CHAPTER-IV
LAW RELATING TO MATRIMONIAL CRUELTY AND DOMESTIC VIOLENCE WITH JUDICIAL APPROACH

“The letter of the law must not in supreme emergency obstruct who are charged with its protection and enforcement. It would not be right or rational that the aggressor Power should gain one set of advantages by tearing up all laws, and another set by sheltering behind the innate respect for law of its opponents. Humanity, rather than legality, must be our guide.” 104

4.1 Prologue

Half of India’s population comprises of women. Women of ancient India, especially during the Vedic and Indus civilizations, received great divine honor. She was given more prominence in decision making in the social institutions and used to perform her independent role in the society. But with the passage of time her position slipped into the abyssal depths that deprived her of independence; social; economic and political; and thereby, made her dependent on the male members of her family. All the decisions for her were taken by men only. Since ages she has been deprived of opportunity and made to suffer inequalities. She is made as a mere chattel and placed at the receiving end, at the mercy of her male counterpart.

After independence of India, the country followed not only the noble principles of justice, liberty, fraternity and equality, but also enacted several legislations to reform and develop the status of women and to fulfill the commitments towards gender justice and protection of women from injustice and various abuses against them. Framers of our Constitution were also conscience of degenerating position of women in Indian society. Therefore, in fundamental duties they specially cast a duty on the society through Article 51A (e) to renounce the practices derogatory to the dignity of women. These enactments later on opened floodgates for feminist movement all over the world. The constitutional mandates have been followed in the form of several enactments in order to protect and uphold the rights and dignity of women.

Women is a unique creation of God possessing the qualities of understanding, hardworking, full of compassion holding high level of initiative and a trend setter for progeny \(^{105}\) inspite of these qualities the women have never been treated at par with the men. The hallmark of a healthy society is the respect it accords to women who have since time immemorial been looked down upon with contempt, ridicule and hostility and have been subjected to torture and harassment of all kinds, both physical and mental due to the orthodoxies born out of male chauvinism and the traditional and archaic social structure where patriarchy ruled the roost. This social imbalance and rudimentary thought process led to the subjugation of the women and harassment and torture of all kinds both within the matrimonial domain and outside it with women becoming an easy prey to the prying eyes and falling into the trap of the lascivious and voyeuristic tendencies of gender-insensitive men. These abominable and appalling conditions of the weaker gender had made serious inroads into the very institution of womanhood.

However, with the advancement and progress of society and with women's movement gaining momentum, the need felt to mitigate the sufferings of the fair sex, provide more rights to them, break them free from the social fetters and shackles of savagery. A number of legislations both civil and penal were brought and some new sections in the laws were introduced to provide more rights to women and place them on an equal footing along with their male counterparts. These ranged from providing grounds to women to divorce her husband, maintenance provisions and giving relief to protect women from the matrimonial cruelty of the husband and his relatives, protection against dowry and harassment, violence within the matrimonial home as well as domestic violence and torture, etc.

But in spite of special Constitutional guarantees and other legislations, crimes against women are rampant. It is very sad to note that even after adopting the Constitution, the Indian women did not, so far, get their due share; of justice-social, economic and political, and Equality- of status and opportunity; which they are entitled to. Her complexities have enormously increased in modern times, due to disintegration of the institution of family and marriage, which

\(^{105}\) Kashmir University Law review 2003, p-195-196 also see Dr. Mohini Chatterjee, "Womens Human Rights".
negligently threw her into a pathetic position. She is again made a victim and her legitimate rights are denied in many a case; more so in matters of divorce and succession. The phenomenon of domestic violence by the husband and his relatives etc. has been widely prevalent but has remained largely invisible in the public domain.

In modern India again, Indian womanhood is marching towards liberty and equality. Various social legislations passed from time to time are mainly responsible for this march towards liberty and equality. These legislations aimed at eradicating social evils which encourages inhuman practice towards women. History will reveal that discrimination against women starts even before her birth when she is in womb. The malpractices prevalent in the society and sins like dowry etc compel the parents to kill the girl child in the womb itself. Law maker were conscience of this situation and has enacted various laws such as Medical Termination of Act, 1971, Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition on Sex-Selection) Act, 1994 for prevention of termination of pregnancy in case of a girl fetus. Recently even the Apex Court has also shown its concern for increasing number of cases of elimination of female fetus in the case of Voluntary Health Association of Punjab Vs. Union Of India & Ors106. It was observed that Indian society’s discrimination towards female child still exists due to various reasons which has its roots in the social behavior and prejudices against the female child and, due to the evils of dowry system, still prevailing in the society, in spite of its prohibition under the dowry prohibition Act. The decline in the female child ratio all over the country leads to an irresistible conclusion that the practice of eliminating female fetus by the use of pre-natal diagnostic techniques is widely prevalent in this country. Complaints are many, where atleast few of the medical professionals do perform sex selective abortions having full knowledge that the sole reason for abortion is because it is a female fetus. The provision of Medical Termination of Act, 1971 are also being consciously violated and misused.

The Parliament wanted to prevent the same and enacted the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition on Sex-Selection) Act, 1994 which has its roots in Article 15(2) of the Constitution of India. These Acts are welfare legislation. The Parliament was fully conscious of the fact that

106 Writ Petition (Civil) No. 349 of 2006
the increasing imbalance between men and women leads to increased crime against women, trafficking, sexual assault, polygamy etc. unfortunately, facts reveal that perpetrators of the crime also belong to the educated middle class and often they do not perceive the gravity of the crime.

The Supreme Court of India had noticed the misuse and non compliance of the Act and gave various directions for its proper implementation in the cases of Centre for Enquiry into Health and Allied Themes v. Union of India\textsuperscript{107} and Centre for Enquiry into Health and Allied Themes v. Union of India\textsuperscript{108}

However, the misery of women doesn’t end here. In fact it starts with her birth. Once born a girl has to face discrimination and violence at all places and in all relationships. Hence, numerous laws have been enacted to provide a just and equal society to women. All the legislations can be broadly divided into three categories on the basis of sphere of life in which they are applicable.

A) Law relating to matrimonial cruelty
B) Law relating to domestic violence
C) Law for protection against other offences

\textbf{4.2 Law Relating to Matrimonial Cruelty}

Marriage is one of the most important Sacrament or Sanskara among the Hindus. Even in other religions marriage is considered as a tie between two individuals for life. Marriage is considered as a personal issue of an individual and state has always been reluctant to bring it in the public domain and to intervene through law. But men have always treated his wife as a chattel. Woman is subjected to all kinds of cruelties in their matrimonial home by all the relatives including husband on various grounds. The data of matrimonial cruelty inflicted upon women in India is alarming. Statistics reveals that every three minutes a woman becomes victim of a crime somewhere in India out of which highest number become targets of their husbands and in-laws. Last year, 75,930 women became victims of torture and cruelty by their husbands and in-laws, accounting for the highest number of crimes against women. Homes are far from being safe heavens for women.

\textsuperscript{107} (2001) 5 SCC 577
\textsuperscript{108} (2003) 8 SCC 398
During the Vedic period, women had an excellent position and they enjoyed full freedom and equality with men. The position of the wife was an honoured one in the household. In a sense, she enjoyed a position superior to that of man in the matter of performance of religious ceremonies. That time Dowry system was unknown. After the Vedic period, gradually, the position of the woman started declining. The wife’s status in the matrimonial home was less satisfactory. Although Manu describes wife as the divine institute given by God and that a husband cannot make any progress if there is no wife beside him to co-operate with him in all activities, yet he also says, “husband is the Lord and master of his wife.” Manu suggested the ways and means to keep the wife under subjugation and taking a clue from Manu, men have adopted those ways of cruelty by which women is being exploited since ages. This kind of treatment of wife is a natural consequence of Manu’s theory that marriage establishes the supremacy of husband over the wife. Further, widow remarriage was also prohibited by the Manu code.

The position of women further deteriorated in the Muslim era. The Muslim period left an indelible mark on the plight of the women in several ways. Child marriage was the popular feature of the social life, depriving child of education. Domestic violence, in a way, used to force widows to adopt the practice of ‘sati’.

In the British rule, the position of women in the family and society had reached the maximum degree of deterioration. The wife’s position in a household was in a sorry state of affairs because of the evil of socio-religious practices, sinister customs, irrational religious rites and inhuman superstitions unknown in the ancient period which had crept into the society in the British Period. The reform movements in favour of women during the British Period tackled, inter alia, the problems of sati, Hindu widow remarriage, denial of education, purdah, prevalence of child marriage, women property rights etc. However, it is to be noted that the pace of women’s welfare process during the British period was very slow. In the British period to prevent the social evil, the Child Marriage Restraint Act, 1929, Hindu Widow Re-marriage Act, 1856 and like were enacted. However, these enactments proved ineffective and remained a dead letter for a long time though women’s unequal position was sought to be
rectified. The freedom struggle also paved the way for their emancipation from socio-religious taboos.

Women's position in the family can be judged by the extent of violence both physical and mental hurled towards her by her husband and in-laws. Till 1983, there were no specific provisions in the IPC dealing with violence within the home. However, husbands who were violent to their wives could be convicted under the general provisions of murder or abetment to suicide, causing hurt and wrongful confinement.

Cases which are graver than simple hurt are covered under section 324 of IPC. He courts in cases of quarrels between the husband and the wife which result in wife beating, could convict the husband under section 324 if the hurt was grave, but no injury was caused on any vital fact of the victim. Section 328 of IPC deals with cases where the husband beats his wife for extracting more property or for demanding dowry items. Under this section the offender husband can be punished with imprisonment of either description for a term extending up to ten years and is also liable to fine. The offence under section 327 of IPC is treated as an aggravated form of the offence of hurt for which the husband is likely to be more severely punished. On examining the above general provisions it was found that they were more appropriate in cases where a woman is assaulted by a stranger and not in cases of domestic violence where the offence is committed within the privacy of a home by a man on whom the woman is emotionally and economically dependent.

It was felt that it was very difficult for women to prove violence by husbands in-laws as (1) the existing criminal law required the proving of the offence “beyond reasonable doubt” and (2) there were no witnesses to corroborate the woman's evidence. It was also seen that even if the beating did not result in serious injury as stipulated by the I.P.C., nonetheless routine and persistent beatings could lead to grave injury and cause mental, and emotional trauma to women and children. Taking into considerations all such factors the women activists and the intelligentsia realised that completely different criterion had to be evolved to assess the nature and extent of injury and hurt caused on account of domestic violence. It was rightly felt by those campaigning for the cause of battered women that while complaints are generally registered only
after the offence is committed in a case of domestic violence the women needs protection even before the crime is committed. In fact she requires help at a time when she apprehends danger to her life because she is living with her assaulter who can strike any time. At this junction help from the police can be a blessing but it is otherwise. When a woman goes to the police-station to register a case against her violent husband, the police being part of the value system that pardons wife beating, does not register a complaint against the husband under the relevant provisions of the IPC. (Section 324 and 326 provide punishment for causing grievous hurt with or without weapons). On the other hand the police advises the woman to please and obey her husband and sends her back without caring to register a complaint. In the light of such factors a campaign seeking a special law for protecting women within her own home was inevitable.

With the objective of controlling domestic violence, instead of passing a new legislation only the existing provisions of the criminal Acts were amended. In fact the criminal Acts were amended twice, once in 1983 and the second time in 1986 to create categories of offences dealing with cruelty to wives, dowry harassment, and dowry deaths. Prior to these amendments the IPC did not deal specifically with cases of domestic violence, though it did contain a chapter dealing with offences against marriage and another chapter dealing with offences against marriage and another chapter dealing with offences relating to the human body.

Reasons for matrimonial cruelty varies from dowry demand to other factors such as visualizing women as weaker spouse, conservative approach of confining women to the four walls of house, treating her as an instrument for pleasure and household work, male dominance etc. In some cases matrimonial cruelty leads to death of the girl. Here I shall discuss the provisions of law which has been enacted to give protection to the women against matrimonial cruelty caused due to dowry and due to reasons other then dowry.

4.2.1 Matrimonial Cruelty Induced by Dowry Demand

In ancient times marriage among hindus was considered as an irreversible ‘sacrament’ where the bride’s parents ‘voluntarily’ present gifts to the couple and the family members of the groom as a symbol of their love and not as an assertion of their status or submissions to material demands. However,
with the passage of time these gifts which are given out of love and affection are
distorted by the groom’s family making greedy demands from the girl’s family.
Today marriage is no longer a ‘sacred union’. It has become a commercial affair
where the bride’s father is forced to give the demanded dowry or face the dire
social consequences.

Dowry demand is another issue which leads to a great deal of violence
against women. Dowry is an easy way of making money and attaining higher
status. The giving and taking of dowry are forbidden by law but still the malady has
not left the society. In fact it has increased over the years. Many innocent
girls have been ruthlessly tortured by their husband and in-laws for bringing
insufficient dowry or for not meeting their incessant dowry demands. Dowry
deaths, or incidence of bride burning have become a common features. The
supporter of the dowry system give numerous arguments to justify it. According
to them, it is a fine method of setting up an establishment for the newly-weds.
The second argument is that since the bride's parents are quite choosy about the
groom's income, his qualifications, this property, why shouldn't the groom get a
price for what he has to offer? They think that marriage is a girls' life insurance
and so the dowry is the premium. Thirdly, the supporters of this system argue, a
girl carrying with her a respectable dowry feels confident while entering her in-
law’s house while a girl without dowry feels uneasy and apprehensive.

However, dowry related crime is the most barbarous and cruel form of
crimes committed against married woman. The curse of dowry has been raising
its ugly head every now and then and the evil has been flourishing beyond
imaginable proportions. The problem of dowry demand has been persistent in
India and is also rising at a rapid rate so are the offences related to dowry
demand. The Supreme Court in the case of State of Himachal Pradesh v. Nikku
Ram109 interestingly started off the judgment with the words ‘Dowry, dowry and
dowry’. The Supreme Court went on to explain why it has mentioned the words
‘dowry’ thrice. This is because demand for dowry is made on three occasions:

(i) before marriage;
(ii) at the time of marriage; and
(iii) after the marriage.

4.2.1.1 Meaning of Dowry

In order to find a plausible solution to any problem it is first essential to understand its meaning. It has always been difficult to define the term dowry. Till now there has been no definite definition of the term dowry. Dowry is defined differently by the English Dictionaries. Some of the definitions of dowry as given by various English Dictionaries are as follow:

(i) Oxford dictionary defines it as ‘an amount of property or money brought by a bride to her husband on their marriage’.

(ii) According to Tomlins Law Dictionary ‘Dowry is that which the wife gives to husband on account of marriage, and is a sort of donation made with a view to their future maintenance and support’.

(iii) According to Cambridge Dictionary ‘Dowry is property which a woman brings to her husband at marriage’.

(iv) According to Webster Dictionary, it means ‘Money, goods or estate that a woman brings to her husband at marriage.’

In simple words we can say that dowry usually denotes property, either immovable or movable that a wife brings to her husband upon her marriage. There is no equivalent of the word ‘dowry’ in Sanskrit. But stridhan is often misused to define it. However stridhan is the women’s sole property. The term closest to the word dowry is Vahatu which appearing in the Suyasukta marriage hymn, of the Rigveda (10.85) describes the “bridal train” as the entire sum of gifts received by the bride at marriage from her family and others. This may be distinguished from stridhan as it means property in which women had a disposable interest. In England until the enactment of the Married Women’s Property Act, 1870, women’s property passed absolutely to the husband at the time of the marriage. Such is the situation in most of the societies. In Smriti literature women were perceived as their husband’s property on marriage and before that of their father’s. The Nardasmriti describes property received at marriage as a ‘gift’ of high ritual status, which could be disposed off by the husband to settle debts.
4.2.1.2 Origin, Evaluation and Current Trends of Dowry System

Some people argue that system of dowry find its root in ancient Hindu society specially in the rituals of kanyadan and varadakshina followed in the marriage of Brahmans. But varadakshina means gifts given by the bride’s father to the groom out of his own choice. On the other hand dowry has always been and conceptually and essentially that property which is obtained under duress, coercion or pressure. It is that property which is extorted from the father or guardian of the bride by the bridegroom or his parents or other relatives. But the origins of dowry are far nobler than we imagine. Dowry was started by wealthy businessmen, kings and other influential people of the society as a means to give girls their due in the ancestral property as in those times, even till recent times, all the money and property went to the sons only. Later on it was used to provide “seed money” or property for the establishment of a new household. Till then the amount and contents of dowry were decided solely by the parents of the bride. But as said above with the passage of time this concept of dowry has been distorted by the groom’s parents because of their greed to make easy and quick money in order to compete with other families in their social circle. Hence now dowry is demanded by the groom’s parents and marriage takes place only if a certain amount of dowry is paid by the bride’s parents. Today dowry is given as compensation to the groom’s parents for the amount they have spent in educating and upbringing their son. It is also considered a status symbol, especially in the high class of the society, and generally the items of dowry are flaunted and hyped by both parties.

The dowry system is prevalent virtually in all parts of India. Dowry system is deeply ingrained in the social texture of our country. In modern times dowry is a contemptible social evil. It reduces the sacred institution of marriage to a business transaction. It degrades a young maiden to the level of a saleable commodity. Poor people have to incur heavy debts to provide their daughter with a handsome dowry. This wrecks them financially. Some people resort to unfair means for fulfilling dowry demands which poses a grave threat to the moral values of the society. The daughters of poor parents consider themselves a burden on their family and they either opt for a life of disgraceful spinsterhood or commit suicide. The dowry system is also an evil since it perpetuates the myth of
male superiority. If a bride is harassed for dowry, it may breed hatred in her mind for her husband and ruin the married life of the couple.

The modern dowry system has spread like cancer in the Indian society. Today, demand for dowry has reached alarming proportions. The Indian police say that they receive over 2,500 reports of bride-burning alone every year while the number of dowry deaths is about 9000. These numbers increase at a rate of 1-2% every year. The government, feeling deeply concerned about the problem of dowry and harassment and torture of women connected with it, issued instructions to the State Government and Union Territory Administrations to conduct through and compulsory investigations into cases of dowry deaths and to set up anti dowry publicity.

4.2.2.3 Enactment of Laws to Curb Dowry Demand

Legislature was conscience of the increasing menace of evil of dowry. Urgent need was felt to enact law to eradicate the evil of dowry. The problem of dowry was sought to be tackled by providing improved property rights to women by amendment in Hindu Succession Act, 1956 but the evil persisted. In 1961, the Dowry Prohibition Act was passed. It was the first penal legislation to ban the evil practice of dowry. Three decades have passed since the enactment of the Dowry Prohibition Act, but dowry continues to be the pivot around which all Indian marriages revolve and which has resulted in the death of a large number of married women.

