CHAPTER-IV
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The State is accountable for the security of the individual citizen. The Indian state is also committed to protect their female citizens' rights to physical integrity and to take reasonable measures to prevent, investigate, prosecute and punish acts of domestic assault, particularly wife murder, when committed by private actors. The right to a violence free home is a basic right of women regardless of being governed by statutory or by customary laws.

In part III of the Indian constitution, Article 12 defines the term 'state' which includes the government and parliament of India and the government and the legislature of each of the states and all local or other authorities within the territory of India or under the control of the government of India. The term 'state' includes executive and legislative organs of the union and states as well as their subsidiaries. The judiciary is undoubtedly an organ of the state though many a time it sits on judgement on the two other organs of the state. The very fact that the head of state makes appointment of the head and other top brass of the judiciary indicates in ample measure that the judiciary also is a part of the state. Therefore, the response of the state shall also include the response of the judiciary to a particular issue. In the context of Article 12, the word 'Authority' means the power to make laws, orders, regulations, byelaws, notifications etc.

The constitution of India is the fountain head of all legal policies. In view of the gender inequalities and related issues, the constitution of India not only guarantees equality to women but also empowered the state to adopt measure of positive discrimination in favour of women. The Directive Principles of State Policy set Gender Equality as a major objective. Articles 14, 15, 16, 39 (a) and (c), etc give clear direction to Indian administrators for delivery of gender justice in all sphere of life.
may be said that for the first time Indian women are to be accorded a social position to function as a citizen and as an individual, and not merely as a member of a family or group simply as daughters, wives and mothers.

In modern times, the role of government is vast and diverse and it has to employ various agencies to perform manifold functions. India admittedly is a welfare state. It is officially committed to the welfare and development of its people – particularly the vulnerable sections of the society. The Preamble, Directive Principles of State Policy and Fundamental Rights enshrined in the constitution of India stand testimony to the commitment of the state to its people. The Ministry of Social Justice and Empowerment has introduced many schemes for the target groups that include the victims of social wrongs.

Women, who number 498.7 million according to 2001 census, represent 48.2% of country’s population of 1,027.01 million. For their social and economic upliftment and empowerment, the following women oriented programmes are being implemented by government. Support to Training and Employment Programme for women (STEP) was launched as a Central Scheme in 1986-87. During the year 2004-05, four projects have been sanctioned to benefit 13,000 women by December 2004. Swawalamban was launched in 1982-83 across the country to provide training and skills to women to facilitate their obtaining employment or self-employment on a sustainable basis. Swayamsidha is based on the formation of women into Self-help Groups (SHG) with emphasis on covering services, developing access to micro credit and promoting micro enterprises with long term objective to achieve all round empowerment of women, especially socially and economically. A total of 59,940 SHGs were formed by December 2004. Swadhar was launched during 2001-02 for the benefit of women in difficult circumstances such as destitute widows deserted by their families, who are disowned by family or who do not want to go back to their respective families for various reasons. The services made available under the scheme include provision for food, clothing, shelter, health care, counselling, social and economic rehabilitation
through education, awareness generation, skill upgradation and behavioural training. Helpline and other facilities are also available to the women in distress. An amount of Rs 1.24 crore was released to benefit women during the year 2004-05 under the scheme. Short-stay Homes were launched through Central Social Welfare Board (CSWB) in 1969 to rehabilitate those women and girls who are facing social, economic and emotional problems due to family stress, social ostracism, moral danger etc. An amount of Rs 10.20 crore was released during the year 2004-05 for maintenance of Short-stay homes. Family Counseling Centres were launched through CSWB since 1984 through voluntary organizations to provide preventive and rehabilitative services to women and children who are victims of atrocities and family maladjustments.

4.1 Uniform Civil Code:

Article 44 of the constitution of India, which is one of the Directives Principles Of State Policy provides that the State shall endeavour to secure for the citizens Uniform Civil Code throughout the territory of India and the Uniform Civil Code (UCC) has become the need of the hour. A large number of people in India are dominated by the religious laws or laws based on tradition, customs or usage practiced for centuries. But the UCC is conceived as part of secularization of personal laws which will become applicable for all citizens in equal measure irrespective of their caste creed and religion. Equal right for women in matters of marriage, separation, custody of children, inheritance and property is today understood as the rationale for UCC. Various factors like communalism and political opportunism; mass illiteracy, and backward notions of culture and religion are responsible for keeping UCC in cold storage. The interest of women and children would have been taken best care of by making a UCC effective.

Till the advent of the British on Indian soil, no one knew about uniform legal system. All the religious people were governed according to their own religious code about marriage and succession. Reasons behind the failure in making a UCC effective are
caution, a desire for status quo, eye on the vote bank, power politics etc. Customs are so deep rooted that assuring enforcement of a common law remained a dream till today. Though the society has moved forward with education and economic development, social reforms through legislation remained standstill because of resistance to reform by a section of the society.  

In some important cases, the Supreme Court felt the necessity of bringing a common law. In the famous Shah Banoo case, where the issue was, whether in a case of a Muslim divorced woman, section 125 Cr.P.C. was applicable for maintenance, throughout her life or until remarriage, from her estranged husband. But the uproar that followed made the issue go in favour of Muslim Personal Law depriving the Muslim woman from maintenance and forcing her to resign herself to the fate of a hapless divorcee. Another case was Sarla Mudgal vs Union of India where a case was filed by the president of a women’s organization called Kalyani against the husbands of four Hindu women, whose husbands converted to Islam to get married to other women for non-fulfillment of their demand for dowry by the existing wives.

The issues under consideration were:

1. Whether a Hindu husband having embraced Islam can solemnize a second marriage;
2. Whether the second marriage would be valid without the dissolution of the first marriage;
3. Whether the apostate husband would be guilty under Sec. 494 of IPC.

Justice Kuldip Singh and Justice R.M. Sahai delivered judgement against those Hindu husbands who had changed their religion for their benefit. The judges finally went on record to observe: “We, therefore, request the government of India through the Prime Minister of the country to have a fresh look at Article 44 of the constitution of India and endeavour to secure for the citizens a uniform civil code throughout the territory
of India ……” There is an increasing demand for recognition of women’s rights as human rights and it is in this context a UCC becomes relevant to India.6

4.2 Legislation Relating to Women:
The involvement of law is there everywhere in the sphere of women’s position in the internal situation in the parental or matrimonial home or in the external situation of acquiring education and employment. There are a number of significant legislations that directly or indirectly serve to protect women’s human rights. These include:

1. Indian Penal Code.
2. Criminal Procedure Code.
3. Indian Evidence Act.
5. Age of Consent Bill – 1891

The Indian penal code was enacted in 1860, which came into force in 1861. Later it has been amended from time to time in response to the changing social attitude that came with the passage of time. The Indian penal code is uniformly applicable to all and in general, does not make any distinction on the basis of sex. The Penal code has provided special provisions to protect women by judging the social condition and norms prevailing in the Indian society, who could be a victim of the offences relating to her sex.7 Three new offences, viz., sections 304-B, 376-A, 498-A, specially
protecting women, were added later because of the peculiar Indian social conditions and needs of the time.

### 4.1 Offences under the Indian Penal Code protecting Women

<table>
<thead>
<tr>
<th>Section</th>
<th>Offence</th>
<th>Punishment</th>
<th>Cognizable Or non-cognizable</th>
<th>Bailable Or non-bailable</th>
<th>By what court triable</th>
</tr>
</thead>
<tbody>
<tr>
<td>109</td>
<td>Abetment of any offence is committed in consequence and where no provision is made for its punishment</td>
<td>Same as for offence abetted</td>
<td>According to whether offence cognizable or non cognizable</td>
<td>According to whether offence abetted is bailable or non bailable</td>
<td>Court by which offence abetted is triable</td>
</tr>
<tr>
<td>304-B</td>
<td>Dowry death</td>
<td>Imprisonment if not less than 7 years but which may extend to imprisonment for life</td>
<td>cognizable</td>
<td>Non-bailable</td>
<td>Court of session</td>
</tr>
<tr>
<td>307</td>
<td>Attempt to murder if such act cause hurt to any person</td>
<td>Imprisonment for 10 years and fine</td>
<td>cognizable</td>
<td>Non-bailable</td>
<td>Court of session</td>
</tr>
<tr>
<td>313</td>
<td>Causing miscarriage without women’s consent</td>
<td>Imprisonment for life or for 10 years and fine</td>
<td>cognizable</td>
<td>Non-bailable</td>
<td>Court of session</td>
</tr>
<tr>
<td>314</td>
<td>Death caused by act done with intent to cause miscarriage if without women’s consent</td>
<td>Imprisonment for 10 years and fine or life imprisonment</td>
<td>cognizable</td>
<td>Non-bailable</td>
<td>Court of session</td>
</tr>
<tr>
<td>323</td>
<td>Voluntarily causing simple hurt, wife beating</td>
<td>Imprisonment for 2 years or fine of 1000 Rs or both</td>
<td>cognizable</td>
<td>bailable</td>
<td>Any magistrate</td>
</tr>
<tr>
<td>325</td>
<td>Voluntarily causing grievous hurt or wife beating</td>
<td>Imprisonment for 7 years or and fine</td>
<td>cognizable</td>
<td>bailable</td>
<td>Any magistrate</td>
</tr>
<tr>
<td>341</td>
<td>Wrongfully restraining any person</td>
<td>Simple imprisonment for 1 month or fine of 500Rs or both</td>
<td>cognizable</td>
<td>bailable</td>
<td>Any magistrate</td>
</tr>
<tr>
<td>342</td>
<td>Wrongfully confining any person</td>
<td>Imprisonment for 1 year or fine of Rs1000 or both</td>
<td>cognizable</td>
<td>bailable</td>
<td>Any magistrate</td>
</tr>
<tr>
<td>376-A</td>
<td>Intercourse by a man with his wife during separation</td>
<td>Imprisonment for 2 years and fine</td>
<td>Non cognizable</td>
<td>bailable</td>
<td>Court of session</td>
</tr>
</tbody>
</table>
### 493 Cohabitation caused by a man deceitfully inducing a belief of lawful marriage

| Imprisonment for 10 years and fine | Non-cognizable | Non-bailable | Magistrate of the first class |

### 494 Bigamy

| Imprisonment for 7 years and fine | Non-cognizable | bailable | Magistrate of the first class |

### 495 Bigamy with concealment of former marriage

| Imprisonment for 10 years and fine | Non-cognizable | bailable | Magistrate of the first class |

### 496 Marriage ceremony fraudulently gone through without lawful marriage

| 7 years imprisonment and fine | Non-cognizable | bailable | Magistrate of the first class |

### 497 Adultery

| Imprisonment for 5 years or fine or both | Non-cognizable | bailable | Magistrate of the first class |

### 498 Enticing or taking away or detaining with a criminal intent a married woman

| Imprisonment for 2 years or fine or both | Non-cognizable | Non-bailable | Any Magistrate |

### 498-A Subjecting a married women to cruelty

| Imprisonment for 3 years and fine | cognizable | Non-bailable | Magistrate of the first class |

### 506 Criminal intimidation If threat be to cause death or grievous hurt

| Imprisonment for 2 years or fine or both, Imprisonment for 7 years or fine or both | Non-cognizable | bailable | Any Magistrate |

### 306 Abetting the commission suicide

| Imprisonment for 10 years and fine | cognizable | Non-bailable | Court of session |

### 354 Assault or use of criminal force to a woman with intent to outrage her modesty

| Imprisonment for 2 years or fine or both | cognizable | bailable | Any Magistrate |

Section 498-A was the first law in the Indian Penal Code that specially recognized violence against married women in homes. Criminal Law (amendment) Act 46 of 1983 has provided section 498-A which declares that, whoever, being the husband or the relative of the husband of woman, subjects such woman to cruelty, shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. “For purpose of this crime ‘cruelty’ shall mean:
(a) Any wilful conduct which is of such nature as is likely to drive a woman to commit suicide or to cause grave injury or danger of life, limb, or health (whether mental or physical) of the woman;

(b) Harassment of the woman where such harassment is done with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.\textsuperscript{9}

It is felt that the scope of Section 498-A IPC is limited as it is silent on other kinds of cruelties involving psychological, economic and sexual abuses. The definition of cruelty is unduly restrictive for which this provision is highly inadequate. It is to be proved that (a) that her husband had indulged in such conduct as is likely to cause grave injury to life or drive her to commit suicide, or (b) that she was being harassed in connection with an unlawful demand for dowry. It cannot be ignored that the causes of domestic violence are a variety of reasons and not just in connection with dowry demand, which causes the wife to suffer emotional distress. This aspect is completely ignored and even today the police are reluctant to register a case under section 498-A of the Penal Code unless a specific allegation of dowry harassment is made. Under these circumstances the genuine complaints of wife beating are overshadowed by vague allegations of dowry demands, which tend to cast aspersions on the credibility of the complaint, which results in acquittal of the husband.\textsuperscript{10} Justice Malimath committee in 2003 made a proposal that section 498-A be made bailable and compoundingable to give a chance to the spouses to come together.\textsuperscript{11}

In sequel to this, in 1986, a new offence ‘dowry death’ has been inducted in the Penal Code as section 304-B which provides:

(i) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within 7 years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband for, or in connection with, any demand
for dowry, such death shall be called ‘dowry death’ and such husband or relative shall be deemed to have caused her death.

(ii) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than 7 years, but which may extend to imprisonment for life.12

The Supreme Court has directed that in cases of abetment of suicide, there must be proof of direct or indirect acts of incitement. The mere fact that a man was cruel to his deceased wife is not enough to warrant conviction.13 The government is considering a proposal to make Anti-dowry laws more stringent and will extend the current ‘seven years of marriage’ for registration of dowry death cases to life-time – the death of married woman by burns or bodily injury can be investigated at any stage of married life for dowry harassment as evidence showed that dowry cases have been reported even after several years of marriage. The ministry is considering raising the punishment for suspected dowry deaths to a minimum of 10 years and a maximum of life imprisonment or death. On the other hand, if a complaint is proved beyond doubt to be false, law must punish the accused.14

Marital Rape – Chapter XVI of Indian Penal Code on the ‘Offences against Human Body’ contains sections 375 and 376-A as marital rape. They are:

(i) Section 375 says “Whoever sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, it is not rape.”

(ii) Section 376-A says “Whoever has sexual intercourse with his own wife, who is living separately from him under a decree of separation, or under any custom or usage without her consent shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.”15

IPC Section 375 has created controversies and many human rights activists and women’s organizations have vehemently criticized it since the age of marriage was
raised to 18 years in the amendment of the Child Marriage Restraint Act, 1978; but the rape law continues to view forcible intercourse with a wife who is 15 years of age as being no offence at all. The Law Commission recommended that marriage with a girl below 18 years should also be prohibited. According to Hindu Marriage Act the bridegroom should be 21 years of age and the bride should be 18 years. But according to the Indian Penal Code, section 375, if the girl is above 15 years, the marriage will be considered by implication as valid whereas it is liable to be punished under section 18 of Hindu Marriage Act, 1955.\textsuperscript{16}

**Criminal Procedure Code, 1973** – The criminal procedure code has also provided some provisions in favour of women. These protective provisions have been made keeping in mind the constitutional protective provisions and special social and cultural background of women in India. The previous Criminal Procedure Court of 1898 had some of the special clauses in favour of women; but the new code of 1973 is completely a revised code and added some new clauses to protect women.

**Section 125** – Section 125 of this code (Section 488 of the code of 1898) provides for maintenance to his wife, children and the parents, which is the fundamental and natural duty of a man.

(a) The husband has to maintain the wife including divorced wife during her lifetime or until the time she remarries.

(b) Both parents have to maintain illegitimate and legitimate minor sons, unmarried daughters, married minor daughters whose husbands are incapable of taking care of them and all children who by reason of physical or mental abnormality or injury are unable to maintain themselves.

(c) Both sons and daughters are bound to maintain their parents who are unable to maintain themselves.\textsuperscript{17}

**Property right** – The question is whether the wife is entitled to matrimonial property, especially when she had contributed economically for her matrimonial home. The
present case is an appropriate example where her all economic contribution proved vain. The case is about an unfortunate woman who got married to a bank officer in 1973. She was a victim of abusive relationship. Her husband was a drunkard. He used to assault her physically and sexually and often strip her naked and then beat her. Next day he used to ask for forgiveness and promised to mend his ways. She was a mother of four children—three daughters and one son. On April 3, 1988 she was again beaten up and thrown out from the house. Finding no other way she took shelter at her widow mother's house in Calcutta. The husband filed divorce proceedings in Delhi and since the wife was unable to contest the proceedings, ex-parte divorce was granted. Under section 125 of the criminal procedure code 1973, the court granted her only Rs. 500 per month, which was hardly sufficient to maintain herself and her children with dignity. During the course of her marriage, she made financial and non-financial contribution towards the building of the matrimonial home; therefore, she was legitimately entitled to the share in the matrimonial home. She said her husband sold her all jewellery to purchase the plot of land. For the construction of the house she contributed with cash and kind by doing business. She looked after the matrimonial home and financially contributed a great deal towards maintaining the home and rearing the children. She dedicated herself for 15 years to make a home. She performed all the domestic chores at home. But when the marriage broke down, she had to remain satisfied with only Rs. 500 per month with her four children even though she had contributed substantially for the acquisition of the property for her matrimonial home.18

Under section 27 of the Hindu Marriage Act, 1955 the wife is only entitled to receive that property which was presented at or about the time of marriage. Her financial and non-financial contribution towards the making of the home is completely ignored.19 In the absence of any record, it is very difficult again to prove the nature and amount of the assets gifted to the woman during her marriage. Most often women's jewellery and personal belongings are passed into the hands of the in-laws and in that case, the recovery of such items is next to impossible after divorce. In India, even if wife is...
earning, the husband usually becomes the custodian of his wife's money and controls all the family income.²⁰ It is a common sight that victims of domestic violence feel helpless when they become homeless with the husband and in-laws driving them out from their marital home. After marriage in our society, women lose their right on parental home and property.

