

INTRODUCTION

1. METHODOLOGY

Research Methodology:

In an effort to embark on arriving at a Vision Statement on Empowerment of Women vis a vis legislation and judicial decisions, the Indian Trust for Innovation and Social Change a registered NGO has:

- I.
 - (i) Studied a large number of (published) judicial decisions of the Supreme Court and the various High Courts.
 - (ii) Examined the Constitutional and legal provisions available for women;
 - (iii) Scanned through the women's empowerment. Executive/Enforcement policies of the Central & State Government and their plans and programmes.
 - (iv) Referred to the UN Conventions/declarations etc.
 - (v) Studied selected number of secondary sources and publications, books, official reports, media clippings and past seminar reports concerning problems.
- II.
 - A. Had personal interviews with a number of legal experts, judges, lawyers, academics, teachers, students, planners and futurist, police personnel, government officials and the media. Our major inputs have come from the key consultants of this Trust.
 - B. Made personal visits to number of states to hold meetings and to collect information from them to understand regional compulsions
 - C. Had periodic consultations with members of the Projects Advisory Committee for this project. (See Appendix List 1)
 - D. Organised a brainstorming meet of ten task force persons, besides over 50 experts from the NCW, CSWB, government officials, NGOs, UN agencies. (See Appendix List 2)
- III. Have taken the benefit of understanding the process and Methodology of Future Scan & Envisionment from leading institutions of India who are engaged in the task of future scan and anticipatory managements' scientific envisionment and forecasting (A vision is neither a guess work nor a personal view; nor is it the voice of the powerful. A vision has to be derived from an analytical study of system-interaction See Fig.1)

In the women empowerment study, we have analytically examined the interaction, interplay of positive and negative impacts of the legislative process, the judicial verdicts, the enforcement system (its merit/demerit) The 'Vaux Populis' as expressed by NGOs, media and other interest groups are also closely studied.

- IV. Our consultants also made efforts to study the empowerment policies of women of other countries. (We have not quoted them here specifically but we have taken note of relevant ideas while preparing this report).

The Purpose of the Study:

The purpose of this research effort is to look at policy issues and future oriented planning that can best enhance the role of women's contribution towards sustainable development in the whole country. Also, this exercise is to look at the challenges that policy makers and the judiciary face on how to improve the lot of women. The Universal Declaration of Fundamental Human Rights, asserts that all sexes should enjoy equal rights. This is reinforced by the Indian Constitution and the various pro-women legislation passed in this country. However, both from the ground reality and the type and number of cases that reach the courts, one finds that women are not treated as equal partners in all areas of planning and developmental activities in the country.

There is a vast chasm in empowerment and freedom enjoyed even by a microscopic number of women and the large majority who are illiterate, ignorant and poor. But the common problems faced by all are:

- Inequality of power sharing with men and in particular in the decision making at all levels.
- Lack of awareness of and commitment to internationally and nationally recognized women's rights, even amongst the elite.
- Insufficient machinery at all levels to promote advancement of women.
- Poverty, discrimination and marginalisation of women from 'Cradle to grave'.
- Inequality in women's access to and participation in the definitions of economic structures and policies and the productive process itself; unequal access to education, health, employment, credit facilities and other means of maximizing awareness of women's rights and the use of their capacities.
- Violence against women. (It is ever on the rise)
- Effects on women of continuing local, national, international armed or other kinds of conflict. (Indian women are the worst sufferers of the cross-border Terrorism)
- Marginalisation in the decision making process, with women generally remaining invisible at most levels in public structures. For example, India, considering its vastness, has less than minimum female representation both in Parliament and in legislatures.
- Lack of on the job training to elected women members of the Panchayat, legislatures and Parliament.

- Patriarchy interfering and eroding the work of the women Sarpanchas and panchas.
- In spite of the strong women's movement in the country, the NGOs are too dispersed and isolated in deciding the national and local priorities in action.
- Inactive executive and monitoring mechanisms to oversee the implementation of national/state plans and programmes. (There is near total lack of a Feedback mechanism amongst them).

The above though are crucial to be identified as the crisis points it is necessary to highlight the positive trends in the sphere of empowerment of women. Indian women have not to struggle for Constitutional and legal rights which stands given to them. Since the days of independence struggle, the achievements in the area of women's rights are many. Education has become a Fundamental right of every child. Health infrastructure and gender budgeting and allocations for better family health have improved. There is no discrimination in competitive examinations, recruitment and employment. There is no taboo for women to contest and occupy the highest echelons of power. The Judicial decisions have improved women's lot here and there. Changes in the laws to prosecute and punish with stringent punishments are available. Many amongst the 100,000 odd women elected to Panchayats spread all over India are getting ready to participate duly in the Parliamentary and the Assembly elections. There is now a wide base developing where women are getting a hold in the Indian political arena.

2. EMPOWERMENT OF WOMEN : SECTORAL FEATURES : A REVISIT

Situational analysis of Indian Women is necessary before we attempt an envisionment of the future of Women mentioned earlier. We are aware that the trend of Women's empowerment is backed by the Constitution of India. Over the decades, various laws and the National Policy, the Plans, Programmes and allied strategies for implementation of national and international periodic reviews and assessments too have further strengthened this trend in that women's welfare and development is an ongoing active concern of this nation.

But can we say that this mega-trend has benefitted all women? Do not, women at large, still remain unreached by the aforesaid bounty? What are the various constraints that the numerous processes involved in this empowerment still fall short of what is needed; thus, calls for a 'REVISIT'.

The National Commission for Women, sponsoring this concern, interalia has felt the need to search for a Vision statement on Women's Empowerment vis a vis, our Legislation and the Judicial Decisions. In this endeavour, a great deal of significance can be attached to a study of the key judicial decisions.

The objective of this exercise is also to look at women's empowerment as a key contributor to 'Development'. Of course, our socio-economic development has been uneven and has not touched millions of women. These women somehow survive in spite of not having awareness

of their own rights. We need to evolve innovative ideas and strategies to bring them into the mainstream of national progress - a function quite independent of the role of our Judiciary.

Hence, we raise the question, 'Why the existing efforts are not adequate? Can we not redefine and redesign a new paradigm shift? If so, what it could be'. This is where, lies the challenge.

I need not catalogue the known issues and ailments. A Brainstorming* session was organized in April 2002 to air out new ideas on the conceptual, analytical and the prescriptive aspects of Women Empowerment vis-à-vis known social ills, which can help bring down child mortality, arrest foeticide, infanticide, stop child marriages, rampant in some of the Indian States or, on how do we nip in the bud the ill practices like the banned Sati? Can we transcend the conventions and customary practices where girls are consecrated in the name of Gods and Goddesses into prostitution? What more can we do to stop child trafficking? How to arrest violence at home, outside and in work-place?

If the Governmental approach, with centralized force, has not fulfilled the good intention; where are the gaps in between our laws and their implementation? Could bonded labour, lack of minimum wages, unequal pay for equal work between men and women be eliminated? These are stark realities that still persist. Why ensured legal rights fail us again and again is a perennial question.

Health:

Be it health, system after system, the story remains unchanged. Health is of course a big casualty, maybe because of short sighted plans or absence of required infrastructures. But how long will we let women and children continue to suffer? The UN and other Donor agencies funding, also, often do not reach the people for whom it is meant. The basic infrastructure though minimum in number has not been effectively functioning. People of the villages are still not active partners in developmental programmes. Who debarred them from participation? They remain only as occasional beneficiaries. Why? These are real questions to ponder on and to seek due answers.

Education :

An equal stark failure stares at women on the Educational sector. How do we ensure that every child goes to school? If not, what new innovative steps need to be taken? We stick to the rigid formats and uninteresting syllabus in the name of education. Often the true role and purpose of learning is not understood by the teachers themselves. The fixed notion of a blackboard, a stick and a chalk piece, an unavailable text book and not unoften a missing teacher needs to be overhauled. The investment on educational infrastructure is not only

*A video cassette of the proceedings of the Brainstorming session and record of the views expressed there in have already been provided to NCW along with CD Disks.

meager but is of a very poor quality. Who then is to ensure that this Fundamental right to primary education is fulfilled? What could be the alternative strategies? Should we search for a highly enlightened/educated person experienced and well versed to children's cause be then engaged as a teacher, if so on what terms? Can thus the whole educational environment change? Can our government programmers realize that, if girls and women cannot reach the school – can the school go to them instead?

Since the State level government 'service-delivery-system' too are over centralized, the local context and needs often do not find full and satisfactory expression in the services provided. Local communities often are not empowered to access and to demand for services that suit their needs. This is particularly true for the poorer women and households of the rural communities. Our focus and strategies have to be targeted to those who are distant and unreached on the one side and towards their empowerment within the 'rights' domain on the other.