By the latter half of the seventies it was realized that the brutal murders and agonising deaths by burning of the brides were directly connected with dowry and the Dowry Prohibition Act of 1961 had not been able to achieve the desired goal. A Parliamentary committee was appointed to study in detail the defects of the Act and to recommend amendments after an empirical survey. As a consequence, the Act was amended in 1984 and again in 1986. The important recommendations of the committee, for dealing with cruelty to a married woman by the husband or the relatives of the husband, for not getting sufficient dowry were given effect by introducing various changes in the Indian Penal Code, Criminal Procedure Code and the Indian Evidence Act. These amendments specifically deal with the problem of dowry suicides and dowry murders. It was realized that dowry death takes place within the privacy of a home. The family
camouflages it by calling it an accidental death. The neighbors who hear the cries of the dying woman or see the woman dying deliberately shut their ears and close their eyes. Laws against taking dowry and harassment for dowry have been drastically strengthened in the past eight years. Giving and taking of dowry are now cognizable offences and the imprisonment has been raised from a maximum of six months to two years. Cruelty to women including coercion for dowry is also criminal offence. It has now become compulsory to investigate every unnatural death of a woman, in the first seven years of her marriage both by the police and the magistrate. The two legal enactments dealing with the menace of dowry are

I. Dowry Prohibition Act; and

II. Section 304B of the Indian Penal Code

Both these enactments are discussed herein as under:

I. The Dowry Prohibition Act

The Dowry Prohibition Act, 1961 (hereinafter referred as “the Act”) is intended to prohibit the giving or taking of dowry and makes it demand itself also an offence. Even the abetment of giving, taking or demanding dowry has been made an offence. Further, the Act provides that any agreement for giving or taking of dowry shall be void and the offences under the Act have also been made non-compoundable.

Definition of Dowry and Penalties under the Dowry Prohibition Act

Keeping in view the object which is sought to be achieved by the Act and the evil it attempts to stamp out, a three Judges Bench of the Supreme Court in *L.P. Jadhav v. Shankar Rao Abasahed Pawar* opined that the expression “Dowry” wherever used in the Act must be liberally construed. The term “dowry” as defined in the Dowry Prohibition Act shows that any property or valuable security given or “agreed to be given” either directly “at or before or after the marriage” as a consideration for the marriage of the said parties would become “dowry” punishable under the Act.

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110 Section 304B, Indian Penal Code
111 Section 4, Dowry Prohibition Act
112 Section 8, Dowry Prohibition Act
114 Section 2 Dowry Prohibition Act
The definition of the expression “dowry” contained in Section 2 of the Act cannot be confined merely to the “demand” of money, property or valuable security “made at or after the performance of marriage”. The Legislature has in its wisdom while providing for the definition of “dowry” emphasised that any money, property or valuable security given, as a consideration for marriage, “before” “at” or “after” the marriage would be covered by the expression “dowry” and this definition as contained in Section 2 has to be read wherever the expression “dowry” occurs in the Act. Meaning of the expression “dowry” as commonly used and understood is different than the peculiar definition thereof under the Act. Marriage in this context would include a proposed marriage also more particularly where the non-fulfillment of the “demand of dowry” leads to the ugly consequence of the marriage not taking place at all.

The Dowry Prohibition Act is a piece of social legislation which aims to check the growing menace of the social evil of dowry and it makes punishable not only the actual receiving of dowry but also the demand of dowry made before or at the time or after the marriage where such demand is the consideration of marriage. Dowry as a quid pro quo for marriage is prohibited and not the giving of traditional presents to the bride or the bridegroom by friends and relatives. Thus, voluntary presents given at or before or after the marriage to the bride or the bridegroom, as the case may be which are given not as a consideration for marriage but out of love, affection or regard, would not fall within the mischief of the expression “dowry made punishable under the Act”. Further the term used by the Dowry Prohibition Act is ‘bride’ and ‘bridegroom’. So, an argument, regarding the use of the expressions “bride” and “bridegroom” occurring in Sec. 4 of the Act to urge that “demand” of property or valuable security would not be “dowry” if it is made during the negotiations for marriage until the boy and the girl acquire the status of “bridegroom” and “bride”, at or immediately after the marriage, was raised and repelled by the Supreme Court in L.V. Jadhav’s case115.

➤ Dowry and wedding presents

Although Explanation I to Section 2 of the Dowry Prohibition Act, 1961 has been omitted by the Dowry Prohibition (Amendment) Act, 1984, it does not

115 A.I.R. 1983 S.C. 1219
mean that wedding presents have been banned or their giving constitutes any offence under the Act. The wedding presents by parents, relatives, friends and close acquaintances at or about the time of marriage can still be given. The definition of dowry does not include them. The Joint Committee was fully aware of this, and therefore, it said that it is neither desirable to put a complete ban on these presents nor does it seem reasonable to prescribe a ceiling thereon for different sections of the society for the reasons that it would be neither possible to implement it nor it would be acceptable to the society. The Joint Committee then observed:

“Keeping in view the interest of the girl uppermost in mind and to ensure that the parents of the bride are also not put to any undue hardships, the Committee is of opinion that apart from the right of inheritance or succession or any other property, right to which the bride might be entitled to under any other law applicable to her or any other property rights under the personal law applicable to her, presents made voluntarily, i.e., without compulsion or coercion either directly or indirectly to her by her parents, relatives, friends, etc., at or before or after the marriage in form of cash, ornaments, clothes or other articles not exceeding in value twenty percent of the income, during the year preceding the date of marriage, of the parents of the bride or other persons bearing the marriage expenses on the bride's side or fifteen thousand rupees whichever is less, should not be deemed dowry for the purpose of the section. The Committee feels that presents made voluntarily to the bride by the bridegroom or parents or relatives of bridegroom should not be treated as dowry for the purpose of section.”

Parliament has accepted the recommendations of the Joint Committee in this regard, though it has not agreed to any upper limit of Rs. 15,000/- or 20% income for marriage expenses and presents. However, several States contain such an upper limit. Proviso to sub-section (2) lays down that where such presents are made by or on behalf of the bride or any other person related to bride, such presents should be of a customary nature and the value thereof should not be excessive having regard to the financial status of the person by whom or on whose behalf, such presents are given. The provision relating to wedding presents which has been deleted from Explanation I to section 2 has been re-enacted in sub-section (2) of section 3 with some modifications. The
sub-section speaks of only those presents which are given to the bride or
bridegroom at the time of marriage. It does not cover within its ambit presents
made to the bride or bridegroom before or subsequent to marriage. It specifically
relates to the presents made to the bride and bridegroom at the time of marriage.
Such presents should be made without any demand having been made for the
same. Obviously, if these are demanded presents, they would constitute dowry.

➢ Property or Valuable Security

The word “property” used in section (2) has been used in a very wide
sense. It includes both movable and immoveable property. It will have the same
meaning as was given to it by the Supreme Court in the case of Dwarkadas
Shrinivas v. Sholapur Spinning and Weaving Co.\footnote{116}, it must be understood both
in corporeal sense as having reference to those specific things that are
susceptible of private appropriation and enjoyment as well as in its judicial or
legal sense as a bundle of rights which the owner can exercise under the
municipal law with respect to the use and enjoyment of these things to the
exclusion of others.\footnote{117}

The term “valuable security” has been defined in section 30 of the Indian
Penal Code, 1860 (45 of 1860) as under:

30. Valuable Property.- The words “valuable property” denote a document
which is, or purports to be, a document whereby any legal right is created,
extended, transferred, restricted, extinguished or released or whereby any person
acknowledges that he lies under legal liability, or has not a certain legal right.

Thus, for instance, where a person writes his name on the back of a bill
of exchange, the effect of this endorsement is to transfer the right to the bill to
any person who may become the lawful holder of it. The endorsement is a
valuable security. The word “purports to be” signify that if for want of
registration or any other reason, a document is not admissible in evidence, if it
purports to create, extend, transfer, etc., any legal right, the documents will be
valuable security.\footnote{118} A copy of a document is not a valuable property.\footnote{119}

\footnote{116} 195 SCR 674; AIR 1954 SC119
\footnote{117} Commissioner of Hindu Religious Endowments vs. Lakshminda Thirthaswamiar, 1954 SCC 1005
\footnote{118} Kalimuddin vs. State, 1977 Cr.Lj (NOC) 261
\footnote{119} Govinda Prasad Pauri vs. State, AIR 1952 Cal 174
the money advanced by a person to a prospective son in law for purchasing land in the joint name or himself and the daughter amounts to dowry? This question came before the High Court of Kerala in the case of Kunju Moideen v. Sayed Md.\textsuperscript{120} which was a suit for the recovery of the amounts against the prospective son in law who not only broke the engagement but also refused to refund the money. The court following its earlier decision in the case of K. Chillappan v. Kunju\textsuperscript{121}, held that the money could be recovered. Since this was a case before the amendment of 1986, the court said this amount was not dowry as it was not paid at or before or after the marriage in consideration of marriage. However, in the amended Act this would be dowry under the new definition, as it was paid in connection with the marriage which did not take place.

➢ **Dowry given after marriage**

Even if demand of any valuable property is made after solemnization of marriage still it will be considered a demand made in connection of marriage. In Pawan Kumar v. State of Haryana\textsuperscript{122} the Supreme Court has held that persistent demand for T.V. and scooter after marriage would be said to be in connection with marriage and this would constitute a case falling within the definition of dowry. But if dowry is de-linked from marriage and in its ambit are included anything and everything given to a married woman at any time, on any occasion, then the definition becomes very wide and unmanageable. The Joint Committee observed that in the continued relationship between the two families of the bride and bridegroom, gift -giving characterises specific occasions of visits, festivals and ceremonies like those associated with marriage, child birth, initiation etc., particularly in the first few years of marriage. It is a matter of general observation that while giving such gift, bride's family is under compulsion and heavy pressure. These subsequent expenses are often regarded as making up of the deficiencies in the initial giving of dowry and cause severe hardship to the girl's parents. In the first few years of marriage, in most cases, the girl's treatment in her husband's home is linked with these gifts. In actual practice one comes across so many cases of cruelty even long after the marriage, arising chiefly out of almost insatiable demands made on the parents of the girl. Thus,

\textsuperscript{120} AIR 1986 Ker 48  
\textsuperscript{121} 1969 Ker LR 659  
\textsuperscript{122} 1998 Cr LJ 1144
according to the Committee, dowry is not one isolated payment initially made at
the time of marriage but a series of gifts given over a period of time before and
after the marriage. There is no dispute about the correctness of the statement of
Committee, but the real difficulty arises is to how to make a distinction between
genuine gifts and extorted gifts between what is voluntarily given and what is
obtained by extortion or through some pressure, i.e., what is not given voluntarily. There is no doubt that among the Hindus there are many occasions
when after marriage also gifts are given, and this gift giving to the girl is a
lifelong relationship. It is also true that in some cases, even after the marriage
demands for dowry are continuously made on the father of the girl, and when
they are not met, cruelty is purported on the girl to force her parents to meet the
demand, and it is this which results in worst, wife battering and dowry-deaths
too. But the difficulty remains in making the distinction between what is
voluntary and what is involuntary. No specific guidelines can be formulated to
make this distinction. Each case has to be decided on the basis of its facts.

➤ Giving and taking Dowry: Demanding Dowry as an offence

Sections 3 and 4 of the Dowry Prohibition Act, 1961 deal with these
offences. Section 3 runs as under:

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

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

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

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

Provided that such presents are entered in a list maintained in accordance with
the rules made under this Act;
(b) presents which are given at the time of marriage to the bridegroom (without any demand having been made in that behalf):

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

Provided further that where such presents are made by or on behalf of the bride or any person related to the bride, such presents are of a customary nature and the value thereof is not excessive having regard to the financial status of a person by whom, or on whose behalf, such presents are given.

Section 4 runs as under:

4. Penalty for demanding dowry-- If any person demands, directly or indirectly, from the parents or other relatives or guardian of a bride or bridegroom, as the case may be, any dowry, he shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to two years and with fine which may extend to ten thousand rupees:

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term less than six months”.

So we see that Section 4 of the Act aims at discouraging the very “demand” of “dowry” as a “consideration for the marriage” between the parties thereto and lays down that if any person after the commencement of the Act, “demand”, directly or indirectly, from the parents or guardians of a 'bride' or 'bridegroom', as the case may be, any “dowry”, he shall be punished with imprisonment which may extend to six months or with fine which may extend to Rs. 5,000/- or with both. Thus, it would be seen that Section 4 makes punishable the very demand of property or valuable security as a consideration for marriage, which demand, if satisfied, would constitute the graver offence under Section 3 of the Act punishable with imprisonment for a term which shall not be less than five years and with fine which shall not be less than fifteen thousand rupees or the amount of the value of such dowry whichever is more.

Besides these two sections the Act has also provided certain other privileges to women in order to protect her from the violence induced by dowry. In order to eliminate the demand of dowry itself it has been provided in Section 5 of the
Dowry Prohibition Act that any contract of giving or taking dowry is void. Further the demand of dowry is made as the articles given in dowry are considered to be belonging to the bridegroom and his family members. In order to eradicate this practice Section 6 of the Dowry Prohibition Act specifically states that dowry belongs to the wife and she either holds it herself or if another person holds it, then such person shall transfer it within one year of the marriage.

So we see that an effort has been made to curb the evil of dowry by enacting Dowry Prohibition Act, 1961. This Act is enacted in such an exhaustive manner that it punishes not only giving and taking of dowry but also the mere demand of dowry. But despite this the menace of dowry is increasing day by day. Reason behind this is lack in effective implementation of law. Dowry Prohibition Act 1961 has been one of the most neglected Acts till date. Most of the women are not even aware about its existence.

**Critical analysis of the Dowry Prohibition Act**

The definition of dowry as contained in the Dowry Prohibition Act, prohibits the giving and taking of dowry and tries to curb the practice of demanding dowry in any form either before or after marriage. However, the definition permits giving of customary presents to the bride or bridegroom which have to be entered in a list to be maintained in accordance with the rule framed under the Act.

In interpreting this the Act singled out only that portion as dowry, which was given or agreed to be given as consideration for marriage, thereby excluding all gifts, cash and expenditure incurred before, on or after marriage. While applying this provision the Delhi High Court has observed as follow:

“…property that may pass hands subsequent to marriage, even months or years after it, merely to save the marriage, humiliation or taunts, on the ground that she did not bring enough at the time of marriage is not dowry.”

In the light of the above discussion it can be said that dowry in fact consists of those presents which are extorted or extracted from the bride’s

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parents by making a demand and saying that marriage would take place only if those demands are fulfilled, thereby taking advantage of the weaker position of the bride’s parents and relatives who are obliged to give the girl in marriage as part of their moral and spiritual obligation. It is this coercive element that distinguishes dowry from presents. Unfortunately, this essential coercive element inherent in the practice of giving and taking dowry is not indicated in the definition of dowry as embodied in section of the Dowry Prohibition Act which makes it difficult to distinguish between dowry and presents i.e those gifts given to the bride which would constitute her stridhan. In order to distinguish ‘dowry’ from presents, the court must introduce a coercive element in dowry. Otherwise all presents might be treated as dowry and vice versa.

During the early eighties most cities in India witnessed public protests against dowry deaths which received wide coverage by the media. The evil of dowry was spreading in most Indian cities and a number of educated middle class women were becoming a prey to it. The result was that many young women were burnt to death and the cause of death diagnosed was dowry demand. Nationally and internationally dowry death or bride-burning (as it was called) came to be recognised as a unique form of violence experienced by Indian Women, particularly Hindu Women. As a consequence, it was presumed that a more strong law against dowry would, in effect, curb domestic violence and put a stop to murders of wife. In a nut shell over simplified analysis of domestic violence was put forward by the activists and responded to by the law makers.

The media coverage also reinforced the presumption that while in other cultures men murdered their wives for more complex reasons such as stress in their life-style or breakdown of the support of a joint family system, in India the women were murdered for dowry. The Dowry Prohibition Act, enacted in 1961, suffered from several flaws. With the objective of plugging some of the glaring loopholes a private member's Bill was introduced in Parliament by Pramila Dandavate, in June, 1980. After examining the bill the Joint Committee made the following observations:

1. The definition of the term 'dowry' was two narrow and lacked clarity,

2. The Act was not being enforced properly,
3. The stipulation that complaints could be filed only by aggrieved party within one year from the date of offence, considerably reduced the applicability of the Act,

4. Punishment of imprisonment for six months and/or fine up Rs.5000 was not stringent enough to act as deterrent,

5. The words “in consideration for the marriage” contained in definition of dowry ought to be deleted,

6. The exclusion of presents from the definition of dowry nullified the objective of the Act,

7. The gifts given to the bride ought to be listed and registered in her name

8. In case the girl dies during this period, the gifts should be returned to her parents and in case she is divorced the gifts should be returned to her,

9. The presents given to the girl should not be transferred or disposed off for a minimum period of five years from the date of marriage without the prior permission of the family or court on an application made by the wife so that the bride's control over her gifts is ensured,

10. The necessity of appointing Dowry Prohibition Officers for the enforcement of the Act.

After considering the above mentioned suggestions and their shortcomings the Joint Committee had given its report to bring in the necessary changes in the Dowry Prohibition Act in order to make it more effective. Unfortunately, the Bill on Dowry that was introduced in 1984 failed to adopt some of the positive recommendations of the committee. One of the major amendments of the Act was that the words, “in connection with marriage” were substituted for the words “as consideration for the marriage” as omitting the latter words would make the definition too wide. The suggestion of imposing a ceiling on gifts and marriage expenses was also not included in the Act. The 1984 Amendment to the Dowry Act comprised the following:
1. Increase in punishment up to five years and a fine upto Rs.10,000 or the value of dowry, whichever is more. The section was not applicable to presents given to the bride or to the bridegroom,

2. The limitation period of one year was improved,

3. The complaint could be filed by the girl's parents, relative or a social work institute on behalf of the girl,

4. The necessity of obtaining prior sanction of the government for prosecuting a husband who demands dowry was dropped,

5. Dowry was made a cognizable offence.

Surprisingly, even before the impact of the 1984 amendments could be felt, the Act was amended again in 1986. The main purpose of the amendment of 1986 was to make the Act more stringent. Thus, the 1986 amendment made the following changes:-

1. The fine was increased to Rs.15,000/-.

2. The burden of proving innocence was shifted to the accused.

3. Dowry demand was made a non-bailable offence.

4. A ban was imposed on advertisement.

5. In case the woman died an unnatural death, her property would devolve on her children and if she died without leaving behind a child, then her property would revert to her parents.

Though the definition of dowry was liberalized by the 1986 Amendment Act, the statute retained the exemptions granted to the presents given without any demand provided they were not dowry in nature and not excessive in nature with regard to the financial capacity of the giver. However, the amended definition did not essentially widened the scope of the term ‘dowry’ thereby introducing that coercive element for the presents also but in turn widened the scope of exercise of judicial discretion. Unfortunately, despite widening the definition, the interpretation given to the term ‘dowry’ as defined under Dowry Prohibition Act by the court has been narrow and restrictive. This is evident
from the case of *Shobha Rani v. Madhukar Reddi*.

