CHAPTER-4

VARIOUS DIMENSIONS OF FEMALE FOETICIDE AND REGIONAL DIFFERENCE IN VARIOUS PARTS OF INDIA

In India domestic violence is the most endemic and widespread form of violence. Despite its prevalence, it is only recently, as a result of relentless effort by women's organisations, that violence against women in the home has received any public attention. Domestic violence cuts across education and income levels occurs in both joint and nuclear families. It is not necessarily related to alcohol abuse. A very little research has been done on this subject and this is largely because, like in the rest of the world, in India too, there is a tendency to overlook the incidence of the phenomenon with only the few heinous cases attracting media and public attention.

Not much research has been done in India for variety of reasons. Firstly, the semi sacred nature of the family in India society makes research into family violence a taboo. Secondly, research into the family has been largely devoted to the study of joint family which diverted attention from family conflicts in general and physical violence in particular. Thirdly, paucity of research on family violence can be attributed to the apathetic attitude of society which has relegated intra-family to believe that physical conflicts in the family do not constitute violence.147

The age old phenomenon of wife-beating has unique manifestation in India. In most Indian homes, wife-beating is in fact one of the most accepted crimes committed against women. This problem is not confined to one particular strata of society alone. It exists everywhere though in different forms.\textsuperscript{148} In India, the wife-beating seems to get camouflaged under the term dowry-deaths. The deaths which occurs within the home is the ultimate manifestation of the violence suffered by most Indian women in varying degrees.\textsuperscript{149}

If statistics are to be believed, almost every six hours, somewhere in India, a young married women is burnt alive, beaten to death or forced to commit suicide. Atleast 20\% married women aged between 15 to 49 years experience marital violence at some point in their lives, many on an almost continual basis. In one study of battered women it was found that the percentage distribution of causes of violence against married women were dowry demands, extra marital affairs and bigamy, alcohol and gambling were the highest. The analysis revealed that for more than 50 percent of the cases, regular beating was a fact of life. Besides manual beating, 10 percent of the women were assaulted with instruments. Another study of dowry victims shows that one in every four was murdered or driven to commit suicide and more than half i.e. 61.3 percent were through out of their husbands house after a long drawn out period of harassment and torture. According to another study the victims were mostly young i.e. 18-30 years, less educated than their spouses, dependent on husbands on in-laws for their living and mostly died from burn injuries. It has also been argued that it is not only a woman's


dependence with makes her vulnerable; a wife in a high status job may also be subjected to violence.\footnote{Pawar, M.S., "Women and Family Violence Policies and Programmes", cited in MalavikaKarlekar, "Domestic Violence", Eco & Pol Weekly, July 4, 1998, p. 1747.}

A detailed discussion on wife abuse, has rebutted convincingly, that the popular myths which surround the phenomenon of wife beating in India such as middle class women do not get beaten, the victim of violence is a small, fragile helpless women belonging to the working class, the wife beater is a man who is frustrated in his job, an alcoholic, or a paranoid person, aggressive in his relationships. Nor was it true that the so-called loving husbands did not beat their wives or that woman provokes men to beat them. Yet, many of these myths seem to pervade the analysis of wife-beating and feminine expectations in Indian society.

For instance, based on an analysis of cases which had come to the Delhi-based women's organisation, Saheli, it as evident that wife-beating was common among, all social classes as it "is a reflection of the power relationship between a husband and wife", which mirrors a woman's secondary social status.\footnote{Saheli, "Wife Battering : Creating Choices for Individual Women, the Role of Government and Issues Facing the Women's Movement", Paper presented at the National Workshop on Family Violence Against Females, New Deli, February 15-18.} However, the pattern of violence differs from one class to another, with the whole neighbourhood being witness when a slum-dweller beats his wife to the extremely private nature of a middle class professionals physical oppression of his spouse.

Another area about which universally little is known and hardly discussed, is that of marital rape : in India, despite some thinking along these lines by feminists and legal experts, there has as yet been no amendment in law to include rape within marriage. The Only two exceptions being, firstly, if the wife is below 15 years of age and
secondly, if the wife is living separately under a decree of separation. Though figures on marital rape as well as other sexually demeaning and violent acts are difficult to obtain, however discussions with counsellors working with abuse women indicated that a very large percent of their clients were tortured with forced sexual intercourse. Feminine socialisation which stresses docility, compliance and shame predisposes a wife to accept a range of physical behaviour from her spouse. It would not be too extreme to hypothesis that male physical violence in marriage is related to sexual activity: detailed interviews and discussions at the women's shelter of battered women quite often led to admission of sexual excess; when a woman resisted, she was beaten, or if she did not satisfy her husband's demands (which could quite often be perverse in nature) the outcome was physical abuse.\textsuperscript{152}

It is indeed ironical that for long, the family, viewed as an individuals ballast against the world becomes the arena for legitimate physical and mental oppression of women; which the legal and police systems have, after 1975 become more receptive to certain excesses, yet much remains unstated, invisible and repressed.\textsuperscript{153} Domestic Violence against women is a difficult and intractable health and social problem in India. The overwhelming conclusion is that wife-beating is not only deeply entrenched, but also that attitudes uniformly justify wife-beating, and few women would opt out of an abusive marriage.

4.1 Causes of Domestic Violence

There is no one single factor to account for violence perpetrated against women. Increasingly, research has focused on the inter-

\textsuperscript{153} Ibid., p. 1748.
relatedness of various factors that should improve our understanding of the problem within difficult cultural contexts. Several complex and interconnected institutionalised social and cultural factors have kept women particularly vulnerable to the violence directed at them, all of them manifestations of historically unequal power relations between men and women. Factors contributing to these unequal power relations include: socio-economic forces, the family institution where power relations are enforced, fear of and control over female sexuality, belief in the inherent superiority of males and legislation and cultural sanctions that have traditionally denied women an independent legal and social status.\footnote{UNICEF, 2000, Innocenti Digest no. 6, Florence, Italy. :Unicef, Innocenti Research Centre, p. 7.}

4.2 Consequences of Domestic Violence

Domestic violence is a heinous offence against the society. It has many consequences on the progressive wheel it means women.

4.2.1 Health Consequences

Domestic violence against women leads to far-reaching physical and psychological consequences, some with fatal outcomes. While physical injury represents only a part of the negative health impacts on women, it is among the more visible forms of violence. Assaults result in injuries ranging from bruises and fractures to chronic disabilities such as partial or total loss of hearing or vision, and burns may lead to disfigurement. The medical complications can range from hemorrhage and sterility to severe psychological trauma. Studies in many countries and also in India have shown high levels of violence during pregnancy resulting in risk to the health of both the mother and the unborn foetus. In
the worst cases, all of these examples of domestic violence can result in the death of the women – murdered by her partner.155

4.2.2 Denial of Fundamental Human Rights

Perhaps the most crucial consequence of domestic violence against women is the denial of fundamental human rights to them. International human rights instruments such as a Universal Declaration of Human Rights, adopted in 1948, the Convention on the Elimination of all form of Discrimination against Women, adopted in 1979, and the Convention on the Rights of the Child, adopted in 1989, affirm the principles of fundamental rights and freedoms of every human being. Both the Convention on the Elimination of all form of Discrimination against Women and the Rights of the Child, are guided by a broad concept of human rights that stretches beyond civil and political rights to the core issues of economic survival, health, and education that affect the quality of daily life for most women and children. The two Conventions call for the right to protection from abuse and neglect.156

The strength of these treaties rests on an international consensus, and the assumption that all practices that harm women and children, no matter how deeply they are embedded in culture, must be eradicated. Legally binding under international law for governments that have ratified them, these treaties oblige governments not only to protect women from crimes of violence, but also to investigate violations when they occur and to bring the perpetrators to justice.157

156 UNICEF, 2000, Innocenti Digest no. 6, Florence, Italy, :Unicef, Innocenti Research Centre, p. 8.
4.2.3 Human Development Goals undermined

There is a growing recognition that countries cannot reach their full potential as long as women’s potential to participate fully in their society is denied. Data on the social, economic and health costs of violence leave no doubt that violence against women undermines progress towards human and economic development. Women’s participation has become key in all social development programmes, be the environment, for poverty alleviation, or for good governance. By hampering the full involvement and participation of women, countries are eroding the human capital of half their populations. True indicators of a country’s commitment to gender equality lie in its actions to eliminate violence against women in all its forms and in all areas of life.\textsuperscript{158}

The Constitution of India contains various provisions, which provide for equal rights and opportunities for both men and women. The silent features are:-

4.3 RIGHTS AGAINST DOMESTIC VOILENCE:

4.3.1 Political Rights

Even though the fact that women participated equally in the freedom struggle and, under the Constitution and law, have equal political rights as men, enabling them to take part effectively in the administration of the country has had little effect as they are negligibly represented in politics. There were only seven women members in the Constituent Assembly and the number later decreased further. Their representation in the Lok Sabha is far below the expected numbers. This has led to the demand for reservation of 33%
seats for women in the Lok Sabha and VidhanSabhas. Political empowerment of women has been brought by the 73rd and 74th Amendments\textsuperscript{159} which reserve seats for women in Gram Panchayats and Municipal bodies. Illiteracy, lack of political awareness, physical violence and economic dependence are a few reasons which restrain women from taking part in the political processes of the country.