Societal Negative pressures:

Amongst several ills, one can't help reiterate that Dowry ails all communities (even religion) leading to dowry deaths in plenty. Even the ineffective law is not implemented fully. Dowry prohibition officer with powers to arrest persons/parties for dowry extortions are conspicuous by their absence leave alone the appointment of special courts and special police officers so entrusted.

Violence, disputes of many sorts at the village level go unnoticed. There is no respite except blaming ones fate. How do we empower women to give justice unto themselves? There are micro-level experiments that have proved very effective. Mangalam project in Pondicherry is a case in point.* This project was initiated by me as Member of NCW (1993). This report is available with NCW.

A woman in India, as in many other countries is born to fight for her rights at every step. She is silenced by emotional ties, family norms, values, proprieties etc. Mostly her inability as a non-economic entity stems as the main cause of several of her problems in life. Ninety-nine percent of Indian women have neither a social, an economic nor a legal Persona?

In the male-dominant society, women are denied property rights. Why daughters are not equal to their brothers? In reality - Are these laws implemented in spirit and text. Our laws sometimes, though in step with times are mostly utopian. The Medical Termination of Pregnancy Act has been made to give woman a choice to decide about abortion or exercise choice to limit the size of her family. Is there really a choice left to her alone?

How do we set right such anomalies? It cannot be done by tinkering with little gender-allocation here, or by amending laws, with conjunctions or propositions, here and there. We

*This project was initiated by Padma Seth as Member of NCW (1993). This report is available with NCW.

(NCW on other concerned agencies) need to arrive at right perspectives to rewrite much needed implementable laws and policies? A healthy, cybernetic - to and fro - feedback and healthy dialogue with the Government and the legislators can give the women the much required mileage.

The area of enforcement:

The laws, police and other agencies do fail us often, in spite of good intent. For instance, when we talk of handicapped women-one has to be sensitive-in using cliches like 'integration'; it does not seem to serve the purpose. They need attention and special services at their end-not mere sympathy nor theoretical concepts. India is full of right thinking people and is fortunate to have hundreds of legal luminaries, economists, committed politicians, activists and social workers. But a time has come again to pose some questions which have already been asked by many in that: How far our Police, Prosecution or the judiciary enable better justice? If not why not?

Why good reports do not get implemented? The custodial justice report of Justice Krishna lyer and his team gave us valuable recommendations - both innovative and far-sighted. But even till today, none of these recommendations have been put to practice in toto. It was at the time of Mrs. Margaret Alva, the then Minister, who commissioned this project, and after her term, nothing much was implemented. What should be done, if at all, to make the executive accountable for non-implementation of good ideas?

Is it possible to codify all criminal laws pertaining to women? Let there be a set of common laws whereby women of all shades and colour could feel safe and empowered - Another question concerns women's representation in the political arena specially in the Parliament and the State legislatures. It still remains unfulfilled. There are many other futuristic questions that modern science and technology shall create for women, such as cloning, renting-a-womb, stem-cell research etc. These are to be anticipated since these are ethical and legal questions of some complexity to be dealt with?

Where lies the bottleneck?

The formidable foe is the societal role perception of women. Economic empowerment, professional competence and integrity of women are looked down upon even today. That is the reason why the numerous legislations passed to help women to occupy equal place in society often seem to be grading concessions they are rendered infructuous for they are unimplementable. Enforcement of Child Marriage Restraint Act, the Dowry Prohibition Act, Sati Prevention Act, Immoral Traffic Prevention Act are glaring examples.

The male mindset, even in this century and times, is refusing to realize that women remain an integral part of the human community and that it will be impossible to consider socio-economic and societal transformation in isolation without women playing their due developmental role.

Hence the slogan for the 21 century and beyond should be, **“winning through empowerment, participation and not through intimidation and exclusion”**. For the women, it should be on how to get empowered and feel empowered and how to use the newly acquired power properly. Conversely, the challenge for the men is to learn how to accept sharing power and get used to women being equal partners in the development process. With the passage of time, the Global information technology shall create a new woman equipped with better education, health care at home and more effective engagement with other actors outside.

No matter, how one looks at it, the truth of the matter, integral to a grand vision for women suggests that the challenge of empowering, of ensuring equality and partnership to them whereby they can cope with the existing challenges on women related issues on all fronts, and their forward march to a sustainable future requires our society to come out of the existing male chauvinism and societal misconception of female inferiority. By this mini-change of mind-set alone can the existing issues of women’s marginalisation and exclusion- so deeply rooted in our society as an index to our slow forward march to sustainable development - to a large extent be eliminated. There is thus a need for valuing freedom with equality. So **equality and partnership** are the slogan for mapping new futures for gender participation in our socio-economic transformation. Ultimately society needs to develop a new image and to face the realities of the challenges of the 21 century and beyond. In the search of a grand vision configuration even on a conceptual frame-work, women’s future thus becomes a function of their movement in step with our times. The fast changing technologies and specially the new innovations in information technology are a challenge as well as a boon to women. With IT at our doorstep, if women could become computer literate, they can reach out to the whole globe. Women can link themselves with women’s struggles abroad and imbibe the spirit of coping to challenges to succeed. Equipping oneself to newer and newer technologies is vital to assert women’s equality and partnership. But we are not asserting here an urbanized scenario. This new empowerment - the computer literacy, has to reach to the grass root levels as well perhaps, as a realist one can say, it may happen full in two or three decades from now. If stainless steel vessels are not the sole privilege of our urban house-wife but they are there in a rural house-wife’s kitchen as well- what indeed will stop a computer arriving in due time to her household.

Social Reality :

We need to give a second-hand look to some societal realities of India. We all know that during the last fifty years and more, a great deal of transformation has taken place in India. Also, notwithstanding its seamy side, the attempt towards decentralization has once again brought women’s role into focus. Nevertheless social equality and lack of equal opportunity with a tardy political culture does not indicate that Indian women from the grass roots to the state and national levels stand relatively empowered. In fact the inequality that prevails between persons, castes, groups, in their geographical locations, still remains a central challenge both to the legislative and executive branches responsible for the execution of progressive

legislations and policies. The gender inequality reflects itself across all the recognized building blocks of power - for example the equitable educational opportunity; for social security arrangements for the girl child, for the widow, freedom from violence against dalits and schedule castes, and the incidence of child labour. Needless to say that the nature of inequality and status of empowerment, if it has to be assessed qualitatively in terms of social or economic indicators, can but only point loudly that for greater equality, a great deal has to happen which will come through State Policy and public action. Against the pathetic poverty, economic inequality, social oppression and regional backwardness, the National Commission for Women's own statement is released recently with a caption, **"our vision"** which says, **"the Indian woman of today, culturally rooted, globally oriented, healthy, educated, self-reliant, secure in her home and safe outside with access to all the rights of a citizen with opportunity to contribute in all walks of life"**. How true or correct is it? These are indeed brave words and do depict a preferred ideal; however the stark truth is that notwithstanding all the socio-economic growth of India, the map of Bharatvarsh is dotted with persistence of endemic deprivation and deep social failures. Amongst other factors which one could list, there is unmistakable failure of the feminist movement in India; It perpetually depends on the mercy of policies of the government and on occasional judicial dictat. What we are missing is the feminine vanguard and their public involvement in crucial fields such as basic education, health care, social security, environmental protection (edible drinking water, sanitation, hygiene and domestic fuel for cooking) Gender equity for equal wages, equal access to invoke centers of power and dispensation of justice besides, broad and open recognition of female civic and human rights, irrespective of caste, religion and habitat.

