the Supreme Court observed that having taken the air hostess in service and after having utilized her services for four years, to terminate her services by the management in the event of her becoming pregnant amounts to compelling the poor air hostess not to have any children and thus interfere with and divert the ordinary course of human nature. The termination of the services of an air hostess under such circumstances is not only a callous and cruel act but an open insult to Indian womanhood, the most sacrosanct and cherished institution. Such a course of action is extremely detestable and abhorrent to the notion of a civilized society. Apart from being grossly unethical, it smacks of a deep-rooted sense of an utter selfishness at the cost of all human values. Such a provision, therefore is not only manifestly unreasonable and arbitrary but
contains the quality of unfairness and is, therefore, clearly violative of Art.14.

The Supreme Court while dealing with a rule barring married women from working in a particular firm criticized the validity of the rule in the following words:

"We are not impressed by these reasons for retaining a rule of this type. Nor do we think that because the work has to be done as a team, it cannot be done by married women. We also feel that there is nothing to show that married women would be more likely to be absent than unmarried women or widows. If it is the presence of children, which would account for greater ostentation of married women, that would be so with the widows having children. The fact that the work has to be carried out by the workers as a team and presence of all these workmen is in our opinion no disqualification. So far as married women or widows are entitled to such leave as the rule of the Respondent's Firm provide and they would be availing themselves of these facilities".
Right Against Exploitation:

The following expression constitute the relevant portion in Art. 23 of the Constitution.

Prohibition of Traffic in human beings and forced labour:

Traffic in human beings and 'beggar' and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

Nothing in this Article shall prevent the State from imposing compulsory service for public purposes and in imposing such service, the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them”.

Art. 21, which mentions about personal liberty. Supreme Court has included International conventions for the protection of rights of women. Besides, many cases Vishakha case is the first case where provisions of Human Rights emphasized in International Covenants was enforced.

Art.23 may be compared to the 13th Amendment of the Constitution of America which
abolished slavery. In our country, at the time of adoption of the Constitution, there was no such practice like slavery in our country but there existed large scale exploitation of forced bonded labour practiced by upper caste people upon the underprivileged section of the society.

Evils like the practice of devdasi and other similar practices in the Southern and Western part of the country and some of the temples in Orissa particularly bordering Andhra Pradesh were rampant and still existed.

The ideal of human dignity, which though pervades the entire Constitution has been expressed in explicit terms in the form of this Article. The expression ‘Traffic in Human Beings’ means disposal by way of sale or hire or otherwise of human beings more or less in the same manner as man does with the disposable articles.

The trafficking in women and girls in the male dominated society has been the evil practice since old times. Medieval feudalism brought down the position of women to a very mark. Prostitution
became rampant and flesh trade established itself with agents and pimps and the dignity of women had gone down to the lowest ebb. To counter this, the Parliament enacted. The Suppression of Immoral Traffic in Women and Girls Act, 1956, "This Act was renamed as "Immoral Traffic (Prevention) Act, 1956" and enforced with effect from January 26, 1987. The Act was enacted by the Parliament in pursuance of the ratification by India of the International Convention of the Suppression of Traffic in persons and of the prostitution by others, signed in New York on May 9.

Thus sex is a prohibited ground of discrimination under Art. 15 and Art. 16, but not under Art. 29, Courts however, have come to settle down with an interpretation which means that sex as a basis of classification may be a suspect but cannot altogether be prohibited. Special laws for women can be made in different kinds of cases notwithstanding the fact whether they are favourable or unfavourable to women. It has only to be seen in such a situation that such orders may not only be redresser but also seem to be
reasonable. The following cases are cited by way of example.

In Anjali Roy Vs. The State, the fact involved was that after opening of a college exclusively for women, girl students were denied admission into another college, which was a co-educational institution. Accordingly one Anjali Roy was denied admission in the co-educational college under the orders of the Director of Public Instruction of the Government of West Bengal. The petitioner challenged the orders of the D.P.I. as arbitrary and unreasonable. The Hon’ble High Court of Calcutta dismissed the Writ Petition holding that the order prohibiting the admission of the girl students to the former co-educational institution was with the intention to make the girl students to take admission in women’s college so that the same could be popular and well established and thus, become self sufficient. This was thus, a special provision as contemplated by Art.15(3) for the benefit of women and in consequence the provision of Art.15(1) was not available for this. It was further held that Art.15(1) was of wider
implications as compared to Art.29(2) and prohibited discrimination on the ground of sex on all matters and so it included discrimination in matters of admission into educational institutions with the result that Art.15(1) should control Art.29(2).

In "University of Madras Vs. Santhabai" and another The High Court of Madras took a different view to deny admission to Santhabai in a newly opened college. The Court held the view that the University of Madras is not a 'State as defined in Article 12 of the Constitution and thus its regulation will not be subject to prohibition of Art.15(1) of the Constitution of India. Another point is that admissions are regulated within the ambit of Art.29(2) and the regulation of the University required that colleges should have the necessary infrastructure to provide essential facilities for women before they could be admitted. This fact is not discriminatory on ground of sex.

So far as the scope of Art.15(3) is concerned, the High Court expressed that notwithstanding
Art. 15(1) it was lawful for the state to establish educational institutions solely for women and the exclusion of men students from such institutions does not contravene. Art.15(1). The cumulative effect of Art. 15(3) and 29(2) is that while male students have no right to get admission in women's college, the women's right to admission to other colleges is a matter within the regulation of authorities.

The Supreme Court of India, the protector and guardian of the fundamental rights has always been the champion in maintaining and elaborating the concept of “equality of status” – particularly, when the discriminatory laws were made by the State against women. In the very first year of its working, a woman, Champakam Dorairajan for claiming equality of status came before the Supreme Court and got the Government Order(G.O.) of the Madras Government declared unconstitutional and violative of Article 14 (Right to equality) and Article 15 (Discriminatory legislation). Article 14 of the Constitution firstly, confers on women the equality of Status and secondly, protects against any
violation of this principle. Article 14 of the Constitution recognizes "women" as a class. The Court has declared that women as a class were different from men as a class; and for this, the legislature had merely removed the disability attaching to women by passing the Hindu Succession Act, 1956. This Act has declared in unequivocal term that the limited rights in property of a female will now be held by her as an absolute owner, which clearly shows departure from the Shastric Law. Furthermore Section 8 of the Hindu Succession Act has put female heirs at par with male heirs. In case of division of property after the death of father, sons, wife and daughters are entitled to inherit his estate including alienated property even though the wife and daughter were under the customary laws incompetent to challenge the alienation. The Court has made it clear that the Section 14 of Hindu Succession Act does not discriminate between citizens on the ground of place of birth, it equally applies to the "Mitakshra" and "Dayabhaga" Schools of Hindu law. The Hindu Adoption and Maintenance Act, 1956, under Section
22, provided that illegitimate daughters along with sons can claim maintenance from those who take the estate if she has not obtained any share in the estate. This preferential treatment is not violative of Article 14 as it puts daughters equal to sons.

The Landmark case in the history of women's right on this point is *Air India v. Nargish Meerza and others.* In this case some of the provisions of Air India Employees Service Regulations and of Indian-Airlines (Flying Crew) Service Regulations were declared against the letter and spirit of Article 14 of the Constitution of India. Regulation 46(1)(c) of the Air India Employees Service Regulations, provided that "An Air Hostess was to resign from her service: (a) upon attaining the age of 35 years, or (b) on marriage, if it takes place within four years of service, or (c) on first pregnancy, whichever occurs earliest. Justice Fazal Ali, while declaring clause "C" of the above provision, i.e. termination of services on first pregnancy as violative of Article 14, observed that, "it seems to us that the termination of services of an Air Hostess under such circumstances is not only a
callous and cruel act but an open insult to Indian womanhood—the most sacrosanct and cherished institution.” Therefore, such a provision is not only manifestly unreasonable and arbitrary but contains the quality of unfairness and exhibits naked despotism and is, therefore, clearly violative of Article 14 of the Constitution.

The writ by Miss Muthamma,⁹ a senior member of Indian Foreign Service, speaks a story which makes one wonder whether Articles 14 and 16 belong to myth or reality. It was a unique example of sex discrimination ultra-vires Articles 14 and 16 of the Constitution of India. Rule 3 (2) of the Indian Foreign Services Rules, 1961 provided that “a woman member of the service shall obtain the permission of the Government in writing before her marriage is solemnized. At any time after marriage, a woman member of the service may be required to resign from service, if the Government is satisfied that her family and domestic commitments are likely to come in way of the due and efficient discharging of duties............” Justice Krishna Iyer while delivering the judgment has observed that the
"Discrimination against woman, in traumatic transparency, is found in this rule. In these days of nuclear families inter-continental marriages and unconventional behaviour one fails to understand the naked bias against the gender of species."\(^{10}\)

In *University of Madras v. Shanti Bai\(^ {11}\)* the regulation of the University requiring that the College should provide certain facilities for women before they could be admitted, the Hon'ble Court held, are not discriminatory on the ground of sex but they are only reasonable restrictions permitted within the frame work of the Indian Constitution. On the same analogy it was held that the denial of admission in a college to a woman student under above regulation is not unconstitutional.

Article 14 of the Constitution of India prohibits class legislation but permits reasonable classification. The Classification must be based on sum "intelligible differentia" and should have a "rational nexus" with the object sought to be achieved by the act or legislation in question. Having in view classification and object of
legislation "women" can be treated as a class and special laws can be made in their favour. Various provisions have been declared valid and within the framework of the Constitution of India, where women have been given a special treatment. Such provisions of law have been declared by the Courts as "permissive classification" not violating the principle of equality under Article 14 of the Constitution provided the classification is not arbitrary.

Section 354 of the Indian Penal Code which makes assault or use of criminal force with intent to outrage the modesty of any woman (and does not include "man" within the provocation of the section), is not invalid as being a violation of the equal protection clause. The Classification made in favour of wives and that too those deserted by their husbands is also not arbitrary. Because the classification made under Section 488 of Criminal Procedure Code 1893 (now section 125 of Criminal Procedure Code 1973) aims at preventing starvation of wives deserted by their husbands and provides for right to maintenance. This can not be
questioned on the ground that the Section provides for maintenance of wife and contains no similar provision in favour of men as against wives. It is not inconsistent with the principle of equality. Though, contrary view has been expressed by Hon'ble Madras High Court. The High Court observed that a jobless husband is entitled for maintenance from her well to do wife. The wife filed special leave petition before the Hon'ble Supreme Court. During pendency of the case in the Apex Court, one of the litigating parties died, thus the matter has become infructuous.

The Allahabad High Court made it clear that special provision for women as a class can be made, but not to benefit an individual woman. Exclusive reservation of posts in reservation offices of Railways for women alone is violative of Articles 14 and 16 of the Constitution of India.

Article 15 of the Constitution is more specific instance to right of equality which prohibits the State from making discrimination "against any citizen on rounds only of religion, race, sex, place
of birth or any of them.” To effectuate equality between men and women the Constitution of India prohibits the State to make any kind of discrimination on the basis of sex specifically. Not only this but the Constitution has gone, further and empowered the State to a positive act where it is needed, by giving ‘preferential treatment” in favour of women.\textsuperscript{15}

In \textit{University of Madras v. Santa Bai},\textsuperscript{16} the respondent was refused admission to the college on the ground of “sex” only. The Syndicate of University had directed to the college under its jurisdiction not to admit women students without obtaining permission of the Syndicate. Had the respondent not been a woman, she would have been admitted in the college on the basis of her marks. The Madras High Court held that the Madras University was not a “State” and therefore, the respondent could not complain of discrimination under Article 15(1) as Article 15(1) of the Constitution prohibits discrimination made by the “State” only. The Court further held that University was right in refusing admission to the respondent
in the colleges open for men only, because in these colleges there were no facilities for women like separate common room, toilet, and the like. In *Anjali Roy v. State of West Bengal,* the appellant was denied admission in the third year class with honours in Economics for which she applied. Her case was that the refusal of her application was solely on the ground of her sex and this was in contravention of Article 15(1) of the Constitution of India. The college authorities offered her the facilities for attending the honours classes in that institution, provided she got herself admitted in the women's college which was recently established in the locality and which, at present impart instructions only in the pass courses.

Justice Bose held that the provision contemplated in Article 15(1) of the Constitution does not require that absolutely identical facilities as those enjoyed by men in similar matter must be afforded to women also.

In *Dattatreya Motiram v. State of Bombay,* Chief Justice Chagla held that as a result of joint
operation of Article 15(1) and Article 15(3) the State could discriminate in favour of women against men, but it could not discriminate in favour of men against women. Accordingly, reservation of seats for women in election to a Municipality was upheld as protected by Article 15(3) of the Constitution of India.

The Allahabad High Court in Cracknell v. State of UP, declared Section 8 (i)(b) of the Court of Wards Act, 1912, unconstitutional as it was violative of Article 15(1) of the Constitution of India. Section 8 (i)(b) of the Act provided that “proprietors shall be deemed to be disqualified to manage their own property when they are females declared by the Provincial Government to be incapable of managing their own property.” It is submitted that the Court had rightly declared Section 8(i)(b) of the Court of Wards Act 1912, unconstitutional as violative of Article 15 (3), because the discrimination was solely based on “sex”.

