CHAPTER FOUR

The Procedural Laws and other Laws

One of the most pressing needs that has been highlighted at all the seminars, workshops and meetings of women activists, academics and the public is the need for legal education. Understood broadly, the term covers education and information about the legal processes in relation to women. This need arises out of the need to demystify the law. To a layman, the law is absolute, something distant and incomprehensible. Its statements are viewed as incontrovertibly right and just. The law, however, is not impartially fair and just, constructed, as it is by humans and reflecting therefore, its creator's biases.

The most notable point to consider in the case of the law is that it is almost entirely a product of male conceptualisation and may thus be blind to woman concerns. In fact, there is a basic injustice built into the system of justice, which has not been brought out forcefully or often enough. What we need is a primer explaining in simple language the law as it affects a women's personal, social and political life. We need to understand why, how and to what extent the law and its supporting structures perpetuate the oppression of women in the country.

What women need help with is arriving at the real sources of their exploitation and oppression. Basically, understanding institutions like religion, family, the Constitution of India and the law, that work in consonance to build a
patriarchal society. All religions prescribe the inferior status of women in the family and in society, and the law has helped to strengthen and uphold this belief. Laws are made by men, enforced by men and interpreted by men against a set of internalised patriarchal values. What women workers and non-legal persons need is knowledge on the legal system and its workings.

(A) DEMYSTIFYING THE LAW – IT IS MALE DOMINATED: With Independence came the chance for a breakthrough in women's fight for justice and equality denied by religion and tradition. The country was also now in a position to construct a secular law, a common civil code which did not discriminate between men and women. And thus was drafted the Constitution of India. Now, the Constitution of India guarantees every citizen certain Fundamental Rights; Equality before Law - Prohibition of Discrimination on Grounds of Religion, Race, Caste, Sex or Birth of Place, Equality of Opportunity in matters of Public Employment, Freedom of Speech. And Article 25.1 of the Freedom of Religion states:

'Subject to public order, morality and health and to other provisions of this Part, all persons are equally entitled to freedom of consciences and the right freely to profess, practice and propagate religion'.

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In a series of cases dealing with the family and the law, the patriarchal family value within the law emerges as the oppressor and as the basis of the unequal status of women. Whether it is rape or restitution of conjugal rights, the woman is more often than not the loser because of the prevalence of double standards of morality. The basic explanation given for this is "in order to perpetuate and reinforce male power man needs to have control over women's body, her reproductive powers so that he can have control over the children and the family". The most shocking injustice relates to prostitutes. In 1975, an Indian judge could actually state:

"The professional prostitute being a social outcaste may be periodically punished without disturbing the usual course of society.... The man, however, is something more than a partner in an immoral act; he discharges important social and business relations, is a father or brother responsible for the maintenance of others, and has commercial or industrial duties to meet. He cannot be imprisoned without damaging society". 119

i.e. those with influence in society!

119 The International Women's Year, Article
DIVORCE, LAW & THE INDIAN WOMEN: The effects of the legislation that has been passed on this issue have been positively regressive. The Family Courts Act, 1984 aims to provide for Family Courts with a view to promote conciliation in, and secure speedy settlement of disputes relating to marriage and family affairs. But while the aims may be laudable, the mechanics of implementation are not. For a start, according to its own edicts, there's a judge responsible for bringing about conciliation, supposedly 'committed to the need to protect and preserve the institution of marriage and to promote the welfare of children.' So already a position vis-à-vis the women have been taken. Lawyers will not be ordinarily allowed, the proceedings will be in secret and once an agreement has been reached there will be no appeal. Again, fine if you are a man. For the woman it means having to adjust to the current inequalities within the family. Furthermore, private hearing ensures that there is no social protest irrespective of the severity of the crime.

Sexual Harassment and Rape Laws in India

Sexual harassment and rape are two sides of the same coin. Both showcase the power of man to dominate that of women. Both have one victim-'women'. Both are barbaric in nature; but many people extenuate sexual harassment to rape, just because the victims are not physically harmed. Whereas in rape- the victim is ravished like an animal for the fulfillment of desire and lust of another man. Both have the same object- to undermine the integrity of
the victim, physically as well as mentally. While a murderer destroys the physical frame of the victim, a rapist degrades and defiles the soul of a helpless female.

