CHAPTER - V

WOMEN’S RIGHTS AND PROTECTION UNDER THE LAW AND CONSTITUTION

Social security is dynamic by nature. It varies from time to time and country to country. It envisages that the members of the community shall be protected by collective action against social risks causing undue hardship. The social risks are violation of human rights, anti-dowry and other injustice against women. In order to protect women against social evils Tamil Nadu Government took various measures and introduced various legislations now and then. In this chapter, women’s rights and protection under the law and constitution are discussed.

Second quarter of the 20\textsuperscript{th} century saw women in India rising against the gender bias. They questioned the Hindu scriptures, which accorded them a status lower than that of males. According to an author, the challenge given by educated women was and still one of the greatest challenges that the Hindu society ever faced in modern times.\textsuperscript{1}

The plight of women in India during pre-independence period had necessitated the enactment of Hindu Widows Remarriage Act, 1856, The Child Marriage Restraint Act, 1929\textsuperscript{2}, Hindu Women’s Right to Property Act, 1937, and the Dissolution of Muslim Marriage Act, 1939 but in view of social practices prevalent amongst different communities, women continued to suffer on various fronts leading to insertion of Article 51-A (with effect from 03-01-1977) in the Constitution of India which stipulates, inter-alia, that it shall be the fundamental duty of every citizen of India to renounce practices derogatory to the dignity of women.

\textsuperscript{1} Sharma, Ramnath, \textit{Indian Society and Social Institutions}, Delhi, 1981, pp. 165 - 166.
\textsuperscript{2} Ramakrishna, S., Criminal Minor Acts, Delhi, 2001, p. 229
The Constitution of India, adopted by the Constituent Assembly on 26th November, 1949 is a comprehensive document containing 395 Articles and various Schedules. The Constitution of India, besides dealing with the structure of the Government contains provisions for the right of citizens and other persons and for the principles to be followed by the state in the governance of the country under the nomenclature “Directive Principles of State Policy”. The structural part of the constitution is to a large extent derived from the Government of India Act, 1935. The philosophical part has other sources. The part dealing with Fundamental Rights derives its inspiration partly from the Bill of Rights of the American Constitution. Part IV of the constitution, which deals with Directive Principles of State Policy derives its inspiration from the Irish Constitution.3

The Preamble of the constitution envisages India to be a sovereign, secular, democratic republic and declares that the constitution has been given by the people to themselves, thus affirming the republican character of the polity and the sovereignty of the people of India. The democratic nature of the Constitution is manifested in the provisions on universal adult suffrage, election of representatives to the legislative bodies and panchayati raj institutions and the accountability of the Executive to the Legislature. The socialistic character of the Constitution is highlighted in the Preamble of the Constitution which spells out the aspiration of the people to secure to all citizens, social, economic and political justice. The Preamble further affirms a determination to secure liberty of thought, expression, belief, faith and worship and equality of status and opportunity, and to promote amongst the people a feeling of fraternity, ensuring the dignity of the individual and unity of the nation.

Article 15 of the Constitution of India prohibits discrimination on certain grounds, which include sex. According to the said Article, the state shall not discriminate against any citizen on the grounds only of religion, race, caste, sex, place of birth or any of them. No citizen shall on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to access to shops, restaurants, hotels, places of public entertainment, use of wells, tanks, ghats, roads and places of public resort maintained wholly or partly out of state funds or dedicated to the use of general public. The most important provision of this Article is the provision that enables the State to make provision for women and children. Article 15 (3) stipulates that nothing in that article shall prevent the state from making any special provision for women and children.

Article 16 of the Constitution of India which guarantees equal opportunity in the matter of public employment stipulates that no citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the state.

The Supreme Court in *Madhu Kishwar Vs State of Bihar*\(^4\) held that denial of right to succession to women of Scheduled Tribes amounts to deprivation of their right to livelihood under Article 21 of the Constitution of India.

Wherever the government’s policy to keep away convicts for crimes against women from certain benefits extended to other categories were challenged before the Supreme Court, that Court always upheld such policies. In *Sanaboina Satyanarayana Vs Government of Andhra Pradesh*,\(^5\) in which, the government’s policy to keep away convicts for crimes against women from the benefits of remission of sentence was

\(^4\) AIR(All India Law Reporter) 1996 SC 1864.
\(^5\) 2003 AIR 3074.
challenged, while upholding the policy, the Supreme Court of India, observed as follows:

The Constitution of India itself has chosen to countenance the claims of women for favourable treatment and acknowledge the fact that sex is a sound classification. The issue in question being one pertaining purely to the area of policy and political philosophy of the State, the Courts except in the rarest of rare cases, cannot be called upon to adjudicate on the desirability or wisdom of such decisions. It is no exaggeration to place on record that instances of violence against women and children particularly female, such as rape, dowry deaths, domestic violence, bride burning, molestation, brazen, ill treatment of horror, vulgarity and indecency are not only rampant but on phenomenal increase casting a shadow of shame on the society, the culture and governance in this country and it seems that cruelty to women and problems of battered wives have become ironically almost a worldwide phenomenon. Such a situation deserves a special treatment in the hands of the State. Consequently, the classification to keep away convicts for crimes against women from the benefits of remission under the order does not violate any reasonable principle or concept of law so as to call for its condemnation in exercise of the powers of judicial review. The classification therefore sounds just, reasonable, proper and necessitated in the larger interests of society and greater public interest and does not attract the vice of Article 14 of the Constitution.

Article 21A, inserted by the Constitution (Eighty-sixth Amendment) Act, 2002 on right to education is a very important constitutional provision for the up-liftment of women. That Article states that the state shall provide free and compulsory education to
all children of the age of six to fourteen years in such a manner as the state may, by law, determine.

Article 23 of the Constitution of India, which prohibits traffic in human beings and forced labour, stipulates that Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall also be an offence punishable in accordance with law. Under this provision, the Supreme Court has issued in public interest litigation directions on the children of prostitutes.\(^6\) Indian Penal Code is one of the laws which provide for punishment for violations of Article 23 of the Constitution of India. The Suppression of Immoral Traffic in Women and Girls Act, 1956\(^7\) provides for punishment for such contravention.

According to the Supreme Court of India, in *Vishal Jeet Vs Union of India*\(^8\), traffic in human being includes devadasis. The Supreme Court in this case held as follows:

“The malady of prosecution is not only a social but also socio economic problem and therefore, the measures to be taken in that regard should be more preventive rather than punitive. This cannot be eradicated either by banishing, branding, scourging or inflicting severe punishment on the helpless and hapless victims most of whom are unwilling participants, and involuntary victims of compelled circumstances and who, finding no way to escape, are weeping or wailing throughout. This devastating malady can be suppressed and eradicated only if the law enforcing authorities in that regard take very severe and speedy action against all the erring persons such as pimps, brokers and brothel keepers.

(867 D, E-G)\(^8\)

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6 AIR 1990, SC 1412; *Gaurav Jain Vs Union of India* AIR 1990, SC 292; *Gaurav Jain Vs Union of India* AIR 1997, SC 3021.
7 Act No 104 of 1956, dated 30 December 1956.
8 *Vishal Jeet Vs Union of India*, AIR 1990, SC 1412.
In spite of the stringent and rehabilitative provisions of law contained in Constitution of India, the Immoral Traffic (Prevention) Act, 1956, Indian Penal Code, 1860 and the Juvenile Justice Act, 1986, it cannot be said that the desired result has been achieved. It cannot be gainsaid that a remarkable degree of ignorance or callousness or culpable indifference is manifested in uprooting this cancerous growth despite the fact that the day has arrived imperiously demanding an objective multi-dimensional study and a searching investigation into the matter relating to the causes and effects of this evil and requiring the most rational measures to weed out the vices of illicit trafficking. (867 C-D)

Apart from legal action, both the Central and the State Governments have got an obligation to safeguard the interest and welfare of the children and girls of this country. (867 H).

All the State Governments and the Governments of Union Territories should direct their concerned law enforcing authorities to take appropriate and speedy action under the existing laws in eradicating child prostitution without giving room for any complaint or remissness or culpable indifference. They should also set up separate Advisory Committees for making suggestions for eradication of prostitution, implementation of the social welfare programmes for the care, protection, treatment, development and rehabilitation of the victims and for amendments of the existing law, or for enactment of any new law for prevention of sexual exploitation of the children. These Governments should also devise a machinery for ensuring proper implementation of the suggestions of their respective committees. (868- H; 869 A-E)”

Article 42 directs the State to make provision for securing just and humane conditions of work and for maternity relief.
Article 243D\(^9\) of the Constitution provides for reservation of seats for women in *panchayats*. The Article provides that of the seats reserved for Scheduled Castes and Scheduled Tribes, in the *panchayats*, not less than one-third of the total number of seats shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes. Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every *Panchayat* shall be reserved for women and such seats may be allotted by rotation to different constituencies in a *Panchayat*. The offices of the Chairpersons in the *Panchayats* at the village or any other level shall be reserved for the Scheduled Castes, the Scheduled Tribes and women in such manner as the Legislature of a State may, by law, provide. Not less than one-third of the total number of offices of Chairpersons in the *Panchayats* at each level shall be reserved for women.

Article 243T\(^10\) of the Constitution provides for reservation of seats for women in municipalities. The Article provides that of the seats reserved for Scheduled Castes and Scheduled Tribes, in the municipalities, not less than one-third of the total number of seats shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes. Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every municipality shall be reserved for women and such seats may be allotted by rotation to different constituencies in a municipality. The offices of Chairpersons in the municipalities shall be reserved for the Scheduled Castes, the Scheduled Tribes and women in such manner as the Legislature of a State may, by law, provide.

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\(^9\) Inserted by the Constitution (Seventy-third Amendment) Act, 1992 (with effect from 24 April 1993).

\(^10\) Inserted by the Constitution (Seventy-third Amendment) Act, 1992 (with effect from 24 April 1993).
Laws that Protect Women’s Interests

Keeping in view the need for uplift-ment and emancipation of women from subjugation and for ensuring their safety, various Acts were enacted in the country. A number of laws and other legal provisions have been enacted for the protection of women. Discrimination still however continued to afflict women as a result the National Commission for Women Act came to be brought on the statute book in the year 1990 for establishing National Commission for Women, inter-alia, to investigate instances of violation of women’s rights and to take remedial steps by making recommendations to the Central and State Governments for amendment of relevant laws which are anti-women or which are not strong enough to save women’s interests.

