

WOMEN AGAINST CRIME

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INTRODUCTION

In this twentieth century, when the whole world is awakening to the call of enlightened feminism, India still wallows in the swine of primordial misogyny. In many parts of our country, women are still considered to be a burdensome appendage. She is an economic drain. She must be exploited or dispensed with as a non – person because she crushes her family with marriage and dowry expenses.

Women can be burnt for not bringing enough dowry, tortured and harassed for not providing money to their alcoholic husbands, raped to satisfy the lust of males, or just to teach them a lesson for being bold and outspoken, This is the reality in spite of the Constitutional assurance of its belief in the ‘equality and dignity of all human beings’ and its guarantee ‘that the State shall not discriminate against any citizen on grounds of religion, race, caste.

The police did nothing. Tripta’s brother has to face a lot of resistance even to file a complaint. It was only when about a 1000 Depot employees, where Tripta was working, staged a demonstration, then the cops arrested the accused. They got a bail and were released within a week. Further, instead of charging the culprits with bride burning, the police charged them with abetting suicide and submitted their report after about two years, in spite of speedy investigation required by the provisions of Cr. PC relating to dowry death. The Supreme Court’s order was ignored in the sense that the key witness was not even produced in the court. Such was the influence wielded by the accused.

His presence of a submissive and lonely lady, who seems to be seducing him; then it would be like a match applied to gun powder. Likewise an environment of an undesirable type would not, in itself be responsible for the causation of crime but the crime may be caused if there is a person, who, by some weakness of mind or lack of organization of personality traits is susceptible to such environment. It is a complex mixture of social, economic, cultural, biological and legal factors that accounts for the rising crimes against

women. These crimes can be studied under three clusters: Social personal and psychological and legal.

Five years back on September 4, 1987 when an eighteen year old girl was publicly burnt alive in Deorala thousands of people rejoiced. They were proud 'it was sat that made her commit Sati, she has brought honour to the community.' This was the attitude and expression, not only of illiterate villagers but educated people like advocates, doctors and members of the elected bodies. Those who denounced the act were characterized as a bunch of westernized Indians alienated and out of touch with Indian reality. The heinous crime of murder was condoned in the name of tradition by the ostensibly liberal and progressive elites.

The killers are in jail but the collective conscience of the village remains unmoved. People still blame the widowed mother for giving birth to such shameless daughters and permitting them to live with her in the village. If she wanted to live in peace.

It is difficult to combat these because they are not committed by criminals, but by the so-called law abiding persons. Moreover, they mostly one-sided, i.e., without any provocation from the victims. They do not depend on any quality of the victim or lack of it, but other factors which are beyond her control, e.g. avarice is the reason for dowry deaths, it is immaterial how much dowry was given or how rich is the husband's family. Suspicion is the main reason of cruelty against the wife though it may be totally baseless.

While working parents spend lavishly on children, they normally end up in denying them the care and the time that they need, not to mention the discipline which has to be inculcated in the early years of the life. The children are left alone to fend for themselves or are left with the servants; few are left in the crèches. Children want quantity time and psychological security, they want physical proximity with their parents, all these requirements remain unfulfilled. Children feel emotionally abandoned and look elsewhere for company and companionship. Working parents do not have time. They come home tired and often have service obligations. This results in the children being neglected. There is no control of parents over children nor is any effective monitoring over their behavior or habits done by the parents.

According to a recent case from Delhi, which took place on May 12, 1992, the victim and the culprit both were working together in a deviance installation. The man could not tolerate the popularity of the girl which was due to her efficiencies, for which she was given merit certificates and decorated as well. The man felt let down and humiliated. He

consciously started befriending the girl and one day persuaded her to go with him to his house. He took her to a lonely place instead, where his friend was waiting. Both of them forcibly denuded the girl, after gagging her. They wrote their names on her breasts with cigarette butts thereafter they raped her and took photographs. The girl had fainted after being burnt. She learnt about her plight after regaining consciousness. Next day she complained against the colleague to the superior officer in strict confidence. She was in acute pain and too dazed but was not willing to report the matter to the police. She had no faith in the system. Everyone in the office agreed that she will not get justice in the courts; such a complaint will only result in more harassment and mental tension. No one helped her beyond denouncing the brutal act and offering advice.

If we examine the phenomenon of criminality by examining the castes and the tribes we will realise that criminality has in fact been transmitted from generation to generation as a heritage. There are certain tribes in which prostitution and sale and purchase of girls is taken as a very natural vocation which children inherit from their parents. People belonging to castes like Guggers, Kanjars, Sansi, Kanchi, etc. are recognized as communities, which subsist on the spoils of crime and find shelter and support in some prominent social cultural circles. Lombroso was the first social scientist to draw the attention to physical characteristics of a criminal in the causation of crimes. His thinking has been revived by Professor Hooton and Professor Lange. Physical ailments and organic and functional ailments also have their role in contributing to crimes against women. A sick wife may sometimes evoke sympathy but most of the times it is resented by the husband, who invariably becomes irritable and aggressive if the sickness continues for long. Hyper-sexualize may be a factor in the causation of sexual delinquency like rape, indecent assaults, cohabitation by deceit, bigamy, adultery, etc.

Unemployment and poverty is a major cause of crimes against women. Some men just cannot see women doing well while they themselves are unemployed or under-employed. They find such women to be the cause of their failures; they nurture a grudge against them and commit crimes against them to take out their frustration. There are cases where husbands have not even left their wives to vent out their frustration, ignoring the fact that she is supporting the whole family by her earnings. Sitting at home without a job, they imagine the wife insulting them or looking down upon them because they are dependent upon

her. They imagine her enjoying with other men at place or work. Unemployed men have been found beating their wives on very trival domestic issues.

When the husband tries all sources to earn more but fails and his wife keeps on making demands for money or the children insist on buying things the man becomes irritable. In such an emotional situation he beats her even if she asks for money to run the house, In a reported incident on may 15, 1992 a business man, who was depressed because a fire had gutted his shop and rendered him bankrupt, picked up the kitchen knife and stabbed his wife and children then he stabbed himself. The financial losses that he had frequent arguments. This stabbing incident was the aftermath of an argument for buying blue-berries for the children.

