Chapter - III

The Indian Family and Women

Sociologists have defined 'family' as a group of individuals who live under the same roof, eat food cooked in one kitchen and are related to one another through blood or law. The basic ingredients of family are love, affection, affinity, a feeling of belonging and concern for each other.

In one of the earlier stages of the development of human society, men and women were members of tribes who were always on the move in search of food. Each tribe was headed either by a man or a woman who provided leadership to the tribe to fight against the aggression committed by another tribe or to protect themselves from wild animals and nature's fury. Ignorant of their role in procreation, men looked up to women with awe as only women could produce another human being. Naturally women were worshipped as goddesses and enjoyed equal freedom with higher status in the society which was matriarchal.

After settling down as an agricultural society, a slow change affecting women's status and roles took place. Concepts of ownership of land and ownership of progeny were developed. Desire to control women's fertility and establish ownership over her reproductive power and her womb was a logical corollary. With the decline in the status of women in family and society, matriarchal society was replaced by the patriarchal kinship system. A reference to the story of
Shwetaketu in Hindu mythology would not be out of place here. Shwetaketu who prevented his mother from going out with another man, was the first to prescribe moral codes for women and created the institution of marriage which has been the foundation of the family unit.¹

In the patriarchal family, women were confined to the four walls of 'home' and their status declined to a secondary position. Later, religions which were established by men strengthened patriarchal values and gave religious sanction to the subjugation of women.

To justify the discriminatory code of behaviour, women have been condemned as inferior human beings who were created by God for men's service and entertainment. Some Hindu scriptures consider her as the gate to Hell or a seductress. Christianity brands her as the temptress who caused Adam to sin by desiring to eat the forbidden fruit. And, according to Islam, she is the earth in which man sows his seed, hence she is the property of man and she needs protection but not freedom.

In addition, to make women accept their inferior status and subjugate them willingly and without protest, all religions have glorified motherhood and put mother on the pedestal of goddess. However, in the process they were

cunningly deprived of all economic and property rights rendering them powerless and dependent on men for their very survival. Conditioned under patriarchal values of accepting secondary status in the family, women cherished qualities of self sacrifice, silent submission to male domination and invisibility. Hence for generations together the stability of the family has depended on the sacrifices made by its female members.

Now, coming to the present, the main characteristic of the family in India has been that all family members, including brothers, sisters, cousins and remotely related persons lived under the care of the head. The joint family was like a solar system. All individuals got protection and security from the head a 'Lord' who controlled their lives, actions and emotions.

The family provided social security for its members, sheltering widows and the infirm too, besides providing for their basic needs. However, a few individuals felt suffocated. With industrialization, migrations and education, especially for women, individualism grew and the joint family system started showing cracks. Presently, the joint family is reduced to a show piece.

Thus, the definition of family has become irrelevant. Marriage as the foundation of family is also getting redundant. Couples now live together without going through the formality of marriage and part company when the relationship turns sour
without having to seek a legal divorce. ²

Rapid industrialization, migration, mobility of the population, urbanization and an increase in life expectancy, on the one hand, and the rat race for a higher standard of living, consumerism, individualism and changes in cultural behaviour have created new challenges for the present family.

In this Chapter, we have taken up the legal status of women in the family. This would cover marriage and the related problem of Dowry, rights of motherhood and adoption, violence in the family, disrupted marriages, divorce, maintenance, property rights and the rights of women to custody and guardianship of a minor child when the marriage is dissolved.

But, because there is no uniform law which covers all Indian women, Kapila Hingorani has rightly raised the question "What family? What Indian? What Women?" ³ The fact is that the biggest lacunae so far as legal status of women in the family is concerned, relates to the personal laws of different communities. While our Constitution confers complete equality to men and women, the personal laws discriminate not only between men and women but against women and women. According to Hingorani, "A Hindu woman is more privileged than the Muslim woman. Being a Muslim woman is as

2. Ibid., p.18.
bad as being a Christian or Parsi woman." In this context, we would be focussing on the Indian woman in general and the Hindu woman in particular since they constitute the majority. We would be touching briefly on the status of Muslim, Parsi, Jew and Christian woman also.

Marriage

Marriage is the foundation on which a family is raised. It is an important social institution and is as old as the dawn of civilization. According to Hindu culture, it is the union of two souls. In all societies, husband and wife are considered as the two wheels of the chariot of life. In the social turmoil in which we find society, the following observations of Ranganath Misra J are very apt:

Every marriage ordinarily involves a transplant. A girl born and brought up in her natural family when given in marriage, has to leave the natural setting and come into a new family. When a tender plant is shifted from the place of origin to a new setting, great care is taken to ensure that the new soil is suitable and not far different from the soil where the plant had hitherto been growing; care is taken to ensure that there is not much of variation of the temperature, watering facility is assured and congeniality is attempted to be provided. When a girl is

4. Ibid., p.73.
transplanted from her natural setting into an alien family, the care expected is bound to be more than in the case of a plant. Plant has life but the girl has more developed one. Human emotions are unknown to the plant life. In the growing years in the natural setting, the girl now a bride has formed her own habits, gathered her own impressions, developed her own aptitude and got used to a way of life. In the new setting, some of these have to be accepted and some she has to surrender. This process of adaptation is not and cannot be one sided. Give and take, live and let live, are the ways of life and when the bride is received in the new family she must have feeling of welcome and by the bonds of love and affection, grace and generosity, attachment and consideration that she may receive in the family of the husband, she will get into new world, which would last for her life. She has to get used to a new set of relationships— one type with the husband, another with the parents-in-law, a different one with the other superiors and yet a different one with the younger ones in the family. For this she would require loving guidance. The elders in the family including
the mother-in-law are expected to show her the way. The husband has to stage as mountain of support ready to protect her and espouse her cause where she is on the right and equally ready to cover her either by pulling her up or protecting her willingly taking the responsibility on to herself when she was in fault. The process has to be a natural one and there has to be exhibition of co-operation and willingness from every side. Otherwise how would the transplant succeed.5

India is a multireligious nation and marriage ceremonies are governed by the religious laws of the community to which the couple belong, and in accordance with their customary rites. However, certain conditions are common to every community for the performance of the marriage ceremony.

a) The potential spouse should be of sound mind and capable of discharging his/her obligations therefrom.

b) The person should be adult having completed the age of 21 for groom and 18 for bride.

c) The person should be capable of giving consent to his/her marriage, i.e., consent should not be obtained by fraud.

d) The marriage should not be performed within prohibited degrees of relationships, e.g. among Hindus, the parties should not be sapindas of each other.

e) Certain ceremonies are essential to completion of the marriage such as the saptapadi and the performance of rites before fire in Hindus, while in Muslims, the formality of offer and acceptance, followed by Mehr in the presence of witnesses is essential. Under the special Marriage Act, the marriage is concluded by registration before the registrar of marriage, subsequent to thirty days of notice in a prescribed form. 6

The important issues pertaining to marriage are -

Mate Selection: The Special marriage act, 1954 has permitted girls to select their own life-partners if they have attained the age of eighteen years. They can select their mates from outside their own caste, sub-caste, community and religion too, if they so choose. Both boys and girls who want to get married outside their religion and caste can resort to civil marriage which requires no rites or customary ceremonies.

Besides providing the minimum age for the civil marriage, the 1954 legislation also lays down three other conditions: neither of the partners has a spouse living, each party must give consent to marriage and the partners should not be close relatives, that is, within the degrees of prohibited relationship,

unless the custom of their community permits such a marriage. The couple wanting to get married under the Special Marriage Act 1954 have to give notice to the marriage officer in their district in which one party must have been living for thirty days before giving notice. If any party to the marriage is a permanent resident of another district, the notice is sent to the marriage officer of that district who displays it on the notice board in his office. The object of the notice is to invite objections to the marriage, if any. It is also to prevent bigamy and marrying before the legal marriage age. The marriage is solemnised, if there is no objection within thirty days. Three witnesses are necessary for the civil marriage.

Age at marriage: Our religious norms and social customs had made the marriage of a girl before attaining puberty obligatory. The Special Civil Marriage Act, 1872 had fixed the minimum age of marriage for girls at 14, but this applied only to those girls who married through courts outside their own castes. The Child Marriage Restraint Act, 1929 fixed the minimum age of marriage for males at 18 and for females at 14, which was later amended to 15. The Special Marriage Act 1954 fixed the minimum marriage age at 21 and 18 for boys and girls respectively. The Hindu Marriage Act, 1955 prescribed 15 years as the minimum age for marriage for girls and 18 for boys. This act was amended in 1978 and the age of marriage has now been raised to 21 and 18 for males and females.
respectively. Though the 1929 and 1955 Acts provide same age of marriage, yet there is difference between the two. The violation of the 1929 Act prescribes penalty but the marriage itself remains valid. On the other hand, the violation of the 1955 Act makes the marriage legally void. The offence under the 1929 Act is non-cognizable and provides punishment for the bridegroom, parents, guardians and the priest which is three months of simple imprisonment and a fine of upto Rs.1,000. No woman is, however, punishable with imprisonment under this Act. The Act also provides for the issue of injunction order prohibiting child marriage.

The Christians in India are governed by Christian marriage Act of 1872. It provides that marriages between 2 persons, a man and woman who are both Christians (as defined by the Act - the definition includes all persons professing the Christian religion) can be performed by a priest or minister of the Christian Church or a marriage Registrar or person specially appointed under this Act in India. The formalities for the marriage ceremony are provided by the statute - i.e. the presence of the priest, performance during day light hours, notice of intended marriage, publication of 'banns' or notice, presence of 2 witnesses and consent of the father, mother or guardian of a person under 21 years of age, and issue of the marriage certificate and registration of marriages.
Section 60 provides for capacity to marry. The man must be 18 years and the woman 15 years of age, the marriage should not be bigamous, and the wording of the marriage vow invokes the name of the Almighty God and Lord Jesus Christ as spiritual witnesses of the ceremony of marriage. There are special provisions for various Church groups such as Anglicans, Roman Catholics etc. 7

The condition for making Christian marriage invalid are some as those of Hindu marriage that is, bigamy lunacy, impotency, prohibited relationship, and violation of age limits. Besides these conditions, the marriage is also invalid if consent of either party is obtained by force or fraud.

There are hardly about 35,000 Jewish persons left residing in India today, according to figures given to the Christian Institute Conference at Bangalore in 1978. Jewish personal law, comprising of Rabbinical Law, is administered by the Jewish Rabbi. A bill of gett, equal to a divorce, is within the competence of the Rabbinical court. However the character High Courts at Bombay, Calcutta and Madras holding letters patent from H.M. Queen Victoria also have jurisdiction over Jewish persons to grant matrimonial relief. The High Court would necessarily have to apply the personal law of the particular Jewish Community to which the parties belong in India. 8

7. "women and family law in India", Approach Paper submitted by Women Education Unit, NCERT for the Workshop on Women and law, held from 18th to 20th March, 1982 at New Delhi, p.2.
8. Ibid., p.5.
Polygamy: Our legal system prohibits polygamy and permits only monogamy. The Hindu Marriage Act, 1955 has made bigamy an offence for Hindus. According to the Special Marriage Act, 1954 and the Hindu Marriage Act, 1955 no marriage can be solemnised between two persons if either party has a living spouse. The wife has now been given the right to divorce her husband if he takes a second wife. If no such ceremonies were performed for the second marriage, the man and woman cannot be given the status of husband and wife and they cannot be prosecuted for bigamy.

The Muslim Law, however, still permits polygamy though it prohibits polyandry. This is perhaps because the Muslims regard marriage as a contract as against Hindus who regard it as a sacrament.

Invalid Marriage: A Hindu marriage (according to the Special Marriage Act, 1954 and the Hindu Marriage Act, 1955) would be invalid if it is bigamy; either party suffers from unsound mind or mental disorder; either party is impotent; the boy has not completed 21 years and the girl 18 years; the partners are closely related within the degrees of prohibited relationship (i.e. five generations from the father's side and three generations from the mother's side, unless the community custom permits it).

A Muslim marriage would be invalid if the parties are within the prohibited relationship defined in the Muslim Law. Children of an invalid Muslim marriage are considered illegitimate.
The condition for making Christian marriage invalid are some as those of Hindu marriage that is, bigamy, lunacy, impotency, prohibited relationship and violation of age limits. Besides these conditions, the marriage is also invalid if consent of either party is obtained by force or fraud.

**Defective or Void Marriage:** The defective marriage is liable to be declared invalid by law, but if the spouses want to continue with the marriage, they may do so. The defects which can make a marriage invalid are: one party refusing to consummate the marriage, wife being pregnant at the time of marriage by another person, and consent to marriage being given by force or fraud. The Hindu Marriage Act, 1955 makes the marriage void on four conditions. These are: impotency, unsoundness of mind, pre-marriage pregnancy and consent having been obtained by force or fraud. The Special Marriage Act, 1954 makes civil marriage void on conditions, such as pre-marriage pregnancy, consent obtained by force or fraud and wilful refusal to consummate marriage.

In Christian and Parsi Laws, there is no difference between invalid and voidable marriage, whereas Muslim Law defines irregular marriages rather than a void marriages.
**Dowry Problem**

The most serious problem faced by women as far as marriage is concerned is the problem of dowry. It is for this reason that the birth of a girl child is not welcomed. The evil of dowry system has been a matter of serious concern to everyone in view of its ever-increasing and disturbing proportions. As pointed out by the Committee on the Status of Women in India, the educated youth is grossly insensitive to the evil of dowry and unashamedly contributes to its perpetuation. Government has been making various efforts to deal with the problem, in addition to issuing instructions to the state governments and the union territories administration with regard to the making of thorough and compulsory investigations into cases of dowry deaths and stepping up anti-dowry publicity.