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In *Smt. Choki v. State of Rajasthan*, the Hon'ble Court upheld Section 497 of Criminal Procedure Code 1898 which prohibits release of a person accused of a capital offence on bail except women and children under 16 years of age and sick men. The court held that the State can make special provision for the benefit of women and children.

Article 15 (3) of the Constitution of India must be treated as applying to both existing and future laws for making special provisions in favour of women. In *Yusuf Abdul Aziz v. State of Bombay*, Yusuf was charged with an offence of adultery under Section 497 of Indian Penal Code as violative of Articles 14 and 15. The challenge under Article 15(1) was based on the last Para of Section 497, which provides that the wife not to be punished as an abettor. The Chief Justice of Bombay High Court, Mr. M. C. Chhagla repelled the challenge under Article 15(1) by observing that the differential treatment was not based only on the ground of sex, but on the ground of social position of women in India. On appeal, Bose J. held that the
challenge under Article 15(1) was effectively met by referring to Article 15(3). In dismissing the appeal he observed:

"It was argued that clause (3) of Article 15 should be confined to provisions which are beneficial to women and cannot be used to give them a license to commit and abet crime. We are unable to read any such restriction into the clause; no are we able to agree that a provision, which prohibits punishment is tantamount to a license to commit the offence of which punishment has been prohibited.

"The two Articles 14 and 15 read together validate the impugned clause in Section 497 of the IPC."

In Girdhar Gopal v. State, it was held that section 354 of Indian Penal Code, which makes an assault or use of criminal force, whether by a man or woman, with intent to outrage the modesty of a woman punishable, is based on a valid classification under Article 14, and does not violate Article 15(1) as it did not discriminate on grounds
“only” of sex but also on consideration of property, public morals, decency decorum and rectitude. It is submitted that the decision is correct but it should be rested on the ground that the section is covered by Article 15(3). Under clause (3) of Article 15 of the Constitution discrimination can be made favouring the women and not against them. Further, this clause protects both the pre-Constitution and post-Constitution laws:

Numerous laws\textsuperscript{23} have been enacted relating to prohibition of female infanticide, dowry, exposure of women in advertisements and films, female child marriage, atrocities and molestation, abduction and rape, maternity benefits, medical termination of pregnancy, prohibition of prostitution and trafficking in women, protection in employment etc. The decisions of the courts have served as a stimulus for the Indian legislatures to enact new laws or to bring about the changes in the existing ones with a view to afford better protection to women.
Another specific example of equality of status is the right to equality of opportunity for citizens of India provided under Article 16 of the Constitution of India. Clause (1) of Article 16 provides equality of opportunity in matters relating to employment or appointment to any office under the State. This right to equality is only in employment or appointment under “the State” that is in matters of recruitment, promotion, wages, termination of employment, periodical increments, leave, gratuity, pension, age of superannuation, etc. But this equality envisaged under Article 16 of the Constitution is the equality amongst equally placed persons-equality amongst the same class of persons and not amongst different classes of persons.

Clause (2) of Article 16 of the Constitution lays down specific grounds on which citizens are not to be discriminated against each other in matters of opportunity and offices under the State. These are religion, race, caste, sex, descent, place of birth, residence or any of them. Discrimination on the
basis of sex has been specifically prohibited under the Constitution so as to bring women at par with men. Sex shall not be the sole ground of ineligibility for any post. In Punjab the Governor promulgated an ordinance making women ineligible for the post of warden in men's Jail. It was held by the Court that such order can not be said to be discriminatory on the ground of sex alone and remains immune to challenge even after the commencement of the Constitution.\textsuperscript{24} Denial of promotion to a woman from the post of typist to the post of Stenographer in Police Department on the ground of the nature of the Stenographer duty (touring with officers and working at off hours) is discrimination on the ground of sex Article 15 (3) can also be invoked to justify the discrimination in favour of female under Article 16 (2). The sole reservation of Reservation-cum-booking clerks in metropolitan cities by Railways has been held to be violative of Article 16 (1) and (2) of the Constitution of India\textsuperscript{24}.

Constitution of India has provided in Part IV the Directive Principles of State Policy. These
principles lay down certain economic and social goals to be achieved by the various Governments in India i.e. the Central Government and the State Governments. These directives impose certain obligations on the State to take positive action in certain directions in order to promote the welfare of the people. Though these principles are "non-justiciable," they are constitutional directions which the "State" is supposed to abide by. Mathew J. has aptly observed:

The moral rights embodied in Part IV of the Constitution are equally an essential feature of it. The only difference being, that the moral rights embodied in Part IV were not specially enforceable as against the State by Citizen in a Court of Law in case State fails to implement it's duty but, nevertheless, they are fundamental in the government of the country and all the organs of the State, including the judiciary, are bound to enforce those directives.25

Another manifest declaration of the Constitution to achieve equality of status is a
directive under Article 39. It provides: (a) that the citizens, men and women, equally have the right to an adequate means of livelihood. The State shall, in particular direct its policy towards securing, (b) That there is equal pay for equal work for both men and women (c) That the health and strength of workers, men and women......are not abused and that citizens are not forced by economic necessity to enter a vocation unsuited to their age and strength. The principle underlying this provision is "equal wages for equal work" irrespective of "sex".

In Randhir Singh v. Union of India\textsuperscript{26}, applying this principle, it was explained that it is true that the principle of "equal pay for equal work" is nor expressly declared by our Constitution to be fundamental right, but it certainly is a constitutional goal. Article 39 (d) of the Constitution of India proclaims "equal pay for equal work for both men and women" as Directive principle of State policy............. means equal pay for equal work for every one and as between the sexes.
The above principle of "equal pay for equal work" has also been reiterated by the Supreme Court in *Bhagwan Das v. State of Haryana*\(^27\) and *R. D. Gupta v. Lt. Governor Delhi Administration*\(^28\) It has also been made clear by the Supreme Court that this principle has to be read in the light of Article 14 and Article 16 of the Constitution.

The Constitution of India provides some other principles of State policy also to elevate the status and position of women, viz. "Article 42 provides that the State shall make provision for securing just and humane conditions of work and maternity relief." Article 43 of the Constitution provides that "The State shall endeavour to secure by suitable legislation, or economic organization or in any way, to all workers, agricultural industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life......"
REFERENCES

1. Articles 14 of the Constitution of India.

2. Article 15 of the Constitution of India.

3. Article 16 of the Constitution of India.

3A. AIR 1979 Sc 1868

4. Article 23 of the Constitution of India.


6. U.S.A. Constitution. Sec. 1 of 14th amendment
   No state shall......deny to any person within its
   jurisdiction the equal protection of laws. ‘Eire
   constitution Section 40 (1). All Citizens
   irrespective of birth, religion, sex or Burma
   Constitution-Section 13. All Citizens
   irrespective of birth, religion, sex or race are
   equal before law, that is to say, there shall not
   be any arbitrary discrimination between one
   citizen or class of citizens and other’. Constitution Article 10 “All the inhabitants of
   Republic are assured equality before the law’.

6A. AIR 1952 Col. 822
6B. AIR 1954 Mad. 67


8. AIR 1981 Sec 1829

9. (supra note) 3A

10. AIR 1979 Sec 1868 at pp. 69-70.

11. (supra note) 6B


15. Art 15 (3) of the Constitution of India.


17. (supra note) 6A

18. AIR 1953 Bom 311


20. AIR 1957 RAj 10

21. AIR 1954 Sec. 321

22. AIR 1953 Madhya Bharat at p. 147

24. Mrs. Raghbans Saudagar Singh V. the State of Punjab AIR 1972 P & H 117

25. Keshavanand Bharati V. State of Kerala AIR 1973 Sec. 1461


27. Bhagwan Das V. State of Haryana AIR 1918 Sec 2049

28. AIR 1987 Sec 2086
Offences relating to the Domestic Violence under IPC

The Indian Penal Code, in general, does not make any distinction on the basis of sex it is uniformly applicable to all. The Indian Penal Code was enacted in the year 1860 and came into force in 1861. Looking to the social conditions and norms prevailing in the Indian Society, the Indian Penal Code has provided special provisions, which afford protection to woman who could be a victim of the offences relating to her sex. It must be clear that the special provisions relating to women are not exceptions but are special offences because a woman faces many problems in her public and private life because of her womanhood, her social position. For example, the offence of adultery under Section 497 of the Indian Penal Code, which provides that the woman, who has voluntarily participated, in the offence of adultery cannot be punished. Under IPC there are number of
provisions to protect the dignity and status of the women: The Table given below:

<table>
<thead>
<tr>
<th>Offence</th>
<th>Relevant Section of IPC</th>
<th>Cognisable</th>
<th>Non-cognisable, Bailable</th>
<th>Non-liable</th>
<th>Compoundable</th>
<th>Non-compoundable</th>
<th>Who can try the offence?</th>
<th>What is the punishment for the offence?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dowry death</td>
<td>304B</td>
<td>√</td>
<td></td>
<td>√</td>
<td></td>
<td></td>
<td>Court of sessions</td>
<td>Imprisonment for not less than 7 years, and as much as imprisonment for life</td>
</tr>
<tr>
<td>Abetment of suicide</td>
<td>306</td>
<td>√</td>
<td></td>
<td>√</td>
<td></td>
<td></td>
<td>Court of sessions</td>
<td>Imprisonment for 10 years and fine</td>
</tr>
<tr>
<td>Cruelty</td>
<td>498A</td>
<td>√</td>
<td></td>
<td>√</td>
<td></td>
<td></td>
<td>Magistrate of the First Class</td>
<td>Imprisonment for 3 years and fine</td>
</tr>
<tr>
<td>Hurt</td>
<td>323</td>
<td>√</td>
<td></td>
<td>√</td>
<td></td>
<td></td>
<td>Any Magistrate</td>
<td>Imprisonment for 1 year or fine of Rs.1000, or both</td>
</tr>
<tr>
<td>Hurt using dangerous weapons or means</td>
<td>324</td>
<td>√</td>
<td></td>
<td>√</td>
<td></td>
<td></td>
<td>Any Magistrate</td>
<td>Imprisonment for three years, or fine, or both</td>
</tr>
<tr>
<td>Grievous hurt</td>
<td>325</td>
<td>√</td>
<td></td>
<td>√</td>
<td></td>
<td></td>
<td>Any Magistrate</td>
<td>Imprisonment for 7 years and fine</td>
</tr>
<tr>
<td>Grievous hurt using dangerous weapons or means</td>
<td>326</td>
<td>√</td>
<td></td>
<td>√</td>
<td></td>
<td></td>
<td>Magistrate of the First Class</td>
<td>Imprisonment for life and fine</td>
</tr>
<tr>
<td>Wrongful restraint</td>
<td>341</td>
<td>√</td>
<td></td>
<td>√</td>
<td></td>
<td></td>
<td>Any Magistrate</td>
<td>Simple imprisonment for 1 month, or fine of Rs.500, or both</td>
</tr>
<tr>
<td>Wrongful confinement</td>
<td>342, 343 and 344</td>
<td>√</td>
<td></td>
<td>√</td>
<td></td>
<td></td>
<td>Any Magistrate</td>
<td>Imprisonment for 1.2 or 3 years depending on</td>
</tr>
<tr>
<td><strong>Outrage of modesty</strong></td>
<td>354</td>
<td>√</td>
<td>√</td>
<td>√</td>
<td>Any Magistrate</td>
<td>Imprisonment for 2 years, or fine, or both</td>
<td></td>
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<tr>
<td><strong>Sexual intercourse during separation</strong></td>
<td>376A</td>
<td>√</td>
<td>√</td>
<td>√</td>
<td>Court of Sessions</td>
<td>Imprisonment for 2 years and fine</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Criminal breach of trust</strong></td>
<td>406</td>
<td>√</td>
<td>√</td>
<td>√</td>
<td>Magistrate of the First Class</td>
<td>Imprisonment for three years of fine</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Bigamy</strong></td>
<td>494 and 495</td>
<td>√</td>
<td>√</td>
<td>**</td>
<td>Magistrate of the First Class</td>
<td>Imprisonment for 7 or 10 years depending on whether the first marriage was concealed</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Adultery</strong></td>
<td>497</td>
<td>√</td>
<td>√</td>
<td>√</td>
<td>Magistrate of the First Class</td>
<td>Imprisonment for 5 years, or fine, or both</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

304B. Dowry death

(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.

Explanation-For the purpose of this sub-section, "dowry" shall have the meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Where commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.

306. Abetment of suicide – If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of
either description for a term, which may extend to ten years, and shall also be liable to fine.

354. Assault of criminal force to women with intent to outrage her modesty - Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

367A. Intercourse by a man with his wife during separation - Whoever has sexual intercourse with his own wife, who is living separately from him under a decree of separation or under any custom or usage without her consent shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.

