CHAPTER 2

ATROCITIES, VIOLENCE AND CRIMES AGAINST WOMEN
— EXITING FRAMEWORK OF FAMILY LAW AND CRIMINAL LAW IN INDIA.

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2:1 Introduction

In all societies to a greater or lesser degree women and girls are subjected to physical, sexual and psychological abuse that cuts across lines of income, class and culture.¹

In India, discrimination exists from the childhood itself. Women are considered to be in the secondary position and they are put to atrocities before birth till death. The reason may be due to her economic dependency or illiteracy or lack of decision power.

Traditionally women have been confined to the private sphere of the family, as mothers, wives, sisters and daughters and their access to the public sphere has been divided. Discriminatory practices ranging from unequal inheritance right to sexual assault to dowry death have been and continued to be, justified on the ground that they occur within the private sanctuary of the family, and thus beyond the scope of law.²

 "From the cradle to the grave she is known as somebody's daughter, somebody's wife and somebody's mother." She has no identity of her own. She cannot take any decision of herself. According to Manu's Code,¹ A wife's marital duty does not come to an end even if her husband is to sell or abandon her.

Another legal text 'Shudchitatwa' provides 'If her husband is happy, she should be happy, if he is sad she should be sad, and if he is dead she should die'.

A majority of the cultures of the societies in the world are patriarchal, except for tiny pockets here and there, which are matriarchal or matrilineal. Even the progress of human reproduction from menstruation of girls to the birth of children by them as women, has been degraded by ideas of impurity, pollution and taboos, while man has sought freedom and even abused it. Woman has not only restricted, confined and subordinated by means of powerful ideas, rituals, traditions and customs, but also by inflicting unnecessary pains and sufferings on her being, to bring her and keep her under control to suit men's whim and desires.

In some situations not only men but women also find nothing defective with the man-woman relationship of domination and subordination, that they will argue for the 'status quo' or say 'there is nothing wrong, women are OK'.

It is well known that in the ancient civilization female deities ruled the universe and were worshipped. But gradually patriarchal cultures with their male gods took over and reigned supreme ideologically for over 5000 years. Hence all religions that was bark after about 3000 B.C. preach and uphold patriarchal values.

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Mary Daly in 1973, asserts that "God began to be represented as man and soon man began to think of himself as God."  

The general temper of violence has intensified the atrocities upon women. They are objects of beating, torture, injury and rape because all these have been routinised in the society. Violent incidents are so numerous that no eye-brows are raised when a new incident is added to the old long list. Atrocities against women has become a prominent issue within the Hindu right. The resolutions of the Mahila Morcha of the BJP, and more recently, the All India Women's Organisation have come to routinely condemned 'Atrocities against women' Rape, Dowry, female infanticide and sex selection have each been taken up and condemned, to the extent that the manifestos of the BJP have addressed issues of concern to women. Violence against women is always condemned. Some political leaders repeatedly denounce atrocities against the women.

Buried within the long shopping list of the BJP's manifesto for the Delhi assembly election in November, 1993 was a promise to establish special court to deal with crimes against women.  

Chief Minister of the Shiv-Sena BJP government in Maharashtra has stressed the need for more district courts for women to deal with cases of atrocities.  

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4. Mary Daly : 'Beyond God the father', towards a philosophy of women's Liberation, Boston, Beacon Press, 1973  
Even RSS training for women is often justified specifically in a relation to the violence since physical training and strengthening will empower women to resist this violence. Violence within public sphere is associated with rape, sexual assault and sexual harassment, whereas violence within the private sphere is associated with issues such as dowry, sex selection and female infanticide etc. Public violence is constituted within the communalizing discourse, whereas private violence is constituted through the feminization discourse.

Before proceeding further on the subject of violence against women, it is proper to know ‘violence’ and ‘crime’. A German mystic philosopher considered ‘Crime as a lacking of a stitch in a man’s make up. Criminologists define ‘Crime’ in different ways because their training is different. In simple words ‘crime’ is merely an anti-social behavior. It is only a harmful act, an objective evil act, a violation of social validity, and an offence against the dignity of the person.