Lack of proper education is a potent cause of moral depravity. It is through the molding of the propensities and potentialities that the formation of good habits and a sound character can be developed. Both the school and the home should train the child for being a worthy citizen, Properly trained mind in the correct values of life can combat the situational urge which so often results in heinous crimes like rape and outraging the modesty of women,

Inefficiency of the Legal Machinery

The police is the first agency for the administration of criminal justice and is considered to be the first line of defense against crimes. They are the entry point of the criminal justice system for the first offenders and re-entry for the failures of other sub-systems. They occupy a strategic position in respect to social defense, probably next only to the family and other groups in importance. No society can exist or function without the support of an groaned police force yet in every part of the world the police has failed to check completely the onward march of crime and delinquency.

In India police inefficiency, corruption, connivance with the guilty and the police-politician nexus has been the major cause of crimes against women. The job of the polices is to uncover law violations and to bring to book those people who threaten the social order. It is police who in their capacity as “the first line enforcers” take the important decision whether the specific situation requires official action or not. If they choose not to identify an act as a crime, or if they choose not to Label a person as a suspect, or if they choose not to take official action even when a man has committed a crime the members of the society lose faith, both in law and its enforcement agencies. This encourages the prospective offenders to indulge in crimes.

On the advice of the doctor the husband registered a case of rape, A few people in the neighborhood were willing to testify that they had seen the culprit entering his house on that after moon but the police took no action and the man threatened the woman that if she continued to blabber he would kill her husband. It was then that the husband sought help from a woman's organization. The village panchayat also demanded action against the man. As pressure for the arrest of the man mounted he disappeared. It was alleged that the police abetted the man's escape. He was not seen for two months, the neighbors also lost interest in the case. But the woman continues to live in terror who knows when the rapist will strike again?

In *Shoe Karan v. State* the contention according to the statement of the doctor was that in a case of rape, injuries on the private parts of the accused should be found but none was found even though the body was examined the same day while the girl was examined the next day. The doctor said that in such a case it is possible that injuries on the penis would occur. This statement is very different from saying that 'injury must occur'.

Absence of injuries on the person of the prosecutrix may or may not indicate absence of physical violence. A force need not be actual physical force. A threat of violence may at times prompt submission of the prosecutrix to sexual act and may not cause any physical injury. Even in cases where the prosecutrix may struggle and resist, she may not suffer actual body injury because of other circumstance like the number of persons committing rape, the place where the act is committed and her own condition including the manner in which it is committed.

Since the Supreme Court agreed with the judgment of the High Court that rape was committed then where is the legal definition to suggest that only virtuous women can be raped. In this case the learned counsel for the accused rested his argument on a medical examination, to surmise that the victim was used to sexual intercourse. Since she had a boy friend the counsel concluded that she was of question character and easy virtue with lewd and this moral certification. But the judge were convinced and quoted this is their judgment.

PRESUMPTION IN CUSTODIAL RAPE

The 1983 amendment had brought a change in the Indian Evidence Act, a new Section 114-A was added by which in case of custodial rape, if a woman states in her evidence before the court that she did not consent, the court shall presume that she has not consented. it is for the accused to prove the contrary, but the peculiar manner in which this

clause is phrased, has led to glaring loopholes. The presumption is not made absolute but is made subject to providing the country. It has to be gathered from the attendant circumstance arising in a particular case.

Intercourse by any management Member or Staff of a Hospital:-

Section 376D protects all women against sexual intercourse by any member of the management or staff of a hospital. If any such person, taking advantage of his position has hospital premises, he shall amounting to rape, with any women in the hospital premises, he shall be punished with imprisonment for five years and fine. Hospital precincts or hospital include the institution for the reception and treatment of the persons during convalescence or person requiring medical attention or rehabilitation . The victim need not necessarily be a patient, she may be any women in that hospital.

‘Induces’ or ‘seduces’ has not been used in sub-clause D. in sub-clause B and sub-clause C mere inducement or seduction is punishable but under sub-clause D mere sexual intercourse must take place. The victim under section 376D can be any women she need not necessarily be a patient or be under the authority or control of the offender.

PROVING THE GUILT

In cases of rape by police men the investigation is conducted by fellow policemen, often of the same police station. it is they who conduct the spot panchnamas, and if there are witnesses they are most likely to be fellow comrades in arms. Medical examination is done by police doctors or other Government doctors. Corroborative evidence that reaches the trial court is the one that survives these inherent anomalies. And here it is not the victim or her lawyers but the prosecuting counsel who conduct the case. They are notoriously close to the police, especially at the Session level.

Much value is placed to the corroborative medical evidence. But in reality it would be difficult to obtain such medical evidence. The victim would probably instinctively set about to clean herself and remove any signs sexual intercourse or struggle. A victim of rape and that too a custodial intercourse rape, cannot be expected to rush from that too a custodial intercourse rape, cannot be expected to rush from the scene of the crime to the police station to lodge a complaint. There is basic hesitation on account of the intimate relationship. There is basic hesitation on account of the conduction the medical examination does not exist, to be of any use, medical examination has to be done within 24 hours.

RAPE ON MINORS:-

Rape on innocent girls is literally murder of innocent. The insensitivity of the trauma and the agony is unimaginable; it takes a minute to happen but a lifetime to get over. In most instances the child is not a victim of criminals who entice children off the streets or playfields, but the crime is committed by an uncle, cousin, friend, or a neighbor.

One of the most important ingredients in the 1983 amendment was the clause regarding minimum punishment of 10 years, in case of rape of children below the age of 12 years, but the decision of various courts, even after this amendment, show that either the rapists are let off on the grounds of benefit of doubt or sub-minimum punishment is given on various other grounds.

In *Bhai Singh v. State* a 7 year old girl was raped by a boy of 18. The Sessions Court sentenced the accused to 5 years imprisonment. The High Court Rajasthan turned down the appeal for enhancing the sentence on the ground that the rapist was only 18 years old. This appeal was decided after the amendment.

In *Arjun Singh's* case the Sessions Court went a step further and convicted the rapist till the rising of the court! Even an appeal against the sentence proved futile.

Ghuraiyya alias Rohini Baisawar v. State of M.P. is a very brutal case of child rape. The victim was an 11 years old minor. She told her mother that the two accuse had raped her and thereafter inserted sticks in her vagina. It was done to create an impression that she had got injured with a stick.