In this case the petitioner sought divorce on the ground of cruelty caused due to dowry demand. One of the letters written to her by her husband was produced as evidence of dowry demand. The relevant part of the letter read as follow:

“now regarding the issue of dowry, I still feel that there is nothing wrong in my parents asking for a few thousands rupees. It is quiet a common thing for which my parents are being blamed of harassment.”

The trial court while agreeing with the explanation given by the husband for the money demanded by his parents held as under:

“Though one would not justify demands for money, it has to be viewed in this perspective. The respondent is a young upcoming doctor. There is nothing strange in asking his wife to give him money when he is in need of it.”

The said view was upheld by the High Court of Andhra Pradesh thereby observing that there is nothing wrong or unusual in asking a rich wife to spare some money. However, the Apex Court differed from the courts below and decided in favour of wife.

In two separate decisions, the Madhya Pradesh High Court laid down that the cash amount demanded did not constitute dowry demand. However, in both the cases the trial court had convicted the accused for abetting suicide by harassment for dowry. But in appeal the High Court set aside both the convictions. In one case the bride was harassed due to non-payment of Rs. 10,000/- despite the fact that an earlier demand of Rs. 20,000 was already fulfilled.

The court ignored the dowry element on the ground that the earlier payment was made under mutual agreement and free consent of the parties concerned without any element of force and duress. The court held that there was not enough evidence to prove that the wife had been subjected to harassment because of dowry demand.

Again, in another case the bride’s father had paid Rs. 50,000 to the groom’s family on one occasion. But as the second demand could not be met out the girl was consistently subjected to cruelty consequent to which she committed

\[124\] *AIR 1988 SC 121*
\[125\] *Padmabal v. State of M.P.*, 1987 Cr.L.J 1573
\[126\] *Harishchandra & Anr. v. State of Madhya Pradesh*, 1987 Cr.L.J. 1724
suicide. In appeal, the High Court was of the view that the first payment was gratuitous and not a forced one. Hence, with respect to the demand for the second amount the court found the allegation of harassment to be concocted one as the groom’s family was of sound financial status.

So from the above discussion one can conclude that according to the provisions of Dowry Prohibition Act, presents given without demand are not dowry, so long as they are customary and not excessive in value in relation to the capacity of the giver. But unfortunately instead of applying the dowry law strictly the judiciary has often used terms like “no force or duress”, “mutual agreement”, “free consent”, “gratuitous offer” etc to suggest that gifts made without any demand do not amount to dowry. Unless the difference between the demand and gifts given out of free consent is made legally clear the tendency of the court to view ‘dowry demand’ as a gratuitous offer would continue.127

Even in cases of unilateral demand, where demand is apparent, the courts have been reluctant to acknowledge it as dowry demand in the absence of any agreement to pay the same. For example in the year 1983 in a case before the Bombay High Court the groom’s father has demanded Rs. 50,000/- during marriage negotiations which the bride’s father had rejected. This led to disruption of marriage which was later on made up by the intervention of the families known to both sides. The above said amount was demanded to meet the air fare of the girl and her father in law to join the girl’s husband in U.S. since the amount was not paid the girl was not sent to U.S. to join her husband for one year after marriage. The girl’s parents instituted a criminal complaint for dowry demand. The Bombay High Court quashed the complaint as not constituting dowry demand. In appeal, the Supreme Court set aside the decision of the High Court and held that an unilateral demand for dowry did constitute an offence under Section 4 of the Dowry Prohibition Act.128

In Shankar Prasad v. State & Anr.129 the Calcutta High Court quashed another petition of dowry demand against the husband’s family for continuous demand of costly electronic goods, cash and gold from the wife’s family. According to the court unless the articles demanded were given or agreed to be

127 Gender and Judges: A Judicial Point of View by Sakshi (1998) p.72
129 1991 Cr.L.J. 639
given the same did not constitute dowry demand. Thus it can be seen that customary giving which is culturally approved has been kept outside the ambit of criminal law. Complaints about dowry demand are usually made after the demand has been met and trouble has begun in the matrimonial home. Women face all kinds of harassment for not fulfilling further demands which often results in their being killed. Hence, in this backdrop the 1986 Amendments made the provisions of the Dowry Prohibition Act more stringent by increasing the punishment to a mandatory minimum of five years and also in the same year section 304B was added in the Indian Penal Code, thus penalising dowry deaths. Since then, several prosecutions have taken place under section 304B of Indian Penal Code but hardly any under Dowry Prohibition Act. This shows the attitude of the parents in resorting to the law only when it is too late for their daughters instead of moving the legal machinery at the threshold itself when the demand is made for the first time.

An overview of the Dowry Prohibition Act, 1961 was given by the Apex Court in the case of L. V. Jadhav v. Shankarrao Abasaheb Pawar case where it was observed as under:

“The Dowry Prohibition Act, 1961 is intended to prohibit the giving or taking of dowry, and Parliament has made every offence under the Act non-compoundable by s. 8 of the Act. By s. 5 it has been enacted that any agreement for the giving or taking of dowry shall be void. Section 3 makes abetment of the giving or taking of dowry an offence. No doubt, according to s. 2 of the Act "dowry" is any property or valuable security given or agreed to be given either directly or indirectly at or before or after the marriage as consideration for the marriage but does not include dowar or mahr in the case of person to whom the Muslim Personal Law (Shariat) applies. It would appear from s. 2 that consent to comply with the demand for any property as consideration for the marriage would alone make the property or valuable security given or agreed to be given directly or indirectly, "dowry" within the meaning of the Act. But having regard to the dominant object of the Act which is to stamp out the practice of demanding dowry in any shape or form either before or after the marriage, we are of the opinion that the entire definition of word "dowry" should not be

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130 1983 AIR SC 1219
imported into s. 4 which lays down that "if any person after the commencement
of this Act, demands directly or indirectly from the parents or guardian of a
bride or bridegroom, as the case may be, any dowry, he shall be punishable with
imprisonment which may extend to six months or with fine which may extend to
five thousand rupees or with both. According to Webster's New World
Dictionary, 1962 edn. bride means a woman who has just been married or it
about to be married, and bridegroom means a man who has just been married or
is about to be married. If we give this strict meaning of a bride or a bridegroom
to the word bride or bridegroom used in s. 4 of the Act property or valuable
security demanded and consented to be given prior to the time when the woman
had become a bride or the man had become a bridegroom, may not be "dowry"
within the meaning of the Act, We are of the opinion that having regard to the
object of the Act a liberal construction has to be given to the word "dowry" used
in s. 4 of the Act to mean that any property or valuable security which if
consented to be given on the demand being made would become dowry within
the meaning of s. 2 of the Act. We are also of the opinion that the object of s. 4
of the Act is to discourage the very demand for property or valuable security as
consideration for a marriage between the parties thereto. Section 4 prohibits the
demand for 'giving' property or valuable security which demand, if satisfied,
would constitute an offence under s. 3 read with s. 2 of the Act. There is no
warrant for taking the view that the initial demand for giving of property or
valuable security would not constitute an offence and that an offence would take
place only when the demand was made again after the party on whom the
demand was made agreed to comply with it."

In Bhagwant Singh v. Commissioner of Police131 Hon’ble Supreme
Court has recognized the fact that the Dowry Prohibition Act, 1961 has not
succeeded to the extent for which it was enacted and gave some suggestion for
its effective implementation. It was held as under:

“The greed for dowry, and indeed the dowry system as an institution,
calls for the severest condemnation. It is evident that legislative measures such
as the Dowry Prohibition Act have not met with the success for which they were
designed. Where the death in such cases is due to a crime, the perpetrators of the

131 AIR 1983 SC 826
crime not infrequently escape from the nemesis of the law because of inadequate police investigation. It would be of considerable assistance if an appropriately high priority was given to the expeditious investigation of such cases, if a special magisterial machinery was created for the purpose of the prompt investigation of such incidents, and efficient investigative techniques and procedures were adopted taking into account the peculiar features of such cases. A female police officer of sufficient rank and status in the police force should be associated with the investigation from its very inception.”

II. Dowry Death

Another atrocity inflicted upon a woman for bringing insufficient dowry is dowry death. Dowry deaths are the deaths of young women in India who are murdered or driven to suicide by continuous harassment and torture by husbands and in-laws in an effort to extort an increased dowry. As per the statistics there was a rise in the incidence of crime against women during 1999-2001, especially dowry deaths, sexual harassment, kidnapping and abductions and offences registered under the indecent representation of women (prohibition) Act. While dowry deaths have been on the rise (3.92 per cent), cases booked under Dowry Prohibition Act have come down sharply by 38.3 per cent, from 3,064 in 1999 to 1891 in 2000.  

The daily newspapers are writ large with reports about the deaths of young brides in the hands of their husbands or in-laws. Though the dowry related problems have been on the rise throughout the post independence period, in the last two decades dowry demand has been associated with its violent manifestations such as bride burning and dowry death. Bride burning and dowry death are extreme form of dowry violence, which can be both, homicidal or suicidal in nature.

For years the phenomenon of bride burning for dowry was considered as an aberration of certain North Indian communities. Today this shameful crime has permeated all communities irrespective of caste, creed and class. Earlier, cases of bride burning and dowry deaths were camouflaged by the police as accidents or suicides. By 1977-78, it could be realized that most of the deaths of married women which were registered as accidental deaths or cases of suicides

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were, in fact, murder or induced suicides. Further probe into such cases revealed that a large percentage of such cases involved newly married girls and post marriage dowry demands in cash or kind had been an important factor in their harassment. Everyone knew that the root cause of such deaths was demand for more and more dowry. Therefore, such deaths began to be called dowry deaths. Today dowry is not the innocent practice as it started out but has turned into a social menace that cannot be reverted back to its original form; hence it must be eradicated from our society permanently. The payment of a dowry gift, often financial, has a long history in many parts of the world. But it took more than a decade for the legislature to make ‘dowry deaths’ a crime under the Indian Penal Code and to prescribe sentence for culprits. In India, the payment of dowry was prohibited in 1961 under Indian civil law and subsequently Sections 304B and 498A of the Indian Penal Code were enacted to make it easier for the wife to seek redress from potential harassment by the husband's family.

All over the world the practice of bride burning and murder of young bride owing to demand of dowry was condemned. Various efforts were made to eradicate this practice globally also. Reports of these incidents have attracted a great deal of public interest and have sparked a global activist movement seeking to end the practice. Of this activist community, the United Nations (UN) has played a pivotal role in ending not only dowry deaths, but violence against women as a whole. The UN has been an advocate for women's rights since its inception in 1945, explicitly stating so in its Charter’s Preamble, the Universal Declaration of Human Rights (adopted in 1948), the International Covenant on Civil and Political Rights (adopted in 1966), the International Covenant on Economic, Social and Cultural Rights (also adopted in 1966), these three documents are known collectively as the International Bill of Rights and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) The United Nations Children's Fund (UNICEF), though predominately focused on improving the quality of education available

to children globally, has also taken a proactive stance against dowry death. On March 9 (International Women's Day), 2009, at a press conference in Washington D.C., UNICEF's Executive Director, Ann M. Veneman, publicly condemned dowry deaths and the legislative systems which allow the culprits to go unpunished. In 2009 UNICEF launched its first Strategic Priority Action Plan for Gender Equality, which was followed by a second Action Plan in 2010. The aim of these plans has been to make gender equality a higher priority within all international UNICEF programs and functions.

Amnesty International, in an effort to educate the public, has cited dowry deaths as a major contributor to global violence against women. Also, in their annual human rights evaluations, Amnesty International criticizes India for the occurrences of dowry deaths as well as the impunity provided to its perpetrators.

Human Rights Watch has also criticized the Indian government for its inability to make any progress towards eliminating dowry deaths and its lackluster performance for bringing its perpetrators to justice in 2011. In 2004, the Global Fund for Women launched its "Now or Never" funding project. This campaign hopes to raise funds domestically and consequently finance the efforts of feminist organizations across the globe - including Indian women's rights activists. As of 2007 the Now or Never fund has raised and distributed about $7 million.

Despite a considerable amount of activism both globally and domestically, and the passage of international and domestic laws, dowry deaths remain persistent and their perpetrators consistently go unpunished. Although India officially ratified the terms and conditions of CEDAW in 2000, several organizations including the United Nations and the aforementioned Amnesty International and Human Rights Watch criticize the nation for not adhering to its terms. India’s reluctance to obey CEDAW’s mandates began before the nation

139 "Statement of UNICEF Executive Director Ann M. Veneman on International Women's Day". UNICEF
140 "UNICEF Strategic Priority Action Plan for Gender Equality: 2010-2012". UNICEF.
141 "Violence Against Women Information". Amnesty International
142 "India". Amnesty International
144 "Her Majesty Queen Noor and Nancy Pelosi Join GFW to Announce Endowment for the World's Women". Global Fund For Women
even ratified it. When originally presented with CEDAW, the Republic of India’s initial report contained two Declaratory Statements and one Reservation. The first Declaratory Statement was written as follows:

 "With regard to Article 16 (a call to the end of the discrimination against women in all matters of family and marriage relations) of the Convention on the Elimination of All Forms of Discrimination Against Women, the government of the Republic of India declares that it shall abide by and ensure these provisions in conformity with its policy of non-interference in the personal affairs of any community without its initiative and consent."

The second Declaratory Statement was written as follows:

 "With regard to the second part of Article 16 (a mandate requiring the registration of all marriages with the government) of the Convention on the Elimination of All Forms of Discrimination Against Women, the government of the Republic of India declares that it agrees to the principle of compulsory registration of marriages. However, failure to get the marriage registered, will not invalidate the marriage particularly in India with its variety of customs, religions and level of literacy."

India's only Reservation was written as follows:

 "With regard to Article 29 (the compulsory adjudication of any and all disputes over interpretation to an International court of law) of the Convention on the Elimination of All Forms of Discrimination Against Women, the government of the Republic of India declares that it does not consider itself bound by paragraph 1 of this Article."145

In the United Nations Committee on the Elimination of All Forms of Discrimination Against Women’s response to India’s Initial Report, several problems were noted. In addition to concerns regarding the Republic of India’s Declarations and Reservation, the Committee found that the initial support lacked sufficient statistical data; India’s education system does not offer the same educational opportunities to girls as it does to boys; and that customs such as dowry and sati and traditional structures such as the caste system and religion

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leave women susceptible to acts of violence and harassment. In addition to these aforementioned nation-specific aspects which make adherence to international laws a complicated process, there also exists a great deal of fundamental obstacles to overcome when a nation adapts international laws for use within its borders.

Section 304B Indian Penal Code

As the legislature was aware about the fact that dowry deaths occur in the four walls of the house and it is difficult to get the direct evidence for the same a need was felt to enact a special provision thus punishing homicide or suicide of a woman by her husband or in-laws induced by dowry demand. Accordingly Section 304B was inserted in the Indian Penal Code by 1986 amendment. The wording of the law states as follow:

“Section 304B: Dowry death

(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband 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.

Explanation:-For the purpose of this sub-section, "dowry" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.”

Thus in order to prove the guilt of a person under Section 304B of the Indian Penal Code the following ingredients are required to be proved:

1. The death of a woman should be caused by burns or bodily injury or otherwise than under normal circumstances.

2. Such a death should have occurred within seven years of her marriage.

146 "Committee's Response to India's Initial Report". United Nations.
3. She must have been subjected to cruelty or harassment by her husband or any relative of her husband.

4. Such cruelty or harassment should be for or in connection with the demand of dowry.

5. Such cruelty or harassment is shown to have been meted out to the woman soon before her death.

One of the important ingredients to attract the provision of dowry death is that the death of the bride must relate to the cruelty or harassment on account of demand for dowry. It is true that Section 304-B does not define cruelty. However, under explanation of Section 113-B of the Evidence Act, by which presumption of dowry can be drawn, it has been provided that ‘cruelty’ shall have the same meaning as in section 498-A of the Indian Penal Code. As per requirement of clause (b) appended to section 498-A I.P.C. there should be a nexus between harassment and any unlawful demand for dowry. If these conditions are fulfilled then a presumption can be drawn under the Indian Evidence Act and the burden of proof shifts on the accused to prove that he is innocent. A conjoint reading of Section 113-B of the Act and 304-B I.P.C. shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. Prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of the ‘death occurring otherwise than in normal circumstances’. ‘Soon before’ is a relative term and it would depend upon circumstances of each case and no straitjacket formula can be laid down as to what would constitute a period soon before the occurrence. There must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the concerned death.

In the case of State of Punjab v. Iqbal Singh\(^{147}\) the Supreme Court clarified the position as to why the necessity to introduce Section 113-B in the Indian Evidence Act was felt. The Apex Court has held that the legislative intent is clear to curb the menace of dowry deaths, etc. with a firm hand. It must be remembered that since crimes are generally committed in privacy of residential houses and in secrecy, independent and direct evidence is not easy to get. That is why the legislature has by introducing Section 113-B in the Evidence Act tried

\(^{147}\) AIR 1991 SC 1532
to strengthen the prosecution hands by permitting a presumption to be raised if certain facts are established and the unfortunate event has taken place within seven years of marriage. This period of seven years is considered to be the turbulent one after which the legislature assumes that the couple would have settled down in life. Further in order to give a deterrent effect to the provision of dowry death the offence under section 304B, Indian Penal Code has been made a cognizable and non-bailable offence. Hence, in such cases, an accused cannot claim bail as a matter of right but has to apply for the same under section 437 in case he has been arrested or under section 438 of code of Criminal Procedure in case there is apprehension of arrest. Granting bail is the discretion of the court which should be exercised judiciously keeping in view the social status of the parties involved, age and medical condition of the accused, facts of the case, possibility of misuse of bail etc. Court can impose conditions also while granting bail if it deem it necessary to protect the interest of the victim her family members and witnesses.

➢ Judicial Assessment of laws to curb cruelty induced by Dowry

Apex Court has discussed the object behind enacting Section 304B of Indian Penal Code and role of legislation in combating social evil in respect of matrimonial offences in the case of Ram Badan Sharma v. State of Bihar\(^\text{148}\) wherein after referring to the case of Soni Devrajbhai Babubhai v. State of Gujarat & Others\(^\text{149}\) it was observed as under:

“Section 304-B and the cognate provisions are meant for eradication of the social evil of dowry which has been the bane of Indian society and continues unabated. For eradication of social evil, effective steps can be taken by the society itself and social sanctions of community can be more deterrent, yet legal sanctions in the form of its prohibition and punishment are some steps in that direction. The Dowry Prohibition Act, 1961 was enacted for this purpose. The report of the Joint Committee of Parliament quoted the observation of our first Prime Minister Pt. Jawaharlal Nehru to indicate the role of Legislation in dealing with the social evil as under:

‘Legislation cannot by itself normally solve deep-rooted social problems. One

\(^{148}\) AIR 2006 SC 2855
\(^{149}\) (1991) 4 SCC 298
has to approach them in other ways too, but legislation is necessary and essential, so that it may give that push and have that educative factor as well as the legal sanctions behind it which help public opinion to be given a certain shape.’