2:2 The Term Atrocities, Violence And Crime And Categories Of Crimes Against Women.

The superiority complex or ego among the men has created the situation unfavorable to women, as they are the sufferers in the hands of men all over the world. They were and equal in quite very old times. The ideology created by men made them submissive and have to sacrifice everything including their lives. The higher the sacrifice – the higher the salvation – became the motto for women.
They were worshipped as a goddess and treated as a second-grade members of the family. Women rarely had an identity of their own apart from wives, mothers, sisters and daughters.

Going through the definitions given in various Dictionaries and Encyclopedias, one could define violence as intense, excessive, unrestrained, illegal and unjustifiable use of force or coercion to inflict injury or abuse on other persons or things by some persons usually to gain their personal or group ends. Thus infliction of injury on others, which may be physical, mental, emotional or psychological, is the essence of violence. It may include exploitation, torture, harassment and humiliation of all kinds. The violence against women is centuries old and women become victims of these for no fault of their own.

In patriarchal system, where girl has to leave his parents place and go to her husband's place. The girl being new in the family, becomes easy prey for subjection with various atrocities. The ancient custom of 'Swayamvaram' was replaced by arranged marriages. The parents wish to have sons, who fetch cash and dowry. The daughters are never welcomed and the mothers wish themselves dead and cursed on the birth of a female child. Infanticide is practiced and women are tortured physically as well as mentally in their own homes. They were treated as slaves and idols. They were made to put on 'Pardah' They could not own any property and was not having any personality of their own. In India, the position of women was worse. She was told to serve her husband and in-laws. She was to call her husband as 'Swami' (Owner) and she the 'Dasi' (Slave).
The pitiable condition of women in India continued in Muslim and early British period.  

People practicing various religions such as Hindu, Muslim, Christian, Zoroastrian, Jain, Buddhist, and Sikh etc inhibit the Indian sub-continent. Within each religion there are various sects, but all of them in one form or another overtly or covertly support sub-ordination of women. None of them consider women as an independent human being with individuality but as dependent on father, husband or son.

Violence is both physical and mental. It has been pointed out that, physical abuse or non-accidental trauma inflicted by a caretaker may include bruises, burns, head injuries, fractures and the like. In the Indian context, child abuse encompasses a wide range of maltreatment of girls, including malnutrition, physical injury, abandonment, neglect, exploitation, sexual abuse, pawning and child marriage.  

"Although the aggressive forms of violence when frequently come to light, other silent forms reflect in high incidence of neurosis, depression and other psycho-somatic disorders are yet to be given a wider recognition."  

Mental torture of married women includes persistent denial of food, insistence on perverse sexual conduct, turning a woman out of the house.

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8. The Times of India: 7th November 1992
or confining her to the house and denying access to minor children. Repeated physical violence or threat to that effect, taunting the woman about her family, her infertility or for giving birth to female infants only, voicing suspicious about infidelity, denying paternity of the children, especially in front of relatives and assaulting children to cause mental anguish to the mother are the instances of mental torture or violence.

Female foeticide, female infanticide, child marriage, incest, dowry deaths or bride burning, cruelty against women by husband or relatives, denial of maintenance and property rights to women in general, rape, forced prostitution in form of the 'Devadasi' tradition, ill-treatment meted out to elderly women especially when they are single. Sexual abuse is one of the most frequent form of violence which now a days received considerable reportage.

Violence against women has crossed all the barriers of castes and humanism. In a recent case in South India on 2.7.1999 a Dalit woman by name Shanti was dragged and pinned down by a group of 15 men around midnight and both her hands were chopped off in front of her family members. This was done because she had refused to bed with a man of the upper caste in her village.