In another case from jammu Kashmir, non-bailable warrants were issued against a minister for raping a minor girl but they were not executed for seven years. The minister was involved in rape along with other bad characters. A small flaw in the warrant took seven years for the minister to be arrested.

VICTIMS OF RAPE BY AGE-GROUPS DURING 1988-92

Sl. No.	year	Below 10 Years	10-16 years	16-30 years	30 years and above
1	1988	233	1869	5832	1165
2	1989	369	1965	5646	1772
3	1990	394	2130	6028	1541
4	1991	1099	2630	5377	1319

5	1992	532	2581	7000	1621
Source: national Crime Record Bureau.					
Rape Case in Delhi					
Year	1991	1992	1993	1994	
Rape on Minors	167	216	235	158	
Rape on Majors	59	77	86	59	

Note : Data of 1994 is up to August.

Dowry Harassment: its Beginning

The modern dowry system has reached gargantuan proportions; it however had a humble beginning, as stray incident show. A groom would refuse to proceed with the marriage rituals show. A groom unless the demand for either a cycle, ratio or a watch was though unless the demand for either a cycle, ratio or a watch was not met. This not only created confusion as the bride's kin went around arranging the item at Zero hour, but also caused an embarrassment to them. The girl's parents succumbed to this hold up due to social and economic pressure because in olden days marriage was the only career for women. Parents were always too eager to get their daughters married lest they remain a burden on the family for the rest of their lived. (Not that the modern parents have changed their attitude, even now they span sleepless nights thinking about their daughter's marriage.)

DOWRY PROHIBITION ACT

(Cases Registered ion Crime Cell)

year	1990	1991	1992	1993	1994 till Sept.
Cases reported	6	1	6	8	10
Convicted	-	-	-	-	-
Pending trial	5	4	-	-	-
Investigation	1	-	1	-	-

Note : Hardly any marriage is without Dowry.

Date till April 30, 1992

DOWRY IS A TRUST

Dowry is generally regarded as a gift for the benefit of the husband and his relatives rather than for the benefit of the wife. This is probably the reason why dowry is demanded and the wife is harassed for not bringing it. This is wrong, it is contrary to the spirit of the Dowry prohibition Act. Section 6 of the Act specifically states that dowry belongs to the wife and she either holds it herself or if another person holds it, then such person shall transfer it within one year of the marriage. In *Vinod Kumar v. State of Punjab* the high court took a completely erroneous view of law and held that the very concept of a matrimonial home connotes jointness of possession and custody by the spouses, even with regard to the therefore concept, in view of the conjugal relationship, as involving any entrustment or a passing of dominion over property day-to-day by the husband to the wife or vice versa.”

FIGHT AGAINST BRIDE BURNING:-

The fight against bride burning started with efforts to banish dowry which was pinpointed as the root cause of the dowry deaths.

Dowry prohibition Act, 1961 was soon realized that these changes were not enough. Dowry deaths maintained their upward spiral in spite of all legislative efforts to curb them.

One important reason for the ineffectiveness of the Act was, perhaps, a major defect in the IPC in the definition of cruelty which preceded all cases of bride burning or suicides by newly wedded brides. Indian Penal Code defined cruelty as a conduct which resulted in physical and bodily injury to a person. A wife had to undergo medical examination and produce evidence that physical injury was inflicted upon her. The subjection of a wife to mental cruelty was considered a ground for her to seek divorce but it was not a ground for any penal action to be taken against the husband. Further, though the demand for dowry was punishable under the Dowry Act, the harassment inflicted by the husband and his family was not punishable under the penal code. Often the harassment and torture was so much that the wife was left with no option but to commit suicide in order to put an end to all the misery. Many times it was the husband and the in-laws who eliminated the wife from the scene by murdering her and deposing that it was a case of accidental death.

It was very difficult to prove it since the crime was committed in the privacy of the house and the culprits had all the time to create. Evidence of accidental death by removing all the incriminating clues.

DEEMED TO HAVE CAUSED THE DEATH

“ if at all the framers of law would have intended the liability to be fixed on the person actually causing death there would have been no necessity of using the expression ‘ and such husband or his relative shall be deemed to have caused the death’ the end of sub-section (1) of section 304-B IPC. I it suggests that the framers had intended and contemplated the liability of the death being fasted on the in –laws “.

A division bench decision of the Andhra Pradesh High Court in Public Prosecutor v. Tota Basava Punnial. Supports this view. This was a case of death by hanging with in there years of the marriage. Evidence showed that dowry was demanded. The Court held that even if it is a case of suicide Section 304-B IPC is attracted.

But in Atula Ravinder and other V. State of AP though it was proved that the accused was harassing the deceased and marking demand for dowry, and there was evidence to show that the deceased was subjected to cruelty within the meaning of Section 498-A IPC the Court did not punish the accused. The marriage had taken place in 1984. At time of marriage a demand was made for Rs. 10,000 but the parents has paid only Rs. 8,000 and had promised to pay the balance later. They could not pay. This was the reason for the husband and his parents to harass the deceased.

BURDEN OF PROOF IN DOWRY DEATH

The introduction of Section 304-B in IPC and 113-B in the Evidence Act has shifted the burden of proving the innocence on the person against whom there is an allegation of causing dowry death. This was to combat the difficulty in adducing evidence for the crime of dowry death and do overcome other legal hassles.

In Ashok Kumar V. State of Rajasthan it was asserted that dowry killing is a crime of its own kind where elimination of the daughter-in- law becomes an immediate necessity if she and her parents are not able not able to satiate the greed and avarice of the husband and his family. “Eliminate the bide and everything is resolved automatically is the guiding principle in such cases. The time and place of the unnatural death of Asha at her in-laws small house with at least six inmates was not disputed. It was proved that she did not die of

accident nor had she committed suicide. Burning by the stove, gas which or even by fire-wood may not be unusual due to the synthetic wear which has become very common. But when the post mortem report indicates, as was in this case that the smell of kerosene oil then it only belied the statement of her sister –in –law that she was burnt while she was preparing tea. It also ruled out the remotest possibility of an accident.

LEGAL CRUELTY

To constitute legal cruelty, there must be danger to life or injury to health, a physical or mental, or a reasonable apprehension of it . Stray incidents of violence do not constitute cruelty, but if the cumulative effect of them this can be said to constitute legal cruelty.