Sexual harassment is nothing less than the showcasing of male dominance. Given an opportunity, such men (those committing sexual harassment) would try fulfilling their desire. However, it is not true that all cases of sexual harassment are such—where the accused is guilty of conceiving the intention of a sexual intercourse. But it also depends on each individual case and circumstances, because it may well be the case that the woman may also be at fault.

The question is not whether women have the right to bodily integrity, as this right is already adumbrated under Article 21 of the Constitution of India. Article 21, which guarantees the right to life and liberty to men and women both alike—but whether it is really imperative to take a decisive step towards extirpating this evil and make the contemporary and future society a safe haven for women.

According to the official statistics of 1991, one woman is molested every 26 minutes. These statistics refer to the reported cases. Whereas, if the unreported cases were to be included, it would be a matter of seconds—rather than minutes. Investigation of most cases are not reported by victims because of various reasons such as family pressures, the manner of the police, the unreasonably long and unjust process and application of law; and the resulting consequences thereof.
In instances where women have reported such illegal and unwelcome behavior, there have been significant victories in the past decade or so. Also considering the fact the sometimes these victories are achieved after a wait of a decade or so.

In Rupan Deol Bajaj Vs. K PS. Gill, a senior IAS officer, Rupan Bajaj was slapped on the posterior by the then Chief of Police, Punjab- Mr. K P S. Gill at a dinner party in July 1988. Rupan Bajaj filed a suit against him, despite the public opinion that she was blowing it out of proportion, along with the attempts by all the senior officials of the state to suppress the matter.

The Supreme Court in January, 1998 fined Mr. K P S. Gill Rs.2.5 lacs in lieu of three months rigorous imprisonment under Sections 294 and 509 of the Indian Penal Code.

In N Radhabai Vs. D. Ramchandran, when Radhabai, Secretary to D Ramchandran, the then social minister for state protested against his abuse of girls in the welfare institutions, he attempted to molest her, which was followed by her dismissal. The Supreme Court in 1995 passed the judgment in her favour, with back pay and perks from the date of dismissal.
Vishaka’s case\textsuperscript{122}: It was in 1997 in Vishaka Vs. State of Rajasthan and others, that for the first time sexual harassment had been explicitly—legally defined as an unwelcome sexual gesture or behaviour whether directly or indirectly as

1. Sexually coloured remarks
2. Physical contact and advances
3. Showing pornography
4. A demand or request for sexual favours
5. Any other unwelcome physical, verbal/non-verbal conduct being sexual in nature.

It was in this landmark case that the sexual harassment was identified as a separate illegal behaviour. The critical factor in sexual harassment is the unwelcomeness of the behaviour. Thereby making the impact of such actions on the recipient more relevant rather than intent of the perpetrator— which is to be considered.

In the abovementioned case, the judgment was delivered by J.S. Verma. CJ, on behalf of Sujata Manohar and B.N.Kirpal, JJ., on a writ petition filed by ‘Vihsha’- a non Governmental organization working for gender equality by way of PIL seeking enforcement of fundamental rights of working women under Article.21 of the Constitution. The immediate cause for filing the petition was the alleged brutal gang rape of a social worker of Rajasthan. The Supreme Court in

\textsuperscript{122} AIR, 1997 S.C. 3001

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absence of any enacted law (which still remains absent- save the Supreme Court guidelines as stated hereunder) to provide for effective enforcement of basic human rights of gender equality and guarantee against sexual harassment, laid down the following guidelines:

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

   a) Express prohibition of sexual harassment which includes physical contact and advances, a demand or request for sexual favours, sexually coloured remarks, showing pornographic or any other unwelcome physical, verbal/ non-verbal conduct of sexual nature should be noticed, published and circulated in appropriate ways.

   b) The rules and regulations of government and public sector bodies relating to conduct and discipline should include rules prohibiting sexual harassment and provide for appropriate penalties in such rules against the offender.

   c) As regards private employers, steps should be taken to include the aforesaid prohibitions in the Standing Orders under the Industrial Employment (Standing Orders) Act, 1946.

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

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

3. Victims of sexual harassment should have the option to seek transfer of the perpetrator or their own transfer.

As stated by the Supreme Court, these guidelines are applicable to:

a) The employer or other responsible persons or other institutions to prevent sexual harassment and to provide procedures for the resolution of complaints;

b) Women who either draw a regular salary, receive an honorarium, or work in a voluntary capacity- in the government, private or organized sector come under the purview of these guidelines.