All these Acts can be broadly characterized into the following categories:

1. Laws to protect women from evil social practices
2. Laws to protect women from violence
3. Laws to ensure dignity and equality of women
4. Laws to protect the property right of women and adoption
5. Laws relating to marriage
6. Laws for affirmative action

1. Laws to protect women from evil social practices

Suppression of Immoral Traffic Act [presently known as Immoral Traffic (Prevention) Act. 1956\textsuperscript{11}]

It is the mandate of the Constitution which prohibits traffic in human beings. Keeping that object in view and in pursuance to International Conventions for the Suppression of Traffic in persons and of the Exploitation of the Prostitution of

\textsuperscript{11} Ramakrishna, S., Criminal Minor Acts, Delhi, 2001, p. 587.
others signed at New York on May 9, 1950 the Parliament enacted the Suppression of Immoral Traffic in Women and Girls Act, 1956. The Act was amended in 1978 to make good some inadequacies in the implementation of the Act and in the light of the experience gained during the period the Act was being implemented. Despite the amendments of the Act, it was felt that enforcement of the Act had not been effective enough to deal with the problems of immoral traffic in all its dimensions. Suggestions had been made to Government by voluntary organisations working for women, advocacy groups and various individuals urging the enlargement of the scope of the Act, to make penal provisions more stringent and to provide for certain minimum standards for correctional treatment and rehabilitation of the victims. The Act was, therefore, further amended in 1986 making it more wide based. The Act is now called as Immoral Traffic (Prevention) Act, 1956.\(^12\)

The criticisms against implementation of this penal law is that the Policemen abuse innocent women by charging her as a prostitute with the ulterior motive of abusing her physically or for other ulterior motives.

**The Dowry Prohibition Act, 196\(^13\)**

The culture of dowry-giving is spreading even to communities, which had no such tradition a generation or two ago. This despite the fact that in the last two decades the anti dowry laws have been made very stringent and draconian.

The anti-dowry campaigners attribute the problems of the modern day dowry system to the tradition of *stridhan*,. The present day custom of dowry giving may retain some ingredients of the tradition of giving *stridhan* (a woman's own inalienable property) to daughters but the difference between modern day dowry and *stridhan* is as

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\(^{12}\) Gaurav Jain Vs Union of India AIR 1997, SC 3021.  
\(^{13}\) Ramakrishna, S., Criminal Minor Acts, Delhi, 2001, p. 379.
profound as that between a horse carriage and a motorized truck. Though both move on wheels the power that propels the two kinds of wheels is altogether different.

*Stridhan*, as per Hindu customary practice, is that portion of wealth, which is the exclusive property of women and passes from mother to daughter. It includes gifts of money, property, jewelry or a share in a family business given to a woman as a daughter, sister, wife or daughter-in-law. It also covers wealth generated through her own enterprise or any other wealth accruing to her due to her own effort or by inheritance. It includes, but is not limited to, gifts or wealth given to a daughter at the time of her marriage. It also includes gifts given to her by her in-laws. Unlike *stridhan*, which was the exclusive property of the woman, the present day dowry includes gifts and wealth given at a daughter's wedding, not just to her but to her husband, in-laws and his relatives as well as household goods required for setting up the house. These vary from simple gifts of clothing and small items of jewelry for the woman, to exorbitant sums in cash or expensive pieces of property to the groom and his parents.

The anti-dowry agitationists relied mainly on pious outrage demanding that the law be made more and more stringent in their attempt to abolish this 'social evil'. However, such laws work only if people perceive their own interest in the proposed measure of reform. If a woman believes in taking a portion of her parental wealth at the time of her marriage and if her parents believe this is a necessary investment for her future happiness, effectiveness of such a law may not be of the expected level. The perceived effect of the anti-dowry law and campaign has been that the giving and taking has become more surreptitious. The anti-dowry movement, by limiting itself to the propaganda of 'dowry abolition' as the strategy for ending women’s oppression and as a precondition for women's empowerment, has only helped give legitimacy to the belief that daughters are an economic liability.
The Supreme Court of India called the evil of dowry as a terrorist in the following words in the case Hira Lal Vs State, Delhi:\textsuperscript{14}:

“Marriages are made in heaven, is an adage. A bride leaves the parental home for the matrimonial home, leaving behind sweet memories therewith a hope that she will see a new world full of love in her groom's house. She leaves behind not only her memories, but also her surname, gotra and maidenhood. She expects not only to be a daughter in law, but a daughter in fact. Alas! The alarming rise in the number of cases involving harassment to the newly wed girls for dowry shatters the dreams. Inlaws are characterized to be outlaws for perpetrating a terrorism which destroys matrimonial home. The terrorist is dowry, and it is spreading tentacles in every possible direction.”

Systems that provided reasonable or adequate protection of women's economic rights have been steamrollered out of existence. The present day dowry system in India symbolizes the disinheriance of women and the desperation of parents to get their daughters marrying off and failure to do so is considered a severe stigma on the family's reputation. As the woman is perceived as a disinherited dependent, the receiving family has to be compensated for her acceptance. In order to combat the problem of dowry the most effective way is to empower women by inheritance of property of her parents. This is possible by way of encouraging parents to gift income-generating property such as house, land etc to their daughters. Amendment of the Hindu Succession Act to give coparcenary rights to daughters at par with sons as the states of Andhra Pradesh, Karnataka and Tamil Nadu is necessary. The states who have not done this should do the same at the earliest.

\textsuperscript{14} 2003, AIR 2865
As a step towards dowry prohibition, the Imperial Legislative Assembly, way back in the year 1870 took the measure of limiting the expenses incurred by any person on account of the celebration of marriage or of any ceremony or custom connected therewith under section 2 (iv) of the Female Infanticide Prevention Act.

When the Central Government introduced the Dowry Prohibition Bill both the houses differed on various issues relating to the Bill. Although several activists pleaded for making the contraventions of the proposed Act cognizable (arrest without warrant), the select committee rejected the plea on the ground that the powers would be misused by the corrupt enforcement agencies which will result in harassment to the people.

This Dowry Prohibition Act, 1961 replaced various state legislations enacted by states for prohibiting taking of dowry. This Act prohibits the request, payment or acceptance of dowry ‘as a consideration for the marriage’. The expression ‘dowry’ is defined as a gift demanded or given as a precondition for a marriage. Gifts given without precondition are not considered dowry, and are, therefore, legal. Offences under the Act are punished by an imprisonment from six months, and a fine up to Rupees fifteen thousand or the amount of dowry whichever is higher and imprisonment up to five years.

There was a demand from activists for amending the Act to give it teeth to fight the evil of demanding and giving dowry. On 16th September, 1984, over two lakh signatures were obtained and sent to the Prime Minister to highlight the failure to amend the law to incorporate popular demands. Consequently the law was amended in the years 1984 and 1986. The amendments made in the years 1984 and 1986 made dowry giving and dowry receiving cognizable offence. The burden of proof is on the husband and his family to prove that they did not make dowry demands and what was given by the bride’s parents were voluntary gifts.
The Tamil Nadu Government has notified the Tamil Nadu Dowry Prohibition Rules, 2004.\textsuperscript{15} The said rules provide for filing of complaints by any aggrieved person or a parent or other relative of such person or by any Recognised Welfare Institution or Organisation in writing to the Dowry Prohibition Officer, either in person or through a messenger or by post. The Dowry Prohibition Officer shall, inter-alia, endeavour to create awareness among the public by organizing camps, publicity through Information and Tourism Department, Panchayat Raj Institutions and other media against dowry and to involve local people for prevention of dowry and shall conduct surprise checks and discreet enquiries to ascertain whether there has been any violation of the provisions of the Act and Rules.

Section 406 of the Indian Penal Code prescribes a punishment of imprisonment up to three years for criminal breach of trust, for not returning the dowry of a woman if she demands it after the marriage breaks down. If a person fails to comply with court’s direction to return dowry under this section, an amount equal to the value of the dowry may be recovered from him.

The Supreme Court held that it is not necessary that the dowry prohibition law applies only when the marriage has taken place, but that it becomes active the moment two parties start a dialogue for marriage. A bench of the court comprising Justices Arjit Pasayat and Ashok Kumar Ganguly said that the definition of the expression ‘dowry’ in section 2 of the Dowry (Prohibition) Act cannot be confined merely to demand of money, property or valuable security made at or after the performance of marriage. Demand of money, property or valuable security made to the (would be) bride or her parents or other relatives by the bride groom or his parents or other relatives or vice-versa would fall within the mischief of ‘dowry’ under the Act even if the demand is not

properly referable to any legally recognized claim and is relatable only to the consideration of marriage. The court further held that marriage would include a proposed marriage particularly when the non-fulfillment of the demand of dowry leads to the ugly consequence of the marriage not taking place at all.¹⁶ This interpretation given to the Act is laudable as it has given teeth to the Dowry (Prohibition) Act, which has not been a deterrent against the evil of dowry.

In Vikas Vs State of Rajasthan,¹⁷ Justice Shah of the Supreme Court while referring to the role of the Society in fighting the demon of dowry observed as follows:

Daily, demon of dowry is devouring lives of young girls, who marry with high hopes of having heavenly abode in their husband's house. In few cases, guilty are punished but it has no deterrent effect on mothers-in-law or sisters-in-law who might have suffered similar cruelty/tyranny. This deep rooted social evil requires to be controlled not only by effective implementation of the Dowry Prohibition Act, 1961, but also by the Society. The Society has to find out ways and means of controlling and combating this menace of receipt and payment of dowry. It appears that instead of controlling payment and receipt of dowry in one or other form, it is increasing even in educated class. May be that, it is increasing because of accumulation of unaccounted wealth with few and others having less means follow the same out of compulsion.

Going by the news paper reports and a number of dowry harassment cases reported and registered, it can safely be concluded that the Dowry Prohibition Act, 1961 has grossly failed in fulfilling the objective for which it was enacted. Even

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¹⁶ DNA (Daily News & Analysis), Friday, 1 May 2009.
¹⁷ 2002, AIR 2830
education has not proved to be effective in arresting the evil practice of dowry. Educated people are not way behind in giving and taking dowry. In order to make this law effective strict enforcement of the Act and sensitization of the people about evils of dowry and the consequences of giving and taking dowry is absolutely essential. The voluntary organizations in the field of women’s upliftment should strive to build public opinion against dowry. They should encourage simple and inexpensive marriage ceremonies such as the self-respect marriages solemnized by Periyar. The curriculum should strive to build values amongst the students that spurn dowry. The media should play its role to create public opinion against dowry.

The Commission of Sati (Prevention) Act, 1988\(^{18}\)

During the renaissance period, our religious leaders like Swami Vivekananda, Swami Parmahansa, and Raja Ram Mohan Roy had raised their voice against evil practices like *sati* but the social conscience mired in rituals has not been able to shed its pro-male attitude even in the 21\(^{\text{st}}\) century. In these days of globalization, it is imperative for this country to shed this attitude if we are to achieve any degree of recognition along-side advanced countries of the world which have progressed mainly due to grant of equal rights to men and women, whereas India, despite its vast geographical area and natural resources continues to lag behind.