The irony of the situation is that unless the spouse can provide evidence to show that her health has been affected due to cruelty, she will not get any relief. The situation is compounded by the fact the lack of sufficient evidence; several women with genuine woes do not get justice.

LEGAL HANDICAPS

Violence which is dowry related is viewed in a special light. it is placed on a separate pedestal. Special protective laws are enacted in the form of Sections 304-B and 498-A to deal with it and Section 113-A and 113-B have been inserted in the Evidence Act to make the proof easier but no such law exists to facilitate proving wife beatings. There are many cases where the wife is beaten mercilessly; harassed or even killed but dowry is not the main issue.

In *Admit Begum v. State of Gujarat* the husband was not a considerate man, he was bull around the house, he was given to bad ways and was in the habit of subjecting his wife to mental and physical torture day in and day out. Terror by day and violence by night seemed to be his cult. On the day of the incident also the wife was mercilessly beaten. The beating were so acute that the wife saw danger to her life and spontaneously reacted violently to save her life. There was no issue of dowry or property involved but the cruelty was no less brutal.

Hurdles in Getting the case Registered:-

One major handicap in registering a case under Section 498-A is the requirement of Section 198-A Cr. PC. Cognizance under Section 498-A is possible report or a complaint

made by the aggrieved person or the father, mother , brother , sister, or with the leave of the court any person related by blood, marriage or adoption.

In another case of cruelty and ill-treatment the accused got excited on a very small failure on the part of his wife and brutally killed her by beating her to death. According to the prosecution the accused had come back from the market after purchasing a pair of buffaloes, he asked his wife to bring some turmeric powder but there was some delay, this made the accused angry. he entered the house, dragged out the deceased and attacked her with the stick that he had used for bringing the buffaloes. The stick broke in two then he dealt such severe blows and kicks on her that she died, he unceremoniously buried her also.

The Criminal Law (Second Amendment) Act, 1983 has changed the cardinal principle of criminal jurisprudence by shifting the burden of proof on the accused. Section 113-A aims at ameliorating the condition of women by preventing their criminal exploitation. It makes the rules of proof simpler. The very spirit of this amendment reveals the gravity of the situation and shows how difficult it was to prove the charge of cruelty against the accused. Now, ‘when the question is whether the commission of suicide by a woman has been abetted by her husband or any relative of her husband and it is shown that she has committed suicide within seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty.

CRUELTY BY HUSBAND OR IN-LAWS

Year	1990	1991	1992	1993
Arrests	927	858	61	723
Convictions	1	2	-	-
Acquittals	2	-	-	-
Pending trial	898	574	-	-
Investigation	5	281	238	-
Discharged	21	1	-	-

Source : Crime (Women) Cell.

EFFICACY OF THE LEGAL PROVISIONS

Of late the number of incidents of sexual harassment have increased alarmingly. The Delhi University Students' Union had organized a rally to draw attention on this issue and protested against the failure of the authorities to punish the offenders even at their own level. This agitation seems to be a build-up of what has come to be regarded as the lax attitude of the college authorities in dealing with sexual harassment of girls over the years.

PROSTITUTION IN PRACTICE

Prostitution is a well organized industry. There are certain tribes, communities and even castes like Beria, Kanjar, Sansi and Gujjar which practice it as a family profession; they have remained unaffected by the legal changes. There are many villages, specially near big cities, like Raspur village near Agra, Mandi Mangalpur and Saganpur in Rajasthan, Baksa in Hyderabad, Yamuna Pushta in Delhi, which are dens of flesh trade.

Sati, the custom of burning widows on the funeral pyres of their husbands, was not peculiar to India but here it persisted the longest, till it was outlawed in 1829.

This practice reflects man's desire to acquire total control over a woman, not only in this world, but also in the world hereafter in the name of high sounding ideals like love, devotion duty and religion. Sati was the manifestation of this baseless and unjustified desire of man.

INADEQUACIES OF LEGAL PROVISIONS

A critical examination of the legal provisions revealed that most of the protective laws for women suffer from various loopholes or shortcomings. They are complicated and ambiguous, and instead of solving the issues make the situation more complex. Often the provisions of the law are not clear and precise; it makes them the battleground for legal interpretation in the hierarchy of courts. Certain laws remain confined to status books, because the enforcement machinery is inadequate, or the penalties are not awarded according to the stipulations.

Many of these protective laws like the Act prohibiting Sati were passed in such a great hurry that there was no time even to think about the various aspects of the enactment. Indecent Representation of Woman is a classic example of a hurriedly passed law. The Act was passed with a lot of urgency yet the rules implementing that law not made for years. This shows the callous attitude of the executive and the unenthusiastic reaction of the enforcement authorities.

The Dowry (Prohibition) Act is just one example of the innumerable acts which do not take into account the social realities of a woman's life. Such law can only be a palliative measure to steer the State out of a problem and help it to get out of an ugly situation by appeasing a particular group of people. The laws on Sati and Cruelty against Married women are some other examples of laws which cannot be enforced effectively. The law on Sati is heartless; it treats Sati as a case of suicide. The definition of glorification of Sati is vague and ambiguous, which gives place to arbitrariness.

**DISPOSAL OF IPC CRIME CASE BY COURTS
DARING 1961-91 & 1992**

Sl. No.	Year	Total No. Case for Trial (Including Pending Cases)	No. of Cases		Percentage of	
			Tried	Convicted	Trial completed	conviction
1	2	3	4	5	6	7
1	1961	800784	242592	157318	30.3	64.8
2	1971	943394	301869	187072	32.0	62.2
3	1981	2111791	505412	265531	23.9	52.5
4	1991	3964610	667340	319157	16.8	47.8
5	1992	4274361	733191	340058	17.2	46.4

❖ Excluded Withdrawn/ Compounded Cases.
Source: Crime in India, 1992.

PRO-RICH BIAS

The Courts are not always impartial nor are judgments given on merit. A pro-rich bias was clearly visible. For some rich litigants the judges can sit in the chamber beyond working hours and give a decision, while for the poor litigants paucity of time is the reason to prolong the case, The poor litigants may keep running from pillar to post to get the process hurried up

or even for directions to be issued to the police or the CID to start investigations or initiate legal proceedings.