Cr. P.C. 1973 – Post-mortem examination in case of death of a woman, the criminal law (second amendment) Act of 1983 has introduced sub-section (3) in section 174 of the code. As the number of dowry deaths or cases of cruelty to married woman culminating in suicide has been increasing day by day, this amendment was felt necessary. Within seven years of marriage if a woman commits suicide or dies in circumstances raising a reasonable suspicion that some other person is involved in committing an offence, a post mortem examination of the body of the deceased is mandatory besides inquest by an Executive Magistrate. In case of death of a married woman within seven years of her marriage and the relatives of such woman making a request in this behalf, the post mortem is compulsory as a sequel to it.²¹

\textit{Indian Evidence Act, 1872} –

Section 113-A – Presumption as to abetment by suicide by a married women — when the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she has committed suicide within a period of 7 years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.²²

113-B – Presumption as to dowry death – when the question is whether a person has committed the dowry death of a woman and it is shown that soon after her death such woman had been subjected by such person to cruelty or harassment for, or in
connection with, any demand for dowry, the court shall presume that such person had caused the dowry death.\(^{23}\)

**Female Infanticide Prevention Act – 1870** – There has been in India the barbarous custom of killing female infants after their birth as the girls became a burden on the family owing to the dowry system and the huge expenditure involved in giving them marriage. In 1870, legislation was passed to stop the evil custom and for enforcing registration of births and deaths.

**Age of Consent Bill – 1891** – The leaders of Brahma Samaj protested against the custom of child marriage. In 1860, Indian Penal Code, at the instance of Iswar Chandra Vidyasagar, prohibited consummation of marriage when the girl was less than ten years. In 1891, the government passed the Age of Consent Bill prohibiting cohabitation with a wife under the age of twelve.\(^{24}\)

**Child Marriage Restraint Act – 1929, (Amended in 1978)** -- Child marriage is a major social evil sought to be prevented and curbed by law. As per the Act, child is a person who, if male has not completed 21 years of age and if female, has not completed 18 years of age. The Act prohibits marriage below the prescribed age. Child marriages are valid under all personal laws. The Special Marriage Act prohibits marriage below the age of consent.\(^{25}\) In 1927 Harbilas Sharda introduced a bill to regulate the age of marriage among the Hindus and was popularly known as Sharda Act of 1929, subsequently known as Child Marriage Restraint Act\(^{26}\). Parents and guardians are liable to be punished with fine for violating the provisions of the Act. But the Act exempts the girl from the punishment. The offence is cognizable only under specific conditions. The Child Marriage Restraint Act is applicable to all Indians irrespective of their religion.\(^{27}\) Once child marriage is solemnized, the union becomes valid, even though the act of giving a child in marriage is an offence.\(^{28}\) A recent judgement declared that the marriage of a girl above the age of fifteen is legally valid; provided she does so of her own free will. Thus, ruled a High Court in a judgement
that may open a floodgate of controversy. The court said that a girl above 15 years can
be said to have reached the “age of discretion” and any wilful marriage by her would
be considered “valid, enforceable and recognizable in courts of law”. The Supreme
Court asked all courts not to draw any inspiration from the two High Court orders.

The Child Marriage Restraint Act, which has been in existence for the last 77 years,
has been utterly ineffective in dealing with the problem, something that has a very
close connection with domestic violence on married women. Faced with the need for a
stronger law, the government introduced “the Prevention of Child Marriage Bill” in
the Rajya Sabha in 2004. The Government wants to go from ‘restraint’ to ‘prevention’.

**Special Marriage Act – 1954** – This Act was passed for providing marriages
irrespective of differences in religion. It allowed all communities to get their marriages
registered under this Act, which is modeled on the modern notions of monogamy,
divorce and desertion.

**Dowry Prohibition Act – 1961** – The Dowry Prohibition Act was enacted to prohibit
the evil practices of giving and taking dowry. If any person demands, directly or
indirectly any dowry from the bride, he shall be punished with imprisonment for a
term of not less than six months, which may extend to two years and with fine upto Rs
10,000.

The Dowry Prohibition Act of 1961 was enacted with a purpose of curbing the evil
practice of dowry. It failed to achieve its purpose, as it is full of contradictions and
loopholes. The narrow definition of dowry in the Act as “property given in
consideration of marriage” and as a condition of marriage taking place did not cover
money asked for and given after marriage; this is the reason behind the failure of the
very purpose for which it was enacted. The offence relating to dowry is non-
cognizable and bailable. The complaints had to be filed within one year of the offence.³³

The main flaw in this Act is that it holds both the giver and the taker equally guilty. As a result it prohibits the parents of the girl from coming forward and complaining about the fact that they were compelled to give dowry. The idea behind it was to discourage the practice of giving dowry. When both giver and taker are punishable, no giver can be expected to come forward to make complaint.³⁴ According to the latest proposal for anti-dowry law by the government, the gifts should be customary in nature. On the other hand, wife’s family which gives dowry will face lesser punishment.³⁵

The Supreme Court has directed the centre and the states to ask their male employees about the quantum of dowry taken by them during wedding and if so, they should put it in the name of their wives. If the candidate is married before joining a government job, he must submit the list of dowry items taken by him. This may discourage the accepting of dowry. Section 3 and 4 of the Act provides that bride and bridegroom must maintain the lists of presents or gifts received.³⁶

The lack of control of the bride over dowry property and misappropriation of dowry by groom’s family have been sources of conflict between families, which frequently resulted in the persecution of the bride. Recently Supreme Court in its majority judgment laid down that such property was wife’s exclusive property and that the husband and in-laws of the woman were simply trustees of such property. An action for criminal breach of trust would lie against them if they did not return her this property. But fact is that in most of the cases mothers-in-law and sisters-in-law are dominating in the relationship and they appropriate all the dowry articles by depriving the bride.

✔ The Commission of Sati (Prevention) Act 1987 — Sati or the burning of the widow along with their dead husband on the same funeral pyre was the custom practiced
widely in several parts of India, specially Rajasthan and West-Bengal and to some extent in Madhya Pradesh. It can be said to be the worst form of domestic violence. Raja Ram Mohan Roy actively campaigned against Sati. In 1829, Lord William Bentick, an enlightened Governor General, prohibited the act of sati by punishing the guilty for murder or abetting murder.\footnote{37}

An Act of Parliament called “The Commission of Sati (Prevention) Act, 1987” was enacted in response to a national uproar following the burning of a young educated woman, Roop Kanwar, on the funeral pyre of her husband in Deorala, Rajasthan. The Act is a measure against the capital offence of killing of a helpless widow in the funeral pyre of her husband.\footnote{38}

\textbf{Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act 1994}—With a view to preventing female foeticide it was proposed to prohibit pre-natal diagnostic techniques for determination of sex of foetuses. The dignity and status of women were affected by such abuse of scientific techniques, which was found discriminatory against the female sex. Hence legislation was required to regulate the use of such techniques to stop such an inhuman act and to provide deterrent punishment.\footnote{39}

Since the time the centre enforced the Act to ban Pre-Natal sex determination tests, not a single person has been convicted for committing female foeticide, admitted Union Health Minister Anbumani Ramadoss. Killers of female foetuses are going scot-free. To arrest the declining sex ratio, PNDT Act was amended in 2003 to make it more stringent; the sex ratio had slumped from 972 in 1901 to 927 in 1991. The punishment for violating the Act is jail for five years and a fine of Rs. 1 lakh.\footnote{40}

The North East is also not spared from this evil practice of foeticide and has been witnessing a sharp decline in sex ratio in the last couple of years. According to 2001 census, five NE states were lagging behind the generally accepted sex ratio in the
range of 943-952. Declining sex ratio reflects the status of women and domestic violence on married women. In so many cases married women were compelled by their husbands and in-laws to abort the foetus of girl child or infanticide of the girl child and put to tremendous mental agony and risk of life in the process of abortion. Sex determination test and abortion of the female foetus is directly linked with domestic violence.

The Protection of Women from Domestic Violence Act, 2005 – The Protection of Women from Domestic Violence Act 2005 was enacted on October 26, 2006 and the main focus of the Act is on protection of women from domestic violence and not punishing the accused. This is for the first time in India, domestic violence is being considered both a civil and a criminal offence. According to this Act, domestic violence of any kind, physical, sexual, verbal and economic, will necessitate protection of the victim by law.

Physical violence includes beating, slapping, hitting, biting, kicking, punching, pushing, shoving and causing bodily pain or injury in any other manner. Sexual violence considers the following as domestic violence: forced sexual intercourse; forcing the woman to look at pornography or other obscene pictures or material; any act of sexual nature to abuse, humiliate or disgrace; any act which violates dignity or any unwelcome sexual conduct and child sexual abuse. Verbal violence includes insults, calling names, maligning character or conduct; insult for not having a male child, for not bringing dowry; preventing a woman or a child in custody from attending school, college or any other educational institution; preventing a woman or a child from leaving the house; forcing a woman to leave a job; preventing a woman to meet a person in the normal course of events; forcing a woman to marry when she does not want to or to a person she does not want to; threatening violence etc. Economic violence includes the following: not providing money for maintenance of wife and children; not providing food, clothes, medicines for them; preventing a woman from doing her job; not allowing her to use husband’s salary; taking away part
of her salary; forcing her out of the house she lives in; preventing her from accessing certain parts of the house; not allowing her to use clothes, articles, or things of general household use; not paying rent if she is staying in a rented home etc.

The woman’s right to secure housing is one of the most important features of the Act, which provides her a right to reside in the matrimonial and shared household, whether or not she has any title in the household. The Domestic Violence Act provides protection not only to the wife but also to all women sharing a household with a man like live in partners, daughters, sisters, mothers and widows. This Act also tried for the first time to deal with every form of violence – physical, sexual, verbal / emotional and economic. Marital rape (without terming it as such) has for the first time been introduced in the legal vocabulary of violence. Without calling it “marital rape”, forced sexual intercourse has entered as a form of violence.\textsuperscript{42}

Under section 18 and 19 of the Act a person can be punished if he is guilty of practicing any one of the above-mentioned violence. A Magistrate can issue a protection order that will entitle the woman to her stridhan, jewellery and clothes and bar the offender from operating joint bank accounts or lockers without the court’s permission. Hindu custom entitles women to have their stridhan as their exclusive property, which includes money, property, jewellery or a share in a family business. The wealth a woman inherits or has generated through her own enterprise is also included as her exclusive property, No one in the family has any right on her stridhan unless the woman gifts it away. If the stridhan is used by a male, which is not gifted to him, he is expected to return it to the woman with interest.

The main features of the 2005 Act are as follows ---

- Any harm, injury to health, safety, life, limb or well being or any other act or threatening or coercion, etc., by any adult male member of the family constitutes domestic violence.
• A woman in a family can file a complaint if and when she is subjected to one or more acts of domestic violence.

• A victim woman has the choice of making / submitting a complaint for any offence of domestic violence to a Protection Officer, a Service Provider or to a Magistrate concerned.

• It is the right of the aggrieved woman to be informed about the provisions of the act, her rights in the family and the free legal services that should be available to her under the Legal Services Authorities Act. The Protection Officer or others concerned have the responsibility to inform her details of her rights.

• When necessary the aggrieved woman will have to be provided for in a shelter home and also has to be given medical facilities.

• A victim is also entitled to interim monetary relief under an order of the Magistrate concerned.

• The proceedings in a case under this Act could be held in a camera.

• The woman victim will also be entitled to a protection order to be issued by the Magistrate concerned. Such a protection order will cover both the person and the property of the victim. She will also have a right to reside in a shared household.

• Violation of the protection order by the husband or the in-laws will entail the imprisonment of one year or a fine of Rs. 20,000 or both. This will be apart from any charge made under section 498-A IPC. Even the failure of a
Protection Officer in the performance of his duties will also attract imprisonment of one year or a fine of Rs. 20,000 or both.\(^{43}\)

According to section 2 (g), any relationship between two persons who live, or have any point of time lived together in a shared household when they are related by marriage or through a relationship similar to marriage, consanguinity or are family members living in a joint family, is considered a “domestic relationship”. The Act offers the same degree of protection to women in fraudulent or bigamous marriages or in a marriage considered invalid by law.\(^{44}\)

The victim of domestic violence will have the right to get services of the police, shelter homes and medical services. Section 498-A of the IPC can be used by the victims of domestic violence at the same time. Thus, an accused person will be liable to have charges framed against him under both the old law and the new one and the offences are cognizable and non-bailable.\(^{45}\)

The new Domestic Violence Act has made some significant improvements over the existing laws. It acknowledges domestic violence as a problem in itself. The previous law carried an absurd assumption that domestic violence was invariably linked to dowry demands; consequently, lawyers, police officers and even some women’s organizations suggested to women to register violence cases on the basis of an allegation of dowry demand so that the case becomes stronger and gets a sympathetic hearing and prompt justice. Thus, the courts are filled with cases with exaggerated or patently false charges of dowry demand related cruelty, while other dimensions of cruelty got pushed under the carpet. This new law is free from these infirmities and makes their abuse taken seriously. It dispels the false notion that dowry is the sole and main cause of violence. Section 498-A IPC has failed to do what was intended in the matter of dealing with domestic violence against women as the law so far was only interested in putting people behind the bar whereas most of the time women do not want to leave the home and put their partners behind the bar but want the violence to
stop. Many of the battered women are not financially independent and do not have the option of living separately. Thus, the new Act’s main purpose is to provide protection.

**Provisions for Speedy Relief** – The Domestic Violence Act provides for comprehensive and speedy relief within a set time frame, which was not possible in the criminal courts, vide section 498-A IPC. The new Act provides positive protection of women’s civil and matrimonial rights, without using the threat of imprisonment. In the new Act, imprisonment comes as a second stage remedy. The Domestic Violence Act provides for swift time bound and comprehensive civil remedies for maintenance, right to the matrimonial home, protection against atrocities and custody of children.46

**Duties and responsibilities of Protection Officers** – Section 9 of the Act has laid down a very heavy set of duties for the Protection Officers (POs). To begin with, the PO has been designated as an ‘assistant’ to the magistrate concerned. The PO here is intended to be a bridge between the victim and the authorities. With the PO being immediately available with the legal mandate to help her, the distressed woman is bound to feel a great deal assured. The PO has been given the task of moving the magistrate concerned for issuance of a protection order should the victim desire. The PO comes immediately into the picture in such a situation. In most of domestic violence cases, women are in need for free legal assistance. The Act lays responsibility on the PO to organize such assistance from the Legal Services Authority concerned. The PO’s office has to maintain a list of service provider NGOs, area-wise. An onerous task has been given on the PO to accommodate an aggrieved person in a shelter home should she ask for it. The PO is expected to have the medical examination of an injured victim done. Finally, the PO has been tasked “to ensure that the order for monetary relief under section 20 is complied with and executed in accordance with the procedure prescribed under the Cr.P.C 1973.”47

In Assam, District Social Welfare Officers were made protection officers. During an interview a protection officer in Assam spoke about the practical problems they were
facing in performing their jobs. Overnight they were given additional responsibility without any infrastructure, training and allotted budget. They have to spend money from their own pocket to do the job as protection officer. Moreover they were finding it difficult to get dedicated NGOs to help them perform the job properly.

In a training programme organized by the Assam Administrative Staff College, Guwahati, on August 23, 2007, as many as 26 newly appointed Protection Officers (POs), who basically were District Social Welfare Officers in various districts of the state, attended. They have been asked to perform duties as POs in addition to the duties of their substantive posts. In an interaction with them, it was found that except in Dibrugarh, none of the districts has even started its work, partly because they did not really understand the exact nature of their duties and partly owing to non-availability of the basic infrastructure. In another workshop held on August 31, 2007 at the National Institute of Public Co-operation and Child Development, Guwahati, two POs from Sikkim and some delegates from Meghalaya and Tripura, revealed that the functioning of POs in those states had not even commenced as they did not have even the basic idea to go about the task. In the same workshop, there was a consensus of opinion that it was not only the POs and the service providers but also the field police officers who needed a thorough training in the matter of domestic violence and the Act.