Hundreds of similar atrocities on women are part of their daily lives. This goes to establish the fact that 'Sexual abuse' and subjugation of women has a specificity of its own. It has acquired an institutionalized form by which subjugation can be perpetrated. Physical violence against a woman is done in a manner that it shames and breaks the honor of men. While sexual abuse and assault is a political weapon that is used to retain the status-quo of the system.
The girl-child is overburdened with carrying out the household chores and taking care of her younger siblings. And yet she is discriminated and harassed at every stage, though the nature and degree of the harassed out differs from community to community and in the same community from family to family.  

In many parts of the world, marriages are still arranged by families, between very young brides and older grooms. In a marriage arranged by the families, the ability of the woman to leave her home if her husband is harming her, may not be her decision alone. Most Indian girls are married between the ages of 16 and 20, although some are married at significantly younger ages. The young bride must be obedient to her elders, loyal to her husband and his family and never to discuss her family problems with outsiders. She has to sacrifice her life for the honor of the family name. Even educated and well-placed professional women submit to wife beating, sexual assault etc.  

The custom of marriage payments contributes to the concept of women as property that can be bought & sold. The payment of bride price by the groom’s family also operates to prevent a woman from escaping violence in the home. Under the customary law, once the bride price is

paid, 'The woman and her child-bearing and earning ability is entirely owned by the husband'.  

The incidents of female foeticide, infanticide are nothing but the denial of her very right to be born, more so it has angulated almost all regions and sections of our society. Likewise child marriage, child motherhood and child-widowhood are such other kinds of violence on the girl child. In the States of Rajasthan, Uttar Pradesh and Bihar, particularly in the districts of Hazaribagh and Dhanbad, child marriages are very common. Despite legal provisions exiting since long banning this pernicious practice, this practice is common.  

In many cases, the girl child is exploited in order to meet another person's sexual or emotional needs. Sexual abuse of a girl child is very complex and its range is very wide. Selling, kidnapping, exploiting, pushing or forcing the girl children or women for the act of prostitution is also not rare. The most disturbing and disillusioning fact is that the family members or he relatives themselves sexually abuse the girl child in the home itself.  

Many of these do go unreported because most of the victims and their family members do not want to talk openly about their trauma and

also because they have no faith in the law. 14

The incidents of polygamy by husbands, child marriages, infanticides and feticide of girl child, rape, molestation of woman, indecent representation of woman and sati or bride-burning are some of the examples of violence against women. The practice of sati is on the wane now days but after every 5 to 10 years an incidence of forced Sati shatters the World in India. For e.g. Roopkunwar of Rajasthan in 1987 and Guttubai of M.P. in the year 2002.

Violence against women is a continuous process and in 2002 the old woman was forced to go Sati after her husbands death in the year 2002 in the district of Panna in M.P. in cases of victimization of women no any socio-economic as well as educational criteria is fixed. The woman may belong to poor and socio- educationally class or she may belong to the high status class. For e.g. Manisha Koilara, a renounced film-actress is fighting justice, in court of law against her indecent representation by film maker Shashi Nair through a dummy actress. In all, the feelings of women are conveniently neglected. The woman is considered to be only an 'Object' having no sentiments, no emotions, no feelings.

2:2:1 Offences Against Women Identified As Crimes Under The Indian Penal Code.

To uphold the Constitutional mandate, the State has enacted various legislative measures intended to ensure equal rights, to counter social discrimination and various forms of violence and atrocities and to provide support services especially to women. Although women may be victims of any of the crimes such as “Murder”, “Cheating” etc., the crimes which are directed specifically against women are characterized as “Crimes Against Women”. These are broadly classified as under -

1) Female feticide: Violence on unborn girl child. It is a silent violence even before her birth. (Section 312 IPC)
2) Female Infanticide - Violence on birth as an infant (sec. 315 IPC)
3) Rape (sec 376 IPC)
4) Kidnapping or abduction for different purposes (sec 363 to 373 IPC)
5) Homicide for Dowry; Dowry Deaths or their attempts (sec 302/304-B IPC)
6) Torture, both mental and physical. (sec 498 -A IPC)
7) Molestation (sec 354 IPC)
8) Importation of girls (up to 21 yrs. of age- sec. 366-B IPC)
9) Immoral Traffic (sec 372-378 IPC)
10) Indecent representation of women (sec 292-294 IPC)
11) Sexual harassments (referred in the past as, 'Eve — Teasing) (Sec 509 IPC )

(These provisions are discussed in detail in Chapter 6:2:2)
2:2:2 Offences Against Women Identified Under The Special Laws.