377. Unnatural offence - Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of
either description for a term which may extend to ten years, and shall also be liable to fine.

498A. **Husband or relative of husband of a woman subjecting her to cruelty** – Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation- For the purpose of this section, “cruelty” means-

(a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman’ or

(b) harassment of the woman where such harassment I with a view to coercing her or any person related to her to meet any unlawful demand for any properly or valuable security or is on account of failure by her or any person related to her to meet such demand.
304B. Dowry death—(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with any demand for dowry, such death shall be called “dowry death”, and such husband or relative shall be deemed to have caused her death.

Explanation—For the purpose of this sub-section, “dowry” shall have the meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Where commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.

Let us go through case law:-

Satvir Singh v. State of Punjab reflected the scope of the sections in the IPC. The Court held that Section 306 IPC, read with Section 113-A of the Indian Evidence Act, has only enabled the court to
punish a husband or his relatives who subjected a woman to cruelty as envisaged in Section 498-A, IPC and such woman commits suicide within seven years of her marriage.

In Premwati v. State of M.P. 2 it was held that Section 304-B (1) would be attracted not only when the death is caused by someone but also when the death occurs “unnaturally”. If occurrence of death is preceded by cruelty or harassment by in-laws for or in connection with a dowry demand and if the connection between the two is established, mere occurrence of death is enough though death may not have been caused by the in-laws.

Wazir Chand v. State of Haryana3, was a case involving the death by burning of a newly-married woman. In this case, the fact that a large number of articles were taken back by the father of the deceased after her death from her matrimonial house, showed that pressure was being exerted by the in-laws for money and articles which continued to be exerted till her death.
Shobha Rani v. Madhukar Reddi, that a demand for dowry entitles the wife to get a decree for dissolution of marriage. Thus Section 304-B, IPC has given a new dimension to the concept of cruelty for the purpose of matrimonial remedies.

In State of Punjab v. Iqbal Singh, the court while convicting the husband held that:

"The legislative intent behind incorporation of Section 113-A of the Indian evidence Act and Section 304-B of Indian Penal Code was to strengthen the hands of the prosecution in a crime generally committed within the privacy of residential houses."

In Shamnsahed M.Multtani v. State of Karnataka, the court confronted with the question whether the accused could be convicted in a case of an offence under Section 304-B of the Indian Penal Code without the said offence forming part of the charge. When a person is charged with an offence under Sections 302 and 498-A of the Indian Penal Code on the allegation that he caused the death of a bride after subjecting her to harassment with a
demand for dowry within a period of 7 years of marriage, a situation may arise, as in this case, that the offence of murder, is not established against the accused. Nonetheless, all the other ingredients necessary for the offence under Section 304-B would stand established

"If the prosecution succeeds in showing that soon before her death she was subjected by the husband to cruelty or harassment for or in connection with any demand for dowry and that her death had occurred (within 7 years) otherwise than in normal circumstances the court shall presume that such person had caused the dowry death. In view of Section 4 of the Evidence Act the court has no option but to presume that the accused had caused dowry death unless the accused disproves it. It is a statutory compulsion on the court. However, it is open to the adduce such evidence for disproving the said compulsory presumption as the burden is unmistakably on him to do so. He can discharge such burden either by eliciting answers through cross-examination of the witnesses of the prosecution or by adducing evidence on the defence side or by both"
498A. Husband or relative of husband of a woman subjecting her to cruelty – Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation - For the purpose of this section, "cruelty" means-

(a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman' or

(b) harassment of the woman where such harassment with a view to coercing her or any person related to her to meet any unlawful demand for any properly or valuable security or is on account of failure by her or any person related to her to meet such demand.
In Madhuri M/S Chitnis v. Mukund M. Chitnis, it was held that the meaning and definition of cruelty given in Section 498-A IPC is not vague. The ordinary dictionary meaning of cruelty does not apply to Section 498-A which has been inserted in a statute with the purpose of meeting a social challenge to save the married woman from ill-treatment and ensure that women live with dignity in their matrimonial homes. The sole constituent, the court held, of an offence under Section 498-A of the Indian Penal Code is willful conduct. Willful contemplates obstinate and deliberate behaviour on the part of the offender for it to amount to cruelty. But from the point of view of practice and procedure and to avoid technical defects, it is necessary in such cases to frame charges under both the sections and if the case is established they can be convicted under both the sections but no separate sentence need be awarded under Section 498-A in view of the substantive sentences being awarded for the major offence under Section 304-B.
In *Pawan Kumar v. State of Haryana* and harassment for non-fulfilment of dowry demands was proved, it was held that conviction under Sections 304-B and 498-A was sustainable.

In *S. Faisal Nabi v. State* the husband's illicit relation with his sister-in-law were protested by the wife and the husband had snubbed her. It was held that it was not harassment and husband was not guilty under Section 498-A.

In *Meesala Ramakrishnan v. State of A.P.*, the Supreme Court held that where a woman who was not in a position to speak at the time of giving the dying declaration and as such her dying declaration was recorded by a Magistrate on the basis of nods and gestures made by her, making it clear that she was burnt, not accidentally but by her husband, such a dying declaration was held to be admissible and relied upon for conviction of the accused.

In *Ramesh Kumar v. State of Chattisgarh* where the wife (deceased) was teased and ill-treated by her husband to the extent of turning her out of
the house at odd hours, for mistakes which were pardonable, it was held that the facts amounted to cruelty and the conviction of the appellant was upheld.

High Court reduced the sentence merely because in a revision before the High Court the accused persons had not challenged their sentence. The Supreme Court observed while maintaining conviction:

“The High Court has modified the sentence without recording any reasons and without considering the crime prevalent in the society for unjustified demand of dowry.”

In Ram Badan Sharma v. State of Bihar,^12

In Soni devrajbhai Babubhai v. State of Gujarat & Others (1991)^13 This Court dealt with the objects and philosophy behind enactment of section 304B IPC. In this case, it has been mentioned that section 304B and the cognate provisions are meant for eradication of the social evil of dowry, which has been the bane of Indian society and continues
unabated. For eradication of social evil, effective steps can be taken by the society itself and social sanctions of community can be more deterrent, yet legal sanctions in the form of its prohibition and punishment are some steps in that direction.

In *Hem Chand v. State of Haryana*, (1994)14 "A reading of section 304-B IPC would show that when a question arises whether a person has committed the offence of dowry death of a woman what all that is necessary is it should be shown that soon before her unnatural death, which took place within seven years of the marriage, for or in connection with demand for dowry. If that is shown then the court shall presume that such a person has caused the dowry death.

In *Hira Lal & Others v. State* 15 Section 304-B IPC and section 113-B of the Evidence Act were inserted with a view to combat the increasing menace of dowry deaths. Perhaps the Legislations are outcome of public opinion and a comprehensive 91st Report on “Dowry Deaths and Law Reform: Amending the Act, 1872” submitted on 10.8.1983
by the Law Commission of India. In the introductory chapter of the report, it is mentioned that the last few months have witnessed an alarming increase in the number of cases in which married women die in circumstances which, to say the least, are highly suspicious. In the popular mind, these deaths have come to be associated with dowry, which is why, in popular parlance; they have come to be called “dowry deaths”

In Harjit Singh v. State of Punjab,\textsuperscript{16}

It is not enough that harassment or cruelty was caused to the woman with a demand for dowry at some time, if section 304-B is to be invoked. Before her death, no doubt, is an elastic expression and can refer to a period either immediately before her death or within a few days or even a few weeks before it. But the proximity to her death is the pivot indicated by that expression. The legislative object in providing such a radius of time by employing the words “soon before her death” is to emphasize the idea that her death should, in all
probabilities, have been the aftermath of such cruelty or harassment.

In *Hira Lal and Others v. State*\(^\text{17}\) (Govt. of NCT) Delhi (2003), this court observed that:

"The expression "soon before her death" used in the substantive section 304-B IPC and section 113-B of the Evidence Act is present with the idea of proximity test. No definite period has been indicated and the expression "soon before" is not defined. It presume that a man who is in the possession of goods "soon after the theft, is either the thief or has received the goods knowing them to be stolen, unless he can account. The determination of the period which can come within the term "soon before" is left to be determined by the courts, depending upon facts and circumstances of each case. Suffice, however, to indicate that the expression "soon before" would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question. There must be existence of a proximate and live link between the effect of
cruelty based on dowry demand and the death concerned.

In *K. Prema S. Rao (supra)*,\(^{18}\)

"Both the courts below have found the husband guilty of cruel treatment of his wife and as a result the wife committed suicide within seven years of their marriage. On such evidence the presumption, which arises under section 113-A of the Evidence Act is that the husband abetted the suicide. The word "cruelty" as mentioned in the Explanation below section 113-A of the Evidence Act has been given the same meaning as contained in the Explanation below section 498A IPC. On the facts found, "the willful" conduct of the husband in forcing the deceased to part with her land, which she had received in marriage as "stridhana" and for that purpose concealing her postal mail was so cruel that she was driven to commit suicide. A case of conviction and sentence of Accused has thus clearly been made out even though his acquittal for commission of the offence of "dowry death"
punishable under section 304B is not found liable to be disturbed."

In *Satvir Singh (supra)* Learned Senior Counsel submitted that since the word "cruelty" employed therein is a virtual importation of that word from section 498-A IPC, the offence envisaged in section 306 IPC is capable of enveloping all cases of suicide within its ambit, including dowry-related suicide.

For the purposes of this section, 'cruelty' means-

"Harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand".

**L.V. Jadhav v. Shankarrao Absaheb Pawar,**

The Dowry Prohibition Act, 1961 is intended to prohibit the giving or taking of dowry, and Parliament has made every offence under the Act non-compoundable by s.8 of the Act. By S.5 it has been enacted that any agreement for the giving or
taking of dowry shall be void. Section 3 makes abetment of the giving or taking of dowry an offence.

Let us go through case law of IPC 304, 498-A:

Arun Garg v. State of Punjab,\textsuperscript{21}

The Courts below have carefully gone through the facts of the case and the evidence on record and have found that the appellant is liable for the offence under section 304-B IPC. The courts below, after appreciation of the facts and evidence recorded have reached the conclusion that Seema Garg died an unnatural death at the house of her in-laws within a period of seven years of her marriage with the appellant due to intake of poisonous substance.

Section 304-B was inserted by the Dowry Prohibition (Amendment) Act, 1986 with a view to combating the increasing menace of dowry death. By the same Amendment Act, section 113-B has been added in the Evidence Act, 1872 for raising a presumption.
Our attention was also drawn to section 498-A. In our view, sections 304-B and 498-A are not mutually exclusive. They deal with different and distinct offences. In both the sections, ‘cruelty’ is a common element. Under section 498-A, however, cruelty by itself amounts to an offence and is punishable. Under section 304B, it is the dowry death that is punishable and such death must have occurred within seven years of the marriage. No such period is mentioned in section 498-A. Moreover, a person charged and acquitted under section 304-B can be convicted under section 498-A without a specific charge being there, if such a case is made out.

In the result, the appeals are partly allowed confirming the sentence of imprisonment for a period of 10 years.

Shamnsaheb M. Multtani v. State of Karnataka,\(^{22}\)

The postulates needed to establish the said offence are:
(1) Death of a wife should have occurred otherwise than under normal circumstances within seven years of her marriage;

(2) Soon before her death she should have been subjected to cruelty or harassment by the accused in connection with any demand for dowry. Now reading section 113-B of the Evidence Act, as a part of the said offence, the position is this: If the prosecution succeeds in showing that soon before her death she was subjected by him to cruelty or harassment for or in connection with any demand for dowry and that her death had occurred (within seven years of her marriage) otherwise than under normal circumstances the court shall presume that such person had caused dowry death.

Kans Raj v. State of Punjab,\textsuperscript{23}

“The object of this Bill is to prohibit the evil practice of giving and taking of dowry. This question has been engaging the attention of the Government for some time past, and one of the
methods by which this problem, which is essentially a social one, was sought to be tackled, was by the conferment of improved property rights on women by the Hindu Succession Act, 1956. It is, however, felt that a law, which makes the practice punishable and at the same time ensures that any dowry, if given does ensure for the benefit of the wife will go a long way to educating public opinion and to the eradication of this evil. There has also been a persistent demand for such a law both in and outside Parliament, Hence, the present Bill.”

Rajayyan v. State of Kerala,\textsuperscript{24}

Having analysed the entire evidence on record we are in complete agreement with the High Court that the deceased was subject to cruelty by the appellant for payment of dowry soon before her death for which she committed suicide. The conviction of the appellant under section 304-B IPC.
Satvir Singh v. State of Punjab

It is not enough that harassment or cruelty was caused to the woman with a demand for dowry at some time, if section 304B is to be invoked. But it should have happened soon before her death. The said phrase, no doubt, is an elastic expression and can refer to a period either immediately before her death or within a few days or even a few weeks before it. But the proximity to her death is the pivot indicated by that expression. If the interval elapsed between the infliction of such harassment or cruelty and her death is wide the court would be in a position to gauge that in all probabilities the death would not have been the immediate cause of her death. It is hence for the court to decide, on the facts and circumstances of each case, whether the said interval in that particular case was sufficient to snuff its cord from the concept soon before her death.