The first legislation against *sati* was enacted in the Bengal Presidency in the year 1827 followed by similar legislations in Madras and Bombay Presidencies. When the Indian Penal Code was enacted no specific provision against *sati* was included in the Penal Code, probably for the reason that certain sections of the Indian Penal Code dealing with offences such as murder, abetment of suicide could adequately deal with

\(^{18}\) Ramakrishna, S., Criminal Minor Acts, Delhi, 2001, p. 250.

The Act defines the expression ‘*sati*’ as the burning or burning alive of any widow along with the body of her deceased husband or any other relative or with any article, object or thing associated with the husband or such relative or burning alive of any woman along with the body of any of her relatives, irrespective of whether such burning or burying is claimed to be voluntary on the part of the widow or the women or otherwise. The Act penalises any attempt to commit *sati*. Any person who is attempting to commit sati is punishable with imprisonment for a term which may extend to one year or with fine or with both. Persons charged with the offence of abetment of *sati* are punishable with death or imprisonment for life and shall also be liable to fine. Persons charged with the offence of abetment of attempt to commit *sati* are punishable with imprisonment for life and shall also be liable to fine.

Persons who glorify *sati* are punishable with imprisonment for a term which shall not be less than one year but with may extend to seven years or with fine which shall not be less than five thousand rupees which may extend to thirty thousand rupees.

Where the Collector or the District Magistrate is of the view that *sati* or any abetment thereof is being, or is about to be committed, he may by order prohibit the doing of any such act towards the commission of *sati*.19 The State Government may, if it is satisfied that any temple or other structure is in existence for not less than twenty

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years, any form of worship or the performance of any ceremony is carried out with a view to perpetuate the honour of or to preserve the memory of, any person in respect whom *sati* has been committed, by order, direct the removal of such temple or structure.\(^{20}\)

A very innovative and important provision of the Act is that it has amended the Representation of the people Act, 1951 for the disqualification of the persons who have contravened any of the provisions of the Commission of *Sati* (Prevention) Act, 1987, from the date of conviction and for the continuous disqualification for a further period of five years since his release. Further the Act has provisions for forfeiture of property and also provisions for disqualification of a person convicted under the Act from inheriting the property of the person in respect of whom such *sati* has been committed or the property of any other person which he would have been entitled to inherit on the death of person in respect of who such *sati* has been committed.

2. Laws to Protect Women from Violence

**Indian Penal Code, Section 209**

Under Section 209 of the Indian Penal Code, eve-teasing is covered. As per Section, 209 of the Indian Penal Code, whoever, to the annoyance of others does any obscene act in any public place or sings, recites or utters any obscene song, ballad or words in or near any public place shall be punished with imprisonment of either description for a term which may extend to three months or with fine or both.\(^{21}\)

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\(^{20}\) Laws to Protect Women from Violence, Indian Penal Code, Section 7 of the Act.

Indian Penal Code Section 304B

Women's organizations also pushed to get a new category of crime included on the statute book via an amendment to the Indian Penal Code. This crime - named 'dowry murder' or 'dowry death' is covered by Section 304B.

This Section of the Indian Penal Code was inserted by a 1986 amendment. The dowry deaths law defines a 'dowry death' as the death of a woman caused by any burns or bodily injury or which does not occur under normal circumstances within seven years of her marriage. For a woman's death to be a dowry death, it must also be 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. If this is proved, the woman's husband or relative is required to be deemed to have caused her death. Whoever causes dowry death is required to be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.

By inserting a new section 113B in the Indian Evidence Act, the lawmakers stipulated that in cases that are registered by the police as those of 'dowry death', the court shall presume that the accused is guilty unless he can prove otherwise. Under section 304B, in the case of a 'dowry death', where allegations of demand of dowry or non-return of dowry are made, the accused are frequently denied anticipatory, or even regular bail.

In a case before it, the Supreme Court referring to the evidence given by certain prosecution witnesses which clearly showed the greed of the accused who were

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persistently taunting and harassing the deceased for not having brought sufficient dowry held that the High Court was justified in upsetting the order of acquittal passed by the trial court and directing conviction.\footnote{Prem Kanwar Vs State of Rajasthan 2009, (1) SCALE 230}

**Indian Penal Code Section 312\footnote{Sarkar’s Criminal Major Acts, Allahabad, 2009, p. 210}**

Section 312 of the Indian Penal Code prohibits any person from voluntarily causing a woman to miscarriage and such violation is made punishable with imprisonment which may extend to seven years and fine but if such miscarriage is carried out without the consent of the woman, such act is punishable up to ten years imprisonment and fine.

**Indian Penal Code Section 354\footnote{Sarkar’s Criminal Major Acts, Allahabad, 2009, p. 230} – Outraging the Modesty of Women**

As per Section 354 of the Indian Penal Code, whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punishable with imprisonment of either description for a term which may extend to two years, or with fine or both.

**Indian Penal Code, Section 376\footnote{Sarkar’s Criminal Major Acts, Allahabad, 2009, p. 242} - Rape**

The Indian Penal Code also provides for stricter punishments when the crime of rape is committed in custody. Section 376 states that the crime of rape, when committed by a private actor, is punishable by a minimum of seven to ten years and a maximum of life imprisonment. Under subsection (2), the rape is punishable by "rigorous imprisonment" for a term of ten years to life if it is committed by a police officer against a woman in his custody (or in the custody of a police officer subordinate to him), or on the premises of his police station or a station house.
Indian Penal Code, Section 509\textsuperscript{27} - outraging the modesty of women by uttering words, making gestures, intruding privacy of women etc.

Whoever intending to insult the modesty of any woman utters any word, makes any sound or gesture, or exhibits any object intending that such word or sound shall be heard, or that such gesture or object shall be seen by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or both.

Indian Penal Code Section 498A\textsuperscript{28} - Cruelty by Husband or His Relatives

Section 498A of the IPC criminalises cruelty by husband or relatives of husband. It was inserted in the Indian Penal Code in the year 1983. It reads as follows:-

“Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation-For the purpose of this section, "cruelty" means-

(a) Any willful conduct which is of such a 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 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 meet such demand.”

\textsuperscript{27} Sarkar’s Criminal Major Acts, Allahabad, 2009, p. 326.
\textsuperscript{28} Ibid., p. 315.
Prosecution for a non-compoundable offense can only be quashed by a High Court of India under its powers under section 482 of Criminal Procedure Code of India.

After registration of a FIR for a cognizable, non-bailable offense, the police in India can arrest any and all of the accused named in the complaint. In practice, cruelty is taken to include the demanding of a dowry. This section is non-bailable, non-compoundable (i.e. it cannot be privately resolved between the parties concerned) and cognizable (i.e. the police can arrest the accused without investigation or warrants) on a report from a woman or close relative.

This law takes particular cognizance of harassment, where it occurs with a view to coercing the wife, or any person related to her, to meet any unlawful demand regarding any property or valuable security, or occurs on account of failure by her, or any person related to her, to meet such a demand.

**Domestic Violence**

Although dowry per se is not the cause of domestic violence, dowry demands are sometimes the cause of domestic violence.

The Protection of Women from Domestic Violence Act, 2005 was brought into force by the Government of India from October, 26, 2006. The Act was enacted in August 2005 and assented to by the President on 13 September, 2005. For the purpose of this act, Domestic Violence includes the demand for dowry, and other act or conduct of the respondent shall constitute domestic violence in case it,

(a) Harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person 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 her 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.

One of the important features of this Act is the right of women to secure housing. The Act provides for the woman’s right to reside in the matrimonial or shared household, whether or not she has any title or right in the household. Such right is secured by issuance of an order by the Court. This Act empowers the lower courts to issue "protection orders" on the complaint of a woman against her male relatives. The protection orders could include restraining orders on the husband and others, monetary compensation, and residence orders. Any breach of the protection order is punishable with imprisonment for a term which may extend to one year or with fine which may extend to twenty thousand rupees or with both.

The Malimath Committee in 2003 proposed making amendments to this section although such amendments were opposed by women's groups.

3. Laws to Ensure Dignity and Equality of Women

Convention on the Elimination of All Forms of Discrimination against Women, 1979

Under Article 2 of the International Convention on the Elimination of All Forms of Discrimination against Women states, parties are required to "establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of

women against any act of discrimination." They must also "refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation."30 Women are also entitled to equal remuneration and protection of health and safety in working conditions.31

With respect to the situation of rural women, the convention requires states parties to take into account the "significant roles which rural women play in the economic survival of their families, including their work in the non-monetized sectors of the economy," and to, "take all appropriate measures to ensure the application of the provisions of this convention to women in rural areas."32

**Prevention of sex-determination - The Pre-natal Diagnostic Technique (Regulation and Prevention of Misuse) Act, 1994**33

The practice of prenatal sex determination followed by selective female foetus abortion is one of the modern examples of how advances in science and technology are employed for the furtherance of women’s oppression.34 It is a social problem like dowry and child marriage. Sex ratio is an accepted index of the socio-economic development of any country, with the ‘developed’ countries having more number of females as compared to males. The female of the species is known to be tougher. In India, however, prevalent patriarchal structures have managed to do away with this natural advantage. Mortality rates for females are higher at all age groups in India, as a result of female infanticide, neglect and abuse of female children, early and repeated childbirth, under-nutrition, lack of medical facilities, dowry murders and violence against women. Medical technology has now developed yet another means to eliminate

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30 Article 2 (c & d).
31 Article 11 (1).
32 Article 14.
women in India. The Registrar General of India has admitted to abortion of 3.6 lakh female foetuses in India in 1993-94, an estimate based on hospital births alone.\(^{35}\) There is a tremendous pressure on women in certain societies to voluntarily opt for female foeticide. In such societies women are under pressure to produce male children.

What is alarming is the acceptability and legitimacy given to this form of violence. There has been vocal support for sex-selective abortion on grounds that it is better not to bring forth another female into the world, rather than have her murdered for dowry 20 years later. This sort of perverted logic encourages eliminating the victim rather than the problem.

There are clinics who extract amniotic fluid and send samples for prenatal sex determination. Problems associated with these technologies have also surfaced in an alarming way. The hazards of amniocentesis range from infections to trauma to the mother as well as the foetus, false results, and the hazards of second trimester abortion after an ultrasound. However, women are never informed of these possible hazards, and only leech of their cash by money making professionals who tout the wonders of these technologies.