Although all laws are not gender specific, the provisions of law affecting women significantly have been reviewed periodically and amendments are carried out to keep pace with the emerging requirements. Some Acts which have special provisions to safeguard women and their interests under family law are:-

1. The Special Marriage Act, 1954
2. The Hindu Marriage Act, 1955
3. The Hindu Succession Act, 1956
4. Immoral Traffic (Prevention Act), 1956
6. Dowry Prohibition Act, 1961
7. The Medical Termination of Pregnancy Act, 1971
8. The Child Marriage Restraint (Amendment) Act, 1979
9. The Family Courts Act, 1984

(The protections under the family law are discussed in detail in chapter 6 of the instant work.)

2:3 Crime Statistics Regarding Women

Statistics is the mathematical tool to measure the population. Effective and very efficient data-base will be very much helpful to draw inference from the modular stimulation and extra population. By making use of different kinds of mathematical functions, one is able to predict and project the magnitude of events in future also. In this particular sense the statistics of crimes has received prime attention. There is several
tabulated information available for all kinds of crime witnessed during the decade.

Since the present work is very much related with specific crimes against women only, it becomes necessary to study the tabulated information on crimes against women. As a matter of fact, the categories of crimes against women are well known and widely accepted. It is the first attempt to collect the factual information on different categories of crimes against women during proceeding years. It will be easy to draw the inferences with a specific attention to the region of a study. The researcher opines that the national and state wise scenario of different Crimes against women will be important in view to draw more correct inferences.

The detailed State and Union Territory wise statistics of these crimes are presented in the study and the related analysis is discussed in the following tables.
It is observed that crimes against women in 1998 reported an increase of 8.3 percent and 4.8% over previous year 1997 and 1996 respectively. In absolute numbers an increase of 10,073 cases were reported at All India level in 1998 over 1997.

The available data indicates an increasing trend during the last three year in all the IPC crimes against women except 'Rape', 'Sati' (Prevention) Act' and 'Importation of Girls' which reported a declining trend during this period. All crimes against women reported under Special and Local Laws also resulted in increasing trends during 3 years except 'Indecent Representation of Women (P) Act' which reported a declining trend.

Uttar Pradesh State reported highest incidence (13.3%) of these crimes followed by Madhya Pradesh (12.1%) and Maharashtra (10.9%). In contrast, Delhi, which accounted for only 1.9 per cent of total crimes and shared only 1.3% of the population in the country reported third high rate of such crime at 19.6 after Madhya Pradesh (20.5).

Incidences of rape cases (15,031), reported a decline of 2% during 1998 over 1997. Madhya Pradesh alone reported 22.3 per cent of total rape cases in the country, Union Territory of Delhi, which represented only 2.9 per cent cases reported fourth highest rate at 3.4 after Mizoram (9.3), Madhya Pradesh (4.3) and Dadar and Nagar Haveli (3.9).

At national level there were 15,033 rape victims compared to 15,336 in the previous year representing a decrease of nearly 2 per cent.
State Wise Incidences Of Child Rape

Numerically, the States of Madhya Pradesh (806), Uttar Pradesh (516), Maharashtra (452), Andhra Pradesh (288), Delhi (239) and West Bengal (214) reported significant number of cases of Child Rape. The above mentioned 5 States and Union Territories together contributed 62 percent of total Rape cases of children reported at All-India level. There was decline in Child Rape Victims in the age group 10-16 years during this year (3,433) compared to previous year (3,644). The Child Rape Victims below 10 years also reported a decline (626 in comparison to those of 1997 (770).