4.3.2 Economic Rights

At hand there has been series of legislation conferring equal rights for women and men. These legislations have been guided by the provisions of the fundamental rights and Directive Principles of State Policy. Here again there is a total lack of awareness regarding economic rights amongst women. Laws to improve their condition in matters relating to wages, maternity benefits, equal remuneration and property/succession have been enacted to provide the necessary protection in these areas.

4.3.3 Social justice

For providing social justice to women, the most important step has been codification of some of the personal laws in our country which pose the biggest challenge in this context. In the area of criminal justice, the gender neutrality of law worked to the disadvantage of a woman accused because in some of the cases it imposed a heavy burden on the prosecutor, for e.g. in cases of rape and dowry.

Certain areas like domestic violence and sexual harassment of women at the workplace were untouched, unthought-of. These

\textsuperscript{159} 73rd and 74th Amendments of the constitution
examples of gender insensitivity were tackled by the judiciary and incorporated into binding decisional laws to provide social justice in void spheres.

Although a Uniform Civil Code is still a dream in spite of various directions of the Court, the enactment of certain legislations like the Pre-Natal Diagnostic Techniques (Prevention of Misuse) Act and the Medical Termination of Pregnancy Act prevent the violation of justice and humanity right from the womb.

In spite of these laws, their non-implementation, gender insensitivity and lack of legal literacy prevent the dream of the Constitution makers from becoming a reality. They prevent the fulfillment of the objective of securing to each individual dignity, irrespective of sex, community or place of birth.

4.4 \textbf{Reported Incidents of Crimes Against Women}

The crime recording authorities have not started collecting the data on the head of Domestic Violence against women, neither at the national level nor at the State level. The data are still recorded on different crimes against women under Indian Penal Code. As per the report of Law Ministry and Home Ministry tabled in Parliament national data of 2006-2010 are analysed. A total of 2,13,585 incidents of crime against women (both under IPC and SLL) were reported in the country during 2010 as compared to 2,03,804 during 2009 recording an increase of 4.8\% during 2010. These crimes have continuously increased during 2006-2010 with 1,64,765 cases in 2006; 1,85,312 cases in 2007; 1,95,856 cases in 2008; 2,03,804 cases in 2009 and 2,13,585 cases in 2010.
4.5 **Trend Analysis**

The crime head-wise details of reported crimes during 2006 to 2010 along with percentage variation are presented in Table-1. The crime against women has increased by 4.8% over 2009 and by 29.6% over 2006. The Indian Penal Code component of crimes against women has accounted for 96% of total crimes and the rest 4% were SLL crimes against women.

The proportion of the Indian Penal Code crimes committed against women towards total the Indian Penal Code crimes has increased continuously during last 5 years from 8.2% in 2006 to 9.6% during 2010.

Table – 1

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Crime Head</th>
<th>Year</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>Percentage variation in 2010 over 2009</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Rape (Sec. 376 IPC)</td>
<td>19,348</td>
<td>20,737</td>
<td>21,467</td>
<td>21,397</td>
<td>22,172</td>
<td>3.6</td>
<td></td>
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<tr>
<td>2</td>
<td>Kidnapping &amp; Abduction (Sec. 363 to 373 IPC)</td>
<td>17,414</td>
<td>20,416</td>
<td>22,939</td>
<td>25,741</td>
<td>29,795</td>
<td>15.7</td>
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<tr>
<td>3</td>
<td>Dowry Death (Sec. 302/304 IPC)</td>
<td>7,618</td>
<td>8,093</td>
<td>8,172</td>
<td>8,383</td>
<td>8,393</td>
<td>0.1</td>
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<td>4</td>
<td>Torture (Sec. 498-A IPC)</td>
<td>63,128</td>
<td>75,930</td>
<td>81,344</td>
<td>89,546</td>
<td>94,041</td>
<td>5.0</td>
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<td>5</td>
<td>Molestation (Sec. 354 IPC)</td>
<td>36,617</td>
<td>38,734</td>
<td>40,413</td>
<td>38,711</td>
<td>40,613</td>
<td>4.9</td>
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6. Sexual Harassment (Sec. 509 IPC)  
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<tr>
<td></td>
<td>9,966</td>
<td>10,950</td>
<td>12,214</td>
<td>11,009</td>
<td>9,961</td>
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7. Importation of Girls (Sec. 366-B IPC)  
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<td>67</td>
<td>61</td>
<td>67</td>
<td>48</td>
<td>36</td>
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8. Sati Prevention Act, 1987  
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<tr>
<td></td>
<td>4,541</td>
<td>3,568</td>
<td>2,659</td>
<td>2,474</td>
<td>2,499</td>
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</table>

10. Indecent Representation of Women (Prohibition) Act, 1986  
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<tr>
<td></td>
<td>1,562</td>
<td>1,200</td>
<td>1,025</td>
<td>845</td>
<td>895</td>
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11. Dowry Prohibition Act, 1961  
<p>| | | | | | |</p>
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<tr>
<td></td>
<td>4,504</td>
<td>5,623</td>
<td>5,555</td>
<td>5,650</td>
<td>5,182</td>
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<table>
<thead>
<tr>
<th></th>
<th>Total</th>
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<tbody>
<tr>
<td></td>
<td>1,64,765</td>
<td>1,85,312</td>
<td>1,95,856</td>
<td>2,03,804</td>
<td>2,13,585</td>
<td>4.8</td>
</tr>
</tbody>
</table>

The data of Rajasthan with regard to crimes against women recorded in 2010, 2011 and 2012 have been shown in table-2. These data also show the increasing trend of crimes against women every year, which includes domestic violence.

Table-2

Crime Against Women in Rajasthan

(Comparative Table of Year 2010, 2011 and 2012)

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Head</th>
<th>Complaint Lodged</th>
<th>Increase/ Decrease</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Dowry Death</td>
<td>28</td>
<td>32</td>
<td>29</td>
</tr>
<tr>
<td>2.</td>
<td>Abetment to Dowry Suicide</td>
<td>18</td>
<td>12</td>
<td>9</td>
</tr>
<tr>
<td>3.</td>
<td>Cruelty to women</td>
<td>769</td>
<td>920</td>
<td>1298</td>
</tr>
</tbody>
</table>
4.6 CASES FORM VARIOUS REGIONAL PARTS OF INDIA :-

4.6.1 Cases Handled and Disposed of during 2007-08

1. The National Commission for Women received a complaint from Mr. Y, a resident of Jalore, Rajasthan. The complainant alleged that his daughter had been continuously harassed for dowry by her in-laws and one day she was killed by them. The complainant lodged an First Information Report against the in-laws of his daughter for dowry death but police took no action, as most of the in-laws of his daughter were policemen. He approached National Commission for Women for help. The Commission took up the matter and a letter was sent to the Superintendent of Police, Jalore, Rajasthan, to investigate the matter. The Commission also asked for the report of the action taken. After intervention of the National Commission for Women, case was filed against the culprit U/s 498-A, 304-B and 201 of Indian Penal Code. Two of the accused persons were arrested and one surrendered himself later.

