CHAPTER-4

LEGISLATIVE MEASURES TO PREVENT CRIME AGAINST WOMEN

4.1. Introduction

In India almost half of the Indian population belong to women. Yet they have been discriminated and have suffered and are suffering discrimination in silence in the civilized as well as in the primitive society. Even though self-sacrifice and self-denial are their nobility and virtue, still they have been made the victims of all inequalities, indignities, inequity and discrimination from time immemorial. These are some of the factors that compel legislature to make various laws to give the women their due share. The Indian constitution which is the fundamental law of the land contains numbers of provisions for the benefit and protection of the women. The concept of equality and non-discrimination finds its due place in Indian constitution. Besides, it also enables the state to adopt measures of affirmative discrimination in favour of women. Apart from fundamental rights, some specific provisions to ensure the rights of women have also been incorporated in Directive Principles of State Policy. However, in spite of constitutional protection and a number of legislations, gender discrimination and injustices continue to occur. This is mainly because those who enforce the laws or interpret them do not always fully share the philosophy of gender justice concept.

There are several areas of concern for women in law and judicial administration. However, it is in criminal law and criminal justice administration that the problems are more acute and unbearable. These problems are partly embedded in substantive law and partly in procedural aspects, i.e., Cr.P.C, 1973 and-the Indian Evidence Act, 1872 and the way they are administered. In cases of offences against women like sexual abuse, harassment, dowry deaths and the like, the victims in most cases do not get
justice at all. With regard to women, basic right (to get justice) is not easily available because of a variety of factors on which they have little control.\(^5\)

Indian women are, by and large, handicapped in respect to all the prerequisites essential for access to justice. The widespread illiteracy, the cultural barriers and subordination they suffer from, and unfriendly process of law have kept most women, who have problems, away from the law and courts.\(^6\)

Victimized women have varied experiences with the national criminal justice system. They cannot always depend on the criminal justice system for protection. In terms of combating violence against women, there often exist gaps and ambiguities in the laws criminalizing violence. Laws tend to be piecemeal, focusing on specific forms of violence rather than dealing comprehensively with all forms of violence against women. When the law is put in place, there is often weak law enforcement. This leads to victim apathy, distrust and avoidance of the system. In certain situations such as the cruelty and dowry deaths, corruption among police and other enforcement officials works as a major obstacle.\(^7\)

In a large and complex country like India, the dimensions and problems of violence against women do not yield easy solutions. Setting standards is a first step, and while it is an important and necessary one, it is not enough. There must be effective implementation at the national, regional and international levels. The rule of law and recourse to legal remedies for violation of rights and entitlements must be observed. Therefore, in present chapter, an attempt has been made to highlight legislative provisions which have direct bearing on women in the field of administration of justice.

### 4.2. Constitutional Safeguards for Women

The Constitution of India confers a catena of rights upon women. Our revered constitution-makers were well aware of the subordinate and backward position of women in our society. They made conscious efforts for improving the condition of women. The Indian Constitution adopted by the Constituent
Assembly on 26th November 1949 is a comprehensive document enshrining various principles of justice, liberty, equality and fraternity. These objectives specified in the preamble and elsewhere form part of basic structure of the Indian Constitution. The fundamental law of the land assures the dignity of the individuals irrespective of their sex, community or place of birth.

With regard to the women, the Constitution contains many negative and positive provisions which go a long way in securing gender justice. While incorporating these provisions, the framers of the Constitution were well conscious of the unequal treatment meted out to the fairer sex, from the time immemorial. The history of suppression of women in India is very long and the same has been responsible for including certain general as well as specific provisions for upliftment of the status of women. The rights guaranteed to the women are at par with the rights of men and in some cases the women have been allowed to enjoy the benefit of certain special provisions.8

The Preamble to the Constitution of India promises “to secure to all its citizens Justice-social, economic and political; Liberty of thought, expression, belief, faith and worship; Equality of ‘status and of opportunity’; and to promote among them all; Fraternity - assuring the dignity of the individual and the unity of the Nation”. To realize these goals, the Constitution guarantees certain fundamental rights and freedoms, e.g. freedom of speech, protection of life and personal liberty, etc. which may be termed positive rights. Along with these certain negative rights, prohibiting discrimination or denial of equal protection of law, are also guaranteed. As equal citizens of India, women benefit from these rights equally with men. However, since the Constitution recognized the unequal social position of women, a special clause9 empowers the State to make special provisions for women and children even in violation of the obligation not to discriminate among citizens. This power has been used to enact special laws for the protection of women, women workers in factories, mines and plantations, and to provide maternity relief to women workers in the organized sector.
Equality of opportunities in public employment and office under the State is guaranteed by Article 16. This clause has helped to ensure a significant position and status to Indian women demonstrated in the increasing number of women in the public services and in positions of political power and dignity, even to such offices as Governors, Chief Ministers and the Prime Minister. The principle of adult franchise, irrespective of sex, seeks to ensure women's full participation in the shaping and sharing of power.

The Directive Principles of State Policy, embodying the major goals of a welfare State, also contain certain specific items affecting women. While the provision of Article 38 directs the State to bring about a transformation of socio-economic conditions for the common good, another Article 39 directs movement towards the achievement of an egalitarian and just social order which would affect men and women equally. Article 39 holds out the promise of an equal right to “adequate means of livelihood”, “equal pay for equal work”, “protection of health and strength of workers – men, women and children – from abuse and entry into avocations unsuited to their age and strength”. Just and humane conditions of work and the provision of maternity relief are directed by Article 42.

The special attention given to the needs and problems of women as one of the “weaker sections” of Indian society, and the recognition of political equality were undoubtedly radical departures from the norms prevailing in traditional India. It has led many scholars to describe the Indian Constitution as a manifesto of a social revolution.10

In a scenario where the condition of Indian woman is pathetic, It is pertinent here to analyze the various constitutional and other provisions which protect and promote the basic rights of Indian women. Indian Constitution is an instrument which guarantees to all the citizens of India certain basic Human Rights implicit from the Preamble, Fundamental Rights and Directive Principles of State Policy.
i) **Fundamental Rights**

a) **Right to Equality (Articles 14-18)**

The Constitution of India enunciates the general principle of right to equality and prohibits the state from denying to any person equality before the law or the equal protection of the law. Articles 14 to 18 of the Constitution guarantee the right to equality to every citizen of India. Article 14 embodies the general principles of equality before law and prohibits unreasonable discrimination between persons. The succeeding Articles 15, 16, 17 and 18 lay down specific application of the general rules laid down in Article 14. Article 15 prohibits the discrimination on grounds of religion, race, caste, sex or place of birth. Article 16 guarantees equality of opportunity in matters of public employment. Article 17 abolishes untouchability and Article 18 abolishes title. The guardian of the Indian Constitution i.e. the Supreme Court of India has always been the champion in maintaining and elaborating the 'concept of equality’ of status. Hostile discrimination against women has always been struck down by the Supreme Court of India from time to time because …

“since sex, like race and national origin is an immutable characteristic determined solely by accident of birth, the imposition of special disability upon the member of their sex (female) would seem to violate the basic concept of our system that legal burdens should bear some relationship to individual responsibility” . Though Article 14 of the Constitution prohibits class legislation but permits reasonable classification. The Supreme Court declared that women were different from men as a class.¹¹ Having in view the object of the legislation, women can be treated as a class and special laws can be made in their favour. Accordingly various provisions have been declared valid where women have been given special treatment.¹²

Article 15(3) of the Constitution specifically provides that the prohibition of discrimination on grounds of religion, race, caste, sex or place of birth as contained in Article 15, shall not prevent the State from making any special provisions for women and children. Article 15(3) lifts that rigour and
permits the state to positively discriminate in favour of women by making special provision to ameliorate their social, economic and political justice and accords them parity.

Clause (3) of Article 15, which permits special provisions for women and children, has been widely resorted to, by the State and the courts have always upheld the validity of the special measures in legislation or executive orders favouring women. These provisions could be seen in the sphere of Criminal Law, Labour and Industrial Laws, Service Law and Criminal Procedure, etc.

Article 15(3) embodies one of the two exceptions to the prohibition contained in clause (1) and (2) of Article 15. It empowers the state to make special provisions for women and children. This particular advantage has been conferred on the women because the framers of the Constitution were well aware of the unequal treatment meted out to women in India from the time immemorial. The other reason for making special provisions for them is their physical structure and the performance of maternal functions which place them at a disadvantage in the struggle for subsistence.13

Thus it would be no violation of Article 15 if institutions are set up by the State exclusively for women—or places reserved for them at public entertainments or in public conveyances. The reservations made for women in educational institutions and public employments are protected by Article 15(3)14. The decisions of the courts are also helpful in understanding the concept of protective discrimination in favour of women. For example, Andhra Pradesh High Court held that if a beauty contest indecently represents any woman by depicting in any manner the figure of a woman, form, body or any part of the body in such a way so as to have the effect of being indecent, or derogatory to or denigrating women or likely to deprive, corrupt or injure the public morality would be violative of the provisions of the Indecent Representation of Women (Prohibition) Act, 1986 and also unconstitutional as it violates Articles 14, 21 and 51-A of the Constitution.15
In *Yousuf Abdul Aziz v. State of Bombay*\(^6\), the validity of Section 497, Indian Penal Code, which punishes only the male counterpart-in the offence of adultery and exempts the woman from punishment was challenged as violative of Arts.14 and 15(1) of the Constitution. The petitioner contended that even though the woman may be equally guilty as an abettor, only the man was punished, which violates the right to equality on the ground of sex. The Supreme Court upheld the validity of the provision on the ground that the classification was not based on the ground of sex alone. The court obviously relied upon the mandate of Article 15(3) to uphold this provision.

Similarly in *Sowmitri Vishnu v. Union of India*\(^7\), the petitioner challenged the validity of Section 497, Indian Penal Code on the ground that it violates Articles 14 and 21, because this provision recognizes only the husband of the adulteress as the aggrieved party and not the wife of the adulterer. It was contended that Section 497 is a flagrant instance of gender discrimination and male chauvinism. The Supreme Court held that the law does not violate either Art.14 or 15, on the ground that the offence will be committed only by a man. The Supreme Court obviously followed the ratio of *Yousuf Abdul Aziz. V. State of Bombay*\(^8\), as declared by a Constitutional Bench.

In *Revathi v. Union of India*\(^9\), the Supreme Court held that Sec. 198(2) of Cr.P.C. which gives the husband of adulteress the right to prosecute the adulterer but does not give the wife of the adulterer the similar right, is not discriminatory following the abovementioned judgment.

In *Air India v. Nargesh Mirza*\(^10\) the Supreme Court struck down the Air India Regulations relating to retirement and pregnancy bar on the services of Air hostesses as unconstitutional on the ground that the conditions laid down therein were entirely unreasonable and arbitrary. The impugned Regulation 45 provided that an air hostess would retire from the service of corporation upon attaining the age of 35 years or on marriage, if it took place within 4 years of service or on first pregnancy whichever occurred earlier. Under Rule 47, the Managing Director was vested with absolute discretion to extend the age of
retirement prescribed at 45 years. Both these regulations were stuck down as violative of Article 14, which prohibits unreasonableness and arbitrariness.

b) Right to Life and Personal Liberty (Article 21)

This Article provides that “no person shall be deprived of his life or personal liberty except according to the procedure established by law”. Resorting to judicial activism, the Supreme Court has expanded the scope of ‘right to life’ to new horizons by reading many more rights into it as integral and essential part thereof. Thus, women also have fundamental right to human (read feminine) dignity, to privacy, to healthy environment, to primary education, to free legal aid, to speedy trial as adjuncts to right to life.

c) Right against Exploitation (Articles 23-24)

Article 23 of the Constitution prohibits traffic in human being and beggar and other similar forms of forced labour. Traffic in human being means selling and buying men and women like goods and includes immoral traffic in women and children for immoral or other purpose.27 This article protects the individual not only against the state but also against private citizens. It imposes an obligation on the state to undertake measures to abolish the evils of traffic in human beings and all forms of forced labour wherever they are found.

In this context traffic in human beings includes “devadasi system”.28 Trafficking in human beings has been prevalent in India for a long time in the form of prostitution and selling and purchasing human beings for a price just like vegetables. On the strength of Art 23(1) of the Constitution, the legislature has passed the Suppression of Immoral Traffic Act, 1956 [now renamed as The Immoral Traffic (Prevention) Act, 1956] which aims at abolishing the practice of prostitution and other forms of trafficking. This is an Act made in pursuance of the International convention signed at New York on the 9th day of May, 1950 for the prevention of immoral traffic. The Andhra Pradesh Legislature has also enacted the Devadasis (Prohibition of Dedication) Act, 1988 to prohibit the practice of dedicating women as Devadasis to Hindu deities, idols and temples etc. which invariably results in evils like prostitution.29
ii) Directive Principles and Fundamental Duties

The Directive Principles of state Policy contained in Part IV of the Constitution incorporate many directives to the State to improve the status of women and for their protection. Article 39(a) directs the State to direct its policy towards securing that the citizen, men and women, equally have the right to an adequate means of livelihood. Article 39(d) directs the State to secure equal pay for equal work for both men and women. The State has enacted the Equal Remuneration Act, 1976 to give effect to this Directive Principle. Article 39(e) specifically directs the State not to abuse the health and strength of workers, men and women. Article 42 of the Constitution incorporates a very important provision for the benefit of women. It directs the State to make provisions for securing just and humane conditions of work and for maternity relief. The State has tried to implement this directive by enacting the Maternity Benefit Act, 1961. Article 44 directs the State to secure for the citizens a Uniform Civil Code throughout the territory of India. This particular goal is towards the achievement of gender justice. Even though the State has not yet made any efforts to introduce Uniform Civil Code in India, the judiciary has recognized the necessity of the uniformity in application of civil laws like law of marriage, succession, adoption and maintenance etc. in the case of Sarala Mudgal v. Union of India and other cases.