The exact details of female foeticide and infanticide cases could not be available, though repeatedly these problems are discussed at various seminars, conferences. Though there are penal provisions in Indian Penal Code, these crimes go silently and records are not maintained either by the Doctors, or by the hospitals government and private both.

Rape

At national level there were 15033 rape victims compared to 15336 in the previous year representing a decrease of nearly 2 %. Of these 8414 (56%) were in the age group of 16-30 years, 3433 (22.8%) in the age group of 10-16 years and 626 (4.2%) of age 10 years and below. Similar to decrease 92% in the number of rape victims over previous year, the child victims (below 10 years) of age also reported decrease of 18.7% and the victims above 30 years of age reported an increase of 10.8% signifying decrease of incidents relating to rape of children. The numbers also include rape by members residing and employed by the household or
family such as drivers, servants or the nearest family members like uncles, fathers, grandfathers etc.

**Kidnapping And Abduction**

Incidence of Kidnapping and Abduction cases of children reported a significant increase over the previous year (12.7). Gujrart (124) and Bihar (102) continued to report higher incidents of kidnapping this year, while among Union Terretories, Delhi reported higher kidnapping cases (104).

Incidences of these cases reported an increase of 4.0 % in 1998 over 1997. The states of Uttar Pradesh and Rajasthan each reported more than 15 % of these cases at National level while Union Territory of Delhi with share of 6.0 % cases reported highest rate at 7.5%

**Dowry Deaths**

At national level Incidence of Dowry Deaths cases reported an increase of 15.2% over the previous year. Uttar Pradesh alone followed by Bihar 15.0% reported 32.2 % of these cases at national level. Over the previous year. 32.2% of these cases were reported by Uttar Pradesh alone followed by Bihar i.e. 31.5 %

**Torture (Cruelty By Husband And His Relatives)**

Incidence of Torture cases in the country increased by 12.9% in 1998 over the previous year 18.7% of these were reported by Maharashtra while the highest rate in the country at 9.54 reported from Rajasthan compare to 4.3 national average rate.
Molestation

Incidence of molestation cases in the country reported an increase of 0.9% over the previous year. Nearly 23.5% of total cases were reported from Madhya Pradesh State which also reported significantly higher rate (9.40) than national average rate.

Sexual Harassment (Eve - Teasing)

The number of sexual harassment cases reported in the country significantly rose by 40.1% over the previous year. More than half (59.7%) of these cases were reported from the state of Andhra Pradesh, Uttar Pradesh, and Tamil Nadu. Jammu & Kashmir reported the highest rate at 3.8% compared to 0.8%, which is the national average rate.

Importation Of Girls

A total of 146 such cases were registered in 1998 compared to 78 cases in the previous year reporting a sharp increase of 87.2% over 1997. Gujrat, Madhya Pradesh, and Haryana reported 57, 26 and 25 cases respectively.

Sati

The practice of Sati is an rare practice in modern times still sporadically cases of Sati get reported e.g. Roopkunwar's of Rajasthan (1987) and Guddenbai's case of Madhya Pradesh. (2002)
Immoral Traffic Of Women

Cases immoral traffic registered increases of 4.5% during 1998 as compared to 1997 more than half cases were reported from the state of Tamil Nadu only.

Indecent Representation Of Women (Torture)

A remarkable increase of 163.0% was noticed as any pared to cases reported in the previous year (1997) nearly 45% cases were collectively reported from Andhra Pradesh and Bihar States put together. Thus it has become vital here to know the underlying basis and to now the conceptual basis of Indian Legislation.

2:4 Underlying Basis And Conceptual Basis Of Indian Legislation

Indian legal system before 1947 was static and counterproductive to social change and social justice. It was anti-people, suppressive to human dignity and non-responsive to egalitarian goals of Indian people. According the legal fraternity of judges, lawyers and juries were insensitive to the urge, expectations and need of people.