2. The National Commission for Women received a complaint from Ms. X, a resident of Bundi, Rajasthan. The complainant alleged that her husband and her in-laws continuously tortured...
The complainant also alleged that her husband committed bigamy. The complainant’s husband later deserted her and her in-laws did not accept her. She approached National Commission for Women for help. The matter was taken up by the National Commission for Women and a letter was sent to the Superintendent of Police, Bundi, Rajasthan, to investigate the matter. The Commission also asked for the report to be submitted within 7 days. After intervention of National Commission for Women a case was registered against the culprits U/s 498-A, 406 and 494 of Indian Penal Code. The accused persons were arrested under charges of domestic violence and bigamy.

3. The National Commission for Women received a complaint from Ms. X, a resident of Jodhpur, Rajasthan. The complainant alleged that she was severely harassed and tortured by the accused. She even consumed poison and tried to end her life. The accused continued to harass and torture her. She lodged a First Information Report but police took no action. She approached the National Commission for Women for help. The Commission took up the matter and a letter was sent to Superintendent of Police Jodhpur, Rajasthan asking him to conduct investigation into the matter. After intervention of National Commission for Women case was filed against the accused under Sections 306, 509 and 511 of the Indian Penal Code. The accused was arrested and the challan against them was submitted to the court.

4. The National Commission for Women received a complaint from Ms. X, a resident of Mahesh Nagar, Jaipur, Rajasthan. The
complainant alleged that her husband and in-laws harassed her for dowry. The complainant no longer wanted to live with them and wanted her ‘Stridhan’ back from her in-laws. The accused did not return the ‘Stridhan’. She approached the National Commission for Women for help. The National Commission for Women took the matter and sent summons to both the parties. The accused party did not turn up for counselling. Therefore, a letter was sent to Crime against Women Cell, Rajasthan regarding the matter.

Thereafter, the National Commission for Women again called both the parties wherein they reached a mutual compromise. The complainant and her husband agreed to compromise and the accused gave assurance to return the ‘stridhan’ to the complainant.

5. The National Commission for Women registered a complaint dated from Mr. Y, a resident of Bikaner, Rajasthan. The complainant alleged that his daughter had been subjected to dowry demand, harassment, and torture by her husband and in-laws. When she failed to bring one lakh rupees as demanded by them, she was turned out of her matrimonial home. Since then she was residing with her father. The complainant made various attempts to reconcile but all his attempts proved to be in vain. The complainant approached the National Commission for Women for help. The matter was taken by the National Commission for Women and an Action Taken Report was sought from the Superintendent of Police, Bikaner, Rajasthan. An Inquiry was conducted and both the parties were called wherein they reached a mutual compromise. The complainant
left for her matrimonial home along with her husband. The complainant’s husband assured the Commission that he would take care of his wife.

6. The National Commission for Women received a complaint from Ms. X, a resident of Udaipur, Rajasthan. The complainant alleged that her husband had extra-marital affairs and he used to disappear for at least 5-6 months. She further alleged that he never gave maintenance for the family. The matter was taken up by the Commission and both the parties were called wherein they reached a mutual compromise. The complainant’s husband agreed to give a part of his salary to the family and assured that he would live with his family.

4.6.2 Cases Dealt with during 2008-09

1. The National Commission for Women received a complaint from Mr. X, a resident of Udaipur, Rajasthan, alleging that the husband and in-laws of his daughter subjected her to dowry demand, harassment and torture. When she failed to bring one lakh rupees as demanded by them, she was turned out of her matrimonial home. The complainant made various attempts to bring about reconciliation but all attempts proved to be unsuccessful. The complainant approached the National Commission for Women for help. The Commission took up the matter and an Action Taken Report was sought from the Senior Superintendent of Police, Udaipur, Rajasthan. On the National Commission for Women’s intervention, an enquiry was conducted and both the parties were called wherein they reached mutual compromise. The complainant returned to her
matrimonial home and her husband assured that he would take care of his wife.

2. The National Commission for Women received a complaint from Ms. X, a resident of Sikar, Rajasthan. The complainant alleged that her husband was having an extra-marital affair and used to leave frequently. She further alleged that no maintenance was provided to her for meeting the day-to-day needs of her family. The Commission took up the matter and both the parties were called for a personal hearing at the Commission wherein after counselling, an amicable settlement was arrived at. The complainant’s husband agreed to give a part of his salary for the maintenance of the family and also agreed that he would stay with his family.

3. The National Commission for Women received a complaint from Ms. Z, a resident of Malviya Nagar, Jaipur, Rajasthan regarding the alleged dowry demand and harassment meted out to her by her husband and in-laws. The Commission took up the matter and both the parties were called for a personal hearing at the Commission so that the matter could be sorted out at the initial stage itself. On further attempts of the Commission, both the parties reached an amicable settlement that the complainant and her husband would reside separately from their in-laws and that their in-laws would not interfere in their personal lives. After the National Commission for Women’s intervention, the complainant and her husband arrived at a mutual settlement compromise. The complainant’s husband also assured the Commission that he would take proper care of his wife.
4. The National Commission for Women received a complaint about the physical and mental torture meted out to a minor girl Ms. A, aged about 13 years, by her employers where the girl was employed as a domestic help. As the matter was serious, the Commission immediately sent a team headed by Ms. Manju S. Hembrom, Member of the National Commission for Women, along with members of Child Line to rescue the girl from her employers. The team visited the house and the girl was rescued from her employers. Thereafter, the National Commission for Women requested the Chief Minister, Government of Rajasthan, to personally intervene in the matter and to ensure that proper investigating be carried out in the case. The Chief Minister, Rajasthan, directed the Director General of Police, Rajasthan Police, for looking into the matter and getting it investigated through some Senior Officer and take appropriate action against the employers of the girl. As a result of the initiative of the National Commission for Women, the rescued girl Ms. A, had been taken to the Rehabilitation Centre, a Delhi-based Non-Governmental Organization.

5. The National Commission for Women received a complaint from Mrs. 5, a resident of Bundi District, Rajasthan, wherein the complainant alleged that she had been subjected to harassment torture by her husband and in-laws. She requested the Commission to ask her in-laws to return her “Streedhan—Dowry money, jewelry items, valuable goods, etc.” The Commission examined the matter and an Action Taken Report was sought from the Superintendent of Police, Bundi, Rajasthan, as regards the recovery of “Streedhan” from the in-
laws of the complainant. As a result of National Commission for Women’s intervention, the police took action and the complainant recovered her valuables.

6. The National Commission for Women received a complaint from Mrs. X, Pali in October 2008. The complainant had alleged in her application that she was married in the year 1995 to Mr. Y in Rajasthan and had been leading a normal married life and were blessed by 4 children. However, subsequently her husband had taken to consuming excessive alcohol on account of which their marital life had been adversely affected. Further, Mr. “X” was also alleged to have resorted to beating his wife and children. He had even sold a piece of land in his village on the advice of his friends. Presently, the complainant was residing in her parental house at Delhi. She stated that her husband provided no money for her maintenance for several years and that he had retained the children in his custody. Aggrieved by the situation she submitted her complaint to the Commission. The matter was taken up by the National Commission for Women and both the parties were called for a personal hearing at the Commission on an appointed date and were duly heard and counselled. As a result of the above, the husband agreed in writing that he would refrain from beating his wife and children, would support them, would not sell the remaining land in the village without the permission of his wife and would also not consume liquor.

7. The National Commission for Women received a complaint in November 2008 from Mrs. G; resident of Sri-Ganganagar alleging that she had been subjected to dowry demand,
harassment and torture by her husband and in-laws. An Action Taken Report was sought by the National Commission for Women, from the Senior Superintendent of Police, District Sri-Ganganagar, Rajasthan and as a result a compromise had been arrived at between both the parties and the dispute amicably resolved.

8. The National Commission for Women received a complaint from Mrs. D, a resident of Kota in November 2008 stating that she had been harassed and tortured in addition to being financially deprived by her husband and in-laws. The matter was taken up by the Commission and an Action Taken Report was sought from Superintendent of Police, Kota, after which both the parties had arrived at a compromise to live in harmony.