The very fact that such scientific technology for identification of the sex of the foetus cannot be applied by a layman, but requires a doctor or other qualified professional to do so manifests that even the so-called educated elite has not been able to shed their mental bias against the female child. Even if they are considered to be motivated by financial greed only in disclosing the sex of the foetus to the couple before the birth of the child, such activity needs to be deprecated in the strongest terms because it has harmful effects on the social fabric. This indicates that the birth of a

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\(^{35}\) https://sites/google.com/site/saheliorgsite.
female child is sought to be thwarted out of social constraints, and monetary considerations.

In Centre for Enquiry into Health and Allied Themes (CEHAT) Vs Union of India, on 9th May, 2000, the Supreme Court issued the following directions:

a. Central Government should create awareness against the pre-determination of sex and female foeticide. Act and Rules should be implemented with zeal. Rule 15 shall be strictly adhered to.

b. Meeting of Central Supervisory Board shall be held at least once in six months. Members of the Board shall be appointed for implementation of the Act. The Board shall review and monitor the implementation of the Act. The Board shall also examine the necessity to amend the Act keeping in mind the emerging technologies and difficulties encountered in implementing the Act. The Board shall lay down a Code of Conduct under Section 16(iv).

c. State Government/U. T. Administrations shall fully empower Appropriate Authorities at district and sub-district levels. Advisory Committees to aid and advise the Appropriate Authority in discharge of its function shall be appointed. List of the Appropriate Authorities in the print and electronic media in its respective State/UT shall be published. Public awareness against the practice of pre-natal determination of sex and female foeticide shall be created. Must be ensured that all State/UT Appropriate Authorities furnish quarterly returns to the Supervisory Board giving a report on the implementation and working of the Act.

d. Appropriate Authorities shall take prompt action against any person or body who issues or causes to be issued any advertisement in violation of section 22 of the Act. Action should be taken against persons who are operating without a valid certificate of registration under the Act. All State/UT Appropriate Authorities should furnish quarterly returns to the Supervisory Board giving a report on the implementation and working of the Act.

The parties again approached the Supreme Court complaining lack of adequate response from the various Governments. After hearing the parties, the Supreme Court on 10\textsuperscript{th} September, 2003 made the following further directions:

a) For effective implementation of the Act, information should be published by way of advertisements as well as on electronic media. This process should be continued till there is awareness in public that there should not be any discrimination between male and female child.

b) Quarterly reports by the appropriate authority, which are submitted to the Supervisory Board should be consolidated and published annually for information of the public at large.

c) Appropriate authorities shall maintain the records of all the meetings of the Advisory Committees.

d) The National Monitoring and Inspection Committee constituted by the Central Government for conducting periodic inspection shall continue to function till the Act is effectively implemented. The reports of this Committee be placed before the Central Supervisory Board and State Supervisory Board for any further action.
e) As provided under Rule 17(3), public would have access to the records maintained by different bodies constituted under the Act.

f) Central Supervisory Board would ensure that the following States appoint the State Supervisory Board as per the requirement of Section 16A.

1. Delhi  
2. Himachal Pradesh  
3. Tamil Nadu  
4. Tripura  
5. Uttar Pradesh.

g) As per requirement of Section 17(3)(a), the Central Supervisory Board would ensure that the following States appoint the multi-member appropriate authorities:

1. Jharkhand  
2. Maharashtra  
3. Tripura  
4. Tamil Nadu  
5. Uttar Pradesh

**Women’s movement against sex determination**

Women’s groups all over the country have been vociferously protesting since the early 80s against the growing incidence of these tests, and campaigning to put an end to this practice. Women's groups and people's science and health groups formed the Forum Against Sex Determination and Sex Pre-Selection in November 1985 in Bombay, India, to prevent sex determination and sex pre-selection tests. The Forum considered sex determination and sex pre-selection to be an abuse of science and technology against people, especially women. Between 1901 and 1991, the sex ratio fell from 972 females/1000 males to 929/1000. The Forum saw the issue of sex determination and sex pre-selection as a link to oppression and discrimination against females in all sectors of society. It also believed this to be a human rights issue. The Forum lobbied for a law regulating diagnostic techniques without banning them, since determining chromosomal abnormalities is important. The State of Maharashtra passed such a law in June 1988. It had some provisions which were counter-productive, however. For example, women undergoing a sex determination test must pay a fine of
Rs 5 if found guilty of planning to terminate a pregnancy of a female foetus. Yet, neither the husband nor parents-in-law are liable, even though they often pressure women to undergo sex determination tests. The Forum's efforts and enactment of the law in Maharashtra have prompted other state governments and the central government to propose similar legislation. These state governments include Goa, Gujarat, and Orissa. The central government has met with organizations and individuals lobbying against misuse of diagnostic tests to obtain their counsel. The Forum does not feel comfortable with state control, however, since it tends to consider government to be against the people. Yet, the Forum did want the state to protect women's interests. It has raised important questions about technology, particularly concerning criteria to determine desirable and appropriate technologies.

In April 1987, the Central Government established an expert committee to draft a central legislation to curb the menace. In May, 1988, the Legislature of Maharashtra enacted the Maharashtra Regulation of use of Pre-Natal Diagnostic Techniques Act, 1988. After years of pressurising by women’s groups, a draft to central legislation was put forward. A Joint Parliamentary Committee [JPC] was constituted to go into the merits of the legislation and open the debate to concerned parties. Certain women’s groups such as Saheli, along with Sabla Sangh and Medico Friends Circle, deposed before the JPC in January 1992. The Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994, was passed by the Parliament in July 1994. The Pre-Natal Diagnostic Technique (Regulation and Prevention of Misuse) Act, 1994 is primarily meant at prohibiting disclosure of the sex of the foetus in the womb of the mother.

Section 6 of the Pre-Natal Diagnostic Technology (Regulation and Prevention of Misuse) Act, 1994, prohibits any person in charge of a hospital or laboratory from
undertaking any test for the purpose of determining the sex of the foetus of a child in the womb and such violation has been made punishable under Section 22 of the said act with imprisonment which may extend up to three years and fine and any medical practitioner found indulging in such an act can also be debarred by the State Medical Council from carrying out any medical practice.

Registration of Genetic Counselling Centres and Laboratories under the law will only serve the purpose of regularizing private clinics which, in view of the weak mechanisms for deterrence created by the Law, will continue to indulge in these activities for the pursuit of profit. Licensing also would pave the way for another avenue of corruption to circumvent the bureaucracy. The most offensive and misguided feature of the Law is its punishment for women, in order to act as a deterrent. Such a clause will only increase the misery of women in a context where patriarchy leaves little room for autonomous decision making by women, and where women are forced to make ‘choices’ under pressure. Punishment to women will only help to cover up the interests of those responsible for providing such a facility. Unless future technologies are brought within the ambit of the law, it will soon become irrelevant to the very issues which are to be addressed by it. Punishment for the providers of the facility is nominal, and will not act as a deterrent given the super profits generated in this business. In order to combat the problem, like in any other problems confronting women, discriminatory inheritance laws, limited educational and job opportunities, and family, community & caste structures that perpetuate the secondary status of women, all need drastic change. Social attitudes denigrating female children will change only with a transformation of conditions towards a more egalitarian and less exploitative social order.
Safeguards under the Code of Criminal Procedure/law declared by courts

Section 47(2) of the Code of Criminal Procedure requires that no place or apartment which is in the occupation of a female and who is not the person to be arrested shall be searched by any police officer etc before giving of a notice to the female occupier thereof that she is at liberty to withdraw there from.

As per section 100(3) of the Code of Criminal Procedure, if a female is reasonably suspected of concealing about her person any article for which search can be made, such shall only be conducted by another woman with strict regard to decency.

No male person below the age of fifteen years or woman can be called by any police officer to the police station in connection with investigation of any case.

If a woman is arrested, it is imperative on the part of the arresting officer to prepare a memo indicating the reasons for arrest, the place where the arrested person will be detained after arrest and when she/he will be produced before the Court. Copy of such memo of arrest is also required to be given to the family members or relatives or neighbourer of the arrested person as so directed by the Hon’ble Supreme Court in the case D. K. Basu vs. State of West Bengal.\(^{37}\)

Every woman under arrest is entitled to get free legal services as so provided in Section 12 of Legal Services Authorities Act, 1987 and it is the duty of the court before whom such arrested person is produced that he/she is entitled to get free legal services as so laid down in the case titled Khatri and others vs. State of Bihar\(^{38}\) and followed in the subsequent case titled Sukh Dass vs. Union Territory of Arunachal Pradesh.\(^{39}\)

\(^{37}\) 1997(1) SCC 416.
\(^{38}\) AIR 1981, SC 928.
\(^{39}\) AIR 1986, SC 991.
In the event of a female upon trial being sentenced to death for commission of heinous offences such as murder etc., her sentence of execution is required to be postponed and can even be commuted to imprisonment for life as so provided under Section 416 of the Code of Criminal Procedure.

The above-said safeguards are provided to women to protect the dignity of women. The police need be sensitized to follow these provisions of law scrupulously.

**The Medical Termination of Pregnancy Act, 1971**

The Medical Termination of Pregnancy Act, 1971 prohibits the undertaking of termination of pregnancy by a person who is not a registered medical practitioner and even by a medical practitioner without the consent of the pregnant woman or her guardian (if she is under the age of 18 years, or is a mentally challenged person) where the pregnancy exceeds 12 weeks but does not exceeds 20 weeks, and that too for saving the life of the pregnant woman, or grave injury to her physical or mental health, or where there is substantial risk, that if such a child is born, he may be seriously handicapped. It will thus be seen that the law attempts to ensure that no discrimination is carried out or practiced in respect of a female child not only after she is born but even at the stage of pregnancy, or when she is a child.