**Origin of Dowry:** Somehow or other there is a widespread confusion and misconception that the present dowry system has its origin in the twin Hindu marriage rites viz., *kanyadan* and *varadakshina*. Even the Parliamentary Joint Committee has fallen into this trap and perpetuated this myth. It opined, "The ancient marriage rites in the Vedic period are associated with *kanyadan* or the ceremony of giving away the bride. According to the Hindu Shastras, the meritorious act of *daan* or ritual gift is incomplete till the receiver is given *dakshina*. So when bride is given over to the bridegroom, he has to be given something, in cash or kind which constitutes *varadakshina*. Thus
kanyadan became associated with varadakshina, i.e., the cash or gift in kind by the parents or guardian of the bride to the bridegroom.\(^9\) The fact is that varadakshina has not been prevalent among all Hindus. It has prevailed only among certain castes of Brahmins. Apart from the Brahmins no other class of Hindus have the rite of varadakshina. Even among the Brahmins its non-performance does not affect the validity of marriage. If santpadi and vivaha-homa were performed, marriage was valid among all classes of Hindus. The Committee abruptly equates varadakshina with dowry. It says, "This varadakshina or dowry in those days included ornaments and clothes, which the parents of the bride could afford and were given away as the property of the bride." In the same breath, it adds, "This varadakshina was offered out of affection and did not constitute any kind of compulsion or consideration for the marriage. It was a voluntary practice without any coercive overtones." The Committee has made more than one error. Varadakshina was essentially a present made to the bridegroom and it was to be retained by him. The same error is perpetra­ted in Sudharam V. Thandaveshwara\(^10\) where it was observed that varadakshina was not to be kept by bridegroom's family, nor can he make a profit out of it. The court added, it was meant to serve as a nucleus of married couple as a sort of

matrimonial estate. Consequently, the court held that varadakshina was dowry. To call varadakshina and presents made to the bride at or about marriage as dowry is to misunderstand the very concept of stridhan. In fact, major portion of stridhan is received by her at or about or subsequently to marriage. The stridhan given to her at the time of marriage cannot and should not be called dowry. It appears that this confusion between dowry and stridhan is causing lot of difficulties not merely in framing legislation but also in its judicial interpretation. Dowry has always been, and conceptually and essentially that property which is obtained under duress, coercion, or pressure. It is that property which is extorted from the father or guardian of the bride by the bridegroom or his parents or other relations. Among Hindus, it is that property which is extracted by the bridegroom from his bride or more particularly from her parents or guardian. Thus, dowry is not presents made to the bride and bridegroom. The distinction between the two is that dowry is essentially a property which is extorted or extracted from the bride or her parents, while presents are those properties which are voluntarily and willingly given. It is only the Dowry Prohibition Act which makes it stridhan, in the sense that it lays down that dowry must be handed over or transferred to the wife. The dowry—the social evil of dowry—cannot be thus traced to kanyadan and varadakshina. It may be again emphasised that dowry is
essentially that property which is extorted, extracted or even snatched from the parents or guardians of the girl by the bridegroom or his parents or other near relations, since under Hindu law it is customary for a parent or rather the parent is duty bound (it is his dharma) to give his daughter in marriage. In discharge of this duty he seeks a groom for his daughter, and among most Hindus, it has become customary on the part of the groom and groomwallas to extract and extort dowry on the specious plea that they would not accept the hand of the girl in marriage unless their demands were met. Conceptually looked at, dowry is essentially property given by girl's parents (mainly her father) or guardian to the groom and groomwallas, and it has to be distinguished from stridhan-saudavika stridhan (particularly the vauktaka which constitutes of gifts received by the bride at the time of marriage)—which is her absolute property. The nearest to dowry that the Hindu sages have talked about and which has been condemned by them, though tolerated, is sulka. The sulka is the money or property given by a groom to the bride's father or guardian in consideration of the latter agreeing to give the hand of his daughter to him in marriage. This was in the asura form of marriage—an unapproved form of marriage—which was condemned by all the sages. Manu defines it thus, "When the bridegroom receives the maiden after giving as much wealth as he can afford to the kinsmen and to the bride herself, according to his own will, that is called the asura rite."\[11\]

It was considered to be almost a sale of bride and was condemned though tolerated.

The extracted or extorted sum of money or other property obtained by a groom and his parents from the hapless, helpless and at times mutely driven and drawn parents of the girl is in fact what dowry is. This dowry has never been considered, nor was it meant to be, the property of the bride, but now the Dowry Prohibition Act has made it so. It may also be emphasised that there should be no confusion between the gifts made to the bride at the time of marriage—which are given to the bride all over the world, practically in all societies by relations, friends and even acquaintances, and which cannot be prevented so long as we recognize the concept of private property. There is a prevailing confusion between stridhan (particularly yauktaka) and dowry which are two distinct concepts. It is the later which has to be condemned and prevented and prohibited. It is true that border line between the two is thin, but that does not mean that we should make the confusion worst confounded. That presents will still be made to brides and bridegrooms is recognized even by the amended Dowry Prohibition Act with some safeguards, though time will show how effective these safeguards would be. But, it may be emphasised over and over again that Yaukaka should not be confused with dowry.

Definition of Dowry: The dictionary meaning of dowry is different from the one given in the Dowry Prohibition Act, 1961 (as amended
in 1984 and 1986). According to Webster Dictionary, it means "Money, goods or estate that a woman brings to her husband at marriage." According to the Cambridge Dictionary it is "property which a woman brings to her husband at marriage." Under the Dowry Prohibition Act, the definition is very wide. Originally, under the Act it was defined as "any property or valuable security given or agreed to be given either directly or indirectly, (a) by one party to the marriage to the other party to the marriage, or (b) by the parents of either party to the marriage or by any other person to either party to the marriage; or to any other person, at or before or after the marriage as consideration for the marriage of the said parties, but does not include dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies". The Amending Act of 1986 has substituted the words "as consideration for the marriage" with words "in connection with the marriage". These words widen the meaning of dowry but retain the essential character of dowry, i.e., it is not merely what the bridegroom and the groomwallas demand or take or agree to take, but also the other way round, i.e. whatever is demanded or given or agreed to be given by the groom or groomwallas to the bride and bridewallas. This aspect of the definition is often overlooked. The reason seems to be that among the Hindus by and large dowry is demanded from or given by the bride's side to the bridegroom or his parents. But this does not mean that what the bride or bridewallas demand or take or agree to take some money or
property from the groom or his parents in connection with the marriage, they will not be guilty of the offence of taking or demanding or agreeing to take dowry under the Dowry Prohibition Act. They will as much be guilty of dowry offences as the other way round. Thus, *sulka* in *asura* marriage will be dowry. This is the reason why *mahr* has been excluded from the definition of dowry. Before Shah Banu decision, it was commonly accepted view that *mahr* is given in consideration of marriage. 12

Since dowry is considered to be a widespread social evil among Hindus, there is a misconception among some that it applies only to Hindus and does not apply to non-Hindus. The fact of the matter is that it equally applies to Muslims, Parsis, Christians, Jews or to any and every person who performs his marriage in India, and is found guilty of any dowry offence.

The evil of dowry may be rampant among Hindus, but it does not mean that it does not exist among others. The Joint Committee observed, "It is equally prevalent among the Muslims and the Christians. Among the Muslims in many parts, there is a custom of giving cash to the bridegroom (popularly known as *salami*) after the *nikah* ceremony and of giving clothes and jewellery to the bride by her parents who also bear other expenses of the marriage. The Christians of

12. Diwan, Paras, *Muslim Law in Modern India* (1985), Chapter V.
Mangalore follow their preconversion custom of kanyadan. It is reported that in a state like Kerala with its high literacy rate and progressive outlook, prevailing high rate of dowry makes marriages almost impossible for many Christian girls belonging to large families and induce them to join nunneries or search desperately for jobs in other states. There is, in fact, no difference these days in the pattern and motives of conspicuous consumption and dowry, either religion-wise, region-wise or otherwise."¹³ In our submission veracity of this statement of the Committee need not be doubted, though the report indicates that there seems to be a prevailing confusion in the mind of the members of the committee between what is dowry and what are presents.

The issue of 'dowry' has resulted in innumerable dowry crimes and dowry deaths in India, particularly in North India.¹⁴ Murders are committed in broad day light by in-laws when their demand of dowry is not met with by the bride's parents. Society, in general, is aware of the problem but remains a silent spectator to avoid being dragged to the courts and harassed as witnesses. Nevertheless, women's special organizations and samities are taking pains to tackle this problem and highlighting the offences committed in the name of dowry. These social organisations, responsive academicians,

jurists, lawyers and other socially conscious people have helped a great deal in amending the Dowry Prohibiting Act of 1961 to occasion changes through the Amending Act (4308 of 1986) at the Centre. Steps have also been taken by state governments to amend the state legislation pertaining to dowry and curb the menace. Now the presents, cash, ornaments, clothes and other costly items given by the girl's parents are no more a 'consideration of marriage' but are deemed to have been given in connection with the marriage. Moreover, the taking and demanding of dowry has been made a cognizable offence. Apart from the provisions of Dowry Act, section 498A has been inserted vide the Indian Penal Code (Second Amendment) Act, 1983 under which, cruelty to a married woman is punishable with a sentence of imprisonment upto 3 years. One of the forms of cruelty is 'harassment' of the woman to coerce her or any person related to her, to meet any unlawful demand for any property or valuable security or on their failure to meet any such demand. Under section 304(b) of the Code, where the death of a woman is caused by any burns or bodily injury or occurs otherwise than in normal circumstances within 7 years of her marriage and if it is proved that shortly before her death, she was subjected to cruelty or harassment by the husband or any of his relatives, in connection with the demand of dowry; such a death would be called a 'dowry death' and such husband or relative shall be deemed to have caused her death.
Before the Dowry Prohibition (Amendment) Act, 1984, several state legislatures have introduced certain changes in section 2. But it is interesting to note that none of these amendments made any change in the definition of dowry. In Haryana the state has through an amendment prescribed a limit of total expenses to be incurred on pre-marriage ceremonies and on the marriage ceremonies including all arrangements therefor. The amount should not exceed Rs.5000/-. The Haryana's substituted section 2 defines dowry as is defined in the original Act of 1961. However, it stands repealed in view of the 1984 amendment. The limit of Rs.5000/- has been laid down in section 3 of the Haryana Act.

Government Servants and Dowry: The Civil Services (Conduct) Rules, 1964 specially prohibit Government servants from giving and taking dowry or abetting the giving and taking of dowry. Rule 13-A of the Central Civil Services (Conduct) Rules lays down:

No Government servant shall -

i) give or take or abet the giving and taking of dowry, or

ii) demand directly or indirectly, from the parents or guardians of a bride or bride-groom, as the case may be any dowry.

Explanation - For the purpose of this rule, dowry has the same meaning as in the Dowry Prohibition Act 1961.

A similar provision has also been enacted in the Indian Services (Conduct) Rules, 1968.16

Penalty for giving or taking dowry: (1) If any person after the commencement of the Act, gives or takes or abets the giving or taking of dowry, he shall be punishable with imprisonment for a term which shall not be less than five years and with fine which shall not be less than fifteen thousand rupees17 or the amount of the value of such dowry, whichever is more:

Provided that the court may, for adequate and special reasons to be recorded in the judgement, impose a sentence of imprisonment for a term of less than five years.

(2) Nothing in sub-section (1) shall apply to, or in relation to:

a) Presents which are given at the time of marriage to the bride (without any demand having been made in that behalf);

Provided that such presents are entered in a list maintained in accordance with the rules made under this Act;

b) Presents which are given at the time of a marriage to the bridegroom (without any demand having been made in that behalf);

17. Inserted by the Act 43 of 1986.
Provided that such presents are entered in a list maintained in accordance with the rules made under the Act; provided further that where such presents are made by or on behalf of the bride or any person related to the bride, such presents are of a customary nature and the value thereof is not excessive having regard to the financial status of the person by whom or on whose behalf such presents are given.

In Haryana: Before the coming into force of the 'Dowry Prohibition (Amendment) Act 1984', the State Government through an Act, made substantial amendments to section 3. This Section as replaced by the Haryana Act (38 of 1976) runs as under:

No person shall --

a) give or take or abet the giving and taking of dowry;

b) demand, directly or indirectly, from the parents or guardians or a bride or bridegroom, as the case may be, any dowry;

c) incur marriage expenses the aggregate value where exceeds five thousand rupees;

d) display any gifts made at or before the marriage in the form of cash, ornaments, clothes or other articles;
e) take or carry in excess of ______
   i) 25 members of the marriage party; and
   ii) 11 members of the band;

f) deny conjugal rights to his wife on the ground that dowry has not been given or the dowry given is insufficient.

The Haryana Act retains the same penalty as in the original Act.

Abetment: Abetment of a dowry offence will include not merely instigation, but also conspiracy and aiding in the commission of offence. But a mere association with an offender without any instigation is not abetment.

Presents and their listing: The Dowry Prohibition (Maintenance of the lists of presents to the bride and the bridegroom) Rules 1985 provide for the maintenance of the following two lists:

a) lists of the presents given to the bride which is to be maintained by her, and

b) the lists of the presents given to the bridegroom to be maintained by him.