An analysis of the convictions for crimes shows that very few rich people get convicted; not that the rich do not commit crimes but their apprehension and conviction is not an easy task. The offenders who were interviewed had the same feeling; they were convinced that with money anything can be brought, even acquittals were not difficult with money power.

In 1992 Child Marriage Restraint Act was passed. It prohibited child marriages and prescribed punishment for those parents and guardians who solemnized such marriage, but no attention was paid to the causes that were responsible for this practice, with the result that child marriages are still prevalent. In some pockets they are solemnized on such a large scale that one starts doubting the existence of any law banning them.

In the present permissive environment and the invasion on moral values from the sky also, in the form of M TV and the STAR TV it has become very difficult for the enforcement authorities to prevent indecent representation of women in various forms and to reclaim the lost dignity of the women- folk.

The Government has not been able to control the growing incidents of female feticide. It has yet to pass a comprehensive law banning sex determination tests to protect infants who are yet to be born.

An over-view of the crimes establishes that most of the crimes against women cut across all barriers of religion, race caste or social strata. Education or economic independence rarely increases the moral courage of the victim to fight against the crimes specially those crimes which have a social stigma attached to them. The process of law is lengthy, cumbersome and expensive. Delayed trials due to the heavy back – log of cases and the other delaying tactics of the offender dilutes the case and proofs disappear, it reduces the chances of the victim getting justice.

RAPE LAWS

Rape laws need thorough overhaul. They should be simplified and made less technical. In a tradition – bound non – permissive society, the danger of being ostracized and losing the love and respect of the near and dear ones are factor which deter a interim from reporting the crime committed against her. The mental trauma of a rape victim is unfathomable; she is treated as a social outcast as though she was responsible for the crime. The chances of getting a suitable matrimonial offer for her are nil. The heartless cross – examination and the aspersions cast on her character are unbearable for any woman, leave alone a woman who has undergone a virtual nightmare.

Police – Public Cooperation

There should be greater public- police cooperation to create confidence in women about the benign role of the police. Drug de addictions camps, eve eye camps and safety week organized by the police in Delhi in 1990 and 1991 proved a big success in bridging the gap between the police and the people. Such camps should be organized more frequently to remove the initial hesitation of women going to the police for help. Nagrik Suraksha Samiti, organized in some areas of East Delhi on an experimental basis, should be formed in each locality to prevent the crimes being committed against women or nipping them in the bud. The concept of neighborhood watch schemes should be popularized. Cooperation from the public can go a long way in preventing these crimes.

On September 14, 1992 the police has had organized a week of Jan saying abhiyan. It was aimed at teaching at teaching the masses the techniques of dealing with crimes and promptly reporting such incidents to the Police. Such campaigns should be organized regularly to create greater awareness in the people about the provisions of law and the proper procedure for reporting a crime.

Administrative Reforms in Judiciary

Freedom of judiciary is essential for maintaining the democratic edifice. The favoritism shown by the Government in the appointment and transfer. Of judges has made the judges sycophants, this practice of politicizing judiciary should be stopped immediately. Investigations in the appointment of judges reveal the clandestine nature of the whole process. It has led to many appointments being made on totally extraneous considerations. There are instances where even the Chief justice has engaged in the barter.

National Rural Employment Programme (NREP) has been launched: to generate additional gainful employment for the unemployed and underemployed persons in rural areas; create productive community assets for strengthening rural economic and social infrastructure and improve overall quality of life in rural areas. In this programme preference is given to landless laborers. Among them, women are given her preference. In the year 1986-87 out of total employment generated, women account, for roughly 19%

Integrated child Development Services (ICDS): At the centre Department of Women and Child Development (WCD), Ministry of Human Resource Development, coordinates the implementation of ICDS. The ICDS is based on the conviction that child development programmers can become catalytic agents for social change and serve as entry points for improving the quality of life of present and future generations of the disadvantaged and poor. It seeks to improve child survival health, nutrition, learning opportunities for pre- school children and their mothers. It initially had only 33 projects, as against nearly 1500 projects at present spread over length and width of the country.

The national machinery has been set up to develop policies and programmers for women. These consist of: (1) A coordination committee. (4) A women's welfare and development bureau. These projects for woman have been sponsored by the Government of India.

Khula and Mubarat

A dissolution of marriage by agreement may take the form of Khula or Mubarat. a divorce by Khula (redemption is a divorce with the consent of the husband and at the instance of the wife, in which she gives or agrees to give a sum to the wife release from the marriage tie; in fact it is a divorce purchases by her. It is complete and irrevocable from the moment the husband repudiates the wife. A Khula divorce is effect by (a) and offers from the wife coupled with (b) a sum for the same and (c) acceptance of the offer by the husband. Once the offer is accepted it operates as a single irrevocable divorce (talak-t-bain) and its operation is not postponed until the execution of the deed of Khula. Mubarat (Mutual freeing) divorce proceeds from the mutual consent of both the husband and the wife. As the incentive comes from both sides, no return is required from the wife in this form of divorce.

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

Offences under this Act have been made cognizable and non – compoundable for certain purposes. Some special provisions to supplement Dowry Prohibition Act 1961, to cope with cruelty to married women culminating in Dowry Deaths by suicide or murder to helpless married women have been introduced by criminal Law Amendment Act 46 of 1983.

By introducing a new section 498 in I.P.C. cruelty to a woman by her husband or any relative of her husband has been made punishable with imprisonment for a term which may extend to three years and also with fine. Provision has been made for inquiry by Executive Magistrate and for Post - mortem in all cases when a woman has within seven years of her marriage committed suicide or died in circumstances raising a reasonable suspicion that some other person has committed an offence.

Women are Society:-

One advantage of dowry is that it facilitates the marriage of some girls who could not get married otherwise. The Government of India has not yet formulated definite ideas on how to deal with this social practice. Nirupama Rao narrated the story of her parents who were living in poverty after getting their four married. Her father, now retired, was working in the P&T department, and living in Mysore. As dowry was a regular practice in their community, her father was continuously in debt to get his four girls married. “There was a stage when i decided i would never get married. But then I had to think of my younger sister, if I had refused marriage they would have had difficulty in getting her married. As I have seen how much my parents had to suffer to wee us married I would never dream of accepting dowry for my two sons.”