**The Maternity Benefit Act, 1961**

The object of maternity leave and benefit is to protect the dignity of motherhood by providing for the full and healthy maintenance of women and her child when she is not working. With the advent of modern age, as the number of women employees is growing, the maternity leave and other maternity benefits are becoming increasingly

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40 Ramakrishna, S., Criminal Minor Acts, Delhi, 2001, p. 662
common. The maternity Benefit Act, 1961 was enacted by the Parliament to provide certain maternity benefits to women. The Act envisages the following:

a) The main object of the Act is to protect the dignity of the motherhood by providing maternity & certain other benefits after the child birth when she is not working. It also regulates the employment of woman in the establishment for certain period.

b) The Maternity Benefit Act, 1961 applies in the first instance to every establishment, being a factory, mine or plantation, every establishment wherein persons are employed for the exhibition of equestrian, acrobatic & other performances, every shop or establishment in which ten or more persons are employed and any such establishment belonging to the Central or State Government. (section-2)

c) No employer shall knowingly employ a woman in any establishment during the six weeks immediately following the day of her delivery or her miscarriage. (section-4)

d) No pregnant women shall on a request being made by her before one month of the date of her expected delivery or any period does not avail herself of leave of absence for six weeks be required by her employer to do work which is of an arduous nature or which involves long hours of standing or which in any way is likely to interfere with her pregnancy or the normal development of the foetus or is likely to cause her miscarriage or otherwise adversely affect her health. (section-4)

e) Every employer shall be liable for the payment of maternity benefit at the rate of the average daily wage for the period of her actual absence. i.e. the period
immediately preceding the day of her delivery, the actual day of her delivery and the period immediately following that day. (section-5)

e) The amount of maternity benefit for the period preceding the date of her expected delivery shall be paid in advance by the employer on production of proof duly issued by a Medical Officer of a regional hospital or of a dispensary set up by State Government or a Registered Medical Practitioner. (section-6)

f) In case of miscarriage, a woman shall be entitled to leave with wages for a period of six weeks immediately following the day of her miscarriage. (section-9)

h) A woman suffering from illness arising out of pregnancy, delivery, premature birth of child or miscarriage shall be entitled to leave with wages at the rate of maternity benefit for a maximum period of one month in addition to the prescribed period of the absence. (section-10)

i) Every woman entitled to maternity benefit shall be entitled to receive a medical bonus of Rs. 250/- from her employer if no pre-natal confinement or post natal care is provided for by the employer free of charge. (section-8)

j) Every woman delivered of a child who returns to duty shall, in addition to the interval for rest allowed to her, be allowed in the course of her daily work two breaks of twenty minutes duration for nursing the child until the child attains the age of fifteen months. (section-11)

k) In case the Crèche or place where children are left by women while on duty is not in the vicinity of the place of work a period up to fifteen minutes more may be allowed for the purpose of journey. (section-11)

l) When a woman absents herself from work in accordance with the provisions of the Maternity Benefit Act, it shall be unlawful for her employer to discharge or
dismiss or to vary to her disadvantage, any of the conditions of her service.

(section-12)

**The Plantation Labour Act, 1951**

The Plantation Labour Act, 1951 provides for crèches in plantations where 50 or more women workers are employed. The crèche is provided for the benefit of children up to the age of 6 years. The mother of the child is allowed in the course of her work two intervals of sufficient time to visit the crèche to feed the child. The Act also provides for separate latrines and urinals of prescribed type for males and females and they should be conveniently accessible to workers employed.

**Indecent Representation of Women (Prohibition) Act, 1986**

The legal provisions dealing with obscenity are ineffectual. Section 292 of I.P.C did not define obscenity. The section leave a lot to the judges to decide what is obscene. Obscenity definitely being a subjective matter is difficult to explain. The Indecent Representation of Women (Prohibition) Act was passed by the Parliament in the year 1986. This Act seeks to ‘prohibit indecent representation of women through advertisements or in publications, writings, paintings, figures’. Under the Act, ‘Indecent representation of women’ means the depiction in any manner of the figure of a woman; her form or body or any part thereof in such way as to have the effect of being indecent or derogatory to or denigrating women or as is likely to deprave, corrupt or injure public morality or morals. This Act envisages the following:

   a) No person shall publish or cause to be published or arrange or take part in the publication or exhibition of any advertisement which contains indecent representation of women in any form.
b) No person shall produce or cause to be produced, sell, let to hire, distribute, 
circulate or send by post any material which contains indecent representation of 
women in any form.

c) The Act provides for the punishment of offences under it with imprisonment of 
either description for a term which may extend to two years and with a fine 
which may extend to two thousand rupees, and with an enhanced punishment in 
the event of a second or subsequent conviction.

The criticism against the Act is that criminalizing porn only drives the business 
underground; the fruits of illegality will be crime, exploitation, black market; there will 
be rise of the mafia, street violence to capture markets, corruption of the police, legal 
system, and the bureaucracy; One must not forget the distinction between laws and 
morals; no society has been able to legislate moral behavior; and we are no different.

The Factories Act, 1948\textsuperscript{44}

Section 19 of the Factories Act, 1948 requires construction of separate latrines 
and urinals for women.

Section 22 of the Act provides that no woman shall be required to clean, 
lubricate or adjust any part of a prime mover, or any transmission machinery while in 
motion.

Section 27 of the Act provides that no woman shall be employed in any part of 
a factory for pressing cotton, in which a cotton opener is at work.

Section 48 of the Act lays down that in every factory wherein more than 30 women 
workers are employed, there shall be provided and maintained a suitable room for the 
use of the children (under the age of 6 years) of such women.

\textsuperscript{44} AIR Manual, Civil & Criminal, 1989, Nagpur, Vol. 24, p. 517.
The Equal Remuneration Act, 1976\textsuperscript{45}

Sections 4 and 5 of the Equal Remuneration Act, 1976 provide for equal remuneration for equal work to male and female workers for performing works of similar nature and prohibits discrimination in matters of recruitment of men and women which discrimination if carried out is punishable with imprisonment which shall not be less than three months but which can extend up to one year and fine.

The other Acts that relate to women to safeguard equality and dignity of women are the Minimum Wages Act, 1948, the Employees’ State Insurance Act, 1948, the Plantation Labour Act, 1951, the Bonded Labour System (Abolition) Act, 1976, the Legal Practitioners (Women) Act, 1923, the Child Marriage Restraint Act, 1929 and the Indian Divorce Act, 1969.

Sexual harassment in work places

The Supreme Court in \textit{Vishakha Vs State of Rajasthan}\textsuperscript{46} held that sexual harassment in workplace is a violation of Articles 15 and 21 of the Constitution of India. As per the directions of Supreme Court of India in the above case, necessary amendments have been made by the State of Tamil Nadu vide G.O. Ms.No. 108, Labour and Employment Department, dated 26.11.2002 by adding sexual harassment as one of the misconducts in order 16 of Schedule I of Model Standing Orders appended to Tamil Nadu Industrial Employment (Standing Orders) Rules, 1947. For the implementation of the guidelines laid down by the Supreme Court in the above case the Central Organizations of the Employers have been requested to advice their member establishments to form a Complaints Committee. In respect of Department of Labour, Government of Tamil Nadu, a Complaints Committee has been set up with 3


\textsuperscript{46} AIR 1997, SC 3011.
female members and one male member. This committee is headed by a female officer.47

Laws to Protect the Property Right of Women, Inheritance and Adoption

*Stridhan*, as per Hindu customary practice, is the wealth, which passes from mother to daughter. It includes gifts of money, property, jewelry or a share in a family business given to a woman, which also covers wealth generated through her own enterprise or any other wealth accruing to her due to her own effort or by inheritance. It includes, but is not limited to, gifts or wealth given to a daughter at the time of her marriage. It also includes gifts given to her by her in-laws. A key-defining characteristic of *stridhan* is that no one in the family can touch it, except if the woman concerned voluntarily gifts a portion to someone. In the natural course, *stridhan* passes from mother to daughter and if in a contingency a male member uses a part of a woman's *stridhan*, he is expected to return it with interest. The traditional *stridhan* given at the time of a daughter's marriage was determined by predictable norms within each community and was more in the nature of pre-marriage inheritance for the daughter that usually included items such as gold, cows or even a piece of land, along with a few clothes and utensils.

Our modern inheritance laws have increasingly moved in favour of men and against the interests of women. All those communities that practiced matrilineal inheritance, such as the Nairs in Kerala, have also been forced through legislation to move towards patrilineal inheritance.

The Hindu Succession Act, 1956 which is applicable to all persons who are Hindus, Buddhists, Jainas or Sikhs provides that the self acquired property of a male

Hindu dying intestate (i.e. without executing a will) shall devolve upon his widow, surviving sons, daughters and the mother of the deceased, in equal shares. Furthermore the property once falling to the share of a female becomes her absolute property and she cannot be deprived of the same even if a widow acquiring such property remarries. However any heir who is related to an intestate as the widow of a predeceased son, the widow of a predeceased son or the widow of a brother shall not be entitled to succeed to the property of the intestate as such widow, if on the date the succession opens, she has remarried. It will thus be seen that the Hindu Succession Act, 1956 has vastly enhanced the status of women to hold, acquire and dispose off property.

Tamil Nadu is one of the few states which have amended the law to provide for inheritance of coparcenary property by women under Mitakshara law. This was done by the Hindu Succession (Tamil Nadu Amendment) Act, 1989. Under the above amendment, in a Joint Hindu family governed by Mitakshara Law, the daughter of a coparcener shall by birth become a coparcener in her own right in the same manner as the son and have the same rights in the coparcenary property as she would have had if she had been a son, inclusive of the right to claim by survivorship; and shall be subject to the same liabilities and disabilities in respect thereto as the son. The other states which have provided for inheritance right to women in coparcenary property are, Andhra Pradesh, Karnataka, Kerala and Maharashtra.

4. Laws Relating to Marriage

The Madras Hindu (Bigamy Prevention and Divorce) Act, 1949, which was framed under the Central Act prohibited bigamous marriages and provided for a right to divorce in bigamous marriages. This Act was repealed by the Hindu Marriage Act, 1955.
The Special Marriage Act, 1954[^1]

The Special Marriage Act, 1954 replaced Act III of 1872. While this Act did not replace any of the personal laws, it has provided an alternative arrangement to replace any of the personal laws in the matter of marriage, divorce and succession. It gives the option to any two persons marrying or already married to opt for this law. It permits marriages between persons of different religions and castes who have attained, in the case of male age of 21 and of female age of 18. It permits persons who have married under personal law to register their marriage under the Act for qualifying for divorce under the Act.

Divorce under the Act is comparatively simple which permits divorce under mutual consent, provided, the marriage is more than three years old and that the persons divorced under this provision are disabled to marry within one year of divorce.

Conciliation of Family Disputes

Conciliation is the most ideal process which may be used for the resolution of family disputes because of the nature of the process with great emphasis on the voluntary action of the parties, and emphasis being put on the merely facilitative role of the conciliator. The statutes in India do provide for some kinds of conciliation where it comes to family disputes. The statutory provisions regarding conciliation of family disputes are found in the Hindu Marriage Act as well as the Family Courts Act.

In the Hindu Marriage Act, S. 2,3 deals with the provisions for conciliation where it is stated:

“2,3 Decree in Proceedings:......

(2) Before proceeding to grant any relief under this Act, it shall be the duty of the Court in the first instance, in every case where it is possible to do so consistently with the nature and circumstances of the case, to make every endeavour to bring about reconciliation between the parties.

Provided that nothing contained in this sub section shall apply to any proceeding wherein relief is sought on any of the grounds specified in clauses (ii), (iii), (iv), (v), (vi) or clause (vii) of sub section 1 of Section 13.