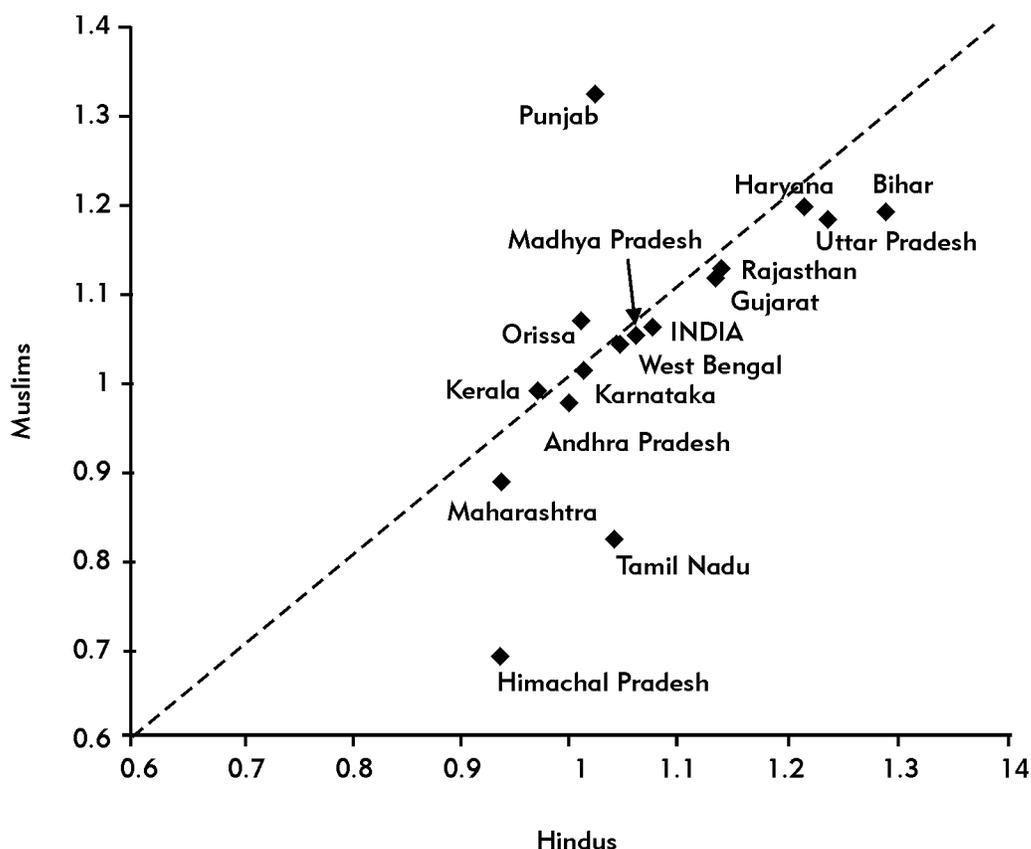
Biases against Women :

It would be necessary that our fellow scholars take up the role of superstition on enfeebling of hurting women badly. In this country a thousand biases against women exist, and they point out to distortions in public policy priorities. Why blame the State when within the family a male child and a female child are treated unequally in terms of nutrition, education and health. The male-female ratio, if examined from one state to the other in India, will shed interesting light on different aspects of gender relations.

Even within different communities notwithstanding an equitable public policy, ratio of female to male child mortality varies from state to state and community to community. The graph given here is self-explanatory. (See page 9)

For any envisionment, it is necessary that we should first know where we are and how and in what direction, we as a nation is going. It is against this background, how a policy and what policy counts, what plan schemes provide, how and in what time-frame will they get implemented, and who shall do it, can alone tell what kind of future we shall arrive at? The question is: Do we prefer such a future?

Ratio of Female to male child Mortality Among Hindus and Muslims in Different States, 1981-91



Notes: (1) The horizontal axis indicates the ratio of female child mortality to male child mortality among Hindus; similarly with Muslims on the vertical axis. (2) The child mortality measure used is 'q5', the probability of dying before age 5. (3) Due to small sample sizes, the estimates for Muslims in Punjab and Himachal Pradesh involve a large margin of error.

Source: Calculated from Government of India (1988a) and Rajan and Mohanachandran (2000). The mortality ratios displayed here are unweighted averages of the 1981 and 1991 ratios.

(See page 235, Professor. Amartya Sen's book, "India Development and Participation" 2002)

Gender & Justice :

Let us, in a mode of the reality, examine how our governance, bureaucracy are truly driving the women related Empowerment features. This could then be the first step to identify pros and cons of gender-justice status integral to any grand envisionment.

It is common knowledge that in India both governmental and non governmental efforts continue in finding the best means for women's empowerment and enhanced gender justice. Women's welfare and development lie in the good intentions that all can perceive, but a few can pursue. It is deeply influenced by the interaction between economic, social and political opportunities and the way of life in which people live; in terms of the traditional hold of the past socio-economic practices, be it in the rural agricultural context or that of the urban areas. Some problems demand local solutions and others demand national attention. The sociology of a multi-cultural society, as India is, complicates an easy solution to benefit all sections of female society, whether they are tribal women, Hill area women, rural or urban women or the present category viz; the adolescent girl, the single woman, the married women, the working woman or a widow, one can multiply these categories. (Even this gets complicated as we go to the complexity that prevails in India in terms of the Personal laws based on religion and customary practices).

A Large human system :

India is a large human system of which female population is nearly half. Their literacy levels vary as do their economic status; hence their bargaining capacity with the environment, socio, economic or political is too feeble in any given context; specially compared to the male population. The state of poverty of India, its un-homogenous development in the geographical sense and the cultural plurality further diminishes the benefits that normally would have accrued in a homogenous society. Social practices, traditional practices, steeped in superstition, cultural variations around a peoples customary obligations, faith and even religion, all these create a strange mosaic and layer upon layer of invisible boundaries and blocks which hamper the trickle down effect of the advantages associated with national level legislation towards women's empowerment. It is very clear thus that the problems that require lasting solutions often lose their impact if they are treated through quick-fixes which many of the schemes and programmes that we have adopted in our five year plans normally could have yielded to the women folk.

Complicated Societal framework :

A close look at our bureaucratic order does indicate that many an administrative decisions too offer weak relief and are not able to balance competing interests. Likewise, the financial assistance and the desired developmental impact are often lost because of lack of understanding of the policy intent, because of their personalized commitment. Besides, accountability in executing agreed decisions of the Center, the States and the Panchayats is a sad story indeed.

Suffice here to state that an uninterrupted phenomena of the state of India's governance has an endless chapter of diverting of funds besides its misutilization and integral corruption.

Vision - a garland of goals :

In such a complicated societal framework to envision an ideal state of both policy and human behaviour as well as executive and judicial protection, one can only end up by stating a self-fulfilling prophesy. The term, "Vision" itself demands a heightened emphasis, a stringing of a garland of goals and sub-goals. Put it in another way, it has to be a bouquet of flowers which will ensure the fulfillment of national and regional aspirations to impart a quality of life for the women of India, wherein the women and men folk are equally participating in social, economic and political terms. The true empowerment is the fulfillment of the basic human rights of women for an equal access to all opportunities in all spheres of life, ensuring that their identity does not get smothered and that they continue to receive the due protection of the laws of the land.

A vision statement thus would not only be indicative of a state of achievement of certain basic human values for the welfare and development of the women folk, which values are universal in nature for women of any country. But this vision has also to accommodate a speedy revision and enunciation of such policies and programmes which can ensure that women are not dependent as has been historically the case. In a new scheme they have also to begin exercising freely their choices, for such of their rights that help fulfill their individual and collective dreams. This would call for a hard look at all institutions, national, State or local to assess how best they can be improved to promote women's empowerment.

It need not be said that most systems today operate in their grand isolation, which enfeebles our policies, developmental plans and programmes which often miss inter-connectedness of human activity. Do we really need to state or draw a fresh balance sheet in statistical terms, the census figures of India and several special NSS rounds? The annual reports of different ministries are indicative enough that women's empowerment, gender justice and the laws are far from perfect; they have not yet created people both men and women to show their initiative; to have the benefits of modern learning, science and technology.

Review function :

In this sense, this study is both a review pointing out to the merits and demerits of the existing provisions of law and other policies as they get administered by the judiciary on the one hand and executive on the other. The enforcement of policies and laws and their awareness are not quite there even in our society. Women who belong to the more deprived and the poorer section of Indian society, irrespective of their social strata or region by themselves are in no position to solve tough problems. One can safely say without any fear of contradiction that more than 400 million women of this country hardly have any social, economic, legal or political attributes of any strength. In a sense, they survive at the fringes and do constitute a special group that deserves special dispensation.

Legal Judgement - trends :

The review function of the report is more illustrative and indicative. Even though for the period 1994-96 and 1999 to 2001 many legal judgments have been studied, they only constitute a minor input in the determination of feeble or dominant trends that characterize women's empowerment. Let this be stated at the outset that the function of the judiciary is not to promote environment nor make statements on preferred futures. Their task is to interpret laws case by case. There are judgments which can be inspirational in character; but there are larger judgments which are repetitive; they are not lofty, though they are not pedestrian either. Evidence based judicial dispensation does not provide stimulus for environment. They are mostly indicative for the continuation of a trend or how societal aberrations should be corrected in upholding the scales of justice.