The rules lay down that each list of presents should be prepared at the time of marriage or as soon as possible after the marriage. The Rule 2(3) provides for the following:

i) Lists should be in writing, and

ii) Should contain the following information:

   a) a brief description of each present;

   b) the approximate value of the present;
c) the name of the person who has given the present;
d) where the persons giving the present are related to the bride or bridegroom, a description of the relationship.

It is the option of the bride or the bridegroom to obtain the signatures of the other party to the marriage or any relation or any other person or persons at the time of the marriage, on the lists. 18

It is obvious that where the bride or bridegroom is unable to sign on account of illiteracy or any other person, she or he may affix her or his thumb impression in lieu of her or his signatures after having the lists read out to her or him and on obtaining the list of the person who has so read out the particulars contained in the list. 19

Penalty for Demanding Dowry: If any person demands directly or indirectly from the parents or other relatives or guardians of bride, or bridegroom, as the case may be, any dowry, he shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years and with fine which may extend to ten thousand rupees. Provided that the court may, for adequate and special reasons to be mentioned in the judgement, impose a sentence of imprisonment for a term of less than six months.

It is clear that demanding dowry is an offence under this section. But what precisely are the ingredients of the offence? In cases coming under the original Act of 1961, because of the definition of dowry contained in the original Section 2, i.e. any property or valuable security given or agreed to be given as consideration of marriage, there was some controversy. Now these words have been substituted with the words "in connection with the marriage of said parties". Hence there is hardly any scope for controversy.

The Supreme Court in L.V. Jadhav V. Shankar Rao was of the view that the dictionary meaning of the term 'bride' and 'bride-groom' should not be understood mechanically. In its dictionary meaning, the word "bride" means a woman who had just been married or is about to be married and or "bridegroom" as a man who has just been married or about to be married; and that if strict meaning of these terms is to be given in Section 4, then security demanded or consented prior to the time when woman had become a bride or man had become a bridegroom might not be dowry within the meaning of the Act. These observations of the Supreme Court are important and should be kept in view.

Ban on advertisements: (a) Offers, through any advertisement in any newspaper, periodical, journal or through any other media, any share in his property or any other money or both

as a share in any business or other interest as consideration for the marriage of his son or daughter or any other relative. 

(b) prints or publishes or circulates any advertisement referred to in clause (a), he shall be punishable with imprisonment for a term which shall not be less than six months, but which may be extended to five years, or with fine which may extend to fifteen thousand rupees. 21

Agreement for giving or taking dowry to be void: Any agreement for giving or taking dowry shall be void. According to this section, wherever dowry is received despite the Dowry Prohibition Act, the receiver of the dowry cannot retain it; whosoever whether the bridegroom, his parents or relation or any other person has received the dowry must hold it in trust for the bride.

Dowry to be for the benefit of the wife or her heirs:

1) where any dowry is received by any person other than the woman in connection with whose marriage it is given, that person shall transfer it to the woman -

a) If the dowry was received before marriage, within three months 22 after the date of marriage; or

b) If the dowry was received at the time of or after the marriage, within three months after the date of its receipt; or


22. The time limit was reduced from one year to three months by the amendment of Act of 1984.
c) If the dowry was received when the woman was a minor, within three months after she has attained the age of eighteen years. And pending such transfer, shall hold it in trust for the benefit of the woman.

2) If any person fails to transfer any property as required by sub-section (1) or as required by sub-section (3), he shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to two years or with fine which shall not be less than five thousand rupees but which may extend to ten thousand rupees or with both.

3) Where the woman entitled to any property under sub-section (1) dies before receiving it, the heirs of the woman shall be entitled to claim it from the person holding it for the time being. Provided that where such woman dies within seven years of her marriage, otherwise than to natural causes, such property shall:

a) if she has no children, be transferred to her parents; or

b) if she has children, be transferred to such children and pending such transfer, be held in trust for such children.24

23. The amount of fine was enhanced to Rs. 10,000/- from Rs. 5,000/- by the amending Act of 1984.

3-A) Where a person convicted under sub-section (b) for failure to transfer any property as required by sub-section (3) has not before his conviction under that sub-section, transferred such property to the woman entitled thereto, or as the case may be her heirs, parents and children, the court shall, in addition to awarding punishment under the sub-section, direct, by order in writing, that such person shall transfer the property to such woman or as the case may be, her heirs, parents and children, within such period as may be specified in the order, and if such person fails to comply with the direction within the direction within the period so specified, and amount equal to the value of the property may be recovered from him as if it were a fine imposed by such court and paid to such woman, or as the case may be her heirs.

4) Nothing contained in this section shall affect the provisions of section 3 or section 4.

The new sub-section 3A is very important. Even after his conviction under this section, the accused is required to transfer the dowry to the woman within the time specified in the order, failing which an amount equal to the
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The Haryana State has amended the law by laying down that the fine of Rs.5000/- on the person accused of an offence under the section is not in the alternative but is in addition to.

Cognizance of Offences: Notwithstanding anything contained in the code of Criminal Procedure Code, 1973,

a) No court inferior to that of a metropolitan magistrate or a judicial magistrate of the first class shall any offence under this Act;

b) No court shall take cognizance of an offence under this act except upon-

i) Its own knowledge or a police report of the facts which constitute such offence, or

ii) A complaint by the person aggrieved by the offence or a parent or other relative of such person, or by any recognized welfare institution or organization.

c) It shall be lawful for a metropolitan magistrate or a judicial magistrate of the first class to pass any sentence authorised by this Act on any person convicted of any offence under this Act.

Explanation:-For the purpose of the sub-section "recognized welfare institution or organization" means a social welfare institution or organization recognised in this behalf by the Central or State Government.
2) Nothing in chapter XXXVI of the code of Criminal Procedure, 1973 shall apply to any offence punishable under this act.

3) Notwithstanding anything contained in any law for the time being in force, a statement made by the person aggrieved by the offence shall not subject such person to prosecution under the Act.

The Haryana statute (38 of 1976) has also substituted Section 7 with its own section. The substituted section runs as under:

Notwithstanding anything contained in the code of Criminal Procedure 1973 (2 of 1974)-

a) No court inferior to that of judicial Magistrate of the first class shall try any offence under this Act:

b) No court shall take cognizance of any such offence except on a complaint made by any party to the marriage or her father, mother or brother or a Gazetted Officer specially authorised by the state Government in this behalf, within a period of one year from the date of the marriage;

c) No court shall take cognizance of any such offence except with the previous sanction of the District Magistrate or of such officer as the state Government may by general or special order, specify in this behalf;

d) No enquiry shall be got made through any Police Officer below the rank of a Deputy Superintendent of Police.
e) No woman shall be called to a Police Station for the purpose of an enquiry regarding any offence under this Act.

**Offences to be cognizable for certain purposes and to be non-bailable and non-compoundable:** The Code of Criminal Procedure, 1973 shall apply to offences under this Act as if they were cognizable offences -

a) For the purpose of investigation of such offences; and

b) For the purpose of matters other than -
   i) Matters referred to in section 42 of that code; and
   ii) The arrest of person without a warrant or without any order of a magistrate.

2) Every offence under this Act shall be non-bailable and non-compoundable.

**Burden of proof in certain cases:** Where any person is prosecuted for taking or abetting the taking or any dowry under Section 3, or the demanding of dowry under Section 4, the burden of proving that he had not committed an offence under those sections shall be on him.\(^{25}\)

**Dowry Prohibition Officer:**

1) The State Government may appoint as many Dowry Prohibition Officers as it thinks fit and specify the area in respect of which they shall exercise their jurisdiction and powers under this Act.

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\(^{25}\) Inserted by Act 43 of 1986.
2) Every Dowry Prohibition Officer shall exercise and perform the following powers and functions, namely:

a) to see that the provisions of this Act are complied with;

b) to prevent, as far as possible, the taking or abetting the taking of, or demanding of dowry;

c) to collect such evidence as may be necessary for the prosecution of persons committing offences under the Act; and

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

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

4) The State Government may, for the purpose of advising and assisting the Dowry Prohibition Officers in the efficient performance of their functions under this Act, appoint an advisory board consisting of not more than five social workers (out of whom at least two shall be women) from the area in respect of which such Dowry Prohibition Officer exercises
jurisdiction under sub-section (1). 26

Section 9 of the Act, deals with power to make rules under this section, the Central Government has made the Dowry Prohibition (Maintenance of Lists of Presents to the Bride and Bridegroom) Rules, 1985.

Section 10 of the Act deals with the power of the State Government to make rules. The State statutes on dowry are still valid so far as they are not inconsistent with the amending Act of 1984.

The Matrimonial Home?

"To my mind, the idea of the matrimonial home appears to lie at the very centre of the concept of marriage in all civilized societies. It is indeed around it that generally the marriage revolves. The home epitomizes the finer nuances of the marital status. The bundle of indefinable rights and duties which bind husband and the wife can perhaps be best understood only in the context of their living together in the marital home. The significance of the conjugal home in the marriage tie is indeed so patent that it would perhaps be wasteful to elaborate the same at any length. Indeed the marital status and the

conjugal home has been almost used as inter-
changeable terms." 27

A question that has come up again and again before
our courts, after the marriage, is - which should be considered
matrimonial home in case both husband and wife are in employment
and they are posted at different places? In most cases the
matrimonial home was set-up at husband's place, since, there
at least for some time soon after the marriage, both parties
cohabited. The question should be settled is whether the
home set up by the husband or the home set up by the wife
should be considered the matrimonial home? Could both be not
considered as matrimonial homes?

The dispute arises because whichever whether of the
husband or of the wife home is considered the matrimonial home,
one of the spouses (mostly the wife) has to leave the job and
join the other. In different cases 28 that have come before
the Indian courts, the common features are that the husband
and wife were working at different places, the parties belong
to lower middle class and the husband's earning was not enough
to carve out a decent living. Does the wife's refusal to
give up her job at the instance of the husband amount to

27. Sandhawalia, J., ILR (1977) 1 P & H 650.
    Bhagwati, AIR 1966 MP 212; Praveenaven v. Sureshbhai, AIR
    1975 Guj. 69; N. R. Radha Krishnan v. M. Dhamalakshmi, AIR 1975
withdrawal from his society within the meaning of section 9, Hindu Marriage Act 1955, entitling the husband to a decree of restitution of conjugal rights?

As has been rightly pointed out by Prof. Diwan, the issue should be looked at in a wider perspective - has the husband the right to dictate to the wife that she should resign her job whenever he wants her to do so? The husband may belong to the affluent class and both the husband and the wife may be posted at the same place. The husband may complain that the wife's job interferes in the performance of her duties of maintaining the matrimonial home. This may be much more so, when the working hours of the spouses are different. The question may arise in four different situations - when the woman is already in a public or private job at the time of marriage; when the woman is encouraged or allowed by the husband to take up a job after marriage; when the woman accepts a job away from the matrimonial home against the wishes of the husband; and finally the spouses may, by mutual arrangement, agree to take jobs and live at different places. According to Sandhawalia, J. "As long as the matter is consensual the spouses may not only live separately but may even live in separate countries without in any way either jeopardising their marriage or infringing their legal duties to each other." 30

29. Diwan, p.211.
30. ILR (1977) 1 P & H 642.
It is well established that in matrimonial law parties by mutual arrangement may agree to anything but the problems arise in the first three of the four situations referred to above. The courts have favoured the husband when the wife has refused to resign her job and decreed restitution of conjugal rights. Their arguments run thus - firstly, the Hindu wife has the duty to submit herself obediently to the husband and to remain under his roof and protection. This is advanced as a special argument based on the special duty of the Hindu wife as a dharama patni under the special concept of Hindu marriage. Secondly, the husband had the right to choose and establish the matrimonial home and it is the marital obligation of the wife to accept such determination and live in the matrimonial home wherever it may be established. Obviously the husband has an upper hand in deciding about the matrimonial home.

"According to the ordinary notions of Hindu society, the wife is expected to perform the marital obligations at her husband's residence. She can accept service at a different place but not so as to clash with the husband's marital rights which she is duty bound to render."  

Verma J. has put it in a different way according to him. The Hindu marriage on the one hand, imposes a duty on the husband to protect his wife, to give her a home, etc. on the other hand, it enjoins on the wife the duty of attendance, to live with him wherever he chooses to reside. "This means that the wife, by entering into marriage, places herself under the obligation to reside with her husband wherever he may provide her with a matrimonial home." 33

Hence, the wife's refusal to resign her job has been held by the Indian judiciary as amounting to withdrawal from the husband society entitling the husband to a decree of restitution of conjugal rights. Prof. Diwan strongly disagrees with this interpretation. According to him, "with the recognition of the principle of dissolutibility, one wonders, how much holy or sacramental Hindu marriage has really remained." 34 The fact however, remains that it is not only in Hindu Society but in all societies which have patriarchal system, this obligation of the wife to live under the roof of the husband has always existed.

Prof. Diwan has raised the question of spouses who live at different places because of the exigencies of circumstances. He has referred to merchants and traders who trade in places far away from their wife or many class IV employees who serve in city offices and keep their wives and children

34. Paras Diwan, p.218.
at their parental home. Thus, there are two homes, one where the wife lives and the other where the husband lives. The matrimonial home is the place where the wife lives, not where the husband lives. We do not agree with Prof. Diwan and do not find any anomaly in the situation. Since, it is by mutual arrangement that the wives and children are kept at the parental home. In case of difference of opinion between the spouses as to the place of the matrimonial home, some must have the casting vote. As the law stands today, the husband has the casting vote.