Preventive Steps:

1. Express prohibition of sexual harassment should be notified and circulated.

2. Inclusion of prohibition of sexual harassment in the rules and regulations of government and public sector.
3. Inclusion of prohibition of sexual harassment in the standing orders under the Industrial Employment (Standing Orders) Act, 1946 by the private employers.

4. Provision should be made for appropriate work conditions for women.

Procedure pertaining to filing of complaints:

1. Employers must provide a Complaints Committee which is to be headed by a woman; of which half members should be women.

2. Complaints Committee should also include an NGO or other organization- which is familiar with sexual harassment.

3. Complaints procedure should be time bound.

4. Confidentiality of the complaints procedure has to be maintained.

5. Complainant or witnesses should not be victimized Or discriminated against- while dealing with complaints.

6. The Committee should make an annual report to the concerned Government department and also inform of the action (if any) taken so far by them.

Miscellaneous Provisions:

1. Guidelines should be prominently notified to create awareness as regards the rights of the female employees.
2. The employers should assist the persons affected, in cases of sexual harassment by outsiders or third parties.

3. Sexual harassment should be discussed at worker's meetings, employer-employee meetings and at other appropriate forums.

4. Both Central and State governments are required to adopt measures including legislations to insure that private employers also observe these guidelines.

A K.Chopra’s case\textsuperscript{123}, is the first case in which the Supreme Court applied the law laid down in Vishaka's case\textsuperscript{124} and upheld the dismissal of a superior officer of the Delhi based Apparel Export Promotion Council who was found guilty of sexual harassment of a subordinate female employee at the place of work on the ground that it violated her fundamental right guaranteed by Article 21 of the Constitution.

In both the above mentioned cases the Supreme Court observed, that "In cases involving Human Rights, the Courts must be alive to the International Conventions and Instruments as far as possible to give effect to the principles contained therein- such as the Convention on the Eradication of All forms of Discrimination Against Women, 1979 [CEDAW] and the Beijing Declaration directing all state parties to take appropriate measures to prevent such discrimination."

\textsuperscript{123} Apparel Export Promotion Council Vs. AK Chopra AIR, 1999 S.C. 625
\textsuperscript{124} Vishaka Vs. State of Rajasthan and others AIR, 1997 S.C. 3011
The guidelines and judgments have identified sexual harassment as a question of power exerted by the perpetrator on the victim. Therefore sexual harassment in addition to being a violation of the right to safe working conditions is also a violation of the right to bodily integrity of the woman.

Provisions of the Indian Penal Code:

In cases where the accused sexually harasses or insults the modesty of a woman by way of either obscene acts or songs or by means of words, gesture, or acts intended to insult the modesty of a woman, he shall be punished under Sections 294 and 509 respectively.

Under Sec. 294 the obscene act or song must cause annoyance. Though annoyance is an important ingredient of this offence, it being associated with the mental condition, has often to be inferred from proved facts. However, another important ingredient of this offence is that the obscene acts or songs must be committed or sung in or near any public place.

Section 509 of IPC, comes into effect when there is an intention to insult the modesty of any woman by the offender by uttering any word, making any sound or gesture or by exhibiting any object, with the intention that such word or
such sound be heard, or that such gesture or object be seen by such a woman, or by intruding upon the privacy of such a woman.

Thus, this Section requires:

1. Intention to insult the modesty of a woman.
2. The insult be caused by
   i) Uttering any word or gesture, or
   ii) Exhibiting any object with the intention that such word, gesture, or object be heard or seen by such a woman, or
   iii) By intruding upon the privacy of such woman.

Rape laws in India:

"The law of rape is not just a few sentences. It is a whole book, which has clearly demarcated chapters and cannot be read selectively. We cannot read the preamble and suddenly reach the last chapter and claim to have understood and applied it."125

In the Mathura rape case,126 wherein Mathura- a sixteen year old tribal girl was raped by two policemen in the compound of Desai Ganj Police station in

125 Kiran Bedi., Joint Commissioner, Special Branch
126 Tukaram, 1978 Cr. LJ 1864 S.C.
Chandrapur district of Maharashtra. Her relatives, who had come to register a complaint, were patiently waiting outside even as the heinous act was being committed in the police station. When her relatives and the assembled crowd threatened to burn down the police chowky, the two guilty policemen, Ganpat and Tukaram, reluctantly agreed to file a panchnama. The judgment however turned out to be in favour of the accused. Mathura was accused of being a liar. It was stated that since she was 'habituated to sexual intercourse' her consent was voluntary; under the circumstances only sexual intercourse could be proved and not rape.