9. The National Commission for Women received a complaint from Ms. X of Chittorgarh District, Rajasthan, aged about 35 years, afflicted with health problems, regarding alleged mental torture and gender discrimination meted out to her by her parents. On the Commission taking up the matter and counselling both the parties, after a personal hearing, the parents agreed to pay due attention to their aggrieved daughter based on which the complainant requested for closure of the case.

10. The National Commission for Women received a complaint from Mrs. X of Sirohi regarding dowry demand and harassment meted out by her husband and in-laws. The Commission called both the parties for a personal hearing during which it was observed that the complainant and her husband had minor differences which had been escalated on account of negligence
by the husband thereby compelling her to leave her matrimonial home. As a result of personal hearing and effective follow-up, the parties arrived at a compromise.

11. The National Commission for Women received a complaint from Mrs. X alleging that her husband and in-laws were continuously harassing, torturing and subjecting her to physical and mental torture/domestic violence. The Commission took up the matter and an Action Taken Report was sought from the Superintendent of Police, District Jaipur, Rajasthan, requesting him to look into the complaint and to submit a report of the factual details of the case. In response to the same, the National Commission for Women received an Action Taken Report from the Deputy Superintendent of Police, Jaipur, wherein it was stated that an First Information Report under Sections 323/506/34 of Indian Penal Code had been registered against the alleged persons. In addition to this, the complainant had also initiated proceedings under Section 12 of the Protection of Women from Domestic Violence Act, 2005, which is pending in the Court.

12. The National Commission for Women received a complaint from Mrs. X, a resident of Bikaner, District of Rajasthan, alleging that she has been subjected to harassment or torture or cruelty or domestic violence by her husband and brother-in-law. The Commission took up the matter and both the parties were called for a personal hearing and counselling at the Commission. As a result of mediation, the complainant and her husband resolved their differences. Both the parties were also advised to minimize the interference of respective their in-laws.
into their personal lives. The complainant went to her matrimonial home along with her husband. Two follow-ups have been conducted in this regard, which has confirmed that the parties are living in harmony.

4.6.3 Cases Dealt with during 2009-10

1. The National Commission for Women received a complaint from Smt. X, a resident of Jaipur, regarding the alleged harassment/breach of trust/cruelty/cheating/bigamy, etc. meted out to her by her husband. She stated that her husband has deserted her and that she has no knowledge about his whereabouts. Being immensely aggrieved, she approached National Commission for Women for help and intervention. The matter was taken up by National Commission for Women and efforts were made to trace the whereabouts of the complainant’s husband, where after the complainant’s husband appeared before the Commission. Both the parties were counselled to save their matrimonial home. Consequently, they agreed to mutually resolve their differences in the interest of the only teen-aged daughter’s future.

2. The National Commission for Women received a complaint from Smt. Y, a resident of Jhunjhunu District, Rajasthan, regarding the alleged harassment/torture/domestic violence meted out to her by her husband and in-laws. The National Commission for Women took up the matter and both the parties i.e., the complainant and her husband were called for a personal hearing at the Commission. Thereafter, both the parties appeared before the Commission and were counselled wherein
the complainant’s husband admitted his fault and assured the Commission in writing that in future he will take proper care of his wife.

3. The National Commission for Women received a complaint from Sh. Z, a permanent resident of Udaipur, alleging that his sister Smt. Y, has been brutally murdered by her husband and in-laws for want of more dowry. He stated that since the very inception of the marriage, his sister was subjected to dowry demand and harassment by the husband and in-law and when she failed to fulfil their aggravated demands for dowry, she was brutally murdered in District Anand of Gujarat. The complainant alleged that the police was not taking prompt action in the case and even the Investigation Officer of the case was about to drop Section 304(B) of Indian Penal Code that is “Dowry Death”. The National Commission for Women took up the matter and Action Taken Reports were sought from the Director General of Police, Gandhinagar, Gujarat, District Magistrate and Collector, Anand and Superintendent of Police, Anand, wherein they were requested to initiate appropriate action. Thereafter, the Commission received an ATR from the Gujarat Police wherein it was informed that the issue was reexamined where after the charge-sheet has been presented in the concerned court and Section 304(B) of Indian Penal Code has not been dropped during the investigation.

4. A women complainant had alleged that she was subjected to physical and mental torture by her in-laws and her husband also was not interested in continuing the marital relationship. As a result, he did not take care of her. She appealed to the
Commission to get her ‘Stridhan’ back. The Commission called both the parties for a personal hearing. After 5-6 hearings in the Commission, both the parties reached an amicable settlement wherein the couple agreed for a mutual divorce and the groom’s side returned the ‘Stridhan’ to the complainant at the commissions.¹⁶⁰

4.7 AGENCIES FOR PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE:-

The growing international concern for women’s issues has motivated many Governments to study the problems of women and to provide some measures of social security and status to women. So far as Indian Government is concerned, it responded by enacting some laws for creation of authorities to deal with matters relating to women, like National Commission for Women under the National Commission for Women Act, 1990 and Human Rights Commission under the Protection of Human Rights Act, 1993.

National Commission for Women Act, 1990 was passed by Parliament with a view to set-up the National Commission for Women with the objective to investigate and examine all matters relating to the safeguards provided for women under the Constitution and other laws. This law is to provide a statutory authority to look into the women related complaints regarding deprivation of women rights and non- implementation of laws protecting women from various kinds of harassment and violence against women. Every State is to have a State Commission for Women to perform similar functions.

¹⁶⁰ About NCW National Commission for Women, official website.
For enactment of the Protection of Women from Domestic Violence Act, 2005, National Commission for Women was very instrumental.

On the other hand, Non-Government Organizations also play an important role. Victims of domestic violence, may approach any voluntary organisation including NGO Non-Governmental Organisation working for the women’s cause.

There are several types of voluntary and women’s organisations and each may offer a special type of assistance—shelter, medical and legal aid. While some organisations will themselves assist the women in generating the options, it always helps to have an idea of the kind of assistance one may want. The role of the voluntary organizations in providing support to women has been explicitly recognized under the Domestic Violence Act as Service Providers.

Even if a woman wants to avoid the legal action or wants to wait for some more time before she tries it out, there are some options as statutory bodies and institutions where she could think about.

4.7.1 Role of National Commission for Women

The United Nations Commission on the Status of Women in its Twenty-fifth Report had recommended to all member-states to establish National Commissions for women or similar bodies with a mandate to review, estimate and recommend measures and priorities to ensure equality between men and women and full protection of women in all spheres of her national and individual life.161

Women have always been ill-treated and harassed. The matter has all along been agitated inside and outside the Parliament, by common men, by organisations and societies for the welfare of the women. Looking to the demand for effective legal measures, the Parliament enacted the National Commission for Women, 1990.

In order to ensure the implementation of various measures, the committee recommended the constitution of statutory autonomous commissions at the Centre and in all the States except Jammu & Kashmir.162

The Committee on the Status of Women in India recommended nearly two decades ago, the setting up of a National Commission for women to fulfil the surveillance functions to facilitate redressal of grievances and to accelerate the socio-economic development of women.

The background of passing of the Act reveals that successive Committees or Commissions or Plans including the National Perspective Plan for Women (1988 to 2000) had demanded for time to time for an effective body. During 1990, the central government held consultations with Non-Governmental Organizations; social workers and experts, regarding the structure, functions, powers, etc. of the Commission proposed to be set-up. In May 1990, the Bill to constitute a Commission for women was introduced in the Lok Sabha. In July 1990, the Human Resource Development Ministry organized a National Level Conference to elicit suggestions regarding the Bill. In August, 1990 the government moved several amendments and

introduced new provisions to vest the commission with the power of a civil court. Ultimately the Bill was passed and received accent of the President on 30th August 1990.

Thus, it is in this context that the National Commission for ‘Women Act, 1990 was passed. It was a major step in the protection of women’s rights and enhancement of their status.

(A) Functions of the Commission:

The National Commission for Women was set-up as a statutory body in January, 1992 under the National Commission for Women Act, 1990 of Government of India, to review the Constitutional and legal safeguards for women; recommend remedial legislative measures, facilitate redressal of grievances and advise the Government on all policy matters affecting women.