All said and done, the problem of working couples in modern society is one of those problems which require that the state should discharge its public responsibility towards them. The individual liberty to take up a job should be protected by the state's responsibility of posting the couples at one place so far as it is possible consistently with the affairs of the state.

Violence in the Family

Battered Wives: The Indian newspapers everyday carry out news of some incident where a married woman has been murdered by her husband or in-laws because her parents could not satisfy their lust for dowry or where a married woman has been forced to commit suicide because of the act of cruelty and violence perpetrated against her.

A considerable amount of attention has been given in recent years all over the world to the problem of domestic violence and wife battering. New procedures and new legal
techniques have been developed to face this manish.

It appeared that domestic hooliganism and violence against married women has come to be called "wife battering" occurs all over the world on a significant and disturbing scale. 35 "Statistically it is safer to be on the streets after dark with a stranger than at home in the bosom of one's family, for it is there that accident, murder and violence are likely to occur." 36 Despande agrees - "unfortunately, cruelty to women and the problem of batter wives have become almost a worldwide phenomenon." 37 The fact is that wife beating continues despite the abolition of the feudal rule and the husband has the privilege to beat his wife, ill treat her and do anything and everything with her.

In India, the Penal Court, code of criminal procedure and the evidence act has recently been amended to provide protection to her against what this pande calls "crimes against her personality". 38 But unfortunately such have been the social condition and prejudice in a male dominated society that even personal liberty guaranteed to her under art.21 of the Constitution has no meaning to her. Thus, where a wife leaves her

38. Ibid., p.105.
husband on account of his ill treatment, cruelty and violence and goes to her parents' home, the husbands have forcibly taken her away and laws have failed to provide protection to such woman.

A new chapter - XXA and a new section 498-A-have been added in the Indian Penal Code which make cruelty to wife by her husband and in-laws, a new offence. The section defines cruelty thus:

(i) Cruelty to married woman includes wilful conduct which may drive the wife to commit suicide or an attempt to commit suicide or may cause her injury or danger to her life, limb or health.

(ii) Cruelty to be defined to include such harassment of the wives which may coerce her or her parents or relations to meet any unlawful demands of dowry by her husband and in-laws.

The offenders are punishable with imprisonment which may extend to three years as well as a fine.

It may be noted that the criminal offence of cruelty as defined in Section 498-A(ii) is distinct from the matrimonial offence of the cruelty. The cruelty as criminal offence means such harassment of the wife which may coerce her or her parents or relations to meet any unlawful demand for dowry made by the husband or her in-laws. On the other hand, persistent demand of dowry from her husband amounts to cruelty under the matrimonial law which entitles the wife to
seek the matrimonial relief of dissolution of marriage.

Traditionally, the woman is subjected to the whim and caprices of the male. The life of a woman in the house of her in-laws sometimes becomes so miserable and intolerable that the circumstances compel her to put an end to her life by way of committing suicide. And such a successful suicide was beyond the scope of the municipal law (i.e. Indian Penal Code). The cruelty, physical and mental, caused by her husband or his relatives causes her to commit suicide to end her life to get rid of this type of drudgery, was not punishable as such under the Indian Penal Code. Consequently, it reflected the anxiety of the legislative (i.e. the Parliament of India) to provide protection to the weaker community of the married woman.

The conscience of the Legislature violently reacted to this legal lacuna in the criminal law in our country. Therefore, the Parliament added section 498A under an independent chapter (XXA) in the Indian Penal Code by the Criminal Law (Second Amendment) Act, 1983 (46 of 1983) which was enforced on 25th December 1983.

The explanation added to section 498A provides the meaning of the term 'cruelty' for the specific purpose of this section. It says that, (a) the wilful conduct of the husband or his relatives of the woman if is of such a nature that it is likely to drive, the woman to bring her life to an end (i.e. to commit suicide) or to cause grave injury on her person (body) or danger to her life, limb or health, mental
or physical of that woman.

Harassment of the woman and such a harassment is made with a view to coercing her or any other relative of the woman to fulfil his (their) any unlawful demand for any property or any valuable security or on account of failure to meet such demand on her or any other person related to her, amounts to cruelty under this section which gives rise to the criminal ability against such husband or his relatives.

The term 'cruelty' used in section 13(1)

(1) Hindu Marriage Act, 1955 is nowhere defined under that Act. It is solely depending upon the judicial mind to consider the alleged act that whether it amounts to 'cruelty' or not, based on the cogent evidence or record.

In this way, the legislature has provided for very stringent provision against cruelty to wife for dowry or other injustiable demands. Let us see how far this new amended Act succeeds in eradicating the evil of dowry which has been eating the very roots of our society. Introduction of these provisions have tightened the noose of the delinquent husband and their relatives. Experience has shown that despite such stringent provisions, the number of dowry deaths per year has not reduced. One can read in the newspapers everyday young brides being burnt. At the same time all is not well with the amended law. Many delinquent wives taking advantage of the favourable law are harassing husbands and in-laws. Wherever the wife does not want to live with the parents of the husband,
she starts harassing the husband and his parents and if they do not succumb to her pressure, she may lodge a convenient complaint that she is being harassed for dowry. In the Lok Adalats and Legal Aid Clinic show that these provisions are not always used only for the protection of women. These have also been used for differences of endeavouring to smoothen the brewing discordance women have rushed to the police station with a complaint against the husband and his parents, under section 498 A of Indian Penal Code and have broken the family. The section is a double edged sword which when used against the delinquent may also harm the complainant. Resort to this weapon should be made very carefully but sparingly.

Bride burning/Suicides: In the statement of objects and reasons of the bill which added this new section, it was very cogently stated "The increasing number of dowry death is a matter of serious concern, cases of cruelty by the husband and relation of the husband which culminated in suicide by, or mother of the hopeless woman concern, constitute only a small fraction of the cases involving such cruelty."

Section 498 A of the Indian Penal Code specifically deals with a situation when coercion is exercised for demanding dowry after the marriage by the husband or in-laws of the married woman. The period during which this harassment of the married woman and the relation with a view to coercing her or her relation to mete any unlawful demand for dowry can be made extends to first seven years of marriage. If during this entire period,
her husband or in-laws harass her by coercing her to bring dowry, then it would be an offence under this section. In other words a wilful conduct of the husband or her in-laws of such a nature as is likely to drive the woman to commit suicide or cause of grave physical or mental injury to her, and harassment of a woman by her husband or by any relative of her husband with a view to coercing her or any other relative to meet any unlawful demand for property amount to cruelty under the section and punishable as such.

The dowry provision (Amendment) act, 1986 now introduces a new offence - the offence of dowry death - by inserting a new Section 304 B in the Indian Penal Code which states:

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

Explanation - For the purpose of this sub-section 'dowry' shall have the same meaning as in section 2 of Dowry Prohibition Act, 1961.

2) Whoever commits dowry shall be punishable with imprisonment for a term which shall not be less than seven
years but which may extend to imprisonment for life. By amending the first schedule to the Code of Criminal Procedure 1973 the offence of "dowry death" has been made cognizable, non-bailable and triable by the court of sessions.

The Supreme Court had dwelt on the subject in some decision and clarified the law, where death of a married woman was caused by burns. These cases illustrate that unless our courts scan the evidence carefully there is likelihood of culprits escaping punishment.

Dowry deaths occur not only when the husband or in-laws put the bride to death, but all when she is made to die by abetment to commit suicide. In this context the judgement delivered by the Supreme Court reserving the High Court decision deserves to be equated at length.

Ahmedi J. referring to the question whether abetment to suicide had been proved observed that "abetment" as defined by section 107 among its ingredients consists of "instigation" to do a thing which is an "offence" and that the literal meaning of the word instigate is "to incite, set on, urge on, stir up, foment, stimulate, provoke etc." Pointing out that the last straw on the camel's back which drove her to suicide

was the severe beating on June 6, 1983 a day prior to her death.

The learned Judge referred to the changes in the law relating to dowry under IPC and the Indian Evidence Act, 1972. It noted that as crimes relating to dowry are committed in the privacy of residential homes, and in secrecy, the legislature introduced sections 113-A and 113-B in the Evidence Act to strengthen the hands of the prosecution, if certain foundation facts are established and if the death takes place within seven years of marriage. After referring to the enactment of section 498-A and 304-B of IPC and also adverting to Section 306 the Supreme Court observed.

Then we have situation where the husband or his relative by his wilful conduct creates a situation which he knows will drive the woman to suicide and she actually does so. the case would fall squarely within the ambit of S.306 of the IPC.

In conclusion the Supreme Court observed that in the peculiar facts and circumstances of the case, the trial court rightly convicted the husband under Section 306 and the High Court eroneously reversed the conviction. It was because of these amendments that Supreme Court could convict Ashok Kumar, his father and sister for burning his wife Mira. The High Court had executed all the three accused against the finding of the trial court and held that Mira had committed suicide. One of the reason was that the name of the witnesses were not mentioned in the FIR.
Ahmedi J. of the Supreme Court, after scanning the entire evidence observed that witnesses had no reason to implicate the accused. There was no reason to disbelieve that testimony. Absence of their name in FIR was also of no consequence. That was quiet natural because the father who rushed to the place of incident had not enquired of their names having regard to the strain and stress and tension in which he was at the relevant point of time. The witnesses could not be said to be falsely set up by father of deceased. The evidence of father of deceased regarding quarrels on account of insufficiency of dowry was corroborated by evidence of witnesses. All this, coupled with the fact that accused persons absconded after the incident leave no room for doubt that the three accused persons were the joint authors of the crime. Similarly in Mulakh Raj v. Satish Kumar, the husband was found guilty of the ghastly offence of murder of his wife on the bases of circumstantial evidence.

It is rather strange that mother-in-laws and sister-in-laws who themselves are women should resort to killing another women. As Mohan J, observed it is hard to fathom as to why even the "mother in her did not make her feel" the mother-in-laws convict to life imprisonment. The Judge said "The language of

41. AIR 1992 SC 1175.
deterrence must speak in that it may be a conscious reminder to the society”.

Section 174 of the court of criminal procedure already contains a provision which empower a magistrate to make an inquiry into the cases of suspicion death a new sub-section (3) has been added to Section 174 which empowers the magistrate to hold such an enquiry when a woman dies while living with her husband and her in-laws or other relations of the husband during the first seven years of her marriage. That sub-section lays down the following: when-

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

ii) the case relates to the death of a woman within seven years of her marriage in any circumstances raising a reasonable suspicion that some other person committed an offence in relation to such woman; or

iii) the case relates to the death of a woman within seven years of her marriage and any relative of the woman has made a request in this behalf; or

iv) there is any doubt regarding the cause of death, or

v) the police officer for any other reason considers it expedient to do so.

Ordinarily death of a person in police custody raises a suspicion of torture by police. Under the new provision a similar suspicion arises when a married woman dies while living with her husband or in-laws during the first seven years of her
marriage. This is a warning to the husband and in-laws that the newly wedded wives coming to live with them for the first time is a sacred trust. If they violate the confidence reposed in them by the parents of the wives then their conduct would be judged by the same standard as the conduct of the police is judged in respect of person in police custody. In both these cases the person in custody is under the overall powers of the custodians and if such a person dies in such custody then a suspicion arises that the custodian must have ill-treated her and this must have led her to commit suicide or the custodian must have murdered her.

The offence under Section 498 A of the Indian Penal Code has been made non-bailable but the new section 198 A of the code of criminal procedure makes it cognizable only if the information is lodged with the police of the commission of such offence by a relation of a deceased woman, or by a public servant authorised in this behalf.

Despite all these amendments and so much noise about dowry death investigation is still often callous. As Jagnath Sethi, J. pointed out in Lichhadevi v. State of Rajasthan that the investigation in this case did not procedure as it ought to have and their appeared so be soft pedalling of the whole case. The facit understanding of the husband of the victim with those who had perpetuated the crime was so apparent that it could not have been ignored. Yet he was not charge-sheeted.

43. AIR 1988 SC 1785.
Similarly, in *Joint Women's Programme v. State of Rajasthan* the Supreme Court found the investigation made by the police in a dowry death case was totally inadequate.

According to Prof. Diwan the measures taken so far to tackle the problem of better wives or cruelty to married woman "first aid to what this malady need is 'intensive care' which these measures do not provide."  

Legal Status of Women Vis-a-vis Children

One of the primary purposes of marriage is to have children. Though both husband and wife have their role in this respect, it is only the women who have to suffer physical and mental stress in giving birth to a child.

In India, we may like it or not, the women have been looked primarily as child producing machine. The tradition forms of *ashirvaad* (blessing) have been: *sada suhagan reho* (the marital bliss always be there) and *phulo phalo* (have a growing family i.e. be blessed with children). The same theme is reflected in such phrases as *Saubhagvat bhava* (marital bliss) and *Ashtaputra bhava* (eight sons)/*Shataputra bhava* (Hundred sons). This was the highest ideal of a women's life to cherish. As has been pointed out by Prof. Shukla, "This resulted into denial of her individual and separate identity and existence."  

44. AIR 1987 SC 2060.  
45. Paras 129.  
The situation has changed in favour of women with the passage of the Medical Termination of Pregnancy Act, 1971. Dr. K.P.S. Mahalwar has rightly called a progressive legislation since in several countries husband's veto in family planning measures including termination of pregnancy operates as an oppression of the women's right to liberty, health and privacy. In India the MTP besides liberalizing abortion, enables women to exercise their wisdom to decide about their body, size of family, number of children and their spacing etc. This freedom provides her an opportunity to choose the role she wants to play liberating her from the age-old shackles of servility. It confers autonomy to live with human dignity. She has to decide as to what must be done to her body. In breeding children she undergoes all the agonies, pains and sufferings, therefore she cannot be forced to produce children nor can she be forced to get the foetus terminated (unless warranted by the law).