In the backdrop of Gandhian humanism and Nehru's scientific temper the new Constitution enacted and adopted in 1950 contributed in ushering a new legal and constitutional philosophy embodying ideals of liberty, equality and human dignity. The Preamble of the Constitution together with Fundamental Rights and Directive Principles constitute the Bhagwadgita of Indian sociological jurisprudence. Its core principle makes
the people of India the ultimate sovereign. The country is Socialist, Democratic and Republic in character.

One of the great juristic development in the post emergency era in India has been the realization on the part of the Parliament an the Supreme Court that they must live in harmony and work in unison for the good of Daridranarayan, the cobbler, the monsoon, the farmer the woman, the worker etc. like the legislators, the judges too seem to be more open and out of their mental ivory tower bristling with sympathy and understanding towards the little Indians. The new inter-action between legislative policies and positive judicial response to restore the balance and harmony in our social policy and the Supreme Court more or less has relegated its five star hotel approach while dealing with questions of social and economic import. Now 'law', both for the Parliament and the Court is nothing but a means to an end and not an end in itself. It is a tool and a technique to serve the people and not to paralyze social change and reforms through legal process. It is a method to adjust and accommodate law to the needs of the country. 'We the people' in other words both the legislators and judges have to be faithful to the changing and interpreting law according to changing times, needs and circumstances of Indian Society.

Another satisfying aspect is that the legislators and courts, social organizations and communities have become more aware of the need to keep in mind women's need and aspirations, difficulties and challenges, when addressing issues are placed before them. India in the last few years have witnessed extensive and intensive developments in the sphere of women and the law. The rapid pace of developments can be attributed to a number of factors.
Firstly, 'the doctrine of equality' of sexes, which is now accepted as established one, is one factor. Increase in literacy and education amongst the females is another contributory factor. The break-up of the joint family system and the spirit of individualism also contributed to tension within the family, thus developing a family law theme.

The intensity of change witnessed during recent years in the sphere of women and the law is not an accident or a sporadic occurrence. It seems to be the result of certain discernible trends. There is in the first place, an increased awareness in the society of the injustice done to women in the past.

Secondly, the rights and position of women have received, close attention at the hands of the Commission of India, whose contributions on the subjects are of permanents value.

Thirdly, the judicial approach on various issues concerning woman has, by and large been progressive and liberal. World-wide movements for women's freedom has not left India untouched even though the form which the movement assumed in India may not be identical with the form assumed by it elsewhere. Even the social movements have insisted upon changes in our customs and beliefs. Social reforms in personal laws continue generation to generation and each generation contributes to the contrivances of the efforts of social reforms.

In *Nargesh Mirza Vs U.O.I.*,\(^{16}\) the airhostesses in a case, which attracted, asserted the right of women to equality wide-spread attention. The Air India laid down condition, for airhostesses that the services of an airhostess could continue up to 35 years of age but would be terminated if she contracted marriage within four years of her recruitment or on her first pregnancy. The court regarded the conditions as unreasonable and arbitrary and held that it compelled the airhostess not to have any children and diverted the ordinary course of human nature. On the strength of Article 15(3) several other statutory provisions in favour of women have been upheld. These include provisions exempting from punishment for adultery, provisions giving special rights to women in respects of bail, provisions authorizing service of summons on men only, while provisions for maintenance of women\(^{17}\) only, and provisions for reservation of seats for women in local bodies or in educational institutions.

The provision in section 354 IPC, punishing indecent assaults only on women has been held to be valid as a reasonable classification.\(^{18}\) In implementation of the Constitutional directives of equality of sexes (Art 39) and prohibition of discrimination against women (Art 15), parliament in 1976, enacted the Remuneration Act, 1976, prescribing equality of remuneration for both the sexes, incidentally to avoid discrimination against women.\(^{19}\)

\(^{16}\) Nargesh Mirza Vs Union Of India, A.I.R. 1981, SC 1829.

\(^{17}\) Section 125 of Criminal Procedure Code.