(3) For the purpose of bringing about aiding the court in bringing about reconciliation, the court may, if the parties so desire or if the court thinks it just and proper to do so, adjourn the proceedings for a reasonable period not exceeding fifteen days and refer the matter to any person named by the parties in this behalf or to any person nominated by the Court if the parties fail to name any person, with directions to report to the court as to whether reconciliation can be and has been effected and the court shall in disposing of the proceedings have due regard to that report”

From a bare perusal of the text it appears that the process of conciliation is not in any way made mandatory, and it is not made a necessary prerequisite for approaching the court that the parties should have gone in for mediation.

One of the most important cases has been the case of Balwinder Kaur v. Hardeep Singh49 where the dispute arose between the parties as regards allegations of harassment and also allegations regarding dowry. The Court after going into the discussions regarding the reasons for the bringing of the Family Courts Act, (a legislation that shall be shortly discussed) and also said that the court has a duty to

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ensure that in any case, where it is possible the conciliation proceedings should take place and therefore decreeing the suit and refusing to entertain an appeal on the same could not be said to be the proper course of action under S. 23(2) of the Hindu Marriage Act. Therefore, the Court is expected to make every endeavour to bring about a compromise even if the advocates for the parties say that there is absolutely no chance of any reconciliation. The law as it has emerged also states that not only is the subordinate Court competent to try and effect reconciliation but it is also highly desirable that the appellate Court if possible should try and effect reconciliation as well.[20] In fact even the Supreme Court has followed this example and in the case of *Annapurna v. Saikumar* it did exactly that, which is to try and effect a process of reconciliation at the highest appellate stage. There the court gave a direction for the couple to occupy a house after an attempt had been made by the parties at reconciliation, separate from the parents with a direction to a retired judge of the High Court to try and act as conciliator between them in case of disputes.

### The Hindu Marriage Act, 1955

The enactment of Hindu Marriage Act 1955 is a landmark in the women’s movement as it abolished the prevailing polygamy in the Hindu society and granted the right to divorce to the Hindu women. Important concepts such as judicial separation (section 10), and remarriage have been grafted into the legislation. The Act recognizes inter-caste marriages of the nature of *anuloma* (marriage between the bridegroom of a higher caste with bride of a lower caste) and *pratiloma* (marriage between the bridegroom of a lower caste with bride of a higher caste). Declaring marriages as null and invalid, registration of marriage, custody of children, punishment for bigamy,
legitimization of illegitimate child, disposal of property are some of the innovative ideas woven into the Hindu personal law.

Section 25 of the Hindu Marriage Act, 1955 makes a provision for grant of permanent alimony by the court at the time of passing a decree for the dissolution of marriage, or subsequent thereto on an application being made for the purpose by either the wife or husband.

The Supreme Court held that until the declaration contemplated by section 11 of the Hindu Marriage Act is made by the competent court, the woman with whom the second marriage is solemnized continues to be the wife within the meaning of section 494 of Indian Penal Code and would be entitled to maintain a complaint against her husband for offences punishable under sections 494 and 495 of the Indian Penal Code. By this interpretation the Supreme Court has protected the right of an innocent woman who was cheated by a person who concealed his earlier marriage and married that woman.

In Chetan Das Vs Kamla Devi the Supreme Court observed as follows:

In the present case, the allegations of adulterous conduct of the appellant have been found to be correct and the courts below have recorded a finding to the same effect. In such circumstances the provisions contained under Section 23 of the Hindu Marriage Act, 1955 would be attracted and the appellant would not be allowed to take advantage of his own wrong. Let the things be not misunderstood nor any permissiveness under the law be inferred, allowing an erring party who has been found to be so by recording of a finding of fact in judicial proceedings, that it would be quite easy to push and drive the spouse to

52 A. Subhash Babu Vs State of A.P. http://judis.nic.in/supremecourt/helddis/aspx
53 Prema Vs Nanje Gowda http://judis.nic.in/supremecourt/helddis/aspx
54 2001, AIR 1709 paragraphs 31 B-D
a corner and then brazenly take a plea of desertion on the part of the party suffering so long at the hands of the wrong-doer and walk away out of the matrimonial alliance on the ground that the marriage has broken down. Lest the institution of marriage and the matrimonial bonds get fragile easily to be broken which may serve the purpose most welcome to the wrong-doer who, by heart, wished such an outcome by passing on the burden of his wrong-doing to the other party alleging her to be the deserter leading to the breaking point.

The Court has thus protected the interest of the innocent woman and did not allow the erring husband to take advantage of the situation.

**Hindu Marriage (Tamil Nadu) Amendment Act, 1967**

By this amendment, the self-respect marriages conducted under inspiration from Dravidian movement of Periyar were recognized as valid Hindu marriages\(^ \text{55} \).  

**Family Courts Act, 1984**

In 1975, the Committee on the Status of Women recommended that all matters concerning the family should be dealt with separately. The Law Commission in its 59th report (1974) had stressed that in dealing with disputes concerning the family, the court ought to adopt and approach radical steps distinguished from the existing ordinary civil proceedings and that these courts should make reasonable efforts at settlement before the commencement of the trial. Gender-sensitized personnel including judges, social workers and other trained staff should hear and resolve all the family-related issues through elimination of rigid rules of procedure\(^ \text{56} \). The Code of Civil Procedure was amended to provide for a special procedure to be adopted in suits or proceedings relating to matters concerning the family. However, the courts continue to deal with

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family disputes in the same manner as other civil matters and the same adversary approach prevails. The Family Courts Act which was passed in 1984 was part of the trend of legal reforms concerning women. The President gave his assent to the Family Courts Act on September 14, 1984. The object of the Act is to establish family courts by the State Governments in every city and town with a population exceeding 10 lakhs. The Preamble for the Act states that it is an Act to provide for the establishment of Family Courts with a view to promote conciliation and secure speedy settlement of disputes relating to marriage and family affairs and for matters connected therewith.

The Act brought civil and criminal jurisdiction under one institution. This was seen as a positive measure to centralize all litigation concerning women. The very nature of criminal courts facilitated quicker disposal of applications to a civil court and there was seriousness and a sense of intimidation associated with a criminal court, which would act in a woman's favour.

The Act provides that persons who are appointed to the family courts should be committed to the need to protect and preserve the institution of marriage and to promote the settlement of disputes by conciliation and counselling. Preference would also be given for appointment of women as Family Court Judges. Section 5 enables the State Government to associate institutions engaged in promoting welfare of families, especially women and children, or working in the field of social welfare, to associate themselves with the Family Courts in the exercise of its functions. The State Governments are also required to determine the number and categories of counsellors, officers etc. to assist the Family Courts (sec. 6).

Section 7 confers on all the family courts the power and jurisdiction exercisable by any District Court or subordinate civil court in suits and proceedings of the nature referred to in the explanation to section 7(1) of the Act. These, inter-alia relate to suits
between parties to a marriage or for a declaration as to the validity of marriage or a
dispute with respect to the property of the parties, maintenance, guardianship etc. In
addition, the jurisdiction exercisable by a First Class Magistrate under Chapter IX of
the Criminal Procedure Code i.e. relating to order for maintenance of wife, children or
parents, has also been conferred on the family courts. There is also an enabling
 provision that the family courts may exercise such other jurisdiction as may be
conferred on them by any other enactment. Provision has also been made to exclude
jurisdiction of other courts in respect of matters for which the family court has been
conferred jurisdiction.

It has been made incumbent on these courts to see that the parties are assisted
and persuaded to come to a settlement, and for this purpose they have been authorized
to follow the procedure specified by the High Court by means of rules to be made by it.
If there is a possibility of settlement between the parties and there is some delay in
arriving at such a settlement, the family court is empowered to adjourn the proceedings
until the settlement is reached. Under these provisions, different High Courts have
specified different rules of procedure for the determination and settlement of disputes
by the family courts.

S. 5 and S. 6 allow for the State government to make rules allowing for the
association of social welfare groups as well as officers and different counsellors who
should be attached to the Court. According to section 9 of the Act, the Family Court
shall in every case, where the same would not be inconsistent with the facts, and
circumstances of the case attempt to arrive at a settlement and for this purpose it may
choose to follow any procedure it deems fit.

Section 13 provides that the party before a Family Court shall not be entitled as
of right to be represented by a legal practitioner. However, the court may, in the interest
of justice, provide assistance of a legal expert as *amicus curiae*. Evidence may be given by affidavit also and it is open to the family court to summon and examine any person as to the facts contained in the affidavit. The other provisions of the Act deal with the general easing of rules of procedure for the purposes of ensuring expeditious disposal of these suits. In general it appears that the provision for settlement is almost the same as in the Hindu Marriage Act, but here the primary differences are that there are provisions in this Act which deal with the power of the state government which allow for the rules regarding of association of social welfare agencies and also of counsellors which puts the onus on the state governments to ensure that the conciliation actually takes place. The facilitation however is much more than in the case of the Hindu Marriage Act. In fact the procedure that has been evolved is of the nature, of what is called court annexed mediation in the United States of America where there is a centre for mediation attached to the Court itself. Here the provisions for the counsellors to be attached to the court seem to be identical to the different states in America.

In Tamil Nadu the rules have been framed shoddily, there being no emphasis given to the proper criteria of selection with people being selected from a list of ten people, engaged in the field of social welfare given to the High Court for approval whereas in Maharashtra there has been improvement in the manner in which the counsellors are appointed with better qualifications. One of the principal reasons for the success of conciliation is generally the skill of the conciliator and therefore a lackadaisical attitude towards that essential aspect of conciliation is bound to ensure that the process does not have the success that it should have.

One of the criticisms against the Act was that the Act does not define the expression ’family’. Matters of serious economic consequences, which affect the family, like testamentary matters are not within the purview of the family courts. Only
matters concerning women and children - divorce, maintenance, adoption etc. - are within the purview of the family courts. Though the Act was aimed at removing the gender bias in statutory legislation, the goal is yet to be achieved. Family courts should align themselves with women's organizations for guidance in matters related to gender issues. In the context of family courts, action forums should be initiated and strengthened by incorporating NGOs, representatives of elected members and the active members of the departments such as Urban Community Development, as members. State level monitoring mechanisms could be established to review the functioning and outcome of the cases related to women in the family courts. Women judges and those who have expertise and experience in settling family disputes should be appointed. These special courts should have the authority to try cases against an accused even if the female victim is not willing to testify or is bent upon withdrawing her case. The marriage counsellors should not be frequently changed as it causes hardship to the woman who has to explain her problems afresh to the new counsellors each time. The family courts committed to simplification of procedures must omit the provisions relating to Court Fees Act. Each additional relief should not be charged with additional court fee.  