Thus, the main task of the Commission is to study and monitor all matters relating to the constitutional and legal safeguards provided for women, to review the existing legislation and suggest amendments, wherever necessary. It will also look into the complaints and take suo-moto notice of the cases involving deprivation of the rights of women in order to provide support, legal or otherwise, to helpless women even within the family. To protect the rights of women so enable them to achieve equality in all spheres of life and equal participation in the development of the nation.163 The commission regularly publishes a monthly newsletter, RtzshtraMahila in both Hindi and English.164

164 http://ncw.nic.in/publications.htm.
In keeping with its mandate, the Commission initiated various steps to improve the status of women and worked for their economic empowerment. The Commission completed its visits to all the States & Union Territories except Lakshadweep and prepared Gender Profiles to assess the status of women and their empowerment. It received a large number of complaints and acted suo-moto in several cases to provide speedy justice. It took up the issue of child marriage, sponsored legal awareness programmes, ParivarikMahilaLokAdalats and reviewed laws such as Dowry Prohibition Act, 1961, The Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994, Indian Penal Code, 1860 and the National Commission for Women Act, 1990 to make them more stringent and effective. It organized workshops, consultations, constituted expert committees on economic empowerment of women, conducted workshops & seminars for gender awareness and took up publicity campaign against female foeticide, violence against women, etc. in order to generate awareness in the society against these social evils.\footnote{http://www.indiatog ether.org/2006/may/wom-ncw.htm.}

(B) Constitution of the Commission

Section 3 of the National Commission for Women Act, 1990

1. The Central Government shall constitute a body to be known as the National Commission for Women to exercise the powers conferred on and to perform the functions assigned to it under this Act.

2. The Commission shall consist of:
(a) A Chairperson committed to the cause of women, to be nominated by the Central Government.

(b) Five Members to be nominated by the Central Government from amongst persons of ability integrity and standing who have had experience in law or legislations, trade unionism, management of an industry potential of women, women’s voluntary organisations (including women activist), 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.

(c) A Member-Secretary to be nominated by the Central Government who shall be:

(i) an expert in the field of management, organisational structure or sociological movement, or

(ii) 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.166

(C) The Mandate of the Commission: Section 10 of the Act

(1) The commission shall perform all or any of the following functions, namely:

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166 About NCW National Commission for Women, official website.
(a) investigate and examine all matters relating to the safeguards provided for women under the Constitution and other laws;

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

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

(d) review, from time to time, the exiting provisions of the Constitution 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;

(e) take up cases of violation of the provisions of the Constitution and of other laws relating to women with the appropriate authorities;

(f) look into complaints and take suo-moto notice of matters relating to:

   (i) deprivation of women’s rights;

   (ii) non-implementation of laws enacted to provide protection to women and also to achieve the objective of equality and development; and
(iii) 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;

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

(h) undertake promotional and educational research so as to suggest ways of ensuring due representation of women in all spheres and identify factors responsible for impeding their advancement, such as, lack of access to housing and basic services, inadequate support services and technologies for reducing drudgery and occupational health hazards and for increasing their productivity;

(i) participate and advice on the planning process of socio-economic development of women;

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

(k) inspect or cause to inspected a jail, remand home, women’s institution or other place of custody where women are kept as prisoners or otherwise and take up with the concerned authorities for remedial action, if found necessary;
(l) fund litigation involving issues affecting a large body of women;

(m) make periodical reports to the Government on any matter pertaining to women and in particular various difficulties under which women toil; and

(n) any other matter which may be referred to it by Central Government.

(2) The Central Government shall cause all the reports referred to in clause (b) of sub-section (1) to be laid before each House of Parliament along with memorandum explaining the action taken or proposed to be taken on the recommendations relating to the Union and the reasons for the non-acceptance, if any, of any such recommendations.

(3) Where any such report or any part thereof relates to any matter with which any State Government is concerned, the Commission shall forward an copy of such report or part to such State Government who shall cause it to be laid before the Legislature of the State along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the State and the reasons for the non-acceptance, if any, of any such recommendations.

(4) The Commission shall, while investigating any matter referred to in clause (a) or sub-clause (i) of clause (f) of sub-section (1), have all the powers of a civil court trying a suit and, in particular 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.\textsuperscript{167}

\textbf{(D) Complaint and Investigation Cell}

The Commission has various cells but Complaint & Investigation Cell is one of very important Cell of them. The Complaints and Investigation Cell of the commission processes the complaints received oral, written or suo-moto under Section 10 of the National Commission for Women Act. The complaints received relate to domestic violence, harassment, dowry, torture, desertion, bigamy, rape, and refusal to register First Information Report, cruelty by husband, deprivation, gender discrimination and sexual harassment at work place.

The Complaints are tackled as below:

- Investigations by the police are expedited and monitored.
- Family disputes are resolved or compromised through counselling.

\textsuperscript{167} www.india.gov.in.
For serious crimes, the Commission constitues an Inquiry Committee which makes spot enquiries, examines various witnesses, collects evidence and submits the report with recommendations. Such investigations help in providing immediate relief and justice to the victims of violence and atrocities. The implementation of the report is monitored by the NCW. There is a provision for having experts/lawyers on these committees.¹⁶⁸

The State Commission, the Non-Governmental Organizations and other experts are involved in these efforts. The complaints received show the trend of crimes against women and suggest systemic changes needed for reduction in crimes. The complaints are analyzed to understand the gaps in routine functioning of government in tackling violence against women and to suggest corrective measures. The complaints are also used as case studies for sensitization programmes for the police, judiciary, prosecutors, forensic scientists, defence lawyers and other administrative functionaries.

The National Commission for Women, is an autonomous body set-up by the Parliament through law that is the National Commission for Women Act, 1990.

(E)  Procedure of the Commission

The women can make an application seeking the assistance of the National Commission for Women (unless one is from the State of Jammu and Kashmir, where the law does not apply).

¹⁶⁸  www.ncw.nic.in
Such an application need not be technical or complicated. There is no specific format for it.

- If the National Commission for Women is of the opinion that the women has a genuine case, it can issue a ‘notice’ and call the abusers to investigate the matter. It has powers of a Civil Court in summoning witnesses and enforcing production of documents. So, if the women doesn’t want to involve the police but wish that one’s case be investigated, she may approach the National Commission for Women.

- The National Commission for Women has constituted a complaint and prelitigation cell which would investigate the woman’s case.

- The National Commission for Women could also write letters to the police to co-operate with the victim or to give her protection and to help in getting her belongings back.

- The National Commission for Women could also use its offices to bring about conciliation or a settlement. However, as it has no powers of enforcement, the National Commission for Women cannot be a substitute for a legal option.169

(F) Problem of Violence against Women is Multifaceted

The National Commission for Women has adopted a Multi-Pronged strategy to tackle the problem

- Generation of legal awareness among women, thus equipping them with the knowledge of their legal rights and with a capacity to use these rights;

• Assisting women in redressal of their grievances through Prelitigation services;
• Facilitating speedy delivery of justice to women by organizing Parivarik Mahila Lok Adalats in different parts of the country;
• Review of the existing provisions of the Constitution and other laws affecting women and recommending amendments thereto, any lacunae, inadequacies or short comings in such legislation’s;
• Organizing promotional activities to mobilize women and get information about their status and recommend paradigm shift in the empowerment of women;
• Investigate and examine all matters relating to the safeguards provided for women under the Constitution and other laws;
• Review, from time to time, the exiting provisions of the Constitution and other laws affecting women;
• Take up cases of violation of the provisions of the Constitution and of other laws;
• Look into complaints and take suo-moto notice of matters;
• Deprivation of women’s rights;
• Special studies or investigations into specific problems or situations arising out of discrimination and atrocities against women;
• Undertake promotional and educational research so as to suggest ways of ensuring due representation of women in all spheres and identify factors responsible for impeding their advancement;
• Advice on the planning process of socio-economic development of women;
• Evaluate the progress of the development of women under the Union and any State;

• Inspect or cause to inspected a jail, remand home, women’s institution or other place of custody where women are kept as prisoners or otherwise and take up with the concerned authorities for remedial action, if found necessary; and

• Fund litigation involving issues affecting a large body of women.