Section 4 of MTP Act clearly states -

a) No pregnancy of a woman who has not attained the age of eighteen years, or who having attained the age of eighteen years, is a lunatic, shall be terminated except with the consent in writing of her.

47. Mahalwar, K.P.S., "Incongruous laws of Marriage and Abortion - a quest for harmony", in Raizada, op. cit., p. 113.

48. The International Convention on the Elimination of All forms of Discrimination against Women has impelled many countries to eradicate such discrimination from their laws.
b) Save as otherwise provided in clause (a), no pregnancy shall be terminated with the consent of the pregnant woman.

Thus, at least on paper the women have uncontroversial and unfettered right to decide whether she would like to get unwanted pregnancy terminated. She can get it done without her husband's consent. However, if a wife deliberately and consistently refuses to satisfy the natural and legitimate craving of husband and the deprivation reduces the husband to despair and affects his mental health. She is guilty of cruelty to the husband. If the husband deprives the wife from motherhood, or wife deprives the husband from fatherhood, there is cruelty in both situations. The situation is not as simple as it looks. As has been pointed by Dr. Mahalwar, "Thus two different laws i.e. the MTP and matrimonial laws overlap each other arousing difficulty for the judiciary in administering the law resulting into uncertainty and affording an opportunity to the individuals in succeeding in their nefarious designs." 49

Guardianship of Minor Children:

So far Hindu law is concerned, the Dharmashastras did not deal with the law of guardianship of minors in any detail. During the British regime the law of guardianship was developed by the courts. It came to be established that the father is the natural guardian of the children and after his death mother is the natural guardian of the children and none else can be.

49. Mahalwar, op.cit., p.117.
the natural guardian of minor children. Testamentary guardians were also introduced in Hindu law.

The Hindu law of guardianship of minor children has been codified and reformed by the Hindu Minority and Guardianship Act 1956. Under this act father is the natural guardian of his minor legitimate children, sons and daughters. However, welfare of the minor is of paramount consideration and father's right of guardianship is subordinated to the welfare of the child. The position of adopted children is at par with natural-born children.

The apex court has decided that the mother could be considered as the natural guardian of the minors where the father fails to function or refuses to function or is incapable of functioning as guardian. The mother is the natural guardian of the minor illegitimate children even if the father is alive. However, she is the natural guardian of her minor legitimate children only if the father is dead or otherwise is incapable of acting as guardian. Proviso to clause (a) of 5.6, Hindu Minority and Guardianship Act lays down that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother. Thus mother is entitled to the custody of the child below five years unless the welfare of the minor requires otherwise.

Mother's right of guardianship is not lost on her conversion to another religion so long as she is able to provide a

congenial, comfortable and happy home. The position of mother's guardianship of her adopted children is the same as that of her natural born children.

Step-parents are not entitled to guardianship, unless they are specifically appointed by the court.

In all matters relating to children including access and custody, the paramount consideration is the welfare of children. Though the ordinary rule is that a child below the age of five should be committed to the custody of the mother, it does not mean that a child above that age would automatically be given over to the custody of the father. Thus in the welfare of the child above that age, he may be committed to the custody of the mother. Natural mother is preferable over the relations of the father.

The father may appoint a testamentary guardian but if mother survives him, his testamentary appointment will be ineffective and the mother will be the natural guardian. If mother appoints testamentary guardian, her appointee will become the testamentary guardian and father's appointment will continue to be ineffective. If mother does not appoint, father's appointee will become the guardian.

Among Muslims the source of law of guardianship and custody are certain verses in the Koran and a few ahadis. In all schools of both the Sunnis and the Shias, the father is recognized

as guardian and the mother even after the death of the father is not recognized as a guardian natural or otherwise. So long as the father is alive, he is the sole and supreme guardian of his minor children.53

Adoption:

Hindus, including Buddhists, Jains and Sikhs are governed by the Hindu Adoption and Maintenance Act, 1956 and Sections 7 to 11, enumerate the requisites of a valid adoption, who are the persons eligible to adopt, persons capable of giving in adoption and the person who may be adopted. A married woman has no right to take a child (son or daughter) in adoption under this Act, unless the marriage has been dissolved or the husband has died or has finally renounced the world or has ceased to be a Hindu. While on the other hand, a Hindu married male can take in adoption, a son or a daughter with the consent of his wife. This shows a disparity in the law of adoption.

However, for a married Hindu male it is obligatory to obtain the consent of his wife and the adoption made without the consent of the wife is void. But the Hindu male may be a bachelor, widower, or a divorsee. A Hindu unmarried female, widow or divorsee can also adopt a child.

A married woman has no capacity to adopt. She cannot adopt even with the consent of her husband. If there is to be an adoption, it must be made by her husband with her consent.

53. Imambandi v. Mutsaddi (1918) 45 Cal 887.
The position is thus that a married woman totally lacks the capacity to adopt except in any one of the following three cases:

a) If her husband has ceased to be Hindu;
b) If he has finally and completely renounced the world, or
c) If he has been declared by a court of competent jurisdiction to be of unsound mind.

Muslim law does not recognize adoption. Before the Shariat Act 1937, adoption among some Muslims was recognized by custom. Under the Oudh Act 1869, S.29, a Muslim talukadar was permitted to adopt. But it seems to a very great extent, the custom of adoption stands abrogated. In Jammu and Kashmir adoption is recognized under custom.

Divorce and Rights of Women:

When the marital relations are soured and the spouses can no longer bear each other, it results into divorce. The spouses can get divorce through enactments and laws which govern them. Among all the grounds of divorce, two grounds namely cruelty and dereliction are available to all communities except Parsis. Apart from this a divorce can be obtained by the parties on the grounds of

a) Adultery
b) Insanity
c) Venereal disease

d) whereabouts not known or not heard of for the last seven years (four among Muslims)
e) Bigamy (if the spouse is a Christian)
f) Non-resumption of conjugal rights after judicial separation (except among Muslims and Christians)
g) Non-restitution of conjugal rights after decree (except Muslim and Christian).
h) If former spouse is living
i) Marriage is performed with a minor i.e. before attaining the age of maturity (21 years for the groom and 18 years for the bride) provided the marriage had not been consumated.

The last two grounds are available to Hindus only.

The Indian Divorce Act, 1869, confers a limited right of divorce to a Christian woman because a Christian marriage is considered a holy alliance as in the case of Hindus. Therefore, a Christian woman can get divorce only on the grounds of apostasy of the husband or adultery, coupled with incest, bigamy, cruelty or desertion or if found guilty of rape, sodomy or bestiality, while the husband can divorce his wife only on the ground of adultery.

55. Among the Hindus twelve grounds are available to both the parties besides two others which are available to women alone i.e., if the husband is:
   i) Guilty of rape or unnatural offence.
   ii) There has been a lapse of one year or more since a court decree or order awarding maintenance and the parties are living apart and have not resumed cohabitation since then.
**Judicial Separation:** A decree of judicial separation can be obtained under Section 10 of the Hindu Marriage Act by husband or wife on any of the grounds under Sub-section 13(1) and 13(2) respectively but during this period marital ties are only suspended and a decree of divorce is needed to get rid of the dead relationship and finally terminate the marriage. A decree of divorce after one year of judicial separation can be obtained through the courts on grounds of cruelty or desertion or both if it is proved that there has been no cohabitation between the parties. However, the petitioner has to undergo a cumbersome procedure and lengthy litigation and prove to the satisfaction of the court e.g. the factum of cruelty, desertion or both on the part of the husband before obtaining a decree of judicial separation.

**Mutual Consent:** The committee on the status of women in India supported the recommendation of the Law Commission of India and consequently the Hindu Marriage Act, 1955 was amended in 1976, as Hindu Marriage Amendment Act 68 of 1976, in which a new provision was incorporated as section 13(a) and 13(b) by which an alternative procedure was provided to obtain divorce by mutual consent under Section 13(b) the parties can present a joint petition before the court to the effect that they have been living separately for a period of one year or more before the filing of the petition and they have not been able to live together and cohabit and have agreed to mutually dissolve the marriage. In such cases, after six months of the first motion, a decree of
divorce is granted by the court after recording the statement of both the parties.

**Dissolution of Muslim Women Marriage Act, 1939:** Similarly Muslim women's right to divorce is codified in the dissolution of Muslim Women Marriage Act, 1939 on the grounds enumerated therein. A Muslim woman can be easily divorced by her husband without assigning any specific reason by simply pronouncing 'talaq' thrice or through a written 'talaghama'. She may even be divorced in her absence and it is sufficient if she is informed.

**Desertion:** While alleging 'desertion' as a ground of divorce, the parties have to establish that the other spouse has deserted the petitioner without any reasonable cause and with the intention to bring cohabitation to an end permanently i.e. an element of 'animus deserendi' is essential to allege ground of desertion. Desertion is a matter of inference which the courts are expected to draw from the facts and circumstances of each case. In particular circumstances the wife may be compelled to leave the matrimonial home, as the husband may have another wife or mistress, husband may doubt the fidelity of the wife or may not have trust in her, thereby compelling her to leave her matrimonial home. Such a case is called constructive desertion.

Similarly, to prove cruelty as a ground of divorce, the wife has to allege that she left her matrimonial home due to physical and mental torture and it is no more safe for her to live with her husband in her matrimonial home. However, it is a different matter if a particular act or words spoken happen
to be a cause of cruelty, in a particular set of circumstances. Cases are there which are still at the stage of petitioner's evidence, even after 5 to 6 years of trial, considering the enormous number of cases pending in trial courts, various High Courts and the Supreme Court, it is high time that 'irretrievable breakdown of marriage' is incorporated by law makers as ground of divorce as has been suggested by the Law Commission in its 71st report, to alleviate hardship to both the parties who have to rub shoulders in the busy corridors of courts with the hope of getting relief someday.

Under the Hindu Marriage Act 1955 cruelty simply is a ground for divorce and judicial separation. After the amendment of 1976 the provision is not qualified by any limiting words. Dr. S. S. Chahar has discussed six factors in the context of this concept of matrimonial cruelty. These factors are—sex difficulties, drinking or drug addiction, age differential, illiteracy or low education level, employment, structure of family. The Indian courts have granting divorce and judicial separation from time to time on the basis of these factors. For example, the structure of family in itself cannot be treated as a valid ground for divorce but in case the wife is exposed to unpleasantness of provision for her to live, the conduct of the husband may amount to cruelty. In Kashinath Sahu v. Smt. Devi

56. Raizada, op. cit., p. 58-65. Under the Hindu Marriage Act 1955 cruelty is nowhere defined but the judicial decision have over the years, expanded the term keeping in view the changing norms of our society.

57. AIR, 1971 ori 295.
the wife was subjected to harassment and physical torture from all members of the family and was not allowed proper food and clothing and was forced to sleep in the background of the house. The decision in this case has added a new dimension to the definition of the word cruelty and is a welcome expansion of the concept and seems to be in line with the modern times. In case the husband fails or is unable to provide a separate residence to his wife, it may be reasonable excuse for her to withdraw from his society.

Similarly, in India, illiteracy or a low education level is not an independent ground for matrimonial relief. However, in Santi Devi v. Raghav Prasad the court held that the act of the illiterate wife burning the thesis of her husband was an act of great cruelty and divorce was granted to the husband.

Again though unemployment per se is not cruelty under the Hindu Marriage Act, denial or inability to provide proper food and clothing to the wife may, however, amount to cruelty. In case the husband is lethargic and does no work or refuses to work, provides no money for the household, he commits 'cruelty'.

Sex difficulty and drinking or drug addiction as grounds for granting a divorce on the basis of cruelty need no

elaboration. However, so far as age differential is concerned, a Hindu Marriage Act while prescribing lowest age of marriage for men and women maintains the difference of three years. There is no provision under the Act which prescribes the maximum age differential of the spouses at the time of marriage. Dr. Chahar suggested that this differential should not be more than five years to avoid the likelihood of the sexual and psychological adjustment between the spouses.

A Hindu marriage was considered to be a Sanskara and not a contract as it is understood among Muslims. But with the advent of education and subsequent attitudinal change, the ancient law of marriage has been changed. Today, marriages are no longer considered indissoluble. Our legislators, therefore, wisely prepared for a major eventuality—its breakup, and enacted Legislation on divorce. Both the Hindu Marriage Act, 1955 and the Special Marriage Act, 1954 now permit divorce and judicial separation. The grounds are almost the same excepting that a decree for judicial separation can be converted into a decree of divorce after one year, if there has been no resumption of cohabitation between the partners during the period. The most important grounds for divorce and judicial separation include adultery, cruelty, bigamy, conversion of religion, imprisonment mental illness, insanity, communicable leprosy, venereal disease, renunciation, desertion for two years, the spouse not heard about for seven years, impotency, obtaining consent for marriage by force or fraud, wife pregnant at the time of marriage from another person and
failure to comply with a decree for restitution of conjugal rights. After the amendment in 1976, the law now permits divorce by mutual consent after also showing that the husband and wife have been living apart for one year and could not reconcile. The right of divorce has been introduced in Hindu society not to attack the sacramental nature of the marriage but to enable women to get rid of husbands who humiliate and torture them or who fail to fulfil their marital obligations.