\(^{18}\) Girdhar Gopal vs. State, AIR, 193 M.B.147.

\(^{19}\) Convention on Elimination of Discrimination Against Women - CEDAW
At the same time, when a social evil assume magnitude or exhibits frequency there is a natural urge to use the weapon of criminal law to check the evil. Circumstances have compelled the legislature in India to apply the sanctions of criminal law for checking a number of evil resulting in the exploitation of women.

In India, recently, two such evils have figured namely, sexual offences against women and dowry demands. The second is peculiar in India and it's neighboring countries, but the first one is a worldwide phenomenon. Increasing focus on victims of sexual offences could make the Indian Criminal Justice System more human and just by minimizing the cost, trauma and inconvenience to victim.

In response to this feeding, Parliament has recently enacted the Criminal Law (Amendment) Act, 1983, which introduced several reforms concerning the punishment of rape, the procedure and the rules of evidence. The essential ingredient to the offence of rape is 'consent' given by a female, who is mature enough to give such consent. Taking note of this aspect the new law makes it clear that consent may be vitiated, not only when the women herself is put in fear of death or of hurt, but also when any person in whom the woman is interested is put in fear of death or of hurt. Besides this, the new law prescribes maximum punishments of 10 years and minimum of seven years imprisonment. The new law provides that the trial of rape and other cognate offences must be held behind closed doors and also introduces another prohibition against the disclosure of identity of the victims of rape and cognate offences.

Apart from this aspects of protection, Criminal Law presents another area which is of special importance to women i.e. abortion. The
Indian Penal Code adopted a conservative approach in this regard. The new Act, Medical Termination of Pregnancy Act, 1971 has added many more exceptions and this Act was passed in order to liberalize the provisions relating to 'abortion'. Under this 'Act, termination of pregnancy can be brought out as a health measure, where there is danger to the life or risk to physical or mental health of a woman and secondary, on humanitarian grounds, such as when pregnancy arises from a sex crime like rape or intercourse with a lunatic woman etc. and third by on eugenic grounds where there is a substantial risk that the child, if born, would suffer from deformities and diseases.

In order to curb the evil of dowry the Dowry Prohibition Act was passed in 1961. In fact, even before this central legislation there were some Acts prohibiting dowry. Now the Act is amended in 1984 i.e. the Dowry Prohibition Act (Amendment) Act, 1984, which has made for reaching changes in the Act so as to make it more effective. Taking note of the dominant object of the Dowry Prohibition Act, 1961, it was held that the initial demand for dowry itself also amounts to an offence even though the other party does not agree to the demand.

The laws of matrimonial remedies particularly divorce and maintenance has been subjected to extensive changes during the last decade. As far as the Hindus are concerned the changes has been effected by legislation as well as by judicial decisions. The grounds for divorce for the Hindus are found in Hindu Marriage Act, 1955. As a result of the amendments in the Act, twelve grounds of divorce are available to both the parties and two more grounds are available only to the wife.
Some developments regarding divorce amongst Muslim are—Section 2(ii) of the Dissolution of Muslim Marriage Act, 1939, enables a Muslim wife to sue for divorce, if the husband has failed to provide her maintenance for at least two years. A Muslim woman can also get her marriage dissolved if her husband falsely charges her of adultery. A man can divorce his wife unilaterally by pronouncing 'Talaq' (I divorce three), where as the wives can divorce their husbands only by establishing grounds.\(^{20}\)

Previously, under Christian Law, a woman must prove adultery along with cruelty if she seeks divorce from her husband, but by amending the Law this hurdle has been removed.

Regarding the rights of succession of Hindu widows the legislation has enlarged their rights of succession to their husband's estate, hence the Hindu Women's Right to Property Act was passed 1973. This Act was repealed the Act of 1956.