Prime Minister Nehru proved prophetic because despite various Legislations the menace of dowry deaths is unfortunately increasing at an alarming speed. Ordinarily, Legislations are based on public opinion, but at times even Legislations also create public opinion. Regrettably, despite many Legislations, we have not been able to control dowry deaths. Perhaps greater social awareness and more severe legislative measures are urgently required to curb the menace of dowry related deaths. To our information, in no other civilized country similar problem of this magnitude exists. This is indeed a slur on our great heritage, ancient cultural and civilization.”

The Supreme Court in the case of Hem Chand v. State of Haryana150, dealt with the basic ingredient of Section 304-B IPC and Section 113-B of the Evidence Act. This Court, in this case, observed as follows:

"A reading of Section 304-B IPC would show that when a question arises whether a person has committed the offence of dowry death of a woman what all that is necessary is it should be shown that soon before her unnatural death, which took place within seven years of the marriage, the deceased had been subjected, by such person, to cruelty or harassment for or in connection with demand for dowry. If that is shown then the court shall presume that such a person has caused the dowry death. It can therefore be seen that irrespective of the fact whether such person is directly responsible for the death of the deceased or not by virtue of the presumption, he is deemed to have committed the dowry death if there were such cruelty or harassment and that if the unnatural death has occurred within seven years from the date of marriage. Likewise there is a presumption under Section 113-B of the Evidence Act as to the dowry death. It lays down that the court shall presume that the person who has subjected the deceased wife to cruelty before her death caused the dowry death if it is shown that before her death, such woman had been subjected, by the accused, to cruelty or harassment in connection with any demand for dowry. Practically this is the

150 (1994) 6 SCC 727
presumption that has been incorporated in Section 304-B, Indian Penal Code also. It can therefore be seen that irrespective of the fact whether the accused has any direct connection with the death or not, he shall be presumed to have committed the dowry death provided the other requirements mentioned above are satisfied.”

In Satvir Singh & Others v. State of Punjab & Another, the Supreme Court examined the meaning of the words "soon before her death". The Court observed that the legislative object in providing such a radius of time by employing the words "soon before her death" is to emphasize the idea that her death, should, in all probabilities, have been the aftermath of such cruelty or harassment. In other words, there should be a close and perceptible nexus between death and the dowry-related harassment or cruelty inflicted on the deceased.

Supreme Court in Hira Lal & Others v. State (Govt. of NCT), Delhi reiterated that Section 304-B IPC and Section 113-B of the Evidence Act were inserted with a view to combat the increasing menace of dowry deaths. Perhaps the Legislations are outcome of public opinion and a comprehensive Report on "Dowry Deaths and Law Reform: Amending the Hindu Marriage Act, 1955, the Indian Penal Code, 1860 and the Indian Evidence Act, 1872". In the introductory chapter of the report, it is mentioned that the last few months have witnessed an alarming increase in the number of cases in which married women die in circumstances which, to say the least, are highly suspicious. In the popular mind, these deaths have come to be associated with dowry, which is why, in popular parlance, they have come to be called "dowry-deaths". Even after more than two decades of submitting the said report and enactments of new Legislations, unfortunately cases of dowry deaths are increasing. In the report, deep concern has been shown that once a serious crime is committed, detection is a difficult matter and still more difficult is successful prosecution of the offender. Crimes that lead to dowry deaths are almost invariably committed within the safe precincts of a residential house. The criminal is a member of the family; other members of the family are either guilty associates in crime, or

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151 (2001) 8 SCC 633
152 (2003) 8 SCC 80
silent but conniving witnesses to it. In any case, the shackles of the family are so strong that truth may not come out of the chains. There would be no other eye witnesses, except for members of the family. Perhaps to meet a situation of this kind, the Legislature enacted Section 304-B IPC and Section 113-B of the Evidence Act.

In the case of Harjit Singh v. State of Punjab154 Hon’ble Supreme Court has distinguished between the offence of causing homicide as given under Sections 302 and 306 of the Indian Penal Code and under Section 304B of the Indian Penal Code. In this case the scope of section 304B of Indian Penal Code was also discussed. It was held as follows:

“A legal fiction has been created in the said provision to the effect that in the event it is established that soon before the death, the deceased was subjected to cruelty or harassment by her husband or any of her relative; for or in connection with any demand of dowry, such death shall be called “dowry death”, and such husband or relative shall be deemed to have caused her death. The Parliament has also inserted Section 113B of the Indian Evidence Act by Act No.43 of 1986 with effect from 1-5-1986.

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From a conjoint reading of Section 304-B of the Indian Penal Code and Section 113-B of the Indian Evidence Act, it will be apparent that a presumption arising thereunder will operate if the prosecution is able to establish the circumstances as set out in Section 304-B of the Indian Penal Code.”

In the case of unnatural death of a married woman, the offender can be prosecuted under Section 302 and Section 306 of the Indian Penal Code and if the offender is the husband or any of his family member then under Section 304B of the Indian Penal Code depending on the reason of death. The distinction as regards commission of an offence under one or the other provisions as mentioned hereinbefore came up for consideration before a Division Bench of the Apex Court in Satvir Singh & Ors. v. State of Punjab and another155, wherein it was held as under:

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154 AIR 2006 SC 680
155 (2001) 8 SCC 633
"Thus, there are three occasions related to dowry. One is before the marriage, second is at the time of marriage and the third is "at any time" after the marriage. The third occasion may appear to be an unending period. But the crucial words are "in connection with the marriage of the said parties". This means that giving or agreeing to give any property or valuable security on any of the above three stages should have been in connection with the marriage of the parties. There can be many other instances for payment of money or giving property as between the spouses. For example, some customary payments in connection with birth of a child or other ceremonies as are prevalent in different societies. Such payments are not enveloped within the ambit of "dowry". Hence the dowry mentioned in Section 304-B should be any property or valuable security given or agreed to be given in connection with the marriage.

It is not enough that harassment or cruelty was caused to the woman with a demand for dowry at some time, if Section 304-B is to be invoked. But it should have happened "soon before her death." The said phrase, no doubt, is an elastic expression and can refer to a period either immediately before her death or within a few days or even a few weeks before it. But the proximity to her death is the pivot indicated by that expression. The legislative object in providing such a radius of time by employing the words "soon before her death" is to emphasize the idea that her death should, in all probabilities, have been the aftermath of such cruelty or harassment. In other words, there should be a perceptible nexus between her death and the dowry-related harassment or cruelty inflicted on her. If the interval elapsed between the infliction of such harassment or cruelty and her death is vide the court would be in a position to gauge that in all probabilities the harassment or cruelty would not have been the immediate cause of her death. It is hence for the court to decide, on the facts and circumstances of each case, whether the said interval in that particular case was sufficient to snuff its cord from the concept "soon before her death".

In the case of Shamnsaheb M. Multtani v. State of Karnataka156 the Apex Court has discussed at length the difference between Section 304B, Section 302 and Section 306 of the Indian Penal Code and also whether a person charged for Section 302 or 306 can be convicted under Section 304B of the

156 (2001) 2 SCC 577
Indian Penal Code or not. It was observed that the composition of the offence under Section 304-B IPC is vastly different from the formation of the offence of murder under Section 302 IPC and hence the former cannot be regarded as minor offence vis-a-vis the latter. However, the position would be different when the charge also contains the offence under Section 498-A IPC (Husband or relative of husband of a woman subjecting her to cruelty). As the word cruelty is explained as including, inter alia, harassment of the woman where such harassment is 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.

So when a person is charged with an offence under Sections 302 and 498-A IPC on the allegation that he caused the death of a bride after subjecting her to harassment with a demand for dowry, within a period of 7 years of marriage, a situation may arise, as in this case, that the offence of murder is not established as against the accused. Nonetheless all other ingredients necessary for the offence under Section 304-B IPC would stand established. Can the accused be convicted in such a case for the offence under Section 304-B IPC without the said offence forming part of the charge?

A two Judge Bench of Apex Court (K. Jayachandra Reddy and G.N. Ray, JJ) has held in Lakhjit Singh and Anr. v. State of Punjab157 that if prosecution failed to establish the offence under Section 302 IPC, which alone was included in the charge, but if the offence under Section 306 IPC was made out in the evidence it is permissible for the court to convict the accused of the latter offence.

But without reference to the above decision, another two Judge Bench of Apex Court (M.K. Mukherjee and S.P. Kurdukar, JJ) has held in Sangaraboina Sreenu v. State of A.P.158 that it is impermissible to do so. The rationale advanced by the Bench for the above position is this:

“It is true that Section 222 Cr.P.C. entitles a court to convict a person of an offence which is minor in comparison to the one for which he is tried but Section 306 IPC cannot be said to be a minor offence in relation to an offence

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158 1997 (5) SCC 348.
under Section 302 IPC within the meaning of Section 222 Cr.P.C. for the two offences are of distinct and different categories. While the basic constituent of an offence under Section 302 IPC is homicidal death, those of Section 306 IPC are suicidal death and abetment thereof.

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The crux of the matter is this: Would there be occasion for a failure of justice by adopting such a course as to convict an accused of the offence under Section 304B IPC when all the ingredients necessary for the said offence have come out in evidence, although he was not charged with the said offence? In this context a reference to Section 464(1) of Code of Criminal Procedure is apposite:

“464(1) - No finding, sentence or order by a Court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any misjoinder of charges, unless, in the opinion of the Court of appeal, confirmation or revision, a failure of justice has in fact been occasioned thereby.” (emphasis supplied)

In other words, a conviction would be valid even if there is any omission or irregularity in the charge, provided it did not occasion a failure of justice. We often hear about failure of justice and quite often the submission in a criminal court is accentuated with the said expression. Perhaps it is too pliable or facile an expression which could be fitted in any situation of a case. The expression failure of justice would appear, sometimes, as an etymological chameleon (The simile is borrowed from Lord Diplock in *Town Investments Ltd. vs. Department of the Environment*. 159 The criminal court, particularly the superior court should make a close examination to ascertain whether there was really a failure of justice or whether it is only a camouflage.

One of the cardinal principles of natural justice is that no man should be condemned without being heard, (*Audi alterum partem*). But the law reports are replete with instances of courts hesitating to approve the contention that failure of justice had occasioned merely because a person was not heard on a particular aspect. However, if the aspect is of such a nature that non-explanation of it has

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contributed to penalising an individual, the court should say that since he was not given the opportunity to explain that aspect there was failure of justice on account of non-compliance with the principle of natural justice.

We have now to examine whether, on the evidence now on record the appellant can be convicted under Section 304-B IPC without the same being included as a count in the charge framed. Section 304-B has been brought on the statute book on 9-11-1986 as a package along with Section 113-B of the Evidence Act. Section 304-B(1) IPC reads thus:

“304-B. Dowry death.- (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband 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.”

In the Explanation to the Section it is said that the word dowry shall be understood as defined in the Dowry Prohibition Act, 1961.

The postulates needed to establish the said offence are: (1) Death of a wife should have occurred otherwise than under normal circumstances within seven years of her marriage; (2) soon before her death she should have been subjected to cruelty or harassment by the accused in connection with any demand for dowry. Now reading section 113B of the Evidence Act, as a part of the said offence, the position is this: If the prosecution succeeds in showing that soon before her death she was subjected by him to cruelty or harassment for or in connection with any demand for dowry and that her death had occurred (within seven years of her marriage) otherwise than under normal circumstances the court shall presume that such person had caused dowry death.

Under Section 4 of the Evidence Act whenever it is directed by this Act that the Court shall presume the fact it shall regard such fact as proved unless and until it is disproved. So the court has no option but to presume that the accused had caused dowry death unless the accused disproves it. It is a statutory compulsion on the court. However it is open to the accused to adduce such
evidence for disproving the said compulsory presumption, as the burden is
unmistakably on him to do so. He can discharge such burden either by eliciting
answers through cross- examination of the witnesses of the prosecution or by
adducing evidence on the defence side or by both.

At this stage, we may note the difference in the legal position between
the said offence and section 306 IPC which was merely an offence of abetment
of suicide earlier. The section remained in the statute book without any practical
use till 1983. But by the introduction of Section 113A in the Evidence Act the
said offence under Section 306 IPC has acquired wider dimensions and has
become a serious marriage- related offence. Section 113A of the Evidence Act
says that under certain conditions, almost similar to the conditions for dowry
death the court may presume having regard to the circumstances of the case, that
such suicide has been abetted by her husband etc. When the law says that the
court may presume the fact, it is discretionary on the part of the court either to
regard such fact as proved or not to do so, which depends upon all the other
circumstances of the case. As there is no compulsion on the court to act on the
presumption the accused can persuade the court against drawing a presumption
adverse to him.

But the peculiar situation in respect of an offence under Section 304B
IPC, as discernible from the distinction pointed out above in respect of the
offence under Section 306 IPC is this: Under the former the court has a statutory
compulsion, merely on the establishment of two factual positions enumerated
above, to presume that the accused has committed dowry death. If any accused
wants to escape from the said catch the burden is on him to disprove it. If he
fails to rebut the presumption the court is bound to act on it.

Now take the case of an accused who was called upon to defend only a
charge under Section 302 IPC. The burden of proof never shifts on to him. It
ever remains on the prosecution which has to prove the charge beyond all
reasonable doubt. The said traditional legal concept remains unchanged even
now. In such a case the accused can wait till the prosecution evidence is over
and then to show that the prosecution has failed to make out the said offence
against him. No compulsory presumption would go to the assistance of the
prosecution in such a situation. If that be so, when an accused has no notice of
the offence under Section 304B IPC, as he was defending a charge under Section 302 IPC alone, would it not lead to a grave miscarriage of justice when he is alternatively convicted under Section 304B IPC and sentenced to the serious punishment prescribed thereunder, which mandates a minimum sentence of imprisonment for seven years.

The serious consequence which may ensue to the accused in such a situation can be limned through an illustration:— If a bride was murdered within seven years of her marriage and there was evidence to show that either on the previous day or a couple of days earlier she was subjected to harassment by her husband with demand for dowry, such husband would be guilty of the offence on the language of Section 304-B IPC read with Section 113-B of the Evidence Act. But if the murder of his wife was actually committed either by a dacoit or by a militant in a terrorist act the husband can lead evidence to show that he had no hand in her death at all. If he succeeds in discharging the burden of proof he is not liable to be convicted under Section 304B, IPC. But if the husband is charged only under Section 302 IPC he has no burden to prove that his wife was murdered like that as he can have his traditional defence that the prosecution has failed to prove the charge of murder against him and claim an order of acquittal.

The above illustration would amplify the gravity of the consequence befalling an accused if he was only asked to defend a charge under Section 302 IPC and was alternatively convicted under Section 304B IPC without any notice to him, because he is deprived of the opportunity to disprove the burden cast on him by law.”

Yet again in *Hira Lal and Others v. State (Govt. of NCT) Delhi*160, the Supreme Court observed that "The expression "soon before her death" used in the substantive Section 304-B IPC and Section 113-B of the Evidence Act is present with the idea of proximity test. No definite period has been indicated and the expression "soon before" is not defined. A reference to the expression "soon before" used in Section 114 Illustration (a) of the Evidence Act is relevant. It lays down that a court may presume that a man who is in the possession of goods "soon after the theft, is either the thief or has received the goods knowing them to be stolen, unless he can account for their possession". The determination

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160 (2003) 8 SCC 80
of the period which can come within the term "soon before" is left to be determined by the courts, depending upon facts and circumstances of each case. Suffice, however, to indicate that the expression "soon before" would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question. There must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the death concerned. If the alleged incident of cruelty is remote in time and has become stale enough not to disturb the mental equilibrium of the woman concerned, it would be of no consequence.

The above mentioned interpretation was reiterated by the Supreme Court time and again in various cases such as Kaliya Perumal and Another v. State of Tamil Nadu\textsuperscript{161}, Kamesh Panjiyar alias Kamlesh Panjiyar v. State of Bihar\textsuperscript{162} and State of A.P. v. Raj Gopal Asawa and Another\textsuperscript{163}.

Thus we see that proximity of infliction of cruelty for dowry demand and the death of the deceased is crucial. This amounts to say that where prosecution fails to prove that deceased was subjected to cruelty for dowry immediately before her death the accused shall be entitled to be acquitted. But problem was faced in the cases where matrimonial cruelty and unnatural death was proved though it might not be proved that such cruelty was for insufficient dowry and was immediate before the death. This situation came before the Supreme Court in the case of K.Prema S.Rao and Another v. Yadla Srinivasa Rao and others\textsuperscript{164}, wherein an observation was made in the peculiar facts and circumstances of that case that even if the accused is not found guilty for commission of an offence under Section 304 and 304-B of the Indian Penal Code, he can still be convicted under Section 306 IPC thereof. Omission to frame charges under Section 306 in terms of Section 215 of the Code of Criminal Procedure may or may not result in failure of justice, or prejudice the accused. It cannot, therefore, be said that in all cases, an accused may be held guilty of commission of an offence under Section 306 of the Indian Penal Code wherever the prosecution fails to establish the charge against him under Section 304-B thereof. Moreover, ordinarily such a plea should not be allowed to be raised for the first time before the court unless

\textsuperscript{161} (2004) 9 SCC 157
\textsuperscript{162} (2005) 2 SCC 388
\textsuperscript{163} (2004) 4 SCC 470
\textsuperscript{164} (2003) 1 SCC 217
the materials on record are such which would establish the said charge against the accused. Before invoking the provisions of Section 306 IPC, it is necessary to establish that: (i) the deceased committed suicide, and (ii) she had been subjected to cruelty within the meaning of Section 498A IPC. Only if these facts are established, a presumption in terms of Section 113A of the Indian Evidence Act could be raised.

The scope of term ‘dowry’ with respect to section 304B Indian Penal Code has been discussed by the Apex Court in Arun Garg v. State of Punjab as follows:

“The ingredients necessary for the application of Section 304B I.P.C. are:

i) that the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances;

ii) within seven years of her marriage;

iii) it must be shown that before the death she was subject to cruelty or harassment by her husband or any relative of the husband or in connection with the demand of dowry.

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Section 304B was inserted by the Dowry Prohibition (Amendment) Act, 1986 with a view to combating the increasing menace of dowry death. By the same Amendment Act, Section 113B has been added in the Evidence Act, 1872 for raising a presumption. It reads thus:

"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 before 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.

Explanation.- For the purpose of this section "dowry death" shall have the same meaning as in section 304B of the Indian Penal Code."