Taiyab Khan v. State of Bihar (now Jharkhand)

It is a case of an unnatural death, that is, death which occurs otherwise than under normal
circumstances. The first three ingredients are clearly established. The only other ingredient, which needs to be considered is the harassment of the woman by the husband or his relatives in connection with demand for dowry.

CRIMINAL PROCEDURE CODE

Like the Indian Penal Code, the Criminal Procedure Code has also provided some provisions in favour of women. These special provisions protect the weaker lot of the society. These protective provisions have been made in view of the special social and cultural background of women in India and keeping in view the Constitutional protective discrimination. As this has been discussed, special laws can be made in favour of women within the framework of the constitution of India. The repealing Criminal Procedure Code of 1898 also had some of these special clauses in favour of women. But now the new Code of 1973 is altogether a revised Code and provides some new clauses to protect women, is consistent with the
constitutional provisions and other social changes. As reflected in Sections 125 to 128 of the Criminal Procedure Code has also been included making it optional on the choice of both the parties, under Section 5 of the Muslim Women (Protection of Rights on Divorce) Act, 1986. Now, it seems that the husband would never make the second choice unless he is very magnanimous or a fool. The choice is to be exercised by both the parties and on the date of the hearing. Under the Muslim Women (Protection of Rights on Divorce) Act, 1986, a divorced Muslim woman is not entitled to claim maintenance from her former husband. She is entitled to such maintenance from the persons referred to in Sect. 4 of the said Act. It, however, seems that in appropriate cases the provisions of Sections 125 to 128 of the Cr. P.C. are applicable all the same. The husband is bound to maintain the wife even if she has sufficient means to maintain herself.

This Section of the Code provides summary remedy to obtain maintenance which otherwise may take long to claim in civil law or other special laws.
In a writ petition under Article 32 of the Constitution of India the validity of Section 125 Cr. P. C. was challenged on the ground that the section unreasonably limits the maintenance to Rs.500 for individual. It was observed that, “Section 125 of Cr. P. C. provides a speedy remedy against starvation of the civil liabilities of parties. The order made there under is tentative and it is subject to the final determination of the rights in civil court. Therefore, there is no reason to issue rule nisi.” Writ petition was, thus, accordingly dismissed.

It is worth-mentioning that the Law Commission in its 133rd report in 1989 had pointed out that the ceiling of Rs. 500/- made in 1955 has no rational basis as apart from other factors the cost of living index had risen nine times since then. While recommending that the ceiling should be completely done away with, the commission had pointed out that if one were to retain the ceiling it would have to be raised from Rs. 500/- to Rs. 4, 500/-.

Therefore, the Code of Criminal Procedure (Amendment) Bill, 1994 recommending that the ceiling on maintenance to be raised to Rs. 1,500/-
is completely arbitrary and has no rational basis.\textsuperscript{115} It may be observed that there is no inconsistency between this self-contained provision and provisions of the Hindu Adoption and Maintenance Act of 1956. Section 125 is wide in its scope equally applicable to all persons irrespective of their religion, and the Hindu Adoption and Maintenance Act is applicable to Hindus and does not provide summary remedy.

The Criminal Law (Second Amendment) Act of 1983 has introduced a sub-Section of 174 of the Code. This amendment was felt necessary as the number of dowry deaths or cases of cruelty or married women culminating in suicide were increasing day by day. This provision has been for in quest by Executive Magistrate and for post mortem in all cases where a woman has within seven years of her marriage, committed suicide or died in circumstances raising a reasonable suspicion that some other persons has committed an offence. Post mortem in all cases is necessary where a married woman has died within seven years
of her marriage and a relative of such woman has made a request in this behalf.

Cr PC specially empowers police officers to make investigation into cases of suicides and other unnatural or suspicious deaths. The object of the proceeding is merely to ascertain whether a person has died under suspicious circumstances or an unnatural death and if so what is the apparent cause of the death.

Section 174(3) gives discretion to a police officer not to send a body for post-mortem examination only in one case, namely, where there can be no doubt as to the cause of death. The amendment introduced by the Criminal Law (Second Amendment) Act, 1983, makes it mandatory for the police officer to send the body for post-mortem examination if:

(a) the case involves suicide by a woman within seven years of her marriage;

(b) the case relates to the death of a woman within seven years of her marriage in circumstances raising reasonable
suspicion that the woman was the victim of an offence;

(c) that any relative of the woman made a request in that behalf when she died within seven years of her marriage; and

(d) there is any doubt regarding the cause of death.

By amending the First Schedule to the Code of Criminal Procedure, the offence of dowry death has been made cognizable, non-bailable and triable by the Court of Session.

**Presumption as to dowry death** - When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death, such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the court shall presume that such person had caused the dowry death.

For the purposes of this section, 'dowry death' shall have the same meaning as in Section 304-B of the Indian Penal Code.
The provisions of this section, although mandatory in nature, simply enjoin upon the court to draw such presumption of dowry death on proof of circumstances mentioned therein which amounts to shifting the onus on the accused to show that the married woman was not treated with cruelty by her husband soon before her death. This was held in *Krishna Lal v. Union of India*\textsuperscript{28} Where the death was caused by strangulation and evidence available (in *Hem Chand v State of Haryana*\textsuperscript{29}) showed that dowry was being demanded and the accused husband was also subjecting his deceased wife to cruelty, it was held that the presumption under the section applied with full force.

Law can be ahead of public opinion but, if the gulf is too wide, there is every likelihood of its non-observance and violation.\textsuperscript{30}

Supreme Court in *Bhagwant Singh v. Commr of Police, Delhi*\textsuperscript{31}

"Young women of education, intelligence and character do not set fire to themselves to welcome the embrace of death unless provoked and
compelled to that desperate step by the intolerance of their misery."

In *Malan v. Balasaheb Bhimrao Gawade*

Where the wife proves performance of certain marriage ceremonies, it is immaterial whether the same satisfies all the requirements of a valid marriage. It is for the husband to have gone to a competent civil court and got his marriage annulled. In the absence of a declaration by a civil court about the legality or otherwise of the marriage the court has to presume that the said marriage is legal.

Sub section (1) corresponds to sub-section (1) 488 of the old Code of 1898. The law has been improved in the following manner:

(a) In the case of wife, the order for maintenance can be passed only if she is unable to maintain herself.

(b) A woman who has been divorced from her husband so long as she has not remarried after the divorce is now also entitled to maintenance allowance.
(c) A married daughter shall not be entitled to an order under this section if she has attained majority. In the case of a minor married daughter the father may be made liable to pay maintenance unless she attains majority if her husband is not possessed of sufficient means.

(d) A child who has attained majority shall be entitled to maintenance only when the child is by reason of any physical or mental abnormality or injury unable to maintain herself.

(e) The powers under the new Code can be exercised now by a Judicial Magistrate of the First Class.

(f) Where a father or mother is unable to maintain himself or herself, a son who is possessed of sufficient means may be directed to pay maintenance. If there are two or more children, the parents may seek the remedy against any one or more of them.
An applicant had to wait for several years for getting relief from the court. Therefore, it was felt that the following provisions should be made by the Cr PC (Amendment) Act, 2001.

1. Provision for interim Maintenance Allowance.

During the pendency of the proceedings, the Magistrate may order payment of interim maintenance allowance and such expenses of the proceedings as the Magistrate considers reasonable, to the aggrieved person.

2. Ceiling on Maintenance Allowance abolished.

The ceiling of rupees five hundred has been repealed, as with the cost of living index consistently rising, retention of a maximum ceiling is not justified. If a ceiling is prescribed and retained, it would require periodic revision taking into account the periodic inflation, which would unnecessarily be time consuming.
Accordingly consequential changes mere made to remove the ceiling of maintenance allowance.

There is no inconsistency between Section 125 Cr PC and the Hindu Adoptions and Maintenance Act, 1956. The scopes of the two laws are different. This section provides a summary remedy and is applicable to all persons. It has no relationship to the personal law of the parties. It has been recognized that the Court must administer the personal law for Muslims in *Ibrahim Fatima v. Mohd. Saleem* 32 on the basis of ancient textual authorities, whose validity as of law can hardly be questioned. An order of maintenance cannot be struck down on the ground of its inconsistency with the personal law of the parties.33
To know the exact position of crime against woman Data of NCRB, 2004 (National Crime Record Bureau) were consulted, which are as follows.

**Crime rate (Crime rate....14.2)**

The rate of crime has increased by 7.6 per cent from 13.2 during the year 2003 to 14.2 during 2004. Delhi, Andhra Pradesh and Madhya Pradesh were top three States in the order of crime rate at 24.1, 24.0 and 23.5 respectively.

<table>
<thead>
<tr>
<th>Crime Rate in States</th>
</tr>
</thead>
<tbody>
<tr>
<td>23.50% Andhra Pradesh</td>
</tr>
<tr>
<td>24% Uttar Pradesh</td>
</tr>
<tr>
<td>24.10% Delhi</td>
</tr>
<tr>
<td>10% Madhya Pradesh</td>
</tr>
</tbody>
</table>

**Trend Analysis**

The crime head-wise details of the reported crimes during 2000 to 2004 along with percentage variation is presented in Table-5 (A). The crime against women has increased by 9.8 per cent over
2000. The IPC component of crimes against women has accounted for 93 per cent of total crimes and the rest 7 per cent were SLL crimes against women.

However, Tripura has reported the highest crime rate 4.8 as compared to national average of 7.

Rape cases have been further categorized as Incest Rape and other Rape cases.

**Incest Rape (Incidence......505)**

As compared to 15.0% increase in overall Rape cases, Incest cases have increase by 26.5% from 399 cases in 2003 to 505 cases in 2004. Chhattisgarh (78) has accounted for the highest 15.4% of the total such cases reported in the country.
Rape Victims

Out of 18,233 reported Rape cases in the country, There were 18,239 Victims of Rape, of the total victims of Rape, 8.9% (1,622) were girls under the 15 years of age, while 11.0% (2,004) were teenaged girls (15 to 18 years). Nearly two-third (11,343) (62.2%) Were women in the age group 19-30 years, 3,189 victims (17.5%)were in the age group of 31-50 years while only 0.4% (81) were over 50 years of age.

![Age of Rape Victims](chart)

Offenders were known to the victims in as many as 15,619 (85.6%) cases. Of these, parents/close family members were involved in 3.2% (505 out of 15,619) cases, neighbor’s were involved in
34.3% cases (5,358 out of 15,619) and relatives were involved in 6.6% (1033 out of 15,619) cases.

**Kidnapping & Abduction**

*(Incidence.....15,578)  (Rate.....1.4)*

These cases have reported an increase of 17.2% as compared to previous year (13,296), Uttar Pradesh (2,324) has accounted for 14.9% of the Total case at the National level. Delhi has reported the highest rate at 5.8 as compared to the National average of 1.4.
Table 5(A)


<table>
<thead>
<tr>
<th>S.NO</th>
<th>Crime Head</th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
<th>% Variation in 2004 Over 2003</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Rape</td>
<td>16496</td>
<td>16075</td>
<td>16373</td>
<td>15847</td>
<td>18233</td>
<td>15.0</td>
</tr>
<tr>
<td>2</td>
<td>Kidnapping &amp; Abduction</td>
<td>15023</td>
<td>14645</td>
<td>14506</td>
<td>13296</td>
<td>15578</td>
<td>17.1</td>
</tr>
<tr>
<td>3</td>
<td>Dowry Death</td>
<td>6995</td>
<td>6851</td>
<td>6822</td>
<td>6208</td>
<td>7026</td>
<td>3.2</td>
</tr>
<tr>
<td>4</td>
<td>Torture</td>
<td>45778</td>
<td>49170</td>
<td>49237</td>
<td>50703</td>
<td>58121</td>
<td>14.6</td>
</tr>
<tr>
<td>5</td>
<td>Molestation</td>
<td>32940</td>
<td>34124</td>
<td>33943</td>
<td>32939</td>
<td>34567</td>
<td>4.9</td>
</tr>
<tr>
<td>6</td>
<td>Sexual Harassment</td>
<td>11024</td>
<td>9746</td>
<td>10155</td>
<td>12325</td>
<td>10001</td>
<td>-18.8</td>
</tr>
<tr>
<td>7</td>
<td>Importation of Girls</td>
<td>64</td>
<td>114</td>
<td>76</td>
<td>46</td>
<td>89</td>
<td>93.5</td>
</tr>
<tr>
<td>8</td>
<td>Sati Prevention Act</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>-</td>
</tr>
<tr>
<td>9</td>
<td>Immoral Traffic (P) Act</td>
<td>9515</td>
<td>8796</td>
<td>6598</td>
<td>5510</td>
<td>5748</td>
<td>4.3</td>
</tr>
<tr>
<td>10</td>
<td>Indecent Rep. if Women (P) Act</td>
<td>662</td>
<td>1052</td>
<td>2508</td>
<td>1043</td>
<td>1378</td>
<td>32.1</td>
</tr>
<tr>
<td>11</td>
<td>Dowry Prohibition Act</td>
<td>2876</td>
<td>3222</td>
<td>2816</td>
<td>2684</td>
<td>3592</td>
<td>33.8</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>141373</td>
<td>43795</td>
<td>143034</td>
<td>140601</td>
<td>154336</td>
<td>9.8</td>
</tr>
</tbody>
</table>
Table-5(B)

Proportion of crime against Women (IPC) towards total IPC crimes

<table>
<thead>
<tr>
<th>S.No</th>
<th>Year</th>
<th>Total IPC Crimes</th>
<th>Crimes Against Women(IPC cases)</th>
<th>% to total IPC CRIMES</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>2000</td>
<td>17,71,084</td>
<td>1,28,320</td>
<td>7.2</td>
</tr>
<tr>
<td>2</td>
<td>2001</td>
<td>17,69,308</td>
<td>1,30,725</td>
<td>7.4</td>
</tr>
<tr>
<td>3</td>
<td>2002</td>
<td>17,80,330</td>
<td>1,31,112</td>
<td>7.4</td>
</tr>
<tr>
<td>4</td>
<td>2003</td>
<td>17,16,120</td>
<td>1,31,364</td>
<td>7.6</td>
</tr>
<tr>
<td>5</td>
<td>2004</td>
<td>18,32,015</td>
<td>1,43,615</td>
<td>7.8</td>
</tr>
</tbody>
</table>
The proportion of IPC crimes committed against women towards total IPC crimes has increased continually during last 5 years from 7.2 % in 2000 to 7.8 % during 2004.