During the judicial separation period, though the husband and wife live separately, husband is expected to support his wife economically. After the divorce too, the wife or the husband are entitled to claim for maintenance and support from the other partner depending upon their income and the economic status. However, the wife loses the right if she leads an immoral life. In assessing the amount of maintenance, the court takes into account the position and the status of the parties, the reasonable needs of the claimant and the obligation of the husband.

Restitution of Conjugal Rights: Sometimes a woman is forced by circumstances like cruelty of husband, ragging or ill treatment by in-law harassment for dowry, dislike of joint family, employment in another town, obligations to parents/siblings and habitual drunkenness of husband, to walk out of her husband's home. In such cases, when the husband fails to persuade his wife to come back and to reconcile, he might go to the court demanding restitution of conjugal rights. Similarly,
the wife may also repent after a few years after leaving her husband and may desire to come back to her husband's house but the husband may refuse to take her back. In such cases also, the wife may approach the court demanding her husband's company. The Supreme Court and some High Courts hold that this provision in the Hindu Marriage Act, 1954 (Section 19) and the Special Marriage Act, 1954 (Section 22) allows the court to try to mend a trouble marriage and is therefore, useful and valid. But sometimes, it makes a painless road to divorce. But when the court grants a husband's request for his wife's company and wife refuses to go with her husband, the court cannot penalise her for disobeying the decree of restitution of conjugal rights or imprison her or attach her property. However, if the husband disobeys the court's order, his property may be attached according to Civil Procedure Code. The consequence of the wife not following the decree is that after one year of separation, either parties would be entitled to divorce the other.

A Muslim marriage is a civil contract. According to the law of the various Muslim Sects, the wife may be given a kind of "security" money MEHAR—which she is entitled to receive from the husband in the event of the husband divorcing her. Muslim men in India are in law entitled to take more than one wife and are not liable to face criminal prosecution for bigamy.

Divorce in Muslims is governed by a personal law which is a discriminatory one which gives the husband upper hand in many ways. He can repudiate the marriage at his will after
merely pronouncing 'talaq' thrice in the presence of two
witnesses without giving any reason for the same (revocable
and irrevocable talaq). Traditional law permitted the Muslim
wife to weak dissolution of marriage only by mutual consent.
The Dissolution of Muslim Marriage Act, 1939 has however, given
a right to a Muslim wife to divorce her husband by filing a
petition in the court on grounds of husband's disappearance
for two years or more, failure to perform marital obligations
for three years, impotency, insanity, leprosy, veneral disease
and cruelty. If the wife was given in marriage before she
had attained 15 years, or if she is forced to lead an immoral
life, she can rescind the marriage.

The lot of a Muslim wife in India is not a happy one.
Depending on the economic stratum of society, she may be cast
aside without much to fall back upon. The husband can divorce
the wife by pronouncing FALAK - without going to court. If the
wife wants a divorce and she can afford to pay off the husband,
the divorce by consent is called "Khaul" or Mubaraat. If the
wife was fortunate enough to get the husband to sign a marriage
contract, she can divorce the husband as per the contractual
terms. To alleviate the hardships suffered by Muslim women,
the Dissolution of Muslim Marriage Act 1939 was enacted. This
Act enables the wife to apply for a divorce decree to a court
on certain grounds which include neglect by the husband, husband
going a 7 years, husband failing to perform his marital obliga-
tions, husband being impotent or insane or suffering from
venereal disease or leprosy, or that he has treated her with
cruelty, or that she was under 15 years of age on the date
of marriage or any other ground available under Muslim Law.
Islam permits a man to marry more than once, the limit being
four wives. But if a man has more than one wife and does
not treat any of his wives equitably in accordance with the
tenets of the Quran, the wife can file for divorce. In
Muslim Law, a divorced wife has no right to maintenance
beyond three months. She only gets dower (mahar) fixed at
the time for marriage.

The Parsi Marriage Act has now been amended and
has been brought on a par with the Hindu Marriage Act and
the Special Marriage Act as far as divorce is concerned.

Though women and men all communities have the choice
of getting married under the Special Marriage Act 1954 which
has more equitable provision for marriage and divorce, society
still looks down upon a divorced woman as the 'culprit' while
the man is able to remarry without a stigma. Moreover most
women suffer from lack of education and economic independence
and are left in a desperate situation after divorce.

Matrimonial relief for Christians in India is availa-
bles under the Indian Divorce Act of 1869. At least one of the
parties to the marriage should be a Christian at the time when
a petition is filed in the High Court for matrimonial relief.
(This takes care of the situation where one spouse changes his
or her religion; for example, the husband converts to Islam
and attempts to take another 'wife' or the wife converts to
become a Buddhist Nun and does not render conjugal rights to the husband). In addition to the nexus of religion, this statute makes a further requirement of nexus. In any case of divorce or dissolution of marriage, both parties must be domiciled in India at the time the petition is presented in court. In any case of nullity of marriage, it is not necessary for either party to be domiciled in India. But the further requirements are that (a) the marriage should have been solemnised in India and (b) the petitioner is Resident in India on the date of the filing of the petition in court.

The ground for divorce differentiates between men and women. It is easier for a Christian husband to obtain a divorce from his wife than for a wife to obtain a divorce. This act of adulterating is a matrimonial fault. If the wife is charged with having committed this matrimonial fault only, and if proved guilty, this is enough. For a wife, however, it is more difficult to get a divorce. She must prove that the husband is guilty, for having committed any one of the following matrimonial faults: (a) the husband has changed his religion from Christianity to professing other religion and has gone through a form of marriage with another woman, (b) has committed incestuous adultery; (c) has committed bigamy with adultery or (d) has committed rape; sodomy or bestiody; or (e) gone through a marriage ceremony with another woman and committed adultery; or (f) has committed
adultery and also been guilty of cruelty to the wife; the
degree of cruelty should be such as would give the wife the
right to seek judicial separation; or (g) has committed
adultery plus has deserted the wife without reasonable
excuse for 2 years or more—collusion, connivance, condonation
are BARS to a divorce decree. It is obvious that the dice
is loaded against Christian woman in India.

The Christian community is ruled by the Indian
Divorce Act, 1860 which provides only one ground for divorce,
i.e. adultery. Here too, the law is discriminatory against
women if the wife wants to sue her husband for divorce, she
can do so on the grounds of adultery coupled with desertion
or cruelty. This means that if a woman wants divorce, merely
adultery is not enough. It must occur along with either
cruelty or desertion. The Christians are allowed for a judi­
cial separation on the grounds which are meant for divorce
in Hindu community under Hindu Marriage Act, 1955 or the
Special Marriage Act, 1954. It may also be pertinent to note
that the judicial separation among Christians does not get
converted into divorce after one year. It remains as judicial
separation and the parties to the marriage can never marry
again.

Maintenance: Section 25 of the Hindu Marriage Act provides
maintenance or a permanent alimony to the applicant till he/
she remarries and the amount shall be a charge on the immovable
property of the respondent. Here again the very purpose of
the court granting alimony can be thwarted by a cunning and unscrupulous respondent by avoiding acceptance of the court notice for the maximum time and then prolonging the proceedings for years thereby causing harassment to the spouse. In one such case, proceedings of judicial separation were filed in 1976 and the divorce could be obtained by the petitioner in the year 1988 and that too when the petitioner decided to forgo her claim of permanent alimony to get rid of endless and irksome litigation.

Here it is suggested that a law be enacted to limit the maximum allowable time for the disposal of matrimonial case. Secondly, maintenance/permanent alimony should be deducted at the source from the income of the respondent without compelling the petitioner to go to court and recover the amount after execution, which again takes a lot of time. This provision of law should be made available to every woman whatever be her religion or faith.

It may be noticed that under second proviso to sub-section(3) of Section 125 IPC, a person is not obliged to pay maintenance to his wife who, on his invitation to live with, refuses to do so without any just ground.

Maintenance under Criminal Procedure Code: Provisions under sections 125 to 128 of the code of criminal procedure enable the wife and children, as well as the parents to take proceedings.

60. Explanation (b) to Section 125(1) of the code defines wife as to include an unmarried divorced wife under the old code 'wife' did not include a divorced wife, Section 448.
before a magistrate the petitioner(s) and the petitioner has to plead that she has no means of livelihood and has no source of income to maintain herself. The application for maintenance under Section 25 of the Hindu Marriage Act is no bar and that applications under section 125 of the Criminal Procedure and under section 25 of the Hindu Marriage Act for the grant of maintenance can be filed and proceeded simultaneously. The courts have captured the spirit of this section and the relief is being given to the applicants who may profess any religion. It is not only the wives or children who can claim maintenance under this section but the parents also. In M. Areefa Beevi v. Dr. K. M. Sahib and Raj Kumar v. Yashoda Devi and another, parents made a claim against the daughter who had sufficient means to maintain her needy parents. Krishna Iyer, J. observed that every divorced wife, Muslim or non-Muslim, otherwise eligible was entitled to the benefit of maintenance allowance and the dissolution of the marriage under personal law made no difference to this right.

Quantum of Maintenance: The Magistrate first class has the power to make and order for a monthly allowance for the maintenance of the claimant at such rate not exceeding Rs. 500/- on the whole, as such Magistrate thinks fit and to pay the same to such person as the Magistrate may from time to time

62. 1978 Cr. LJ 600 P & H.
direct. But the Court can grant under this section only to maximum of Rs.500/- which is awarded only in rare cases, while in other cases a meagre sum is granted which is not sufficient for a destitute woman to maintain herself and her children. The husband may have sufficient landed property and other sources of income which may run into several lakhs, but the court can grant only this limited amount, in accordance with this Act. Legislature should amend the act and the maximum limit of amount of maintenance granted under the section should be raised, keeping in view the price index and condition of inflation in India.

The failure of the person, against whom a maintenance order has been made to comply with the order without sufficient cause, empower the Magistrate for every breach of the order, a warrant for levying the amount due, in the manner provided for levying fines, and further to sentence him for the whole or any part of each month allowance remaining unpaid after the execution of the warrant to imprisonment for a term which may extend to one month or until the payment is sooner made. But it should be noticed that the maintenance there was done not become 'fine' within the meaning of the criminal law. Where arrears of several months have fallen due, he may issue one warrant and impose a cumulative sentence of imprisonment. The application for recovery of amount due should be made within a

63. Section 421.
64. Section 125 (3).
period of one year. The maximum sentence of imprisonment at any time can not be of more than one year. Imprisonment will cease upon payment of the amount due. The objective is to use the coercive machinery of criminal law to compel the husband to pay maintenance as ordered by the court to needy wife (or children or parents).

That the criminal proceedings under section 125 of civil nature is made evident by clause (3) of section 126 which empowers the courts to make such order as to cost as may be just. Further, where the Magistrate is satisfied that the person against whom an order for payment of maintenance is proposed to be made is wilfully avoiding service, or wilfully neglecting to attend the court, the Magistrate may proceed its hearing and determine the case exparte. 65

The basis of the relief under Section 125 Cr.P.C. is the refusal or neglect to maintain his wife etc. by a person who has sufficient means to maintain them. The criterion is not whether a person is actually having means, but if he is capable of earning, he will be considered to have sufficient means. The burden of proof is on him to show that he has no sufficient means to provide maintenance.

The expression 'means' is not restricted to tangible means such as existence of movable or immovable property but includes earning potential or capacity to earn. An able-bodied person is presumed to be capable of earning.

65. The ex parte may be set aside for good cause shown.
The expression 'neglect' is used in a wider sense so as to include disregard of duty to maintain whether wilful or unintentional. Thus a husband may not actually refuse to maintain his wife, but even then he will be guilty of neglecting to maintain her. Wherever there is avoidance or disregard of duty to maintain whether from heallessness, indifference or wilfulness.

Finally, under section 125 person can not evade maintenance on the ground that under his personal law he has no such obligation.

In order to claim maintenance by a wife from her husband, the courts have held that it is not necessary to prove that valid ceremonies of marriage had taken place. There is presumption of marriage if a man and a woman have been having co-habitation as husband and wife, for a long period and have been so treated by the society. It appears that if even of the marriage is void, 'wife' is entitled to maintenance under section 125, if factum of marriage, i.e. proof of required ceremonies and rites of marriage is established or presumption on account of prolonged cohabitation is available.

In the following cases a wife is not entitled to maintenance under section 125(1) of the Criminal Procedure Code-

a) when it is shown that she is living adultery;

b) when without sufficient reason she refuses to live with her husband;

c) if the parties are living separately by mutual consent.

It may happen (and it happens more often than not, a husband offers to keep the wife with him so that he can evade the order for maintenance) that a person offers to maintain his wife provided she agrees to live with him. In such a case if the magistrate is satisfied that there is sufficient cause for her for living separately, he may pass the order of maintenance.

Maintenance order can be changed and the amount of maintenance enhanced by the Magistrate if the change in the circumstances is shown by the receiver of maintenance, but in no case the amount will exceed Rs.500/- per month. Similarly, the amount can be decreased if change in the circumstances is shown by the person paying maintenance.

An award of maintenance made in favour of a divorced wife may be cancelled if—(a) when the divorced wife had remained the order of maintenance may be cancelled from the date of remarriage (b) a wife in whose favour a maintenance order has been made by the magistrate is divorced by her husband and who have received whether before or after the date of the maintenance order, the whole of the sum which under any customary or personal law applicable to the parties, may be payable on such divorce, (c) when the wife has obtained divorce from the husband and has voluntarily surrendered, had right to maintenance after her divorce.67

67. Section 127 (3).
In this context, the question to be considered is whether section 127(3)(b) saves the Muslim Law provision of payment of dower so as to defeat all claims of maintenance of a divorced wife who has been paid mahd money?