Conclusion

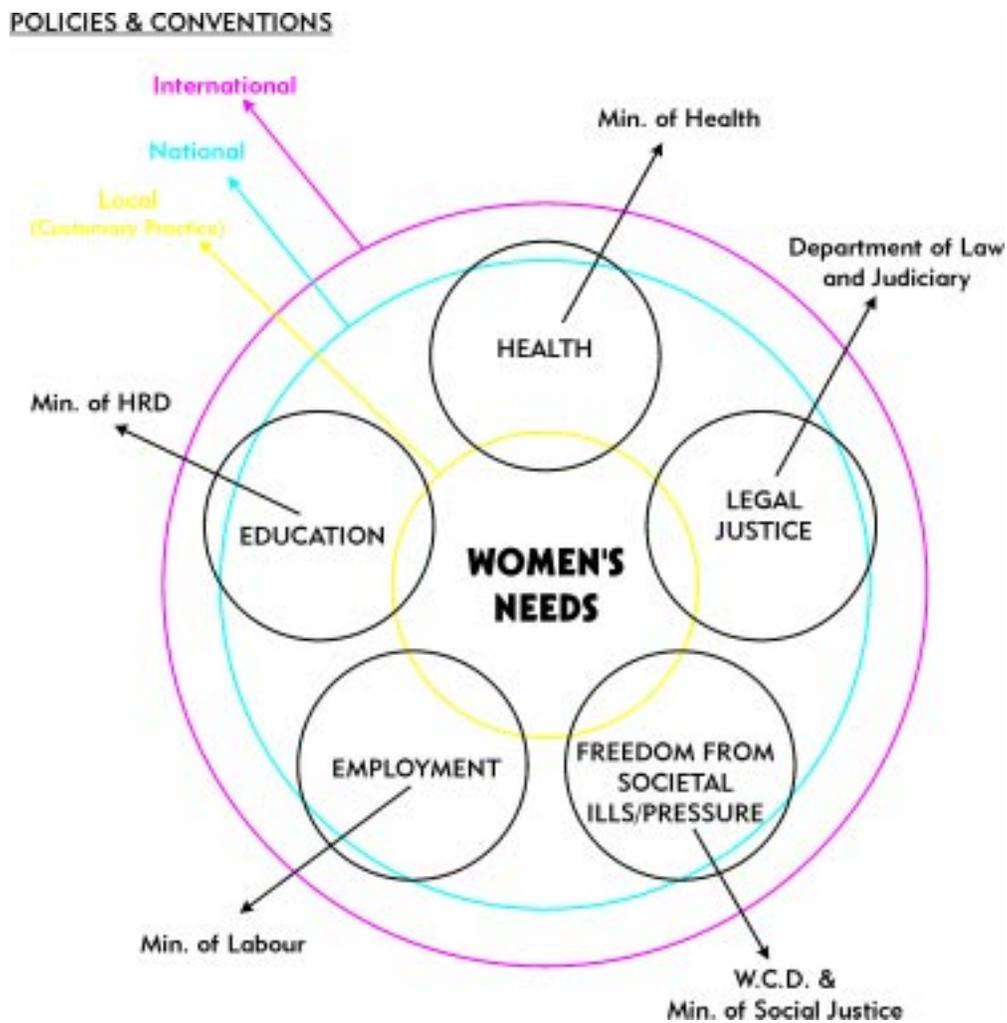
It is not easy to configurate or hypothetically postulate a set of mega trends leading towards the attainment of comprehensive empowerment of women. The core of women's empowerment demands detailed scrutiny of the governmental policies and implementation or non-implementation of developmental plans. By the same token whether new laws affecting women are really ensuring gender justice has to be judged, inter-alia, by how many millions are aware of the existence of these laws and how many millions are there still ignorant of the same.

It is obvious that our socio-economic reforms and their impact also need to be studied in depth since they too provide the social indicators against which trends could be examined. Women's well being remains hidden if it is measured as integral to human development indicators (HDI) Although it is not the subject of this study, but it is worth examining how much can we succeed developing an independent, women development indicators (WDI)?

To sum up this aspect, one can only reiterate what is now well established that achieving **greater gender equality does involve a process of active social changes and cannot be automatically connected to economic growth in a given region.** The rural - urban divide amply proves, and the unhomogenous development in our States from J&K to Nagaland to Tamil Nadu and Kerala proves that economic factor alone is not necessarily the guarantor of women's emancipation and empowerment. We can touch on many other aspects of socio-economic handicaps that women suffer. But in this study, our concern is more to assess if the judiciary's rulings in some way augment and strengthen gender gains for the Indian women. The best one can do is to illustratively look at some of the judicial pronouncements on women related cases to see if they point out some elements existing or those to be sought to get articulated to changes in future public policies.

Figure-1

**WOMEN DEVELOPMENT AND INTER-SECTORAL INPUTS TO FULFILL HER SPECTRUM OF NEEDS
(illustrative not exhaustive depiction)**



WOMEN	Girl Child	Adolescent	Single	Married	Working	Housewife	Divorcee	Widow
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**EACH OF THE ABOVE CATEGORIES DEMAND ITS OWN VARIED NEED FULFILLMENT
(RURAL/URBAN DIVIDE & RELIGION COMPLICATES THE NEED SPECTRUM FURTHER)**

Judicial Verdicts
(20th & 21st century)
on
Women Related Cases :
Some Lessons

LAW & JUDICIAL VERDICTS ON WOMEN RELATED CASES

WOMEN / LAW & JUDICIAL ACTIVISM

Women's Empowerment:

As way back as in 1980, the UN Report Commented:

"That Women constitute half the world's population, perform nearly two thirds of work hours, receive one tenth of the world's income and own less than one hundredth percent of world's property". Half of the Indian population too are women. Women have always been discriminated and have suffered and are suffering discrimination in silence. Self-sacrifice and self-denial add to their nobility and fortitude, and yet they have been subjected to all inequities, indignities, inequality and discrimination".

Judicial activism through a process of affirmative action and protective discrimination is the need of the hour if empowerment of women, to a fair degree, is to be achieved. Even today men and women are not equal. Those who are unequal, in fact, cannot be treated by identical standards. Existence of equality of opportunity depends not merely on the absence of disabilities but on the presence of abilities. "Equality in law" must ultimately result in "Equality in fact". In seeking to achieve this ideal state or situation, the State must resort to compensatory state action for the purpose of making people who are factually unequal in their wealth, education and social environment, equal atleast in certain specified areas. It is necessary to take into account defacto inequalities which exist in society, while taking affirmative action by way of giving preference and reservation to socially and economically more disadvantaged persons or inflicting handicaps on those more advantageously placed, in order to bring about real equality. Such affirmative action, though apparently discriminatory, is calculated to produce equality on a broader basis by eliminating defacto inequalities and placing the weaker section of society on a footing of equality with the strong and more powerful so that each member of the community, whatever his or her birth, occupation or social position may enjoy opportunity of using, to the full, his or her natural endowments, character or intelligence.

The Archaic concept of women being inferior to men continued even after independence. According to MANU, (Laws of MANU, Chapter 10, Page 51), a woman is never fit for Independence, because her father protects her in childhood, her husband in youth, her sons in old age. Hindu religion considered, sons as essential to the family, since sons alone could offer oblations to their departed ancestors and save them from suffering a spell in hell. The daughter could not perform these rites and was therefore considered as inferior to the son. The ancient Roman, Greek, and Egyptian civilizations were no exception wherein the status of woman was inferior to that of the man. England, which boasts of an ancient democratic tradition, gave its women a right to vote only in the year 1928. Like the Hindu religion, other religions such as Islam and Christianity also placed women on a much lower pedestal than that of men.

The Traditional status of a man and woman was that of the husband as the provider and protector of the wife, family and its members. The wife's first duty, therefore, was to submit herself to the authority of her husband and to remain under his roof and protection. In the words of Justice Joseph Bradley of the U.S. Supreme Court in "Bradwell Vs. Illinois (1873) 16 Wall 141."

"Man is, or should be, woman's protector and defender. The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of Civil life. The Constitution of the family organization, which is founded in divine ordinance, as well as in the nature of things, indicates the domestic sphere as that which properly belongs to the domain and function of woman-hood."

Early Legislations :

During the British colonial rule, certain laws were enacted in an attempt to ameliorate the conditions of women in our country. To name a few, the Hindu Widows Remarriage Act, 1856 and the Child Marriage Restraint Act, 1929. These Acts were made to put an end to the inhuman living conditions to which a Hindu Widow was condemned and to put an end to the cruel practice of getting innocent and immature girls married during their infancy or early childhood.

Constitution & Protective Discrimination :

The founding fathers of our Constitution understood the need for protective discrimination in favour of women and as such, while providing for equality of all persons under Article 14, for prohibition of discrimination on the grounds of religion, race, caste, sex or place of birth, under Article 15 and equality of opportunity in matters of public employment under Article 16 of the Constitution, specifically provided for protection in favour of women under Article 15(3) of the Constitution, which enables the State to make any special provision for women and children.