165 (2004) 8 SCC 251
Once the three essentials under Section 304B as referred above are satisfied the presumption under Section 113-B would follow. This rule of evidence is added in the Statute by amendment to obviate the difficulty of the prosecution to prove as to who caused the death of the victim. Of course, this is a rebuttable presumption and the accused by satisfactory evidence can rebut the presumption. In the instant case, the appellant could not rebut the presumption, and the prosecution, even without the aid of this presumption under Section 113-B proved that the appellant was responsible for the death of the deceased Seema. Hence, the conviction of the appellant for the offence under Section 304B I.P.C. is only to be confirmed.

Our attention was also drawn to Section 498A. In our view, Sections 304B and 498A are not mutually exclusive. They deal with different and distinct offences. In both the sections, 'cruelty' is a common element. Under Section 498A, however, cruelty by itself amounts to an offence and is punishable. Under Section 304B, it is the dowry death that is punishable and such death must have occurred within seven years of the marriage. No such period is mentioned in Section 498A. Moreover, a person charged and acquitted under Section 304B can be convicted under Section 498A without a specific charge being there, if such a case is made out.”

Another suggestion which has found favour with the Supreme Court is the need to extend the application of the Coroners' Act, 1871 to other cities besides those where it operates already. The application of the Coroners' Act will make possible an immediate inquiry into the cause of death of the victim, whether it has been caused by accident, homicide, suicide or suddenly by unknown mean. It contains provisions which are entirely salutary for the purpose of such inquiry, and an inquiry under that enactment would be more meaningful and effective and complete in the kind of case. The Supreme Court was aware that the Code of Criminal Procedure, 1973, contains, in Sections 174 and 175, provision for a police enquiry pursuant to an information that a person has committed suicide or has been killed by another or by an animal or by machinery or by an accident or has died under circumstances raising reasonable suspicion that some other person has committed an offence. In such a case the police officer makes an investigation and submits a report to the District Magistrate or the Sub-Divisional Magistrate, and thereafter the District
Magistrate or Sub-Divisional Magistrate or other Executive Magistrate empowered in that behalf is required to hold an inquest. The police officer making an investigation is entitled to summon two or more persons for the purpose of the investigation and any other person who appears to be acquainted with the facts of the case to attend and answer truly all questions other than questions the answer to which would have a tendency to incriminate him. The Supreme Court thought that the more appropriate and effective procedure would be that contemplated by the Coroners' Act, which ensures that the inquiry into the death is held by a person of independent standing and enjoying judicial powers, with a status and jurisdiction commensurate with the necessities of such cases and the assistance of an appropriate machinery.

4.2.2 Matrimonial Cruelty induced by reasons other than dowry demand or for dowry demand but not leading to death of a woman

One of the most common subjugation is the cruelty meted out to the women in the matrimonial home by the husband and his relatives which may be because of the demand for dowry which may lead to very serious repercussions or torture for fulfilling any other unjustified demand. To protect women from such torture, Section 498-A was introduced in the Indian Penal Code (IPC), 1860 in the year 1983 which gives relief to women from the husband and his relatives in relation to any cruelty meted out to her which poses a risk to her life or physical well-being and harassment meted out to her in relation to any demand for dowry.

Attempts to bring about changes in the status of women either through legislation or judicial activism can achieve little success without a simultaneous movement to transform the social and economic structures and the culture (values, ideologies and attitudes) of society. Further it was felt that Section 304B deals only with the cases where the victim of cruelty has to lose her life owing to cruelty and need was felt to give a remedy to women to fight against matrimonial cruelty before it is too late. The one provision amongst others which the legislature has engrafted to target matrimonial cruelty is Section 498A under chapter XX-A of Indian Penal Code.
4.2.2.1 A Brief Overview of Chapter XX-A

In the 1980s, the incidences of ‘dowry deaths’ were steadily rising in India. A dowry death is the murder of a young woman; committed by in-laws, when she is unable to fulfill their coercive demands for money, articles or property, categorized as dowry. Organizations across the country pressurized and urged the government to provide legislative protection to women against domestic violence and dowry. The objective was to allow the state to intervene rapidly and prevent the murder of young girls who were unable to meet the dowry demands of their in-laws. As a result of intense campaigning and lobbying, significant amendments were made in the Indian Penal Code, the Indian Evidence Act and the Dowry Prohibition Act, with the intention of protecting the women from marital violence, abuse and dowry demands. The most important amendment came in the form of the introduction of Chapter XX-A in Indian Penal Code which was introduced in the Code by the Criminal Law Amendment Act, 1983 (Act 46 of 1983). It refers to ‘cruelty by husband or relatives of husband’ and inserts into the Indian Penal Code Section 498A which reads as follows:

“Whoever being the husband or 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 also be liable to fine.

Explanation- For the purpose of this section, “cruelty” means-

(a) Any willful conduct which is of such nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) Harassment of the woman where such harassment is with view to coercing her or any person related to her meet any unlawful demand for any person related to her, to meet such demand.”

4.2.2.2 Presumption of cruelty

Soon it was realized that merely penalizing the act of cruelty will not protect women because in any criminal law in order to prove the guilt of the accused the same has to be proved beyond reasonable doubt. But matrimonial cruelty often occurs in the four walls of the house which is witnessed only by
the offenders and the victim. So it was very difficult for a woman to prove the guilt of the accused. Hence, realizing this, the Act which enacted Section 498A of Indian Penal Code, the same Act added section 113-A to the Indian Evidence Act to raise presumption regarding abetment of suicide by married woman. Section 113-A of Indian Evidence Act reads as follows:

“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 before her death such woman has 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.

In the case of Ramesh Kumar v. State of Chhattisgarh\textsuperscript{166} the Apex Court has discussed the nature and extent of presumption which can be drawn under Section 113A of the Indian Evidence Act. The Court observed as under:

“There is no direct evidence adduced of the accused-appellant having abetted Seema into committing suicide. The prosecution has relied on Section 113A of Evidence Act which reads as under:-

113A. Presumption as to abetment of suicide by a married woman.- When the question is whether the commission of suicide by a woman had been abetted by her or any relative of her husband and it is shown that she had committed suicide within a period of seven 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.

Explanation.- For the purpose of this section. "Cruelty" shall have the same meaning as in section 498A of the Indian Penal Code.

This provision was introduced by Criminal Law (Second) Amendment Act, 1983 with effect from 26.12.1983 to meet a social demand to resolve difficulty of proof where helpless married women were eliminated by being

\textsuperscript{166} AIR 2001 SC 3837
forced to commit suicide by the husband or in-law and incriminating evidence was usually available within the four-corners of the matrimonial home and hence was not available to anyone outside the occupants of the house. However, still it cannot be lost sight of that the presumption is intended to operate against the accused in the field of criminal law. Before the presumption may be raised, the foundation thereof must exist. A bare reading of Section 113A shows that to attract applicability of Section 113A, it must be shown that (i) the woman has committed suicide, (ii) suicide has been committed within a period of seven years from the date of her marriage, (iii) the husband or his relatives, who are charged had subjected her to cruelty. On existence and availability of the above said circumstances, the Court may presume that such suicide had been abetted by her husband or by such relatives of her husband. The Parliament has chosen to sound a note of caution. Firstly, the presumption is not mandatory, it is only permissive as the employment of expression "may presume" suggests. Secondly, the existence and availability of the above said three circumstances shall not, like a formula, enable the presumption being drawn; before the presumption may be drawn the Court shall have to have regard to all the other circumstances of the case'. The consideration of all the other circumstances of the case may strengthen the presumption or may dictate the conscience of the Court to abstain from drawing the presumption. The expression-'The other circumstances of the case' used in Section 113A suggests the need to reach a cause and effect relationship between the cruelty and the suicide for the purpose of raising a presumption. Last but not the least the presumption is not an irrebuttable one. In spite of a presumption having been raised the evidence adduced in defence or the facts and circumstances otherwise available on record may destroy the presumption. The phrase 'May presume' used in Section 113A is defined in Section 4 of the Evidence Act, which says-'whenever it is provided by this Act that Court may presume a fact, it may either regard such act as provided, unless and until it is disproved or may call for proof of it.”

4.2.2.3 Object of Section 498A, Indian Penal Code

The main objective of section 498-A of Indian Penal Code is to protect a woman who is being harassed by her husband or relatives of husband. The object for which section 498A Indian Penal Code was introduced is amply reflected in the Statement of Objects and Reasons of Criminal Law (Second
Amendment) Act No. 46 of 1983. As clearly stated therein the increase in number of dowry deaths is a matter of serious concern. The extent of the evil has been commented upon by the Joint Committee of the Houses to examine the work of the Dowry Prohibition Act, 1961. It has been noted that cruelty may not always result in death and these other forms of cruelty need to be dealt with as much. Therefore, it was proposed to amend Indian Penal Code, the Code of Criminal Procedure, 1973 and the Evidence Act comprehensively to deal with matrimonial cruelty.

From the statement of object and reasons it is clear that to keep a check on the offence of matrimonial cruelty the State deemed it fit to provide additional safeguards to married women by incorporating Section 498A in the Indian Penal Code despite the existence of general provisions for hurt, assault, criminal force and criminal intimidation. Section 498A of Indian Penal Code was intended to permeate into the matrimonial home and to put the domestic lives under the scanner. But experience has shown that in the three decades during which this provision has remained in the rule book, it has been subjected to rampant misuse. It has been observed that the real victims of matrimonial cruelty often shy away from Courts whereas the provision is frequently invoked by women who are dissatisfied with their matrimonial lives due to reasons other than cruelty.

4.2.3.4 Scope of term ‘cruelty’ widened by judicial decisions

The scope of word cruelty under this section has been widened time to time by the courts by its judicial pronouncements in different case. But in all these case it has been held that no straight jacket formula can be given which can define what conduct will amount to cruelty. Each and every case has to be decided depending on the facts and circumstances.

In the case of Ramesh Kumar v. State of Chhattisgarh167 the Apex Court has discussed the ambit of word cruelty and observed as follows:

“This appeal by special leave is directed against conviction of Ramesh Kumar, the accused-appellant, on charges under Section 306 and 498A IPC. He was

167 AIR 2001 SC 3837
sentenced to seven years' rigorous imprisonment under Section 306 IPC and to two years' rigorous imprisonment under Section 498A IPC, both the sentences having been directed to run concurrently. The conviction along with sentences has been maintained by the High Court. His father Shiv Kumar, mother Gargi Devi and brother Mahesh were also tried for offences under Sections 306 and 498A IPC. The trial Court found them "not guilty" and "innocent" and hence acquitted the three of them of both the charges. That acquittal has achieved a finality as not challenged by any one.

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From an independent evaluation of evidence and having gone through oral evidence adduced and the several documents available on record, mostly the writings of the deceased we are satisfied that the present one is not a case of dowry death or the deceased having been (SIC) her failure to satisfy the dowry demands of the accused-appellant. However teasing by the accused-appellant of the deceased ill-treating her for her mistakes which could have been pardonable and turning her out of the house, also once beating her inside the house at the (SIC) hours of night did amount to cruelty within the meaning of Section 498A of IPC and therefore we agree with the (SIC) the High Court though to some extent at variance with the cause for cruel treatment that the accused-appellant subjected deceased Seema to cruelty and therefore conviction of the accused-appellant under Section 498A deserves to be maintained.

So far as the offence under Section 306 of IPC is concerned, in our opinion, the Trial Court and the High Court have committed gross error of law in holding the accused-appellant guilty and therefore conviction under Section 306 IPC deserves to be quashed and set aside.”

In State of West Bengal v. Orilal Jaiswal and Anr.\textsuperscript{168} the Supreme Court has cautioned that the Court should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trail for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end the life by committing suicide. If it transpires to the Court that a victim committing suicide was hypersensitive to ordinary petulance, discord and difference in domestic life quite common to the society to which the

\textsuperscript{168} (1994) 1 SCC 73
victim belonged and such petulance, discord and difference were not expected to induce a individual in a given society placed in similar circumstances to commit suicide, the conscience of the Court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty.

Sections 498A and 396 IPC are independent and constitute different offences. Though, depending on the facts and circumstances of an individual case, subjecting a woman to cruelty may amount to an offence under Section 498A and may also, if a course of conduct amounting to cruelty is established leaving no other option for the woman except to commit suicide, amount to abetment to commit suicide. However, merely because an accused has been held liable to be punished under Section 498A IPC it does not follow that on the same evidence he must also and necessarily be held guilty of having abetted the commission of suicide by the woman concerned.

Meaning of the word ‘cruelty’ was discussed by the Apex Court in the case of Parveen Mehta v. Inderjit Mehta\(^{169}\) wherein it was held as under:

"Under the statutory provision cruelty includes both physical and mental cruelty. The legal conception of cruelty and the kind of degree of cruelty necessary to amount to a matrimonial offence has not been defined under the Act. Probably, the Legislature has advisedly refrained from making any attempt at giving a comprehensive definition of the expression that may cover all cases, realising the danger in making such attempt. The accepted legal meaning in England as also in India of this expression, which is rather difficult to define, had been 'conduct of such character as to have caused danger to life, limb or health (bodily or mental), or as to give rise to a reasonable apprehension of such danger' [\textit{Russel v. Russel} (1897) AC 395 (HL)] and Mulla's Hindu Law, 17th Edition, Volume II page 87]. The provision in clause (i-a) of Section 13(1), which was introduced by the Marriage Laws (Amendment) Act 68 of 1976, simply states that 'treated the petitioner with cruelty'. The object, it would seem, was to give a definition exclusive not inclusive, which will amply meet every particular act or conduct and not fail in some circumstances. By the amendment the Legislature must, therefore, be understood to have left to the courts to provide the meaning of cruelty as it deems fit in the facts and circumstances of the case.\(^{\text{169}}\)

\(^{169}\) AIR 2002 SC 2582
determine on the facts and circumstances of each case whether the conduct amounts to cruelty. This is just as well since actions of men are so diverse and infinite that it is almost impossible to expect a general definition which could be exhaustive and not fail in some cases. It seems permissible, therefore, to enter a caveat against any judicial attempt in that direction (Mulla Hindu Law, 17th Edition, Volume II, page 87).”

The Supreme Court in the case of *N.G. Dastane (Dr.) v. S. Dastane*¹⁷⁰ examined the ground of matrimonial cruelty as it was stated in the old Section 10(1)(b) and observed that any inquiry covered by that provision had to be whether the conduct charged as cruelty is of such a character as to cause in the mind of the petitioner a reasonable apprehension that it will be harmful or injurious to live with the respondent. It was further observed that it was not necessary, as under the English law that the cruelty must be of such a character as to cause danger to life, limb or health, or as to give rise to a reasonable apprehension of such a danger though, of course, harm or injury to health, reputation, the working character or the like would be an important consideration in determining whether the conduct of the respondent amounts to cruelty or not. In essence what must be taken as fairly settled position is that though the clause does not in terms say so it is abundantly clear that the application of the rule must depend on the circumstances of each case; that 'cruelty' contemplated is conduct of such type that the petitioner cannot reasonably be expected to live with the respondent. The treatment accorded to the petitioner must be such as to cause an apprehension in the mind of the petitioner that cohabitation will be so harmful or injurious that she or he cannot reasonably be expected to live with the respondent having regard to the circumstances of each case, keeping always in view the character and condition of the parties, their status environments and social values, as also the customs and traditions governing them.

In the case of *Savitri Pandey v. Prem Chandra Pandey*¹⁷¹ this Court construing the question of 'cruelty' as a ground of divorce under Section 13(1)(ia) of the Act made the following observations:

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¹⁷⁰ (1975) 2 SCC 326
¹⁷¹ (2002) 2 SCC 73
"Treating the petitioner with cruelty is a ground for divorce under Section 13(1)(i-a) of the Act. Cruelty has not been defined under the Act but in relation to matrimonial matters it is contemplated as a conduct of such type which endangers the living of the petitioner with the respondent. Cruelty consists of acts which are dangerous to life, limb or health. Cruelty for the purpose of the Act means where one spouse has so treated the other and manifested such feelings towards her or him as to have inflicted bodily injury, or to have caused reasonable apprehension of bodily injury, suffering or to have injured health. Cruelty may be physical or mental. Mental cruelty is the conduct of other spouse which causes mental suffering or fear to the matrimonial life of the other. "Cruelty", therefore, postulates a treatment of the petitioner with such cruelty as to cause a reasonable apprehension in his or her mind that it would be harmful or injurious for the petitioner to live with the other party. Cruelty, however, has to be distinguished from the ordinary wear and tear of family life. It cannot be decided on the basis of the sensitivity of the petitioner and has to be adjudged on the basis of the course of conduct which would, in general, be dangerous for a spouse to live with the other. In the instant case both the trial court as well as the High Court have found on facts that the wife had failed to prove the allegations of cruelty attributed to the respondent. Concurrent findings of fact arrived at by the courts cannot be disturbed by this Court in exercise of powers under Article 136 of the Constitution of India. Otherwise also the averments made in the petition and the evidence led in support thereof clearly show that the allegations, even if held to have been proved, would only show the sensitivity of the appellant with respect to the conduct of the respondent which cannot be termed more than ordinary wear and tear of the family life."

The Supreme Court, while construing the question of mental cruelty under Section 13(1)(ia) of the Hindu Marriage Act, in the case of G.V.N.Kameswara Rao v. G.Jabilli172, observed as under:

"The court has to come to a conclusion whether the acts committed by the counter-petitioner amount to cruelty, and it is to be assessed having regard to the status of the parties in social life, their customs, traditions and other similar circumstances. Having regard to the sanctity and importance of marriages in a community life, the court should consider whether the conduct of the counter-

172 (2002) 2 SCC 296
petitioner is such that it has become intolerable for the petitioner to suffer any longer and to live together is impossible, and then only the court can find that there is cruelty on the part of the counter-petitioner. This is to be judged not from a solitary incident, but on an overall consideration of all relevant circumstances."

Further quoting with approval the following passage from the judgment in *V.Bhagat v. D. Bhagat*173 this Court observed therein as under:

"Mental cruelty in Section 13(1)(i-a) can broadly be defined as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other. In other words, mental cruelty must be of such a nature that the parties cannot reasonably be expected to live together. The situation must be such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with the other party. It is not necessary to prove that the mental cruelty is such as to cause injury to the health of the petitioner. While arriving at such conclusion, regard must be had to the social status, educational level of the parties, the society they move in, the possibility or otherwise of the parties ever living together in case they are already living apart and all other relevant facts and circumstances which it is neither possible nor desirable to set out exhaustively. What is cruelty in one case may not amount to cruelty in another case. It is a matter to be determined in each case having regard to the facts and circumstances of that case. If it is a case of accusations and allegations, regard must also be had to the context in which they were made".