Crime head-wise analysis (IPC)

Rape

(Incidence.... 18,233  (Rate.......1.7)

Rape cases have reported mixed trends over last 5 years with a decrease of 2.5% in 2001 over 2000, an increase of 1.8% in 2002 over 2001, a decrease of 3.2% in year 2003 over 2002 and substantial increase of 15.0% in current year.
Madhya Pradesh has reported the highest number of Rape cases (2,875) accounting for 15.8% of total such cases reported in the country (1,220) followed by Orissa (532), which also reported the highest crime at 1.4 as compared to 0.3 at National level.

![Trends in Rape cases](image)

**Crime against Women in Cities**

*(All-India....1,54,333) (Cities....20,492)*

As per population census 2001, 35 cities having population over 10 lakh (See Chapter-2) were identified as Mega cities. A total of 20,492 cases of crimes against women were reported from these 35 cities as compared to 19,573 cases in the year 2003 reporting an increase of 4.7%. The rate of crime in cities at 19.0 was comparatively higher.
as compared to National rate of 14.2. Among 35 cities, Delhi (3,334) has accounted for 16.3% of total crimes followed by Hyderabad (1,979) (97%). The crime rate was significantly higher in Vijayawada (109.) city as compared to all-cities rate of 19.0 only.

![Crimes against Women in Cities](image)

Delhi city has accounted for 30.3% of Rape cases, 33.3% of kidnapping and 18.3% of Molestation cases, 14.8% of Cruelty of Husband 7 Relatives among 35 cities. Faridabad of Haryana has reported 17.8% of Eve-Teasing cases (434 out of 2,434 cases).
CRIMES IN DELHI UNDER DIFFERENT HEADS

It is worthwhile mentioning that Bangalore, Chennai, Coimbatore, Hyderabad and Mumbai were more vigilant in curbing these crimes as more cases under Special Laws & Local Acts were booked in these cities. 32.3% (422 out of 1,907) of cases under Immoral Traffic IPC Act and 79.4% (247 out of 311) of Dowry Prohibition Act cases in were booked in Bangalore city alone. 20.5% (392 out of 19.7) cases in Chennai, 13.4% (255 out of 1907) cases in Coimbatore and 12.1% (231 out of 1907) cases in Mumbai were booked under Immoral Traffic (P) Act were booked under Hyderabad city only.
The increase in cases booked under SLL represent preventive policing of State/UT police. Keeping this in view, an attempt has also been made to analyse the Crime Against Women by excluding SLL crime i.e. Sati Prevention Act, Immoral Traffic (P) Act, Dowry Prohibition Act and Indecent Representation of Women (P) Act.

**Dowry Deaths**

*(Incidence......7,026  Rate......0.6)*

These cases have increased by 13.2 % over the Previous year (6,208). Out of the total such cases reported in the country around 24.3% cases were reported from Uttar Pradesh (1,708) alone followed by Bihar (1,029) (14.6%). The highest rate of crime
(1.2) was, however, reported from Bihar and Madhya Pradesh as compared to the National average of 0.6 only.

Torture (Cruelty by Husband & Relative)

*Incidences.... 58,121  Rate.....5.4*

'Torture' cases in the country have increased by 14.6% over the previous year (50,703). 14.4% over these were reported from Andhra Pradesh (8,388). The highest rate at 11.2 was reported from Rajasthan as compared to the National rate at 5.4.
Molestation

(Incidence ....34,567 Rate....3.2)

Incidents of Molestation in the country have increased by 4.9% over the previous year (32,939), 19.4% of total such cases were reported from Madhya Pradesh (96,690) which also reported the highest rate (10.3) as compared to the National average of 3.2.
Sexual Harassment (Eve-teasing)

(Incidence...10,001  Rate...0.9)

The number of such cases has significantly declined by 18.9% over the previous year (12,325). Uttar Pradesh has reported 25.8% of cases (2,682) followed by Andhra Pradesh 23.8% (2,310). Haryana has reported the highest crime rate 3.8 as compared to the National average of 0.9.
The law, both substantive and procedural, appears to have gone to the farthest limits to facilitate the punishment of guilty and create terror in the mind, which are criminally inclined. Thus, the legislature has done all it could but the problem remains and perhaps assumes alarming proportions. The law may be adequate but its enforcement is below expectations with a marginal impact in society. A custom consistently followed and increasingly glamourised cannot be wished away by criminal sanctions and legislative contrivances.

It can safely be concluded that where the society is lacking in institutional framework and organizational framework on a large scale to safeguard women against the atrocities. Women themselves should come forward to guard it with the help of the armory of legislator enacted for their well being by the legislatures in India.
References:

1. (2001) 8 SCC 633 SCC (Cri) 48

2. 1991 Cri LJ 268 (MP)

3. (1989) 1 SCC 244 1989 (SCC(Cri) 105

4. (1989) 1 SCC 105: 1988 SCC(Cri) 60


9. 2001 (Cri) LJ 1598 (MP)

10. (1994) 2 Crimes 114 (SC)

11. (2001) 9 SCC 618

12. AIR 2006 SC 2855


15. (Govt. of NCT), Delhi,(2003)

16. AIR 2006 SC 2855
17. (Govt. of NCT) Delhi (2003)
18. K. Prema S. Rao (supra),
19. Satvir Singh (supra)
20. AIR 1983 SC 1219
22. (2001) 2 SCC 577
23. AIR 2000 SC 232
24. AIR 1998 SC 1211
25. AIR 2001 SC 2828
26. AIR 2006 SC 673
27. Ins by Act 43 of 1986 S. 12
28. 1994 Cri LJ 3472 (P&H)
31. (1983) 3 SCC 352

32. AIR 1980 Mad 82

33. Hussain Saheb, In re, 1985 Cr LJ 1505 (HP)
The issue of dowry has acquired pernicious overtones in almost all the communities of India culminating into the phenomenon of conjugal violence. The newly wedded bride is often subjected to gruesome atrocities, tortures, humiliations by none others but either by her husband or her in-laws in the marital home. At times such inhuman treatment often results into suicide or the bride burnings.

The concept of ‘cruelty’ has drastically changed in the present materialistic society. The courts have also been interpreting the concept of cruelty in order to bring it in conformity with the social facts and compelling needs of the present society. Thus, where the wife has reasonable apprehension arising out from the conduct of the husband or the in-laws that she is likely to be harmed due to persistent demands of dowry, such an apprehension would manifestly be a reasonable justification for the wife’s refusal to live with her husband. Nagging, scolding, withdrawal of marital intercourse and even incompatibility of the
temperaments of the spouses have been included within the purview of cruelty.

**Cruelty**

While there are a variety of grounds upon which divorce and judicial separation can be obtained, this manual concentrates on cruelty, as this is the ground most likely to apply in a case of domestic violence. Cruelty is a ground for both judicial separation and divorce.

The factors that the Courts typically take into consideration in deciding whether the husband’s conduct can be regarded as cruel are:

- The social and cultural background of the parties; the Courts tend to be more critical of domineering and violent behaviour on the part of the husband when the woman is educated.

- The physical and mental health of the parties.

- The day-to-day relations of the parties.

Here are some examples of acts, which the courts have found to constitute cruelty:

- Beating

- Forcing unnatural sexual practices upon the wife
• Husband’s insisting on sexual contact with the wife despite this being painful to her owing to gynecological problems.3

• Rough and domineering conduct4

• Beating combined with refusal to give the wife enough money for running the household and spending such money on alcohol.

• Willful and unjustifiable interference by the husband in the life of the wife 5

• Harassment for dowry (this has been found to constitute mental cruelty to the wife)6

• Unfounded allegations of adultery7

• Visiting the wife’s place of residence in a drunken state and causing annoyance to her and her neighbours8

• Attempt by the husband to strangle the child and the wife’s brother has been found to constitute mental cruelty to the wife9

• Distress of mind caused to the wife by persistent drinking habit of husband10
- Mental distress caused by disappearing without leaving any information as to her whereabouts, threatening to commit suicide, disinclination to sexual intercourse and general depression

- Studied unkindness

- False and defamatory allegations against spouse to his or her employers and colleagues

These examples are taken from cases decided under the HMA and falling under definition of cruelty. The courts technical nuances of this word under the law.

Cruelty itself was not a ground for relief by way of divorce prior to the Amendment of 1976 but was only a ground for the relief of judicial separation under Section 10. Clause (b) of Section 10(1) lays down:

"...has treated the petitioner with such cruelty as to cause a reasonable apprehension in the mind of the petitioner that it will be harmful or injurious for the petitioner to live with the other party."

"cruelty" has nowhere been defined in the Act. But "Legal Cruelty" was explained in Rayden on Divorce and
referred to at length with approval in *Sarvana Perumal v. Shashi Kana Perumal*.\(^\text{15}\) It was held in this case that the concept legal cruelty involves a conduct of such character as to have caused danger to life, limb or health or as to give rise to a reasonable apprehension of such danger. *Rassel v. Russel*.\(^\text{16}\)

In *Bhagat v. Bhagat*,\(^\text{17}\) the wife, a Vice-President in a public sector corporation, made allegations in her written statement that the husband was a mental patient, that he was not a normal person and that he required psychological treatment and that his family members were a bunch of lunatics, the Supreme Court held that these allegations could not but constitute mental cruelty of such a natural that she cannot reasonably be asked to live with the respondent thereafter and therefore directed dissolution of marriage under Section 13(1)(i-a).

In *Shobha rani v. Madhukar Reddy* \(^\text{18}\) the Supreme Court examined Section 13(1)(i-a) and stated the proper approach to cases of cruelty and reiterated the legal position after the Amending Act of 1976. In this case, the Supreme Court had to consider whether persistent demand of dowry by parents of husband with the support of the
husband amounted to cruelty. It was held that the demand for dowry was prohibited by law and that the totality of the facts and circumstances of the case justified the inference of cruelty. It was observed by the Supreme Court that there could be cases where the conduct complained of itself may be bad enough and per se unlawful or illegal. Then, the impact of the act or injurious effect on the other spouse need not be inquired into or considered. In such cases cruelty will be established if the conduct itself is proved or admitted.

The Supreme Court further observed that cruelty may largely depend upon the type of life the parties are accustomed to, or their economic and social condition. It may also depend upon the culture and human values to which they attach importance. Quoting Lord Denning in *Sheldon v. Sheldon* they observed, "the categories of cruelty are not closed". Each case may be different and a new type of cruelty may crop up in any case. The Supreme Court made a special reference to Section 498-A, IPC that any harassment of a woman with a view to coerce her to meet any unlawful demand for any property or any valuable security also constitutes cruelty. They further held that
cruelty requires to be proved on the preponderance of probabilities and not beyond reasonable doubt.

*Geeta v. Mohan* that the distress, pain and suffering of the mind resulting from continuous drinking transforms his individual weakness into such injury to the mind of a wife that the susceptibilities, broken aspirations and other circumstances that consuming alcohol becomes matrimonial cruelty.