Apart from these specific provisions all the other provisions of the Constitution are equally applicable to the men and women. This clearly establishes the intention of the framers of the Constitution to improve the social, economic, educational and political status of the women so that they can be treated with men on equal terms.

The Supreme Court has highlighted the right of the women in India to eliminate gender-based discrimination particularly in respect of property so as to attain economic empowerment. The Court, while referring to the Vienna Declaration on the Elimination of All forms of Discrimination Against Women (CEDAW) which was ratified by the United Nations Organization on 18-12-
1979 and by the Government of India in 1993 elaborately discussed the principles of equality of rights and respect of women dignity. The necessary implication of the observation of the Supreme Court in the instant case which dealt with the right of Hindu female to execute a will in respect of the property acquired or possessed by her under Section 14 of the Hindu Succession Act 1956 is that the right of women to eliminate all kinds of gender-based discrimination particularly in respect of property right form part of Articles 14, 15 and 21 of the Constitution of India.

Article 51-A declares it a fundamental duty of every Indian citizen to renounce practices derogatory to the dignity of women. Thus, the spirit of gender equality, dignity and justice pervades the entire framework of our constitution.

To overcome the existing disparity and ill-treatment of women from different communities and to give effect to the equality concept under personal laws, the enactment of a Uniform Civil Code, as directed under Article 44 of the Constitution will be a desired step. This is also required to fulfill India’s commitment under the Discrimination against Women Convention, 1979 which mandates states to accord complete equality on matters of marriage, divorce, inheritance, ownership, etc. But the Government of India has not done much so far to fulfill its constitutional or treaty obligations, in spite of the judicial eloquence to enact such a code. In the Shah Bano case, The Supreme Court expressed its deep regret that Article 44 of the Constitution has remained a dead letter. It observed that “there is no evidence of any official activity for framing a common civil code for the country and that a beginning has to be made if the Constitution is to have any meaning. The Supreme Court once again asked the Government in May 1995 to take a fresh look at Article 44 and has directed it to ask the Law Commission to draft a comprehensive legislation incorporating the present day concept of Human Rights for women in consultation with the Minorities Commission.
Despite so much of legal protection to women and liabilities on the part of government, gender Justice appears to be a myth in India. Women are still the sufferer of gender discrimination both in private as well as in public life. They suffer discrimination, deprivation and exploitation for being women. Because of gender discrimination they are the poorest, illiterate, and most miserable section of all castes as well as communities suffering a number of atrocities like sex selective abortions, female feticide, child marriage, domestic violence, widow abuse, sati, dowry deaths, criminalities like rape, sexual harassment, physical and mental torture, etc. which are on an increase, despite the high place given to 'Gender Justice' in Indian Constitution. There is no dearth of laws in this regard, even then Indian women are discriminated socially, economically, politically, culturally ad religiously.

4.3. Relevant Provisions under Criminal Law

The Criminal law of India contains special provisions to check crimes committed against women in the Indian society. Some of these crimes are dowry death, cruelty and harassment of a married woman by her husband or relatives of the husband, outraging the modesty of a woman and rape etc.

i) The Indian Penal Code, 1860

Followings are some of the important provisions provided under the Indian Penal Code, 1860 to protect women from crimes against them:

1. Dowry Death (Section 304-B and Section 306).
2. Intention to outrage the modesty of women (Section 354).
3. Kidnapping, abducting or inducing women to compel her marriage (Section 366).
4. Procuration of minor girl (Section 366-A).
5. Importation of girl from foreign country (Section 366-B).
6. Rape (Sections 375 to 376).
7. Cruelty and harassment (Section 498-A).
8. To insult the modesty of a woman. (Section 509)
9. Disclosure of identity of the victim of certain offences, etc (Section 228-A)

It will be desirable to discuss the above stated provisions in brief to understand the legislative endeavors to combat crime against women with the help of leading decided cases.

1. Dowry death

(Section 304-B of the Indian Penal Code, 1860)

Section 304-B I.P.C. provides that where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within 7 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.\(^{35}\)

Object of Section 304-B of I.P.C.: When the Dowry Prohibition Act, 1961, in its original form was found inadequate, the legislatures in order to eradicate the prevailing malady of the dowry system in our society including dowry death, introduced Section 304-B of the Indian Penal Code. Section 304-B I.P.C. was inserted by the Dowry Prohibition (Amendment) Act, 1986 with a view to combat the increasing menace of dowry death.\(^{36}\)

In Amarnath Gupta v. State of M.P.\(^{37}\) it was observed that Section 304-B of I.P.C. was inserted into the Indian Penal Code by the Dowry Prohibition (Amendment) Act, 1986 with the solemn intent to save brides from being burnt for non-payment of dowry and curb the social evil which was gaining momentum.

The object contained in Section 304-B of the Code has been elaborately explained in Prakash Chandra v. State\(^{38}\), which is as under:

In India dowry system is in vogue since ages. Various steps have been taken to eradicate it. In about last two
decades, the legislature became alert to the need of eradicating this social evil. In that pursuit Dowry Prohibition Act, 1961 was enacted and various amendments were made with a view to save the women from harassment etc., at the hands of the husband and his relatives arising out of the dissatisfaction over the dowry. It is true that legislation alone cannot solve this social problem. It is through education and other reformative measures that such a problem can be solved. But at the same time various legislations can play pivotal role in curbing the evil of dowry. With that end in view, Section 304-B was inserted in the Indian Penal Code.

Thus, it can be said that Section 304-B is an innovation made by Parliament in the Indian Penal Code through the Dowry Prohibition (Amendment) Act, 1986.

Experience shows that the demand of dowry and mode of its recovery take different forms to achieve the result and various indirect and sophisticated methods are being used to avoid leaving any evidence of the offence. Similarly, the consequences of non-fulfillment of the demand of dowry meted out to the unfortunate bride takes different forms to avoid any apparent casual connection between the demand of dowry and its prejudicial effect on the bride. This experience has led to several other legislative measures in the continuing battle to combat this evil. The criminal Law (Second Amendment) Act, 1983 was an Act to further amend the Indian Penal Code, the Code of Criminal Procedure, 1973 and the Indian Evidence Act, 1872. Section 498-A I.P.C. was inserted in the Indian Penal Code and corresponding amendments were made in the Code of Criminal Procedure which included Section 198-A therein and also inserted Section 113-A in the Indian Evidence Act, 1872. Thereafter, the Dowry Prohibition (Amendment) Act, 1986 was enacted further to amend the Dowry Prohibition Act, 1961 and to make certain necessary changes in the Indian Penal Code, the Code of Criminal procedure, 1973 and the Indian Evidence Act, 1872. Two of the salient features of the Dowry Prohibition (Amendment) Act, 1986 stated in the Statement of Objects and Reasons of the Bill are as under-
Offences under the Act are proposed to be made non-bailable. A new offence of dowry death is proposed to be included in the Indian Penal Code and the necessary consequential amendment in the Code of Criminal Procedure, 1973 and in the Indian Evidence Act, 1872 have also been proposed.\textsuperscript{39}

Ingredients required: The Rajasthan High Court in \textit{Lila Ram v. State of Rajasthan}\textsuperscript{40}, laid down the ingredients which are required to be proved by the prosecution while dealing with the offence as to dowry death cases. The burden on the prosecution is to prove the following ingredients:

(a) that the death of a woman is a dowry death,
(b) that death is caused by burns or bodily injury or occurs otherwise than under normal circumstances,
(c) that the death is caused within seven years of her marriage,
(d) that soon before her death she was subjected to cruelty or harassment by her husband or any relative of husband, and
(e) that it was in connection with any demand of dowry.

The court observed that unless all of the above ingredients are established, it is not possible to hold the accused guilty of offence under Section 304-B of the Indian Penal Code 1860.

To fall within the definition of dowry death, the prosecution is required to prove that soon before her death the deceased was subjected to cruelty or harassment by her husband or any relative of her husband for or in connection with any demand of dowry besides the other ingredients like the death of a woman has taken place due to burns etc., within seven years of her marriage.\textsuperscript{41}

2. Intention to Outrage the Modesty of a woman

\textit{(Section 354 of the Indian Penal Code, 1860)}

An assault with criminal intention to outrage the modesty of a woman is punishable under Section 354 of the Code. The Orissa High Court in \textit{Baldev
Prasad Singh v. State\textsuperscript{42} observed that the petitioner accused entered into the house, caught hold of the house wife while embracing squeezed her breasts and held that "the accused petitioner is guilty of offence under Section 354 of the Code.

The Apex Court in Union of India v. Himmat Singh Chauhan\textsuperscript{43} observed that a naval officer was sentenced in Court Martial proceedings for the offence under Section 354 of the Code. In the present case, the respondent challenged the conviction before the trial court and it was held by the High Court that:

After a meticulous examination of the record and particularly the evidence of Mrs. Nirmala Sharma (complainant) that the credibility of the evidence is such that the charge cannot be said to have been brought home on the basis of this material". Hence, conviction quashed.

However, in criminal appeal before the Apex Court the question was raised whether the High Court was justified in quashing the conviction and sentence passed in court martial proceedings. The Apex Court held that the High Court overstepped its jurisdiction in trying to re-appreciate the evidence of complainant, thus the respondent has been rightly found to have committed the offence in the court martial proceedings.

3. Kidnapping, Abducting or Inducing Woman to Compel Her Marriage etc.

(Section 366 of the Indian Penal Code, 1860)

Section 366 of the Code shows that to constitute the offence under this section, there must be kidnapping or abducting of woman with intent that:

(i) women in question may be compelled to marry any person against her will, or

(ii) she may be compelled or seduced to illicit sexual intercourse, or

(iii) she may be forced or induced to illicit sexual relationship by means of criminal intimidation.

However, it is immaterial whether the woman in question is married or not.
4. Procuration of Minor Girl

(Section 366-A of the Indian Penal Code, 1860)

For the purpose of prostitution the procuration of minor girl from one part of India to another part is an offence under Section 366-A of the Indian Penal Code, 1860.

To constitute the offence under Section 366-A of the Code, the following ingredients are necessary:

1. Tempting or inducing a girl below the 18 years of age to go from any place or to do an act, and

2. with the knowledge or intention that the girl will even be forced to illicit sexual intercourse with a person. The Allahabad High Court in Sis Ram Case has held that the inducement with a particular object is necessary and when after such inducement the accused offers the girl to several persons a fresh offence is not committed at every fresh offer for sale.

"Seduced" - Meaning of: According to the Bombay High Court expression "seduced" means inciting or tempting irrespective of whether the girl has been previously forced or offered to illicit sexual intercourse.

5. Importation of Girl from Foreign Country

(Section 366-B of the Indian Penal Code, 1860)

Importing the girl below 21 years of age from outside India for the purpose of prostitution is an offence under Section 366-B of the Indian Penal Code, 1860.

In view of the above provision there are three essential ingredients of Section 366-B of the Code. These are as under:

1. The girl in question must be imported from outside India, including the State of Jammu and Kashmir.

2. The age of such girl in question must be below 21 years.
3. Importing of girl must be with the intention either to seduce or compel her to have illicit intercourse with another person.

6. Rape

(Section 375 & 376 of the Indian Penal Code, 1860)

It should be noted that section 375 deals with rape and constructive rape, “Firstly” of section 375 deals with the offence of rape, while “Secondly” to “Sixthly” deals with what may be called constructive rape. Section 376(1) provides punishment for the offence of rape, while Section 376(2) deals with the punishment for custodial rape.

Ingredients required: The reading of Section 375 of the Indian Penal Code, 1860 shows that Section 375 contains two essential ingredients:

1. Sexual intercourse by a man with a woman, and

2. The sexual intercourse must be under circumstances falling under any of the six clauses of Section 375.

The explanation appended to Section 375 provides that mere penetration is sufficient to constitute the sexual intercourse necessary to constitute the offence of rape. Thus, to constitute the offence of rape it is not necessary that there must be complete and total penetration.

Proving the offence of rape: It has always been difficult to prove a rape and to punish the rapist because a rapist always tries to locate his victim in circumstances of solitude. There are rare chances of the availability of direct evidence. The only material evidence, therefore, that remains is the statement of the victim and her complaint. The courts have been traditionally treating the statement of a rape victim on the same footing as the testimony of an accomplice. Such testimony usually requires corroboration which means that it should be supported by some other evidence. Where the doctor to whom the injured lady was brought by neighbors’ recording her statement it is a good evidence.
However, the Apex Court in *Krishan Lal v. State of Haryana* very seriously reduced the significance of corroboration and held:

To forsake that vital considerations and go by obsolescent demands for substantial corroboration is to sacrifice common sense in favour of an artificial concoction called judicial probability. A socially sensitized judge is better statutory armour against gender outrage than long clauses of a complex section with all the protection written into it.

*Punishment for Rape:*

As per section 376 of the Act, the minimum punishment for rape is seven years and the maximum, life imprisonment. If the judge finds valid reasons he/she can impose a sentence of less than seven years. In the cases of ‘custodial rape’ or ‘gang rape’ the minimum sentence is of ten years and the offence is cognizable and non-bailable. Sexual intercourse by a man with his wife who is living separately from him under a decree of separation or under any custom or usage, without her consent is punishable with imprisonment which may extend to two years. This offence is cognizable and bailable. This definition of rape makes it clear that the husband has a right to have sexual intercourse with his wife with or without her consent.