On appeal the Nagpur bench of the Bombay High Court set aside the judgment of the Sessions Court, and sentenced the accused namely Tukaram and Ganpat to one and five years of rigorous imprisonment respectively. The Court held that passive submission due to fear induced by serious threats could not be construed as consent or willing sexual intercourse. However, the Supreme Court again acquitted the accused policemen. The Supreme Court held that Mathura had raised no alarm; and also that there were no visible marks of injury on her person thereby negating the struggle by her. The Court in this case failed to comprehend that a helpless resignation in the face of inevitable compulsion or the passive giving in is no consent. However, the Criminal Law Amendment Act, 1983 has made a statutory provision in the face of Section 114 (A) of the Evidence Act, which states that if the victim girl says that she did no
consent to the sexual intercourse, the Court shall presume that she did not consent.

In Mohd. Habib Vs State\textsuperscript{127}, the Delhi High Court allowed a rapist to go scot-free merely because there were no marks of injury on his penis- which the High Court presumed was a indication of no resistance. The most important facts, such as the age of the victim (being seven years) and that she had suffered a ruptured hymen and the bite marks on her body were not considered by the High Court. Even the eye-witnesses who witnessed this ghastly act, could not sway the High Court's judgment. Another classic example of the judicial pronouncements in rape cases is the case of Bhanwari Devi, wherein a judge remarked that the victim could not have been raped since she was a dalit while the accused hailed from an upper caste- who would not stoop to sexual relations with a dalit. In another instance of conscience stirring cases, Sakina- a poor sixteen year old girl from Kerala, who was lured to Ernakulam with the promise of finding her a good job, where she was sold and forced into prostitution. There for eighteen long months she was held captive and raped by clients. Finally she was rescued by the police- acting on a complaint filed by her neighbour. With the help of her parents and an Advocate, Sakina filed a suit in the High Court- giving the names of the upper echelons of the bureaucracy and society of Kerala. The suit was squashed by the High Court, while observing that it is improbable to believe that a man who desired sex on payment would go to a reluctant woman; and that the version of the victim was not so sacrosanct as to be taken for granted.

\textsuperscript{127} 1989 Cr.LJ 137 Delhi
Whereas, in State of Punjab Vs. Gurmit Singh, the Supreme Court has advised the lower judiciary, that even if the victim girl is shown to be habituated to sex, the Court should not describe her to be of loose character.

The Supreme Court has in the case of State of Maharashtra Vs. Madhukar N. Mardikar, held that "the unchastity of a woman does not make her open to any and every person to violate her person as and when he wishes. She is entitled to protect her person if there is an attempt to violate her person against her wish. She is equally entitled to the protection of law. Therefore merely because she is of easy virtue, her evidence cannot be thrown overboard." Also the Bandit Queen case, which depicts the tragic story of a village girl. Phoolan Devi- who was exposed from an early age to the lust and brutality of some men. She was married to a man old enough to be her father. She was beaten and raped by him. She was later thrown out of the village- accused of luring boys of the upper caste. She was arrested by the police and subjected to indignation and humiliation. Was also kidnapped and raped by the leader of dacoits and later by the leader of a gang of Thakurs- who striped her naked and paraded her in front of the entire village. This is truly one story that shows the apathy of the existing society.
In Chairman, Railway Board Vs. Chandrima Das\textsuperscript{131}, a practicing Advocate of the Calcutta High Court filed a petition under Article 226 of the Constitution of India against the various railway authorities of the eastern railway claiming compensation for the victim (Smt. Hanufa Khatoon)- a Bangladesh national- who was raped at the Howrah Station, by the railway security men. The High Court awarded Rs.10 lacs as compensation. An appeal was preferred and it was contended by the state that:

\begin{enumerate}
  \item The railway was not liable to pay the compensation to the victim for she was a foreigner.
  \item That the remedy for compensation lies in the domain of private law and not public law. i.e. that the victim should have approached the Civil Court for seeking damages; and should have not come to the High Court under Article 226.
\end{enumerate}