Some other instances of cruelty are:

- Husband lethargic, not working, providing no money for household, refusing to look after or make payments for treatment of his ill wife.
- Constantly insulting and accusing of adulterous behaviour.
- Wife not caring to see her husband in hospital.
- Wife visited by persons in her house and leads immoral life.
- Termination of pregnancy twice by wife in spite of insistence by husband to the contrary.
- Constant nagging by mother-in-law.
• Refusal or voluntary acts of the husband depriving the other of society and cohabitation or sexual intercourse for a long time amounts to cruelty.\textsuperscript{27}

• Wife leaving the country without knowledge of her husband.\textsuperscript{28}

• Wife becoming Brahma Kumari\textsuperscript{29}

• Excessive sexual intercourse affecting health.\textsuperscript{30}

• Derogatory and disparaging remarks against spouse and close relatives, allegations of illicit sexual relations and sexual perversity will amount to cruelty.\textsuperscript{31}

Supreme Court observed in \textit{Indira Gangele v. Shailendra I}.\textsuperscript{32} sometimes the temperaments of the parties are not conducive to each other which may result in petty quarrels.\textsuperscript{33}. Also, one isolated instance would not amount to\textsuperscript{34} cruelty so as to grant a decree for divorce, rather, the behaviour of the other party has to be persistently and repeatedly treating the other spouse with such cruelty so as to cause a reasonable apprehension in the mind of the husband or wife that it will be harmful or injurious to live with the other party.
In *A v. H*\(^{35}\) that allegations made in the written statement can never be the basis of divorce on the ground of cruelty. The petitioner must have been treated with cruelty prior to the filing of the petition. A petitioner approaching court with a petition for divorce on the ground of cruelty can succeed only if he proves the act of cruelty on which he has based his petition. No subsequent acts, either by way of allegations in written statement, responsible or not, baseless or not, can be taken help of in order to show cruelty.

**Taiyab Khan v. State of Bihar (Now Jharkhand),\(^{36}\)**

It is a case of an unnatural death, that is, death which occurs otherwise than under normal circumstances. The first three ingredients are clearly established. The only other ingredient, which needs to be considered is the harassment of the woman by the husband or his relatives in connection with demand for dowry.

First, the enquiry must begin as to the nature of the cruel treatment. Second, the impact of such treatment in the mind of the spouse, whether it caused reasonable apprehension that it would be harmful or injurious to live with the other. Ultimately, it is a matter of inference to be
drawn by taking into account the nature of the conduct and its effect on the complaining spouse.

**Pandit Dattaraya Kulkarni v. Laxmi Pandit Kulkarni**

A wife may claim maintenance from the husband notwithstanding a decree of restitution of conjugal rights obtained by the husband. If the wife has sufficient grounds for not joining the husband despite a restitution order, such restitution order would not stand in the way of her seeking maintenance under the provision of section 125 of the Cr.P.C.

**Ashabi B Takke v. Bashasab Takke**

"The question of the wife deserting the husband or the husband deserting the wife pales into insignificance in the light of this development [i.e. the husband’s second marriage]. The fact that the wife could not get maintenance earlier under section 125, Cr. PC proceedings also cannot have any bearing in a suit for maintenance filed subsequent to the defendant husband having contracted a second marriage. This is so even if the personal law of the defendant permits him to contract more than one marriage."
The second marriage of the husband *per se* is sufficient justification for a wife to leave him and claim maintenance. When that is proved, nothing else needs to be established.

**Hindu Marriage Act, 1955 and Section 125 Cr PC**

The proceedings under Section 125, Cr PC and section 24 of the Hindu Marriage Act, 1955 are distinct and different and they are applied for different purposes by courts of competent jurisdiction. It was held in *Rajendra Singh v. Maya Devi* that they do not overlap over one another. As such, where interim maintenance is granted under section 24 of the Hindu Marriage Act that does not warrant cancellation of the maintenance allowed under Section 125 of Cr PC, the maintenance granted by the criminal court under Section 125, Cr PC shall also continue to be paid. The grant of maintenance *pendent elite* under Section 24 of the Hindu Marriage Act does not effect the right of the wife to claim maintenance under Section 125, Cr PC. The mere fact that an order, under Section 24 of the Hindu Marriage Act, 1955 has been passed does not divest the jurisdiction of the courts to pass an order under Section 125, Cr PC.
Kongini Balan v. M. Visalakshy

The fact that under section 125(4) of Cr P.C, a wife living separately from the husband by mutual consent without divorce was not entitled to maintenance does not mean that a wife upon divorce would not be entitled to maintenance either, merely because she obtained divorce by mutual agreement. Had that been the intention of the legislators, it would have been made explicit, the court held.

**MUSLIM LAW**

"Maintenance comprehends food, raiment and lodging though in common parlance it is limited to the first".

In *Amir Mohammed v. Bushra* it was held that if the husband has not paid prompt dower the wife does not lose her right to maintenance. Similarly in *Badruddin v. Aiyasha Begum* it was held that where a husband marries a second wife or keeps a mistress, the wife may refuse to live with the husband and still claim maintenance.

However, cases of disobedience of husband by wives are on a different plain. According to Tyabji:

"....it is impossible to hold that a Mussalman wife defying her husband refusing to live with
him and bringing scandalous charge against him, can yet claim to be maintained separately at the expense of her husband."

In *Bai Fatima v. Ali Mohomed Aiyeb* a person who had a wife living and wanted to marry another had entered into an agreement with his first wife that he would pay her a certain allowance as maintenance if any disagreement took place between her and him thereafter. The agreement here was treated as opposed to public policy because if encouraged a separation between the husband and wife.

In *Muin-ud-din v. Jamal Fatima* was executed before marriage in order to restrain the prospective husband from ill-treating his wife or behaving improperly towards her or capriciously turning her out. In view of the circumstances established, the agreement did not offend Section 23 of the Indian Contract Act, 1872.

In *Mansur v. Azizul* an agreement between a Muslim and his first wife, made after his marriage with a second wife, providing for a certain maintenance for her if she could not in future get on with the second wife was not held void on grounds of public policy. Agreeing with this view *Mulla* held that, "if a Mohammedan wife can lawfully
stipulate for a divorce....There is no reason why she cannot stipulate for future separation at all events if the separation is for a justifiable cause. Such stipulations can hardly be said to be against the policy of Mohammedan law.”

According to Ameer Ali, the following stipulations are enforceable:

1. The husband will not contract a second marriage during subsistence of first.
2. The husband will not remove the wife from the conjugal domicile without her consent.
3. The husband will not absent himself from the conjugal domicile beyond a certain period.
4. The husband and wife will live in a specified place.
5. Certain amount of dower will be payable immediately after marriage or within a stated period.
6. The husband will pay to the wife a fixed sum for maintenance.
7. The husband will maintain the children of the wife from her former husband.
The husband will not prevent her from receiving visits from her relations whenever she likes.\(^50\)

In \textit{Mohd. Rahinulla In re}\(^51\) it was held that:

The foundation upon which the wife's right vested was the relationship of husband and wife. When that relationship was lawfully dissolved and there was no marital tie either in reason or upon any canon of justice or even upon the language of Section 488 and 489, how the husband could be directed to continue to maintain his divorced wife.

\textbf{Danial Latifi v. Union of India}\(^38\)

The constitutional validity of the Muslim Women (Protection of Rights on Divorce) Act, 1986 (MWA), was challenged on the ground that it infringed Articles 14, 15 and 21 of the Constitution. The five Judges Bench, upheld its validity.

The court analysed the \textit{Shah Bano} and the provisions of the Muslim Women (Protection of Rights on Divorce) Act in detail. It conceded that the Act appears to be, \textit{prima facie}, violative of Article 14 of the Constitution, which mandates equality and equal protection of law to all persons and also Article 15, which prohibits discrimination.
on grounds, *inter alia*, of religion. It, however, observed that the validity or otherwise of a statute would depend on the interpretation of the same and the court decided to interpret it in a manner so as to uphold the validity of the Act on the ground that “the legislature does not intend to enact unconstitutional laws.”

**CHRISTIAN LAW**

Section 37 of the Indian Divorce Act, which deals with permanent alimony authorities the court to make an order for the payment of a lump sum amount for permanent maintenance. In this section the husband can have a payment order varied from time to time in accordance with his means. Section 37 original ran as follows (prior to the 2001 Amendment Act):

“The High Court may if it thinks fit, on any decree absolute declaring a marriage to be dissolved, or on any decree of judicial separation obtained by his wife and the District Judge may, if he thinks fit, on the confirmation of any decree of his declaring a marriage to be dissolved, or on any decree of judicial separation obtained by their wife. Order that the husband shall, to the satisfaction of the
court, secure to the wife such gross sum of money, or such
annual sum of money for any term not exceeding her own
life, as, having regard to her fortune (if any), to the ability of
the husband, and to the conduct of the parties, it thinks
reasonable; and for that purpose may cause a proper
instrument to be executed by all necessary parties."

No doubt there are effective legal provisions of prevent
the evil of dowry-death but how for there provisions
safeguard to women's interest? To meet this challenge of
increasing domestic violence, the Criminal Act were
amended in 1983 and 1986 and introduced a Dowry
Prohibition (Amendment) Act, 1984 and 1986 to cerate
special categories of offences and punishment dealings with
cruelty to wives, dowry harassment and dowry-death. It is
wide enough to cover the incident of domestic violence.
These amendments introduced new sec. 498-A of I.P.C. for
cruelty of wives and 304-B for dowry-death.

Section 113-A also added in Indian Evidence Act by
the Criminal Law (Second Amendment) Act, 1983 to create
the presumption as to abetment of suicide by a married
women, and Amendment Act, 1986 added a sec. 113-B
presumption as to dowry death. But these provisions fail
to achieve its objective. In fact the implementation of law have more important.

There are many loopholes in our existing criminal justice system because in many cases the husband and in laws escape from punishment. The system needs a complete overhauling.
References:

1. AIR 1989 NOC 205, AIR 1981 Him Pra 63

2. AIR 1968 Mys 115

3. AIR 1990 NOC 24

4. AIR 1969 Mys 115

5. AIR 1968 Mys 115, AIR 1978 Raj 140

6. AIR 1988 SC 121, AIR 1987 Del 203


8. 1986 1 DNC 394

9. AIR 1967 Bom 394

10. AIR 1989 NOC 205 (Cal)

11. 1981 19 Del LT 250, 1991 1 DMC 571

12. AIR 1968 Mys 115


15. ILR 1969 Mad 845
16. 1897 AC 395
18. (1988) 1 HLR 169 (SC)
19. (1966) 2 All ER 257
20. (1992) 1 HLR 367 (Ker)
22. Paramjit Singh v. Ranjit Singh (1994) 2 HLR 95 (R&H)
23. Rajinder Singh v. Tarawati, AIR 1980 Del 213
26. Ravindernath v. Pramila Bala, AIR 1979 Ori 85
32. AIR 1993 MP 54
33. Yashoda v. Krishnamoorthy, AIR 1992 Kant 308
34. Vimlesh v. Prakash Chand Sharma, AIR 1992 All 260
35. AIR 1993 Bom 70
36. AIR 2006 SC 673
37. (2001) 1 Femo-Juris CC 47 (Bom)
38. 2001 (6) Scale 357
39. AIR 2003 KANT 172
40. 1996 Cr LJ 2384 (AP)
41. V Yedukondalu v. Nageswaramma, 2000 Cr LJ 333
42. (1986) Cri LJ 697 (Ker)
43. Vol.1, 732 cited by Baillie 437
44. AIR 1956 Raj 102
45. (1957) All LJ 300
46. (1912) 37 Bom 280

47. (1921) 43 All 650

48. (1928) 3 Luck 603. The judgment was in contract to Bai Fatima case, (1912) 37 Bom 280

49. Mulla, 306

50. Ameer Ali II, 321-322

51. AIR 1947 Mad 461
THE DOWRY PROHIBITION ACT, 1961

Section-2: 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 parents 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 said parties but does not include dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies.

Supreme Court has given definition of dowry in various cases, which are as follows:

In Satbir Singh v. State of Punjab

(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;

In Arjun Dhondiba Kamble v. State of Maharashtra,²

(ii) "Dowry" in the sense of 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;

In Rajeev v. Ram Kishan Jaiswal ³

(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;
In Vemuri Venkateswara Rao v. State of Andhra Pradesh

(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;

In Shankar Prasad Shaw v. State

(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 section 2;

In Hakam Singh v. State of Punjab

(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;
In Y.K. Bansal v. Anju

(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 demand in connection with the marriage and it was a demand for dowry though it was demanded after the marriage;

In Madhu Sudan Malhotra v. K.C Bhandari

(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;
In Kunju Moideen v. Syed Mohamed

(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;

In Nirdosh Kumar v. Padma Rani

(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;

In L.V. Jadhav v. Shankar Rao

(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;

In State of Andhra Pradesh v. Raj Gopal Aswa

(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;
In Reena Agrawal v. Anupam\textsuperscript{13}

(Xiii) Demand of dowry in respect of invalid marriage would not be legally recognizable;

Sec. 3: Penalty for giving or taking dowry-

(1) If any person, after the commencement of this Act, gives or takes or abets the giving or taking of dowry, he shall be punishable\textsuperscript{14} with imprisonment for a term which shall not be less than [five years, and with fine 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\textsuperscript{15}:

Provided that the Court may, for adequate a special reasons to be recorded in the judgment, impose a sentence of imprisonment for a term of less than five years. \textsuperscript{20}Nothing in sub-section (1) shall apply to, or in relation to\textsuperscript{16},

(a) presents which are given at the time of marriage to the bride (without any demand having been made in that behalf):
In Indravati v. Union of India,\textsuperscript{17}

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. Amar Nath,\textsuperscript{18}

(ii) Abetment is a preparatory act and connotes active complicity on the party of the abettor at a point of time prior to the actual commission of the offence; Muthummal v. Maruthal,\textsuperscript{19}

\textbf{Sec. 4. Penalty for demanding dowry.}\textsuperscript{20}

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 reason to be mentioned in the
judgment, impose a sentence of imprisonment for a term of less than six months.