Many women’s rights organizations had demanded that forcible sexual intercourse by a man with his wife should also be defined as an offence of rape. But the Law Commission of India refused this demand. At the same time it introduced a new section, which makes forcible intercourse by a man with his judicially separated wife an offence. Commenting on this, a progressive legal activists’ organization, Lawyers’ Collective, commented: “This new section is a small step forward in the direction of recognizing the rights of the wife not to be raped by her husband”

*7. Cruelty and Harassment*

The language and purpose of the provision under Section 498-A clearly speaks of past conduct which drives a woman to commit suicide at a later date.
The construction of this section clearly discloses that if a cruelty within the meaning of Section 498-A, I.P.C. committed on married woman drives her to commit suicide or to cause grave injury or danger to life, limb or health, the person guilty of such willful conduct is liable to punishment. The act of suicide or causing grave injury or danger to her life is meant as a result of the past events.\(^5\)

**Purpose of Section 498-A:** The Andhra Pradesh Pradesh High Court in *P Biksha Pathi v. State of Andhra Pradesh*\(^5\) observed that to ventilate the grievances about atrocities of newly married brides due to dowry or other similar demands from their husbands or in-laws, women social worker had taken up the cause in a movement in the country and due to the effective persuasion by social compulsions Section 498-A, I.P.C. and Section 113-A of the Evidence Act have been introduced on 25th December, 1983. The aforesaid provisions as contained in Section 498-A, I.P.C. were obviously intended to cure the existing evil in the society. The evil many a times resulted in atrocities on married women and various acts of cruelty were being practiced. No doubt there were some provisions available in the Indian Penal Code, such as Section 306, IPC but the instances were such which could not come to the light due to their occurrence in the house of their in-laws. Naturally the victims could not take recourse to public authorities to ventilate their grievances. After all social conditions, family traditions etc. prevented the brides to take any recourse to public authorities. They could not even convey the atrocities to their parents. It was, therefore, necessary to curb this social evil by incorporating effective provisions in the present Indian Penal Code.

*Cruelty or harassment can be mental also:* It is settled legal position that the cruelty or harassment need not only be physical as it can be mental also. In *Pawan Kumar v. State of Haryana*\(^5\) where the prosecution witnesses, sister and brother-in-law of the deceased deposed that the deceased had told them that her husband was maltreating her in view of dowry demand and that not being satisfied was harassing her. When on a day before the incident the
husband came to take her back, she was reluctant but her sister sent her with her husband. She went with the husband but with the last painful words that “it would be difficult now to see her face in the future”. On the very next day i.e. the day after she arrived at her husband's place, the unfortunate death of the deceased took place. She died admittedly on account of total burn of her body. Admittedly, the incident of quarrel as deposed was only a day before her death. There is direct evidence that on earlier day itself, there was quarrel at the house of her sister with the deceased and her husband. Thus, physical as well as mental cruelty or harassment is sufficient to invoke the Section 498-A of I.P.C.

8. To Insult the Modesty of a Woman

(Section 509 of the Indian Penal Code, 1860)

Section 509 of the Indian Penal Code, 1860 deals with the offence regarding words, gesture or act intended to insult the modesty of a woman.

If a person with an object to insult the modesty of a woman shows genital organ of his body or insult the modesty of a woman by word or gesture or uses obscene words, that person commits an offence under this section. The Bombay High Court in Phiaz Mohammed case\(^5\) has held that the essential element of Section 509, IPC is to insult the modesty of a woman.

9. Disclose of Identity of the Victim of Certain Offences, etc (Section 228-A Indian Penal Code, 1860)

Whoever prints or publishes the name or any matter which may make known the identity of any person against whom an offence under section 376, section 376-A, section 376-B, section 376-C or section 376-D is alleged or found to have been committed (hereafter in this section referred to as the victim) shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.

ii) The Indian Evidence Act, 1872

Followings are some of the most important provisions provided under the
Indian evidence act, 1872 to protect women from crimes against them.

1. Presumption as to abetment of suicide by a married woman (Sec.113-A).
2. Presumption as to dowry death (Sec. 113-B)
3. Presumption as to absence of consent in certain prosecutions for rape (Sec.114-A)

Now we shall discuss these provisions to understand the legislative endeavors to combat crime against women with the help of leading decided cases.

_objects and reasons:_ Sections 113-A and 113-B of the Evidence Act, have been inserted by Criminal Law Amendment Act, 1983 and 1986 respectively, deal with the presumption as to abetment of suicide by a married woman and presumption as to dowry death. The Legislature with the view to deal with the evil of dowry death and cruelty by husband or relatives of husband, incorporated Sections 304-B and 498-A in the Indian Penal Code. In order to tackle this evil, legal presumptions relating to abetment of suicide and dowry death were inserted in the Evidence Act so that the perpetrator cannot take advantage of legislative incompetency for want of proof, because of certain peculiarities of these offences as they are usually committed inside the matrimonial home.

Nature of Presumption under Section 113-A: In order to attract presumption of abetment of suicide under Section 113-A the facts and circumstances should be such as can reasonably sustain a presumption about the existence of a nexus of cause and effect between the alleged cruelty and suicide. Where the probability of existence of that nexus suffers set back due to pronounced withdrawal of the causal syndrome, it will be unsafe and, therefore, unjust to yet invoke a presumption of guilt against the accused under the said section. There however, cannot be any cut and dried formula as to where the presumption under Section 113-A of the Evidence Act should or should not be drawn and it all depends upon the totality of the facts and circumstances of each case.54

When once there is a demand for dowry and harassment against the
deceased, and death occurs within 7 years of the marriage, the other things 
automatically follow due to the statutory presumption contemplated under 
Section 113-A of the Evidence Act.\textsuperscript{55}

An analysis of the provisions of Section 113-A reveals that to attract 
Section 113-A the suicide must have been committed within seven years from 
the date of her marriage and that her husband or his relative must have 
subjected her to cruelty. When these two factors were found to be present then 
having regard to all other circumstances of the case, the section directs a 
presumption that the husband or his relatives had abetted the suicide. The 
explanation to this provision makes it clear that cruelty contemplated by 
Section 113-A of the Evidence Act means the same as provided by Section 
498-A, I.P.C. Once ‘cruelty’ envisaged by Section 498-A IPC is proved (i) it 
will not be necessary to prove the same again so as to satisfy Section 113-A (ii) 
the Legislature has presumed ‘cruelty’ as the cause of death, (iii) the offence 
under Section 306, IPC need not be proved independently, even if there is no 
\textit{mens rea} or anticipation of the act of ‘suicide’, (iv) it is not necessary for the 
prosecution to prove that the suicide was abetted by the accused, (v) the 
presumption of abetment will be available, without there being evidence of 
abetment as Section 107 of the Penal Code and this would be done without 
there being any \textit{non-obstante} clause. However, it is to be borne in mind that the 
presumption is to be drawn having regard to all the other circumstances of the 
case.

Thus, once the offence under Section 498-A, IPC is established the 
Court shall draw a presumption having regard to all the other circumstances of 
the case that the suicide was abetted by the accused found guilty under Section 
498-A, IPC. So, before drawing the presumption the Court shall have to take 
into consideration all the other circumstances of the case. Since in the instant 
case the very offence under Section 498-A, IPC is not proved, there is no need 
to go into the other circumstances of the case for purposes of involving the 
accused under Section 306, IPC.\textsuperscript{56}
Nature of Presumption under Section 113-B: Proximate or live link must be shown to exist between the conduct regarding cruelty or harassment in connection with dowry demand and consequential death. The term "normal circumstances" means natural death and the term "otherwise than under normal circumstances" means death not in the usual course.

The Apex Court in *Hans Raj v. State of Punjab* observed that no presumption under Section 113-B of the Evidence Act would be drawn against the accused if it is shown that after the alleged demand, cruelty or harassment the dispute stood resolved and there was no evidence of cruelty and harassment thereafter. Mere lapse of some time by itself would not provide to an accused a defense if the course of conduct relating to cruelty and harassment in connection with the dowry demand is shown to have existed earlier in time not too late and not to state before the death of the woman. In the present case, it has been proved that the death of Sunita Kumari by suicide had occurred within 7 years of her marriage and such death cannot be stated to have occurred in normal circumstances. The term "normal circumstances" apparently means natural death. The Apex Court further observed that the High Court appears to have adopted casual approach in dealing with a specified heinous crime considered to be a social crime.

Purpose of Section 114-A: Section 114-A was introduced because of the increasing number of acquittals of accused when the victim of rape is an adult woman because it was very difficult for her to prove absence of consent. The new provision (inserted by Criminal Law Amendment Act, 1983) has brought about a radical change in the Indian Law relating to custodial rapes. This presumption would apply not only to rape cases, but also to cases of "attempted rape".

Effect of new provision

The effect of the new provision is that in cases of custodial rapes, where the question before the court is whether an intercourse between a man and a
woman was with or without consent and the woman states in the court that it was against her consent, the court would presume that there was no consent. The burden of proving becomes shifted to the accused. If he is not able to prove that there was a consent, he becomes guilty. The requirements of the presumption are:

1. It is a proven fact that there has been intercourse;
2. The question is whether it was with or without consent;
3. The woman states before the court that she had not consented.

The amendment became necessary partly because of the growing incidence of rape and partly because of the sensational acquittal in Mathura rape case. The alarming frequency of crimes against women led the Parliament to enact the Criminal Law (Amendment) Act, 1983 to make the law relating to rape more realistic. Sections 375 and 376, I.P.C. were amended and certain more penal provisions were incorporated for punishing such (police) custodians who molest women under their custody or care. Section 114-A was also added to the Evidence Act for drawing a conclusive presumption as to the absence of consent in certain prosecutions for rape. The Criminal Procedure Code was also amended to provide for camera trial.

The case was reported as *Tukaram v. State of Maharashtra*. This case involved prosecution for rape of two police-personnel. Mathura was the name of the girl who was alleged to have been raped. Her parents died when she was still a child. She was brought up by her brother. Both of them worked as labourers. At Mathura’s place of work she came in contact with her employer’s sister’s son. They decided for marriage. Her brother lodged a report at a police station that his sister had been kidnapped by her lover and lover’s sister and husband. All of them were rounded up and brought to the police station. The statements of the girl and her lover were recorded; the party was told to leave. The Head Constable also left. Only the two accused policemen remained at the
station. When the party was about to cross the gate of the police station, the two accused appeared and told Mathura to stay and others to move out. Mathura was taken inside and the party waited for her outside. From this point onwards all that could be known was from Mathura’s mouth. She stated that one of the policemen took her to a latrine at the backside, removed her underwear and started looking at her private parts by exposing them to torch-light. He then dragged her to the back verandah and raped her against her stiff resistance. He left and Tukaram appeared, who was till then sitting nearby. He fondled her private parts. He could not do anything more because he was too drunk.

The patience of the party waiting outside exhausted. They became panicky by noticing the lights being put off and the gate closed from inside. They ran towards the back side, raised an alarm. This attracted a crowd. Only then Tukaram came out and told them that the girl had already left. He went away. The girl emerged from behind him and narrated the story of rape.

The medical examination showed that she had no injury on her person. Her hymen bore no evidence of first rupture. It had marks of earlier ruptures. Her age was put as anything between 14 and 16 years. An examination of a sample of the pubic hair and vagina-smear slides did not show any traces of semen. The girl's clothes and the payjama of the alleged rapist, however, showed traces of semen. The trial court acquitted the accused of the charge of rape. The judge felt that the probability was that of an affair with consent.

On appeal to High Court no importance was attached to the absence of any traces of semen on the pubic hair or vaginal smears, because the girl had been examined twenty hours after the event. The High Court attached more importance to the presence of semen on the clothes of both the parties and taking this along with the fact that “passive submission” at a police station cannot amount to consent, convicted the accused. They appealed against their conviction to the Supreme Court. They were again acquitted.
The points which emerge from the judgment of the Supreme Court are:

1. There being no injury on the person of the girl, the alleged affair must have been a peaceful one and the talk of stiff resistance must have been a subsequent concoction.

2. She silently walked back into the police station with Ganpat when he laid his hand upon her. She should have loudly protested at that time why she was being separated from her party and should have shaken off the policemen's hand. “Meekly following Ganpat and allowing him to have his way with her to the extent of satisfying his lust in full, makes us feel that the consent in question was not a consent which could be brushed aside as passive submission”.

3. The burden of proof was on the prosecution to prove affirmatively each ingredient of the offence. It was for them to prove that her consent had been obtained by putting her in fear of death, or of hurt. They had not discharged this burden.

The new section deals with this last point. It turns the scales to the burden of proving consent. If the present amendment had been in force then, as soon as the girl had stated before the court that she had not consented, the whole burden of proving her consent would have shifted to the accused persons. If they had not been able to produce evidence of her consent, their conviction would have been sustained.62

4.4. Other Legislative Measures

Here we shall discuss the important provisions of certain other enactments pertaining to the crimes committed against women. These laws have been passed by Indian Parliament from time to time to prevent such crime in the Indian society. Followings are some of the important enactments in this regard:

1. The Immoral Traffic Act, 1956
2. The Dowry Prohibition Act, 1961
3. The Medical Termination of Pregnancy Act, 1971
4. The Indecent Representation of Women (Prohibition) Act, 1986
5. The Commission of Sati (Prevention) Act, 1987
7. The Pre-conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994
8. The Protection of Women from Domestic Violence Act, 2005

A brief discussion on important provisions of these enactments is desirable to understand the legislative endeavors to combat crime against women along with the judicial response.