It is well settled that the provision in Section 125 of Criminal procedure Code, 1973, enabling wives and children and now parents to take proceeding before magistrate for maintenance is a measure of social justice, intended to prevent vagrancy. Thus it can be held that in Section 125, the words 'his father or mother' should be read with 'his or her mother'. Hence a daughter who has sufficient means must maintain her needy parents.\(^{21}\) While on the subject of procedural aspects of law as


\(^{21}\) Dr. Mrs. Viaya Manohar Arbat vs. Kashiram Rajaram Sawai, Air 1987 SC. 110
affecting women, the Family Courts Act (66 of 1984) is enacted with the object to provide conciliation in and to secure speedy settlement of dispute relating to marriage and family affairs and for matters connected therewith. An interesting provision in this Act is that for appointment of judges ‘preference shall be given to women’. This Act also suggests securing the services of medical experts or a welfare expert, ‘preferably a woman’, wherever available.

To protect the women from exploitation and harassment the Supreme Court time to time has drawn attention to the need for implementation Uniform Civil code in India.\textsuperscript{22}

Any discussion on the legislations protecting rights of the women cannot be completed without referring to the essay on the subjugation of Women by John Stuart Mill (in 1869). It reads thus that ‘the principle which regulates the existing social relations between the two sexes the legal subordination of one sex to the other is wrong in itself, and now one of the chief hindrances to human improvement, and that it ought to be replaced by a principle of perfect quality, admitting no power or privilege on the one side, nor disability on the other’.\textsuperscript{23}

\textsuperscript{22} Sarla Mudgal vs. U.O.I. (1995)3, SCC 635.
2:5 Appraisal

Thus, the server and steadier support of women's rights today is only law and nothing other than law. It is the function of the law to support the weak and helpless mass of humanity.

Unfortunately in India, there is no special law against wife-beating but the very act if it were of simple or grievous hurt, can be treated as assault under section 322 to 326 of the Indian Penal Code. However, as it seems, there is no practical utility of the provisions of the penal laws as regards this issue because if the wife complain against the erring husband's behavior and if the court convicts the husband, the wife only suffers the social trauma or may disturb her own matrimonial bliss. Under such an event she cannot think of protesting against the cruel behavior of her husband for such matrimonial disharmony, which consequently leads to divorce.

The Department of Women and Child Development's major recent initiatives have aimed at ensuring better enforcement of all those laws as well as at amending them with the twin objectives of making them more stringent and therefore more effective in bridging the widely perceived gap between de-facto and de-jure status of women and of removing any gender bias against women from these as well as other laws such as laws concerning the rape of minor girls, compulsory Registration of marriages and Protection Of Women From Domestic Violence etc.

Regarding the instances of child rape, the 'consent' would be irrelevant as consent of a child is ab-initio void. The initiator of the legal process in cases of child rape would in most cases be the parent or guardian or
relative or friend of the victim. However, when the child is being sexually abuse by any of these persons itself, the situation becomes quite peculiar. In fact, most instances of child rape or child sexual assault by people close to the child go unreported, as the persons who should have initiated the legal process are themselves the victimizers.

Violence against women cannot only be dealt with by resorting to criminal law and Family laws. It has to be seen in the contact of devil of rights to women in all spheres. While the Indian Constitution and certain laws are based on models of substantive equality, the actual implementation of the laws leaves much to be desired.

Despite all these safeguards, the women in our country continue to suffer, due to lack of awareness of their rights illiteracy and oppressive practices and customs. The resultant consequences are many viz, a constant fall in the sex ratio, high infant morality rate, low literacy rate, high drop out rate of girls from education, low wages rates etc. Regarding the fall in the sex ratio, 1991 census in India shows the ratio decline at 927 female per 1000 males.24 While the 2001 census show slight increase to 933 female per 1000 males.25

In spite of all these welcome changes in legislative and judicial approaches and attitude the life of the average women in India is steeped in inequality explanation and dependency on the male. This is evident from the increasing number of reported cases of domestic violence viz, related deaths, female suicides, matrimonial cruelty cases, immoral traffic cases, dissertation and destitution cases, molestation and rape cases.