4.7.2 THE NATIONAL HUMAN RIGHTS COMMISSION

• The National Human Rights Commission was set-up in 1993, as a statutory body to which individuals and interested parties can make complaints on human rights violations in the country. The National Human Rights Commission has explicitly stated that women’s rights will be a part of its concerns. As yet the National Human Rights Commission has taken up to specific issue’ of violations, though it has attempted to address single instances of state violence on women. It is yet to take a significant interest in women’s rights. Part of the problem arises out of the divisions seen between the National ‘Commission for Women and the National Human Rights Commission; although a member of the Women’s Commission is represented on the National Human Rights Commission, it is often assumed that the Women’s Commission will deal primarily with women’s rights.170

• The National Human Rights Commission’s ability to function as an autonomous body is yet to be established. Like the

Women’s Commission its establishment has been criticized as a move on the State to appear accountable without providing these bodies with sufficient autonomy to push through decision or recommendations that may appear to the country to State Interest.\textsuperscript{171}

- Domestic Violence is a human rights violation and will fall under the purview of the National Human Rights Commission, among its other functions. The law Commission, the Minorities Commission, the Commission for Scheduled Tribes and Scheduled Castes that have been set-up to look at women’s issues, but barring the Law Commission which has participated actively in recommending gender just legal change, the remaining Commissions have shown little concern for women’s rights in their functioning.

4.7.3 State Women’s Commissions

Like the National Commission for Women, most States have State Commissions which perform similar functions. They provide assistance to women of the concerned state. In Rajasthan also there is State Women’s Commission which can institute criminal prosecutions.

Thus, it is clear that the objective of the National Commission for Women is to represent the rights of women in India and to provide a voice for their issues and concerns. The subjects of their campaigns have included, domestic violence, harassment, dowry torture, desertion, bigamy, rape, and refusal to register First Information

Report, cruelty by husband, deprivation, gender discrimination, sexual harassment at work place and equal representation for women in jobs. They have also discussed police abuses against women. The Commission has also worked to guarantee women security in unconventional relationships.

4.7.4 VIOLENCE AGAINST FEMALE FOETUS AND GIRL CHILD

The ever present fact of violence, both overt and covert, physical and non—physical form has an overwhelming influence on feminine identity formation. The population of India is young, with nearly 37 percent consisting of children below 15, thus two out of every five persons are below 15 years. Early childhood is an important and delicate period in an individual’s growth and developmental deficiencies during this stage lead to permanent retardation in physical and mental growth.

Much before the United Nations Convention on the Rights of the Child in 1990, the Indian Constitution provided a framework within which provisions were available for protection, development and welfare of children. Article 24 prohibits the employment of children in any factory or mine or in any other hazardous occupation. Article 39(e) and (f) lays down that the Stag shall direct its policy in such a manner that the tender age of children is not abused and children are given opportunities and facilities to develop in a healthy manner and childhood is protected against exploitation and against moral and material abandonment. Education of children has been recognized as the sine—qua—non for growth of children. There is a wide range of laws, including the Juvenile Justice Act, 2014; the Child Labour (Prohibition and Regulation) Act, 1986; the Immoral Traffic (Prevention) Act, 1986; the Child Marriage
(Restraint) Act, 2006 which guarantee, to a substantial extent the rights and entitlements of children. In 1974, the Government of India adopted a National Policy for Children declaring the nation’s children as “supremely important assets”. This policy lays down that the State shall provide adequate services to all children both before and after birth and during the growing stages for their full physical, mental and social development.

Despite all the above provisions, the girl—child in India has as yet not been given an equal status and needs to be seen as a special group suffering from several disadvantages. The girl—child experiences discrimination throughout her life and the existing socio—cultural practices make it difficult for her to overcome the handicaps posed by her unequal status.

A life cycle approach has been taken to examine the situation of girls in India from conception and birth, through early childhood into the school going years, adolescence and womanhood. A very strong gender bias is entrenched in the cultural heritage of Indian society. It is a society that idolises sons, an obsession that cuts across all differences. Sons are considered ritually and economically desirable, essential not only to light the funeral pyres of their parents in order to release their souls from the bondage of their bodies, but also to ensure continuation of the lineage and family name. They are also to become the economic support of parents in their old age.

From the day of her birth, a girl is thus viewed as more of a burden and a liability and is likely to be given a meager share of the family’s affection and resources. This is because investments made for her brings no return; instead when she gets married, a sizeable dowry has to be
given to her, draining the family resources. Girls are thus socialised from the very beginning to accept their situation and the ideology of male supremacy which makes them prey to a whole range of discriminatory practices. Family structures and social values function in such a way that girls grow up looking upon themselves as inferior and subservient, entitled to much less of everything than sons—less opportunity, less authority, less property, less status, less power and virtually no choices. The duality of values that operates in the patriarchal family is internalised at an early age, as a natural inevitable part of life. She acquires qualities of submissiveness, weakness and self-sacrifice. The socialisation process reinforces these stereotypes at all levels in the society, building her into a prisoner of her gender unable to retaliate against implicit and explicit injustice. In fact she often espouses and propagates cultural values, which militate against the interests of the female gender. Customs, rituals, traditional practices frequently make a girl the “lesser child” who is denied optimal opportunities and means required for growth and development during various stages of childhood. The burden of poverty further exacerbates her problems.

Approximately one quarter of India’s population comprises girls up to the age of 19 years. Within the backdrop of the declining sex—ratio for women, it is noteworthy that every year about 15 million girls are born in India and despite being biologically stronger than boys, almost one quarter of this number does not see their 15th birthday. In this connection problems of female foeticide and female infanticide are causing concern to Government and other development activists. Age specific death rate indicate that up to the age of 35 years more females than males die at every age level. Malnutrition in young girls triggers a vicious cycle of under—nutrition, which spans into adulthood and passes on to the next
generation. It leads to “women wastages”. Maternal mortality rate in India is unacceptably high. It is common to provide lower and inferior diet to the female child. Coupled with it is the lack of care given to her, ignoring special nutritional needs during adolescence that may render her vulnerable to complications and mortality during pregnancy and child—birth. Girls thus fail to reach their full growth potential, get married early, run considerable risk of obstetric complications and give birth to low weight babies perpetuating the vicious circle. Sex bias in health care has been indicated in several micro-level studies of hospital records.172

Of all demographic groups, the girl child is perhaps the most socially disadvantaged. At every stage of her life cycle from conception to adulthood, she is vulnerable to human rights abuses.

It is necessary to protect the rights of the girl child—particularly her right to be born, her right to remain alive, her right to protection from neglect and abuse, her right to a secure family environment. The girl child’s first right is the right to be born and not to be aborted purely because she happens to be a girl. So far there are no fail—safe ways of preventing the misuse of foetal sex determination through amniocentesis or ultrasound tests to ensure this right.173

In ancient India, the birth of a girl child used to be praised as the arrival of Laxmi (Goddess of Wealth) into the family. In Hinduism, “Abortion or killing of foetus has always been considered to be a sin and prohibited as such. The person who causes abortion is described as Bhrunaha “भूणहा” and the killing of foetus is described as Bhrunahatih “भूणहति:”. References in Atharva Veda show that abortion was known in

the Vedic age. Abortion was always considered to be a sin for which, however, expiation ceremonies were prescribed in Taittiriyapanishad and also in Arunam. Manu in his Dharmasastra said that a killer of a priest or destroyer of an embryo casts his guilt on the willing eater of his provisions (Chapter VIII, Verse 317). Kautilya’s Arthashastra provides for the highest punishment for causing abortion by physical assault. It refers to Yajnavalkya and Manu as well as Vishnupuran. Lesser punishments are also provided for inducing miscarriage by drugs.\textsuperscript{174}

Muslim jurists also agree unanimously that after the foetus is completely formed and has been given a soul, aborting it is haram. While Islam permits preventing pregnancy for valid reasons, it does not allow doing violence to the pregnancy once it occurs.\textsuperscript{175}

“The Catholic Church has always denounced and opposed abortion. It has consistently defended the right of the unborn to live. The belief is that human life comes from God at the time of conception and that man is only the custodian of his life rather than the owner and abortion represents an act that denies the sanctity of life on the assumption that the Woman is the owner of her life and that of her unborn child.\textsuperscript{176}

Indian Penal Code too has such provisions\textsuperscript{177} which would punish the offenders who would kill the children when they are in the womb and who kill the children after their birth.
In spite of having so much social and legal prohibitions, the parents are deterred with the birth of a girl child in the family.