1. THE IMMORAL TRAFFIC (PREVENTION) ACT, 1956

According to the Supreme Court, the prostitution always remains a running score in the body of civilization and destroys all moral values. The evil effects of prostitution maligning the society are notorious and frightful. It threatens the community at large slowly but steadily making its way onwards leaving a track marked with broken hopes. Therefore, the necessity for appropriate and drastic action to eradicate this evil has become apparent.\(^6\)\(^3\) Undoubtedly; the prostitution is the oldest profession in the world and it prevails throughout the world. This profession is being carried out in all civilized countries though it is prohibited in many countries. There are several factors which are responsible for it. These are:

(i) Gender discrimination
(ii) Unemployment
(iii) Exploitation at work place
(iv) Lack of moral value
(v) Population explosion
(vi) Greed for luxury
(vii) Sex mania etc.
The experience shows that the prostitution is not only confined to females and children but also covers the males. Consequently, in order to bring males within the ambit of the said Act, the Act was reamed as the Immoral Traffic (Prevention) Act, 1956 which covers males also. The legislation deals with the prevention of flesh trade and prostitution in all its form and modus operandi. Before the enforcement of the Amendment Act, 1986 this enactment was called “The suppression of Immoral Traffic in women and Girls”. Now, the Immoral Traffic Act, 1956 contains 25 sections and its provisions are supplemented by the Rules framed thereunder. This Act is aimed to curb and abolish traffic and prostitution of women, children as an organized means of living. The Immoral Traffic Act, 1956 has following special features:

*A comprehensive Legislation: *Section 2 of the Act defines various terms used in the said Act. Though the terms used are self-explanatory however, there are some important definitions, these are as under-

(a) *Prostitution:* According to clause (e) of Section 2 the expression “prostitution” means the sexual exploitation or abuse of persons for commercial purposes and expression “prostitute” is construed accordingly.

In the view of the above section, essential elements of prostitution are as follows-

(i) There must be promiscuous intercourse for hire.

(ii) A female must offer her body to men for indiscriminate sexual intercourse.

(iii) Such sexual intercourse must be for hire for consideration which may either be in cash or kind.

Thus, in absence of any of these ingredients the offence of prostitution is not constituted.

(b) *Brothel:* As provided under clause (a) of Section 2 a brothel includes a house, room, conveyance or place or a portion thereof which is used for the
purposes of prostitution for the gain of another person or for the mutual gain of two or more prostitutes.

Thus premises or place which is used for the purpose of prostitution is a brothel. In Unnikumar case the Madras High Court explained that to constitute a brothel the place must have been used for the purposes of prostitution. The Court further clarified that a solitary event of prostitution committed within the room or place would not be treated as a brothel; according to clause (a) of Section 2 brothel is a place which is being used for purpose of sexual exploitation or abuse.

The Apex Court in Gaurav Jain v. Union of India, has held that to constitute the offence of prostitution the evidence of more than one customer is not always essential, but it is necessary to prove that a girl /lady should be a person offering her body for promisuons sexual intercourse for consideration which may be in cash or kind.

(c) Public place: As provided under clause (h) of Section 2 expression, “public place” means any place intended for use by, or accessible to the public and includes any public conveyance.

According to the Allahabad High Court, a public place may be a place which is either open to the public or is used by the public. Thus, a railway platform, road, street or lane and by-lanes etc. are public places.

Punishment for keeping a brothel and living on the earning of prostitution: Section 3 of the Immoral Traffic (Prevention) Act, 1956 makes provision for punishment regarding any person who keeps or manages or assigns such keeping or manages a brothel. Under Section 3 of the Act, any landlord owner, lesser, tenant, occupier or lessee, is punishable if he knowingly uses the premises or places accommodation for prostitution or allows it for such use. To constitute the offence under this section the knowledge on the part of the person is necessary.

Section 4 of the Act punishes the person who lives on the earnings of
prostitution which is usually pimps of the prostitute. This section makes it clear that any person who is over 15 years of age who lives partly or wholly on the earnings of prostitution such person is liable to be punished. A person is liable to be punished under Section 4 of the Act, if,

(i) he is above 15 years of age;
(ii) he lives in the company of prostitute or he is habitually in the company of prostitute;
(iii) he exercises control, direction or influence over the movements of a prostitute; and
(iv) he acts as a tout or pimps on behalf of the prostitute. Thus, pimps and touts of prostitute can be punished under this section.69

Section 5 of the Act makes provision for punishment of those who procure persons for purpose of prostitution. Even a person who induces a person to take prostitution and he moves from one place to another with a view to his/her carrying on prostitution is also liable to be punished under Section 5 of the Act.

It is worthwhile to note that this provision is similar to the one under Sections 366, 372 and 373 of the Indian Penal Code, 1860.70

Section 6 of the Immoral Traffic (Prevention) Act, 1956 deals with the punishment for a person who detain any person in premises where prostitution is carried on. According to this section, such person shall be punished with a minimum imprisonment of 7 years but the punishment may extend to life imprisonment.71

Prostitution in public place prohibited: Section 7 of the Immoral Traffic (Prevention) Act, 1956 declares that carrying on of prostitution in any premises within a distance of two hundred meters from any place of public religious worship, school, college, hostel, hospital, clinic, nursing home or public place notified as such by the Commissioner of Police or the District Magistrate, it would amount to offence under this section. However, this section further
provides that in such a case not only the woman who committed the offence but also the man with whom she is involved in prostitution are punishable with an imprisonment which may extend to 3 months. It is to be noted that if the offence is committed in respect of minor or child, the punishment is more severe i.e. the person committing such offence shall be punishable with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine:

Provided that the court may, for adequate and special reasons to be mentioned in the judgement impose a sentence of imprisonment for a term of less than seven years.\[^2\]

Prohibition on seducing or soliciting for purpose of prostitution: Section 8 of the Act makes provision for punishment in respect of seducing or soliciting persons for the purpose of prostitution in any public place. Such soliciting for the people for prostitution may be by any communication made by gestures, words, willful exposure of her person. According to this section, such person shall be punishable on first conviction, with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both, and in the event of a second or subsequent conviction, with imprisonment for a term which may extend to five hundred rupees, and also with fine which may extend to five hundred rupees. Provided that where an offence under this section is committed by a man he shall be punishable with imprisonment for a period of not less than seven days but which may extend to three months.\[^3\]

Section 9 of the Act deals with the punishment for custodial seduction. Such seduction should be for the purpose of prostitution in order to constitute offence under this section. The term "custodial seduction" connotes seduction by any person having the custody, charge or care of or in a position of authority over any person. Under the Act, custodial seduction is considered to be a grave offence and a person who commits the offence of custodial reduction is liable
to imprisonment of 7 years and also fine. It is worthwhile to be mentioned that Section 9 of the Act contains provision similar to section 376 (B), (C) and (D) of the Indian Penal Code, 1860.74

**Provisions for Corrective Institution:** It is to be noted that the Immoral Traffic (Prevention) Act, 1956 is not an absolute penal enactment but also a social welfare legislation and it provides rehabilitation and correction of the female and child offenders found guilty of offence. According to Section 10, The Court may pass an order that a female offender who is found guilty of an offence under Section 7 or Section 8 of the Act, may be detained in a corrective institution for a term not less than 2 years, but not more than 5 years in any case. In other words, Section 10 is a rehabilitative and remedial provision in case the female offender is found guilty of an offence under Section 7 or 8 of the Act.75

**Notification of address of previously convicted offenders:** According to Section 11 of the Act, if any person has been repeatedly convicted by a Court in India of an offence punishable under this Act or under provisions of the Indian Penal Code, 1860, namely under Sections 363, 365, 366, 366-A, 366-B, 367, 368, 370, 371 and 373, the whereabouts of such person, his place of residence may be notified.76

**Provision for appointment of special police officer:** Section 13 of the Act empowers the State Government to appoint special police officer and also to constitute advisory body to carry out the purpose behind this legislation. Sub­section (4) of Section 13 gives power to the Central Government for the purpose of investigating any offence under the Act and make appointment of the special police officer in this regard.77

**Offences to be cognizable:** Section 14 of the Immoral Traffic (Prevention) Act, 1956 declares that offences committed under this Act are cognizable, without affecting the provision of the Code of Criminal Procedure, 1973.78
Power to search without warrant: Section 15 of the Immoral Traffic (Prevention) Act empowers the special police officer to carry out searches without obtaining the search warrant if he has reasonable ground for believing that an offence punishable under the said Act has been or is being committed in respect of a person living in premises in question.

According to sub-section 4 of Section 15 of the Act, after removing the persons (female) from the premises in question the special police officer will produce such persons (female) before the appropriate Magistrate.79

Person to Be Rescued Immediately: Section 16 of the Immoral Traffic (Prevention) Act, 1956 provides that on receipt of reliable information either from police or from any other person authorized by the State Government that any person is living or is carrying on or is being compelled to carry on prostitution usually in a brothel, the Magistrate may direct the police officer not below the rank of a sub-Inspector to remove or rescue such person from that place and produce before him.80

Closure of brothels: Section 18 makes provision for closure of brothels and eviction of offenders from the premises. It provides that the Magistrate on receipt of information from police or otherwise that any house room, place or any portion of such house, room, place which is situated within two hundred meters of any place referred to in sub-section (1) of Section 7 is being used as a brothel, the Magistrate is empowered to issue notice on the owner, lesser landlord or tenant of such house, room, place and Magistrate after giving them on opportunity of hearing, may order closure of brothels and also may make order of eviction of offenders found in such house, room, place, i.e., brothel. The Magistrate is also empowered to convict offenders according to the provisions laid down under Section 18 of the Act.81

Victim permitted to seek protection: Section 19 provides that a person who is carrying on prostitution or compelled to carry on prostitution may make an application to the Magistrate within the local limits of whose jurisdiction he or
she is carrying on prostitution with the view to obtain an order that he/she may be kept in protective home or may be provided care and protection. The Magistrate on such application may pass an order that the applicant be kept in a protective home, or corrective home, or under the supervision of a duly appointed person by the Magistrate. The period of such keeping is to be determined by the Magistrate himself.\textsuperscript{82}

\textit{Removal of Prostitute from any place:} Section 20(j) of the Immoral Traffic (Prevention) Act, 1956 empowers the Magistrate to issue notice for appearance and show cause if the Magistrate receives information that the prostitute is residing in or frequenting any place within the local limits of his jurisdiction. The sub-section (1) of Section 20 also empowers the Magistrate to impose prohibition on such person who is a prostitute from re-entering in local limits of his jurisdiction.

However, sub-section (3) of Section 20 imposes statutory obligation on the Magistrate that after service of the notice referred to in sub-section (1) and (2) of Section 20, he has to proceed to inquire into the truth of the information received. Sub-section (4) of Section 20 punishes the person who fails to comply with the order of the Magistrate.\textsuperscript{83}

\textit{Setting up of protective homes:} Section 21 of the Immoral Traffic (Prevention) Act empowers the State to establish as many protective homes and corrective institutions as are required for the purpose of rehabilitating the persons involved in the immoral practices. These protective homes and corrective institutions will be maintained in such manner as may be prescribed by the State Government. It may be pertinent to be reiterated that the Immoral Traffic (Prevention) Act is a social welfare legislation, therefore, it provides for rehabilitation and remedial measures also. This piece of legislation is not only penal in nature.\textsuperscript{84}

The protective homes and corrective institutions are to be established and licensed by the State Government and they are to be governed by the rules
laid down by the State Government in this regard and violation thereof is punishable under Section 20(4) of the Act.

Establishment of special Courts: Section 22 gives power to the State Government to establish special courts with the view to provide speedy trial of offences committed under the Immoral Traffic (Prevention) Act, 1956. Sub-section (4) of Section 22-A provides that the special Court established under this section, shall be deemed to be a court established under Section 16(1) of the Act and the provisions of the Code of Criminal Procedure, 1973 will be applied in such special Courts.

2. DOWRY PROHIBITION ACT 1961

This Act contains only ten sections. Section 1 deals with the short title, extent and commencement, section 2 defines the term “Dowry”. Sections 3 & 4 deal with the provisions relating to penalty for giving or taking or demanding dowry. Section 5 declares the agreement for giving or taking dowry to be void, Section 6 states that in certain circumstances giving or taking of dowry is permitted if it is for the benefit of the wife or her heirs, Sections 7 and 8 deal with the offence relating to the dowry prohibition. Sections 8-A and 8-B deal with the burden of proof in certain cases which lie in the prosecuted person, and he has to prove that he has not committed an offence under Section 3 or 4, whereas Section 8-B makes provision for appointment of the dowry prohibition officers to discharge certain functions, Sections 9 and 10 make provisions for the Central Government and the State Government to lay down rules for the purpose of enforcement of the Dowry Prohibition Act, 1961.

Certain provisions of the Indian Penal Code, 1860 such as Sections 304-B, 306, 300, 302, 405, 406, 498-A, Section 113-A and 113-B of the Evidence Act, 1872 and Section 174 and 198-A (3) have been made applicable to the Dowry Prohibition Act, 1961. It is, therefore, clear that the Dowry Prohibition Act, 1961 is not a complete Code/Act.
Purpose of Dowry Prohibition Act: In Soni Devraj Bhai Baber Bhai v. State of Gujarat, the Supreme Court observed that the social evil of dowry has been the bane of Indian society and continues to persist inspite of the women's liberation movement. Even though for eradication of this social evil, effective steps can be taken by the society itself and the social sanctions of the community can be more deterrent. Yet legal sanctions in the form of its prohibition and punishment are some steps in that direction. Thus, the Dowry Prohibition Act, 1961 was enacted to achieve this objective.

Meaning of the term "dowry": The term ‘dowry’ means any property or valuable security given either directly or indirectly by the parents of either party to a marriage to other party to the marriage or any other person at or before marriage in connection with the marriage of the said parties. In view of the present Act the term dowry means, any property given by the parents of the girl to the bridegroom or his family members at or before or any time after the marriage, in connection with the marriage of the said parties.