Article 21 of the Constitution of India reinforces "right to life". Life in its expanded horizon includes all that which give meaning to a person's life including culture, heritage, tradition and dignity of person. For its meaningfulness and purpose, every woman is entitled to elimination of obstacles and discrimination based on gender. Women are entitled to enjoy economic, social, cultural and political rights without discrimination and on a footing of equality. Article 23 of the Constitution specifically prohibits Traffic in human beings. The Directive Principles of State Policy contained in Part IV of the Constitution incorporate many directives to the State to improve the status of women and for their protection. Article 39(a) requires the State to direct its policy towards securing for its citizens, men and women equally, the right to an adequate means of livelihood. Article 39(d) requires the State to secure equal pay for equal work for men and women. Article 39(e) directs the State not to abuse the health and strength of workers, men and women. Article 42 directs the State to make provisions for

securing just and humane conditions of work and for maternity relief. Article 44 directs the State to secure for its citizens a Uniform Civil Code throughout the territory of India. Equally in order to effectuate fundamental duty to develop scientific temper, humanism and the spirit of enquiry and to strive towards excellence in all spheres of individual and collective activities as enjoined in Article 51 A(h) and (j) of the Constitution of India, facilities and opportunities not only are to be provided for, but also all forms of gender based discrimination should be eliminated. The State should create conditions and facilities conducive for women to realize the right to economic development including social and cultural rights. The 73rd and 74th Amendments to the Indian Constitution provide for reservation of seats for women in elections to panchayats and Municipalities. Under Clause (3) of Article 243-D, not less than one-third of the total number of seats to be filled by direct election in every Panchayat shall be reserved for women. Similar reservation in Municipalities is prescribed by Clause (3) of Article 243-T of the Constitution.

Un-Declaration/Conventions :

The General Assembly of the United Nations adopted a Declaration on December 4, 1986 on "The Development or the Right to Development", in which India played a crusading role for its adoption and ratified the same. Human rights for woman, including the girl child are an integral and indivisible part of the universal human rights. The full development of personality, fundamental freedoms and equal participation by women in political, social, economic and cultural life are concomitants for national development, social and family stability and growth, culturally, socially and economically. All forms of discrimination on ground of gender is violative of fundamental freedoms and human rights.

The Vienna declaration on the elimination of all forms of discrimination against women, in short "CEDAW", was ratified by the U.N.O. on December 18, 1979. The Government of India which was an active participant to CEDAW, ratified it on June 19, 1993, and acceded to CEDAW on August 8, 1993 with certain reservations. The Preamble of CEDAW reiterates that discrimination against women violates the principles of equality of right and respect for human dignity. By operation of the relevant articles of CEDAW, the State should take all appropriate measures including legislation to modify or abolish gender based discrimination in the existing laws, regulations, customs and practices which constitute discrimination against women.

Changing Trend in Empowerment :

The intensity of change witnessed during recent years in the sphere of women and the law is not an accident or a sporadic occurrence. There is an increased awareness in society of the injustice done to women in the past. Worldwide movement for women's rights has not left India untouched. The rights and position of women, in several of their facets, have received close attention at the hands of the Law Commission of India, whose contribution in

this area has been of immense value. More than all, judicial intervention on various issues concerning women has been largely progressive and liberal.

"Judicial activism means different things to different people. One reason is because, like beauty, it can often be found" in the eyes of the beholder", making the same conduct appear as Judicial activism to some and as "Judicial Statesmanship" to others. Judicial activism through the process of affirmative action and protective discrimination in favour of women has been, to a large extent, instrumental in the growing empowerment of women and in providing the necessary framework within which the woman of today is able to move around with confidence, assert her rights and gradually progress towards a position wherefrom they can stand on an equal footing with men in all walks of life.

To make law keep its promise, it behoves on the judiciary to help actualization of Statutory objectives, the Constitutional mandates and legislative initiatives.

How can law Perform?

Judicial interpretation of gender jurisprudence in diverse situations has explained and expanded the law, some of them containing positive directives to make empowerment a living reality. "Even court rulings, however supreme and inviolable, are not self-operative. The executive using its police powers must act or other agencies invested with State power must be created to make law perform".

An attempt is made in the following pages to study the court orders, rulings in cases pertaining to women and the girl child. In the words of the Judge, "the watershed of human rights jurisprudence is marked by the epic event of the Indian Constitution coming into force on 26th January 1950. But the struggle to give meaning to the jurisprudence of justice to women from foetus to ashes, is still a continuing process resisted at every turn by masculine strategists giving specious reasons and scriptural citations. We must demonetize this diehard blockage by gender-just humanism. I appreciate the vision and mission of women of every stratum in their demand for rightful empowerment; not condescending grace, for the birth right to shape their destiny without inhibitions and vulgar, violent and other intimidating tactics, not charity to a weaker sex treated as a decorated doll at home or an unpaid factotum".

How Can Law Perform?

LAWS & JUDICIAL DECISIONS ON FOLLOWING ISSUES

Foeticide / Infanticide

Child Marriages

Issues of Jurisdiction & Limitation

Maintenance

Cruelty

Abetment to Suicide

Bride Burning

Dying Declaration

Delays in Civil / Criminal / Family Courts

Woman in Custody

Kidnapping Abduction

Statutory benefits in favour of women :

Equality / mother guardianship rights / Bigamy

Education / Employment

Right to privacy

Protection against divorce

Women's Right to Property :-

Widows right to full ownership

Widows right to marriage

Dowry Prohibition & Offences against Women :-

Trafficking

Rape

Domestic working women

Outraging modesty

Criminal assault

Harassment at Workplace

Political Process

Concluding Reflections

- *Foeticide*
- *Infanticide*
- *Sex-Ratio*

HOW CAN LAW PERFORM?

Foeticide / Infanticide :

Demographic balance is adversely affected globally, due to receding sex-ratio because of foeticide and infanticide. Both the Indian Penal Code and the special law of Prenatal Diagnostic Techniques (Regulation Prevention and Misuse) Act 1994 are meant to prevent foeticide and infanticide. This special Act has been enacted to provide for the regulation of the use of prenatal diagnostic techniques for the purpose of detecting genetic or metabolic disorder or chromosomal abnormalities or certain congenital malformations or sex-linked disorders and for the prevention of misuse of such techniques for the purpose of prenatal sex determination leading to female foeticide and for matters connected therewith or incidental thereto.

The alarming fall in sex-ratio according to 1991 census figures has been 927 females to 1000 male births as against 972 per 1000 in 1961. The mere figures tell us a ghastly story of the mysterious disappearance of millions of women. Madhya Pradesh, Haryana, Rajasthan and Uttar Pradesh, showed a drastic fall in sex ratio to 850 women for every 1000 men. In certain communities of Bihar and Rajasthan, the ratio is mere 600 females per 1000 males.

Besides the PNDT Act, the Medical Termination of Pregnancy Act, 1971, though meant to help the woman to resort to abortions only under medical advise and care to enable her, under special circumstances, to resort to abortion when pregnancy is caused by rape or situations causing her mental agony and grave injury to her mental health. But this right has been misused only to avoid female babies to be born. It is roughly estimated about 50 to 70 per 1000 women in reproductive age opt for abortions. Thus the abortion ratio has been roughly calculated to 260-450 per thousand live births. This led to 11.2 million approximately going in for abortions in 1992 and 15 million abortions in 2000 AD as per Dr. Sharada Jain, practising Gyneacologist in Delhi.

The year wise medical termination of pregnancies performed by doctors all over India is as follows :

1991-92	63,6456
1992-93	60,6015
1993-94	61,2291
1994-95	62,17748
1995-96	5,70914
1996-97	52,8075
1997-98	51 ,2823
1998-99	6,66882

Irrespective of the socio-economic, religious or cultural pressures exerted on women, it is clear many women are seeking sex selective abortions. Thus the ever increasing number of cases of female foeticide. In reality the, "Women have no right over their womb".

Inspite of the risk to life during abortions the doctors doctoring these abortions are exploiting the vulnerability of helpless women forced to undergo abortions by the fear of dowry extortion for the girl child if she survives.

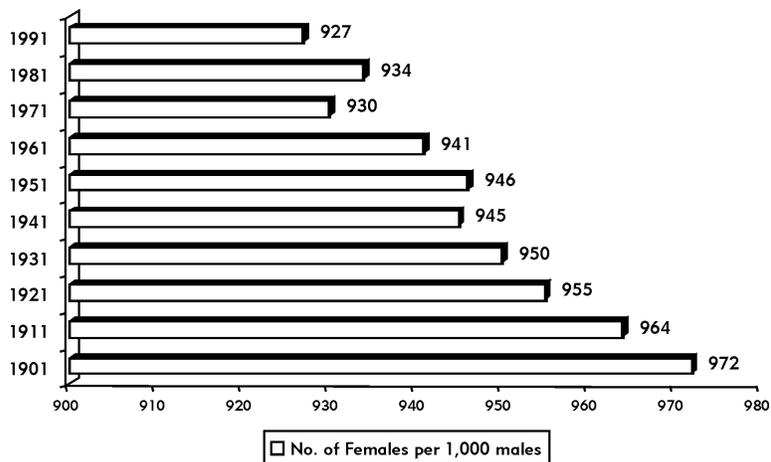
PNDT though amended for purposes of strict enforcement and MTP Acts are recklessly used almost as family planning devices and to flush out female foetuses. Instead of PNDT Act becoming an aid to women by guarding against sex-determination tests with an intent to eliminating the girl child to be born, it has been allowed to be misused by doctors and technicians. "Making law is one thing, but unless there is an effective mechanism to take proper action - these laws will remain wishful thinking".