The Delhi government has hired an all-women cadre for the full-time job of implementing the domestic violence law, setting an example for other states. The “protection officers” are crucial to the legislative success, for they are meant to help and guide a victim in every way, and their report to the court would largely decide the cases.48 Women’s Rights Initiative of Lawyers Collective brought out a chapter titled “Staying Alive” in the very first monitoring and evaluation report on the implementation of the PWDVA stating that 7,913 cases had been filed under the Act until July 31, 2007, and that most of the proceedings were pending in court. All states, barring five, have appointed protection officers, the report said. However, only five
states reported having registered service providers and only 12 had notified medical facilities and shelter homes.\textsuperscript{49}

**Registering Marriages** — On February 12, 2006, a Supreme Court ruling has made registrations of marriages compulsory. The ruling of Supreme Court about compulsory registration of the marriages looks like a first step towards a Uniform Civil Code. The ruling may help eliminate polygamy and the vulnerable poor section of society can be rescued from marital injustice.\textsuperscript{50} It has come as a welcome relief for innumerable women and children caught in legal disputes following failed marriages. Besides helping women fight the evils of bigamy, this ruling will benefit illiterate women the most. Marriage registration not only empowers women to fight for their rights, but also helps in the delineation of an authentic census. It will also curb the practice of child marriage, which is much in vogue in India. The absence of registration all too often allows an irresponsible husband to desert his partner. The court order may help women to get their share of both property and maintenance. The Goa Government decided to make HIV tests mandatory for marriage registration on March 17, 2006.\textsuperscript{51}

### 4.3 Women and Personal Laws:

India is a land of many religions and faiths. Unlike in many progressive countries, matter like marriages, divorce, maintenance, adoption, guardianship and inheritance are determined here by the personal laws, depending on the religious community to which the man and the woman belong. The Indian Constitution offers equality, protection, equal opportunity and choice to all. Contrary to the spirit and content of the constitution, many personal laws that are in practice and honoured by various communities have adversely affected the status of girls and women through the institution of marriage, child marriages, dowry, bride price, succession to the joint family property etc. Law relating to marriage and divorce has been codified in different enactments applicable to people of different religions. These are:

1. The Hindu Widow's Remarriage Act, 1856.
2. The Indian Christian Marriage Act, 1872.
3. The Dissolution of Muslim Marriage Act, 1939.
5. The Hindu Succession Act, 1956.

Personal laws, usages and customs prevailing in our country for ages have a dominating influence on our social system. It is necessary now to reform the age-old approach derogatory towards women and the worn out system of inequalities in the name of religious practices and culture. A review of personal laws may help us to know the social position of women and its role in justice delivery system.

**Hindu Law** - The word “Hindu” includes Jains and Budhists and even ignored the divisions of caste. Muslim, Christian, Parsis or Jews are not part of Hinduism. The broader connotation of Hinduism widens the scope of choice, integrity and interaction in the social order. Hindu law considers marriage as a sacrament. The root of family life is the national culture and ethos and not a mere social contract for material desires of worldly existence. Thus Hindu marriage is considered as the union of two souls for permanent relationship and an endeavour to achieve Dharma, Artha and Kama by both husband and wife.

Modern social thinkers and Hindu reformers counteracted Hindu orthodoxy to become more responsive to modern needs and gender justice. Some legislative reforms of fundamental Hindu laws made in favour of women can be mentioned below.

1. Hindu Widow Remarriage Act, 1856 – Under this Act Hindu widow remarriage in certain cases was declared legal.
2. Hindu Law of Inheritance (Amendment) Act, 1928 – This Act has been made more comprehensive and liberal with a new enactment namely the Hindu Succession Act, 1956.
3. Hindu Women’s Right to Property Act, 1937 - This Act has now been repealed by Hindu Succession Act, 1956.
4. Hindu Married Women’s Right to Separate Residence and Maintenance Act, 1944 - It is replaced by Hindu Adoption and Maintenance Act, 1956.

Above-mentioned legislations did not mitigate gender injustice to Hindu families. Equality, the basic concept of modern global culture, was possible to a large extent by the enactment of the Indian Constitution.

1. Hindu Marriage Act, 1956 - This Act was amended in 1976 providing for divorce by consent.
2. Hindu Succession Act, 1956 - It provides equal share of daughters along with sons in the property of their fathers, in case father dies intestate.
3. Hindu Minority and Guardianship Act, 1956

In improving the status of women in matrimonial matters and inheritance, the reform in Hindu laws showed a substantial progress. The fundamental principles of the present Hindu matrimonial law draw largely from those of British Law.

1. Principle of monogamy is established in Hindu Law.
2. Bigamy is considered as crime and punishment is provided for at the same time.
3. Divorce, judicial separation, declaration of nullity of marriage is equally available for both husband and wife.
4. Provisions are there for maintenance and permanent alimony pendant lite.

For pushing up the economic status of women, Hindu succession Act of 1956 helped them to get equal share of parental property. As per Hindu Mitakshara law, a widow, mother and daughters are entitled to share equally the property with the sons. The Act of 1956 for Hindu Married women’s right to separate residence and maintenance had liberalized the situation in favour of women but not to the extent of their requirement.
Dependent daughter-in-law and other relatives are also to be provided maintenance under this Act (Section 21). The Hindu Minority and Guardianship Act, 1956 considers father as natural guardian of the legitimate children and after father, the mother becomes guardian. In case of illegitimate children the situation is reversed. But in case of minor child of five years or below, the custody is ordinarily to be with the mother. The above discussion on the codified Hindu Laws reflects a progressive and unbiased gender justice system. Whatever unjust provisions are found can be neutralized by invoking the constitutional provisions of Article 14 and 15.\textsuperscript{55}

**Muslim Personal Law** – Muslim personal law is highly detrimental to gender justice and is completely male dominated. A long 750 years of Muslim Rule and subsequent British rule did not improve the legal position of Muslim women in India.\textsuperscript{56} The gender inequality is of two categories, one is absence of parity between sexes and other is deprivation of certain basic human rights to women.

Two legislations, that is, the Shariat Act, 1937, and the Dissolution of Muslim Marriage Act, 1939 were passed in the process of codifying Muslim personal law, initiated at the behest of members of the community. The purpose of these acts was to give Muslim women rights denied to them under customary law and for securing uniformity of law in all their social and personal relations.\textsuperscript{57} The central idea in the family law of Mohammedans is the institution of nikah or marriage through which the paternity of children is established and relationship and affinity is traced. The Mohammedan family is based on the patriarchal principle.\textsuperscript{58} Under the Muslim Personal Law; marriage is considered as a contract for the purpose of procreation and legalization of children. Restricted polygamy is recognized by Islamic law. Muslim law permits polygamy; keeping four wives at the same time, provided he treats them equally, whereas a Muslim woman can marry only one husband. A widow and divorced woman can remarry. During the period of ‘Iddat’, Muslim woman is prohibited from contracting a marriage afresh. Islam very much insisted on fidelity on the part of the wife during wedlock. Child marriage is not prohibited. Regarding
divorce Muslim law is to a certain extent inadequate for equitable rights of women. By pronouncing ‘talaq’ a Muslim male can divorce his wife unilaterally whereas woman has to take the help of court to obtain relief. On flimsy grounds divorces are given which violates the basic human rights. The husband enjoys one-sided liberty in the matter of divorce. However, ‘Dower’ or ‘mehr’ is to be paid by the husband to his wife which is stipulated during marriage and has to be given over to his wife without fail before divorce becomes effective. Muslim law prescribes maintenance for a divorced wife only for the period of ‘iddat’, that is only for three months. After that she cannot claim any maintenance, which makes a Muslim woman’s position very vulnerable.

Muslim continues to be governed by Islamic Personal Law, laid out in the 1937 Shariat Act in matters of marriage, divorce and inheritance. According to the All India Muslim Personal Law Board (AIMPLB), the Nikahnama (marriage contract) is very important to safeguard the marriage of Muslim women. Since marriage in Islam is a contract between the two parties, the woman is protected by the nikahnama, which contains the dower (to be paid by the husband to his wife) fixed at the time of marriage. Muslim family and marriages are regulated by the Muslim Personal law and the Dissolution of Muslim Marriage Act. The 1939 Act allows Muslim women to file for divorce in the family court.

To provide justice to Muslim women, Supreme Court judges have spoken their mind but the scenario remained same. The Rajiv Gandhi Government passed a law in 1986 to overturn the judgement of the apex court in the Shah Banoo Case in which Shah Banoo was granted maintenance by the court. The All India Muslim Personal Law Board convinced Rajiv Gandhi against providing maintenance to a divorced wife as the Muslim law did not permit former husband to pay maintenance beyond iddat. The Muslim Woman Protection Act (1986) said cash-rich State Waqf Board would extend the monetary help for maintenance if any Muslim divorced woman were unable to sustain herself. But not a single woman till date has succeeded in receiving
maintenance as conditioned by the Act. The cause of failure of the new law of maintenance to Muslim women lies in the fact that the Waqf Act was not amended to make it operational. The Union Ministry of Social Justice and Empowerment has a supervisory role over the Central Waqf Council and State Waqf boards but never directed the State Boards to ensure implementation of the law. This failure is due to sheer negligence or political motivation.

The Supreme Court is showing serious concern about the injustice to Muslim women and advising government to explore the possibilities of enacting a uniform civil code since the personal laws are still continuing in civil matters like marriage, divorce and inheritance. The most neglected and forgotten cases of divorced Muslim women remained unsolved. Most Waqf boards are cash-rich but few distressed women got benefit and help out of it. The annual turn over of the Haryana and Punjab Waqf Board is about 75 crore and the Uttar Pradesh, Bihar, Bengal, Orissa Waqf Boards have mind boggling extent of Waqf properties. But the rampant corruption and political interference made them non-functional — meanwhile, the agony of the likes of Shah Banoo continues.62

Imrana Bibi, a 25 year old woman, mother of five children, was raped by her father-in-law and divorced by her husband and turned her out from the village. Imrana’s ordeal began when her husband was away in Muzaffarnagar town in June 2005. Her 59-year-old father-in-law, Ali Mohammed dragged her into his room and raped her. The next day her husband Nur Ilahi (32) returned and coming to know from Imrana about the assault by his father started shouting at her instead of sympathizing with her and uttered three dreaded words. On June 13 the Qazi ordered her to leave the village and to treat her husband as her son and declared their marriage ‘haram’ or sinful. Imrana had to leave her five children, the youngest child was two and the eldest was seven.63 The Darul Uloom Deoband had in one stroke annulled Imrana’s marriage, rendered her destitute, and her children homeless. The country is full of Imranas, where women are treated as commodities.64 After Imrana’s case was highlighted by the media and
various rights groups, the National Commission for Women directed the authorities in Muzzafarnagar to take action. The police registered a case under section 376 (rape) and 506 (criminal intimidation) of the IPC against Mohammed and arrested him.65

On October 19, 2006, Imrana’s father-in-law Mohammed was convicted by the Trial Court and sentenced to 10 years imprisonment for raping his daughter-in-law. He was to pay a compensation of Rs. 8,000 to Imrana. On a separate charge of criminal intimidation, Mohammed was also punished with 3 years imprisonment and a fine of Rs. 3,000. The public hue and cry and pressure from women groups made it possible to punish the culprit in Imrana case in a reasonable period. Imrana and her husband Ilahi said they wanted to live with each other, though Ilahi had pronounced triple talaq, probably under pressure. The All India Muslim Personal Law Board spokesman, Qasim Rasool Illyas, cautioned the Muzaffarnagar Clergy against issuing fatwas against the couple staying together.66 Another victim who had suffered a similar fate has come out in the open, whose name is Rani Begum, a 24 year old, and mother of four. Rani Begum had been raped by her 65-year-old father-in-law Ali Mahammad at their home in Hardauli Bulandshahar 3 years ago. Her marriage was annulled by the local Qazi’s verdict and she was forced to stay with her parents. She is fighting for alimony in court. Assam witnessed the same version of Imrana rape case at Dhing village in Nagaon district on May 25, 2005. Jotsanara (19) was raped by her 60-year-old father-in-law Moiduddin Bhuyan. Local Ulemas citing the Shariat asked her to accept her father-in-law as her husband.67 It took a critical turn when the head of the local Islamic Madrasa asked her to leave her husband. “We thought she will get justice from the religious body. But when we found that our religious heads are not interested in considering the matter on humanitarian grounds, we went to the police in search of justice,” Jotsanara’s uncle Kusumuddin said. A local court remanded 60-year-old Moinuddin Bhuyan in police custody for five days for raping his daughter-in-law.68

Seeking divorce by uttering the word ‘talaq’ thrice at one go is banned in many Islamic nations like Bangladesh, Pakistan, Indonesia, Iraq, Iran, Algeria, Tunisia, and
Turkey. But in India it is still in practice for lack of awareness among the Muslim women. In respect of the issue of polygamy, countries like Turkey, Egypt, Sudan, Indonesia, Iraq and Pakistan have put in place strict judicial and administrative regulations; the practice is banned in Malaysia and Brunei. The National Commission for Women (NCW) has brought out a handbook to create awareness among Muslim women in India about their legal and constitutional rights and the changes introduced by various Islamic countries in the ‘Shariat’.69

**Laws applicable to Tribal communities** – Hindu Marriage Act is not applicable to scheduled tribes. Customs and taboos vary from tribe to tribe. Getting married before attaining puberty is not supported by tribal communities.70

**Laws Applicable to Christians** – The marriage of Indian Christians is regulated by ‘The Indian Christian Marriage Act, 1872’. According to the Act, bigamy is punishable and child marriage is prohibited.71

**Laws Applicable to Parsis** – ‘The Parsi Marriage and Divorce Act, 1936 regulates marriage and divorce of Parsis and strictly prohibits bigamy and child marriage.72

### 4.4 Role of the Police

The criminal justice system rests on four pillars — the police, the prosecution, the judiciary and the jail. Police plays a pivotal role in the criminal justice system and the response of state for justice depends largely on the police. A developing country like India needs a healthy criminal justice system but unfortunately the system appears to be disintegrating.

The inefficiency and causes of failure of the police lies in its feudal character, archaic style and growing politicization. Considering the important role the police have to play, it would not be an exaggeration to say that the police constitute the central pillar of the structure. The failure or weakness of the police organization could be the reason
behind the collapse of the criminal justice system. The increase in violence against women demands a prompt and proper response on such complaints from the police. As keepers of the criminal justice system, the police enjoy all discretion in the enforcement of law. On June 28, 2005, Prime Minister Manmohan Singh made some significant remarks and stressed that our police forces and criminal justice system need to be “responsible, sensitive, caring and human” and “need to be not only just, efficient or accountable but also responsive to citizen’s needs.”

Unfortunately the justice system could not prove itself up to the mark and showed itself much behind expectation. Democratic India inherited a police whose role was defined in colonial terms; and as the things stand today, police responsibility ironically means responsibility for the agenda of the political masters and not for the need of the citizens. Professionalism, integrity and efficiency are no longer considered hallmarks of policing by our politicians who expects the police personnel to be amenable to their wishes. Indian police failed to live up to the expectations of a free nation. The police force should be socialized with a social responsibility; otherwise, while they investigate crimes taking place in the space of a most sacred relation between a man and a woman, they might as well additionally criminalize the marital relation. The police response to violence against women continues to be grossly inadequate and inappropriate. The reasons behind the poor response to offences against women of the police are increasing workload, lack of resources, pressure of political bosses, law and order problem, mal-practices in the organization etc. In the police department the cult of masculinity dominates to make the police officers hold some stereotypes about violence against women.

**All Women Police Station In Guwahati** - In Guwahati, the only women police station in the entire state was established in 1993 and the state of affairs is very pathetic there. More importantly, the police station has never been privileged enough to have full staff strength to provide justice to victimized women. The OC (Officer In-Charge) is unable to cope with the tremendous pressure of work and sounded very frustrated...
during an interview. Counselling takes most of her time and she hardly gets enough time to attend to other work like investigation, record keeping etc. When the Inspector goes on leave, no case can be registered, as the ASI (Assistant Sub Inspector) is not empowered to do so. Justice then is put on hold till the officer joins back. Only one vehicle is attached to the police station. “The vehicle has fuel just enough to make one part of a two way journey to a place of crime,” says officer in charge Reena Kakoti Devi.

According to a recent survey conducted by the All Women Police Station at Panbazar, the major causes of marital discord and growing domestic violence appeared to be adultery and alcoholism. Kakoty Devi said, “From January to May this year (2007), we registered 19 cases of domestic violence. The number is quite high. Most of the time it is an alcoholic husband, or a husband who is having an extra marital affair, who beats up his wife.” In 2005, the P.S. solved all its 30 cases, of which 25 were registered under section 498-A IPC. In 2004, the P.S. recorded a total of 28 cases, whereas in 2003 the number of cases was 46 – the highest in the preceding four years.

“Most of the cases registered in our station are connected with domestic violence. I regret to note that a large number of women, belonging to all the different social and economic strata in the city, have to silently undergo the trauma of domestic violence,” said Kakoty Devi. The police station on an average receives three complaints related to domestic violence everyday. “We don’t register all the cases that come to us. If the situation goes beyond control, we register the case and investigate it further. Otherwise, we bank heavily on counseling,” explained Kakoty. Counselling by the experts at the P.S. has often yielded fruitful results. “Through just counselling, we have solved 80% of the cases. We respect the sanctity of the institution of the marriage and we always try to resolve the problems between husband and wife through discussion,” says Kakoty. “Divorce is not a solution to the conflict between husband and wife. We always try our best to reunite the family,” said a counsellor. However, the new Domestic Violence Act is yet to be implemented by the police station. “We are continuing to register cases of domestic violence under section 489-A IPC as we
are still waiting to get permission to use the Domestic Violence Act," said another official of the station.

Renuka Das (name changed), who till the other day, was living in a marriage that had nothing but continual physical torture and mental agony, is now leading a happy life. “After I approached the police station, they summoned my husband, who was an alcoholic. They counselled him and now he has practically stopped drinking. I am thankful to the counsellors at the police station. Now we are a happy family of four, with two children,” said Renuka.

Delhi Experiment:-For the first time in India, to curb crime against women, 'beat constables' in charge of localities in the capital of India were deployed in Delhi. A beat constable’s job is to patrol her ‘area’ and generally keep watch over it. She notes down if she finds anything suspicious and extends help if anyone needs it. Under a scheme called “parivartan”, forty women constables started the job in northwest district, where the highest number of crimes against women had taken place. Generally it will be extended across Delhi. Mithilesh a woman constable said, “We are just two women constables on this beat. We had training sessions earlier with NGOs, doctors and psychologists, who told us how to counsel women and children”. The policewomen’s main job is to communicate with women residents. They will deliver awareness lectures, carry on door-to-door awareness programmes, and hand out safety literature by NGOs. This new scheme makes India only the second country after London, to have women beat constables working in the field. The response, within short period of being on work, has been overwhelming. If government could materialize this scheme across the country it might help to curb crime against women to a large extent.