In view of the amendment, the provisions contained in Section 2 of the Dowry Prohibition Act, 1961, it has widened the scope of dowry by providing that any property or valuable security given or agreed to be given either directly even before or at any time after the marriage in connection with the marriage of the said parties would amount to dowry.

In Venuri Venkateswar Rao v. State of A.P. it has been held that the lands to be given come within the definition of dowry. The Andhra Pradesh High Court observed in the present case that the definition of dowry was wide enough to include all sort of properties, valuable securities etc. given or agreed to be given directly or indirectly. Therefore, the amount of Rs. 20,000 and 3/2 acres of land agreed to be given at the time of marriage was nothing but dowry.

Expression “dowry: Liberal consideration to be given”: In L. V. Jadhav v. Shankarrao Abasaahab Pawar, the Apex Court observed that having regard to the dominant object of the Dowry Prohibition Act, 961 which is to stamp out
the practice of demanding dowry in any shape or form either before or after the marriage, the entire definition of the word “dowry” should not be imported into Section 4 which lays down that “if any person after the commencement of this Act, demands, directly or indirectly from the parents or guardian of a bride or bridegroom, as the case may be, any dowry, he shall be punishable with imprisonment which shall not be less than 6 months but which may extend to 2 years and with fine which may extend to ten thousand rupees”. It was held that having regard to the object of the Act a liberal construction has to be given to the word “dowry” as used in Section 4 of the Act to mean that any property or valuable security which if consented to be given on the demand being made would become dowry within the meaning of Section 2 of the Act. Further the object of Section 4 of the Act is to discourage the very demand for property or valuable security as consideration for a marriage between the parties thereto. Section 4 prohibits the demand for giving property or valuable security which demand, if satisfied, would constitute an offence under Section 3 read with Section 2 of the Act. There is no warrant for taking the view that the initial demand for giving of property or valuable security would not constitute offence and that an offence would take place only when the demand was made again after the party on whom the demand was made agreed to comply with it. The learned Magistrate was, therefore, right in proceeding on the basis that the allegations in the complaint *prima facie* constitute an offence under Section 4 of the Act and issuing processes to the respondents.

*Demanding dowry is a criminal offence:* In *Inder Raj Malik v. Sunita Malik*, it was held that demand of dowry has been made a criminal offence under Section 498-A of the Indian Penal Code, 1860 which was inserted by the amendment Act, 1983. If a woman is harassed by her husband or any relation of her husband to meet any unlawful demand of Dowry, such a demand is made punishable with imprisonment for a term which may extend to three years and with fine.
Whether indirect demand of dowry amounts to an offence: Whereas accused made demand of dowry indirectly by using joint bank accounts in two different banks and on the basis of evidence it has been proved that demand is nothing but a consideration for the marriage which amounts to “dowry”. To illustrate the point in State of Maharashtra v. Madhusudan and others, it was held that this is nothing but consideration for the marriage which constitute “dowry”.

Section 4-A of the Act imposes total prohibition on any advertisement in any newspaper, Journal or through any other media as consideration for the marriage. In other words, no advertisement can be made through any medium as consideration for the marriage of his son or daughter, by any person. If doing so such person shall be liable to be punished with imprisonment for a term which shall not be less than six months, it is minimum imprisonment provided under this section, and however, such imprisonment may be extended to five years with fine which may extend to fifteen thousand rupees.

In case of punishment imposed for less than six months, the Court is duty bound to record the reason for doing so.

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

Whether the suit for return of dowry is maintainable: In Ramebal v. Harihar Singh, on non-materialization of the marriage the father of the girl filed a suit for refund of the dowry. It was decreed by the Trial Court and decree was affirmed by the first appellate Court. But the Patna High Court on Second Appeal under Section 100 of the Code of Civil Procedure, 1973 dismissed the second appeal on the ground that the giving of dowry was prohibited by the Dowry Prohibition Act, 1961 and both the parties were in 'pari delicto', i.e. equally guilty in entering into an illegal contract.

The Madhya Pradesh High Court by holding the similar view in Babulal Sao v. Moolchand Jain, held that giving of presents before solemnization of marriage certainly come within the purview of dowry and the same is void in
view of Section 5 of the Dowry Prohibition Act. Thus, the Trial Court, as such, rightly non-decreed the suit for return of dowry in favour of the appellant.

Section 6 of the Act states that where any dowry is received on account of marriage to a person, that person shall transfer the dowry to the woman, i.e. bride or hold such dowry as trust for the benefit of the woman or bride. In other words the dowry or presents received by the bride on her marriage shall be treated as exclusive property vesting in her with right to use including the right to transfer.98

According to Section 7 of the Act offences committed under the Act are cognizable offences and no court inferior to that of Metropolitan Magistrate or Judicial Magistrate of First class shall try offences either on its own knowledge or on a police report or on complaint filed by an aggrieved person.99

Section 8 of the Dowry Prohibition Act, 1961 declares that offences committed under the Act are cognizable, non-bailable and non-compoundable. This provision connotes legislative intent to provide stringent measures regarding punishment with a view to prevent the social evil of dowry. A bare reading of Section 8 of the Dowry Prohibition Act shows that the Legislature has co-opted stringent measure to deal with the social evil of dowry. The current society is undoubtedly showing trend that the majority of today's society is considering economical aspect while settlement of marriage. In other words, the marriage is being commercialized in present day society. The evil of dowry must be suppressed and checked at any cost of any level. Such evil practice must be condemned; it is a blot on our civilized modern society.100

Section 8-A provides that any person prosecuted under the Act shall be under legal obligation to prove that he has not committed the offence for which he has been prosecuted. Section 8-A as inserted by the Amendment Act, 1986 is another stringent provision whereby the burden of proof regarding the offence under Sections 3 and 4 of the Dowry Prohibition Act, 1961, would lie on person who has been prosecuted for taking or abetting the taking of any
dowry.\textsuperscript{101}

Section 8-B of the Act makes provision regarding appointment of Dowry Prohibition officers if the State Government considers it necessary. The function and jurisdiction of such officers will be determined by the State Government under the Dowry Prohibition Act. However, sub-section (2) of Section 8-B broadly lays down the powers and functions of Dowry Prohibition officer. These are as follows:\textsuperscript{102}

(a) to ensure the compliance of the provisions of the Dowry Prohibition Act;
(b) to check the taking or abetting or demanding of dowry as far as possible;
(c) to collect evidence with the view to initiate prosecution of persons committing offences under the Act; and
(d) to perform any additional function as may be assigned to the Dowry Prohibition officer by the State Government which are specified in the rules made under the said Act.

Section 9 of the Dowry Prohibition Act empowers the Central Government to make rules for carrying out the purpose of the Dowry Prohibition Act Sub-section (2) of Section 9 states that such rules may provide for the form and manner regarding the lists of presents referred to Section 3(2) of the Act and trustful implementation of policy and execution of action with respect to the administration of the Dowry Prohibition Act.

Sub-section (3) of Section 9 makes mandatory provision that rules framed by the Central Government while exercising powers under Section 9 of the Act will be laid as soon as may be after it is made before each House of Parliament while it is in session. Thus, rules made by the Central Government under Section 9 of the Act will be notified in the Official Gazette and also to be approved by the Parliament. The rule making power of the Central Government has to be exercised in particular, and without prejudice to the generality of the foregoing power. Rules framed by the Central Government
under Section 9 of the Dowry Prohibition Act should not be contrary to the other provisions of the said Act.\textsuperscript{103}

Section 10 of the Dowry Prohibition Act provides for the rule making power of the State Government. Sub-section (1) of Section 10 states that the State Government may, by notification in the official Gazette, make rules for carrying out the purposes of the Dowry Prohibition Act.\textsuperscript{104}

3. THE MEDICAL TERMINATION OF PREGNANCY ACT, 1971

The Medical Termination of Pregnancy Act, 1971 provides for the termination of certain pregnancies and for matters connected therewith or incidental thereto by registered medical Practitioners.

When Pregnancies may be terminated by Registered Medical Practitioners

Section 3 of the Medical Termination of Pregnancy Act, 1971 provides that a registered medical practitioner under the following circumstances may terminate a pregnancy:-

(i) where the length of the pregnancy does not exceed twelve weeks, if a medical practitioner is; or

(ii) where the length of the pregnancy exceeds twelve weeks but does not exceed twenty weeks, if not less than two registered medical practitioners are, of the opinion formed in good faith; that-

(a) the continuance of the pregnancy would involve a risk to the life of the pregnant woman or of grave injury to her physical or mental health; or

(b) there is a substantial risk that if the child was born, it would suffer from such physical or mental abnormalities as to be seriously handicapped.

Consent: Pregnancy of a woman who is less than 18 years or who is mentally ill person can be terminated only with the consent in writing by her guardian.\textsuperscript{105}

Place where Pregnancy may be terminated

According to Section 4 of the Medical Termination of Pregnancy Act,
1971, pregnancy can be terminated either at a hospital established or
maintained by the Government or at a place which is approved by the
Government or district level committee constituted by that Government.¹⁰⁶

Protection of action taken in good faith

According to Section 8 of the Medical Termination of Pregnancy Act,
1971, if any registered medical practitioner causes any damage by anything
which is, in good faith, done or intended to be done under the Medical
Termination of Pregnancy Act, 1971, no suit or other legal proceedings can be
instituted against him.¹⁰⁷

4. THE INDECENT REPRESENTATION OF WOMEN
(PROHIBITION) ACT, 1986

This Act prohibits indecent representation of women through
advertisements or in publications, writings, paintings, figures or in any other
manner and for matters connected therewith or incidental thereto.

As defined under Section 2(c) of the Act, expression "indecent
representation of women" means the depiction in any manner of the figure of a
woman, her form or body or any part thereof in such a way as to have the effect
of being indecent or derogatory to, or denigrating women or is likely to
deprave, corrupt and injure the public morality or morals.¹⁰⁸

Prohibition of advertisements containing indecent representation of women:
As envisaged in Section 3 of the Act, no person shall publish or cause to be
published or arrange or take part in the publication or exhibition of any
advertisement, which contains indecent representation of women in any
form.¹⁰⁹

Prohibition of publication: According to section 4 of the Act no person shall
produce or cause to be produced, sell, let to hire, distribute, circulate or send by
post any book, pamphlet, paper, slide, film, writing, drawing, painting, photo
of books, pamphlets etc. containing indecent representation of women.
Provided that nothing in Section 4 shall apply to:

(a) any book, pamphlet, paper, slide, film, writing, drawing, painting, photograph, representation or figure:

(i) the publication of which is proved to be justified as being for the public good on the ground that such book, pamphlet, paper, slide, film, writing, drawing, painting, photograph, representation or figure is in the interest of science, literature, art, or learning or other general concurrent objects; or

(ii) which is kept or used bona fide for religious purposes;

(b) any representation sculptured, engraved, painted or otherwise represented on or in:

(i) any ancient monument within the meaning of the Ancient Monument and Archaeological Sites and Remains Act, 1958; or

(ii) any temple or on any car used for the conveyance of idols or kept or used for any religious purposes;

(c) any film in respect of which the provisions of Part II of the Cinematography Act, 1952 will be applicable.

Penalty: According to Section 6 of the Indecent Representation of Women (Prohibition) Act, 1986, any person who contravenes the provisions of Section 3 or Section 4 of the said Act shall be punishable on first conviction with imprisonment of either description for a term which may extend to two years and with fine which may extend to two thousand rupees and in the event of a second or subsequent conviction with imprisonment for a term of not less than 6 months but which may extend to 5 years and also with a fine not less than Rs. 10,000/- but which may extend to one lakh rupees.

5. THE COMMISSION OF SATI (PREVENTION) ACT, 1987

Sati is an awesome practice of Indian womanhood. It is a traditional practice of widow immolation. Sati is a crime peculiar to the Indian scenario. The custom of burning alive of any widow along with the dead body of
husband is popularly known as Sati. Relatives of the deceased male dying issueless instigate the widow of the deceased to commit suicide by burning on the pyre of her dead husband in order to grab the property of the deceased person. This age old practice prevailing among the Hindu community was first prohibited by enactment of law at the initiative of social reformer, Raja Rammohan Roy, more than a century ago.

The Commission of Sati (Prevention) Act, 1987, provides for punishment of death sentence for abettors of sati irrespective of whether it is murder or suicide. The glorification of sati is also made an offence punishable with seven years imprisonment by this Act.

6. THE NATIONAL COMMISSION FOR WOMEN ACT, 1990

Women in India, as is well known, have never been treated well even at home or while at work. The matter has all along been agitated inside and outside the Parliament by Parliamentarians, by common men, by organizations and societies for the welfare of the women. Several women activists and voluntary action groups had also been making persistent demands for setting up of a commission for women. Keeping in view the desirability of a commission for women at the national level the National Commission for Women Bill, 1990 was introduced in the Lok Sabha on 22nd May, 1990. Later on this Bill became an Act to be known as the National Commission for Women Act, 1990 w.e.f 30-8-1990.

Constitution of the National Commission for Women

According to Section 3(2) of the National Commission for Women Act, the Commission shall consist of:

(i) Chairperson, committed to the cause of women, to be nominated by the Central Government;

(ii) five members to be nominated by the Central Government from amongst persons of ability, integrity and standing who have had experience in law or
legislation, trade unionism, management of an industry or organization committed to increasing the employment potential of women, women's voluntary organizations (including women activists), administration, economic development, health, education or social welfare:

Provided that at least one member each shall be from amongst persons belonging to the Scheduled Castes and Scheduled Tribes, respectively;

(iii) Member Secretary to be nominated by the Central Government who shall be an expert in the field of management, organizational structure or sociological movement; or an officer who is a member of a civil service of the Union or of an all India service or holds a civil post under the Union with appropriate experience.