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In Tamil Nadu, the marriage counsellors keep changing every 3 months and each time the woman meets a new counsellor she has to explain her problems all over again, with no continuity in the discussion. 58

The requirement of following the provisions of the Civil Procedure Code makes things even more difficult for the lay person who is completely unaware of the legal jargons. The Act and Rules exclude representation by lawyers, without creating any

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58 Ibid.
alternative and simplified Rules. Merely stating that the proceedings are conciliatory
and not adversarial does not actually make them so. The situation has worsened
because in the absence of lawyers, litigants are left to the mercy of court clerks and
peons to help them follow the complicated rules. Women are not even aware of the
consequences of the suggestions made by court officials. For instance, when a woman
files for divorce and maintenance, the husband turns around and presses for
reconciliation only to avoid paying maintenance. It is crucial to the woman that people
who are mediating are aware of these strategies. If a judge or a counsellor feels that a
woman should go back to the husband simply because he is making the offer and as a
wife it is her duty to obey him, it will be detrimental to the woman's interest. 59

The setting up of family courts does not in any way alter the substantive law
relating to marriage. Divorce disentitles a woman to the matrimonial home. Whether or
not she gets maintenance during a separation or after divorce, depends on her ability to
prove her husband's means. In a situation where women are often unaware of their
husband's business dealings and sources of income, it is difficult, if not impossible, to
prove his income. To make matters worse, the existence of a parallel black economy
makes it impossible to identify the legal source of income. In such a situation, unless
the law changes in radical ways conferring rights on women and creating new rights in
their favour, the setting up of family courts will not help to alter their position. The
right to community of matrimonial property would be the first step in ensuring security
for women. This would mean that all property acquired after the marriage by either
party, and any assets used jointly, such as the matrimonial home, will belong equally to
the husband and wife. Based on such a law, family courts would be able to provide
effective relief to women in case of breakdown of the marriage. Even otherwise, courts

59 Ibid.
must be empowered by law, to transfer the assets or income of a husband to his wife and children or to create a trust to protect the future of the children of a broken marriage. But as the law stands today, courts have no power to create obligations binding on the husband for the benefit of the wife or children. The adversarial system is unsuited to the needs of women who are in any case disadvantaged and have no access to their husband's assets and income. Family Courts must have investigative powers to be able to compel disclosures of income and assets for passing appropriate orders of maintenance.\(^{60}\)

The National Commission for Women organized a workshop on Family Courts on 20\(^{th}\) March, 2002. The important recommendations of the workshop are:

- a) There is a need to sensitize, train and orient the judiciary to the real meaning of the Family Courts Act. The social workers escorting women are not given due recognition. Family courts look upon such social workers with contempt or having no role. It was reiterated in the workshop that proper training would add to the informality of the atmosphere, which is required of the family courts.

- b) Gender justice should be a component for recruitment and it should be made essential for a judge to have undergone a gender sensitization course or training before taking position as a judge.

- c) Setting up of a family court bench in the appellate courts was considered a prime necessity during the proceedings at the workshop. This would help the appeal cases to be adjudicated on the basis of the same principles as done in the family courts at the district level.

- d) Family Courts can also take help of NGOs in the settlement of disputes.

- e) Counsellors should be permanently appointed and should be given training.

\(^{60}\) Ibid., p. 6.
f) Family courts should follow simple procedures which should not create hurdles to justice.

g) There should be an informal atmosphere in the family courts and these courts should not be like any other civil courts.

h) Every district should have family courts. A woman should be allowed to file a case in the family court in the district or state where she resides and not necessarily at the place where the marriage took place or where the husband resides or where they both last resided together.

In the state of Tamil Nadu only six family courts are set up, (three in Chennai and one each in Madurai, Coimbatore and Salem)\(^61\) which is creating inconvenience to the women from remote areas. It is necessary that at least each district court has a family court which should camp at faraway places of the district.

**Muslim Women (Protection of Rights on Divorce) Act, 1986\(^62\)**

In Mohd. Ahmed Khan vs. Shah Bano Begum,\(^63\) the principal question for consideration before the Supreme Court was the interpretation of Section 127(3)(b) of the Code of Criminal Procedure (CrPC) that where a Muslim woman had been divorced by her husband and paid her mahr, would it indemnify the husband from his obligation under the provisions of Section 125 CrPC. A Five-Judge Bench of the Supreme Court pointed out that mahr is more closely connected with marriage than with divorce though mahr or a significant portion of it, is usually payable at the time the marriage is dissolved, whether by death or divorce. Observing that this fact is relevant in the context of Section 125 CrPC, the Court held that the divorced Muslim women were

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\(^61\) Dr. Sarla Gopalan, *op.cit.*, p. 127.

\(^62\) Ramakrishna, S., *Criminal Minor Acts*, Delhi, 2001, p. 703

\(^63\) (1985) 2 SCC 556
entitled to apply for maintenance orders against their former husbands under Section 125 CrPC.

There was a big uproar thereafter and Parliament enacted the Muslim Women (Protection of Rights on Divorce) Act, 1986, perhaps, with the intention of making the decision in Shah Banos case ineffective.

Under the Muslim Women (Protection of Rights on Divorce) Act, 1986 a divorced Muslim woman shall be entitled to a reasonable and fair provision and maintenance to be made and paid to her within the ‘Iddat’ period i.e., within the period of three menstrual courses (if she is subject to menstruation) or three lunar months (if she is not subject to menstruation) after the date of divorce; or the period between the divorce and delivery of the child or termination of the pregnancy (if she was in a family way on the date of divorce).

If no such maintenance is paid by her former husband during the said period, she can apply to the magistrate who if satisfied that such husband despite having the means has failed or neglected to make such provision for her maintenance can direct such husband to pay such reasonable and fair provision and maintenance to the divorced woman as he may determine fit and proper having regard to the needs of the divorced woman, the standard of life enjoyed by her during marriage and the means of her former husband.

Under Section 3 of this Act, the right of a child to claim maintenance up to the age of two years is a part of the right of the divorced woman where she herself maintains the child and thus the right of a child of a Muslim couple to claim
maintenance up 125 Cr. PC is not curtailed at all by this Act-as so held in the case titled Mst. Nursuba vs. Md. Kasim.\(^{64}\)

Where a divorced Muslim woman (who has not remarried) is unable to maintain herself after the period ‘Iddat’, and has grown up children, the Magistrate is required to order such children to pay maintenance to her, but in the event of any such children being unable to pay such maintenance, the Magistrate shall order the parents of such divorced woman to pay maintenance to her. If however either of her parents is unable to pay maintenance to such divorced woman, the Magistrate is empowered to make an order for the payment of maintenance by her relatives who may be entitled to inherit her property on her death according to Muslim law in the proportions in which they would inherit her property.

If any one of her such relatives is unable to pay his or her share on the ground of his or her not having the means to pay, the Magistrate will ask other relatives who have sufficient means, to pay the share of these relatives also, but where a divorced woman has no relative or such relative has not enough means to pay maintenance, the magistrate would order the State Wakf Board to pay the shares of the relatives who are unable to pay maintenance to such divorced Muslim woman.

By virtue of Section 5 of the Act, it is however open to a Muslim couple to opt to be governed by the provisions of Sections 125-128 Cr. P.C. if they submit an affidavit or any other declaration in writing to this effect, either jointly or separately before the Court hearing the application.

In Danial Latifi Vs Union of India,\(^{65}\) the constitutional validity of the Muslim Women (Protection of Rights on Divorce) Act, 1986 was challenged before the

\(^{64}\) AIR 1997, SC 3280.
Supreme Court of India. While upholding the validity of the Act, the Supreme Court of India held as follows:

1) A Muslim husband is liable to make reasonable and fair provision for the future of the divorced wife which obviously includes her maintenance as well. Such a reasonable and fair provision extending beyond the iddat period must be made by the husband within the iddat period in terms of Section 3(1)(a) of the Act.

2) Liability of Muslim husband to his divorced wife arising under Section 3(1)(a) of the Act to pay maintenance is not confined to iddat period.

3) A divorced Muslim woman who has not remarried and who is not able to maintain herself after iddat period can proceed as provided under Section 4 of the Act against her relatives who are liable to maintain her in proportion to the properties which they inherit on her death according to Muslim law from such divorced woman including her children and parents. If any of the relatives being unable to pay maintenance, the Magistrate may direct the State Wakf Board established under the Act to pay such maintenance.

4) The provisions of the Act do not offend Articles 14, 15 and 21 of the Constitution of India.

It could be seen from the foregoing that the Supreme Court of India while respecting the sentiments of enactment of the Muslim Women (Protection of Rights on Divorce) Act, 1986 for the protection of Muslim personnel law has taken care of the welfare of divorced Muslim women by extending the duty to maintain them beyond

65 2001, AIR 3658
iddat period and also directing the Magistrate to direct the State Wakf Board to pay maintenance.

**Adoptions**

Although there is no general law of adoption, yet it is permitted by the Hindu Adoptions and Maintenance Act, 1956 amongst Hindus. Since adoption is legal affiliation of a child, it forms the subject matter of personal law. Muslims, Christians and Parsis have no adoption laws and have to approach court under the Guardians and Wards Act, 1890. Muslims, Christians and Parsis can adopt a child under the said Act only under foster care. Once a child under foster care becomes major, he is free to break away all his connections. Besides, such a child does not have legal right of inheritance. Foreigners, who want to adopt Indian children have to approach the court concerned under the aforesaid Act. In case the court has given permission for the child to be taken out of the country, adoption according to a foreign law, i.e., law applicable to guardian takes place outside the country.

The Hindu Minority and Guardianship Act, 1956 (Act No. 32 of 1956) has codified laws of Hindus relating to minority and guardianship. As in the case of uncodified law, the Act has upheld the superior right of father. It lays down that a child is a minor till the age of 18 years. Natural guardian for both boys and unmarried girls is first the father and then the mother. Superior right of mother is recognised only for the custody of children below five. In case of illegitimate children, the mother has a better claim than the putative father. The Act makes no distinction between the person of the minor and his property and, therefore guardianship implies control over both. The Act envisages that in deciding the question of guardianship, courts must have the welfare of child as the paramount consideration.
Under the Muslim law, the father enjoys a dominant position. It also makes a distinction between guardianship and custody. For guardianship, which has usually reference to guardianship of property, according to Sunnis, the father is preferred and in his absence his executor. If no executor has been appointed by the father, the guardianship passes on to the paternal grandfather. Among Shias, the difference is that the father is regarded as the sole guardian but after his death, it is the right of the grandfather to take over responsibility and not that of the executor. Both schools, however, agree that father while alive is the sole guardian. Mother is not recognised as a natural guardian even after the death of the father. As regards rights of a natural guardian, father's right extends both to property and person. Even when mother has the custody of minor child, father's general right of supervision and control remains. Father can, however, appoint mother as a testamentary guardian. Thus, though mother may not be recognised as natural guardian, there is no objection to her being appointed under the father's will. Muslim law recognises that mother's right to custody of minor children (Hizanat) is an absolute right. Even the father cannot deprive her of it. Misconduct is the only condition which can deprive the mother of this right. As regards the age at which the right of mother to custody terminates, the Shia school holds that mother's right to the Hizanat is only during the period of rearing which ends when the child completes the age of two, whereas Hanafi school extends the period till the minor son has reached the age of seven. In case of girls, Shia laws uphold mother's right till the girl reaches the age of seven and Hanafi school till she attains puberty.