A life time of systematic gender bias for the Indian girl child begins in the mother’s womb itself. Sex—linked abortions have become rampant. Middle class and upper class families go for omniologists (foetus test which will reveal the gender of the child in womb). Actually, this test is a boon in the Medical field, which will enable the doctors to know about the congenital diseases. But, by using it for a wrong purpose, we turned it into a curse.  

In twenty-first century, where globalization and information technology are being supported as the creeds of the millennium, liberalization is happening fast, there are villages and towns where girls are killed even before their cries leave their throats. Some are even killed in their mother’s womb, unseen and unheard.  

The traditional method of getting rid of the unwanted girl child was female infanticide where the female baby was done away with after birth in various ways—by either poisoning the baby or letting her choke on husk or simply by crushing her skull under a charpoy. With the advancement of medical technology, sophisticated techniques can now be used or rather misused, to get rid of her before birth. Through ultrasound scans and amniocentesis, the sex of the foetus can be determined during

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be punished with imprisonment of either description for a term which may extend to 10 years or with fine or both.

Section 316 of Indian Penal Code punishes offences against children in the womb where the pregnancy has advanced beyond the stage of quickening and where the death is caused, after the quickening and before the birth of the child.

178 1993(2) SCJ Jour. 65; see also, The Hindustan Times, April 11, 2004, p. 1.

the pregnancy of the woman and the foetus is aborted if found to be female.\textsuperscript{180}

In several countries, prenatal diagnostic techniques are employed exclusively for detection of genetic and other congenital disorders. Nevertheless, in India, ever since their origin they are being misused mainly for sex determination purposes leading to sex selective abortions.

The world has made wonderful inventions in the area of human genetic and reproductive technologies with a noble mission to serve mankind. These discoveries, due to the lack of a powerful monitoring system created havoc and led to destruction of life of the girl child foetus resulting in diminishing sex ratio and blatant violation of the girl child’s right to survival and protection. It has been accepted by demographers that there exists a link between elimination of female foetuses and widening sex ratio.

This is evidenced by the population statistics, which reveal an alarming decline in the male-female sex ratio.\textsuperscript{181}

In 1900, the female sex ratio was 972 females for every 1,000 males; which fell to 941 per 1,000 in the 1961 census and to 927 in 1991. The situation in some states is more startling. There are only 879 women per 1,000 men in Uttar Pradesh and just 865 women per 1,000 men in Haryana. In certain communities in Bihar and Rajasthan, the sex ratio has plummeted to 600.

\textsuperscript{180} The Lawyers Collective, November 2001, p. 4.
\textsuperscript{181} Kali’sYug, October 2000, p. 15.
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<tr>
<th>Census Year</th>
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Thus in India, as per 1991 census count, there were 32 million fewer females in a population of 846 million, there being 439 million males and 407 million females. The sex ratio is not only adverse to females but has touched an all time low of 927 females per thousand males in 1991.

The 2011 census results are indeed shocking, though the sex ratio at the national level is 940 females per 1000 males. But the same ratio in the age group 0 to 6 is even lower which is 927 : 1000 as compared to 945 in 1991. The fall in ratio of girls to boys over the past decade has been most extreme in Punjab and Gujarat, where more people can afford tests and abortions. In Punjab, India’s most agriculturally prosperous state, the ratio of girls to boys has dropped to 793 girls per 1000 boys.
from 875 in 1991. While in Gujarat, a leading industrial state, the figures for girls has fallen to 878 from 928 in 1991.\textsuperscript{182} According to 10th Plan Document, in Uttar Pradesh, sex ratio has declined considerably in the age group of 0 to 6 years. The ratio in this age group came down from 927 in 1991 to 940 in 2011.\textsuperscript{183}

According to the 2001 census, Punjab and Haryana, two of the most affluent states in India, have the lowest sex ratios of 793/1000 and 820/1000 respectively for the 0 to 6 years section.

The practice of sex determination through ultrasound largely started dominating the scene since 1970s and early 1980s, especially in Punjab and Haryana. Slogans like “Boy or a Girl”, “Spend 500 now, save 5 lakhs then” flooded the entire Punjab, Haryana and Rajasthan belt during the eighties. Dramatic reduction of birth rates since the eighties coupled with reliable and cheaper ultrasound machines in the nineties, enabling accessibility of foetal sex testing to a much larger population across the country contributed to the intensification of son preference in our patriarchal society.\textsuperscript{184} Besides Sikh and Hindu communities even Jams are on female foeticide black list.\textsuperscript{185}

Female foeticide has become popular with the spread of amniocentesis, a medical technique evolved to discover birth defects. A part of the test involves establishing the sex of the foetus. Introduced in 1974 at a leading government-run hospital in New Delhi, the new technology was quickly appropriated by medical entrepreneurs. A spate of sex—selective abortions followed. Though a series of government

\textsuperscript{182} The Deccan Herald, Sunday, June 3, 2001, p. 3, The Telegraph, June 24, 2001, p.3.
\textsuperscript{184} The Lawyers Collective, November 2001, p. 5.
\textsuperscript{185} The Hindustan Times, October 12, 2005, p.1.
circulars from 1977 onwards have banned the tests, “the privatisation and commercialisation of the technology” was well under way within a few years of its introduction.\textsuperscript{186}

A case study from a hospital in a city in western India conducted from June 1976 to June 1977 reveals that of the 700 women who sought pre-natal sex determination, 250 were found to have male foetuses and 450 females. While all the male foetuses were kept to term, 430 of the 450 female foetuses were aborted.\textsuperscript{187} According to Kuntal Agarwal, the amniocentesis test and female foeticide have been prevalent since 1977 but have become popular (only) since 1982 and thereafter small towns and cities are also experiencing their effect.\textsuperscript{188} A field study conducted by Sanjeev Kulkarni (1986) of the Foundation for Research in Community Health brought to light the fact that in the 1980s, 5000 amniocentesis tests were carried out annually in Bombay for determining the foetal sex. Eighty-four per cent of the gynaecologists contacted by him admitted to having performed the amniocentesis tests for sex determination. Of these, 74 per cent had started performing the tests only since 1982 and only a few cases of genetic defects were detected. The overwhelming majority of ‘patients’, most of whom were of middle or upper class status, came merely to obtain information about the sex of the foetus.

Many women who came for the tests already had at least two daughters. Several clinics were run under the guise of maternity homes, clinic laboratories and family health centers and costs ranged from Rs. 70 to Rs. 600. Thirty per cent of the doctors believed that their patients came to them under some pressure. At the same time, there is also evidence that

women often took the decision on their own.\textsuperscript{189} It is a moot point whether mothers to be genuinely believed that girls were burdensome or whether they were socialised into such a world view. Today, there are clinics throughout the country and “Gujarat topped the list with sex determination clinics spreading even in small towns”.\textsuperscript{190} Despite the efforts of women’s organisations, voluntary groups and the media to the contrary, sex determination tests are becoming increasingly common.

Referring to the records of the primary health centres the report states that in 1995 there were 3,178 cases of female foeticide in six districts of Tamil Nadu. It was estimated in 1989 that 10,000 cases of female foeticide annually occur in Ahmedabad. In Chandigarh with a population of just six lakh; about 8,000 abortions take place annually. As a result, the number of females to 1000 males which was 793 in 1991 came down to 790 in 1995.\textsuperscript{191}

Most Non Governmental Organizations and the medical profession, for the past two decades have failed to recognize the likelihood of the rapid spread of the female foeticide. The first private clinic was set up in Amritsar in 1979. This trend soon spread to other cities in North and Western India, resulting in adversely influencing the sex ratio in those parts of the country.

A ten year’s gap ensued before the proliferation of these clinics began in Southern India. In the early eighties, attention was being given to the issue of female infanticide but the activists had not anticipated the problem of female foeticide. Although the spread of this problem was

\textsuperscript{189} Juneja, R., ‘Women should also be Punished for Foeticide’, The Pioneer, August 11, 1993.
\textsuperscript{191} The Deccan Herald, Saturday, June 2, 2001, p. 4.
initially slower, many taluks even in backward parts of Karnataka and Andhra Pradesh now have sex determination clinics.