Considering the above said contentions, the Supreme Court observed

"Where public functionaries are involved and the matter relates to the violation of fundamental rights or the enforcement of public duties, the remedy would be avoidable under public law. It was more so, when it was not a mere violation of any ordinary right, but the violation of fundamental rights was involved- as the

\textsuperscript{131} AIR, 2000 SC 988
petitioner was a victim of rape, which a violation of fundamental right of every person guaranteed under Article.21 of the Constitution.\textsuperscript{132}

The Supreme Court also held that the relief can be granted to the victim for two reasons- firstly, on the ground of domestic jurisprudence based on the Constitutional provisions; and secondly, on the ground of Human Rights Jurisprudence based on the Universal Declaration of Human Rights, 1948 which has international recognition as the 'Moral Code of Conduct'- adopted by the General Assembly of the United Nation.

After having studied the case laws, it is necessary to also study the definition of Rape as given in the Indian Penal Code, 1860. As per Section 375 of IPC a man is said to commit the offence of rape with a woman under the following six circumstances:

1. Sexual intercourse against the victims will,
2. Without the victims consent,
3. With her consent, when her consent has been obtained by putting her or any person that she may be interested in fear of death or hurt,
4. With her consent, when the man knows that he is not her husband,

\textsuperscript{132} Ibid.
5. With her consent, when at the time of giving such consent she was intoxicated, or is suffering from unsoundness of mind and does not understand the nature and consequences of that to which she gives consent,

6. With or without her consent when she is under sixteen years of age.

Further explanation provided to the section states that penetration is sufficient to constitute the sexual intercourse necessary to constitute the offence of rape, whereas the exception leaves out marital rape altogether if the wife is not under fifteen years of age.

**Marital Exception:**

In R Vs. R\(^{133}\), the House of Lords widened the scope of criminal liability by declaring that the husband could be charged as a principal offender in the rape of his wife. This decision seems to have obliterated the protection of the husband from such prosecution under the doctrine of marital exemption. This exemption was based upon the belief under which the wife was regarded as the husbands' chattel. She was supposed to have given a general consent to her husband as a natural implication of the marriage. This has now become an outdated view of marriage in England. However, the above decision of the House of Lords has not been followed in India- where marital exemption to the husband 'still exists'.

\(^{133}\) (1991) 4 ALL ER 481 (HL)
Section. 375 therefore requires:

a) Sexual intercourse by a man with a woman;
b) The sexual intercourse must be under any of the six circumstances given in the section.

Criminal Law Amendment Act, 1983:

The Criminal Law Amendment Act has substantially changed Sections.375 and 376 of the IPC. Several new sections have been introduced therein- viz. Sections. 376(A), 376(B), 376(C), 376(D) of the IPC.

Section. 376(A) punishes sexual intercourse with wife without her consent by a judicially separated husband.

Section. 376(B) punishes for sexual intercourse by a public servant with a woman in custody.

Section. 376(C) punishes sexual intercourse by superintendent of jail, remand house, etc. whereas,
Section. 376(D) punishes sexual intercourse by any member of the management or staff of a hospital with any woman in that hospital.

These new sections have been introduced with a view to stop sexual abuse of women in custody, care and control by various persons- which though not amounting to rape were nevertheless considered highly reprehensible.

**Attempt to Rape:**

In cases where an indecent assault is made upon the person of a woman, but where rape is not committed- the culprit is charged with Section 354 of IPC, because unless the Court is satisfied that there was determination in the accused to gratify his passion at any cost, and inspite of all resistance, such person is not charged with rape.

Section 354 of the IPC prescribes punishment for anyone who assaults or uses criminal force to any woman with intent to outrage her modesty. An indecent assault upon a woman is punishable under this section. Rape is punished under Section.376; but the offence under this Section is of less gravity than rape. And also because a person who is guilty of attempting rape cannot be allowed to escape with the lesser penalty of this section.
An indecent assault, i.e., an assault which right minded persons would consider as indecent—accordingly any evidence explaining the defendants conduct, or whether any admission by him or otherwise is admissible to establish whether he intended to commit an indecent assault, as is stated under Section 21 sub clause (2) of the Evidence Act, which reads:

"Section 21 (2): An admission may be proved by or on behalf of the person making it, when it consists of statements of the existence of any state of mind or body, relevant or in issue, made at or about the time when such state of mind or body existed, and is accompanied by conduct rendering its falsehood improbable."