Looking at the alarming abortion estimates in 1992 at 11.2 million out of which registered abortions were 0.6 million i.e. 10-12 illegal abortions for each MTP. This led to abortion deaths, the likely figures are 15,000-20,000 at an abortion rate of 452 to 1000 live births and 50-70 per 1000 women of Reproductive age.

Sex Ratio

The sex ratio i.e. number of females per 1,000 males, which should be more favourable to women due to their biological advantage, is inverse in India. As can be seen from Figure 1, it has been getting worse with each census.

Figure 1
SEX RATIO

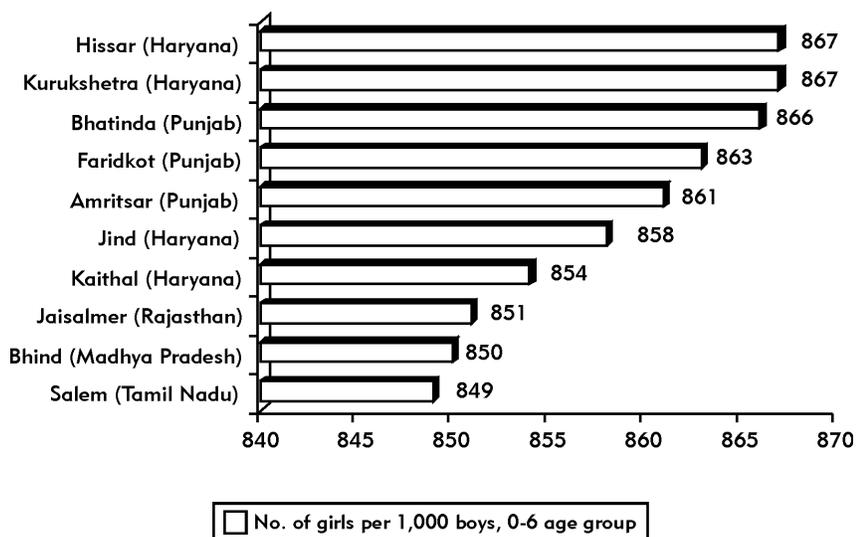


Source: India Country Report prepared for the World Congress for Women – Beijing, 1995, New Delhi, Department of Women and Child Development.

Figure 2 provides a list of the ten districts in the country with the worst child sex ratio. The irony of it all is that Punjab and Haryana are not economically backward; the extremely patriarchal nature of agriculture-based economies is the influencing factor. Tamil Nadu is considered a success story as far as female literacy and decrease in birth rates are concerned. Yet, female infanticide continues to be practiced in some districts of Tamil Nadu. Here, as in Bihar, poverty seems to be the driving force.

Figure 2

TEN DISTRICTS WITH THE WORST CHILD SEX RATIO, 1991



Source : Census of India, 1991, New Delhi, Office of the Registrar General of India.

Aghast with executive indifference coupled with peoples phobia for male issues, right thinking NGOs and individuals working against female foeticide and infanticide filed a Public Interest Litigation in the Supreme Court i.e. Sehat & Masoom and Sabu George Vs : Union of India (2001 (5) SCC 577).

This case sought immediate action to stop and prevent the misuse of PNDT Act. An interim order was issued by the Supreme Court on 2nd May 2001, directing the Central and the State governments to set up an Appropriate Authority and Advisory Board under the Act and that the State government has to file quarterly reports to show that steps have been taken to comply with the Act. There was an order given to the Central government to consider amending the Act.

Consequently the amendment was brought about in the Act (PNDT) and the ultra-sound and the pre-conception diagnostic techniques have been brought under one ambit & control. The ultra sound procedures are clarified in detail. It also mandated the appointment of a State Policy making body.

Inspite of the Centre's pro-active stand, the judicial system, relying much on the necessary evidence, has not been able to nab the truant doctors and clients engaged in this nefarious exercise of continuing with pre-sex determination tests. However, the Delhi government has already banned X-Y separation as per Delhi Artificial Insemination Bill 1995.

Distribution of Sex Ratio (females per 1000 males) by Residence, India, States and UTs, 1951-2001

	1951			1961			1971			1981			1991			2001		
	Rural	Urban	Total															
India	NA	NA	946	NA	NA	941	939	858	930	952	880	934	939	894	927	—	—	—
Andhra Pradesh	NA	NA	986	NA	NA	981	983	949	977	984	948	975	977	959	972	983	965	978
Arunachal Pradesh	NA	NA	NA	NA	NA	894	881	457	861	881	629	862	880	728	859	—	—	—
Assam	NA	NA	868	NA	NA	869	913	749	897	NA	NA	910	934	838	923	944	872	935
Bihar	NA	NA	990	NA	NA	994	971	807	954	963	832	946	921	844	911	926	868	919
Chhatisgarh	NA	1004	932	989														
Goa	NA	NA	1128	NA	NA	1066	—	—	981	1010	906	975	993	930	967	988	934	961
Gujarat	NA	NA	952	NA	NA	940	951	893	934	959	905	942	949	907	934	945	880	920
Haryana	NA	NA	971	NA	NA	868	870	853	867	876	849	870	964	868	865	866	847	861
Himachal Pradesh	NA	NA	912	NA	NA	938	976	749	958	989	795	973	990	831	976	989	795	968
Jammu & Kashmir	NA	NA	873	NA	NA	878	882	860	878	897	875	892	973	930	923	917	819	892
Jharkhand	NA	962	870	941														
Karnataka	NA	NA	966	NA	NA	959	971	913	957	978	926	963	973	930	960	977	942	965
Kerala	NA	NA	1028	NA	NA	1022	1020	997	1016	1034	1021	1032	1037	1034	1036	1059	1058	1058
Madhya Pradesh	NA	NA	967	NA	NA	953	956	868	941	956	884	941	943	893	931	927	898	919
Maharashtra	NA	NA	941	NA	NA	936	985	820	930	987	850	937	972	875	934	960	873	922
Manipur	NA	NA	1036	NA	NA	1015	980	980	980	971	969	971	951	975	958	—	—	—
Meghalaya	NA	NA	949	NA	NA	937	958	853	942	965	904	954	966	910	955	969	982	972
Mizoram	NA	NA	1041	NA	NA	1009	—	—	946	928	893	919	912	932	921	—	—	—
Nagaland	NA	NA	999	NA	NA	933	928	472	871	899	688	863	917	749	886	—	—	—
Orissa	NA	NA	1022	NA	NA	1001	1002	845	988	999	859	981	988	866	971	987	895	972
Punjab	NA	NA	844	NA	NA	854	868	856	865	884	865	879	888	868	882	890	849	876
Rajasthan	NA	NA	921	NA	NA	908	919	875	911	930	877	919	919	879	910	930	890	921
Sikkim	NA	NA	907	NA	NA	904	—	—	863	864	697	835	892	750	878	880	830	875
Tamil Nadu	NA	NA	1007	NA	NA	992	990	951	978	987	956	977	981	960	974	992	982	987
Tripura	NA	NA	904	NA	NA	932	944	935	943	945	957	946	942	958	945	946	959	948
Uttar Pradesh	NA	NA	910	NA	NA	909	889	821	879	893	846	885	884	860	879	904	876	898
Uttaranchal	NA	1007	845	962														
West Bengal	NA	NA	865	NA	NA	878	942	751	891	947	819	911	940	858	917	950	893	934
And. & Nic. Island	NA	NA	625	NA	NA	617	671	558	644	774	720	760	837	769	818	861	815	846
Chandigarh	NA	NA	781	NA	NA	652	683	756	749	688	775	769	632	810	790	621	796	777
Dadra & Nagar Haveli	NA	NA	946	NA	NA	963	1007	—	1007	981	884	974	965	817	952	852	691	812
Daman and Diu	NA	NA	1125	NA	NA	1169	1030	885	980	1057	1071	1062	922	1024	968	586	984	710
Delhi	NA	NA	768	NA	NA	785	825	798	801	810	808	808	808	830	827	810	822	821
Lakshadweep	NA	NA	1043	NA	NA	1020	978	—	978	986	963	975	959	930	943	959	935	948
Pondicherry	NA	NA	1030	—	NA	1013	984	996	989	977	992	985	970	985	979	990	1007	1001

Source : Census of India, Primary Census Abstract, 1951-2001
State Profile 1991, India, RGI & Census Commissioner

- *PNDT Act*
- *Miscarriage*

Main Provisions of the PNDT Act: Effective from January 1, 1996

1. Prohibition of the misuse of prenatal diagnostic techniques for determination of the sex of the foetus leading to female foeticide.
2. Prohibition of advertisement of prenatal diagnostic techniques for detection or determination of sex.
3. Permission and regulation of the use of prenatal diagnostic techniques for the purpose of specific genetic abnormalities or disorders.
4. Permitting the use of such techniques only under certain conditions by registered institutions.
5. Under no circumstances are these techniques to be used to determine the sex of the foetus (S.6) (This includes ultrasonography).
6. No person conducting prenatal diagnostic procedure (S.4) shall communicate to the pregnant woman concerned or her relatives the sex of the foetus by words, signs or in any other manner.
7. Punishment for violation of the provisions of the Act. (3 years imprisonment and/or Rs. 10,000/- fine for the first charge, this increasing to Rs. 50,000 fine and 5 years imprisonment for the second conviction).