There were occasional media reports from 1992 onwards about the abuse of ultrasound for foetal sex determination in major cities of Tamil Nadu. Despite expression of concerns, from the mid—nineties, about the prevalence of female foeticide in rural areas. Non Governmental Organizations and others involved in work against infanticide did not prioritise action against foeticide. Even elementary steps were not taken, for instance, there was no lobbying with the state to set up the mechanisms to register sex determination clinics, as mandated by the 1994 national law; and there also was a failure to confront the medical profession’s insensitivity to the gross violation of medical ethics.

Fertility decline has taken place in all economic and social groups in most parts of the country, especially in Tamil Nadu. The sharp fall in birth rates from the eighties is one contributory factor for intensification of son preference.

The indication from the grassroots level is that there will undoubtedly be an even steeper fall against girls. There are more than one thousand ultrasound clinics in Punjab, and elaborate networks from the village level to the nearest urban ultrasound clinics for referrals exist where each link gets a commission from the clinics.¹⁹²

Deteriorating women’s status and the emergence of female foeticide is not a unique sociological phenomenon confined to a particular state, but a countrywide trend even in diverse cultural contexts where there has been relative greater gender equality, such as the Uttarakhand

¹⁹² George, Dr. Sabu, ‘Female Foeticide in India’, Health Action, September 2000, p. 25.
hills or the Kashmir Valley. Prenatal sex determination tests are a basic Human Rights’ violation. Female foeticide is an extreme manifestation of gender violence against women.

(A) Causes of Violence Against Female Foetus and Girl Child

In India, where there is no discrimination on grounds of caste or sex and where in theory each human being has the right to participate in social processes to create conditions of equality for the socially suppressed and disadvantaged sections of society, “the dice is heavily loaded against women. Female oppression continues from womb to tomb.” In particular discrimination occurs within the family, where norms regarding women’s secondary status are reinforced in children from birth. Son preference is one of the key aspects underlining social values that view girls as burdens. Women are viewed as dependents within the family and face severe restrictions, it is not the level of income or material well-being that makes families discriminate against girl child, much of it has to do with cultural beliefs, patriarchal social norms, superstitions and mind set that combine to produce discrimination behaviour patterns. Due to modern science and technology female infanticide has been replaced by female foeticide.

Another reason for the dangerous phenomenon of female foeticide is the extreme low valuation of female life and the low status accorded to women in India. People feel that female foeticide will keep the family size small and increase the value of girls perhaps in the long-run. Another justification is poor law and order situation that makes parents wary of

\(^{193}\) Ibid. at p. 26.
bringing up girls in highly unsafe social environment and the likelihood of the daughter being maltreated or even killed for dowry. The motto appears to be ‘spend now save later/end now than later’. The practice of female foeticide has also been justified by the doctors and others in the name of family planning.

Dramatic reduction of birth rates in most of Indian states has also contributed to intensification of son preference in the existing patriarchal society. Parents tend to be calculative in choosing the sex of the next child and the decision is based on the birth order, sex sequence of previous children and number of sons. Still, there exists strong cultural preference for sons who will carry the family name, inherit ancestral property, care for parents in old age and light their father’s funereal pyre.

Because of traditional gender bias, we still have cases of female infanticide, and the girl child is denied equal opportunities in terms of food, clothing and education. She faces deterioration in health and knowledge. Also in literacy, the girl child does not get a fair chance as a male child does. Poverty is another major cause of female infanticide.

Fear of sexual abuse of girl child also leads to female infanticide. A very condemnable practice that exists especially in Tamil Nadu is the “Sex practice of father—in—law” with daughter—in—law and the husband’s inability to do anything against the practice due to the fear that he would lose his share of the property from his father.

Patriarchal society has developed into a tremendously greedy and materialistic society which strongly supports the notion of male

197 The Indian Express, April 15, 2001, p. 1.
supremacy and consequently justifies, even encourages demand for dowry. It has become a ‘dowry nightmare’ for young women; there is a culture of criminality and immorality which has got inbuilt into the society. There is almost no social ethics which can withstand this craze. To avoid to pay huge amount of money in dowry, people eliminate their female infants.

There are some extreme situations when some mothers kill their babies as an act of ‘mercy’ that they may be saved from future excesses by husbands in the form of domestic violence.¹⁹⁸

It can be said that cases of foeticide and infanticide find its explanations under patriarchal theory and socio-cultural theories.

Another gruesome act committed against the girl child is incest, where she is abused by her own close relatives. Psychiatrists are of the view that molestation of a child, like any form of sexual abuse, does not necessarily have to do with sex. It is about power—a depraved sense of asserting power. In cases of father—daughter incest, there is a strong need on the part of the father to cover up their feelings of inadequacy as males by overcompensating in a patriarchal way. The father presents himself as a strong authoritarian figure, he maintains his dominant position in the family by threats and physical abuse.

Fathers in incestuous relationship generally come from a background of emotional deprivation and/or physical desertion or abandonment, i.e. they suffer from childhood trauma.

The chief reasons for child abuse in India attach themselves to prevalent myths, ignorance and superstitions beliefs. The belief that

having sex with an infant or a virgin can cure a man of impotency and venereal diseases is widespread, especially in rural India. The problem is further complicated because most villagers hesitate to consult a sexologist, if there is one in the area.

Impotency also incites a man to rape a minor on another ground—he is ashamed to expose his inadequacy to an adult woman but has the normal sexual urge all the same. He finds a child the easiest prey to vent his urge. A child after all, is less prone to talk later. This is aided by a total lack of resistance on the infant’s part. Thus, due to vulnerability of age, the girl child suffers this trauma.

Some incestuous convicts have been reported to be psychotic at the time of commission of offence. Paedophilia, or the mental disorder that incites a man to molest a child is another reason for child abuse. According to psychiatrists, paedophilia is a definitely not a normal trait in a person. It is a sexual perversion, whose cause is yet to be totally explored. The invasion of foreign media has also led to the increase in paedophilia.

Paedophilic cases that are an outcome of the media onslaught are mostly common among teenagers. The sudden exposure to sex can have an adverse effect in the impressionable mind reared in a society that is sexually regressive. The teenager would dare to go for a minor and not for an adult women. Torn by an urge for premarital sex and yet scared be open about it, the teenager loses his sense of right and wrong.\textsuperscript{199}

Several cases of child abuse by mentally retarded persons are reported annually. Alcohol or drug also plays a role in incestuous

\textsuperscript{199} The Pioneer, November 23, 1997.
behaviour as it acts as a destroyer of inhibition, thus neutralizing guilt. A man is no longer sure whether it is right or wrong to have sex with an infant. Such loss of control is also visible in a person who was sexually abused as a child. An abused man is prone to become an abuser out of a correct sense of vindictiveness though he may appear perfectly normal outwardly.

Lack of religious education and degradation of moral standards also lead to such crime. There are two general characteristics of the incest offender. One characteristic is inability to control impulses and the other concerns role confusion, in which the adult uses the child to meet his own needs, rather than playing the parental role of meeting the needs of the child. Love becomes perverted into sexual abuse.

Although it is true that many parents and care-givers, in the socially, economically, culturally and educationally deprived segments of the populations are involved in child abuse in some form or other, there has been evidence that a majority of the deprived families, do not engage in child abuse in spite of economic and social stress factors. Hence, social and economic factors have been overemphasized in the dynamics of child abuse. There are studies which have demonstrated that socio-economic stress factors are incidental intensifiers of personality—rooted etiological factors. There is an interplay of mental, physical and emotional stresses in addition to socio—economic stress factors. Vulnerable psychological character and structures and personality weaknesses in the presence of added environmental stress factors, can give expression to uncontrolled physical and emotional aggression. While the majority of parents in the disadvantaged communities do not abuse their children, many well—to—

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200 1996, Cr.LJ, 29.
do parents in the upper strata of society engage in child maltreatment and child abuse practices. Hence, child abuse can be attributed to socio-economic disadvantages or to physical health problems within a family situation. The psychologists, therefore, should look for the etiology of child abuse beyond socio-economic stress factors.\textsuperscript{202}