**AMENDMENTS TO THE DOWRY PROHIBITION ACT**

The issue relating to the deep-rooted evil of dowry was taken up in the Convention organized by the National Commission For Women on the 22nd of November 2005, at the Symposia Hall of the NASC, Pusa, New Delhi.

Though the legislation, The Dowry Prohibition Act, 1961, aptly prohibits the giving or taking of dowry, it was felt that the present law has been totally ineffective to curb this social evil. The convention, which was attended by chairpersons of various State Commissions for Women, members of NGOs’, Civil Servants as well as retired and working police officers from various states, felt that there was a dire need to make the requisite amendments to the Act so as to make it effective.

The background note prepared by the lawyers collective as well as the inputs provided by the NCW and other delegates was discussed and on
basis of which, the following recommendations are being made suggesting suitable amendments to the Act. The justifications for amendments have been mentioned in the background note:
## PRESENT LAW AND PROPOSED AMENDMENTS

<table>
<thead>
<tr>
<th>Present Act</th>
<th>Proposed</th>
<th>Remarks</th>
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<tbody>
<tr>
<td>“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 parents 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.</td>
<td>“dowry” means any property or valuable security given or agreed to be given either directly or indirectly: (a)by one party to marriage to the other party to the marriage. (b)by the parent of either party to the 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, but does not include dower or mahr in the case of persons to whom the Muslim Personal Law (shariat) applies.</td>
<td>Term in connection with marriage is deleted.</td>
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<tr>
<td>Explanation II: The expression “valuable security” has the same meaning as in section 30 of the Indian Penal Code (45 of 1860).</td>
<td>(2) Nothing in the section shall apply to, or in relation to:- (a)presents given at the time of 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 the Act; (b)presents which are given at the time</td>
<td>The sub section (2) to section 3 is proposed to be included within the broad definition of dowry.</td>
</tr>
</tbody>
</table>
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 the Act.

Provided further that where such presents are made by or on behalf of the bride or any person related of 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.

Provided further that the list of presents is authenticated and signed by the Protection Officer or a service provider. Explanation I- for the purposes of this section, indirectly means. Any willful conduct or harassment of such a nature, which is likely to coerce the woman to meet any unlawful demand of any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

Explanation II- The expression valuable security has the same meaning as in Section 30 of the Indian Penal Code.
PRESENT LAW AND PROPOSED AMENDMENTS

SECTION 2: DEFINITION OF DOWRY:

Brief note on changes recommended:

The misinterpretation of the term in connection with marriage’ is manifested in the recent case of the Supreme Court-Satvir Singh v. State of Punjab. The Court held, there are three occasions related to dowry. One is before the marriage, second is at the time of marriage and the third is at any time after the marriage. The third occasion may appear to be an unending period. But the crucial words are in connection with the marriage of the said parties. This means that giving or agreeing to give any property or valuable security on any of the above three stages should have been in connection with the marriage of the parties. There can be many other instances for payment of money or giving property as between the spouses. For example, some customary payments in connection with birth of a child or other ceremonies are prevalent in different societies. Such payments are not enveloped within the ambit of dowry.
Therefore it is felt that the term ‘in connection with marriage should be deleted.

"Indirectly"- At present the term remains undefined:

➤ How do you define what indirectly is? Does indirectly mean that in case the in laws do not demand for it but create such situations for the bride that she has no choice but to bring home lavish gifts for her in laws?

➤ Does it include situations where the bride is not coerced but expected to bring a particular item from her parents?

Leaving this term undefined leaves the Dowry victims and their families, with the burden of providing that Dowry was demanded in an “indirect” way. The definition of “indirect” has been left to the courts to determine on an ad-hoc basis, which results in inconsistent precedent at the trial court and at the appellate court levels.

The sub-section (2) to Section 3 is proposed to be included within the broad definition of dowry.
### 2. SECTION 3: PENALTY FOR GIVING OR TAKING DOWRY:

<table>
<thead>
<tr>
<th>Present Law</th>
<th>Proposed Amendments</th>
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</table>
| (1) If any person, after the commencement of this Act, gives or takes or abets the giving or taking of dowry, he shall be punishable with imprisonment 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 marriage to the | If any person, after the commencement of this Act, gives or takes or abets the giving or taking of dowry, he shall be punishable with imprisonment 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. Deleted (2) Notwithstanding anything contained in any law for the time being in force a statement made by the person aggrieved | The sub section (2) is proposed to be included in the broad definition of dowry

Section 7 (3) of the Present Act proposed to be incorporated as Section 3(2). Given can be treated as an aggrieved and it becomes important to state that such an aggrieved will not be liable to prosecution
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 in 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.)

by the offence shall not subject such person to a prosecution under this Act.
2. **SECTION 3: PENALTY FOR GIVING OR TAKING DOWRY**: Equally responsible in the prevalence of dowry in our society. It would thus be logical to prosecute not only the taker, but also the given if the need arises. But at the same time the language of Section 3 should not be such as to discourage the given of dowry to complain, even if dowry has been given under a threat or coercion and has not been the result of a voluntary decision. In this scenario, the given can be treated as an aggrieved and it becomes important to state that such an aggrieved will not be liable to prosecution. Hence, Section 7(3) of the present Act should be imported in Section 3 itself.

3. **SECTION 6: REVERSION OF DOWRY**:

<table>
<thead>
<tr>
<th>Present Law</th>
<th>Proposed Amendments</th>
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<tbody>
<tr>
<td>1. 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.</td>
<td>Dowry, <em>stridhan</em> or gifts to be for the benefit on the wife or her heirs-(1) where any dowry or <em>stridhan</em> or gifts 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.</td>
</tr>
<tr>
<td>Inclusion of <em>stridhan</em> and gifts.</td>
<td></td>
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</tbody>
</table>
### SECTION 7: COGNIZANCE OF OFFENCES:

<table>
<thead>
<tr>
<th>Present Law</th>
<th>Proposed amendments</th>
</tr>
</thead>
<tbody>
<tr>
<td>(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 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 try offences under this Act.</td>
<td>(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974). (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</td>
</tr>
<tr>
<td>other relative of such person, or by any recognized welfare institution or organization.</td>
<td>parent of other relative of such person, or by any recognized service provider or protection officer.</td>
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<td>---</td>
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</tr>
<tr>
<td>(a) it shall be lawful for a Metropolitan Magistrate or a Judicial Magistrate of the first class to pass any sentence authorized by this Act on any person convicted of any offence under this Act.</td>
<td>(b) it shall be lawful for a Metropolitan Magistrate or a Judicial Magistrate of the first class to pass any sentence authorized by this Act on any person convicted of any offence under this Act.</td>
</tr>
<tr>
<td>Explanation: For the purposes of this subsection, &quot;recognized welfare institution or organization&quot; means a social welfare institution or organization recognized in this behalf by the Central or State Government.</td>
<td>Explanation 1: For the purposes of this subsection, &quot;service provider&quot; has the same meaning as in the Protection of Women from Domestic Violence Act. Explanation 2: for the purposes of this subsection, &quot;protection officer&quot; will have the same meaning as in Section 8B of the Act.</td>
</tr>
<tr>
<td>(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.</td>
<td>-- shifted as above mentioned.</td>
</tr>
</tbody>
</table>
5. **Insertion of a new section- section 7a- procedure for obtaining orders of relief's:**

   SECTION 7A (1) An aggrieved person, or a parent or relative of such person, or a protection officer or a service provider may present an application to the Magistrate seeking one or more relief's under Chapter IV of the Protection Of Women From Domestic Violence Act. 2005.

**Justification for adding Section 7A to the Present Act:**

   The Protection of Women from Domestic Violence Act, 2005 has moved in a positive direction from mere punishments and arrests to the necessity of providing victim protection. It must be realized that just empowering the law to give punishments to the accused will not help the victim overcome her economic or mental strain which has occurred due to the act of violence or harassment. In this situation it is important for the law to take a human step towards the aggrieved and provide her with the necessary protection orders.
The term 'dowry' is stated to have the same meaning in the Protection of Women from Domestic Violence Act, 2005 as given in Section 2 of the Dowry Prohibition Act, 1961. This automatically implies that all the protection and residence orders which can be given under the Act also applies to violence of harassment in connection to a demand for dowry. But the Dowry Prohibition Act, 1961 only deals with punishment or penalty imposed with regard to the giving or taking of dowry. It does not authorize the magistrate to issue any protection orders, monetary relief's or residence orders in favour of the victim. Thus if a case is registered with regard to the taking or demanding of dowry, the Magistrate, if reading the sections of the Dowry Prohibition Act, 1961 might not be able to issue the required protection orders in favour of the victim. It thus becomes imperative that the necessary orders, which can be passed to benefit the victim, be also incorporated in the Dowry Prohibition Act, 1961.
### 5. **SECTION 8B-DOWRY PROHIBITION OFFICERS:**

<table>
<thead>
<tr>
<th>Present Law</th>
<th>Proposed Amendments</th>
<th>Shall and Protection Officers</th>
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</thead>
<tbody>
<tr>
<td>(1) The State Government may appoint as many Dowry Prohibition Officers as it thinks fit and specify the areas in respect of which they shall exercise their jurisdiction and powers under this Act.</td>
<td>(1) The State Government shall appoint such number of Protection Officers in each district as it may consider necessary and shall also specify the areas in respect of which they shall exercise their jurisdiction and powers under this Act.</td>
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<tr>
<td>(2) Every Dowry Prohibition Officers shall exercise and perform the following powers and functions, namely.</td>
<td>(2) Every Protection Officer shall exercise and perform the following powers and functions, namely.</td>
<td></td>
</tr>
<tr>
<td>(a) to see that the provisions of this Act are complied with;</td>
<td>(a) to see that the provisions of this Act are complied with,</td>
<td></td>
</tr>
<tr>
<td>(b) to prevent, as far as possible, the taking or abetting the taking of, or the demanding of, dowry.</td>
<td>(b) to prevent, as far as possible, the taking or abetting the taking of, or the demanding of, dowry.</td>
<td></td>
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<tr>
<td>© to collect such evidence as may be necessary for the prosecution of persons committing offences under the Act; and</td>
<td>© to authenticate and sign the list of presents which are given at the time of marriage to the bride or bridegroom.</td>
<td></td>
</tr>
<tr>
<td>© to provide such evidence as may be necessary for the prosecution of persons committing offences under the Act.</td>
<td>(d) to collect such evidence as may be necessary for the prosecution of persons committing offences under the Act.</td>
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<tr>
<td></td>
<td>(e) to create awareness among the people about the evils of dowry and give wide publicity through the concerned Government Department.</td>
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<tr>
<td></td>
<td>(f) To issue directions that schools and colleges be given awareness about dowry as a social evil and to this effect take assistance of the advisory boards and/or</td>
<td></td>
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</tbody>
</table>
(d) to perform such additional functions as may be assigned to him by the State Government, or as may be specified in the rules made under this Act.

(g) to perform such additional functions as may be assigned to him by the State Government, or as may be specified in the rules made under this Act.

(h) to perform such duties as assigned to him in the Protection of Women From Domestic Violence Act, 2005.

(3) The State Government may, by notification in the Official Gazette, confer such powers of a police officer as may be specified in the notification on the Dowry Prohibition Officer who shall exercise such powers subject to such limitations and conditions as may be specified by rules made under this Act.

(3) The State Government may, by notification in the Official Gazette, confer such powers of a police officer as may be specified in the notification on the Protection Officer who shall exercise such powers subject to such limitations and conditions as may be specified by rules made under this Act.

(4) The State Government may, for the purpose of advising and assisting the Dowry Prohibition Officers in the efficient performance of their functions under this Act, appoint an advisory board consisting of not more than five social welfare workers (out of whom at least two shall be women) from the area in respect of which such Dowry Prohibition Officer exercises jurisdiction under sub-section (1).

(4) The State Government shall, for the purpose of advising and assisting the Protection Officers in the efficient performance of their functions under this Act, appoint an advisory board consisting of not more than five social welfare workers (out of whom at least two shall be women) from the area in respect of which such protection officer exercises jurisdiction under sub-section (1).
VIII. **SECTION 9: POWER TO MAKE RULES:**

1. The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

2. In particular, and without prejudice to the generality of the foregoing power, such rules may provide for:

   (a) the form and manner in which, and the persons by whom, any list of presents referred to in sub-section (2) of section 3 shall be maintained and all other matters connected therewith, and

   (b) the better co-ordination of policy and action with respect to the administration of this Act.