Functions of the National Commission for Women

According to Section 10 of the National Commission for Women Act, 1990, the National Commission for Women shall perform all or any of the following functions, namely:

(i) To investigate and examine all matters relating to the safeguards provided for women under the Constitution of India, 1950 and other laws;

(ii) To present reports to the Central Government annually and at such other times as the Commission may deem fit, reporting upon the working of those safeguards;

(iii) To make in such reports recommendations for the effective implementation of those safeguards for improving the conditions of women by the Union or any State;

(iv) To review, from time to time, the existing provisions of the Constitution of India, 1950 and other laws affecting women and recommend amendments thereto so as to suggest remedial legislative measures to meet any lacunae, inadequacies or shortcomings in such legislations;

(v) To take up the cases of violation of the provisions of the Constitution of
India, 1950 and of other laws relating to women with the appropriate authorities;

(vi) To look into complaints, and take *suo motu* notice of matters relating to:

(a) Deprivation of women's rights;

(b) Non-implementation of laws enacted to provide protection to women and also to achieve the objective of equality and development;

(c) Non-compliance of policy decisions, guidelines or instructions aimed at mitigating hardships and ensuring welfare and providing relief to women; and take up the issues arising out of such matters with appropriate authorities;

(vii) To call for special studies or investigation into specific problems or situation arising out of discrimination and atrocities against women and identify the constraints so as to recommend strategies for their removal;

(viii) To undertake promotional research so as to suggest ways of ensuring due representation of women in all spheres and identify factors responsible for impeding their advancement;

(ix) To participate and advise on the planning process of socio-economic development of women;

(x) To evaluate the progress of the development of women under the Union and any State;

(xi) To inspect or cause to be inspected a jail, remand home women's institution or other place of custody where women are kept as prisoners;

(xii) To fund litigation, involving issues affecting a large body of women;

(xiii) To make reports on any matter pertaining to women and in particular various difficulties under which women toil.

*Power of Women's Commission*

According to Section 10(4) of the National Commission for Women Act, 1990,
the National Commission for women shall have all the powers of a civil court trying a suit, in respect of the following matters, namely-

(a) summoning and enforcing the attendance of any person from any part of India and examining him on oath;
(b) requiring the discovery and production of any document;
(c) receiving evidence on affidavits;
(d) requisitioning any public record or copy thereof from any court or office;
(e) issuing commissions for the examination of witnesses and documents; and
(f) any other matter which may be prescribed.

Grants by the Central Government

As provided under Section 11 of the National Commission for Women Act, 1990, the Central Government is empowered to grant sum of money to the National Commission for Women, however, with prior approval of the Parliament. The Commission may spend such sum of money for the purpose of performing such functions as laid down under the said Act.114

Annual Report: Under Section 13 of the National Commission for Women Act, 1990, the National Commission for Women is duty bound to prepare annual report giving a full account of its activities during the previous financial year and forward a copy thereof to the Central Government.115 By virtue of Section 14 of the said Act annual report and audit report of the National Commission for Women shall be laid before the Parliament.116

7. THE PRE-CONCEPTION AND PRE-NATAL DIAGNOSTIC TECHNIQUES (PROHIBITION OF SEX SELECTION) ACT, 1994

This Act regulates the use of pre-natal sex determination techniques. It permits the use of pre-natal sex determination techniques for the purpose of detecting genetic or chromosomal disorders or certain congenital malformations or sex linked disorders and not for the purpose of killing the female
child in the mother's womb. The said Act has the following objectives:

(i) prohibition of the misuse of pre-natal diagnostic techniques for
determination of sex of foetus, leading to female foeticide;
(ii) prohibition of advertisement of pre-natal diagnostic techniques for
detection or determination of sex;
(iii) permission and regulation of the use of pre-natal diagnostic techniques for
the purpose of detection of specific genetic abnormalities or disorders;
(iv) permitting the use of such techniques only under certain conditions by the
registered institutions; and
(v) punishment for violation of the provisions of the proposed legislation.

Regulation of Genetic Counseling Centres, Genetic Laboratories and Genetic Clinics

According to Section 3 of the Pre-conception and Pre-natal Diagnostic
Techniques (Prohibition of Sex Selection) Act, 1994, genetic counseling
centres, genetic laboratories, genetic clinics, unless registered under the said
Act, cannot conduct or associate with, or help in, conducting activities relating
to pre-natal diagnostic techniques.

They cannot employ or cause to be employed or take services of any
person whether on honorary basis or on payment who does not possess the
prescribed qualification, medical geneticist, gynecologist, paediatrician, or
cause to be conducted or aid in conducting by himself or through any other
person, any pre-natal diagnostic techniques at a place other than a registered
place.  

Prohibition of Sex Selection

In terms of newly added Section 3-A of the Act, sex selection on any
issue, embryo, conceptus, fluid or gametes is prohibited.

Pre-condition to use Pre-natal Diagnostic Techniques

As provided under Section 4(3) of the Act, no pre-natal diagnostic
techniques shall be used or conducted unless the person qualified to do so is satisfied for reasons to be recorded in writing that any of the following conditions are fulfilled, namely:-

(i) age of the pregnant women is above 35 years;
(ii) the pregnant woman has undergone two or more spontaneous abortions or foetal loss;
(iii) the pregnant woman had been exposed to potentially teratogenic agents such as drugs, radiation, infection or chemicals;
(iv) the pregnant woman or her spouse has a family history of mental retardation or physical deformities such as, spastically or any other genetic disease;
(v) any other condition as may be specified by the Central Supervisory Board:

Provided that the person conducting ultrasonography on a pregnant woman shall keep complete record thereof in the clinic in such manner, as may be prescribed and any deficiency or inaccuracy found therein shall amount to contravention, unless contrary is proved by the person conducting such ultrasonography.

No person including a relative or husband of the pregnant woman shall seek or encourage the conduct of pre-natal diagnostic techniques on her except for the purpose as mentioned above.119

Consent of and Communication to Pregnant Woman

By virtue of Section 5 of the Act, 1994 pre-natal diagnostic procedure cannot be conducted unless:-

(i) all side and after effects of such procedures have been explained to the concerned pregnant woman;
(ii) her written consent is taken to undergo such procedures that has been explained in the language which she understands; and
(iii) a copy of her written consent is given to the concerned pregnant woman.
Communication of sex of the foetus by words, signs or in any other manner to the concerned pregnant women or her relations or any other person is prohibited.\textsuperscript{120}

\textit{Determination of sex prohibited}

According to Section 6 of the Act, no genetic counseling centres or Genetic laboratories or genetic clinic or any person can conduct or cause to be conducted pre-natal diagnostic techniques including ultrasonography for the purpose of determining the sex of foetus. No person can cause or allow to be caused selection of sex before or after conception.\textsuperscript{121}

\textit{Prohibition of Advertisement Relating to Pre-Conception and Pre-natal sex Determination Techniques}

Section 22 of the Act provides that the advertisement relating to pre-conception and pre-natal determination of a sex or sex selection is prohibited. Contravention of the said provision is punishable with imprisonment upto three years or and with fine up to ten thousand rupees.\textsuperscript{122}

\textbf{8. THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005}

The Protection of women from domestic Violence Act, 2005\textsuperscript{123} is an Act to provide for more effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family and the matters connected therewith or incidental thereto.

\textit{Power and Duties of Protection Officers, Service Providers:} Section 4 seeks to provide that any person who has reason to believe that an act of domestic violence has been or is being committed; such person may inform the Protection officer. It also lays down that the person who is providing the information in good faith shall be exempted from any civil or criminal liability for giving such information. Section 5 lays down the duties of a police officer, Protection Officer, service provider and the Magistrate to inform the aggrieved
person of her right to make an application for one or more relief under the Act, the availability of services of service providers and Protection Officers, her right to avail free legal services under the Legal Services authorities Act, 1987 and her right to file a complaint under section 498A of the IPC, wherever relevant. It is also envisaged that this section shall not relieve any police officer from his duty to proceed in accordance with law on receipt of information as to commission of a cognizable offence. Further, section 6 seeks to provide that the person in charge of a shelter home shall be bound to provide shelter to the aggrieved person on being requested by the aggrieved person or, on her behalf by a protection Officer or a service provider. Section 7 seeks to provide that the person in charge of the medical facility shall be bound to provide medical aid to the aggrieved person if requested by her or on her behalf by a protection officer or a service provider.

Section 8 empowers the State government to appoint, by notification in the official Gazette, such number of Protection Officers in each District, as it considers necessary and also to notify the area in which such Protection Officer shall exercise the powers conferred and discharge the duties imposed under the Act. It also provides that the Protection Officer shall, as far as possible, be women and shall possess such qualifications and experiences as may be laid down by the Central government by rules. The terms and conditions of service of the Protection Officer and the other officers subordinate to him may also be regulated by rules.

The Protection Officer may assist the Magistrate in discharge of his functions under the Act, make a domestic incident report to the Magistrate, make an application to the Magistrate if the aggrieved person so desires praying for issuance of a protection order, ensure legal aid to the aggrieved person under the Legal Services authorities Act, 1907, maintain a list of service providers, make available a safe shelter home if the aggrieved person so requires, get the aggrieved person medically examined if she has sustained bodily injuries, ensure that the order for monetary relief under section 20 of
this Act is complied with and executed in accordance with the provisions of the Code of Criminal Procedure, 1973, and perform such other duties as may be laid down by the Central Government, by rules. It also stipulates that the Protection Officer shall be under the control and supervision of the Magistrate and perform the duties assigned to him by the Magistrate and the Government by or under the Act.¹²⁴ Section 10 provides for the registration of certain entities with the State Government as a service provider for the purpose of this Act. Any voluntary association registered under the Societies Registration Act, 1860 or a Company registered under the Companies Act, 1956 or under any other law, having the objective of protecting the rights and interests of women by lawful means including providing legal aid, medical, financial or other assistance shall be eligible to be registered under the Act as per the procedure laid down by rules. This section also enumerates the powers of a service provider. Such powers include the power to record the domestic incidence report, to get the aggrieved person medically examined and to ensure that the aggrieved person is provided shelter in a shelter home, if she so requires. This section further provides immunity to the service provider or any member of the service provider for anything done or intended to be done in good faith under the Act, from any suit, prosecution or other legal proceeding.

Duties of Central and State Governments: The duties of the governments include wide publicity of the provisions of this Act, to give sensitization and awareness training on the issues addressed by the Act to the Government Officers including police officers and members of judicial service, to ensure effective coordination between Ministries and Departments dealing with law, home affairs, law and order, health and human resources in the services provided by them on the issues of domestic violence and to put in place protocols for the Ministries and courts concerned with the delivery of services to women under the provisions of this Act.¹²⁵

Procedure For Obtaining Orders Of Reliefs: The aggrieved person or Protection Officer or any other person on behalf of the aggrieved person may
present an application to the Magistrate seeking one or more relief under the Act including order for payment of compensation or damages without prejudice to the rights of such person to institute a suit for compensation or damages for the injuries sustained in the act of domestic violence committed by the respondent. While disposing of an application under sub-section (1), the Magistrate shall take into consideration any domestic incidence report received by him from the protection officer or the service provider. The amount paid or payable to the aggrieved person by an order made by the magistrate under the Act shall be set off against the amount of decree of compensation or damages passed by any court in favour of the aggrieved person. Sub-section (3) provides that the format and particulars of the application under this section shall be as nearly as possible correspond to the format laid down by the Central Government by rules. Sub-rules (4) and (5) provide that Magistrate shall fix the first date of hearing of the application ordinarily within three days of its receipt and shall endeavor to dispose of every application within sixty days of the first hearing. A notice of the date of hearing of an application for relief shall be given by the Magistrate to the Protection Officer who shall get it served by such means as may be prescribed by the Central Government on the respondent and on any other person within a maximum period of two days or such further reasonable time as may be allowed by the Magistrate. A declaration of service of notice made by the Protection Officer in the form set out by the Central Government by rules shall be a proof of service of notice. The Magistrate may secure the services of a suitable person preferably a woman whether related to the aggrieved person or not, including a person engaged in promoting family welfare for the purpose of assisting the court in the discharge of its functions. The Proceedings can be held in camera at the discretion of the Magistrate or if either party to the proceedings so desires. Every woman in domestic relationship shall have the right to reside in shared household and the aggrieved person shall not be evicted or excluded from the shared household by the respondent except in accordance with the procedure established by law.
Protection Orders by the Magistrate: The Magistrate may after giving the aggrieved person and the respondent an opportunity of being heard and on being prima facie satisfied that domestic violence has taken place or is likely to take place may pass a protection order in favour of the aggrieved person. A protection order may contain an order prohibiting the respondent from committing any act of domestic violence or aiding or abetting therein, entering the place of employment of the aggrieved person or if the person aggrieved is a child, its school, or any other place frequented by the aggrieved person or attempting to communicate in any form whatsoever with the aggrieved person without the leave of the Magistrate alienating any assets, operating bank lockers or bank accounts belonging to both parties jointly or to the respondent singly, including her stridhan or any other property held jointly or separately by them, causing violence to the dependents, other relatives or any person giving the aggrieved person assistance from domestic violence or committing any other act as specified in the protection order. Section 19 provides that the Magistrate may on being satisfied that domestic violence has taken place, pass a residence order restraining the respondent from dispossessing or disturbing the possession of the aggrieved person from the shared household, directing the respondent to remove himself from the shared household, restraining the respondent or his relatives from entering the shared household, restraining from alienating or disposing of or encumbering the shared household, restraining the respondent from renouncing his rights in the shared household except with the leave of the Magistrate, or directing the respondent to secure alternate accommodation for the aggrieved person of the same level as enjoyed by her in the shared household or to pay rent for the same. Sub-section (2) empowers the Magistrate to impose additional conditions and pass any other direction in order to protect the safety of the aggrieved person or her child. Subsection (3) provides for execution of a bond by the respondent for prevention of the domestic violence. Sub-section (5) empowers the Magistrate to pass an order directing the officer-in-charge of the concerned police station
to give protection to the aggrieved person or to assist in implementation of the
residence order. It is also provided in this section that the Magistrate may
impose on the respondent an obligation to discharge rent and other payments
and to direct the respondent to return to the aggrieved person her stridhan or
any other property or valuable security to which she is entitled. Further, section
20 empowers the Magistrate to pass orders for grant of monetary relief to the
aggrieved person from the respondent to meet the expenses incurred and losses
suffered including loss of earnings, medical expenses, loss of property and
maintenance of the aggrieved person and her children including maintenance
under, or in addition, to section 125 of Cr.P.C. 1973 or any other law for the
time being in force. Sub-section (2) provides that monetary relief shall be
adequate, fair and reasonable and consistent with the standard of living to
which the aggrieved person is accustomed. This Section also empowers the
Magistrate to order lump sum or monthly payments for maintenance. Sub­
section (6) provides that on the failure of the respondent to make payments of
the monetary relief, the Magistrate may direct the employer or a debtor of the
respondent to directly pay to the aggrieved person or to deposit with the court a
portion of the wages or salaries or debt due or accrued to the respondent.