**Standard police response**

1. Trivialization.
2. De-criminalization and illegitimization of domestic violence.
3. Non-intervention and advising the victims to seek remedies in a civil court.
4. Acting as peacemaker and mediator and letting off the male offender with mild informal threats.

Women victims are placed differently from their male counterparts because of several socio-economic factors. So, the police should act in a gender sensitive manner to handle the cases relating to violence against women. The lack of proper awareness of the prevailing gender inequalities among police personnel causes hindrance to the proper discharge of their duties. In order to remove the prejudices and biases of police officials toward women in general and women victims in particular, it is required to develop in them professionalism in terms of knowledge, skills and attitudes. To sensitize the police personnel at all levels for dealing with cases of violence against women more effectively, police organizations should undertake suitable initiatives, including the organization of training programmes.76

An examination of the role of the police in Assam in recording first information reports (FIR) and the investigation of the cases relating to domestic violence indicates that it is all but shoddy. The police are reluctant to register the FIR because like other members of the society, police consider domestic violence as an entirely private domain where any public or official intervention is uncalled for. There is a general mistrust of, disrespect to and blaming of women especially if she seeks help without the support of social/women’s organizations. Thus, a victim who is not safe even at her home and has practically no one to stand by her, has to run from pillar to post to get her FIR recorded. Even the sight of a woman in tattered condition with bruises and injuries strewn all over her body does not evoke the least of sympathy from many police officers. Many of such police officers and policemen themselves practice violence on their wives --- after all they come from the same society to which the victim complainants belong. So much is there in simply recording the FIR, many a time there has to be intervention from conscientious citizens or NGOs in the field.
Once the case is registered in the police station, it has the lowest priority in the investigation. A junior inexperienced police officer who lacks sensitization in the matter of gender violence is commonly drafted for investigation in the case. All that the officer knows is the existence of section 498-A in the IPC and he barely has any idea about the ingredients that constitute the offence and much less about the evidence that need be collected. In some cases such an officer is an Assistant-Sub-Inspector of police (ASI) who does not have even the legal power to investigate a cognizable offence. Thus, right at the root itself, whatever he does remains liable to be struck down during the trial of the offence in the court.

Whatever the rank of the investigation officer is, he ordinarily makes a total mess of the evidences that lie strewn at the scene of crime which is normally the matrimonial home of the victim. The officer does hardly make any attempt to gather the minute physical evidences just because he does not know the importance at such evidences. In case of a murder committed for dowry or otherwise, the perpetrators commonly present the case as one of suicide and therefore it requires strongly observant eyes of the investigator to realize that it was a case of homicide. What the ignorant I/O (Investigating Officer) does is to remove the body and the injuries are not properly examined. During post mortem examination, medical officers tend to rely on the forwarding report of the I/O who, being misled by the husband and in-laws of the victim, states in his report that he was forwarding a case of suicide. Thus the whole picture changes about the incident and the accusation or suspicion about the unnatural death of the victim falls through. Once the I/O makes an error at the time of the first visit and the body gets disposed of in this way, there will be nothing more to fix the accused or the suspect for the crime.

In the next stage the inexperienced I/O whose legal knowledge matches his inexperience rushes to pack off all the members of the victim's husband's family under arrest, without caring to make note of the part played by each of the arrested individuals. Consequently during the trial, the prosecution becomes totally incapable
of showing the guilt of the arrested accused persons and therefore the credibility of the prosecution story suffers a deathblow

An average investigating officer in Assam is not in habit of writing his case dairies right at the time of investigation but later produces the dairy based on his crowded memory. The diary noting is many a time inconsistent owing to fading memory of the I/O, partly because the same is written after a long gap. There is a huge hierarchical structure of the police but hardly cases of domestic violence are looked into by senior officers. Domestic atrocities and deaths resulting therefrom, therefore, go by default without stinging the conscience of anybody. Sadly the state of affairs has been continuing even as the incidence of domestic violence, dowry deaths etc. has been rising by leaps and bounds.

**Reasons of Delay in Completion of Investigation —**

2. Non-receipt of prosecution sanction on time.
3. Inability of the Investigators Officer to arrest the accused as well as the non-availability of witnesses.
4. Over burdening of the investigating officers with both investigative as well as law and order duties which leads to delay in investigation of the case

In India, the police response to any violence or illegal activities is directly proportional to what the politicians of the country feel about the issue. Obviously this powerful segment of the society is totally indifferent to the grave nature of atrocities that take place within the four walls of homes because they do not have any stake in it. Under the circumstances the police are not sensitive to the subject.

On the basis of First Information Reports (FIRs) at different Police Stations in Guwahati city, some cases of domestic violence which gave a picture of the working
of the justice system are discussed below. To conceal the identity of the victims and the accused, the names have been changed.

During the period from 1991 to 2000, there were 44 numbers of dowry death cases. 72.7% of dowry death cases were taken as sample for analyzing the justice system. 276 cruelty cases on married women were registered during the period from 1991 to 2000 and 20.6% were taken as sample for the study.

Cases of dowry death:

1. Case No-17/92, Noonmati P.S. – The wife was tortured physically almost every day for not fulfilling the dowry demand. On January 16, 1992 she was locked in a room by her husband and the house itself was set on fire. Thereafter her husband fled away from the place. Neighbours seeing fire broke open the door of the room she was locked in and found her grievously injured. Later on she succumbed to her injuries.
   The case was registered under sections 436/498-A/304-B IPC. The investigation was in progress.

2. Case No-124/92, Panbazar P.S. – The 31 year old girl was brutally murdered by her husband and in-laws for dowry. They cooked up a story that she had sustained burn injury on May 6, 1992 while working in the kitchen and on May 7 she succumbed to her injuries. On diverse occasions she had complained about her harassment and physical torture for dowry by her husband and in-laws as she was staying in a joint family. So her brother firmly believed that for dowry she had been brutally murdered by her husband and in-laws.
   The case was registered under sections 498-A and 304-B IPC. The investigation of the case was in progress.
3. Case NO-151/92, Chandmari P.S. – The woman committed suicide by hanging herself owing to abetment by her husband, mother-in-law and sister-in-law. The case was registered under section 498-A IPC. The wrong application of IPC may hamper the justice system. The investigation was in progress.

4. Case No-320/92, Jalukbari P.S. – The women died of head injury but her husband and in-laws reported to the police that she committed suicide by burning herself. Moreover while reporting to the police, her husband had changed her name. Before her death she used to complain to her parents about the inhuman torture on her for more dowry. All the circumstantial evidence said that it was a case of murder for dowry and not a case of suicide. The case was registered under sections 498-A/ 302/ 34 IPC. The investigation was in progress.

5. Case No-81/94, Bharalumukh P.S. – The wife was always ill treated by her husband. On July 13, 1994 her husband assaulted her and the following day on July 14 she committed suicide by hanging herself. The case was registered under section 498-A IPC. The investigation was in progress.

6. Case NO-480/94, Páltán Bazar P.S. – It was a case of dowry death. The wife was facing problems and was also tortured for not bringing enough dowry. It was a love marriage and they had marital life for 3 years 9 months. But suddenly on November 30, 94 her parents were informed about her death by fire accident. Later on, her parents came to know from the maid servant that she was killed by her husband and in-laws by pouring kerosene and setting fire on her. The case was registered under section 304-B IPC. The investigation was in progress.
7. Case No-157/95, Dispur P.S. – The victim's father was SDO Telegraph and the victim herself was Doctor by profession and was posted in Guwahati. Her husband was posted in Delhi as he was a senior employee of International Airport Authority of India. Before the incident, her husband came to Guwahati and on February 14, 95 she was found dead in her bathroom with deep cut mark on her face and body. Before the incident, they had a quarrel as her husband demanded a car and a flat at Delhi as dowry. The case was registered under section 302/498-A IPC. The investigation of the case was in progress.

8. Case NO-23/96, All Women P.S. – Husband was a senior executive of TISCO. While alive the victim had reported to her mother that on flimsy grounds she had been subjected to cruelty by her husband. On several occasions she was mentally and physically tortured and threatened that he would leave her and marry another woman. The victim felt insecure and miserable. Even her minor daughter was threatened and beaten by the accused. The victim disclosed the facts of torture and cruelty perpetrated by the accused to her own relatives. But they did not intervene and report to the police as they feared it might cause further deterioration in their marital relationship. The accused was on transferable job and was posted in Guwahati since 1991 till June 1996. After that he was posted in Goa but the victim was apprehensive to accompany him away from her own ones. On July 1996 the victim died under mysterious circumstances in Goa. Her daughter was the witness of all cruelty by her father on her mother. Victim's sister witnessed several times the mark of cruelty like many cuts and bruises on her body. After her death, some writings by her were found which unfolded the miseries and torture she had suffered because of the cruelty meted out by her husband. The case was registered under section 498-A IPC. The section of IPC is insufficient to do justice to the victim. The police investigation was completed.
The accused was absconding. The police issued non-bailable warrant of arrest against the culprit.

9. Case No-39/96, Ambari P.S. – A young married woman, 19 years old, helplessly watched her own violent end which she could quite clearly see approaching her. She was consistently pestered by her in-laws and husband with demand of Rs 40,000 from her widow mother. Poor bride went several times to her widow mother but her mother was helpless as she did not have that capacity to fulfil their demand. In the second week of January 1996, the victim lodged a complaint against her husband and in-laws for the inhuman torture on her. But police remained inactive and did not take any step. Her widow mother also spoke with her husband and in-laws to settle the matter. On March 7, 1996 her mother received the news of her death. Her in-laws and husband reported that she had committed suicide by burning herself. The following day on March 8, she succumbed to her injuries just after 3 months of her marriage. Her mother was convinced that it was a case of murder, not suicide. The case was registered under section 304-B IPC. The investigation was in progress.

10. Case No-39/97, All Women P.S. – They were married for 3 years and had a one year old daughter. In November 28, 97 she committed suicide by setting fire on herself. It was suspected that she was abetted to commit suicide as she was assaulted physically and mentally that evening by her husband. The case was registered under section 498-A/304-B IPC. The investigation was in progress.

11. Case No-191/97, Basistha P.S. – It was a case of dowry death. Husband demanded Rs. 25,000, which could not be fulfilled. As a result she was physically tortured by her husband and on August 25, 97 her husband set her
on fire to kill her. In that process the house was also burnt completely and the neighbourhood was badly affected.
The case was registered under section 304-B IPC. The investigation was in progress.

12. Case No-137/97, Noonmati P.S. – It was a case of suicide. The victim took poison for ending her life as the torture for dowry became unbearable for her. Husband was working in army and was posted in Guwahati when the incident took place. Husband, mother-in-law and sister-in-law used to torture her mercilessly. They even cremated the body in the absence of family members from her parental side.
The case was registered under 498-A and 306 IPC. The investigation was in progress.

13. Case No-2/98, Geetanagar P.S. = The complainant Sibani Devi’s daughter Kamala Devi was married to Ajoy Ghosh and became mother of two children. But for dowry she had been tortured and ultimately her mother-in-law poured kerosene and set fire on her. She died in the hospital on December 27, 1997.
The case had been registered under 304-B and 34 IPC. The case is still pending.

14. Case No-8/98, North Guwahati P.S. – The victim consumed poison to end her life for the unbearable torture perpetrated by her husband with the help of his mother and sister. Her husband started taking interest in her sister and wanted to get married with the latter. As she could not agree to that, inhuman torture increased on her day after day. They were married for 4 years and five months. The victim was a mother of a child and belonged to a middle class family.
The case registered under section 498-A/306/34. The accused was found guilty in the investigation and case was charge sheeted on June 20, 2001. It took almost 3 years to charge sheet the case.
15. Case No-36/98, Fatasil Ambari – The young bride had been tortured by her
husband and in-laws for dowry and when it used to become unbearable for her
she used to come to her parents’ place. Her parents would try again by giving
some dowry to settle the matter. But the reconciliations proved very temporary.
The reconciliation and torture repeated three / four times. Once she stayed at
parents’ place for 15 days because of the brutal torture and again her brother
settled the matter and she returned to her husband’s place. The following day
her body was found hanging in the kitchen. Her brother did not find any
evidence of her suicide and he was firmly convinced that after her murder, she
was kept hung.
The case was registered under section 304-B IPC. The investigation was in
progress.

16. Case No-39/98, Azara P.S. – It was a case of murder of a widow with her two
children, daughter (7 year old) and son (3 year 6 months old) by her in-laws.
Her husband died five years back. She was married for 9 years. As a widow
she never got minimum support from her in-laws. To support herself and her
children she was working in Anganwadi centre. Even her clothes and
medicines were provided by her brother and parents. Her whole earning was
sometimes snatched away by her in-laws. The widow and her two children
were found dead in mysterious circumstances. Natural suspects were the in-
laws for the mysterious deaths.
The case was registered under section 302 IPC. The investigation was in
progress.

17. Case No-137/98, Noonmati P.S. – It is a dowry death case. Husband Kunal
Dubey and the in-laws of Smt. Pushpa Dubey had been torturing her regularly
for more and more dowry, which was not within the capacity of her brother.
When the torture became unbearable, Pushpa committed suicide by consuming
poison on July 12, 97. The cremation was done in the absence of the victim's parental family.
Victim's brother lodged an FIR on August 3, 97 after reaching Guawahati. Under section 498-A, 306 IPC, a case had been registered. The investigation of the case is still pending. Could there be any earthly reason for this delay?

18. Case No – 13/99, under Basistha P.S –Smt Kanan Bora got killed under mysterious circumstances in the house of her husband who was a CRPF constable in the Guawahati Group Centre. On December 16, 98 Kanan's dead body was sent by a Maruti Van to her parent's place. Kanan was married one-month before the incident and the son-in-law never came to his in-laws' house after her mysterious death.
Police registered the case under Section 304-B IPC. Police found sufficient evidence and arrested the accused Jatin Talukdar. The case has been charge-sheeted within five months of the incident.

19. Case No- 27/99, under Fatasil Ambari P.S.- On February 25, 99 the complainant Kushal Nath lodged an FIR that at 9-30 am on the same day his sister Reena Devi who was married to Dilip Deka one and half years back had committed suicide by hanging herself. She left behind a seven month old son.
Complainant said that just after her marriage, she had been constantly tortured by her husband and in laws. Whenever her mental and physical torture became unbearable, she would come to her parents' place at Nalbari. The complainant believed that she had been murdered and hung later.
The case has been charge sheeted under Section 304-B IPC on May 13, 2000. It took for the police more than one year to chargesheet the case.

20. Case No-92/99, Fatasil Umbari P.S. – The woman committed suicide by hanging herself. The mother suspected that her daughter's husband and in-laws abetted her to commit suicide. Earlier whenever she used to come to her
parents' place she used to complain about the ill treatment by her husband and in-laws. Moreover the suspicion was more because her dead body was not allowed to be seen by her parental family members.

The case had been registered under section 304-B IPC. The investigation was pending.


Police registered the case under Section 304-B / 34 IPC. The case had been charge-sheeted on December 11, 2000. It took one and half years to charge-sheet the case.

22. Case No- 160/99, under Dispur PS – The complainant Pranja Sharma submitted an FIR that his daughter Reena Devi had committed suicide by setting fire on herself on Feb 17, 99 as she had been tortured by her in-laws regularly for dowry. She had love marriage with Mridul Medhi one and half years back. The father of the victim wanted justice for her daughter's brutal torture and suicide.

Police registered the case under Section 304-B IPC. For not getting sufficient evidence Police disposed of the case in Final Report. It took almost one year to come to this conclusion.

23. Case No-127/99, Jalukbari P.S. – Very often the victim was assaulted physically by her husband. They had two years of marital life. She was a mother of 5 months old daughter. On April 11, 1999 she died of a fire accident.
Her parents suspected that it was a case of murder by setting fire on her. The past record of inhuman torture on her only led them to such suspicion.

The case was registered under section 498-A/302 IPC. The investigation was in progress.

24. Case No-234/99, Chandmari P.S. – The wife died under mysterious circumstances. All the suspicion came on her husband for her death. The 72 year old father of the bride demanded proper investigation into the incident.

The case was registered under 498-A IPC. First of all, the section of IPC was not appropriate enough for the death case. The investigation was in progress.

25. Case No-57/2000, Latasil P.S. – The wife died in mysterious circumstances. The husband was a constable and kidnapped the young girl from her school. Her parents had no other choice but give marriage by fulfilling all the dowry demands. Even then, his greed for more dowry did not get satiated. She was found hanging. Her parents and brother were not allowed to see the dead body properly. Cremation was done in a hurry.

The case was registered under 304-B IPC. The investigation was in progress.

26. Case No-96/2000, Fatasil Ambāri – The wife was burnt to death. Neighbours heard her screaming. They also could understand that somebody was trying to set her ablaze. The suspect was her husband.

The case was registered under section 304-B IPC. The investigation was in progress.

27. Case No-98/2000, Fatasil Ambāri P.S. – The wife committed suicide by hanging herself after one year of her marriage. The cause was not known.

The case was registered under section 304-B IPC. The investigation was in progress.
28. Case No-111/2000, under Paltan Bazar P.S. - After 2 and half years of marriage the bride died of burn injuries. She was a mother of an infant child. Her father was convinced that his daughter was murdered by her husband and in-laws as she was tortured physically for dowry. It was beyond the capacity of her father to fulfil their demand of dowry. She was not allowed to go to her parents’ place as they could not meet the dowry demand. But in her dying declaration she said it was accidental.