Supreme Court has taken a serious note of any kind of pre-pregnancy sex selection techniques and requested Center and State governments to pass the bill accordingly.

The noted economist Dr. Amartya Sen estimated that even in 1990, 100 million fewer women were alive than were projected by demographic studies.

The Indian Penal Code in sections 312 to 318, comprehensively covers offences/crimes of causing miscarriage, with or without consent, for preventing the unborn to be born and causing death to the unborn has been equated even to culpable homicide-exposure and abandonment of the child and concealment of birth by secret disposal of dead body. Though the words like 'foeticide' and 'infanticide' are specifically not used, nevertheless the sections do cover both the above. But alas, there has been no case nor complaint of the child being killed when in foetus form or of an infant born alive. To that extent the law has never been invoked, and remains passive.

Comment: The Supreme Court though responded positively to the PIL from Sehat and ors Vs. Union of India, the directives given by the Court needs to be followed up by a continuous Monitoring Mechanism to prevent pre-sex-selection tests and misuse of MTP Act.

Since foeticide and infanticide are directly linked to dowry-demand and dowry extortion, as also child marriages, there is an imminent need for fresh thinking to restructure or amend the existing laws to arrest the crime.

MISCARRIAGE

How law can catch the allegedly professional criminals parading in the garb of doctors and experts to allegedly help woman from anxiety who though conceived, wishes to get her female foetus aborted. Easily accessible quack doctors play havoc with the lives of the unborn and the consequent child and maternal mortality.

Dr. Jacob George v. State of Kerala, 1994 AIR SCW 2282 (2285,2286): 1994 SCC (Cri) 774: 1994 Cri APP R (SC) 214: 1994 (2) Crimes 100.

Death while causing miscarriage - Accused a homeopath – Deceased desirous of abortion admitted in hospital of accused - Death following few hours after operation - Evidence of cousin of deceased who accompanied the deceased at hospital and had played vital role in the entire episode. Supporting prosecution case - his version as to date and time of death corroborated by postmortem report - Autopsy of deceased showing that her uterus got perforated because of scientific gadget employed by untrained accused - Defence plea that cousin of deceased had tried to cause miscarriage by crude means and deceased was admitted in serious condition for emergent treatment in hospital of accused - Belied by accused's failure to report that matter to police - Abortion not for any of the permissible causes - Held, accused as liable to conviction under Section 314.

Sentence - Accused a homeopath causing death while operating deceased to abort - sentenced to 4 years' imprisonment and fine of Rs. 5,000/- by High Court - Accused undergoing imprisonment for 2 months - Held, purpose for which punishment awarded has been achieved by imprisonment already undergone by accused - Sentence of imprisonment reduced to one already undergone - Deceased leaving behind a child - Considering expenses required to nurse a child reasonably, fine increased from Rs. 5,000/- to Rs. One Lac to be paid by the accused.

*“I am the child, All the world waits for my coming
All the earth watches with interest to see what
I shall become. Civilization hangs in the balance
For, What I am, the world of tomorrow will be.
I am the Child, you hold in your hand, my destiny
You determine largely whether I shall succeed or fail
Give me, I pray you, these things that make for happiness
Train me. I beg you, that I may be a blessing
in the World”.*

*Judges of the Supreme Court
Bursting into poetry in M.C. Mehta Vs. State of Tamilnadu*

- Child Marriage Restraint Act
- Child Marriages

Child Marriage Restraint Act:

A major social evil sought to be prevented and curbed by law is child marriage. Child marriage has taken deep roots in the South Asian soil to the detriment of children and specially the girl child. The Indian Constitution offers equality, protection, equal opportunity and choice to all. Contrary to the spirit and content of the Constitution, many Personal laws that are practised are honoured by the various communities. This situation has adversely affected the status of girls and women through the institution of marriage, Child Marriages, dowry, bride price, custody and guardianship over children, divorce, maintenance, inheritance and succession to the joint family property etc. Nevertheless, certain customs have been challenged by law and hence the Child Marriage Restraint Act was passed way back in 1929. This was amended in 1949.

As per the Act, child is a person who, if male has not completed 21 years of age and if female has not completed 18 years of age. While the Act prohibits marriage below the age of consent, child marriages are valid under all personal laws except for the Parsis and under the Special Marriage Act. The Hindu Marriage Act gives option to the minor girl to repudiate the marriage if she was below 15 years but this has to be done before she reaches 18 years of age.

There is hardly any case of repudiating the marriage by the girls because they would not go against their parents or guardian. When the marriage is legal in case of a female below the age of discretion, she cannot be expected to form an intelligent opinion about her partner in life. The policy of law which permits the marriage of a girl before she is physically and mentally mature is open to serious question. Child marriage has been a factor causing early motherhood, likely maternal mortality and possible early widowhood and the resultant woes of vulnerability, desertion, destitution etc. But the girl child can repudiate when she attains the age of puberty, which has approximately been fixed at 15 years. Even under the Christian law, the marriage below the age of consent is valid provided it is with the consent of the guardian.

Any parent or guardian violating the provisions of the Act by solemnizing the child marriage are liable to be punished also with fine. But the Act exempts punishing the girl/Woman. It is a cognizable offence only under specified conditions. The courts do not have the power to pass ex-parte injunction; The Child Marriage Restraint Act is applicable to all Indians irrespective of their religion.

Comment : This provision for girls i.e. the right to repudiate the marriage on attaining the age of majority must be available to girls in all personal laws and communities whether marriage was consummated or not is not of material significance.

The courts must not grant any relief in respect of marriages celebrated in contravention of the Child Marriage Restraint Act.

When minor girls get married, conceived and become young mothers, it has placed dichotomous situation for the courts. As per the Act, they have no choice but to condemn and even punish those who perpetuate the same. But considering the plight of young mothers, the courts declare them void and voidable marriages.

Today, even when we are in the new millennium, child marriages are still prevalent in states like Rajasthan, M.P., Bihar, U.P. and parts of Tamilnadu and in many distant parts of the country. The Act is flagrantly violated. When the Saathins were appointed to prevent child marriages in the rural areas of Rajasthan, Bhanvari Devi was gang raped for attempting to stop solemnization of child marriages. The courts verdict has not been in favour of the Saathin. The accused were free and acquitted and the victim suffered stigma and ostricisation by the whole village.

If laws are not implemented by enforcement systems and if the public violates laws, how can law perform its role as an instrument of social change?

What then is the role and responsibility of the judiciary? It has to come down from its pedstal and to haul up the executive for its inaction and direct it to perform. The girl child from its status of a child to youth seems to have no choice nor voice against foeticide, child marriage etc.

To stop child marriages, **introducing compulsory registration of marriages appears to be an appropriate solution.** This will offer reliable proof of the child and her date of marriage and will make people aware of the punishment for not registering child births and marriages at the Panchayat, Block or district levels.

Also in the guise of child marriages, touts and traffickers go through the ceremony of marriage and sell the girls to brothels. The resultant ills due to child marriages are far too many to cite.

In cases of flagrant violation of laws, it behoves on the judiciary to take serious notice of the fact of child marriages and severely punish the executive wings of government whose task is to implement the laws as also forcefully prevent child marriages, adopting innovative preventive strategies and strict enforcement policies and execution.

Laws per se are not self-operative. It is the upholder of justice i.e. the Courts have to invent ways to see that the stake holders act. Otherwise counting the number of reformative laws and carefully to put them on the shelf will be an infructuous exercise.

The UN Convention on the Rights of the Child endows numerous rights to the child and mandates state parties to undertake programmes and activities to work for the best interest of the child. The Right to life, to education, to good health, amicable environment, right to

participation and expression and to make choices are inalienable rights. The Govt. of India has way back ratified the UN Convention on the Rights of the Child and ensured to honour the same; **but child marriage is a dishonour to Rights Convention.**

It is pertinent to note that there have been two opinions about considering child marriages as illegal. One view is that in order to prevent such marriages, they must be considered void. But the other view takes note of the reality and holds that if such marriages were to be considered void, it will stigmatize the child-woman and a vast percentage of marriages will become illegal; denying maintenance rights to women will become a rule; nevertheless, the Act remains an ineffective enactment and prosecutions are few and far between. Besides, Courts do not have the power to pass exparte injunction against child-woman.