The general law relating to guardians and wards is contained in the Guardians and Wards Act, 1890. It lays down that father's right is primary and no other person can be appointed unless the father is found unfit. This Act also provides that the court must
take into consideration the welfare of the child while appointing a guardian under the Act.

The Hindu Adoptions and Maintenance Act, 1956

The Hindu Adoptions and Maintenance Act, 1956 was enacted as part of the Hindu Code such as the Hindu Marriage Act and the Hindu Succession Act. These Acts initiated by Jawaharlal Nehru were meant to codify and standardise the Hindu Law. The Hindu Adoptions and Maintenance Act, 1956 was enacted with the primary objective of specifying the legal process of adopting children by a Hindu adult and also the legal obligations of a Hindu to provide ‘maintenance’ to various family members including wife.

The Hindu Adoption and Maintenance Act, 1956 extends to only the Hindus, which are defined under Section-2 of the Act and include any person, who is a Hindu by religion, including a Virashaiva, a Lingayat or a follower of the Brahmo, Prarthana or Arya Samaj, or a Buddhist, Jaina or Sikh by religion, to any other person who is not a Muslim, Christian, Parsi or Jew by religion. It also includes any legitimate or illegitimate child who has been abandoned both by his father and mother or whose parentage is not known and who in either case is brought up as a Hindu, Buddhist, Jaina or Sikh.

Any male Hindu, who is of sound mind and is not a minor, has the capacity to take a son or daughter in adoption. Provided that if he has a wife living, he shall not adopt except with the consent of his wife, unless his wife has completely and finally renounced the world or has ceased to be a Hindu, or has been declared by a court of competent jurisdiction to be of unsound mind. If a person has more than one wife living

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at the time of adoption the consent of all the wives is necessary unless the consent of one of them is unnecessary for any of the reasons specified in the preceding provision. Any female Hindu, who is of sound mind, who is not a minor, and who is not married, or if married, whose marriage has been dissolved or whose husband is dead or has completely and finally renounced the world or has ceased to be a Hindu, or has been declared by a court of competent jurisdiction to be of unsound mind, has the capacity to take a son or daughter in adoption. National Commission on Women has stressed on the need for a uniform adoption law.

According to the Act, a Hindu wife is entitled to be provided by her husband throughout her lifetime, regardless of the fact even if the marriage was solemnized before the Act. Meanwhile a separated wife is also entitled to maintenance.

5. Laws for Affirmative Action
Laws for Reservation of Seats in Panchayats and Municipalities

The demand for greater representation of women in political institutions in India was not taken up in a systematic way until the setting up of the Committee on the Status of Women in India (CSWI) which published its report in 1976. Before this the focus of the growing women's movement had been on improving women's socio-economic position.67 The CSWI report suggested that women's representation in political institutions, especially at the grass-root level, needed to be increased through a policy of reservation of seats for women. In 1988, the National Perspective Plan for Women suggested that a 30 per cent quota for women be introduced at all levels of elective bodies.68 Women's groups insisted that reservation be made to the panchayat (village council) level to encourage grassroot-level participation in politics. The

consensus around this demand resulted in the adoption of the 73rd and 74th amendments to the Indian Constitution in 1993, which provided for women’s reservation in Panchayati Raj institutions and Municipalities. A million women are being elected to the panchayats in the country every five years. This is the largest mobilisation of women in public life in the world.

Although India and the State of Tamil Nadu have a number of innovative social legislations enacted with the objective of uplifting the social cause of women of gender equality and equal dignified treatment and equal opportunity in all spheres of human activity, still the position of women is not at par with the men in the society. Social legislations enacted for bringing women at par with men would become meaningful when the values embodied in those legislations are recognized by the society and implemented in their true spirit.

National Commission for Women Act, 1990

By this Act, which came into force on 31.1.1992, the National Commission for Women was constituted on 31.1.1992. The functions of the Commission include investigation and examination of all matters relating to the safeguards provided for women under the Constitution and other laws, review of the provisions of the Constitution and other laws and to suggest remedial legislative measures, to look into complaints and take suo moto notice of matters relating to deprivation of women’s rights etc.

Special studies have been conducted by the Commission on social mobilization, maintenance and divorced women, panchayat raj in action, women under contract, gender bias in judicial decisions, family courts, gender-component in various

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Commissions’ reports on women, women’s access to health and education in slums etc.
Some important issues taken up by the Commission include sexual harassment at workplace, women in detention, anti-arrack movement, issues concerning prostitution and political and technological empowerment of women in agriculture etc. The Commission interacts and networks with NGOs and State Commissions on Women for ensuring gender equality and empowerment of women.

**Tamil Nadu State Commission for Women Act, 2008 (Tamil Nadu Act 31 of 2008)**

The main objective of constituting the Commission is to safeguard the welfare of women handling general issues relating to the status of women and to make recommendations to the Government for suitable action. Vide order G.O. Ms. No. 17 dt. 16.9.2011, the Government of Tamil Nadu has appointed Tmt. Saraswathi Rangaswamy as the Chairperson of the Tamil Nadu State Commission for Women.

**The Role of Officials in the Women’s Movement**

Many individual officers took lead in the causes of women. This is known through the following government orders issued by the Government of Madras G.O. No.708 Home Department dated 22.02.1950. In Tamil Nadu, the Government enacted the amendment of the Madras suppression of Immoral traffic Act 1930. V.T.Lakhsmi, the provincial woman welfare worker proposed the following on the Bombay Act No. XXVI of 1948 and amending Madras Act No V of 1930. She made a lengthy note of this problem (She being a woman), it is admitted on all hands that the present traffic in girls and women is natural outcome of the prevalence of the double standard of morality. This is undoubtedly a growing injustice if not a sin. Will there be brothels or brothel keepers or even the present flow of gullible victims into brothels, if there be no
demand for them? And who creates this demand, even knowing fully well that those who may meet with his requirements will be heavily punished by law? The present Act penalizes those who supply girls or women to the customers for the purpose of prostitution. Should not it also penalize those who demand and receive those very girls and woman for the purpose of prostitution and thereby foster this nefarious trade? Unless the fact of demand is tackled by the Act side by side with its present war against the factor of supply, we will be still far away from the noble objective of the Act. Hence this suggested amendments will penalize the men visitors or customers to the brothels. For this, the chief Inspector certified schools had remarked. The magistrates insist that the man who had sexual intercourse should be examined to prove the prostitution. Now the police send agent provocators to the brothel and examine them as witness. If the proposed amendments are made, the police will not get even agent provocators to help them as they also will be punishable. In this regard, Mrs. M. N. Cubuale M.L.C. asked a starred legislative question No. 175 (G.O. 997 Dated 25.03.53 Home) that, “Will the Hon. Minister for law pleased to state: Whether there is any increase in the incidence of immoral traffic in young girls? Whether the Government has any proposal to open more Rescue Homes?” The following are the data given by the Government to the member.

The data I

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Details</th>
<th>Year</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>1950</td>
</tr>
<tr>
<td>1.</td>
<td>House brothels</td>
<td>7</td>
</tr>
<tr>
<td>2.</td>
<td>Street prostitution</td>
<td>233</td>
</tr>
</tbody>
</table>

The above data indicates that there is a considerable decreases in House brothels, but the street prostitution is in increase.
Data II.

Immoral traffic

<table>
<thead>
<tr>
<th>Details</th>
<th>Year 1950</th>
<th>Year 1951</th>
<th>Year 1952</th>
</tr>
</thead>
<tbody>
<tr>
<td>No. of cases put up</td>
<td>710</td>
<td>664</td>
<td>431</td>
</tr>
</tbody>
</table>

This data indicates that there is a decrease in immoral traffic by year wise, which indicates that the Government was taking stern measures against the immoral traffic. It helps volunteer organizations like the Madras Vigilance Association in starting rescue and shelter houses for the welfare of the women affected by immoral traffic.

Meanwhile, Dr.S.Muthulakshmi Reddi asked a question that, “May I know sir, whether a lady or gentleman is in charge of the rescue home?”

The concerned Minister the Honorable Sri.K.P. Kuttikrishnan Nair said that “The Chief Ministrative officer at the institution is always a lady”. Dr.S.Muthulakshmi Reddy again clarified that “The Boy’s Home is a different thing. This is a girls Home, especially a Rescue Home accommodating girls rescued from houses of ill – fame. May I know sir, whether the Government would employ a woman officer. There are so many woman officers and cannot one be found for this purpose. Subsequently the Government issued orders to look in to the matter positively. Accordingly in G.O. 507 Home 1958 dated 01.03.1958 indicates that, Smt. V.T. Lakshmi, Chief Inspector of certified schools, and vigilance service took a serious efforts for a pupil of the Girl’s certified school by name R.Kannamal with Sri D.Subramani whose income is Rs.70/-.

Tmt. Latika D.Padalkar, the Director of woman welfare has taken meticulous care for the welfare of her woman subordinate officers. This is known through the
following G.O. No.698., dated 01.08.72. This G.O. indicates that, Tmt. Latika D.Padalakar, has started the communication in ROC 43391/at 1/71-7 dated 09.01.192 for getting additional salary for Tmt. A.S.P and the drawal of payment from 15.11.1971 to 24.12.1971. The G.O. has finally sanctioned salary to the officer. According to **G.O. No.860 (SW) (WW) 1972** dated 22.09.72 the Government ordered on the basis of Tmt. Latika D.Padalkar I. A. Director of Women’s welfare asking the Government to delegate powers to Administrative personnel Assistant to Directors of Women’s Welfare for appointment of the following staff of this Department.

1. Lower Divisional clerks and Attendants.
2. Skilled Assistants and instructors in the work centers.
3. Drivers
4. Last Grade Government servants and watchman.

Thus, the Government and various voluntary organizations took effective measures to curb immoral traffic of women.

The slogan of Government for the Girl children campaign was “A Happy Girl is the Future of Our Country”. Traditions, customs and social practices that lay greater value on sons than on daughters who are often viewed as an economic burden, still stand in the way of the girl child being able to achieve her full potential. The Government of Tamil Nadu has taken measures to protect and promote abasement and violation against grown girl children. The Government extends helping hands to the affected women by enacting different legislations.