Vijayalakshmi, who had to delay marriage till she was thirty-two as her parents could not afford a dowry, ended marrying a widower who did not take any dowry. “It is high time the evil of dowry disappeared. No woman can have respect for herself if this practice prevails.” A young undergraduate, felt there was no great point

in women saying they do not approve of dowry. “Young men must come forward and say they will not accept dowry. Once they are definite about the evils of dowry no one can perpetuate this custom which has degraded woman’s status.”

In all areas dowry is considered unfavorable. Only in the northern and central regions, a larger percentage of women are in favour of this practice, in these two areas, the practice of dowry is so ingrained that they consider it a necessity to give daughters their rightful gift when they leave home. Asha Grover justified her opinion in favour of this custom saying, “The dowry I get at the time of marriage is come thing I can take with me to my new home with pride. Though as a daughter I am eligible to my father’s property, one cannot wage a battle with my brothers in demanding my due share since my parents will have to spend their life time with them. As such, a woman’s right for property is only theoretical. In practice a women will get nothing if she loses her right to a dowry.”

When we consider the stratification of society socio economically, the lower strata seemed to be more fovourable to the practice of dowry than the other two groups. This underprivileged section is out of touch with current thinking. They only think in terms of the little money they give during the marriage. The practice of dowry as it exists among the higher castes of India is unknown among the lower strata. Very often among the scheduled castes the expenses are equally shared by the bride’s and the bridegroom’s party. In many hill communities it is the man who gives a “bride price” to be allowed to marry a girl. The acute harassment which high caste middle class families face to get their daughters married is never seen among the lower classes.

It is encouraging to note that the percentage of women favoring dowry is gradually reduced with progressive levels of education. This reveals that the trend in social practices is primarily determined by education in all strata’s of society. Mixed marriage was considered to be a marriage where caste, religious, or linguistic considerations do not come in, Caste as a barrier to marriage is gradually dying off especially in urban areas since people are more aware of the personality characteristics which are important in making marriage a success. The uprooting of families from their ancestral homes, free intermixing of communities, and trade and

occupation not necessarily determined by caste background are all factors which have diluted the importance of caste.

A favorable attitude to mixed marriage has come about with better education. The higher the educational level of women, the higher the score for favorableness. Mainly women below college education are narrow minded and rigid about caste differences. Women lesser education invariably comes from conservative families where caste still determines the mode of life, habits and practices. It is very difficult for them to conceive of a society where caste does not exist. Marriage being the basis of family life is fitted into a particular caste pattern when the husband and wife belong to the same caste. A bride and bridegroom belonging to different castes would create innumerable problems it is believed.

The middle and lower socio-economic class are more traditional in their approach and are not favorable towards divorce under any circumstances. The primary reason for this might be the financial dependency of the female on the male. If they are separated, the family will suffer. The care of children will be hampered. The girl will be a burden on her family again which is not a happy situation in the presence of sister's in-law in the family. So women are expected to suppress their girls and stay back with their husbands for the prestige of their family and also to conform to society's expectation. Much time it is unfortunate that the woman is viewed as the cause of the divorce because she is considered to be the person for making adjustments always. If she deviates a little, then she is considered to be at fault. In the upper class the attitude to divorce is almost half on either side of the continuum. Some feel it should not be undertaken while others feel that is not worthwhile to waste a lifetime if married life becomes unhappy.

A few studies indicate that the less education a person has, the more likely he or she is to approve of and support violence. some other studies, however, contradict their findings and on the other hand, they are of opinion that couples with the lowest educational levels are less prone to violence than those who had attained higher education. It is argued that low education level does not cause violence but it aggravates the frustration.

The reason for more violence among those who have higher education may be that women with high education may not endorse the traditional role relationship and this may be

considered as threat to the dominant position by their husbands. However, education can provide people with alternatives for resolving family disagreements. It is, therefore expected that with the help of education individual learns different mechanism to resolve the conflict in the conjugal relationships.

The educational background of the victim wives indicates that those who have low educational attainment or higher educational attainment had over representation as compared with those who had moderate level of education. There is a progressive decrease in the percentage of the victims from illiterate educational category up to graduation with the exception of those who had higher education. This curvilinear distribution of victims of violence indicates that women who have no education or have higher educational attainment are more prone to physical violence by their husbands.

There were major social factors associated with the problem of wife abuse they have advocated different coping mechanisms for the solution of the problem. Different researchers have given attention to develop programmers for the wife batters, such as individual therapy marital and family therapy psycho educational or psycho – therapeutic group approach; anger control technique cognitive behavior strategies and coordinated programmers involving group treatment and community intervention.

In addition to research on batterer's treatment programmers, researches have also suggested treatment techniques for the victims. Andersen et al. argue that separation factor for the treatment of abuse and ultimately for her survival and yet when she leaves her husband, she exposes herself to an ever increasing risk of violence.

Thus a wife must not leave her husband until she has the resources to stay away either permanently or long enough to facilitate significant change in the husbands behaviour. Gondola and Fisher argue that it is the woman's separation that is the prime motivator for a man's attending counseling in the first place. Once batterer "gets her back "he is much more likely to drop out of counseling and batter again.

Although different researchers in the United States have started working on the solution of wife abuse, yet they are unable to reach at a consensus because most of them are naive. There are high dropout rates in such programmes. After such programmes their battering ceases but psychological abuse heightens. sturdier and Stile argue that patriarchal society will not change overnight and that men in society who are reaping the rewards of violence will resist relinquishing their domination, men who attempt to give up their violence

will be faced with covert and overt pressures from other men to come back in line with the attitude of masculine superiority.

The procedures advocated by these researchers may not be applicable to the Indian cultural situation. First, because the available knowledge regarding violence against wife is only anecdotal but there is also no consensus on the definitions of wife abuse. Additionally, no national sample survey has been conducted in India to find out the extent and the severity of the problem. Under these circumstances efforts should be made to assess the nature and the extent and the severity of the problem as well as to identify the factors associated with wife abuse.

In these cases attempts were made to seek the assistance of the kin of both the partners for settling the dispute between the conjugal units. One victim was helped in filing a divorce case against her husband. There were four victims who informed that these formal sources neither came to their rescue nor gave them any constructive advice.