The case was registered under section 498-A and 304-B IPC. The investigation found that the case was an accidental one and therefore it was disposed of in Final Report. Sometimes for the interest of the child and prestige of the husband, a woman does not disclose the truth. It might be for the same reason she became protective of her husband.

29. Case No-175/2000, Khetri P.S. – It was a case of murder by her husband for dowry. Before her death she used to tell about the torture on her by her husband. In her dying declaration she said that her husband only set her on fire by pouring kerosene oil for dowry.

The case was registered under section 304-B IPC. The investigation was in progress.

30. Case No-263/2000, Paltanbazar P.S. – The wife died in mysterious circumstances by hanging herself. The cause of death was not known.

The case was registered under sections 304-B/ 306/34 IPC. The investigation was in progress.

31. Case No-307/2000, under Paltan Bazar P.S. – It was a case of murder of a wife and one year old daughter by a person. The wife was assaulted cruelly by her husband for dowry. When it used to become unbearable for the wife she used to go to her parents’ place. He even used to blame his wife for giving birth of a girl child. On August 2, 2000, her husband promised at her parents’ place to
keep her properly and took her back. The following day she and her daughter were found dead. The cause of death was poisoning. So the natural suspect was her husband. They had two years of marital life. The case was registered under section 304-B IPC. The husband was arrested and the case was chargesheeted.

32. Case No-344/2000, Dispur P.S. - The victim committed suicide by burning herself. She was tortured on flimsy grounds. Her life became miserable. She could not bear the cruel acts any more and committed suicide. She was mother of three children and was married for 10 years. The case was registered under 498-A and 306 IPC. The investigation was in progress.

33. Case No-160/2000, Paltan Bazar P.S. - The victim committed suicide by burning herself as she was abetted by her husband to take such a drastic step. The case was registered under section 498-A and 304-B IPC. The case investigation was in progress.

34. Case No-640/2000, under Dispur P.S. - It was a case of hanging. The victim’s father believed that it was a case of murder as she was physically abused for dowry. Her husband demanded a plot of land from her father. As his demand was not fulfilled, she had to give the price with her life after 6 months of her marriage. Her husband reported to police that the victim committed suicide by hanging herself. The case was registered under section 498-A and 304-B IPC. The investigation was in progress.

From the information collected in respect of the 32 police cases involving unnatural death of married women, it emerges that the response of the police to them has been extremely slow and negligent. Such cases should not take more than a month or so
for investigation but in the above cases like everywhere, the police have been sitting over the investigation on the vague pretext of 'investigation being in progress'. It will be seen from the above that even in cases which were eventually charge sheeted, the investigating officers took any number of years to complete their work. After all cases depend on evidence, including oral statements of witnesses whose memory of incidences tends to fade as time passes by. In other words, evidence, upon which the offenders have to be punished, is a commodity that evaporates. This brings justice to nullity. Having become old for several years in hands of the police, these cases of homicide would take many more years in the courts, given the heavy pendency of endless number of serious cases including those involving deaths from domestic violence.

Cases of cruelty:

1. Case No-60/93, Noonmati P.S. – The complainant Najma got married in 1990 at Satgaon. She was tortured by her husband and in-laws for dowry. When she was seven months pregnant, they tried to kill her by setting fire on her. Her father-in-law even tried to rape her. For the threat of her life, she left her marital home for parent’s place. Her husband got married again.
   The case was under section 498-A IPC. The investigation was in progress.

2. Case No-537/95, All Women P.S. – Mohsina got married to Anwar Ali of Six mile on April 18, 92 and was having a two year old son. The dowry demand for a Minibus and money for opening a shop was the cause of her physical torture. During her delivery all expenses were borne by her father. Even after that she was driven out with her son from the marital home for not fulfilling the demand for dowry.
   The case had been registered under section 498-A, 34 IPC. The case ended in acquittal on October 10, 98 for 'not getting enough evidence'.
3. Case No-17/98, All Women P.S. – The complainant, mother of a daughter, was working in Assam Secretariat. Her husband was a lecturer in a prestigious college in Guwahati. She was staying in her own official residence. Her husband made her life a big nightmare and the torture on her was increasing day by day. The case was under section 498-A, 506 IPC. The investigation was pending for many years.

4. Case No-54/98, Latasil P.S. – The complainant was Smt. Neela devi, mother of Reema Nath. Her daughter was tortured by her husband Bakul Nath after her delivering a baby girl. Reema Nath used to be locked up in a room and was suffering physical torture. She felt threat to her life from her husband. Mother Neela Devi wanted help to rescue her from such cruelty. The case was under section 498-A IPC and the investigation was pending.

5. Case No-125/98, Jalukbari P.S. – The complainant is Smt. Namita Dhar, who was married to Ratish Dhar in August 12, 93. Her husband was alcoholic and unemployed. If she would demand food for her two children and for herself, he would ask her to commit suicide along with her children by consuming poison. Physical torture was a regular practice. He demanded Rs. 40,000 from her sister to start a business. Her in-laws were a silent spectator of the cruelty on her. The case was under section 498-A IPC. The police investigation was pending.

6. Case No-16/98, All Women P.S. – The complainant Ila Gogoi had been physically abused regularly by her husband. Ila had a son. On May 15, 98 the police arrested her husband for assaulting and keeping her in confinement. The case was under section 498-A IPC. Result of the investigation was pending.

7. Case No-14/98, All Women P.S. - Mrs Rasmi Phukan, wife of a veterinary doctor and mother of two daughters aged 7 and 2 and a half years old, complained against her husband for physical torture. They had got married in 1990. Once
when her husband had driven her out from the house in Khanapara, her husband’s friends helped her to come back. But on April 10, 93, she was grievously assaulted; as a result her nose was bleeding and she also had a fractured cheekbone. She had to take treatment in GMC. She was afraid for her life and left for her parent’s place at North Lakhimpur.

The case was under 498-A IPC. The investigation was pending.

8. Case No-165/2000, Jalukbari P.S. – The complainant Smt. Sujata Mitra lodged a complaint against her brother-in-law Padeep Ghosh who had married her sister and had a daughter. Pradeep ghosh was torturing her sister physically and mentally for dowry. On June 5, 2000, the accused picked up a quarrel with the victim and set her on fire. The intervention of neighbours could save the victim’s life and they sent her to GMC.

The case was registered under section 498-A, 307 IPC. The investigation was in progress. The accused Pradeep Ghosh was arrested.


Though she had lodged a complaint in 1994, there was no action from the police. She was very unhappy with the working of the justice delivery system.


The police helped her to reconcile and she reverted to a regular married life with her husband and two children.
11. Case No-13/95, All Women P.S., Section 498-A IPC – Fulua, a Harijan girl, got married with Nakul. The demand for more dowry led the husband and his family to torture her. She was not spared even during her pregnancy and the baby died.

The husband was arrested and kept for two weeks in the police/judicial custody. When the question of maintenance arose, the husband preferred to settle the case on mutual consent. But for all the disgrace her husband went through, he blamed her. However, Fulua said that now they are settled.

12. Case No-23/95, All Women P.S. G.R.No.2103/95, and Section 498-A IPC – Sujata Bannerjee got married to Anil Das. She had been brutally abused by her husband assisted by his brother and sister for dowry. Her husband had kept with him all her stridhan and the demand for dowry persisted.

Her family was unhappy with the police, as they did not collect the exhibits (letters written by the victim). Since 1997, the case had been dragging. The culprit was not arrested. From CJM Court Kamrup the case has gone to High Court now. They were very frustrated as justice was not yet in the sight.

13. Case No-9/95, All Women P.S. Section 498-A, 34 IPC – Razia Begum was married with Faraz Hussain. They had two sons and a daughter. Razia was beaten physically by her husband, being instigated by his sister, asking for dowry.

Faraz was arrested by the police in connection with the case and was acquitted on Sept.9, 98 for want of enough evidence. Later on, they settled the dispute mutually out of court.

14. Case No-43/95, All Women P.S. Section 498-A IPC – Victim Moromi Devi was married to Rajesh Talukdar of Khanapara. Moromi had been physically and mentally tortured by her husband as he had another woman in life.
After the lodging of an FIR in 1995, the police arrested her husband and kept him in police/judicial custody for one month. Even after his coming out of custody, he continued torture on his wife. Eventually, he left his wife for another woman. For want of money the victim could not approach the justice system. Now she is living at her parent’s place with her daughter. Husband never came to enquire even for his daughter. The victim is now fending for herself as a domestic help at Mangaldoi.

15. Case No-17/95, All Women P.S. Section 498-A IPC – Rumi Saikia (42), a middle class HSCL passed woman and a mother of three children, had got married in 1986. Her uncle-in-law assaulted her for no reason to which her husband did not protest.

The accused uncle-in-law was arrested by the police following her complaint. However, thanks to the intervention of a third party, her marital relationship got resettled in about two months.

16. Case No-34/95, All Women P.S. Section 498-A IPC – Mosina Begum (26), a HSCL passed woman, was married in 1994. Poverty and instigation from the family were the causes of her mental and physical suffering in the hands of her husband.

On her complaint her husband was arrested and later sentenced to imprisonment for one month. During the period of his incarceration, understanding developed between the husband and wife and her suffering ceased. Mother of two children, she is now relieved.

17. Case No-22/95, All Women P.S. Section 498-A IPC – Nakal Rohini (25), illiterate Harijan woman, a mother of two children, was allegedly beaten by her husband for dowry. This caused her deliver a premature boy child on the seventh month.

After the case was registered, things became normal for her.
18. Section 498-A IPC – Tinku dutta was physically tortured by her husband. Her husband expressed dislike for her soon after marriage and started demanding dowry. Police arrested and kept the husband for one month in police/judicial custody. Later they got divorce after one and a half years of their marriage.

19. Case No-12/2000, All Women P.S. Section 498-A IPC – The interviewee was 30 years old and a mother of 3 children. She got married in 1987. She worked as a domestic help having studied upto class V and was earning Rs 1000/- a month on an average. On the other hand, her husband was an alcoholic and unemployed. Thus he was entirely dependent on his wife’s earning. Nevertheless, he used to subject Anima to regular physical torture. Thus, her husband finally landed in police/judicial custody for a good one month. However, with the intervention of their families and police, there was reconciliation in about 35 days.

3.5 Role of Prosecution:
The role of the prosecution commences after the police completes the investigation. Any criminal act is an act against the state and offences that amount to domestic violence are not an exception. The public prosecutor who is designated by the government to push forward the story of the criminal offence before the court has to place before it all the relevant evidences and requisite legal arguments so as to secure punishment for the offenders. Therefore the prosecutor holds a key position for delivery of justice in any criminal offence.

In India, some of the states have a permanent cadre of trained prosecutors for prosecuting the offenders (like Andhra Pradesh) and in others (like in Assam), the government employs practicing advocates as public prosecutors (including additional and assistant public prosecutors). It may be stated here that in a criminal trial, the state is the aggrieved party in the eye of law and the victim is nothing but a witness to the
criminal act committed. Thus by securing a conviction (punishment for the offender) at the trial of a criminal offence, the public prosecutor fulfills a public duty.

3.6 Role of Judiciary:

For protecting human rights, the basic principle of International Law is to "respect, protect and fulfil" the rights of its citizens. The government of India is obliged to undertake all positive measures, both in letter and spirit. The duty of the Indian judges is to defend the Constitution and laws there under. The judges cannot defend the customary laws which are inconsistent with the provisions of the constitution.77

Law in India has always accorded special protection to women to some extent for their weaker physical and social status. As an issue domestic violence has been recognized as a violation of human rights. It is also treated as a crime both against the individual concerned and the society at large. It is a wide concept covering all kinds of mental and physical atrocity, threat to life and honour and dowry demand ending up in mindless murders. Domestic violence ordinarily refers to violence against a woman within four walls of the home. However it does not always remain confined within four walls of home.

Three kinds of courts deal with domestic violence:

1. Criminal courts – In determining whether the accused is guilty of an IPC offence or an offence under any other enactment that covers the crime.

2. Civil courts – In the case of affected women, in awarding damages, giving injunctions on the harmful acts of the opposite party providing instant relief to beleaguered women.

3. Family courts – For deciding on a petition for divorce on the ground of cruelty, or in deciding custody of children, granting judicial separation, determining a complaint of desertion or a claim for maintenance etc. where the issue of domestic violence may be a major component of the dispute.78
The distinction between civil and criminal law is a basic part of the Indian legal system. Civil laws deal with the rights and obligations of people and what is needed is to protect them. Criminal law deals with offences and their punishment and in criminal offence, the state takes upon itself the responsibility to investigate (through the police), to fight the case in court (through a public prosecutor) and enforce the punishment.\(^7\)\(^9\)

**Family Courts** – The Family Court Act 1984 aims at promoting conciliation in and securing speedy settlement of disputes relating to marriage, family affairs and related matters. The court is set up in a city or town with a population of more than 10 lakh and at such other places as the state government may deem it necessary.\(^8\)\(^0\) The Family Court (FC) is a court presided over by a district judge level judicial officer and has the mandate under Family Court’s Act 1984 to decide cases relating to marital problems. Essentially it is a civil court to arbitrate on the sustainability of a marriage besides even giving relief to helpless married women by ordering for payment of maintenance allowance at an appropriate rate under section 125-128 Cr.P.C. (here the judge exercises the powers of a magistrate of the first class).\(^8\)\(^1\)

The preservation of the family is the predominant concept behind the legislation of Family Court Act, 1984. In our society, marriage and family are considered very important institutions and women at all costs try to preserve them in their own interest as also for their children and family honour. The approach of the legislature and the judiciary to treat the cruelty by husband on his wife as a civil dispute and to find its civil remedy by way of dissolution of marriage is regressive.\(^8\)\(^2\) The main purpose of the Family Court Act is to attend specially to cases arising from family disputes and conflicts. It has been observed that Family Courts find various difficulties in their justice delivery system. Normally the offending party, that is the husband, takes to all kinds of excuses to avoid appearing before the court for halting the speedy disposal of the case. It has also been seen that to have an order executed, an aggrieved woman has
to file additional one or more cases because the husband openly disobeys the court's original order.

Sometimes the aggrieved woman is not in a position to attend the hearings herself owing to practical difficulties that she faces at her marital home or even elsewhere. Broken marriages also bring to most women a financial trauma, which dreads them most. Fighting a divorce petition itself is a financial strain and a contested case could stretch up to 10 years and go up to the High Court and even the Supreme Court. As soon as the divorce petition is filed, a woman can ask for an interim maintenance to take care of her daily expenses, including litigation, travel and boarding costs depending on the man’s income profile. All counsellors and divorce lawyers strongly advise women to avoid monthly maintenance and opt for a one-time payment as they have seen how many men default in payment. In such cases, a woman has to approach the court again and again.

Many Family Courts are interfered with by lawyers in plain clothes. Protracting tactics of lawyers invariably lead to delays in the passing of orders by the court. The aggrieved parties do not get quick justice and are put to untold harassment. The technicalities also bind the judges. It is seen that men are always paupers in court and they try and find ways to pay as little maintenance as possible. In law, a husband is duty bound to look after his wife. The maintenance amount can be anything depending on the husband’s income. In a significant ruling, the Supreme Court had held that providing maintenance to his wife, children and parents is a natural duty of a man and a woman need not be a destitute to claim it from her husband.\textsuperscript{83}

To avoid paying alimony husbands go to any extent and even blaming wife for ‘committing adultery’ so that he need not pay maintenance. There are cases where to avoid paying maintenance, husbands try to malign the character of the wife and try to prove that she is living separately without due reasons. There are even cases where, in order to avoid paying maintenance, husbands changed their addresses or left the town.
or city where they were staying. The problem arises whenever the husband fails to pay up; fresh application by wife must be submitted to the court whereas the wife may not be in a financial position to pursue the matter.

**Family Court, Kamrup** – The Family Court Kamrup has been functioning under difficult conditions. It has an enormous number of cases before it but there is only one Judge to try them – a fact that adds to a long queue of cases awaiting hearing. The obvious fall-out is delay in disposal of the pending cases that are constantly getting accumulated as months and years pass by. The obvious result is denial of justice to women who seek redress in the court. Its understaffed position further aggravated the problem. Essential funds necessary for service of summonses and notices on defaulting parties are sometimes not available.

### 4.2 Cases in Family Court, Kamrup, 1992 to July 2002

<table>
<thead>
<tr>
<th>Year</th>
<th>FC (civil) suit under marriage law.</th>
<th>FC (Criminal) u/s 125 Cr.P.C.</th>
<th>Misc(G) / Misc(J) Guardianship and wards, adoption and maintenance Act</th>
</tr>
</thead>
<tbody>
<tr>
<td>1992</td>
<td>216</td>
<td>365</td>
<td>95</td>
</tr>
<tr>
<td>1993</td>
<td>156</td>
<td>216</td>
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<td>278</td>
<td>73</td>
</tr>
<tr>
<td>1995</td>
<td>171</td>
<td>316</td>
<td>67</td>
</tr>
<tr>
<td>1996</td>
<td>200</td>
<td>366</td>
<td>56</td>
</tr>
<tr>
<td>1997</td>
<td>234</td>
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<tr>
<td>1998</td>
<td>235</td>
<td>408</td>
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<td>1999</td>
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<td>2000</td>
<td>220</td>
<td>418</td>
<td>56</td>
</tr>
<tr>
<td>2001</td>
<td>285</td>
<td>390</td>
<td>68</td>
</tr>
<tr>
<td>upto31.7.2002</td>
<td>194</td>
<td>235</td>
<td>34</td>
</tr>
</tbody>
</table>

In 2001, 285 civil and 378 criminal cases were registered and 391 civil and 470 criminal cases were disposed of in the Family Court Kamrup. In 2002, 311 civil and 456 criminal cases were registered and 299 civil and 362 criminal cases disposed of. 319 civil and 510 criminal cases were pending in 2002.
The increasing number of cases registered with the Family Court in the Guwahati city was considered a metropolitan syndrome among the masses. These traits, of late, have become an acceptable mode of social behaviour, even in the up coming cities and their suburbs and are a pointer to a worrying situation. Lack of adjustment, poor tolerance, lack of trust, bigamy, alcoholism, cruelty by husband, dowry demand and torture for that are the factors responsible for getting the families asunder. Litigation between parents means misery for the child, as matters like custody, visitation rights etc take a long time to get settled.