3. Every rules made under this section 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 successive sessions, and if before the expiry of the session in which it is so laid or the session immediately following both Houses agree in making any modification in the
rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

**RECOMMENDATION SECTION 9:**

**SECTION 9 (1)** The Central Government, may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

2. In particular, and without prejudice to the generality of the foregoing power, such rules may provide for-

(a) the form and manner in which, and the persons by whom, any list of presents referred to in sub-section (2) of section 3 shall be maintained and all other matters connected therewith, and

(b) The better co-ordination of policy and action with respect to the administration of this Act.
(c) The qualifications and experience which a Protection Officer shall possess under Section 8B of the Act.

(d) Shall issue such instructions to the effect that every government servant and public servant shall after his marriage furnish a declaration on affidavit to his head of office stating that he has not taken any dowry and such declaration may be signed by his wife or her relative.

(e) The central government shall take all steps to ensure that the provisions of the Act are given wide publicity through public media including television, radio and print media at regular intervals.

(3) Every rules made by the central government 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 successive sessions, and if before the expiry of the session in which it is so laid or the session immediately
following both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

IX. **SECTION 10: POWER OF STATE GOVERNMENT TO MAKE RULES**

1. The State Government may, by notification in the Official Gazette, make rules for carrying out the purposes 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 additional functions to be performed by the Dowry Prohibition Officer under sub-section (2) of Section 8B.

   (b) Limitations and conditions subject to which a Dowry Prohibition Officer may
exercise his functions under sub-section (3) of section 8B.

(c) Every rule made by the State Government under this section shall be laid as soon as may be after it is made before the State Legislature.

**RECOMMENDATION SECTION 10:**

1. The State Government may, by notification in the Official Gazette, make rules for carrying out the purposes 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 additional functions to be performed by the Protection Officer under sub-section (2) of section 8B.

   (b) Limitations and conditions subject to which a Dowry Prohibition Officer may exercise his functions under sub-section (3) of section 8B.
3. The State Government, in case where registration of marriages is compulsory under certain laws, may provide for powers to the competent authority registering marriage to order the list as per the dowry prohibition (maintenance of lists of presents to the bride and bridegroom rules) 1985 to be annexed to the memorandum required for obtaining marriage certificate.

4. The State Government shall issue such instructions to the effect that every government servant and public servant shall after his marriage furnish a declaration on affidavit, to his head of office stating that he has not taken any dowry and such declaration may be signed by his wife or her relative.

5. Every rule made by the State Government under this section shall be laid as soon as may be after it is made before the State Legislature.
Recommendations on The better Co-ordination of policy and action with respect to the administration of this Act.

- There should be a central and state monitoring committee.

- Representatives from the National Commission for women and state women commissions should be included in the committee.

- The committee may function under the Ministry looking into women issues.

- Power to issue advisories to the state government and central government on effective implementation of the Act and Rules.

- Monitor the role, functions and effectiveness of Protection Officer.

**Recommendation 11: Section 304 B IPC:**

304B. Dowry Death (Indian Penal Code (45 of 1860)- (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her
death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death" and such husband or relatives shall be deemed to have caused her death.

**Explanation** – For the purposes of this sub-section, "dowry" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961.

2. Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.

- The words ‘soon before’ used in section 304B (1) must be deleted and replaced by the words ‘any time before’.

- The minimum punishment in section 304 B(2) be raised from seven years to ten years.

- After the words "imprisonment for life" occurring in section 304B (2) the words “or death” may be added.
**Rationale**- The punishment is to be enhanced for the following reasons-

(a) To keep this offence at par with murder and by no stretch of imagination it is less grave an offence than the murder.

(b) To create deterrence in the minds of the people indulging in such heinous crimes. By now it is more than clear that neither the Dowry Prohibition Act nor the amended provisions of I.P.C. could deter the people and could not register the success. The committee found that because of the above said discrepancies in the provision the law has failed in its objective. By incorporating the above changes law can be made effective.

(c) Also the times limit of presumption may be increased because seven years is very short a time and often the offence is executed in a pre-planned manner.

(d) The minimum punishment should be increased from seven to ten years.
So conclusion is that the legal reform has achieved little in transforming the social order and uprooting dowry as a social evil. The records of court documents reflect the failure of the legal system to protect woman. On many occasions it is because of the bias attitude of the judiciary towards a serious crime against woman that result in miscarriage of justice as the accused are acquitted and the cases are usually dismissed as suicides or accidents. Significantly, it has led to a situation in which the law as a whole can easily be taken to be an instrument of patriarchal oppression.
References

1. AIR 2001 SC 2828.
4. 1992 CRI LJ 563 AP HC.
5. (1992) DMC 30 CAL.
7. All LJ 914
8. BLJR 360 (SC).
10. 1984 (2) Rec Cr R 239.
12. AIR 2004 SCW 1566.
13. AIR 2004 SC 1418.
14. Came into force on 1-7-1961, vide S.O. dated 20th June 1961
15. Subs. By Act 43 of 1986 sec.2 for or “after the marriage” (w.e.f. 19-11-1986)
16. Subs by Act 63 of 1984, sec. 2 for certain words (w.e.f. 2-10-1985)

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20. Subs. By Act 63 of 1984, sec. 4 for sec. 4(w.e.f. 2-10-1985)
THE PROTECTION FROM DOMESTIC VIOLENCE ACTS, 2005

Since the early eighties, women’s groups have been campaigning to bring about effective legislation to counter Domestic Violence in 2005, the Laywers' Collective formulated the Domestic Violence against Women (Prevention) Act. It takes into consideration several prevalent forms of violence against women and girls within the family and proposes a mechanism for women to approach the Court for a protection order to prevent further violence and to ensure that they do not have to leave their home. The Act was given to the government for consideration. In December 2001, the Government of India circulated another Act "Protection from Domestic Violence Act. 2005, also providing for protection orders and protection officers.

But the December 13 terrorist attack on Indian Parliament prevented introduction of a legislation for women suffering from domestic violence. The legislation is likely to have far reaching impact on the society. The Draft Act, now part of the
Governments, overarching policy for empowerment of women, seeks to provide a remedy under the civil Law which is intended to preserve family life while providing protection to victims of domestic violence.

The draft 'Protection from Domestic Violence Act 2005' empowers the State Government to appoint a number of 'Protection Officers (PO)' it deems necessary through a gazette notification. A judicial Magistrate can upon a complaint from the victim; issue a Protection order. Violation of the orders of the magistrate, the PO, or failure of a PO to act in a manner that would provide relief to the victim would constitute an offence.

On the object of the legislation HRD minister Mr. Murli Manohar Joshi said that domestic violence is undoubtedly a human rights issue and serious deterrent to development. The phenomenon is widely prevalent but has remained largely invisible in public domain.

He further said that while cruel behaviour against a woman by her husband or his relatives is recognized as an offence under Section 498-A of the
Indian Penal Code, 1860, the civil law does not address this phenomenon in its entirety.

The existence of this social malaise has been acknowledged in the Vienna Accord of 1994 and the Beijing Platform of Action (1995). The intervention of the state to protect women against violence of any kind especially that occurs within the family has been strongly recommended by the UN committee on Convention on Elimination of All Forms of Discrimination Against Women (CEDAW).

On 8th March 2002, the Government of India (GOI) Introduced the Protection from Domestic Violence Act No.13 of 2002 in the Lok Sabha.

It is heartening to note that the state has recognized the existence of the rampant “domestic violence in our society.

Innumerable women who silently suffer assaults and abuses everyday inside every second home across the country can perhaps look forward to a remedy that protects their vulnerable position. The phenomenon of domestic violence is widely prevalent but has remained largely unseen.
It was the Department of Women & Children under the Union Ministry for Human Resource Development, which took the initiative to draft the Act.

Extensive consultations among representatives of several NGOs such as the Lawyers Collective, the National Human right Commission, the National Commission of Women and the Ministries of Home Affair Health and Family Welfare, Social Justice Empowerment, Elementary Education, Justice and Legal Affairs and Legislative Department during the past few years led to the drafting of the Act, which seeks to meet existing gap in the legal framework. After debates and discussions it finally came into existence in 2005 known as Domestic Violence act 2005. The provisions of Act protecting the women from violence are as follows:

II Domestic Violence Act 2005:

Section-3: For the purpose of this Act may 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);

Sec. 4 Information to Protection Officer and Exclusion of Liability of Information:

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).

Sec. 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 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 of 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 office from his duty to proceed in accordance with law upon receipt of information as to the commission of a cognizable offence.

Sec. 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 shall provide shelter to the aggrieved person in the shelter home.

Sec. 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 may medical aid to her such person in charge of the
medical facility shall provide medical aid to the aggrieved person in the medical facility.

**Sec. 10 Service Providers:**

(i) 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 purpose of this Act.

(ii) A service provider registered under sub section 91 shall have the power;

(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 stations 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;

Sec. 11 Duties of Government:

(a) the provisions of this Act are given wide publicity thought public media including the television, ratio 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;

Sec. 12 Application to Magistrate:

(i) An aggrieved person or a Protection Officer or any person on behalf of the aggrieved person an application to the Magistrate seeking one or more relief 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.

(j) 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.

Sec. 13 Service of notice:

(i) 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.

(j) 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.

**Sec. 14 Counseling:**

(i) The Magistrate may at any stage of the proceedings under this Act direct the respondent or the aggrieved person either single or jointly to undergo counseling with any member of a service provider who possesses such qualifications and experience in counseling as may be prescribed.

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

**Sec. 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.

Sec. 16 Proceeding to be held in Camera:

If the Magistrate considers that the circumstances of the case so warrant and if either party to the proceeding so desires he may conduct the proceeding under this Act in Camera.

Sec. 17 Right to reside in a shared household:

(i) Notwithstanding anything contained in any other law for the time being enforcing 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?

(ii) 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.

Sec. 18 Protection Orders:

The Magistrate may after giving the aggrieved person and 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 favor 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;

(c) attempting to communicate in any form, whatsoever, with the aggrieved person, including personal, oral or written or electronic or telephonic contract;

(d) attempting to communicate in any form whatever, with the aggrieved person; including personal, oral or written or electronic or telephonic contact;

(e) alternating 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 order act as specified in the protection order.

Sec. 19 Residence Orders:

While disposing of an application under sub-section (i) 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 relative 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;

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

(h) The Magistrate may impose any additional conditions or pass any order 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.

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

(j) 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.

(k) While passing an order under sub-section (1) sub-section (2) or sub-section (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.

(l) 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.

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

(n) 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.

**Sec. 20 Monetary relief:**

(h) While disposing of an application under Sub-section (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 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 with in the local limits of whose jurisdiction the respondent resides.

(5) The respondent shall pay the monetary relief granted to the aggrieved person with in 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 wages or salaries or debt due to accrued to the credit of the respondent, which amount may be adjusted towards the monetary relief payable by the respondent.
Sec. 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.

Sec. 22 Compensation Orders:

In addition to other relief as may be granted under this Act, the Magistrate may on an application being 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 acts of domestic violence committed by that respondent.
This Act has been enacted keeping in view the rights guaranteed under Articles 14, 15 and 21 of the Constitution besides the provisions provided under section 304B and 498A of Indian Penal Code.

The act empowers the Magistrate to pass protection orders in favour of the aggrieved person to prevent the respondent from aiding or committing an act of domestic violence or any other specified act, entering a workplace or any other place frequented by the aggrieved person, attempting to communicate with her, isolating any assets used by both the parties and causing violence to the aggrieved person, her relatives or others who provide her assistance from the domestic violence.

The Act *inter alia* provides for appointment of Protection Officers and registration of non-government organizations as Service Providers for providing assistance to the aggrieved person with respect to her medical examination, obtaining legal aid, safe shelter etc.
On the day of coming into force of this Act the women abuse in domestic sphere was reduced. A survey revealed the data after the Act came into force.

The first arrest was made in the State of Tamil Nadu under this new Act just 2 days after it's coming into effect. The Act fully protects the women from violence by her husband. Further the wife of Pondicherry Welfare Minister has filed a case against her husband under section 498A of Indian Penal Code. But she sought for registration of case under the Domestic Violence Act but police as she claimed did not apply this Act due to some political pressure.

In Delhi on 6th November, 2006 a case was filed by one Seema against her husband and in-laws under section 12 of the Act and sought for protection order against them and monetary compensation for subjecting her to continuous domestic violence and economic abuse. The Metropolitan Magistrate Mr. Sunil Sharma has accepted the petition for hearing.
Further on 9th December, 2006 one Ms. Santosh filed a case under the alternative residence and maintenance from her husband.

From these current data it is revealed that this Act was in need for Indian women and girls.
Reference:

1. 26th October 2006


3. Time of India, dated 29th October 2006.

4. October 2006

5. Times of India, 3rd November 2006

6. Times of India, 7th November 2006

7. Times of India, 12th November, 2006