It was formerly thought that actual physical harm or reasonable apprehension of it was the prime ingredient of this matrimonial offence. However, from the above discussion it is clear that this doctrine is now repudiated and the modern view has been that mental cruelty can cause even more grievous injury and create in the mind of the injured spouse reasonable apprehension that it will be harmful or unsafe to live with the other party. We see that the Courts have widened the scope of matrimonial cruelty by their judicial pronouncements. It has also been laid that cruelty has to be adjudicated keeping in view the surroundings of a particular person who is affected in the

173 (1994) 1 SCC 337
case at hand and no set norms shall be applicable. An act may amount to cruelty in a particular case and may not amount to cruelty in another. The principle that cruelty may be inferred from the whole facts and matrimonial relations of the parties and interaction in their daily life disclosed by the evidence is of greater cogency in cases falling under the head of mental cruelty. Thus mental cruelty has to be established from the facts. Further the Apex Court has held that for an act to constitute cruelty so as to attract criminal liability it is essential that it should comprise of certain ingredients. The word "cruelty" has been used in relation to human conduct or human behaviour. It is the conduct in relation to or in respect of matrimonial duties and obligations. It is a course of conduct of one which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. If it is physical the court will have no problem to determine it. It is a question of fact and degree. If it is mental the problem presents difficulty. First, the enquiry must begin as to the nature of the cruel treatment and thereafter, the impact of such treatment in the mind of the spouse. It has to be determined if the act has caused reasonable apprehension that it would be harmful or injurious to live with the other. Ultimately, it is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse. There may, however, be cases where the conduct complained of is itself bad enough and per se unlawful or illegal. Then the impact or the injurious effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted. It will be necessary to bear in mind that there has been marked change in the life around us. In matrimonial duties and responsibilities in particular, we find a sea change. They are of varying degrees from house to house or person to person. Therefore, when a spouse makes complaint about the treatment of cruelty by the partner in life or relations, the Court should not search for standard in life. A set of facts stigmatised as cruelty in one case may not be so in another case. The cruelty alleged may largely depend upon the type of life the parties are accustomed to or their economic and social conditions. It may also depend upon their culture and human values to which they attach importance. The judges and lawyers, therefore, should not import their own notions of life. These preliminary observations are intended to emphasize that the Court in matrimonial cases is not concerned with ideals in family life. The

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Court has only to understand the spouses concerned as nature made them, and consider their particular grievance. As Lord Reid observed in *Gollins v. Gollins*\(^{175}\):

"In matrimonial affairs we are not dealing with objective standards, it is not a matrimonial offence to fall below the standard of the reasonable man (or the reasonable woman). We are dealing with this man or this woman."

Similarly Chandrachud, J. in the case of *Narayan G. Dastane v. Sucheta Narayan Dastane*\(^ {176} \) said:

"The Court has to deal, not with an ideal husband and an ideal wife (assuming any such exist) but with particular man and woman before it. The ideal couple or a near-ideal one will probably have no occasion to go to a matrimonial court, for, even if they may not be able to drown their differences, their ideal attitudes may help them overlook or gloss over mutual faults and failures."

### 4.2.2.5 Misuse of Section 498A, Indian Penal Code and Judicial Approach

Though the benevolent provision of Section 498A Indian Penal Code was enacted to benefit the women subjected to matrimonial cruelty by her husband and in laws, soon it became a weapon in the hands of educated and oversensitive women to get easy and quick divorce on her terms. It is seen that there is a breakdown in the marriage due to temperamental differences between the spouses which is given a colour of criminal liability by the wife by resorting to the provisions of Section 498A Indian Penal Code. Even the Courts have acknowledged the rampant misuse of this provision leading to harassment to innocent boys and their family members. The Supreme Court of India has stated that any misuse of this provision of law amounts to unleashing Legal Terrorism. It acknowledged that there are growing instances of women filing false charge.

In *Balbir Singh v. State of Punjab*\(^{177}\) the Court observed, “Though the amendments introduced in the penal code are with the laudable object of eradicating the evil of dowry, such provisions cannot be allowed to be misused by the parents and the relatives of a psychopath wife who may have chosen to end her life for reason which may be many other than cruelty. The glaring

\(^{175}\) [1963] 2 All. E.R. 966 (1972)

\(^{176}\) [1975] 3 SCR 967 (978)

\(^{177}\) AIR 1957 SC 216.
reality cannot be ignored that the ugly trend of false implications in view to harass and blackmail an innocent spouse and his relative's is fast emerging. It is the time to stop the unhealthy trend which results in unnecessary misery and torture to numerous effected persons and sometimes not just ruin their life but also social status of the family.”

In *Saritha v. R. Ramachandra*\(^{178}\) it was held that the Court would like to go on the record that for nothing the educated women are approaching the Courts for divorce and restoring to proceedings against in-laws under Section 498A Indian Penal Code. This is nothing but misuse of the beneficial provision intended to save the women from unscrupulous husbands. It has taken a reverse trend now. In some cases this kind of actions is coming as a formidable hurdle in the reconciliation efforts made by either well meaning people or the Courts. The sanctity attached to the marriage through conciliatory efforts till last, are being buried neck deep. It is for the law commission and the parliament either to discontinue the section or make it bailable so that ill educated women of this country do not misuse the provision to harass innocent people for the sin of contracting marriage with egoistic wife.

4.2.2.6 *Suggestions to check misuse of Section 498A, IPC*

Misuse of this provision can be checked by incorporating certain amendments in the section. Offence under Section 498A is non-compoundable. A non-compoundable offence means an offence, which cannot be compounded. It means that even if the parties have amicably settled the matter, still they cannot be given liberty to compromise the case. The only way left with them to end the litigation is either to file a quashing petition in the High Court under Section 482 of Code of Criminal Procedure or to face trial. However, there may be many instances where natural justice demands that the parties should be allowed to compound specially in such cases where personal relationship of the parties are at stake. When the parties have been able to resolve their disputes amicably, then why should the Court stand in their way of living together as husband and wife? Hence, the offence under Section 498A, Indian Penal Code should be made compoundable. This view has been taken by the Hon’ble

\(^{178}\) I (2003) DMC 37.
Bombay High Court in *Suresh v. State*,\(^{179}\) in which the Court has suggested the Government for amendment of section 320 of Code of Criminal Procedure and section 498 A of Indian Penal Code. Furthermore, it is noteworthy that the whole idea behind compounding the offence is that the law is meant to do justice and not to force the parties for a delayed litigation. As such, when the parties themselves have compromised the dispute, it would be waste of time in going through a mock trial. Furthermore it becomes the duty of the Court to encourage genuine settlements in matrimonial disputes and any hyper-technical view would be counterproductive and would act against the interest of women and against the object for which section 498A of the Indian Penal Code was enacted. If the parties are not allowed to compound the offence, it would amount to miscarriage of justice.\(^{180}\)

Further, the Apex has also observed that for any law to be effective it is important that it is used effectively and judiciously by the section of the society for whose benefit it is enacted. State fulfils its duty by enacting laws but that is only one facet of the solution. A problem can be completely eradicated only when we as citizen of this Country are vigilant about these laws and use it as a tool of empowerment and not as a mean to fulfill our tainted aims which adversely affects the society at large. If the Government and women’s organizations were truly interested in improving the living conditions of women in India they would focus on empowering women through education. Education builds self-confidence and gives a person the ability to stand up for oneself. Educating women can also ensure that the next generation is raised to treat each other with respect and be better citizens. The Government and women’s organizations can also lend support for rehabilitation of abused women and protect them from further harassment without doing injustice to innocent men. It would behoove the Government and women’s organizations to work in collaboration with social scientists and psychologists to understand human behavior in the context of changing social conditions and standards in India and think about workable solutions to deal with Domestic Violence and other forms of abuse instead of criminalizing ordinary citizens. Positive measures that can

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179 I (1990) DMC 426  
bring about domestic harmony are the only way to ensure family stability and long-term social stability.\textsuperscript{181}

Some other suggested changes which can amend this section truly into a beneficial legislation are as follows:

(a) That Section 498A should be suitably amended so as to make it bailable, non-cognizable, and compoundable;

(b) That suitable provisions be specifically inserted in Section 498A so as to make it punishable for whosoever misuses or abuses it;

(c) That the misuser of this law should be made liable to compensate the financial loss suffered by the falsely accused in the process;

(d) That the law be made gender neutral to protect the interests of any innocent, be it a man or a women; and

(e) That time bound trial should be made a statutory requirement under this law, with a six month maximum limit specified therein.

\textbf{4.3 Law Relating to Domestic Violence}

Violence against women has been acknowledged both nationally as well as internationally as a violation of human rights of women, something that impairs the overall development of women. Violence against women is a centuries-old phenomenon that has been perpetrated in the name of religion, social customs and rituals. The violence may manifest itself in different forms, like child marriage, witch-hunting, honour-killing etc. Many a time violence against women is due to defiance of the stereotyped role model of daughter, sister, wife and mother and, of course, as daughter-in-law. Even today-women are not feeling safe and secured in their homes and in the family. The homes where women are living are the dens of terror and horror. According to Sydney Brandon, “Statistically it is safer to be on streets after dark with a stranger than at home in the bosom of one’s family, for it is there that accident, murder and violence are likely to occur.”\textsuperscript{182} Even after 60 years of independence the crimes

\begin{itemize}
  \item \textsuperscript{181} Ibid.
  \item \textsuperscript{182} Domestic Violence Against Women: Legal Control and Judicial Response by Preeti Misra. Also see Womens Human Rights by Dr. Mohini Chatterjee.
\end{itemize}
against the women in India are amongst the highest in the world. It is ironical and distressing that life of women in India is still surrounded by violence. In India the common are wife beating, harassment, torture, bride burning, slavery, exploitation, forced prostitution, sexual harassment, female feticide and infanticide. However, in a layman language the violence caused to the women in the family is classified as domestic violence.

Among the many manifestations of the violations of fundamental rights of a woman, domestic violence is one of the most vicious. Domestic violence is undoubtedly a human right issue and serious deterrent to development.\textsuperscript{183}

Domestic Violence is a serious social issue, it validates gender inequality. It calls for a deeper understanding of the Institution of Family that is facing never-seen-before kind of structural changes with disintegration of values, changing gender roles, migration and an aggressive intervention of consumerism in private spheres. Hence there was an urgent need to deal with the issue of domestic violence which shall be perceived beyond matrimonial cruelty.

\textit{4.3.1 Drafting of Domestic Violence Act 2005: Needs and Challenges}

Resistance to domestic violence is a recent phenomenon. In the modern age voices have been raised against these inhuman practices and efforts are made to bring about change by creating awareness, by educating people and, of course, through legal actions/reforms. Drafting of Protection of Women against Domestic Violence Act, 2005 is a recent effort made by Indian legislature to deal with the problem of domestic violence against women which aims at giving protection to women in all spheres of life and in all kind of domestic relationships and not only against matrimonial cruelty. Initially Section 498A of Indian Penal Code was enacted to protect a woman from matrimonial cruelty and to deal with the cases where death has not occurred and where cruelty is inflicted for reasons other than dowry i.e cases which were not covered by Section 304B of Indian Penal Code. But with advancement in time and society this provision alone was insufficient. Hence, Protection of Women against Domestic Violence Act, 2005 was enacted giving a wider definition to the term cruelty and covering a wider range of women.

\textsuperscript{183} Ibid
4.3.1.1 International Dimension

Criticism of domestic violence and demand for a new law was not confined to our country only. Worldwide women’s participation in the struggle for human rights in recent years has given a new meaning to the concept and content of rights for women. It is because of the women’s insistence globally, that violence against women by private persons has come to be regarded as a violation of human rights. Many conventions and treaties have been formulated which provide a range of rights for women. But none of these earlier international instruments focused on the practical realisation of women’s rights. Human rights for women came into focus with the adoption of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) by the United Nations General Assembly resolution of 18th December 1979. Article 1 of CEDAW defines discrimination against women to mean by distinction, exclusion or restriction made on the basis of sex which has the effect of impairing or nullifying the enjoyment of exercise by women, irrespective of their marital status, on the basis of equality of men and women, of Human Rights and fundamental freedoms in the political, economic, social, cultural, civil and other fields. CEDAW was followed by several other global initiatives to promote women’s rights. These initiatives included the declaration of the decade for women (1975-1985), four world conferences on women, the adoption by consensus of the Nairobi Forward Looking Strategies (1985) and the Beijing Declaration and Platform of Action. Other conferences that have advanced and promoted women’s rights in particular, have been the Vienna Conference on Human Rights and the International Conference on Population and Development.

The truth is that despite of all above mentioned initiatives taken for the achievement of women’s rights, progress for women has been slow and practices violent and discriminatory against women have continued unabated. CEDAW has been the first international instrument, which is gender sensitive and makes it obligatory for the state parties to it to strive towards gender equality in various spheres. The treaty has been described as the International Bill of Rights for Women. It is a comprehensive treaty on the rights of women and contains legally binding obligations for the state to follow and to put an end to discrimination against women and to achieve equality between men and
women. But the equality which the convention wants to achieve is not a formal equality where women are treated at par with men only on papers and the rights on paper are never made a reality. The equality that the Convention sought to achieve for women is not equal rights but the right to be equal. The equality envisaged by CEDAW is a substantive and corrective mode of equality. It recognizes the differences between men and women and realizes that the subordinate status of women today is because of centuries old discrimination that they have been subjected to. Its focus is to change their socially constructed differences. These differences are an impediment to a woman’s all round development. It is true that the other mode of equality also recognizes these differences, but they are perceived as weaknesses, because the equality sought are measured in terms of male standards which leads to further discrimination and disadvantages to women. CEDAW is a comprehensive treaty covering civil, political, economic and cultural rights, ranging from public to private life and international action to end discrimination against women. It is one of the most widely ratified conventions.

The year 1983 was celebrated as the United Nations year of women. It was a significant year for women throughout the world. It was the year when the world community seems to have realized the extent of violence against women all over the world and need of a comprehensive strategy to tackle the menace. Thus, with a view to combat violence against women, the General Assembly, vide Resolution No. 48/104, adopted the ‘Declaration on Elimination of Violence against Women’ on 20th December 1983. This Declaration was significant in various ways. This Declaration is the first of its kind embodying the world’s community genuine concern and resolve to contain violence against women. The Declaration is a reflection of the consensus and collective effort to stop violence within the family or outside.

Article 1 of the UN Declaration gives a very broad definition of the term ‘violence against women’ so as to include almost all kinds of violence to which women are subjected to. According to the Declaration the term ‘violence against women’ means any act of gender based violence that results in or is likely to results in physical, sexual or psychological harm or suffering to women.

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184 The Right to be Equal by Shiela Jayprakash, The Hindu dated 23-4-2000
185 Ibid
including threats of such acts, coercion or arbitrary deprivation of liberty whether occurring in public or private life.

Article 2 (i) of the Declaration specifically embodies within its fold the various instances of domestic violence against women. The relevant article reads as under:

“violence against women shall be understood to compass physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry related offence, marital rape, female genital mutilation and other traditional practices harmful to women, non spousal violence and violence related to exploitation.”

The significance on the inclusion in the declaration for dowry related violence, marital rape, female genital mutation and other traditional practices which are harmful to women can in no way be undermined. Another important feature of the UN declaration is that it recognizes that violence against women is a manifestation of historically unequal power relations between men and women. This takes the issue of violence against women to a much broader issue of a gender unjust society. For centuries women have been treated unequally and nothing offends an individual more than being treated unequally. While CEDAW recognized gender as a distinct area giving rise to discrimination against women, the UN Declaration on the Elimination of Violence against women perceived violence as violence of Human Rights.

The next important international document on gender justice was the declaration adopted at the 4th International Conference on Women in Beijing in September 1995 entitled “Women’s Rights are Human Rights”. The conference had twelve issues for the ‘Platform of Action’. But stress was laid on ending the oppression of women and girls by transforming the social and political structures which underline and perpetuate inequality, injustice and violence against women. Thus, at the international level there is an ongoing struggle to bring, gender sensitivity into the ‘practice of rights affecting’ women. Considering that women’s rights are not really respected nor protected or promoted as inalienable, indivisible and universal human rights, the recently constituted United Nations framework for model legislation on domestic violence urges states to enact a specific legislation on domestic violence and
adopt the broadest possible definition of acts of domestic violence and relationships with which such violence occurs. It recommends the making of a comprehensive legislation on domestic violence which integrates criminal and civil remedies rather than make marginal amendments in the existing penal and civil laws. The model legislation recommends that a law on domestic violence must be secular nature.

The model legislation makes it obligatory for the police to respond to every request of assistance and protection in cases of domestic violence and enjoins a duty upon the police not to give low priority to calls concerning alleged abuse by family then to calls alleging similar abuse and violation by strangers. Further it proposes the establishment of a wide network of complaint mechanisms. It makes it obligatory for law to provide for victims, witnesses of domestic violence, their family members and close associates state and private medical services providers and domestic violence assistance centers to lodge complaints of domestic violence with the police or in the Court. There is also a provision for alternate complaint procedure which makes it possible for victims of domestic violence to file a complaint with the state or private health facility. It is also possible for a relative or friend of a victim to file a complaint alleging act of domestic violence with the police. In fact any person whose assistance a victim seeks can make a complaint with the police and police shall investigate the case accordingly. The legislation enjoins a duty upon the police to inform the victim about the legal rights and remedies available to her. A police officer responding to a domestic violence call must make a domestic violence report that will become a part of the record.

The duty of judicial officers to issue temporary restraining orders against the perpetrators of domestic violence is another distinct feature of the UN model legislation on domestic violence. The restraining order can be passed even if the dependent does not appear in the Court. The provision for passing protection orders is another significant feature of model legislation. These protection orders are passed by the court to protect the victim of domestic violence from the further violation or threats of violence. In case of criminal proceedings against the abuser the model legislation urges the attorney to develop written procedures for officials prosecuting crimes of domestic violence. It also requires the court dismissing criminal charges in a crime involving domestic violence to
give specific reasons for such dismissal. The legislation bestow paramount trust on the victim’s testimony. It says that a complaint solely on the grounds of uncorroborated evidence shall not be dismissed. The model legislation also recommends enhanced penalties in cases of domestic violence involving repeat offences, aggravated assault and the use of weapons. Counseling is also suggested as an additional remedy along with sentencing fine and imprisonment.

As contemplated by the UN model legislation protection orders may be issued in favour of the victim while the civil proceedings for divorce, judicial separation or compensation are pending. Such may be issued independently and unaccompanied by an application for divorce or judicial separation. The legislation also requires states to provide emergency and non emergency services. Emergency services include a seventy two hour crisis intervention services, immediate medical attention, legal and crisis counseling. Non emergency services include long term rehabilitation programme for victims of domestic violence through counseling, job training and referrals, and long term rehabilitation of abusers through counseling. It recommends the delivery of such services in co-operation and co-ordination with public, private, state and local services.

The UN model legislation also recommends sensitizing the police officials and the judiciary on issues related to domestic violence. The legislation urges the states to provide trained counselors to support the police, judge, victims of domestic violence and perpetrators of domestic violence. It advocates mandatory counseling for perpetrators of domestic violence as a supplement to the criminal justice system.