According to officials of the Family Court, civil as well as criminal cases relating to divorce and maintenance have been increasing over the years. The year 2004 witnessed hearing of 423 criminal cases and 371 civil cases. In 2005 up to August, it has been 324 criminal cases and 278 civil cases in the court. Besides this, around six to seven new cases are added to the court register on an average. The atmosphere of the court premises is very painful; the anger, frustration and helplessness make the environment heavy as the women are seen venting their anguish and shedding tears. On the other hand, men are seen discussing how to delay the alimony to their estranged wives. One woman out of desperation said, “My husband compelled me to have separation in 2002 after 14 years of marriage. It is a year now since I filed my case, but hitherto I have not received any maintenance. It was settled last month that I should get Rs. 1000 per month.” The weeping lady said that her husband had married for a second time a young girl though they had two children who were living with her husband. Her love for children restrained her till 2004 from demanding maintenance from her husband, who was a Central Government employee. Though she was to get her dues a day before, legal formalities threw a spanner on her hopes. She again said, “I am making both ends meet by sewing clothes now.”

As pointed out by a senior advocate of Gauhati High Court, scores of touts and some unscrupulous lawyers in plain cloth crowd the precincts of the Family Court to take advantage of the ignorance of helpless women seeking justice in the court and cheat
them as much as possible by promising redress of their grievances by round about means. Such ladies are thus relieved of whatever financial resources they have while justice remains a far cry.

Some of the cases which are registered in police stations are discussed below which reflected the functioning of the Family Court, Kamrup and dispensation of justice to married women in Assam.

1. Case No-355/91, Dispur P.S., Section 498-A IPC – Trishna chakraborty suffered physical abuse by her husband Dinendra Chakraborty and her in-laws. She had been kept in a separate room without food and light. The victim was the second wife of the accused. In order to get rid of her, her uncle-in-law, father-in-law and mother-in-law separately used to beat her. One day they tried to kill her, somehow she could escape. Her husband’s family was very ill reputed. Her husband had illicit relation with his sister-in-law (brother’s wife).

She reported her problems to Assam Pradeshik Mahila Samity and to the police and also to Family Court. Her husband was arrested and kept in police custody for 13 days and was released on bail. They are now separated. Family Court took a long 8 years to provide maintenance. She received maintenance for daughter in the year 2000 and for herself in 2002. She was not satisfied with the justice system. She was not getting maintenance regularly and does not have enough means to fight for justice.

2. Case No-28/95, All Women P.S. Section 498-A IPC – Nihira Devi was married to Madan Das who used to torture her physically in drunken condition. Her husband had extra-marital relation with the maidservant and other women. 

Husband was arrested by police. Then they got divorce with mutual consent within six months and had been getting maintenance of Rs. 800, which was decided by the Family Court.
3. Case No-19/98, All Wornen P.S. Section 498-A / 506 IPC – Victim Amina Begum was married to Nurul Islam. During wedding she was given by her parents' wooden furniture and jewellery. Before marriage her husband and his family did not demand dowry. After marriage she was tortured by being asked for dowries by her husband. Her husband used to treat her like a slave. Physical assault and mental torture was a regular practice. They had two sons aged 4 and 3. On March 28, 1998 her husband abused her badly and drove her out of the house depriving her of her two minor sons.

She filed a case asking for justice and prayed that she should not be deprived of her two sons. From Family Court she did not get justice she wanted. Now she has appealed to the High Court. Nurul Islam is a politically influential person. So he corrupts the system by his political and economic influences. Yet to get justice she was crying helplessly, especially for her two sons, whom she could not meet for long.

**Divorce laws** – There are basically two kinds of divorce: contested and on mutual consent. The Hindu Marriage Act and the Special Marriage Act allow divorce by mutual consent. In a divorce by mutual consent, the court allows divorce if it is satisfied that both parties are freely and voluntarily giving their consent and they jointly decide on questions regarding child custody, maintenance etc. In a contested divorce, either the husband or the wife petitions the court for grant of divorce, based on any of a number of grounds, which the other party will ‘contest’.  

In contested cases, the husband and wife can unilaterally file for divorce. One of the commonest reasons is cruelty – both physical and mental – and desertion. Adultery used to be commonly cited ground but it is difficult to prove. Other grounds can be mental illness or disorder, venereal diseases, AIDS, other virulent and incurable diseases, unknown whereabouts for seven years or renunciation of the world by spouse. On March 21, 2006, the Supreme Court ruled that indifference, frigidity, denial of company, hatred and abhorrence for wife, or physical acts of violence and
abstinence from sexual intercourse and abstinence from sex without any reasonable cause can be counted as cruelty to justify divorce. For getting maintenance, one does not have to wait for the final order. As soon as the divorce petition is filed, a woman can ask for an interim maintenance to take care of her daily expenses, including litigation, travel, and boarding costs. The amount is decided by the court and can be paid monthly or as a lump-sum, depending on the man’s income profile, standard of living and whether his wife works. Bombay High Court has held that every time a man gets a salary hike, the maintenance he pays to his former wife should also be raised. The National Commission for Women wants a review of section 125 of the criminal procedure code to increase the maintenance which should not be less than 30% of husband’s monthly income. The commission also wants to delete the provision that deprives the wife from claiming maintenance if she is living in adultery as this provision is mostly misused and adultery cases framed against a woman to deny her basic expenses. The commission has recommended that the section that stops a woman from recovering the maintenance amount on the expiry of one year should also be removed. According NCW, 60-80% women face problem in securing maintenance despite court orders. Another problem women face is that maintenance is paid for sometime and then stopped. The commission has suggested that more Mahila Courts be set up for fast disposal of maintenance-related matters.

**Fast Track Courts** – The Fast Track Courts were the brainchild of Sri Arun Jaitly, who was Law Minister in the NDA Government at the Centre. These courts were designed to dispose of cases pending for over two years and more in various courts of the country. The Courts were established in 2001 to speed up criminal case trials. Over 2.5 crore cases were pending in criminal courts then. The Fast Track Courts were supposed to try cases on a day-to-day basis to reduce the burden on the regular courts. Initially, an amount of Rs. 509 crore was sanctioned by the 11th Finance Commission with which 1,734 fast track courts were established. For under trials, who suffer jail terms for years for petty offences, these courts are as if a “dream come true.”
Four Fast Track Courts were established in Greater Guwahati during May 2002. Many sessions cases were transferred then to the Adhoc Additional Sessions Judges (i.e. Fast Track Courts) from May 2002. In disposing of pending Sessions cases, matrimonial matters, succession cases and also the motor accident claims, the Fast Track Courts have been doing well.\(^9\)

Dowry death cases should be sent to the fast track courts, says a panel. In order to ensure speedy justice to dowry victims in Karnataka, a state level committee has directed Sessions Courts for speedy trial and disposal. On an average, the government-run anti-dowry cell at the Corps of Detectives (CoD) office at Bangalore receives average 20 dowry death cases every month. An official has even admitted that the situation was grim. “The CoD Cell registers the cases only if a death has occurred, which is a very small percentage of the total number of domestic violence cases. In fact, hundreds of dowry deaths go unreported every month.” The Committee headed by the law secretary is alarmed at the rising number of dowry deaths. “About 1,450 dowry death related cases are pending trial in the state. The Anti-Dowry Cell files the charge-sheet within 60 days, but trial has been pending for several years now. In many cases the evidence has been destroyed and the victim’s families have lost interest in the cases,” said official sources.\(^9\) In such situations Fast Track Courts can really come in great help.

**Legal Aid** – The constitution of India, Article 39 (A), provides for free legal aid to the poor and weaker sections of the society. The Legal Services Authorities Act, 1987, which was amended by the Act of 1994 and came into force on November 9, 1995 aims at establishing a nation wide network for extending the benefit of free and competent legal services to the weaker sections of society. Legal Services Authorities Act provided for the National Legal Services Authority (NLSA) for the centre and a State Legal Services Authority for each of the states of the country. Under the Act, the Supreme Court Legal Services Authority, High Court Legal Services Authorities,
District Legal Services Authorities and Taluk Legal services Committees are also there.

For NATSA, government had sanctioned Rs. 4 crore as grant-in aid for 1999-2000 for allocating funds to the state and district legal services authorities. The NALSA is evaluating and monitoring the implementation of the legal aid programmes and taking proper measures for spreading legal literacy and legal awareness among the weaker sections of the society. Up to December 31, 1998, about 25,600 Lok Adalats have been held where about 80.38 lakh cases were settled in different parts of the country. Under Legal Services Authorities Act, the status of civil court has been given to Lok Adalats and every award is final and binding on all parties and no appeal lies before any court against the award of Lok Adalat.96

**National Legal Services Authority** - Since the inception in 1987, the National Legal Services Authority (NLSA), the apex body for ‘enabling timely and fair justice for all’, has been achieving important milestones. NLSA, which is headed by the chief justice of the Supreme Court as its chief patron, is the mother organ of a host of such bodies at different levels like state, district, subdivision. This law imparted statutory status to Lok Adalats and especially for the grievances of women, created the Mahila Lok Adalats. The sitting judges of the District and subordinate courts helped the Lok Adalats in settling disputes by quick dispensation of justice and helped relieving the anxiety of parties by solving such cases through mutually agreeable disputes resolution. The Authority has made provisions for the deprived and the downtrodden for free legal aid, which includes women and children and those whose annual income does not exceed Rs 25,000. To help the needy and helpless, delivery of justice through the courts is the spirit and content of this law. The idea behind the system is to avoid the cumbersome and expensive litigation process of the country’s legal system and for this a good number of counselling centres were established in different parts of the country. In case the pre-litigation counselling efforts fail to yield desired results, the authority refers the case to a suitable court and bears all expenses in the case.97
To make women aware of opportunities and also make facilities available for speedy legal remedies for women victims, the role of NGOs and the help extended by the judges of the district and subordinate courts are valuable. The NCW also took all initiative to organize Parivarik Mahila Lok Adalats in almost all states of India. The effort bore fruit and benefited the needy and helpless women.

**Assam State Legal Services Authority** - Assam State Legal Services Authority was established in 1999. ASLSA's provisions have tremendous relevance for Assam with a considerable portion of the state's population living below poverty line. Steps for adequate awareness should be increased so that the downtrodden get all benefits from the ASLSA as the judicial system is otherwise costly and time consuming. It has settled about 64,000 cases out of about 1,20,000 from 1999 to January 2004, through a battery of more than a thousand Lok Adalats in various districts of the state. ASLSA has its head office at the Kamrup District Judge's New Court Building at Guwahati and its subordinate units in different districts. During the period, more than 67,000 people have benefited through the ASLSA's provisions with about 18,000 of them belonging to SC/ST communities and 8,000 being women.

### 4.3 Domestic Violence cases, State Legal Services Authority, Assam, 1999 to March 2005

<table>
<thead>
<tr>
<th>Year</th>
<th>Cases</th>
<th>Pending</th>
<th>Disposed off</th>
</tr>
</thead>
<tbody>
<tr>
<td>1999</td>
<td>8</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
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<tr>
<td>2003</td>
<td>45</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>2004</td>
<td>92</td>
<td>72</td>
<td>20</td>
</tr>
<tr>
<td>2005 till March</td>
<td>60</td>
<td>39</td>
<td>21</td>
</tr>
</tbody>
</table>

*Source: Assam State Legal Service Authority.*

The above Table shows an increasing trend in the incidence of domestic violence cases since 1999 till March 2005.
A few cases (to conceal the identity, the names have been changed) disposed of by ASLSA are discussed below —

1. Rinki Deka: Rinki got married on October 9, 1998 with Arun Barua, an employee of Punjab National Bank, who belonged to a good educated family. Rinki's husband had an affair with another girl before her marriage. Mental and physical violence started immediately after her marriage so much so that she was left with no other choice but leaving her husband's place. Rinki had lodged a complaint to ASLSA on May 14, 2003 against her husband. On March 23, 2005, she petitioned again to settle her problem. She got divorce with the help of ASLSA. As maintenance she received Rupees two lakhs seventy thousand from her husband. Now she is working to earn her livelihood.

2. Kamini Bulmiki – Her husband died on February 14, 2004 leaving behind three children aged 5 years, 2 years, and 6 months old. She had no other means to support herself as her in-laws took away everything. Her husband was an employee in Airport. The ASLSA settled her case after getting complaint from her. Now she is getting Rs 750 every month.

3. Mona Bhattacharya – On February 25, 2000, she got married with Ajoy Bhattacharya, an Air Force employee. She had been tortured and ill treated by her husband and in-laws for dowry. She lodged a complaint to ASLSA. With the intervention of ASLSA, the case has been solved and her husband accepted her back as wife. Her torture has also stopped after that.

4. Nomita Devi – On 1990, Nomita was married to Dinesh Sarma and had a girl child. She was abused by her husband and helplessly took shelter at her parent's place. For twelve years her husband was untraced. She lodged a case to ASLSA and could get divorce. Then she got married again as she was very young.

Prompt service to the people is a main objective of the Legal Services Authorities, which is shown in the above cases.
ASLSA has established ‘District Legal Services Authorities’ in 21 districts of the state. As per the provisions of NLSA, permanent Lok Adalats have been set up in four districts of the state namely Kamrup, Nagaon, Jorhat and Dibrugarh and have been getting good response from the people. In addition, for a better service to the aggrieved people, legal aid clinics have also been established in the B.R. Medhi Government Law College in Guwahati.

**Causes of Delayed Justice** - Lesser number of courts with rising volume of cases cannot be expected to give prompt justice to tormented women suffering from domestic violence. The need is not only to have all the sanctioned courts functioning but also to increase the number of courts to enable them to handle the rising number of litigations. Thus the judiciary has been functioning in the country over-stretching their productive working capacity. Besides, the type of formalities that the Indian judiciary observes adds further to both delay in justice and denial of justice. The state of Assam and the judicial system in it suffers from all the above problems.

The judges of the lower tiers of the judiciary are often under trained. For increasing the efficiency level of judges, especially in crimes against women like domestic violence, judicial training and refresher courses are important. It is generally felt that poor quality of prosecution contributes to poor performance of the criminal justice system. The accused are often represented by very senior and competent lawyers, whereas the level of competence of the prosecutors is generally poor and does not match that of defence lawyers. As the emoluments of the prosecutors are not attractive, competent lawyers would not be willing to accept appointments as prosecutors. The co-ordination between the investigating and prosecuting agencies is crucial for satisfactory prosecution. The numbers of prosecutors are less than required often resulting in adjournments.

Appointments of public prosecutors are, in many cases, are matters of political expediency rather than of merit. Less than mediocre people in this job are the cause of
failure of justice for the aggrieved persons. In the matter of domestic violence, the situation is much worse as the cases are handed down to less capable prosecutors. Thus a very long pendency of cases involving domestic violence as well as their acquittals is a common feature. All these happen because the state has not done anything to introduce accountability of prosecutors to the extent it is necessary. The state government of Assam has introduced a Directorate of prosecution headed by a senior officer from the police without effective powers over prosecutors. It has been seen that the public prosecutors, as a rule, do not go to the court fully prepared with the case briefs nor do they care to brief the prosecution witnesses most of whom are unfamiliar with the court-methodologies and surroundings. The cases when they come up at the court had already become old by many years. But the prosecutors fail to give them facility to refresh their memory. Consequently they fumble at the court and a true story turns out to be a false one, leading to the acquittal of the accused.

Number of cases pending at the Gauhati High Court was 37,862 on December 31, 2001. And in the subordinate courts, the number of civil cases were 37,029 and criminal cases 1,03,208 totalling 1,40,237 pending. Gauhati High Court has taken some necessary measures for speedy justice like introducing Lok Adalat, Fast Track Court, Grouping and Classification of cases etc. For the early disposal of cases judicial administrative directions have been issued from time to time in the interest of the justice.

Causes of Delay in delivering Justice

1. At the investigation stage it is left exclusively in the hands of police without judicial scrutiny. There is no separate wing in police department exclusively devoted to the task of investigation. Law and order problem interferes and the persons entrusted with the duties of investigation are not free from political interruption and official interferences. There is lack of paraphernalia and materials to assist the officer and meet necessary expenses. The compulsion
drags the officer to resort to illegal collection of expenses, if not bribes. The investigation is not safeguarded against corruption for many reasons.

2. Delay in the submission of the charge sheet.

3. Non-service or delayed service of the summons to the witness.

4. Sometimes summons are handed over to other person instead of direct service to the witness summoned. As a result the witness does not turn up.

5. Lack of proper interest on the part of the prosecutor for summoning witness as they don’t get their fees regularly.

6. There are no full time staffs to assist prosecution in criminal cases. Public Prosecutors (PP), Assistant PPs depend on the police whose co-operation is lacking.