To what an extent the intervention of the formal sources was helpful to the victims? In other words were the victims able to have congenial relationship subsequent to intervention from the formal sources? Out of 16 cases, 5 victims gave the reply in affirmative. These victims contended that after the intervention from the formal agencies, their abuse at the hands of the husband had stopped. However, out of these 5 cases one had already sought divorce and 4 have been provided legal separation. As all these five cases were not staying with their abusive partners, they got freedom from daily quarrels and abuse.

In the remaining 11 cases even after the intervention of the formal agencies their abuse has not stopped. Despite their efforts at the personal level, informal level and intervention from the formal sources their abuse continues and in the absence of other alternatives they are continuing to stay in the abusive relationship. It can be concluded that intervention even by the formal agencies has not helped the victims to get freedom from violence of their spouses. They can be relieved of the abusive situation only when they leave their perpetrators. In case they become aware that leaving that abusive spouse is the best mechanism to get rid of violence but when they continue to stay with the abusive partner and suffer one may raise the question, why do they stay with them?

Hindu Marriage Act made marriage with a lunatic, epileptic or a child, void. This was the first step towards recognising the fact that the marriage ought to be based on mutual consent between the man and the woman. It was only in 1976 that the provision for divorce

by mutual consent was incorporated and in 1978 the minimum age for marriage under Hindu law raised to 18 for women and 21 for men. Daughters got equal rights to their father's property, and dowry was prohibited by an Act of 1961 which was made more stringent in 1985. Despite these changes in the law, Hindu marriage continues to be based on inequality and injustice. Legally, a Hindu woman cannot be a member of the coparcener and consequently she cannot be the Karta or ask a partition. She still does not get any share in the ancestral property (Kerala is the only state in India which has abolished the institution of Hindu Undivided family). The father is considered to be the natural guardian of the children and the Hindu woman has no right to decide where the matrimonial home will be her adode after marriage or to take up a career which many keep her away from her husband.

Chief Criteria in Mate Selection

- A. Family factors: The Shies are very particular about the family. The guardians generally do not like to marry outside the family or in a family of lower status.
- B. Personal factors: Among the Shies, factors that affect a person's choice in marriage are personality, health and temperament likes and dislikes attitudes and tendencies. The main consideration before the father or the guardian, however, is that the selected spouse does not suffer from any disease or deformity.
- C. Inter-personal factors: As described earlier, generally the marriages among the Shies are solemnised with the cousins. Both of them are supposed to know each other since childhood. Such marriages are expected to be helpful in establishing better relations between the mates. A marriage so based on mutual understanding may be described as a sort of "love marriage" because both parties have known each other from childhood.

Jahaz (dowry) is not a major consideration in the selection of a partner. Chastity and morality are regarded as the highest virtues and essential qualifications for a girl. Some parents regard the bride as a gift, to be given to the bridegroom and, therefore, exercise absolute independence in the selection of the mate. Under the notion of marriage as a gift there is little scope for girls' rights in the selection of the partner. Therefore, the father or the guardian is the whole and sole authority in giving this gift to a person whom he considers deserving and fit.

Marriage in reality is a means of procreation and multiplication of the species and hence is naturally incumbent. To keep away any sex from procreation is biologically wrong and that is why the marriage of widows should be as desirable as that of virgins. In a sense, the

marriage of widow is considered more necessary for she has enjoyed life, and would there for remain miserable all the more. a widow is either childless or has children. if she is childless she must be encouraged according to Islamic principles, so that she may have a flourishing family of her own. if she has children, she will be able to support them better after remarriage. Thus, widows can be classified according to their age into three categories:

1. Those of very age, victims of early marriage, who if not remarried, would have their whole life wasted by remaining either celibate or by becoming a blot on the honour of the family, if they are tempted to behave undesirable and succumb to it.
2. Those of middle age, who are healthy and are experienced housewives, who will prove an asset to any family they join and who may be childless or with children.
3. Those who are of old age, and possibly unfit to bear children, may be allowed to remain as a part of their maternal family. In their cases also, a remarriage is desirable from two considerations. Firstly, for their own support and maintenance and secondly, for the support of the household of the new husband. They would be part and parcel of the family and look after domestic affairs with greater sincerity and diligence than servants.

Where a pregnancy occurs as a result of failure of any device or method used by any married woman or her husband for the purpose of limiting the number of children, the anguish caused by such unwanted pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman. Though the promotional slant of the government's family planning programme may be perceptible in this explanation, it is evident that parliament cannot be blamed for any lack of solicitude for the largest minority in the country.

This solicitude may be even more evident in another provision of the Act which stipulates that in determining whether the continuance of a pregnancy would involve grave risk to the health of a pregnant woman, account may be taken of her actual or reasonably foreseeable environment. This enactment has been hailed as "a major landmark in India's social legislation", and "a far-reaching measure assuring the women of India freedom undesirable and unwanted pregnancies.

- 1- The Committee shall, through the Economic and Social Council, report annually to the General Assembly of the United Nations on its activities and may make suggestions and general recommendations based on the examination of reports and information received from the states Parties. Such suggestions and general recommendations shall be included in the report of the committee together with comments, If any, from States Parties.

- 2- The Secretary-General of the United Nations shall transmit the reports of the committee to the Commission on the Status of Women for its information.

Article 22

The specialized agencies shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their activities. The committee may invite the specialized agencies to submit reports on the implementation of the Convention in areas falling within the scope of their activities.

Article 23

Nothing in the present Convention shall affect any provisions that are more conducive to the achievement of equality between men and women which may be contained:

- A- In the legislation of a State Party; or
- B- In any other international convention treaty or agreement in force for that State.

Article 24

States Parties undertake to adopt all necessary measures at the national level aimed at achieving the full realization of the rights recognized in the present Convention.

DIVORCE- ALSO IS AVAILABLE UNDER THE SPECIAL MARRIAGE ACT, 1954. SECTION 27 PROVIDES THAT-

- 1:- Subject to the provisions of this Act and to the rules made under this Act, a petition for divorce may be presented to this District Court either by the husband or by the wife on the **ground that the respondent –**
- (a) has, after the solemnization of the marriage, had voluntary sexual intercourse with any person other than his or her spouse; or
 - (b) has deserted the petitioner for a continuous period of not less than two years immediately preceding of the petition ; or
 - (c) is undergoing a sentence of imprisonment for seven years or more for an offence as defined in the Indian penal Code;
 - (d) has since the solemnization of the marriage treated the petitioner with cruelty; or

- (e) has been incurably of unsound or has been suffering continuously or intermittently from mental discord of such an extent that the petitioner cannot reasonably be expected to live with the respondent.