Section 22 lays down that in addition to other reliefs as may be granted
under the Act, the Magistrate may, on an application by the aggrieved person,
pass an order directing the respondent to pay compensation or damages or both
to the aggrieved person for the injuries including for the mental and emotional
distress caused to her by domestic violence by the respondent. Section 24
provides for the supply of copies of orders passed by the Magistrate free of
charge to the parties to the application, the concerned police officer and the
service provider. Further, section 25 lays down that a protection order given
under the Act shall be in force till the aggrieved person applies for its
discharge. In case there is a change in the circumstances, the Magistrate may,
on application made by the aggrieved person or the respondent pass an order
altering, modifying or revoking any order made under the Act. Section 26 lays
down that any relief available under the Act may also be sought in any legal proceeding before a civil court, family court or a criminal court and that any relief which may be granted under the Act may be sought for in addition to and along with reliefs sought for in a suit or legal proceeding before a civil or criminal court. Sub-section (3) lays down that the aggrieved person shall be bound to inform the Magistrate of the reliefs obtained by her in any proceeding other than proceedings under the Act. The proceedings under the Act relating to application and orders for relief and offence of breach or protection under or interim protection order by the respondent shall be governed by the provisions of the Code of Criminal Procedure, 1973. The court may lay down its own procedure for disposal of applications for any relief or for ex parte order. An appeal from the order made by the Magistrate shall lie to the Court of Session within thirty days from the date of service of the order. Section 31 provides that a breach of protection order or an interim protection order by the respondent shall be an offence under this Act punishable with imprisonment of either description which may extend to one year or with fine which may extend to twenty thousand rupees or with both. Sub-section (2) provides that the offence of breach of protection order or interim protection order shall be tried as far as practicable by the Magistrate who had passed the order. Subsection (3) provides that Magistrate, while framing charges regarding breach of order, may also frame charges under section 498-A or any other provision of the Indian Penal code or the Dowry Prohibition Act, 1961 in case the facts disclose the commission of any offence under these laws.

After going through the legislative measures in India to control crimes against women in detail, it appears desirable to present in tabular form a brief summary of the above stated general and special penal laws to curb this menace.

4.5. Legislative Reforms in Rape Law

Sections 375 and 376 of the Indian Penal Code, which deal with the issue of rape, had remained unchanged in the statute books since 1860. The
amendment was the result of a sustained campaign against these antiquated laws following the infamous Supreme Court judgment in the Mathura rape case. Mathura, a 16-year-old tribal girl was raped by two policemen within a police compound. The session’s court acquitted the policemen on the ground that Mathura was habituated to sexual intercourse and hence she could not be raped. The High Court convicted the policemen and held that mere passive consent given under threat cannot be deemed as consent. The Supreme Court set aside the High Court judgment on the ground that Mathura had not raised any alarm and there were no visible marks of injury on her body.

The judgment triggered off a campaign for changes in rape laws. Redefining consent in a rape trial was one of the major thrusts of the campaign. The Mathura judgment had highlighted the fact that in a rape trial it is extremely difficult for a woman to prove that she did not consent beyond all reasonable doubt as was required under the criminal law. The major demand was that once sexual intercourse is proved, if the woman states that it was without her consent, then the court must presume that she did not consent. The burden of proving that she had consented should be on the accused. The second major demand was that a woman's past sexual history and general character should not be used as evidence.

The government’s response to the campaign was prompt. The Law Commission was asked to look into the demands and consequently prepared a report incorporating the major demands of the anti-rape campaign. The Commission recommended certain pre-trial procedures that women should not be arrested at night, a policeman should not touch a woman when he is arresting her, that the statements of woman should be recorded in the presence of a relative, friend or a social worker and that a police officer's refusal to register a complaint of rape should be treated as an offence. Based on these recommendations, the government presented a Bill to Parliament in August 1980. The demand that the onus of proof regarding consent should be shifted to the accused was accepted partial only in the cases of custodial rape, i.e. rape by
policemen, public servants, managers of public hospitals and remand homes and wardens of jails. The important provisions of the amendment were:

- Addition of a new section which made sexual intercourse by persons in a custodial situation an offence even if it was with the woman's consent.
- Introduction of a minimum punishment for rape – ten years in cases of custodial rape, gang rape, rape of pregnant women and minor girls under twelve years of age, and seven years in all other cases. Even though this was not the major demand, it turned out to be the most important ingredient of the amendment.

Amendments in Law Relating to Rape

Taking a serious note of the judicial criticism of the inadequacy of the law of rape manifested in a number of judgments of the Apex court and its failure to safeguard the rights of the innocent victims against the heinous crime against humanity, the Parliament in 1983 extensively amended the law of rape so as to make the law more realistic. The Chapter sub-heading and sections 375, 376, 376-A, 376-B, 376-C, and 376-D were substituted for sections 375 and 376 by Act 43 of 1983. Besides substantive law, procedural provisions under law of evidence and Criminal Procedure Code were also added to strengthen the law. Some of the important changes brought about by the Act 43 of 1983 and other provisions are being discussed as under:

(a) Consent of a woman of unsound mind: or under intoxication etc. Before amendment Act of 1983, there were five clauses in section 375 IPC. A new clause 'fifthly' has been inserted in place of the then existing clause 'fifthly', which has been renumbered as clause 'sixthly' to section 375 IPC. The new clause 'fifthly' to section 375 invalidates the consent of the woman for the purpose of the offence of rape, if the woman is of unsound mind, or is under the influence of intoxication at the relevant time. Such consent will not be considered as a valid consent and the accused will be held liable for the offence.
(b) Presumption of absence of consent of women and burden of proof of innocence on accused: The Evidence Act, 1872 was amended by inserting section 114-A drawing a conclusive presumption as to the absence of consent of the woman in case of prosecution of rape under section 376(2) clauses (a),(b),(c),(d),(e) and (g) IPC, shifting the burden of proof of innocence on the accused.

(c) Prohibition on disclosure of identity of the victim: Section 228-A IPC clause (1) as discussed earlier prohibits the disclosure of the identity of victims in rape cases under sections 376, 376-A, 376-B, 376-C or 376-D IPC related to 'custodial rape'.

(d) Proceedings in camera: Section 327 Cr.P.C. 1973 which confers the right of an open court trial has been amended by making the provisions for trial of rape cases or an offence under sections 376-A to 376-D IPC in camera and prohibition of publication of trial proceedings in such cases without the prior approval of the court.

(e) Consent of victim in custodial rape is invalid: Section 376-B to section 376-D IPC comprise a group of sections that create a new category of offences known as custodial rape because in such cases the consent of the victim is obtained under the compelling circumstances which is invalid. Such persons occupy supervisory positions and can take undue advantage of their authority.

(f) Intercourse with wife during judicial separation prohibited: Section 376-A IPC makes sexual intercourse with one's own wife under a decree of separation punishable.

(g) Minimum punishment for rape: Section 376 IPC has provided for a minimum of seven years of imprisonment under clause (1) and ten years under clause (2) of section 376 IPC for rape.

has disallowed putting of questions about the character of the prosecutrix in cross-examination.

(i) Minimum mandatory punishment of seven years in ordinary rape and ten years in custodial rape were introduced: In case of rape of a woman of less than 12 years of age, the offender was made liable to be punished with rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable to fine.

Short Comings in the existing law relating to Rape: No doubt, the aforesaid changes made in rape law have been proved to be milestone yet there are number of drawbacks in the existing law which may be summarized as follows:

(a) except in very limited cases of custodial rape and gang rape, burden of proof is on the prosecution.

(b) In Special categories of cases of Custodial rape, though they are cognizable, but no arrest can be made without warrant or without an order of magistrate.


There has been a long-standing demand for modifications in the existing statutory provisions relating to rape, therefore, Law Commission of India in its 172nd report on the Review of Rape Law in March 2000 has suggested various changes in The Indian Penal Code, 1860, The Code of Criminal Procedure, 1973 and The Indian Evidence Act, 1872.

The Commission has reviewed the laws of Common Law Countries such as Canada, Australia and Britain etc. and has tried to adapt them to Indian context. The Commission has recommended changes for widening the scope of the offence in Section 375 and to make it gender neutral. Various changes have been recommended in Sections 376, 376A, 376-B, 376-C, 376D, 376-E and
377 of the IPC and enhancement of punishment in section 509 of the IPC has also been recommended. In order to block the loopholes in procedural provisions, the commission has also recommended various changes in the Code of Criminal Procedure, 1973 and in the Evidence Act, 1872. The commission has not agreed with some of other suggestions offered by the women’s organizations, as inclusion of marital rape in the category of sexual offences, retention of the provision which impart discretion to the judiciary for reducing minimum mandatory punishment and not providing a statutory definition of 'consent' in the amended sections. In its report, the Commission has submitted the following changes:

(1) Changes Recommended by the commission in Indian Penal Code, 1860:

(i) Amendment in Section 375: The commission has suggested that the word ‘rape’ be substituted by the word ‘sexual assault’. The existing definition of rape covers only the penile/vaginal penetration. This renders various other forms of equally grave penetration as less serious offence.

The proposed section 375 defines sexual assault as, (a) penetrating the vagina (which term shall include the labia major), the anus or urethra of any person with (i) any part of the body of another person or (ii) an object manipulated by another except where such penetration is carried out for proper hygienic or medical purposes;

(b) manipulating any part of the body of another person so as to cause penetration of the vagina (which term shall include the labia major), the anus or the urethra of the offender by any part of the other person’s body;

(c) introducing any part of the penis of a person into the mouth of another person; (d) engaging in cunnilingus or fellatio; or

(e) continuing sexual assault as defined in clauses (a) to (d) above in circumstances falling under any of the six following descriptions:

First – Against the other person’s will.
Secondly - Without the other person's consent.

Thirdly- With the other person’s consent when such consent has been obtained by putting such other person in fear of death or hurt.

Fourthly - Where the other person is a female, with her consent, when the man knows that he is not the husband of such other person and that her consent is given because she believes that the offender is another man to whom she is or believe herself to be lawfully married.

Fifthly - With the consent of the other person, when at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by the offender personally or through another of any stupefying or unwholesome substance, the other person is unable to understand the nature and consequences of that to which such other person gives consent.

Sixthly - With or without the other person’s consent, when such other person is under sixteen years of age.

With a view to widening the scope of the definition of rape, the explanation to this section makes it clear that mere penetration is sufficient to constitute the offence of sexual assault.

The Law Commission has not included marital rape within the category of rape. Not entertaining the demand of women’s organizations for deletion of the exception in the existing section so as to include marital rape in the category of offence. The Commission has maintained the exception to section 375. However, the commission has suggested to increase the age of wife from fifteen years to sixteen years.

(ii) Amendment in Section 376: Only two substantial changes have been proposed in section 376 by the Law commission. This section has been modified keeping in view the changes suggested in section 375 by the Commission. In view of the rising incidences of sexual abuse of children by their own close relatives or by the person in position of trust, authority and within the safety home or institutions, the Commission has proposed inclusion
of a proviso in this section. This proviso to sub section suggests severe punishment for the cases where sexual assault is by the father, grandfather, or brother. To widen the scope further, the proviso also has the words, “or any other person being in a position of trust or authority towards the other person” after the words “father, grandfather or brother”. The second suggested change is related to age of wife. The age is raised from ‘fifteen’ to ‘sixteen’.

(iii) No Change in discretionary power of the Judges: Though the scope of rape has been widened by the Commission but no change has been suggested by the Commission with regard to the discretionary powers exercised by the judges in awarding the sentence. The experience reveals that in a number of cases this discretionary power has been misused by the lower judiciary where lesser punishment has been awarded, ignoring the mandatory minimum prescribed punishment. However, the proviso requires that for awarding lesser punishment special and adequate reasons should be incorporated.

(iv) No change in Section 376-A: The Commission is of the view that the provisions of section 376-A should be kept intact.

(v) Changes in section 376-B, 376-C and 376-D: Conclusively, it may be said that through these changes the amount of punishment has been enhanced i.e. from 5 years maximum imprisonment to 5 years mandatory imprisonment which may extend to 10 years.