7. The present PPs, and APPs are not answerable to anybody for the lapses and non-performance etc. in criminal trials. The appointments are never on merits but on political and party considerations.

8. A lot of confusion exists in preparation of copies of case dairies U/S 173 of Cr.PC to be supplied to the accused persons. Correct copies are not prepared and there is none to guide the copyists and supervise their work. The handicap causes unusual delay and copyists are not trained personnel.

9. The non-judicial cadre is a totally incompetent and an untrained lot. Without active co-operation from them it is almost impossible to improve the present delay in administration of justice.

10. Adjournments are due to various grounds such as absence of either party, witnesses and advocates, communication disruption due to flood, and frequent ‘Bandh’ calls given by different organizations, absconding of accused persons, transfer of doctors or Investigating Officers and the lack of subsequent information about their present posting.

11. Frequent transfer of judges, magistrates, and vacancies in such posts also causes delay.
12. The disrespect shown to the witnesses by all and sundry is another point for their lack of interest in trial. Non-payment of money and expenses is also another cause.

Due to delayed justice people lose faith in the judiciary or in the process of law. Mostly the women victims are worst sufferers of delayed justice.

The justice system can improve if judges are properly trained. A better infrastructure and enough number of courts with more judges and prosecutors can generate proper response of the justice system. A rich law library is required for access to the materials without which legal practitioners cannot fulfil the needs of the situation.

So far as criminal offences in general and domestic violence in particular are concerned, it will be worth our while to examine how the judiciary responds to the issue of our current study. The judiciary, like the police and the prosecutor, also treats the crime of domestic violence in a very humdrum manner. Firstly, the problem of delayed dispensation of justice by the judiciary in respect of all criminal offences, also applies to the offence of domestic violence. Secondly, such a case tends to invite technicalities like those involved in dying déclaration or a postmortem report and a little inconsistency in things like this becomes an occasion for the judicial court to order an acquittal. Here the attitude of the judge or the magistrate coated with insensitivity to the enormity of the crime decides the issue. The courts ought to take into account the entire circumstances of an incident and decide the case on merit rather than demolish it on the legal formalities of a piece of evidence. Thirdly, from the point of framing the charges, the trial progresses in courts at a snail's pace owing to endless number of adjournments granted by the court. The defence lawyers secure such adjournments for the benefit of their clients while in some cases adjournments are allowed owing to non-appearance of public prosecutors. Among other reasons for adjournments the following are very prominent. (i) Failure of official witnesses like the Investigating Officers, the Medical Officers who had examined bodily injuries or conducted post mortem examination on the bodies of victims, Experts, including
Forensic Experts, who had filed expert reports, to appear before the trial court. (ii) Failure of police to promptly execute warrants of arrest and proclamation and attachment to compel appearance of recalcitrant accused persons/witnesses in the court during trial. (iii) Failure of the police to produce exhibits at the court in time. This again owes to the fact that the Court Malkhanas are in very bad shape and do not have enough space for the proper keeping of the exhibits. The Malkhanas remain jammed again for the reason that the Public Prosecutors do not obtain and communicate orders of the court regarding the disposal of the exhibits when the related cases come to a conclusion. It is a vicious circle. (iv) Reluctance of Prosecution witnesses to come to the court for giving testimony since the courts are unable to reimburse them for their journeys to and stay at the headquarters/town where trial is held. Witnesses play truant forcing the court to adjourn hearings. 101

The above points show, to some extent, the helplessness of the court in maintaining a normal pace of the trial. The court cannot hold the trial without the presence of the accused person. But it has been seen that the accused person is invariably on bail by the time the trial commences, no matter what the gravity of the offence is. It is a common experience that with a view to making the trial a prolonged one partly to harass the prosecution and partly to make the witness disinterested in the case, the accused person fails to turn up on dates fixed for the hearing. The worse part of the trial of domestic violence cases is that belonging mostly to the ‘have not’ class, both the victims and the accused live in the rented houses and keep changing their residences as a result of which it becomes very difficult for the court to secure their presence at the trial. Thus, the court is totally helpless in delivering justice even though it may be keen to punish the offender.

The judiciary’s response to the scourge of domestic violence is in fact a part of the state response to the same. Here it is mixed with a good deal of nonchallance and a significant degree of helplessness owing to non-cooperation from other wings of the state like the prosecution and the police. Even the government’s unenthusiastic
attitude towards the functioning of the judiciary and the failure to provide requisite funds and infrastructural facilities are greatly responsible for failure of justice for the common people and much so for the victims of domestic violence.

The remedy to the present failed justice delivery system lie in mitigating the problems described. Here in respect of domestic violence, a good degree of sensitization of even the members of the judicial service should form a policy initiative. In 2004, in India, 58,319 dowry cases were registered. 1, 34,757 men held; 47,828 cases reached the chargesheet stage; 10,491 cases were not chargesheeted as they were based on frivolous grounds; 5,739 men convicted; 24,127 men acquitted.102

**Difficulties in proving dowry deaths** - In 47.7% cases of dowry deaths, husband and in-laws reported suicide by brides. But parents and brothers were convinced that it was murder as evidence showed it differently and the past records indicated a case of murder. As crimes like murder of brides take place in closed doors of home, it becomes difficult to prove the case and becomes very easy for husbands and in-laws to pass it off as a suicide.

There are instances where husbands were obvious offenders; the dying woman hesitated to make a statement before police and magistrate against her husband and even in-laws considering the fate of the children after her death. In Case No-111/2000 in All Women police station, this precise incident took place, where wife was tortured severely for dowry. Her father was not in a capacity to pay the dowry demand. Wife was not allowed to go to her parents' place, as they could not meet the dowry demand. But in her dying declaration she said that she got burnt accidentally. She was a mother of an infant. Her father was convinced that it was a murder. This is a living example of how a wife hesitated to disclose the truth in order to protect her husband for the interest of the child and prestige of the family.

Mostly dowry related crimes and harassment are well planned and executed within closed doors of home by a group of members of the families. So the gathering of
evidence of such crimes is rather a difficult task. Even if the harassment of brides draws attention of neighbours, they rarely take it seriously considering it as a private or a family affair. Public outcry against domestic violence happens very occasionally. Even law enforcement authorities pay deaf ears to such complaints considering it as a domestic disturbance. Many deaths from domestic violence are easily made to look like an accident. It is also relatively simple to commit. It occurs in the kitchen, where the lower middle class housewife spends a large amount of time each day. Pressurized kerosene stoves are in common use in such homes; a tin of fuel is always kept in reserve. This can be quickly poured over the intended victim and a lighted match will do the rest. It is easy to pass off the event as an accident because these stoves are prone to explosion, and the now ubiquitous but highly inflammable nylon saree easily catches fire and engulfs the wearer in flames. Signs of a struggle simply do not show up on bodies with 90% or more third degree burns.

Case studies of the functioning of the justice system in Assam - Some of the cases registered in police stations in Guwahati city show the functioning of the justice system in Assam (as found during interviews with the victims concerned).

1. Case No-38/99, All Women P.S. Section 489-A, 307, 304 IPC - Neepa Goswami and Nagen kakoty had eloped and got married. After three months of their marriage, she died with burn injury in Down Town Hospital. In her dying declaration before Magistrate on July 21, 1999 she stated that her husband had poured kerosene and set fire on her.

Complainant Satinath Goswami, the father of the deceased, sounded very frustrated, as the case had been dragging in the court for no reason. The culprit was kept for 25 days in police/judicial custody. He had managed to come out on bail later. According to the father of the deceased, Nagen used to take drugs. Now he is moving around freely after committing the crime. The business of the victim's father gets affected whenever he has to go to the court and there is no sign yet of justice for him.
2. Case No-66/99, All Women P.S. Section 498-A, 34 IPC – Hasina Begum lodged an FIR against her husband Usuf Ali and her in-laws for assaulting her with lathi and other things. Police arrested her husband and forwarded him to Judicial Custody. The case was charge-sheeted on November 11, 99 (G.R. case No 4173/99). The case is now under trial: proclamation and attachment was issued by the court to force the appearance of the accused on November 29, 2004.

3. Case No 60/99, All Women P.S. Section 498-A – The case was of mental and physical violence. The matter had been settled mutually after one year on the intervention of the CJM, Kamrup.

4. Case No-60/99, All Women P.S. Section 498-A IPC – Namita Paul, a Bengali woman was abused physically by her husband and in-laws since her marriage in December 1993.
Thus she lodged a complaint at the Court of the CJM Kamrup. However after a year, the case got mutually settled through the intervention of the Court. Peace in the family thus got ushered in.

The following cases were collected from CJM's Court, Kamrup —

1. G. R. No-2057/95, Jalukbari P.S. Section 498-A, G.R. Case No. 2057/95.
The State Vs Birendra Ghosh.

The brief of the case is that on May 28, 95 victim Smt. Pratima Ghosh filed an FIR at the Jalukbari P.S. stating that she had got married to accused Birendra Ghosh about a year back and that since after a month of her marriage, accused Birendra and others of his family started physically and mentally torturing her
for dowry, gold ornaments etc. On May 26, 95 at about 10 pm the accused persons assaulted her with blunt weapons causing her injuries. She therefore, had to leave the house and take shelter at her parent's place.

The police investigated the case and filed charge sheet against all the accused. The court sentenced them to rigorous imprisonment for 3 months and also to pay a fine of Rs. 1000 each, in default, to undergo simple imprisonment for one month more. The judgement was pronounced on Nov.18, 2003 ---after a length of eight and a half years.

The case is typical of justice delayed; however it was not one of justice denied.

2. G.R.No-1323/96, Section 498-A IPC.

The State Vs Lankeswar Kalita

Prosecution story in brief is that Smt. Apama Kalita was married to accuse Lankeswar Kalita on July 15, 94 and since after the marriage, her husband along with other family members tortured her alleging that she was a girl of lower caste and asked her to leave the matrimonial home. Her husband assaulted her with a piece of lathi on simple matters and also demanded of her to divorce him. Due to such torture she informed the matter to Mahila Samity, Bafahghuli and lastly filed an ejahar against the accused before O/C, All Women P.S. On receipt of the ejahar a case was registered and charge sheeted. The complainant has been inconsistent about the charges she made against her husband. The court rejected the FIR.

3. G.R.No-1959/97, Section 498-A IPC.


Prosecution story in brief is that Smt. Krishna Das was married to Babul Das resident of Christian Basti on December 17, 95. But after a few months of their marriage, the elder sister of her husband Smt. Dulu Das along with her brother-
in-law started torturing her on demand for an amount of Rs. 10,000 as dowry. As she could not fulfil her demand, she was beaten on several occasions. Again on May 30, 95 the said Dulu Das demanded the dowry. She could not pay the same, so Dulu Das tried to kill the victim and her other in-laws assisted him. On being aggrieved she filed an ejahar on May 30, 97 before O/C, Dispur P.S. Accordingly a case was registered and after due investigation I/O submitted charge sheet against all the accused persons under section 498-A IPC. The case ended in acquittal because of failure of the prosecution to prove the charges. The learned CJM, who tried the case, said in her judgement that the prosecution had not examined the complainant in this case despite being given a long 3 years to produce her. Therefore the FIR did not stand proved. Secondly, the prosecution witnesses were contradicting one another on the basic issue of the complaint. Thus it appears, the police had not properly investigated the case and haphazardly submitted the charge sheet. Thus there was a failure of the investigating agency in the case. Moreover the prosecution also gave an impression of being uninterested in the case.

4. G.R.No-3063/98, Section 498-A.

The complaint of Rupa Biswas is that she was married to the accused Sanjay Biswas on January 31, 97 at Kamakhya Temple, Guwahati as per Hindu rites. After a few days, trouble started as the husband and in-laws started demanding dowry followed by acts of physical and mental torture. It was not possible for the complainant to fulfil their demand as her father was a poor person. Initially she tolerated the atrocities in order to protect her marriage. But on May 20, 97 she was compelled to leave the matrimonial home. Later accused Sanjay Biswas demanded Rs. 50,000 if he had to take complainant back as wife.
The complainant filed a maintenance case against her husband and the Court directed him to pay the maintenance allowance of Rs. 300 per month to her. The Court also took cognizance of a case under section 498-A IPC. Inordinate delay in filing the FIR and inconsistent evidences given by prosecution witnesses were mainly the reasons why the case failed in the trial. The case therefore ended in acquittal of the accused.

5. G.R.No-6134/98, Section 498-A IPC.

Sabina Begum was married to Rajib Ali on 1.3.98. But soon after the marriage, the torture for dowry started along with the threat to divorce her unless the demand was fulfilled. This caused her mental torture. Since February 17, 98, the torture aggravated and on December 20, 98 the accused stopped providing food to his wife. As a result, Sabina came back to her parent’s house and being aggrieved filed an FIR before All Women P.S. Panbazar. The charge was proved beyond all reasonable doubts. The accused prayed for leniency as he got married again and having a child. The responsibility of his mother was also there.

But considering the nature of offence, the Magistrate sentenced him to 3 months rigorous imprisonment and also fined Rs. 1000/-. The judgement was pronounced on February 3, 2003 by the Chief Judicial Magistrate, Kamrup. It took long 5 years to get justice.

6. G.R.No-4116/02, Section 498-A, 506, 109, 34 IPC

Accused Nripendra Nath Kalita being the husband of Smt. Babita Kalita, subjected her to cruelty in connivance with another woman namely Moushoomi Phukan.

In view of the evidence on record, the accused Nripendra Nath was found guilty and he was sentenced to simple imprisonment for one year and to pay a
fine of Rs. 3000/- only (in default to suffer simple imprisonment for another six months).

7. G.R.No-850/02, Sections 498-A, 406, 34 IPC.
Ms Pratima Talukdar Vs Bhabesh Talukdar and others.

Pratima got married to Bhabesh Talukdar according to Hindu rites and customs. After the marriage they started conjugal life but after a few months the husband started mental and physical torture on her and assaulted her on many occasions. On December 31, 2001, she was compelled to quit the house of her husband wearing the daily wear saree and since then has been living with her parents. As she left her marital home, she was deprived of her stridhan. She filed a complaint case before a Gauhati Court vide the case mentioned above against her husband and father-in-law.

During trial, the Court found enough evidence against the husband of the complainant and sentenced him to simple imprisonment of 2 years and a fine of Rs. 2000/- (and in default to suffer imprisonment for another six months) for the offence under section 498-A IPC. The court also convicted the person to a fine of Rs. 500/- (and in default to suffer simple imprisonment) for the offence under section 406 IPC for breach of trust in respect of stridhan. The father-in-law was however acquitted of the charges.

The trial continued for about two and a half years (September 21, 2002 – December 17, 2004), but the fact remains that the guilty person was adequately punished by the court in a complaint case without allowing it to drag on for eight to ten years which is a normal rule. This is remarkable.

8. G.R.No-2008/02, Section 494, 498-A IPC.

The accused Padmeshwar Sharmä married Renü Barkotoky on January 27, 99 and started demanding money from his wife ‘as he was unemployed’. His wife
Helped him to get a job. But the ill treatment to his wife did not subside. He used to demand more money and used foul language while abusing her physically. Later on he married another girl but harassment on the complainant continued.

The accused was found guilty and was punished with simple imprisonment for six months and a fine of Rs. 2000/- on May 25, 2004. It took five years for justice delivery.

9. G. R. No – 3356/03, Sections 498-A, 494 IPC.
State Vs Monoranjan Kumar.

Dipali Kumar lodged an FIR in 2000 against her husband Monoranjan Kumār. It was a case of bigamy. Torture by her husband started after her marriage but it increased when he got married again with Pangami Kumari. The prosecution failed to establish its case under section 489-A / 494 IPC against the accused and he was acquitted. It took 4 years for the court to pronounce judgement.

10. G. R. No - 3895703, Section 498-A IPC.
State Vs Ratneswar Saikia

Kalpana Saikia Lodge an FIR on August 13, 2003 against her husband Ratneswar Saikia. In the initial period of her married life they did not have any problem. But after a year or so he started abusing her and forced her thrice to abort their baby as soon as she conceived. Several times he ousted her from the house. On April 25, 2003 Ratneswar assaulted her and turned her out of the house at 10pm. However, on the intervention of the police she could enter the house at 1am. After that he stopped providing her food and maintenance. On July 29, 2003 he entered home completely in a drunken condition, started beating her and then tied her hands and legs and tried to throw her in a well.
She raised alarm and neighbours came and rescued her. After that she registered an FIR in the police station and police charge sheeted the case under section 498-A IPC. The court found him guilty and convicted him on December 1, 2004 for simple imprisonment for one year and to pay a fine of Rs. 3000, in default simple imprisonment for another six months. It took little more than one year to pronounce the judgement.

The following case was collected from the Court of Adhoc Additional Sessions Judge, Kamrup, Guwahati.

Sessions Case No-26 (K) / 00
State Vs Preetpal Singh and others.

The brief of the case was that victim Paranjit kaur had got married with accused Preetpal Singh alias Raju on February 11, 95. The victim was subjected to torture by the husband and in-laws since after the marriage allegedly for dowry. On May 27, 95 at 8-45pm, the father of the victim Harjeet Singh received information that his daughter had died. She was promptly cremated by her husband’s family before arrival of her father. Her father therefore filed an FIR at the All Women P.S. Panbazar following which a case was registered by the police under section 498-A, 304-B, 34 IPC and investigated.