The Supreme Court tackle this question thus - the purpose of section 127(3)(b) is simply this that a wife can not be allowed double benefit, one of the customary or personal law payment and the other of the payment under under Section 125. But if the former is inadequate, the court has power to award maintenance under section 125.

In the words of Krishna lyre, J. "So a farthing is no substitute for a fortune nor naive consent equivalent to intelligent acceptance." 68

In Kunhi Morjin v. Pathumma, 69 Khalid, J. had held that clause (b) of section 127(3) does not include dower within its compass. The five judges bench of Supreme Court unanimously and unequivocally supported the above mentioned view taken by Khalid J. in the judgement delivered in the Shah Bano case. 70

The unfortunate story of Shah Bano Begum, married to an Advocate, one Mohd.Ahmed Khan, very back in 1932, gave birth to three sons and two daughters, is that in 1975 she was driven out of the matrimonial home by her husband. Lacking

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68. AIR 1980 SC 1736.
69. 1976 KLT 87.
means of subsistence she knocked the gates of Magistrate's court in 1978 claiming maintenance from her husband at the rate of Rs.500/- per month. On November 6, 1978, he pronounced talak on her in talak-a-bidawn (from cirrevocable divorce) and pleaded before the Magistrate's court that since he had divorced his wife, he was under no obligation to provide maintenance for her. He also averred that he had paid maintenance to her at the rate of Rs.200/- per month for about two years and had also deposited a sum of Rs.3,000/- in the court by way of mahr-money. The Magistrate directed the husband to pay a 'princely sum' of Rs.25/- per month. On appeal, the High Court enhanced it to Rs.179.20 per month (the wife had averred that her husband's annual professional income was Rs.60,000). Against this order, the husband landed in the Supreme Court.

The following were the three questions for consideration before the Supreme Court. Admittedly, the Muslim husband enjoys the privilege of being able to discard his wife whenever he chooses to do so, for reasons good, bad, indifferent or for no reason at all, but does it mean that the Muslim Law does not impose any obligation on him to maintain his wife?

The husband's obligation to maintain his wife during idda is recognised, but does it mean that mere fact that he had paid something by way of maintenance to his wife during idda, absolve him for ever from duty to maintaining his divorced wife thereafter?
Is dower a sum payable under Muslim Personal Law as a sum "payable on divorce" within meaning of Section 127(3)(b)?

Chanderchud C.J. held categorically that in case there is any conflict between the personal law (any personal law, Hindu, Muslim, Parsi and others) and section viz., criminal procedure court, the letter would prevail. His Lordship said that the argument of the husband that according to the Muslim Personal Law his liability to provide for her maintenance was limited to the period of *Iddah*, despite the fact that she was unable to maintain herself, was to be rejected.71 Regarding *mahr* he said that it was not a consideration for marriage but an obligation imposed upon the husband as a mark of respect for his wife, and was therefore not a sum payable on divorce.72 According to Diwan we should accept that Muslim personal law to that extent has been abrogated by Section 125 Cr.P.C.73

Sub section (3) of section 125, code of Criminal Procedure provides two modes of execution of maintenance orders. When a person fails to comply with the order, the Magistrate may (a) issue a warrant for levying the amount due in the manner provided for levying fines, and (b) sentence such

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71. AIR 1985 SC at 1951-52.
73. Parliament passed the Muslim Woman (Protection of Right on Divorce) Act, 1986 with the avowed purpose of abrogating the Shah Bano decision of the Supreme Court.
person, for the whole or any part of each month's allowance remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made.

In Shrimati Kuldeep Kaur v. Surinder Singh, Thapakar, J. of the Supreme Court made it clear that a sentence of jail is not substitute for the recovery of the amount of monthly allowance which fallen in arrears. The purpose of sending him to jail is not to wipe out the liability which he has refused to discharge. Hence the Supreme Court directed the husband to pay the monthly allowance by the 15th of every month, and on failure of the husband to do so for any month or part of it, the Magistrate would issue a warrant of the arrest of the husband and cause him to be arrested and put him in jail for his failure to comply with the order till be made the payment.

**Right of Residence:** The right of residence was only for daughters who were widows, unmarried or deserted by or separated from their husbands. For the daughter whose marriage was subsisting but who was the victim of domestic violence, there was no right even to seek shelter in the dwelling house.

With the limited number of short stay house; and lack of knowledge of where to get help, many young women, unable to bear the physical and mental torture commit suicide.
women in Distress - Right to Stridhan:

So long marriage is a going concern and there is peace and harmony between the spouses, such a question as right to Stridhan will not arise. The question assumes importance only when the marriage breaks down and wife is turned out of the matrimonial home or leaves it since she finds it impossible to continue to live there, and the husband refuses to hand her over her Stridhan.

Two questions arise in this context -
a) What constitutes Stridhan and
b) Is a husband who refuses to return her Stridhan, guilty of criminal breach of trust within the meaning of Section 405 and 406 of the Indian Penal Code?

Hindu law has from the very beginning recognised the concept of Stridhan i.e. the type of property over which the dominion of its female owner as her separate property has been complete. On her were confined all the rights of a full owner. Her Stridhan mostly consisted of items of present made to her either during maidenhood, at the time of marriage, during coverture or thereafter. Most of it, in terms of quantum was given to her at or about the time of marriage.

The gifts made to a woman at or about the marriage or subsequently thereafter are classified into Yautaka and Ayautaka. Whatever is given to the bride and the bridegroom sitting upon the same site at the time of marriage is known as
Yautaka which includes all gifts made at the marriage ceremony. Ayautaka is a gift made before or after marriage. Sandayika includes both Yautaka and Ayautaka except that which is received from stranger. The properly called Sandayika has always been recognized from the earliest time as the property over which she has full dominion.

According to Diwan, women's power of disposal of her Stridhan is not confined to Saudayika but extends to all other types of Stridhan. These are properly given to her by way of gift and without any demand, coercion, undue influence or even pressure. Her right of disposal or alienation of any type of Stridhan are not restricted during coverture. Only thing is that in respect of some type of Stridhan, her husband has the power to use it or even alienate, but only during distress or emergency, and then he should return it. 74

The dowry given to the husband or in-laws is different from Saudayika as it is essentially given under coercion, undue influence, intimidation or pressure. It is this which is prohibited under the dowry Prohibition Act, 1961. Dowry has been made Stridhan by virtue of Section 6 of the Dowry Prohibition Act, 1961. That section runs:

1) Where any dowry is received by any person other than the woman in connection with whose marriage it is given, that person shall transfer it to the woman -

a) If the dowry was received before marriage, within three months after the date of the marriage, or
b) If the dowry was received at the time or after marriage, within three months after the date of its receipt or

c) If the dowry was received when the woman was a minor within three months after she has attained the age of eighteen years, and pending such transfer, shall hold it in trust for the benefit of the woman.

Regarding wedding presents, section 3(2) lays down:

Nothing in sub-section (1) shall apply to, or in relation to -

a) presents which are given at the time of the marriage to the bride (without any demand having been made in that behalf);

b) presents which are given at the time of the marriage to the bride (without any demand having been made in that behalf);

As a safeguard, provisos to both the clauses (a) and (b) lay down that such presents are to be listed in a list to be maintained by the bride when presents are made to her and in a list to be prepared by the bridegroom when presents are made to him.75

75. See Rule 2, The Dowry Prohibition (Maintenance of list of Presents to the Bride or Bridegroom) Rules, 1985.
Now, let us take up the other question - is a husband who refuses to return her Stridhan guilty of criminal breach of trust within the meaning of Section 405 and 406 of the Indian Penal Code?

The Judiciary tried to answer this question in Pritab Rani v. Suraj Kumar and Vinod Kumar v. State76 and Vinod Kumar v. State77 one of the Supreme Court Judge Varada Rajan, J. has commented in this context that the criminal law should not enter the precincts of the matrimonial home as that would mar the peaceful and harmonious relationship in a matrimonial home. But the fact is that criminal law or law of divorce enters the matrimonial home only when peaceful and harmonious relationship no longer subsists. Hence, this question needs to be tackled more seriously than has been done by the Indian Courts.

For example, in Vinod Kumar v. State, Sandhawalia, C.J. holds that there can not be any criminal breach of trust even when the husband refuses to handover the Stridhan to a stranger to wife. He says,"The inevitable presumption during the existence or imminent break-up of the matrimonial home, therefore, is one of joint possession of the spouses which might perhaps be dislodged by the special terms of a written contract. However to be precise, this presumption of joint

76. AIR 1985 SC 628.
77. AIR 1982 P & H 373.
possession of properties within the matrimonial home can
subsist only as long as the matrimonial home subsists or on the
immediate break-up thereof."\(^7\) The learned judge then takes the
argument to the logical end and according to Diwan he thereby
ends\(^7\) when he says, "It would be equally untenable to hold
that either the desertion or the expulsion of one of the
spouses from the matrimonial home would result in entrusting
dominion over the property belonging to the other so as to
bring the case within the ambit of Section 405, Indian Penal
Code. The joint custody and possession once established would
thereafter exclude either express entrustment or the passing
of the dominion over the property."

Since the learned Judge has propounded the concept
of unity of possession of all properties in the matrimonial
home on the analogy of the partnership farm, he is led to say
that even when the wife is turned out of the matrimonial home,
the husband refuses to return her Stridhan he is guilty of no
breach of trust. The only remedy the wife has is to file a
civil suit for the recovery of her Stridhan.\(^8\)

However, the same Punjab and Haryana High Court had
observed in Avtar Singh v. Kirpal Kaur\(^8\) where a certain thing

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78. AIR 1982 P & H 372, Paras 45.
is lying in trust with a person, offence of dishonest misappropriation would be committed on a date the demand for return of the entrusted articles is made and the same is declined. According to the complaint, the first demand for the return of the articles was made on January 27, 1976, and it was that date when the demand was declined. Hence, the offence of misappropriation of the dowry articles lying in trust was committed on January 27, 1976.82

But of specific interest to us is the judgement in Vinod Kumar case which has been quoted in nineteen judgements. and even Varadarajan J. of the Supreme Court has quoted in his dissenting judgement, extensively from Vinod Kumar.

Expressly over-ruling Vinod Kumar and other decisions that follow it or express the same view Fazl Ali J. observed that he was amazed to find that so deeply drowned and inherently were some of the High Courts in the concepts of matrimonial home qua the Stridhan property of married woman that they simply refuse to believe that such properties were meant for the exclusive use of the wife and could also be legally entrusted to the husband or his relations, such an approach amounts to a serious distortion of the criminal law, resulting in perpetrating grave and substantial miscarriage of justice to the wife at the hands of the High Courts. We can not countenance such a wrong and perverse approach.83 In the result the Supreme Court by a

82. This discussion in Bhai Sher Jun Singh v. Virender Kaur have been approved by the Supreme Court in Pritabha Rani v. Suraj Kumar.

83. AIR 1985 SC of 642.
majority of two by one held that the complaint *prima facie* disclosed an offence of criminal breach of trust as defined in Section 405-406\(^4\) of the Indian Penal Code and the High Court was not justified in quashing the complaint.

We conclude this section again with these sentences from judgement delivered by M. Fazl Ali which clearly brings out the myth and reality of the women's status in India:

"The present case reveals the sad story of a helpless married woman who, having been turned out by her husband without returning her ornaments, money and clothes despite repeated demands, and dishonestly misappropriating the same, seems to have got some relief by the court of the first instance but to her utter dismay and disappointment, when she moved the High Court she was forced like a dumb-driven cattle to seek the dilatory remedy of a civil suit - such was the strange and

\(^4\) Section 405 of the Indian Penal Code runs as under:

Whoever being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged or of any legal contract, express or implied, which has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits criminal breach of trust.

Section 406 of the Indian Penal Code provides for the punishment for breach of trust which may be a sentence of importance of either description extending to three years or of fine or both.
harsh approach of the High Court, with due respect which seems to have shed all norms of justice and fair play." 85

**Family Courts:**

Parliament passed the family Court act in 1984 in order to provide a forum in which family disputes would be resolved in an atmosphere of reconciliation and understanding keep the advocates out and provide for counsellors to assist the judge. It was envisaged that a family court would be established in every city or town where the population exceeds one million. Social welfare agencies, institutions or organisations engaged in social welfare, and persons professionally engaged in promoting the welfare of the family are required to be associated to enable the family court to exercise jurisdiction more effectively. Under section 3 of the act there is a prohibition against the parties being represented by a legal practitioner as a matter of right though the court may take the assistance of a legal expert as amicus curiae.

One aspect which the law makers seem to have lost sight of is the real nature and situation of women from the socially backward and poorer sections of urban and rural societies. Those women, who are usually illiterate or semi-literate and steeped in ignorance are largely unaware of their

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85. Varadarajan J in his dissenting judgement has extensively quoted from Vinod Kumar (practically nineteenth judgement contains the Vinod Kumar quotes) and took the view that in the absence of a specific separate agreement between the wife on one side and her husband and in-laws on the other, no case of entrustment of Stridhan or dowry to the husband and in-laws is made out and they thus could not be guilty of criminal breach of trust.