4.3.1.2 National Perspective

The phenomenon of domestic violence is basically rooted in the socio-cultural fabric of India. Indian society is highly patriarchal. It not only discriminates between a son and a daughter but also the former is highly preferred and latter unwanted. In many cases preference for a male child is so intense that it results in the death of a female fetus. Gender discrimination culminates into and is manifested in various types of violent practices within ‘home’. Since ‘family’ and ‘home’ denote ‘private space’, an area free from state as well as non-state interventions, therefore, domestic violence has largely
remained free from legal restraints and remains even unacknowledged as a crime. Even if there were laws, victims were hardly taking recourse to law as women are socialised right from their childhood in patriarchal values. Consequently violence within ‘home’ and by their own relatives is not perceived as a crime or something wrong by women themselves. The state has also failed in making required arrangements like sensitisation of masses; bringing the entire family in the purview of the domestic violence law; legal awareness, economic empowerment of women etc. for preventing the occurrence of domestic violence. The state, despite declaring women at par with men, really did not do much until the decade of the 1990s for making women safe in the so-called ‘poor man’s castle’, that is, home.

All the provisions dealing with cruelty against women does not take into account the real problem of domestic violence in its totality, that is, in terms of its magnitude, type and of course nature of perpetrators. All these provisions target only the ‘husband’ and ‘in-laws’ as perpetrators or else only the violence faced by the daughter-in-law was addressed. The domestic violence faced by the daughter, sister, mother, girl friends etc. was all missing and they were denied legal protection. Also the violence committed by the husband and in-laws had to be proved ‘beyond reasonable doubt’. Since the crime is committed within four walls of the house, getting witnesses to corroborate their evidence is extremely difficult. Beside complaints can be registered only after an offence has been committed. But in cases of domestic violence the woman is living with her assaulter and on whom she is emotionally dependent. Over and above these, the attitude of the law-enforcement agencies is highly non-cooperative. Since the problem of domestic violence is rooted in social values and cultural practices that shape the attitude of police as well, therefore many a time the police refuses to register the cases of domestic violence. The law enforcement agencies also presume that the husband has a right to beat his wife.186

During the Fourth World Conference on Women at Beijing, the world community reaffirmed the rights of women as an integral part of the international human rights paradigm. During this Conference, 189 UN member-states adopted the Beijing Declaration and Platform for Action which specified

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186 Agnes Flavia, “Violence against Women: Review of Recent Enactments” in the name of Justice, Women and law in Society, Swapna Mukhopadyay (ed.), Manohar, 1999
the need to take steps to eliminate violence against women. Under its guidance the Government of India undertook some steps to protect women against domestic violence. In view of the fact that domestic violence is not simply a legal problem, India adopted a number of legal as well as non-legal measures to combat or to enable women to combat violence against them. Vast non legal measures were taken which failed to have desired impact. However, on this study I will be dealing only with the legal measure taken by the Indian state and the same are discussed at length. Legal measures taken by the Indian state included (1) review of the existing law and drafting new laws if needed. In fact the Protection of Women against Domestic Violence Act 2005 (hereinafter referred as “the Act”) was a product of this strategy of the state to combat domestic violence.

In the light of the “Government of India Report on Platform for Action: Ten Years after Beijing” and the crime scenario prevailing in the country the need was felt for an exclusive law on domestic violence. Initiatives in this direction began with the collaborative efforts of the UNIFEM and Lawyers’ Collective Rights Initiative (LCWRI). A delegation of representatives from women’s groups and State Women’s Commissions met the then HRD Minister regarding the need to enact a law on domestic violence. It finally resulted in the drafting of the Bill on domestic violence, that is, “Protection of Women from Domestic Violence the Act 2005”, which was passed by Parliament in September 2005 and came into force in October 2006.

4.3.2 Protection of Women against Domestic Violence Act – An Overview

This Act was enacted to cover a wider range of domestic relationships in which women are subjected to violence. In this Act all the suggestions given by UN model legislation was kept in mind and provisions were made to not only cover the cases where act of violence has already been committed but also the cases where women apprehends violence. It aims at giving protection to the women even before she is subjected to cruelty and also unlike criminal law it is not required to prove the guilt beyond reasonable doubt in order to get relief.

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187 The Beijing Declaration and the Platform for Action – Fourth World Conference on Women-Beijing September 4-15, UN Department of Public Information, UN, New York, 1996.
189 Platform for Action: Ten Years after Beijing.
under this Act.

4.3.2.1 Definition of Domestic Violence under the Act

The term “domestic violence” has been defined for the first time in such a detailed manner in this Act. It includes both actual abuse and threat of abuse which can be physical, sexual, verbal, emotional or economic. Even harassment by way of unlawful dowry demands to women or her relatives would also be covered under this definition.

Section 3 of the Act defines the term ‘domestic violence’. It says that any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it:

(a) harms or injures or endangers the health, safety of life, limb or well-being, whether mental or physical, of the aggrieved or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or

(b) harasses, harms, injures or endangers the aggrieved person with a view to coerce him or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or

(c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or

(d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person.

For the purpose of Section 3:

(i) “physical abuse” means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;

(ii) “sexual abuse” includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;

(iii) “verbal and emotional abuse” includes
(a) insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and

(b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested.

(iv) “economic abuse” includes

(a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance;

(b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and

(c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

Thus the Act prima facie appears to be comprehensive. But over the years various difficulties has been faced by the courts in its interpretation. The language used is so wide that leaves the law enforcing agency in a dilemma as to which act will be covered under this Act as an incidence of domestic violence and which will not.
4.3.2.2 Institutional Mechanism under the Act

Mere enactment of law is not a solution to any problem. The key lies in it effective implementation which is the most challenging task. Success of any law is dependent on the fact that how effectively it is implemented by the law enforcing agencies. Though this Act is an improvement over the prevailing legal mechanism as far as the role of the law-enforcing agencies is concerned, how effectively that role is played is more important for achieving the purpose of this Act.

Earlier the enforcement of law was largely the responsibility of ‘police’ that itself never accepted domestic violence as a crime; rather it always perceived such violence as a part and parcel of Indian culture. Therefore, this Act creates two new offices for the purpose of implementing the law, one is “protection officers” and the second is “service providers” (hereinafter referred as POs and SPs respectively). In order to keep a check on the police official and to ensure unbiased and fair investigation this Act provides that a complaint under the Act will be intialised by these POs and SPs.

- Protection Officers (POs)

As per the provisions of the Act the State Government by notification appoints POs in each district, entrusted with the task of reporting domestic violence to the “Magistrate”, as prescribed, upon the receipt of a complaint of domestic violence and forwards the copies thereof to the police officers incharge of the police station within the local limits of whose jurisdiction domestic violence is alleged to have been committed and to the “service providers”.

But statistics will reveal that even this has not been implemented by complete dedication throughout country. From November 2006 to July 31, 2007 there was no Protection Officer (PO) in five States whereas in the remaining States with the exception of the National Capital Territory of Delhi and Andhra Pradesh, only part-time POs were appointed. POs were also not fully trained and adequate infrastructure was lacking. Also, lack of coordination was found

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between judiciary and POs in the States of Assam, Kerala, MP and Orissa; the system, whereby POs are routinely and regularly informed about court orders, was missing. The lack of training, infrastructure and support has led to overburdening. Similarly only five States had registered Service Providers (SPs) and only 12 had notified medical facilities and shelter homes. The report of the Lawyers’ Collective\(^\text{191}\) suggests the inadequacies of government sponsored support facilities in meeting the prevailing needs. In fact, the enforcement aspect reflects severe dissimilarities and deviations from the law; for example, in the States of Rajasthan, Punjab and Haryana, heavy reliance on privately appointed lawyers was found. Legal awareness and economic capabilities were presumed on the part of the victims. There has been a complete oversight of the role of “protection officers” or registered “service providers”. The only State, where all the agencies i.e police, POs, SPs providers and legal aid service authorities, play their due role of facilitating women’s access to court, is Andhra Pradesh.

However, there have been improvements in the following years. All the States have had appointed Pos. But, though the provisions of the Act have been complied with by the states still it has not been able to achieve its aim of curbing domestic violence due to some lacunas in the provisions of the Act itself. Since the Act does not fix the number, it varies from State to State. Ideally the Act should have fixed the number of POs in proportion to the population. For the appointment of POs the Act says only that preference shall be given to women in matter of appointment and does not talk about the qualifications and training of POs and Service Providers. In fact a majority of POs appointed are without any specialised education or training. Ideally POs should be from a specialised branch in social work or law. The Act should have also specified the need for training in the light of which the State governments should have arranged for their proper training. The Act only talks about periodic sensitisation and awareness training on the issue as a duty of the government.\(^\text{192}\) The second monitoring and evaluation report by the Lawyers Collective also found lack of adequate administrative/ logistical and infrastructural support, that is, personnel, office space, transport, telephone, travel allowance etc. creating bottlenecks in the efficient discharge of duties by POs. In some States even ‘police officers’

\(^{192}\) Section 11, Protection of Women Against Domestic Violence Act, 2005
have been appointed as POs (Maharashtra) which made the implementation difficult in view of the patriarchal attitude of the police towards women, issues, particularly regarding ‘domestic violence’.

- Service Providers (SPs)

Section 10 of the Protection of Women against Domestic Violence Act, 2005 states that “any voluntary association registered under the societies Registration Act 1860 or a company registered under the Companies Act, 1956 or any other law for the time being in force with the objective of protecting the rights and interest of women by any lawful means including providing legal aid, medical, financial or other assistance shall register itself with the State Government as a service provider for the purpose of this Act”. Thus the Act does not lay down any specific requirements in terms of qualification, training or expertise of these Service Providers particularly in law/practices, of domestic violence and appointment of SPs is entirely the discretion of States. While earlier in 2007 only five States had registered SPs, now about 18 States have appointed SPs. In very few States (Andhra Pradesh, Assam and Rajasthan) NGOs dealing with domestic violence or women’s issues are working as SPs.

However despite providing a strong institutional system for redressal of complaints of domestic violence the Act has failed to achieve its desires goal. This is because the Act does not provide for any follow-up of the working of POs and SPOs. It has no mechanism for the state or any other law enforcing agencies to keep a check on the functioning of these specialized Institutions of POs and SPs.

4.3.2.3 Procedural Aspect and Reliefs provided under the Act

As far as the procedures for obtaining the orders and relief are concerned, an aggrieved person or Protection Officer or any other person on behalf of the aggrieved person may present an application to the Magistrate seeking relief under this Act. The Magistrate at any stage of the proceedings may direct the respondent or the aggrieved person to undergo counselling. What is important about the Act is that it rejects the Anglo-Saxon notion of locus

stand i.e. it is not essential that the complaint alleging domestic violence can be filed only by the victim, its family members or by the legally recognized person or institution for this purpose. Anybody on behalf of the aggrieved person may file a report. Secondly, the Magistrate shall fix the first date of hearing within three days from the receipt of an application by the Court.

Act provides vast discretion to the Magistrate in granting relief. Magistrate can pass protection orders\(^{194}\), residence orders\(^{195}\), monetary orders\(^{196}\), custody orders\(^{197}\) and compensation orders\(^{198}\). Thus we see that an attempt has been made to give over all protection to the women. Under this Act Court is empowered to give all kind of reliefs and a woman who is already a victim of violence is not tortured further by compelling her to file various litigations under various laws for the protection of her rights.

From the above discussion it is clear that the Act tries to grant relief to the aggrieved party on an urgent basis but in so doing it ends up in overlooking the ground realities of the situation of the victims of domestic violence as is evident from the judgment pronounced in various cases some of which are hereinbelow.

While interpreting the meaning of term ‘shared household’, the Supreme Court held in the case of *S.R. Batra v. Taruna Batra*\(^{199}\) that a woman could claim the right of residence only in relation to a household owned and rented by her husband.\(^{200}\) It was observed that in the opinion of the Supreme Court, there is no such law in India, like the British Matrimonial Homes Act, 1967, and in any case, the rights which may be available under any law can only be as against the husband and not against the father-in-law or mother-in-law. The judgment is a clear oversight of the ground social realities of the joint family system in India. Even if the right to residence is granted, in such a situation there is always a threat to the life and dignity of the woman. Consequently she has no way but to search for an alternative shelter. Also the Act acknowledges speedy justice in

\(^{194}\) Sec.18, Protection of Women Against Domestic Violence Act,2005

\(^{195}\) Sec.19, Protection of Women Against Domestic Violence Act,2005

\(^{196}\) Sec.20, Protection of Women Against Domestic Violence Act,2005

\(^{197}\) Sec. 21, Protection of Women Against Domestic Violence Act,2005

\(^{198}\) Sec.22, Protection of Women Against Domestic Violence Act,2005

\(^{199}\) 136 (2007) DLT 1 SC

the cases. Though the law is civil in nature, criminal procedure is to be applied in accessing reliefs.201 Again, though the Act addresses the need to have speedy justice in such cases, it overlooks the security needs of victims of domestic violence.

The Magistrate may also direct the respondent to pay the ‘monetary relief’ to meet the expenses incurred and losses suffered by the aggrieved person. However, the Act does not take into account the financial condition of the other party (that is, the respondent)—how the ‘losses’ and ‘expenses’ are estimated being very subjective terms there are again no clear guidelines in the Act. While the maintenance provision under the Hindu Marriage Act, 1956 clearly defines the amount of monetary support (as maintenance) not to exceed one-third of the total income,202 no such provisions are enumerated in the Act. How long monetary relief shall be provided is also not mentioned in the Act. Moreover there is a provision for compensation for the damages and injuries including mental torture and emotional distress by acts of domestic violence. But the entire provision of monetary compensation, relief and other protections is largely dependent on the subjective satisfaction of the Magistrate. The Magistrate may even give custody of the child to the aggrieved (though temporary) which is contrary to the provisions of the Hindu Guardianship Act 1956 which declares the father as the natural guardian203 and which may further create guardianship tussle between the parents causing legal complications for the aggrieved. Ideally justice should be delivered within three months but in view of the fact that the courts are overloaded with work, the case may linger on for months. In many places, including the model State of Andhra Pradesh, cases may drag on for more than six months.

4.3.3 Protection of Women from Domestic Violence Act 2005- A Critical Overview

The Act inter alia provides for more effective protection of the rights of the woman guaranteed under the Constitution who are victims of violence of any kind occurring within the family. According to the Act any harm, injury etc. by any adult members of the family constitutes domestic violence. Any woman

who is or has been in a domestic or family relationship, if she is subjected to any kind of violence she can complain. Aggrieved or effected woman can complain to the concerned Protection Officer, Police Officer, Service Provider or the Magistrate. A detailed study of the Act will show that it covers a wider range of women i.e. women who are subjected to cruelty in a relationship other than marriage. Further the definition of domestic violence is more specific and wider discretion is given to the courts while dealing with the complaints under this Act.

This Act covers those women who have been in the relationship with the abuser where both the parties have lived together in the shared household and are related by consanguinity, marriage, or through a relationship in the nature of marriage or adoption. In addition, the relationships with the family members, having together as a joint family are also included. Even those women who are sisters, widows, mothers, single woman or living with the abuse are entitled to legal protection. The Act enables the wife or the female living in a relationship in the nature marriage to file a complaint against any of the relative of husband or the male partner.

But despite all these features the Act suffers from lot of shortcomings. It does not enable any female relative of the husband or the male partner to file a complaint against the wife or the female partner. If in case of domestic violence the complaint is registered both under the Act as well as Section 498-A of the IPC, both the agencies carry out their investigations and if the reports are contradictory then what is the way out? Double enquiry may create confusions.

The Act may further be criticized as a lot of scope for the Magistrate’s discretion. There are no safety valves in the Act to prevent its misuse. It may prove disastrous for an individual in case the complainant has ‘malafide’ intentions. Violence faced by the ‘mother-in-law’ is completely missing. There is no mention of it. The Act completely ignores violence by the daughter in-law against the in-laws. The country has already seen the misuse of the Dowry Prohibition Act 1986 and Section 498A of Indian Penal Code. It was found that every four minutes in India, innocent persons including old mothers/pregnant sisters/children, are facing false and fabricated dowry cases and are sent behind bars without any evidence, Section 498A being non-bailable. Again there is no
mechanism to make it mandatory by the States to enforce the law in its totality; consequently in most of the States implementation is half-hearted. Too many laws on one issue create lots of confusion in the large number of already illiterate women who are without any/adequate knowledge of law. It creates confusion for the decision-making authorities also, notably the judiciary.

Moreover this Act provides only temporary reliefs and on urgent basis; permanent solutions are still to be found in personal laws. The failure of personal law due to its civil nature is an open fact; for example, most of the Hindu women still prefer to seek maintenance under Section 125, CrPC rather than under the Hindu Maintenance Act 1956. Further any legislation should have a simultaneous legal literacy and sensitisation plan. It is an open fact that the victims of domestic violence themselves do not accept it as something wrong. There is total ignorance regarding rights as well as the law on the part of women. Therefore, laws remain paper tigers rather than being the instruments of social change.

4.3.4 Judicial Pronouncements on the Act

The purpose of enacting the Protection of Women against Domestic Violence Act,2005 was discussed by the Hon’ble High Court of Madhya Pardesh in the case of *Ajay Kant v. Smt. Alka Sharma*204

“The phenomenon of domestic violence is widely prevalent but has remained largely invisible in the public domain. Presently, where a woman is subjected to cruelty by her husband or his relatives, it is an offence under Section 498A of the Indian Penal Code. The civil law does not however address this phenomenon in its entirety.

It is, therefore, proposed to enact a law keeping in view the rights guaranteed under Articles 14, 15 and 21 of the Constitution to provide for a remedy under the civil law, which is intended to protect the woman from being victims of domestic violence and to prevent the occurrence of domestic violence in the society.

204 2008 Cr. LJ 264 (MP)
Keeping these objects and reasons in mind to provide for more effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family and for matters connected therewith or incidental thereto, the bill was presented before the Parliament which has become the Act after passing the same by the Parliament. Thus, it cannot be lost sight of that the Act has been passed keeping in view the rights guaranteed under Articles 14, 15 and 21 of the Constitution to provide for a remedy under the civil law which is intended to protect the woman from being victims of domestic violence and to prevent the occurrence of domestic violence in the society. Thus, basically the Act has been passed to provide the civil remedy against domestic violence to the women. However, as provided by Sections 27 and 28 of the Act, a Judicial Magistrate of the First Class or the Metropolitan Magistrate has been empowered to grant a protection order and other orders and to try the offence under the Act. Vide Section 28 of the Act, it is mentioned that save as otherwise provided in this Act, all proceedings under Sections 12, 18, 19, 20, 21, 22 and 23 and the offences under Section 31 shall be governed by the provisions of the Code of Criminal Procedure, 1973. Vide Sub-sections (3) and (4) of Section 19, it is also provided that a Magistrate may require from the respondent to execute a bond, with or without sureties, for preventing the commission of domestic violence and such order shall be deemed to be an order under Chapter VIII of the Code of Criminal Procedure, 1973 and shall be dealt with accordingly. Chapter VIII of Cr.PC dealt with security for keeping peace and for good behaviour which runs from Sections 106 to 124. In these Sections, it is provided that for keeping the peace and maintaining good behaviour, a person can be directed by a Magistrate to execute a bond with or without sureties and in case of non-compliance of such order, that person can be detained into custody. Section 31 of the Act provides penalty for breach of protection order passed by the Magistrate, which is punishable as an offence. A protection order can only be passed under Section 18 of the Act.”