Impediments to Justice:

In the present circumstances when offences against women are on the rise—when young girls are raped by their doctors, by presidential guards in broad daylight, the definition of rape to be of any deterrence—falls extremely inadequate. It does not address forced penetration of objects and parts of the body into the vagina and anus; and forced oral or anal intercourse. It also does not recognize other forms of sexual assaults—like protracted sexual assault by relatives, etc. as aggravated forms of rape. This causes grave injustice to many
victims. In many cases of child rape, the child has been penetrated through fingers or by objects or been force to perform oral or anal sex; yet this is not considered rape by the Courts.

Adding to this is Section 155(4) of the Evidence Act, which allows the victim to be questioned of her past sexual history- which the defense uses to humiliate the victim in the Courtroom. One of the major obstacles in delivering justice in rape cases is the poor quality of investigations. The reason behind this ranges from gender bias and corruption to the general inefficiency of the police. In many cases the police have even refused to lodge the FIR or have lodged incomplete FIR. The victims are not taken for prompt medical examination, because in cases of rape, or attempt to rape- medical examination of the victim and of the accused soon after the incident often yields a wealth of corroborative evidence. Therefore, such an opportunity should not be lost by the police.

Inspite of Supreme Court judgments to the contrary, lower court judges often insist on evidence of physical resistance or marks of injuries to hold that a woman has not consented. A woman’s evidence without corroboration is not considered sufficient.

The long time that is taken to complete a rape trial often by allowing senseless adjournments; and the giving of evidence by the victim in the presence
of the accused and the harsh cross examination in the Court are some other major obstacles.

As observed by Krishna Iyer, J. in Rafique's case\textsuperscript{134}:

"When a woman is ravished, what is inflicted is not mere physical injury but the deep sense of some deathless shame... judicial response to Human Rights cannot be blunted by legal bigotry."

Therefore rape laws in order to be of great deterrence, must have a cooperative victim, professional investigation, diligent prosecution; and an expeditious trial. For otherwise it shall not be the law, that fails, but the applicants, the process and application. Failure of law reflects the failure of the society to protect and serve humanity. In view of the above, the Supreme Court has laid down the following guidelines for the trial of rape cases\textsuperscript{135}.

1. The complaints of sexual assault cases should be provided with legal representation. Such a person should be well acquainted. The Advocates role should not merely be of explaining to the victim the nature of the proceedings, to prepare for the case and assist her, but to provide her with guidance as to how she might obtain help of a different nature from other agencies- for e.g. psychiatric consultation or medical assistance.

\textsuperscript{134} 1980 Cr. LJ 1344 SC
\textsuperscript{135} Delhi Domestic Working Womens Forum Vs. UOI (1995) 1 SCC 14
2. Legal assistance should be provided at the police Station, since the victim may be in a distressed state. Guidance and support of a lawyer at this stage would be of great help.

3. The police should be under a duty to inform the victim of her right to a counsel before being interrogated.

4. A list of lawyers willing to act in these cases should be kept at the police station.

5. Advocates shall be appointed by the Court on an application by the police at the earliest, but in order that the victim is not questioned without one, the Advocate shall be authorized to act at the police Station before leave of the Court is sought or obtained.

6. In all rape trials, anonymity of the victim must be maintained.

7. It is necessary to setup Criminal Injuries Compensation Board with regard to the Directive Principles contained under Article. 38(1) of the Constitution of India. As some victims also incur Substantial losses.

8. Compensation for the victims shall be awarded by the Court on the conviction of the offender and by the Criminal Injuries Compensation
Board—whether or not a conviction has taken place. The Board will take into account pain, suffering, shock as well as loss of earnings due to pregnancy and child birth if this accrued as a result of rape.

Unfortunately a woman in our country belongs to a class or group of society who are in an disadvantaged position on account of several social barriers and impediments and have therefore, been victims of tyranny at the hands of men with whom they, unfortunately, under the Constitution enjoy equal status.