The trial commenced at the Court of ad hoc Addl. Sessions Judge Kamrup after the police charge sheeted the case. As said by the Judge in his judgement, the investigation was perfunctory and so also was the conduct of the prosecution. The police did not try to establish the identity of the victim nor the acts of torture and demand for dowry by the accused. No evidence was collected and put up to show the nefarious part laid by the accused husband and in-laws. The investigation report stopped at showing it as a death by intake
of poison by the victim but the roles played by the accused persons have been
totally omitted. The prosecution also did nothing better. The Court, though it
has the power to order re-investigation for the cause of justice, remained totally
passive. The case thus inevitably ended in acquittal of the accused persons
adding one more incident to the statistics of failed justice.

4.7 National Human Rights Commission:
The Protection of Human Rights Act, 1993 provides for the constitution of a National
Human Rights Commission at the national level, State Human Rights Commissions in
states and Human Rights Courts wherever necessary for better protection of human
rights. It exercises the power to enquire suo moto or on a petition presented to it by a
victim or any person on his behalf, containing a complaint of ---

(1) Violation of human rights or abetment thereof or

(2) Negligence in the prevention of such violation by a public servant.103

No fee is chargeable on complaints. The Commission will review the safeguards
provided by or under the Constitution or any Law for the time being in force for the
protection of human rights and recommends measures for their effective
implementation.104 Justice A.S.Anand, Chairperson of NHRC, said, “The increase in
the number of complaints received by the Commission was not an indication of more
human rights violations. Instead, it meant citizens found a forum in the NHRC to
voice their grievances.” He also mentioned the rise of child marriage and female
foeticide cases in the country.105 For dealing with disputes arising out of the marriages
of Indian women with NRI husbands, the Commission put forward a set of detailed
regulations so that justice could be provided to the victimized women.106

That domestic violence is not a problem confined only to the life pattern of illiterate
and the semiliterate class of families but is a practical situation even in so-called
higher classes. The case pertains to a serving Assam cadre all India service officer,
who had demanded a dowry of Rs. one crore. With payment having been made of an
amount of Rs. 50 lakh in cash and kind before the marriage, he kept pressing his
doctorate degree holder wife for the balance of another Rs 50 lakh. Meanwhile they had a baby boy but that was no consideration for the dowry seeker, so much so that around midnight one day the gentleman threw out his wife and son from his official residence. The helpless lady contacted her parents and begged her husband for shelter for the night only. Thereafter she had to go away with her child back to her parent’s house, never to see her husband’s place again. She made petitions to the government and the National Human rights Commissions for redress but the wily husband manipulated official enquires against him and managed to deny the lady and the child redress from the situation. The man who entered the prestigious class I service through competition is so shorn of normal human feeling that he even threw away the child from his place and has never seen it ever since. The child has now grown up, old enough to attend school but has no knowledge of who his father is. All this is for dowry.

**Assam Human Rights Commission** – Assam Human Rights Commission came into being with effect from the 1st day of May, 1996, at Guwahati.

### 4.4 Domestic violence cases, Assam Human Rights Commission, 1996-2004

<table>
<thead>
<tr>
<th>Year</th>
<th>No. of cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>1996</td>
<td>11</td>
</tr>
<tr>
<td>1997</td>
<td>19</td>
</tr>
<tr>
<td>1998</td>
<td>11</td>
</tr>
<tr>
<td>1999</td>
<td>4</td>
</tr>
<tr>
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</tr>
<tr>
<td>2001</td>
<td>8</td>
</tr>
<tr>
<td>2002</td>
<td>9</td>
</tr>
<tr>
<td>2003</td>
<td>11</td>
</tr>
<tr>
<td>2004</td>
<td>1</td>
</tr>
</tbody>
</table>

*Source: Assam Human Rights Commission.*

Total – 74 cases of Domestic Violence got reported to the Assam Human Rights Commission from 1996 to 2004. During interview, some of the victims of domestic
violence expressed disappointment as they never received any help by reporting to the Assam State Human Rights Commission.

The Assam Human Rights Commission took suo moto cognizance of the case of Jotsanara Begum (19) who was raped by her father-in-law at Dhing village in Nagaon District on May 25, 2005. The Commission directed the Nagaon superintendent of police to submit a report about the development of the case before September 6, 2005.¹⁰⁷

The Assam Human Rights Commission has asked the Government of Assam to set up cold storage facilities for dead bodies and also to introduce other required facilities to the virtually moribund forensic medicine department of the GMCH (Gauhati Medical College Hospital) without which the criminal justice system could not function properly. The remarkable step taken by the Commission will help make police investigations smooth. Without proper post mortem report, the delivery of justice to death cases in domestic violence is not possible.¹⁰⁸

4.8 The National Commission for Women:

In response to the demands of women’s organizations and social workers, Parliament passed the National Commission for Women Act in August 1990, and accordingly the National Commission for Women was set up on January 31, 1992. The main purpose of the Commission is to safeguard women’s rights and promote their welfare, and also to review the constitutional and legal safeguards for women. The commission is organizing Parivarik mahila lokadalats, offering counselling in family disputes and conducting training programmes for creating legal awareness among women and to secure speedy justice for them. For bringing attitudinal changes for social development, outdoor publicity is undertaken to inform, educate and motivate people.¹⁰⁹ The Complaints and Counselling Cell of the Commission receives complaints --- oral or written, under section 20 of the NCW Act. The complaints received relate commonly to domestic violence, harassment, dowry, torture, desertion,
bigamy, rape, and refusal of the police to register FIR, cruelty by husband, deprivation, gender discrimination and sexual harassment at workplace. The NCW ensures that investigations are done by the police promptly and monitors the same. Through counselling, family disputes are resolved or compromised. From time to time the Commission conducts seminars, workshops and conferences and provides financial assistance to research organizations and NGOs. The NCW holds public hearings on issues affecting large sections of women such as crimes against women. Thanks to the efforts of the National Commission for Women, the Supreme Court has now recognized the necessity for making marriage registration compulsory.

**Assam State Commission for Women** - In 1994, Assam State Commission for Women was formed with the same aspirations and ideas as those of the NCW. The function of the Commission is to investigate and examine the problems faced by women in general.

### 4.5 Numbers of cases received and disposed of by Assam Commission for Women, 1994 to 2003.

<table>
<thead>
<tr>
<th>Year</th>
<th>Atrocities</th>
<th>Bigamy</th>
<th>Maintenance / Allowances</th>
<th>Dowry</th>
<th>Rape</th>
<th>Kidnapping</th>
<th>Land disputes</th>
<th>Misc</th>
<th>Total</th>
<th>Disposed of</th>
</tr>
</thead>
<tbody>
<tr>
<td>1994</td>
<td>19</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>2</td>
<td>-</td>
<td>1</td>
<td>1</td>
<td>26</td>
<td>-</td>
</tr>
<tr>
<td>1995</td>
<td>36</td>
<td>-</td>
<td>1</td>
<td>2</td>
<td>4</td>
<td>3</td>
<td>3</td>
<td>5</td>
<td>54</td>
<td>6</td>
</tr>
<tr>
<td>1996</td>
<td>26</td>
<td>5</td>
<td>3</td>
<td>7</td>
<td>4</td>
<td>2</td>
<td>6</td>
<td>5</td>
<td>58</td>
<td>14</td>
</tr>
<tr>
<td>1997</td>
<td>60</td>
<td>5</td>
<td>8</td>
<td>6</td>
<td>6</td>
<td>1</td>
<td>4</td>
<td>7</td>
<td>97</td>
<td>32</td>
</tr>
<tr>
<td>1998</td>
<td>57</td>
<td>-</td>
<td>9</td>
<td>13</td>
<td>2</td>
<td>2</td>
<td>3</td>
<td>6</td>
<td>92</td>
<td>25</td>
</tr>
<tr>
<td>1999</td>
<td>56</td>
<td>-</td>
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<td>16</td>
<td>8</td>
<td>1</td>
<td>5</td>
<td>10</td>
<td>100</td>
<td>60</td>
</tr>
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<td>2000</td>
<td>65</td>
<td>2</td>
<td>6</td>
<td>9</td>
<td>9</td>
<td>1</td>
<td>2</td>
<td>11</td>
<td>105</td>
<td>18</td>
</tr>
<tr>
<td>2001</td>
<td>33</td>
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<td>7</td>
<td>3</td>
<td>4</td>
<td>3</td>
<td>4</td>
<td>21</td>
<td>81</td>
<td>64</td>
</tr>
<tr>
<td>2003</td>
<td>18</td>
<td>3</td>
<td>3</td>
<td>6</td>
<td>5</td>
<td>1</td>
<td>1</td>
<td>21</td>
<td>58</td>
<td>46</td>
</tr>
<tr>
<td>Total</td>
<td>380</td>
<td>22</td>
<td>42</td>
<td>63</td>
<td>44</td>
<td>29</td>
<td>87</td>
<td>671</td>
<td>319</td>
<td></td>
</tr>
</tbody>
</table>

*Source: Assam Commission for Women.*

It appears that out of 671 cases, 319 were disposed of being 47.67% of the total registered cases. The statistics reflects the delay in disposal of the cases. One of the
factors responsible for the delay in providing justice and disposing of the cases is non-appearance of the opposite party. The pendency of cases is high in the Commission as they are mostly sub judice. The counselling to the parties is a lengthy process, so delay is a natural outcome. In 2004 there were 11 cruelty cases, 7 extra-marital cases and 2 dowry cases and in 2005, 20 cruelty cases, 5 extra-marital cases and 7 dowry cases reported before the Assam Women Commission. During the last 12 years (till March 8, 2007), 878 complaints of crimes against women have been registered and 392 complaints have been disposed of by the commission. Atrocities against women form the bulk of the cases, with total of 433 cases in the last twelve years. Divorce follows next with 94 cases and dowry 83 cases. The crime graph has seen an abnormal upswing.

Ms Basanti Sharma, the Chairperson of ASCW (Assam State Commission for Women), made the following observation: “Domestic violence has been registering a rise; cases are not filed by most victims making it difficult for the Commission to intervene; most of the cases looked into relate to bigamy etc.” On 2002, Ms Sharma had joined the Commission as chairperson and regretted the poor state of resources of the commission as the Assam Government has been giving the rather high profile Commission an meager annual allocation of Rs 6 lakh only. Only a decade passed, the ASWC is gasping for life and unable to carry on with its job the way it would want to for lack of funds.

The National Commission for women’s Chairperson Purnima Advani’s visit changed the outlook of the role played by the Assam Commission for women and the deteriorating status of women of Assam. Ms Advani pointed out that the oft-repeated claim by public leaders that the status of women in Assam is higher than their counterparts elsewhere in the country was a misnomer, particularly when the menace of dowry related torture and killing of brides has come to stay in the Assamese society. The State Government, Women Organizations and others concerned should come forward to stop the menace, which is becoming part of ‘Assamese culture’ as in
the rest of the country. She expressed her dissatisfaction about the functioning of the women commission, Assam. The visit of Ms Advani may help to change the mindset of the people of Assam and to make them pro-active to the issues of women for regaining the lost glory of the Assamese society against all kinds of domestic violence, particularly the dowry related crimes.\textsuperscript{114} On August 22, 2005, All India Democratic Women Association (AIDWA) charged the Commission for its failure to deliver justice to a rape victim who was raped by her father-in-law in the absence of her husband. It is a case of domestic violence in the Nagaon District, under Dhing police station and the victim was Jyotsna Begum of Dumdumia.

For the states of Manipur, Arunachal Pradesh, Meghalaya, new State Women Commissions have been established recently.

**4.9 Need for Law against NRI Husbands:**

A recent study disclosed that hundreds of Indian brides were being abandoned or abused by their NRI grooms after being married against a huge dowry. Hyderabad city marriage consultant Anasuya Rao said, “About 15,000 NRI weddings take place in the state every year and almost 20% to 30% of them end in divorce.” Matrimonial consultancies are mushrooming everywhere and the police are getting websites registered, so that they can access these agencies’ database and keep a tab on their functioning. Andhra Pradesh police have decided to treat such cases at par with those involving the hardcore terrorists. Unscrupulously NRIs have made marriage a money making trick or business. The state police have got Interpol to issue red-corner notices for 300 NRIs accused of ill treating women they married. Before the end of the year 2006, police hoped to get about 25 extradited. The US police have already started proceedings of extradition against V.R.V Suryanarayana Raju who allegedly harassed wife Aruna for dowry and desertion; he will be tried in India. According to S. Umapathi, Deputy Inspector General of Police, “Interpol has issued more than 300 red-corner notices to the police in the U.S, the U.K. and other European countries for such husbands, mainly software Engineers. Another officer said, “By year end, we
expect almost 20 to 25 such extraditions. The family courts in Hyderabad, Vijaywada and Visakhapatnam have been flooded with complaints of cheating and wife beating by NRI husbands”.

The recent talk between the foreign ministry and many governments abroad made the intercontinental hunt possible. By filing a police complaint with prima facie evidence of the groom’s guilt, the victims or the parents of the victims can get justice. Such complaints are effective only for the brides who are citizens of India, even if the husbands are NRIs or of foreign origin.115

The Government has finalized a scheme to provide Indian women who have been deserted by their husbands overseas within a year of marriage free legal and counselling services. The ministry of overseas India affairs proposes to introduce this scheme in the US, UK, Canada, Germany, Australia, Malaysia, New Zealand and the Gulf. The assistance will be provided to NRI women as well as foreign citizens of Indian origin. The ministry will involve credible women’s organizations and NGOs working in these countries and give them financial assistance.116

4.10 Justice delayed is justice denied:

‘Justice Delayed is Justice Denied’ is a saying that is very much applicable in the Indian judicial system and particularly for the victims of domestic violence. More often than not, a victim of domestic violence has to pursue justice as though it is a mirage. Thousand of cases all over the country remain hanging for the rendering of justice. Delays add to the cost of the litigation and mental worries. So many other aspects that contribute to judicial delay must be taken under consideration; like lacunae in the criminal procedure code, methods of police investigation, general administrative disorganization etc. Modern technology should be introduced like computerization of its internal management system. Gauhati High Court started the procedure but computerization of materials is slow in the High Court and simply non-existent in lower courts. During the period from 1991 to 2000, there were 276 cruelty cases and 44 dowry death cases registered in the police stations in Guwahati city. The
sample of 20.6% for cruelty cases and 72.7% for dowry death cases was taken for the study. 6.7% women reconciled later in cruelty cases and led a normal family life with the intervention and help of the counsellors, the police, the judiciary and other organizations. From the cruelty cases in Guwahati noted above, it appears that delay in investigation and trial is the biggest hurdle in realizing justice for the suffering women. The police and the courts are nearly indifferent to cruelty cases. Another point that becomes manifest is that the public prosecutors as the direct agent of the state do not present evidences in a consistent way and even fail to produce during trial the witnesses whose testimony is critical in the cases concerned. Here there is no responsible state functionary to supervise the omissions and commissions of the prosecutors. ‘Justice’, is defined as the fair and proper administration of laws.

The case studies relating to the dowry death cases and the cruelty cases show that the hypothesis “the response of the state has fallen short of the requirement for making the society free of domestic violence” has proven true and factual. Despite all efforts, women’s problem in the society remains acute and the women in India continue to suffer from domestic violence due to lack of awareness of their rights, illiteracy and oppressive practices and customs. Many of the Acts and legislations enacted remained ineffective and merely on papers. The foregoing study shows, the response of the State in the matter of domestic violence is not adequately meaningful and comprehensive.

“Justice hurried is justice buried’ is one of the guiding principle of the criminal justice delivery system. Social justice means rendering to every person his or her due, viz, security of life, liberty and pursuit of happiness. If justice is not delivered within a reasonable time, it becomes meaningless as ‘justice delayed is justice denied’. The poignancy of the following incident illustrates the inadequacy of the present system. Sipra Deb, who was a teacher in Guwahati and mother of two children, had to die when her husband set her ablaze. The police registered a case (147/06) under sections 326/307/34 IPC at Maligaon outpost against the victim’s husband and his elder brother. Though on apprehension of her impending danger she had desperately sought
help from the police, the State Women Commission, the State Human Rights Commission and even the media, no help came and she was finally killed by her husband and brother-in-law in March 2006.117

A sample survey conducted by the Nagpur based Yugantar Education Society across Maharashtra, Gujarat, Madhya Pradesh, Chattisgarh and Andhra Pradesh reveals that 81% of women suffering abuse and humiliation at home said they had no faith in the law and government agencies to rescue them from violent marriage. In the opinion of 1,250 women from states, the relief provided by law and other formal agencies were ineffective, complicated, insufficient, not guaranteed and provided only temporary relief to the victims said the survey report. The distrust of long and tedious legal measures is apparent, with just 5% seeking help from formal agencies and 43% of the women choose to suffer in silence for the sake of family honour. The report was forwarded to the Planning Commission in December 2007.118 In today’s society, despite developments in science and democracy, domestic violence continued showing upward increasing trend. Human Resource Development Minister of State Kanti Singh informed in Rajyasabha on 22 August 2005 that during the period 2003-2004, the incidence of domestic violence in the country increased by 9.3%. According to the minister, 1,00,980 cases were charge sheeted in 2003 in relation to domestic violence. 12,558 numbers of persons involved in domestic violence were punished by courts of law in 2003. During 2004, 1,13,367 cases were charge sheeted and 14,228 were punished.119

The conviction rate is very low in cases involving serious offences, as for example, in domestic violence on married women, the lawbreakers seem to emerge stronger to dictate terms to the system. Inordinate delay in disposal of criminal cases leads to a huge pendency all over the country. In India, any legal process has become frightfully expensive and unaffordable for commoners (common people). Moreover, the expensive law is also frightfully slow. Waiting for any length of time for justice takes away the very meaning of justice.
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