In the case of *Amit Sundra v. Sheetal Khanna* 205 it was held as under:

“as per the Protection of Women from Domestic Violence Act, 2005 the Magistrate has got ample power to modify, alter or revoke any order made under

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205 2008 Cri LJ 66
it and further there is specific provision for filing of appeal to the Court of Session against the order of Magistrate under the Act. The relevant provisions in this regard are Section 25 and Section 29 of the Act.

So, according to Section 25 of the Act, any aggrieved person may make an application before the Magistrate and the Magistrate after being satisfied that there is change in the circumstances requiring alteration, modification and revocation of any order made under this Act, he may, for reasons to be recorded in writing pass such order, as he may deem appropriate.

Further, Section 29 of the Act provides for appeal to the Court of Session within thirty days from the date on which the order made by the Magistrate is served on the aggrieved person or the respondent.

When specific remedy by way of appeal or by way of alteration, modification or revocation of any order, has been provided under the Act, prima-facie, the present petition under Article 227 of the Constitution of India, under these circumstances is not maintainable before this Court.”

4.3.5 Protection of Women from Domestic Violence Act 2005 - An Edge Over Existing Laws

Despite its shortcomings this Act has an edge over existing legislations dealing with domestic violence. Its provisions are better than existing laws thus giving stronger mechanism for protection to women against cruelty. This Act can be said to be a step in the right direction because of the following reasons:

(1) The applicants under this Act will only be women.

(2) This Act is undoubtedly a human rights issue.

(3) This Act is enacted for the elimination of all forms of discrimination against women.

(4) This Act protects women against violence of any kind specially that occur within the family.

(5) This Act was drafted keeping in mind the situation in India. Provisions such as the inclusion of economic abuse exemplified this.
(6) Important advance made by the Act in understanding the nature of domestic violence has been in the combination of civil and criminal remedies. While civil remedies are tailored to meet the circumstances of each case, criminal sanctions provide a great deterrent effect among perpetrators.

(7) An important feature of the landmark law is a woman's right to secure housing. It provides for a woman's right to reside in the matrimonial or shared household, whether or not she has any title or rights in the household. This right is secured by a residence order, which is passed by a court. Interestingly too, the new law does not distinguish between married women and women who are in live-in relationships. It provides equal protection to both from abuse at the hands of their partners.

(8) Women are often discouraged from filing complaints about domestic violence because they will be left homeless and destitute, once turned out of the house of the husband. The idea of residence orders therefore has a dual purpose. In that it previews destitution of women, and empowers them to utilise the legal system available by security.

(9) This Act is enacted keeping in view the rights guaranteed under Article 14 (right to equality), Article 15 (prohibition of discrimination under age, sex, cast, etc.) and Article 21 (fundamental rights) of the Constitution for a remedy under the civil law to protect women against domestic violence.

(10) Domestic violence under the Act includes actual abuse, whether physical, sexual, verbal, emotional or economic, said a statement issued by the Ministry. Besides physical violence, beating, slapping, hitting, kicking and pushing—it also covers sexual violence like forced intercourse, forcing a wife or partner to look at pornographic material and child sexual abuse.

(11) There has been an effort in this Act to simplify and make more effective issues of the method of filing a complaint of domestic violence and of obtaining relief under it. It also simplifies the procedure for an aggrieved who wishes to file a complaint, for example, the Act allows anyone, perhaps a friend or an NGO, who has witnessed a domestic violence to file a complaint in that regard to the Protection Officer.
(12) It makes it mandatory for the Magistrate to hear a case within three days of the complaint being filed. The idea of prompt relief is found in Section 12(5), which directs the Magistrate to finish hearing the case within six months reaching the court.

(13) The law also addresses sexual abuse of children and forcing young girls to marry against their will.

(14) The Act provides for a breach of protection order or interim protection order by the respondent as a cognizable and non-cognizable offence punishable with imprisonment or a fine, or both. Offenders can also be charged under other sections of the Penal Code, if applicable.

(15) The State Government will have to appoint a woman protection officer at each police station to book and pursue cases. Victims can seek compensation under the law.

Further the term ‘cruelty’, as defined under section 498A of IPC, is covered in the new Act as well. Further, the new law has widened the meaning of the word ‘Woman’ and it covers the woman facing violence outside matrimonial relationship. Also the secular outlook of the Act is clearly reflected as it deals with domestic violence regardless of the religion of the parties. The term ‘woman’ here is religion neutral. Many a time general protections available to women, irrespective of their religion, are denied on account of religion based personal laws.

### 4.4 Law For Protection of Women Against Other Offences

Women have always been considered as a weaker gender. She is harassed not only at home but is equally vulnerable at other places too. Lot of crimes are committed against her, sometimes out of lust, sometime sheer out of urge to exhibit male supremacy and sometimes due to traditional social approach of treating girl child as a burden on the family. It is this attitude of the society in general which has compelled the drafters of our Constitution also to

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207 Domestic Violence Act Constitutional Perspectives by Sundersan Harini and Ramakrishnan Nirupama.
provide certain Fundamental Rights for women only. Not only this even in the Indian Penal Code apart from above mentioned enactments certain sections have been added making any act of violence against women other than domestic violence a penal offence. These provisions are in addition to the general provisions of hurt, kidnapping, wrongful restraint or confinement, assault, use of criminal force, murder and culpable homicide. These provisions are as follows:

1) Causing miscarriage or injuries to unborn child (sections 312-318)

2) Assault or Criminal Force to woman with intent to outrage her modesty (sections 354 to 354D)

3) Kidnapping, abducting or inducing woman to compel her to marriage or procreation of minor girl or selling buying minor for purposes of prostitution (sections 366-366B; 372 and 373)

4) Rape (sections 375-376D)

As due to vast material it has already been said that it is not possible to cover all the aspects of violence against women in one paper. So this study has been confined to matrimonial cruelty and domestic violence against women. Hence, all the above mentioned provisions are not discussed at length but a brief of these provisions is given herein as under:

4.4.1 **Causing miscarriage or injuries to unborn child (sections 312-318)**

In earlier days aborting female fetus in womb was a prevalent practice as girls were considered as burden and was not wanted by the parents. Many times a woman had to undergo abortion against her wishes. It is in this background that sections 312-318 were incorporated in the Indian Penal Code dealing with various offences of induced miscarriage, injury to unborn children and exposing infants etc. These sections of Indian Penal Code makes act of causing miscarriage without women’s consent, injuries to unborn child, exposure of infants and concealment of birth a penal offence.

4.4.2 **Assault or Criminal Force to woman with intent to outrage her modesty**

Legal framers have acknowledged the incidents of eve teasing, stalking, incidents of outraging modesty of a woman. These acts did not fall under any of the existing provisions in the Indian Penal Code and hence in order to give
protection to women from such acts all these were made penal offences attracting punishment under section 354 and 354A to 354D of Indian Penal Code.

The word “modesty” has not been defined in the Cr.P.C. In the leading case of *Rupan Deol Bajaj v. Gill K.P.S.*\(^{208}\), referring to Oxford Dictionary, the Supreme Court observed as under :-

“modesty is the quality of being modest and in relation to woman means womanly propriety of behavior; scrupulous chastity of thought, speech and conduct. The word ‘modest’ in relation to woman is defined as decorous in manner and conduct; not forward or lewd; shamefast.”

It was observed by Bachawat, J in *State v. Major Singh*\(^{209}\) as under: -

“I think that the essence of a woman’s modesty is her sex. The modesty of an adult female is writ large on her body. Young or old, intelligent or imbecile, awake or sleeping, the woman possesses a modesty capable of being outraged. Whoever uses criminal force to her with intent to outrage her modesty commits an offence punishable under section 354. The culpable intention of the accused is the crux of the matter. The reaction of the woman is very relevant, but its absence is not always decisive,……”

Recently all the above mentioned incidents were made penal offences by the Criminal Amendment Act of 2013 whereby act of sexual harassment\(^{210}\), assault or use of criminal force to woman with intent to disrobe\(^{211}\), voyeurism\(^{212}\) and stalking\(^{213}\) has been made punishable to protect the dignity of women.

**4.4.3 Kidnapping, abducting or inducing woman to compel her to marriage or procuring a minor girl or selling buying minor for purposes of prostitution (sections 366-366B; 372 and 373)**

The word kidnapping has been defined in Section 359 and the punishment for kidnapping is provided in Section 360 and Section 361 of the

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\(^{208}\) AIR 1996 SC 309: 1996 Cri. L. J. 381 (SC)
\(^{210}\) Section 354A, Indian Penal Code
\(^{211}\) Section 354B, Indian Penal Code
\(^{212}\) Section 354C, Indian Penal Code
\(^{213}\) Section 354D, Indian Penal Code
Indian Penal code. But considering the vulnerable position of women in Indian society some special safeguards are provided. Sections 366-366B and Sections 372-373 provides for stringent punishment in case of kidnapping a woman to compel her for marriage or buying or selling of a minor for the purpose of prostitution.

4.4.4 Rape (sections 375-376D)

The protection and preservation of the rights of the individual are the indispensable constituents of the march of civilized society. More emphasis is given in democratic set up, where safeguarding human rights and assuring dignity to the individual is the responsibility of the state. One of the major factors which block the universal realization of human rights goal is violence. Particularly, women by reasons of violence against them are denied of full enjoyment of their human rights. In fact, international standards recognize violence against women and other forms of gender-based prosecution as violations of fundamental and universal human rights. In all societies, primitive as well as civilized, sexual intercourse by force or without consent has been prohibited and condemned, and in all the civilized societies it is unlawful. It is called criminal offence of rape. The position remains the same, except that a sexual intercourse with the wife without her consent, even against her will or by force is not rape, unless the wife is below the age of puberty (according to Indian law under the age of fifteen years.)

Broadly speaking, sexual intercourse by a man with a woman without her consent is rape. It need not be complete sexual intercourse. Explanation to section 375 of the Indian Penal Code lays down, “Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape”. Full penetration is not an essential ingredient of rape. It would amount to penetration if some part of male organ goes within the labium of pudendum of the woman, no matter how little. It is not necessary that hymen should be ruptured, nor is the seminal emission a sure indication of rape.

Rape is not only a crime against women, but a blatant assault on human dignity. It shatters the psychology of the victim and causes emotional breakdown and trauma. Unfortunately, rape victims are looked down upon as tainted women which adds insult to injury. The recent incident of gang rape in
Delhi and the brutality accompanying it has shaken the conscience of people all over the country and abroad.

There are demands for stiffer punishment. The penal laws of the country have been amended from time to time in the light of recommendations of the Law Commission of India. The maximum punishment for rape has been upgraded to life sentence in 1983 with the hope that it will deter and prevent rape. The 172nd report of the Law Commission has reviewed rape laws in the light of increasing incidents of rape and sexual abuse of youngsters and the Criminal Law Amendment Act 2013 has provided for more stringent punishments.

4.5 Civil Law Remedies

Beside the above discussed provisions there are certain civil law remedies also which are aimed at safeguarding the women against domestic violence. In India the problem of domestic violence has always been looked upon from the perspective of both criminal liability of the wrong doer and civil law remedies for the victim. Under Indian civil law also several provisions are available to deal with different types of domestic violence. A brief overview of these provisions is given herein as under:

4.5.1 Dissolution of Muslim Marriages Act, 1939 (DMMA)

The DMMA stipulates cruelty as a ground for divorce. In this Act cruelty is defined to include:

- Habitually assaulting the wife or making her life miserable by cruelty of conduct even if such conduct does not amount to physical ill-treatment.

- Associating with women of ill-repute or leading an infamous life.

- Attempting to force the wife to lead an immoral life.

- Disposing of the wife’s property or preventing her from exercising her legal rights over it.

- Obstructing the wife in the observance of her religion.
4.5.2 *The Hindu Marriage Act, 1955 (HMA)*

In traditional law also that is prior to the enactment of Hindu Marriage Act, 1955 all the schools considered the Hindu marriage a sacrament. Uncodified traditional Hindu law accepted the practice of polygamy and thereby permitted a Hindu man to marry without limitations. The practice of sati and child marriage was allowed and widow re-marriage was prohibited. In the traditional law woman was placed at a weaker position and therefore, to curb the adversaries faced by women at the time of marriage, Hindu Marriage Act was enacted. The Hindu law relating to marriage was codified under *The Hindu Marriage Act, 1955* (here in after referred as Act), which underwent several changes subsequently. The Act applies to any person who is a Hindu by religion including Virashaiya, a Lingayat or a follower of Brahma, Prarthana Samaj or Arya Samaj, and to any person who is Buddhist, Jaina or Sikh by religion. The Act also applies to all those persons who are not Muslims, Christians, Parsis and Jews who are domiciled in India, unless it is proved that some other law or custom or usage, as a part of law, applies to them. The Act elaborately deals with the provisions relating to conditions, ceremonies for a Hindu Marriage and for Registration of marriage, and provisions relating to restitution of conjugal rights, judicial separation, legitimacy of children and divorce etc.

A brief overview of the scheme of Act will help us in understanding that how this Act has brought an equality of rights and status between husband and wife. Section 5 of the Act deals with the eligibility and conditions of marriage which says that marriage may be solemnized between any two hindus, if the following conditions are fulfilled, namely:

1) Neither party has a spouse living at the time of marriage;

2) At the time of marriage neither of the party is incapable of giving consent because of unsoundness of mind or because of recurrent attacks of insanity or epilepsy.

3) The bridegroom has completed the age of twenty one years and the bride the age of eighteen years at the time of marriage.

4) The parties are not within the degrees of prohibited relationship, unless the custom or usage governing each of them permits of a
marriage between the two;

5) The parties are not sapindas of each other, unless the custom or usage governing each of them permits of a marriage between the two.

Thus we see that earlier practice of polygamy, child marriage and prohibition on widow remarriage have been totally abolished with the effect of Section 5 of the Act. The Section placed woman at par with man and thus encourages, monogamy and widow remarriages and discourages child marriage. Section 7 deals with the ceremonies of marriage. Section 8 deals with the procedure of registration of marriage. The Act lays down the provisions for judicial separation, divorce and maintenance also. In all the provisions equal rights are given to the wife also. Thus we see that this Act recognized the equal rights of man and woman in the matters of marriage and divorce.

Under the Act, cruelty is a ground for divorce as well as judicial separation\textsuperscript{214}. However, the term ‘cruelty’ is not defined in the Act. It is through decided cases that the term has been understood to mean acts of physical as well as mental cruelty.

4.5.3 The Hindu Widow Re-Marriage Act

In traditional India a widow had no right to re marry and as a widow she has to lead very simple life. Prohibition of widow re marriage was one of the greatest evil faced by the women in traditional India. By the enactment of Hindu Widow Re-Marriage Act now a widow can re marry and Section 5 of the Act ensured her to enjoy all the rights which a married woman did.

4.5.4 The Child Marriage Restraint Act

The practice of child marriage was another social evil from which woman in traditional Hindu society suffered a lot. In earlier days, girls were married at the age of 9 or 10 years. But after passing this Act the minimum marriageable age of women was fixed to 15 years. Later it was increased to 18 years.

\textsuperscript{214} Section 10 of the Act
4.5.5 **Special Marriage Act**

The main reason behind passing this Act was to provide a special form of marriage for the people of India and all Indian nationals in the foreign countries irrespective of the religion or faith followed by either party to the marriage. The parties may observe any ceremonies for the solemnization of their marriage but certain formalities are prescribed before the marriage can be registered. It is for the good of the Indian citizens abroad, the Act provides for the appointment of diplomatic and consular officers as marriage officers for solemnizing and registering marriage between citizens of India in a foreign country. The Act is applicable throughout the country except the state of Jammu & Kashmir.

4.6 **Epilogue**

After the above discussion we can conclude by saying that one of the main responses to domestic violence from the state was to create laws and amend the existing ones. From the drafting of our Constitution each and every time the weaker position of women and need to protect her from the atrocities faced by her both at home and outside was in the mind of framers of law. Accordingly special laws were enacted prohibiting all the malpractices against women and special provisions were added in the existing laws to give special protection to women. Even the judiciary has played a pivotal role in taking further the object of these enactments by giving a wider and liberal interpretation to the provisions in such a manner so as to benefit a woman who has been victim of matrimonial cruelty and domestic violence. We also see that domestic violence is a reality worldwide and all efforts are made to combat it at international level. It is not only in India but women are subjected to cruelty worldwide though degree may vary. Hence, attempt has been made worldwide to enact women protection laws. However, despite of these laws position of women remains vulnerable. She is still not safe either in her own house, matrimonial house or public places. The reason for this is that these women protection laws have failed to achieve the desired result due to its half hearted implementation. Merely adding law in statute book is not sufficient. It reaps benefit only when it is implemented in the same spirit as it is enacted. Various factors such as conservative approach of police, reluctance of victim to approach
the law enforcing agencies, social stigma attached to such women, lack of awareness among women about their rights etc. has added to the inefficient implementation of these laws. All these factors are discussed by way of empirical research method in the subsequent chapter thereby reflecting the mindset of the society.

Individuals and women activists started realising that the campaign against cruelty against women was not adequately formulated. If violence is seen as a manifestation of a women's powerlessness, then naturally it will make woman more vulnerable to violence and humiliation. Hence, if the above mentioned enactments are desired to achieve their objective then a collective effort has to be made by the people at large and the three organs of the state. The basic social set up and traditional outlook of considering a girl who has been thrown out of her matrimonial house as a stigma for parents has to be changed. Law is meant for the protection of people but mere its enactment will not be sufficient. In order to reap its benefits people also have to fulfill their duties. Therefore, a collective effort has to be made by the state and the society to fight with the menace of cruelty against women and to ensure the effective implementation of women protection laws. Laws have to be made keeping in mind the social set up of a given society so as to achieve their desired results. Their effective implementation can also be ensured only if they are harmonious with the prevalent customs and practices in the society. Here I will like to conclude by quoting as follows:

“Law being a practical thing, must found itself on actual forces”\textsuperscript{215}

\textsuperscript{215} Holmes, Oliver Wendell, The Common Law (Boston : Little, Brown & Company, 1881).