The courts and the legislature have to make many changes if the laws of rape are to be any deterrence. The sentence of punishment, which normally ranges from one to ten years, where on an average most convicts get away with three to four years of rigorous imprisonment with a very small fine; and in some cases, where the accused is resourceful or influential—may even expiate by paying huge amounts of money and get exculpated. The courts have to comprehend the fact that these conscienceless criminals—who sometimes even beat and torture their victims—who even include small children, are not going to be deterred or ennobled by such a small time of imprisonment. Therefore, in the best interest of justice and the society, these criminals should be sentenced to life imprisonment.
However, if they truly have realized their mistake and wish to return to society, the Court and jail authorities may leave such men on parole; but only after they have served a minimum of half the sentence imposed on them. It is outright clear that sexual offences are to be excoriated, but if death sentence is given to such convicts—so as to deter the rest, then no doubt that the graph of rape cases will come down considerably—but it may also happen that those who commit such offences—simply to leave no witnesses or evidence, may even kill their victims and dispose off their bodies (whereas it is observed that in most cases—it is the victim who is the only source of evidence in most cases), thereby frustrating the main object of the Indian Penal Code and the legislature.

Studying the laws, the process, the application of those laws, one thing is certain— the entire structure of justice needs an over haul, otherwise the victim shall no longer the woman, but humanity.

(E) MEDICAL TERMINATION OF PREGNANCY ACT

Although 11 million abortions are performed annually in India, abortion is still looked upon as a family planning technique. A government survey found that "more women in Maharashtra opt for abortions as a measure of family planning as compared to other states."
The Medical Termination of Pregnancy Act was passed in 1971. The Act was intended to grant women freedom from unwanted pregnancies, especially when there was social censure or medical risk involved. Apart from these benefits, it also ensured that abortion services became easily accessible. However, even though the law made abortion legal, not many people have taken advantage of the legally available facilities for the termination of pregnancy.

The aim of the Act is to allow for the termination of certain pregnancies by registered medical practitioners. If someone who is not a registered medical practitioner terminates a pregnancy, it would constitute an offence punishable under the Indian Penal Code.

Sadly, even though the Indian law is one of the most liberal of its kind in the world, as far as the general trend goes, abortion is used as a method of family planning, more than anything else.

(2) The rights of the pregnant woman

Whenever a woman requests that her pregnancy be terminated, she must be informed of her rights under the Act.
Also, whenever a pregnancy has been terminated, the medical practitioner should record the prescribed information. However, the name and address of the woman, who has requested or obtained a termination of pregnancy, should be kept confidential, unless she herself chooses to disclose that information.

(3) Inaccessibility of MTP

The best feature about the Medical Termination of Pregnancy Act is that it permits abortion on socioeconomic grounds. It recognizes that the anguish of an unwanted pregnancy, could constitute a "grave injury to the mental health of the pregnant woman," and could thus justify an abortion.

However, merely legalising abortion has not helped matters. Even though abortion was made legal in 1971, women still take recourse to illegal methods, including seedy non-medical abortion techniques and disreputable clinics.

Twenty-nine years after the law was passed, most people still remain ignorant about the law. The lack of skilled practitioners and medical facilities aggravates the problem. Bent under the weight of social taboos and the condemnation of society, women are unable to make an informed choice about abortion.

We should make it easier for them. Without getting entangled in the pro-choice vs. pro-life debate, we must make the pregnant woman aware that, having considered all angles of the issue, if she decides to terminate her pregnancy, a legal method is available to her.
The Dowry Menace

The practice of giving dakshina during the marriage had its origin in the sublime sentiments of parents and relatives of a bride. Today, as dowry, it has gained the characteristics of a market transaction and women are killed, burned, commit suicide or get thrown out of their house. It is a unique form of violence experienced by women India. Dowry is a social scourge and public opinion has to be mobilized against this cancerous evil. It cannot be contained by only legal and police action.

The memorable words of Mahatma Gandhi — “acceptance of dowry is a disgrace for the young man who accepts it as well as perhaps a dishonour for the woman folk” — should ring in the ears of every unmarried young man or woman. Unfortunately, even with the passage of time and spread of education, the cancer is showing no signs of abatement.

With the course of time, dowry has become a widespread evil, and it has now assumed menacing proportions. Surprisingly, it has spread to other communities, which were traditionally non-dowry taking communities. Cases have come to public notice where brides, on account of their failure to bring the
promised or accepted dowry have been beaten up, kept without for food for days together, locked up in dingy rooms, tortured physically and mentally, strangulated or burned alive or led to commit suicide.