AIR 1985 SC at 630.
rights and the legal benefits available to them. They are not in a position to effectively present their case before the court, whether a civil court or lok adalat or a family court. For such women, the assistance which can be rendered by a lawyer is indispensable for securing them justice. It is therefore, suggested that in cases where, in the court's appreciation, the woman litigant is powerless to present her case properly, it should be mandatory that a lawyer be provided to her, if necessary, at state expense. At the same time it would not be advisable to preclude her choice of advocate in the matter and she should be allowed to have a lawyer of her own choice. Family disputes, including matrimonial matters, by their very nature involve complex questions of social attitudes, psychologies and individual personal problems requiring in-depth understanding of the human nature involved and a maturity and patience which is hard to come by.

Unfortunately only three states have sent up these family courts till date and women are still compelled to seek justice in the normal courts where they are always at a disadvantage.

Law Relating to Widows:

According to the Hindu tradition the best thing for a widow to do was to commit 'Sati' that is to sit on the pyre of her dead husband and get burn alongwith the deceased. The problem of 'sati' has two dimensions one, the plight of widows,
specially in areas which are tradition bound\textsuperscript{86} and other, the social problem of religious beliefs which have been plagueing the country for centuries. The second aspect also has the religious fervour attached to the concept of 'Sati Mata'. The fact, however, remains that this custom became prevalent with the ban on widow remarriage. Even though the widow remarriage act 1856 was passed, Hindu society has not completely accepted widow remarriage.

In India for several years the problem of social ostracisation of widows has been in existence.\textsuperscript{87} Once a woman loses her husband, she has no social status. This has been mentioned in "Manu Smriti". It lays down that "a wife may emaciate her body by living on pure flowers, roots and fruits, but she must never mention the name of another man after her husband has died. Until death she must remain patient of hardships, self controlled and chaste and perform duties prescribed for wives who have only one husband. A virtuous woman who after the death of her husband remains chaste, reaches heaven. Manu also reiterates that "a girl is given in marriage only once."

\textsuperscript{86} 'Sati' and Karva Chouth' are ceremonies which attach a great significance to a marriage and superiority of man. In Karva Chouth, while the husband is alive, it is just a question of fasting, wearing fine clothes and waiting to see the moon. After the death of the husband, it is 'Sati' - the gruesome killing of wives. Both are deep rooted traditions. Most often women themselves perpetuate these practices.

\textsuperscript{87} In the Vedic times, Sati was not in existence when a woman became a widow.
when a Hindu wife became a widow by any chance, her life was made miserable by her in-laws. She would become practically a slave and a beast of burden for kinds of manual labour and harsh treatment. A widow was not expected to wear fine jewellery, flowers, glass bangles or sindoor. In older days she was expected to shave off her head, wear plain white or red cloth and cover her head. She had to take off her 'mangala sutra' on the 11th day of her husband's death. She was not expected to participate in religious ceremonies, attend 'Haldi-Kum Kum' functions or be present when a marriage was being solemnised. In households where 'Kum Kum' is offered traditionally to unmarried girls and 'Sumangalies', it is deliberately not offered to a widow. This is prevalent in most of the southern parts of India and Maharashtra.

In contrast a Hindu male has no fasts to observe, nor does her incur any inauspiciousness, at the death of his wife. He can marry a virgin any number of times with full rights and ceremonies. In fact as soon as the wife dies, relatives start looking for a girl.

The basic rationale behind this practice seems to be two fold; to ensure preservation of the chastity of a widow and the desire for economic benefits from the assets of the deceased by claimants other than the widow under Dajabhagh system of law, it is enjoined that "the whole wealth of the deceased husband who has no male issue shall belong to his widow, though there be brothers of whole blood." Hence if
the widow survived, she proved an impediment to the inheritance of the deceased person's property by his near relatives.

In the name of religion this barbaric custom is being perpetuated even now in independent modern India and it is shocking that the practice is supported by religious heads like Shankaracharya of Puri and even by some political leaders.88

In the words of Justice V.S.Krishan Iyyer, former Judge of the Supreme Court, "What is lacking is not the law but the will, administrative, social, political and judicial to remove the inhuman perversion of our culture and punish abettors of this crime against women."

Gandhi favoured child widow remarriage but advocated 'Satihood' for grown-up widows. For him, "A Sati would regard marriage not as a means of realizing the ideal of selfless and self-effacing service by completely merging her individuality in her husband. She would prove her Sati not by mounting the funeral pyre at her husband's death, she would prove it with every breath that she breathes. She would shun creative comforts and delight of the sense. Knowing that the soul of him who she married is not dead but still lives, she will never think of remarrying."89 He believed that "a real Hindu widow is a treasure. She is one of the gifts of Hinduism to humanity."90

88. The Deorala incident of 'Sati' by Roop Kanwar has been an eye opener for people that Indian mentality and outlook continue to be highly tradition bound.


He yearningly exhorts, "May chaste and virtuous women ever cling to their suffering. Their suffering is not suffering but happiness." The patriarchs could find no better a person than Gandhi who while playing their cards would glorify and sublimate widowhood or satihood to such extremes that every woman is made to cherish it without feeling that she is being duped.  

Gandhi's philosophical-intellectual ideological mentor Viveka-nanda justifies the prohibition of widow-marriage. He asserts "Don't think that the rishis or wicked men introduced the law pertaining to it. Notwithstanding the desire of men to keep women completely under their control, they never could succeed in introducing those laws without betaking themselves to the aid of social necessity of the time. Of this custom two points should be specially observed: (a) widow-marriage takes place among the lower classes (b) among the higher classes the number of women is greater than that of men."

Vivekananda reasons, "Now if it be the rule to marry every girl, it is difficult enough to get one husband apiece; then how to get, by and by, two or three for each? Therefore, has society put one party under disadvantage, i.e. it does not let her have a second husband, who has had one; if it did, one maid would have to go without a husband. On the other hand, widow-marriage obtains in communities having a greater number of men than women, as in their case the objection stated above

does not exist. It is becoming more and more difficult in the
west, too, for unmarried girls to get husbands." The patri
politics of the patriarchs like Vivekananda, Gandhi etc., do
no good to women. Their eulogisation of Satihood and justifica-
tion of prohibition of widow-marriage has proved detrimental to
Indian women today as it has indoctrinated a new breed of patri-
archs be it the priests (like the Shankaracharya of Puri, various
babas, mullahs, grani this etc.), politicians, police or predators.

Having charted a course for wifely subordination and
suffering, Vivekananda audaciously opines, "the Indian woman
is generally very happy, there are not many cases of quarrelling
between husband and wife." It is surprising he maintains this
having boasted, "A mother always lives in our homes: the wife
must be subordinate to her." An emphatic rebuttal of such a
view is provided by S. Das, for whom "Never has man dug a deeper
pit for himself than did the Hindu when he worshipped goddesses
and degraded woman when he adored the mother and slighted the
wife." The key to intra-gender (woman v. woman) oppression
lies here.

We will know that it was due to the efforts of Raja
Ram Mohan Rai and a sympathetic governor, General William Bentinck
that the Sati-pratha was abolished in 1829 through the enactment
of a law. In fact, this an enactment only contained because it
continued clandestinely. It continued to operate even after
India attained independence. As late as 1986, a young widow by
the name of Roop Kanwar, committed Sati in village Deorala in
Rajasthan. It became a rallying point for the fundamentalist and the Sati was justified and glorified a solemn act leading to the attainment of salvation. Roop Kanwar was extolled as Satimata. A movement was launched to establish a temple of "Satimata Roop Kanwar" and donations were made and huge amounts were collected from thousands of people who continued together day after day.

The case for glorification of Sati was registered at Neem Ka Thana Police Station for participating in a celebration of Sati after Roop Kanwar was burnt along with the body of her husband Mal Singh. Apart from Rathore, the police had charged Roop Kanwar's father-in-law Sumer Singh along with two others, Bajrang Singh and Prahlad Singh, in the case.

According to the police, the Dharma Raksha Samiti formed by the Rajputs for defending the custom of Sati had announced a programme to hold a rally and a meeting to honour Roop Kanwar. The district collector had banned the programme.

The special court (Sati abolition) has issued bailable warrants against Minister of State for Health Rajendra Singh Rathore in a case of glorification of Sati registered against him after the infamous Deorala widow burning incident. The warrants were issued to bring him to the court on the next date of hearing on July 12. The Court has also issued bailable warrants against another accused Bajrang Singh.

This was a rude shock for the people of India and to Indian secularism and humanism and led to country-wide awakening and protest. It was in this context that the Indian Parliament

The Act constitutes three offences: (a) attempt to commit Sati (b) abetment of Sati (c) glorification of Sati. However, the court trying the offence will, before convicting any person, take into consideration the circumstances leading to the commission of the offence, the act committed, the state of mind of the person charged of the offence at the time of the commission of the act and all other relevant factors.

Abetment of Sati or abetment of the attempt to commit Sati have been considered to be more serious offences and whoever commits these offences, either directly or indirectly shall be punishable with death or imprisonment for life and be also liable to fine.

Glorification of Sati is an offence whoever does any act for the glorification of Sati shall be punishable with imprisonment for a term which shall not be less than five thousand rupees but which may extend to thirty thousand rupees.

The district collectors or district magistrates have been assigned special powers for the prevention of offences connected with Sati. The district Magistrate can act Suo Motu whenever he comes to know that Sati or abetment thereof is being, or is about to be committed. He can by order prohibit the doing of any such act by any person at any place specified in the order. Similarly, he can by order prohibit the glorification in any manner of Sati by any person or persons. The contravention of any such order is punishable with imprisonment for a term which may extend to seven years as well as fine which can not be less
than Rs.5,000 and in a given case, may be up to Rs.30,000.

The State Govts. have been given very wide powers of demolition of temples or structures build to commemorate the memory of Sati and glorification of Sati. The district Magistrate or Collector has been empowered to seize any fund or property that has been collected or acquired for the purpose of glorification of the commission of any Sati or which may be found under circumstances which create suspicion of the Commission of any offence under this Act. The Act also imposes an obligation on certain public servants to assist the police in the apprehension of culprits.

Very often the motive of the people involved in the offence of Sati has been acquisition of property. It has therefore been provided in the act that a person who has been convicted for the offence of abetment of Sati is disqualified from inheriting the property of the person in respect of whom such Sati has been committed or the property of any other person which he would have been entitled to inherit on the death of the person in respect of whom such Sati has been committed. Also, a person who is convicted of any offence under the Act incurs the disqualification for contesting any election for a period of five years from the date of conviction. 92

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92. The offence under the Act can be tried only by the special courts constituted under the Act by the State Govt.
In many societies the husband-wife relationship is not very important and the widow can continue life with other women members of the family or neighbourhood. However, if her status as a widow changes all her relationships, it can be devastating, as in traditional Indian society for a woman having no adult sons.

Thus, the degree of disorganization of life framework produced by the death of husband depends on the degree to which he was an integral part of her life and self concept as well as on the influence of the status of widow. Also, the broader and the community in which she is located provided with varying degrees of choice, the social role, support systems, life style and self concept which form the life-framework.

The world in which women, who have been widow, are now living has changed considerably from the traditional one in which they are embedded in net work of family and village. As a result of all the changes and all the traditional life frameworks there is a great heterogeneity of life frameworks for the women who are widowed.

Our discussion of women's status in the family would appear incomplete without a word on the uniform civil code. Although gender equality is a constitutional guarantee, family law makes gross discrimination between sexes. It is one of the tragedies of the times that, despite the spread of education and the passage of several laws designed to uplift the women, their
general condition remains largely unchanged. Most men still regard women as unequal and as second class citizens. The position of Hindu women has been slightly improved by the passing of codified family law. We can not say the same thing about Muslim women. The Muslim law of marriage, inheritance and divorce are very much discriminatory. However, in Muslim countries like Tunisia and Pakistan polygamy is curbed. The Indian legislature has failed on this point.

To protect the women from this discrimination we have Article 44 in our Constitution, which makes it the duty of the state to provide uniform civil code. Despite this fact the Parliament has not enacted any Act in this long period of time only due to the fear of votes and slogans. However, the uniform civil code is a necessity of the time. It will abolish the discrimination between male and female. The women will get the same rights in marriage, divorce and inheritance like male.

However at the time of enacting Article 44 two objections were put forward in the Constituent Assembly: firstly, it would infringe the fundamental rights to 'freedom or religion' as in article 25, and secondly, it would be a tyranny to the minority.

As far as the first objection is concerned article 44 does not infringe the freedom of religion. Article 25(a) specifically saves secular activities associated with religious practices.

As regard the second objection, Sh. K. M. Munshi, member
of the drafting committee rightly observed that it is not a tyranny to the minority. He gave the example of Turkey and Egypt where minorities have no such right. They are governed by the same law. However, some persons do not like uniform civil code. According to them the personal law of inheritance, succession and marriage is really a part of their religion. If that is so, you can never give equality to women. But we have fundamental right of no sex discrimination. Religion must be restricted to the spheres of the religion alone and the rest of life must be regulated and modified in such a manner in which all have equal rights. This will not be a tyranny over a minority, but over the majority.

Our work is not only upto the enactment of uniform civil code but to make it also workable. Law on papers does not solve the problem. Law is what law does. The law must be made working. In the formation of the uniform civil code the government has to ignore the slogan like 'religion in danger' etc. A women cell is necessary in the Law Commission to advise the commission in relation to women welfare enactments. Before enacting laws for women the commission must consult women organizations etc.

At last, we can conclude that the uniform civil code is the necessity of time. All men and women must declare war on injustice to women, women are not alone. Men must share their concern. The existing laws must be amended in a manner that they become effective.

We shall now take up in the following chapter, the status of women at the work-place as provided by law in our country.