(viii) Insertion of a new section 376-E in IPC i.e. Unlawful sexual contact:

(1) Whoever, with sexual intent, touches, directly or indirectly, with a part of the body or with an object, any part of the body of another person not being the spouse of such person, without the consent of such other person, shall be punished with simple imprisonment for a term which may extend to two years or with fine or with both

(2) Whoever, with sexual intent, invites, counsels or incites a young person to touch, directly or indirectly, with a part of the body or with an object, the body of a person, including the body of the person who so invites, counsels or incites or touches with sexual intent, directly or indirectly with a part of the body or
with an object any part of the body of a young person shall be punished with imprisonment of either description which may extend to three years and shall also be liable to fine.

(3) Whoever, being in a position of trust or authority towards a young person or is a person with whom the young person is in a relationship of dependency, touches directly or indirectly with sexual intent with a part of the body or with an object, any part of the body of such young person, shall be punished with imprisonment of either description which may extend to seven years and shall also be liable to fine.

This newly inserted section lays down higher punishment for offences committed on young persons and also if committed by the close relatives or the persons in position of trust or dependency.

(ix) Deletion of section 377 IPC: The commission has proposed deletion of section 377 in view of above proposed changes in the IPC.

(x) Amendment in Section 509: The only change suggested by the commission in this section is the enhancement of punishment. The proposed punishment is three years and it also casts liability of fine.

(xi) Insertion of a new Section 166-A:

Whoever, being a public servant, (a) knowingly disobeys any directions of the law prohibiting him from requiring the attendance at any place of any person for the purpose of investigation into an offence or other matter, or (b) knowingly disobeys any other direction of the law regulating the manner in which he shall conduct such investigation, to the prejudice of any person, shall be punished with imprisonment for a term which may extend to one year or with fine or with both.

(2) Changes Proposed in the Criminal Procedure Code 1973:

(i) Insertion of sub-Section (3) and (4) in Section 160: These sub-sections have been proposed to be inserted in Cr. P.C. by the commission with a view to make the complaint and investigation procedure less stressful for the victims.
The fear of narration of the shameful incident to police officers is still a very big deterrent factor for the victim and their families to report the case of sexual abuse. The commission has recommended the recording of the statement before a female police officer. In the absence of the same, either before any female government servant residing in the vicinity or by a female authorized by an organization interested in the welfare of women. If female is not available, the police officer will record the reasons and record the statement of the female victim in the presence of the relatives of the victim.

(ii) Substitution of the proviso to sub-section (1) of section 160: This section deals with the power of a police officer to require the attendance of witnesses, who appear to be acquainted with the facts and circumstances of the case being investigated by him. It also casts an obligation upon the person so required to attend.

(iii) Insertion of a new section 164-A: This section has been proposed for the purpose of laying down the procedure to be followed during medical examination of the victim by a registered medical expert with the consent of the victim or her relatives as the case may be. It is the duty of the doctor to expedite the examination and prepare the report giving necessary details.

(iv) Insertion of section 53-A: This section has been introduced for the purpose of medical examination of the accused person by a registered medical practitioner. It is the duty of the doctor to expedite the examination and prepare the report giving all necessary details.

(v) Amendment of sub-section (6) of section 198: It is proposed that “sexual intercourse” shall be substituted by the words “sexual assault” and the word “fifteen” shall be substituted by the word “sixteen”.

(vii) Amendment in Section 273: The commission has recommended that a proviso to the following effect be added under section 273, above the explanation clause therein:

“Provided that where the evidence of a person below sixteen years who is
alleged to have been subjected to sexual assault or any other sexual offence, is to be recorded, the court may, take appropriate measures to ensure that such person is not confronted by the accused while at the same time ensuring the right of cross examination of the accused”.

(3) Changes Recommended by the Commission in the Indian Evidence Act, 1872:

(i) Modification in Section 114-A: “Presumption as to absence of consent in certain prosecutions for sexual assault - In a prosecution for sexual assault under (a) or clause (b) or clause (c) or clause (d) or clause (e) or clause (g) of sub-section (2) of section 376 of the Indian Penal Code, 1860 where, sexual intercourse by the accused is proved and the question is whether it was without the consent of the other alleged to have been sexually assaulted and such other person states in his/her evidence before the court that he/she did not consent, the court shall presume that he/she did not consent.

(ii) Deletion of clause (4) of section 155 of the Evidence Act: Clause (4) of section 155 deals with the prosecution of rape. It lays down that when a man is prosecuted for rape or an attempt to ravish, it may be shown that the prosecutrix was of generally immoral character. This provision has been one of the most troublesome and objectionable provisions in the Evidence Act. The Commission suggested for deletion of this provision.

(iii) Amendment in Proposed section 53-A of Evidence Act: For prosecution under section 376, 376-A, 376-B, 376-C, 376-D, 376-E or for attempt to commit any such offence, where the question of consent is in issue, evidence of the character of the victim or of his/her previous sexual experience with any person shall not be relevant on the issue of such consent or the quality of consent.

(iv) Insertion of clause (4) in Section 146 of the Evidence Act: In section 146 of the Evidence Act, clause (4) is recommended to be inserted i.e. “In a prosecution for an offence under section 376, 376-A, 376-B, 376-C, 376-D or
376E or attempt to commit any such offence, where the question of consent is in issue, it shall not be permissible to adduce evidence or to put questions in the cross-examination of the victim as to his/her general immoral character, or as to his/her previous sexual experience with any person for proving such consent or the quality of consent”.

4.7. Concluding Remarks

If oppression were to be tackled by enacting laws then the last two decades could be declared as the golden era for Indian women, when laws were given on a platter. During this period every single issue concerning violence against women was taken up by the women's movement resulting in the legislative reform. The enactments conveyed a positive picture of achievement but the statistics reveal a different story. Each year the number of reported cases of rape and unnatural death are increasing. The rate of convictions under the lofty and laudable legislations is dismal and hence, their deterrent value is lost. Some enactments turned out to be more ornamental or paper tigers.

The foremost question in the public mind is why the enactments are ineffective in tackling the problem. The answer would lead to a complex analysis of the processes involved. First, the laws are full of loopholes. There is a wide disparity between the initial demands raised by the movement as well as the recommendations by Law Commissions and the final enactments. Many positive recommendations of the expert committees do not find a place in the Bills presented to Parliament. While one organ of the State, the legislature, is over-eager to portray a progressive pro-women image by passing laws for the asking, the other organs, the executive and the judiciary do not express even this token measure of concern. Their functioning is contradictory to the spirit of the enactment. The defective laws are welcomed as a first stepping stone towards women’s empowerment. But the motive beneath the superficial concern of the State goes unnoticed. The question as to who would ultimately benefit by these enactments is seldom asked. Once the legislation is enacted the campaigns and movements loose their relevance. There is a lull and a false
sense of achievement resulting in complacency. Hence, the impact of the enactments in court proceedings is not monitored with the same zeal.

The enactments uniformly focused on stringent punishment rather than plugging procedural loopholes, evolving guidelines for strict implementation, adequate compensation to the victims and a time limit for deciding cases. The apprehension of legal experts both within and outside the women's movement that more severe punishment would lead to fewer convictions proved wrong. The question confronting us today is whether social change and gender justice can be brought about merely by enacting more stringent laws.

The rape campaign is a classic example of the impact of public pressure on the judiciary. As can be observed from the discussion on the rape campaign, judgments in favour of victims of rape were delivered before the amendment when the campaign was at its peak as compared to the post-amendment period. Perhaps public pressure is a better safeguard to ensure justice than ineffective enactments. The Report of the Joint Committee of Parliament quoted the observations of Jawaharlal Nehru to indicate the role of legislation in dealing with this social evil as under:

Legislation cannot by itself normally solve deep rooted social problems. One has to approach them in other ways too, but legislation is necessary and essential, so that it may give that push and have that educative factor as well as the legal sanctions behind it which help public opinion to give a certain shape.

Ironically, the laws discussed here which are supposed to protect women from violence, actually penalize the women. Instead of empowering women, the laws have served to strengthen the State. A powerful State conversely means weaker citizens, which includes women. And the weaker the women, the more vulnerable they will be to male violence. The cycle is vicious. Once a girl child is raped, a social stigma is attached to her. In such case besides other measures there should be social rehabilitation of victim. Due to many reasons the rape victims hesitate to bring the case to the notice of
police and resultanty most of such cases go unreported leaving the offenders to roam free to commit more crimes in the society

The law commission through its recommendations, made various changes in Indian Penal Code, 1860, Criminal Procedure Code, 1973 and Indian Evidence Act, 1872 and has tried to solve many problems of the victims of rape but these recommendations are not enough. The educated mass should come forward to support the victims of rape and report the matter to the police authorities immediately. Only the law cannot solve all the social problems. Therefore, in addition to the Governmental authorities; social organizations, women's organizations, voluntary groups, NGO's etc. should also come forward for the cause of rape victims. The Human Rights Commission should play an active role to check such hatred events of rape in India. There is an urgent need to strictly enforce and adhere to the law relating to rape. The guidelines propounded by the Supreme Court from time to time should be followed in letter and spirit. There is an urgent need of change in the attitude of the police authorities in the matters of rape cases. They should have a sympathetic attitude towards the victims of rape and the necessary support should be provided to the victims.
REFERENCES

2. Arts. 15 and 16, Constitution of India.
3. Art. 38 directs the State to secure a social order for the promotion of welfare of the people. In clause (1), there is mention of social justice which obviously includes gender justice and in clause (2), there is a direction to endeavour to eliminate inequalities in status, facilities and opportunities.
6. Ibid.
17. AIR 1985 SC 1648.
18. Supra note 16.
22. People's Union for Civil Liberties v. Union of India, AIR 1997 SC 568.
26. Ibid.
31. The Hindustan Times, 1-3 (July 24, 2003).
34. Sarla Mudgal and Others v. Union of India, AIR 1995 SC 1531.
37. 1991 Cr.L.J. 2163.
38. 1994(1) (Cr.) 865.
40. (1993) 1 DMC 62 (Raj.)
42. 1984 Cr. L.J. (NOC) 122 (Orissa)
44. (1929) 51 All. 1888.
45. Gopichand Fattumal, 1960 (3) Bom L.R. 408.
52. AIR 1998 SC 95.
57. 2000 (5) SCC 207.
61. AIR 1979 SC 185.
64. 1975 (1) MLJ 22.
69. sec. 4.
70. Sec. 5.
71. Sec. 6.
72. Sec. 7.
73. Sec. 8.
74. Sec. 9.
75. Sec. 10.
76. Sec. 11.
77. Sec. 13.
78. Sec. 14.
79. Sec. 15.
80. Sec. 16.
81. Sec. 17.
82. Sec. 19.
83. Sec. 20.
84. Sec. 21.
85. Sec. 22.
86. Sec. 22-A.


92. AIR 1983 SC 1219.


95. Sec. 4, Dowry Prohibition Act, 1986.

96. AIR 1962 Pat. 343 (DB).

97. (1989) 11 D.M.C. 42 (M.P.)

98. Sec. 6, Dowry Prohibition Act, 1986.

99. Sec. 7.

100. Sec. 8

101. Sec. 8-A.

102. Sec. 8-B

103. Sec. 9

104. Sec. 10

105. Sec. 3(3)(j) of the Medical Termination of Pregnancy Act, 1971.

106. Sec. 4.

107. Sec. 8.

108. Sec. 2(c) of the Indecent Representation of Women (Prohibition) Act, 1986.

109. Sec. 3.
110. Sec. 4.
111. Sec. 6.
112. Sec. 3 of the National Commission for Women Act, 1990.
113. Sec. 10.
114. Sec. 11.
115. Sec. 13.
117. Sec. 3. Sec. 3 of the Preconception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (57 of 1994).
118. Sec. 3-A.
119. Sec. 4.
120. Sec. 5.
121. Sec. 6.
122. Sec. 22.
123. The protection of women from Domestic Violence Bill, 2005 was passed by the Lok Sabha on 24th August, 2005, and by the Rajya Sabha on 29th August, 2005.
125. Sec. 11.
126. Sec. 12.
127. Sec. 13.
128. Sec. 15.
129. Sec. 16.
130. Sec. 17.
132. Sec. 30.
133. Sec. 31.

135. Flavia Agnes, “There is More to Violence than Dowry and Death”. *Indian Express*, (May 24, 1987).


137. The government of India in 1979 referred to the Law Commission of India for revision of the law of Rape, which submitted its report for changes both in substantive and procedural laws. A Comprehensive criminal Law (Amendment) Bill, 1980 was introduced in Parliament which culminated into the Criminal Law (Amendment) Act, 43 of 1983.

138. Sec. 327 of Cr.P.C. – court to be open:

(1), the inquiry into and trial of rape or an offence under sections 376, 376A, 376B, 376C or 376D of the Indian Penal Code shall be conducted in camera.

(2) Notwithstanding anything contained in sub-section (1), where any proceedings are held under sub-section (1), it shall not be lawful for any person to print or publish any matter in relation to such proceedings, except with the previous permission of the Court.

139. Sec. 146, Indian Evidence Act, 1972: Questions lawful in cross examination: when a witness is cross examined, he may be asked any questions which tend-

1) to test his veracity

2) to discover who he is and what is his position in life, or

3) to shake his credit, by injuring his character, although the answer to such questions might tend directly or indirectly to criminate him or might explore or tend directly or indirectly to expose him to a penalty or forfeiture.
(Provided that in a prosecution for rape or attempt to rape, it shall not be permissible to put questions in the cross-examination of the prosecutrix as to her general immoral character)