In places where traditionally there is an absence of caste of dowry based marriage system (such as the tribal communities of the far-east Indian states or predominantly caste-free Muslim, Christian, or Buddhist majority areas), dowry death are still not rampant. Elsewhere, dowry-related violence on women is out-of-control due to the following reasons:

1) Retention to the caste system,
2) Undermining of the women by the religious orthodox and social patriarch making herself and her family vulnerable to socio-economic pressure and extortion,
3) ever-increasing greed of the bride-groom and his family,
4) an economically strangled hyper-populated society non-supportive of unmarried women, and
5) a morally depraved political system run by pro-status quo conservatives.

With a view to eradicating the rampant social evil of dowry from the Indian society, Parliament in 1961, passed the Dowry Prohibition Act, which applies, not
merely to Hindus but all people, Muslims, Christians, Parsis and Jews. But did the Act did not prove effective and the evil of dowry continued to reign supreme.

With a view to give teeth to the Law, many amendments were made to the existing Law. The legislature intent is clear: to curb menace of dowry with a firm hand. It must be remembered that since these crimes are generally committed in the privacy of residential homes and in secrecy, independent of direct evidence is not easy to get. The members of the husband's family are not likely to dispose against him. There is no body at moment to record the women's degradation.

When this is taken in the light of the principle of criminal courts that every accused is presumed to be honest until is guilt is established beyond a reasonable doubt, it becomes very difficult for the courts to convict the accused. The whole burden of proof is upon the prosecution side. A little lacuna here or there and the accused family get the benefit of doubt. Circumstances loudly demand that there should be some burden of proof on the family in whose home a young married women is lost by burning or otherwise. Some burden will naturally fall upon them to make the position if an adverse presumption is drawn against them.

That is why the legislature, by introducing Sections 113-A and Section 113-B in the Evidence Act, tried to strengthened the prosecution hand by permitting a presumption to be raised when certain foundational facts are
established and the unfortunate even has taken place within seven years of the marriage. The period of seven years is considered to be turbulent one after which the legislature the couple would have settled down in life. If her husband or his family members subject a married woman to cruelty or harassment, Section 498-A of Indian Penal Code would be attracted.

If such cruelty of harassment was inflicted by the husband or his relative in connection with any demand for dowry immediately preceding death by burns and bodily injuries or in abnormal circumstances within seven years of marriage, such husband or relative is deemed to have caused her death and is liable to be punished under Section 304-B IPC. When the question at issue is whether a person is guilty of causing a dowry death, if the woman was subjected by such person to cruelty or harassment in connection with any demand for dowry, Section 113-B Evidence Act provides that the court shall presumed such person had caused the dowry death.

The new section creates a presumption against the husband and his family. The presumption is that even if it was a case of suicide, the family must have abetted it by practicing cruelty upon her. The affect of the new provision is that if some proof is available of the fact that a married woman was subjected to cruelty of her husband or his family members and she has committed within seven years of marriage the court may presume that the suicide had been abetted by her husband or his family members. This may be called presumption
of abetment. The court will raise the presumption only after taking into account all the other circumstances of the case.

Dowry death is defined in Section 304-B of IPC. It covers a kind of death, which is not natural, occurring within seven years of marriage, and is proceeding by cruelty or harassment in connection with dowry. Section 304-B is a special provision, which is inserted by the amendment in 1986 to deal the dowry death. It is a substantive provision creating a new offence and not merely a provision effecting a change in procedure for trial of a pre-existing substantive offence.

Awakening of the collective consciousness is the need of a day. For this, a wider social movement is necessary. The role of the courts, under the circumstances, assumed a great importance. The courts are expected are to deal with such cases in a realistic manner so as to further the object of the legislation.

One of the cardinals of the interpretation in such case is that a penal statute must be strictly construed. The courts have, thus, to be watchful to see that emotions or sentiments are not allowed to influence their judgment, one way or the other, and that they do not ignore the golden thread passing through criminal jurisprudence that an accusation must be established beyond a reasonable doubt. The must carefully assess the evidence and not allow either suspicion or surmise or conjectures to take the place of proof in their zeal to stamp out the evil from the society while at the same time not adopting the easy
course letting technicalities or minor discrepancies in the evidence result in acquittal of an accused. They must critically analyse the evidence and decide the case in a realistic manner.