Upon remarriage a widow forfeited her right to succeed to her husband's estate and not to estate and not to estate of any other person such as her by the previous marriage as his mother .

Introductory:-

The Muslim Women (protection) of Right on Divorce) Rules, 1986 came into force at once on their making by the Central Government. These Rules have provided for service of summons, evidence, postponement and adjournment of proceeding, costs, affidavit and declaration under Section 5:

Service of summons-

Rule 3 of provide that-

- (1) Every summons issued by a Magistrate on an application made under the Act. shall be in writing, in duplicate, signed by the Magistrate or by such other officer as he may, from time to time, direct and shall bear the seal of the Court.
- (2) Every such summons shall be accompanied by a true copy of the application.
- (3) Every summons so issued shall specify the date of the first hearing of the application which shall not be latter than seven days from the date on which the summons is issued.
- (4) Every summons shall be served by a police officer or by an officer of the Court issuing it.
- (5) The summons shall, if practicable, be served personally on the respondent, by the delivering or tendering to him one of the duplicates of the summons.
- (6) Every respondent on whom the summons is so served shall, if so required by the serving officer, sing a receipt, there for on the back duplicate.
- (7) When a court desires that a summons issued by it shall be served at any place outside its local jurisdiction, it shall ordinarily send such summons in duplicate to a Magistrate within whose, local jurisdiction, the respondent resides, or is, to be there served.

Assistance of medical and welfare experts may also be taken vide Section 11, which mandates that in every suit or proceedings, it shall be open to a Family Court to secure the services of a medical expert or such person (preferably a women where available, whether related to the parties or not, including a person professionally engaged in promoting the

welfare of the Family as the Court may think fit, for the purposes of assisting the Family Court in discharging the function imposed by this Act.

Advocates are not allowed to represent a party before a Family Court. Section 13 provide that notwithstanding anything contained in any law, no party to a suit or proceeding before a Family Court shall be entitled, as of right to be represented by a legal practitioner : But if the Family Court considers it necessary in the interest of justice, it may seek the assistance of a legal as amicus curie.

Indian Evidence Act, 1872 is made application to the proceedings before a Family Court by Section 14, that a Family Court may receive as evidence any report, statement documents, information or matter that may, in its opinion, assist it to deal effectually with a dispute whether or not the same would be otherwise relevant or a admissible under the Indian Evidence Act, 1872.

Section 24 provides for maintenance pendente life and expenses of proceedings that where in any proceedings under this Act it appears to the Court that either the wife or the husband as the case may be, has no independent income sufficient for the or his support and the necessary expenses of the proceeding, it may, on the application of the wife or the husband, order the respondent to pay to the petitioner the such sum as having regard to the petitioner's own income and the income of the respondent, it may seem to the court reasonable.

This provision is applicable only for a period of *lis pendens*. it is temporary or interlocutory in nature. But the maintenance awarded under this Section is independent and distinct from the maintenance awarded under Section 125 of the Code of Criminal procedure, 1973, which provision is application to all persons belonging to any religion.

Section 25 of the Hindu Marriage Act, 1955 provides for permanent alimony and maintenance that-

(1) Any Court exercising jurisdiction under this Act may, at time of passing any decree or at any time subsequent thereto, on application made to it for the purpose by either the wife or the husband, as the case may be, order that the respondent shall pay to the applicant for her or this maintenance and support such gross sum or such monthly or periodical sum for a term not exceeding the life of the application as, having regard to the respondent's own income and other property, if any, the income and other property of the application, the conduct of the parties and other circumstance of the case it may seem to the court to be just,

and any such payment may be secured, if necessary, by a charge on the immovable property of the respondent.

(2) if the Court is satisfied that there is charge in the circumstance of their party at any time after it has made an order under sub-section (1), it may, at the instance of their party, vary, modify or rescind any such order in such manner as the court may deem just.

(3) if the Court is satisfied that the party in party in whose favour an order has been made under this Section has remarried or if such party is the wife, that she had not renounced chaste, or, if such party is the husband, it may at the instance of the other party vary, modify or rescind any such order in such manner as the court may deem just.

Powers of the Authority as those of a Civil Court:-

Under Section 7(5):- Every aforesaid shall have the powers of a civil court under the code of civil procedure, 1980, for the purposes of taking evidence and of enforcing attendance of witnesses and compelling the production of documents, and every such authority shall be deemed to be a civil court for all purposes of Section 195 and chapter xxvi of the code of civil procedure, 1973.

Appeal is available to aggrieved person under Section 7(6) – that any employer or worker aggrieved by any order by an authority, on a complaint or claim may, within thirty days from the date the order, prefer an appeal to such authority as the appropriate Government may, by notification specify in this behalf, and that authority may after hearing the appeal confirm, modify, or reverse the order appealed against and no further appeal shall lie against the order made by such authority.

Such authority may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the said period, allow the appeal to be preferred within a further period of thirty days. As to the execution of the original or appellate order, as the case may be, the provisions of section 33-c(1) of the Industrial Disputes Act, 1947 shall apply for the recovery of money due from an employer arising out of the decision of an authority aforesaid.

Inspector's appointment, status, powers and jurisdiction :-

Under Section 9, the appropriate Government may by notification appoint such persons as it may think fit to be inspectors for the purpose of making investigation as to whether the provisions of this Act, or the Rules made define the local limits within which an inspector may make such investigation. Such inspector shall be deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code, 1860.

An inspector may, at any place within the local limits of his jurisdiction:-

- (a) enter at any reasonable time with such assistance as he thinks fit, any building, factory, premises or vessel;
- (b) require any person to produce any register, muster-roll or other document relating to the employment of workers and examine such documents;
- (c) take, on the spot or otherwise, the evidence of any person, for the purpose of ascertaining whether the provisions of this Act are being or have been complied with;
- (d) examine, the employer, his agent or servant or any other person found in charge of the establishment or any premises connected therewith or any person whom the inspector has reasonable cause to believe to be, or to have been a worker in the establishment.

Make copies or take extracts from any register or other document maintained in relation to the establishment.