In the Indian Majority act, however in the matters of marriage, dowry, divorce; adoption, age of majority, cannot be regulated by the courts as they have no powers to regulate them under this Act. Even in an old case of K. Sivaramamurthy Vs. Andhra Pradesh, it was held that the court cannot issue a direction that the marriage of the child shall not be brought about within six to eight years in the future (1965) (2) (Cr. L.J.P. 836).

“The Republic of India has a vintage heritage from the days of the Buddha to the Gandhian era, of kindness sharing and caring and viewing the child as the incarnation of divinity and futurity. November 14th of every year is observed in our country as Children’s Day. The humanist, compassionate emphasis in Article 51-A of the Constitution is a reassertion of the duty of every Indian citizen to behold the noble spark in every child, which is innocent, simple and free from inhibitions and greed to grab. It is true that every 6th human in the world is an Indian and every third Indian is a child. (Recent statistics surely exceed the UNICEF figure, 1990 of 160 million girl children in our country below the age of 16. Horror is the girl child’s autobiography”.

Justice V.R. Krishna Iyer

- *Legal Services Authority*
- *Lok Adalats*
- *Territorial jurisdiction of the Courts*
- *Limitation*

Legal Services Authority :

In order to enhance better and easy access to legal remedies for women and the victims of offences and those who hardly could afford expenses on litigation, the benefits of the Legal Services Authority Act are by law to be made available. The spirit and content of this Act has been to help the helpless and the needy, seeking justice through the courts. This law imparted statutory status to Lok Adalats and Mahila Lok Adalats held specially for women's grievances. The national commission for women in the early nineties coined the word: Parivarik Lok Adalats and organized the same through out India. This quick dispensation of justice in a day relieved the anxiety of parties and assisted them in settling their disputes by the sitting judges of the District and Subordinate Courts.

The question remains as to how many are still aware of these opportunities and facilities available? The role of non-governmental organizations and the help extended by the judges of district and subordinate courts are valuable. The initiative taken by the NCW bore fruit when they could organize these Parivarik Mahila lok adalats in almost all states of India including Andaman & Nicobar islands.

Lok Adalats for Speedy Justice :

Strangely though it may sound, it is a fact that a few of the High Courts resisted the National Commission for Women's initiative and directions received from the legal services authority. In turn the District Courts did not receive advice from their High Courts. However the Legal Aid Board at the Centre came heavily on the High Courts and convinced them that it is a Statutory Mandate to organize quick justice dispensation Mechanisms through Parivarik Lok Adalats. Cases of dowry extortion, divorce maintenance were settled in a day to the utmost relief of the disputing parties. Besides, these adalats dispensed justice to one and all irrespective of their religion, caste and community.

Territorial Jurisdiction :

Regrettably, the regular courts were quibbling about the justification of jurisdiction of the courts relating to disputes between spouses/parties, whether the case to be heard in the place of occurrence of the offence, or where the woman erred against is residing; what empowerment can one dream of for women in such a situation? When even this small issue is blown up out of proportion resulting because of unconcerned and unmindful judges bogged by technicalities in the courts.

In AIR 1997 SC 2463 - petition under Section 482 of the CRPc seeks to quash the proceedings and also the order dated 23.6.95 passed by the learned Metropolitan Magistrate, Delhi and order dated 27.8.96 passed by the learned ASJ in revision on the ground of lack of territorial jurisdiction.

Smt. Poonam Sharma lodged a complaint in Crime Against Women's Cell, Nanakpura, Delhi in 30.7.92 for offences under Section 498-A and 406 IPC. A charge-sheet under Section

173 CRPC was submitted against all the petitioners 1 to 6 (husband and every one): (AIR 1997 SC 2465).

The Metropolitan magistrate took cognizance of 498-A & 406 IPC; but the ASJ in revision held that charge under Section 498-A and Sec. 34 IPC also is made out against all the petitioners but not under Section 406 IPC.

The offence of cruelty is said to be a continuing offence. The court held, "...ASJ's order is not legal and valid and hence is not sustainable.....Metropolitan Magistrate has no territorial jurisdiction while offence stopped the day when the wife left her matrimonial home".

Comment: Section 182 (2) : Magistrate of the residential area of the woman, even if the offender husband happens to be somewhere else - has the right to prosecute the accused. Many judgments saying that the court does not have jurisdiction that there is and no enabling power of the court other than the one having jurisdiction over the area of the commission of offence, are wrong.

In the case of Delhi High Court in ARUN KUMAR SINGH vs : State (NCT Delhi) decided on 27.7.99) CRL M. (M) No: 1875 of 1999 & CrI 4798 of 1999 - it was observed that Section 182 (2) CRPC, as it is, it applies only to cases of Bigamy under section 494 IPC

Comment: But this should be included for Section 498-A cases also. It should come in residential area jurisdiction.

Jurisdiction question continued :

In 11(1999) DMC 512 (SC) in Satvinder Kaur Vs. State Govt. of NCT Delhi & another, the appellant wife was married in 1990 in Delhi and in 1992 was thrown out of the house by husband and in-laws, with her four weeks baby in arms and with only the wearing apparel. The wife lodged a complaint with kotwali, Patiala on allegations of torture, dowry demand etc. Thereafter she came to Delhi and lodged a complaint with the Crime Against Women Cell, Delhi in '92, and in '93, a complaint was lodged in Paschim Vihar Police Station, Delhi, under Section 406/498-A IPC for the alleged occurrence in Patiala. Thereafter the husband filed a petition in Delhi High Court under 482 CRPC for quashing the FIR 34 of 1993 for the cause of the action was not in Delhi. The High Court, after remand, heard the learned counsels and quashed the FIR on the ground that the investigating officer at Delhi was not having the territorial jurisdiction. Referring to cases of State of W. Bengal Vs. S.N. Basak (1963) 2 SCR 52 it was observed by the court, "that the functions of the judiciary and the Police are complimentary and not overlapping and the combination of individual liberty with due observance of law and order is only to be obtained by leaving each to exercise its own function, always of course subject to the right of the court to intervene in an appropriate case when moved under Section 491 CRPC to give directions in the nature of Habeas Corpus" (King Emperor Vs. K Waja N. Ahmad - 1944 LR 71 IA 203, 202).

There are a number of cases questioning the 'jurisdiction' of the court as also the territory'.

Limitation Period :

Added to this dilemma leading to delayed justice after going through various processes and courts, the victim in many cases have been left prey to the question of 'limitation' period (non-obstante clause).

The intervention by the Supreme Court in drawing the attention of the H.C. to the mandate of the Court by Sec. 473 CRPc to examine not only whether delay in filing a case has been explained satisfactorily but also whether for the requirements of justice to condone or ignore delay. The S.C. held, "The Court while considering the question of limitation for an offence under Section 498-A i.e. subjecting a woman to cruelty by her husband or the relatives of her husband, should judge the question in the light of section 473 - of the code"- The appeal is allowed and the order passed by the H.C. set aside. The learned magistrate is directed to proceed with the case in accordance with the law as expeditiously as possible. It was held that it is also settled after long course of decisions of this court that for the purpose of exercising its powers, the High Court has to proceed entirely on the basis of the allegations made in the complaint or the documents accompanying the same it has no jurisdiction to examine the correctness or otherwise of the allegations (Ref: Pratibha Rani Vs. Suraj Kumar & another (1985) 2 SCC 370 at 395.

The Supreme Court held that, "in the present case, the High Court committed a grave error — the Court also cautioned that the power of quashing the criminal proceedings should be exercised very sparingly with circumspection and that too in the rarest of rare cases. The court cannot embark upon an enquiry as to the genuineness or reliability or otherwise of allegations made in the FIR.

Cruelty a continuing offence :

The appeal is allowed. The H.C. order set aside. The I.O. is directed to "complete his investigation as early as possible". (2) 'Limitation non obstante clause' -SC 1 (1994) DMC 172 : In Vanka Radha Manohari Vs. Vanka Venkata Reddy and CRL. Ap. No: 339 of 1993 - decided on 20.4.93. I Sujata Mukherjee Vs. Prashan Mukherjee AIR 1997 SC 2465. Unmindful of the hazards faced by the victim wife, the court took no notice when the wife was maltreated by the husband, but when humiliated not only in his house but in his in-laws house at Raigarh, the court became alert and it was held by the Supreme Court "that as the cruelty has continued at her parents house in Raipur - it was a continuing offence which gave jurisdiction to the courts at Raipur which is not in the case in Mohanlal & Ors. Vs. State Crl. M (M) No: 3480, 1997 decided on 28.5.99. Petition allowed.

Case II

AIR 1997 SC

Petition under Section 482 CRPc seeks to quash the proceedings and also the dated 23.6.95 passed by learned M.M. Delhi & Order dt. 27.8.96 passed by the learned A.S.J. in revision-ground of lack of territorial jurisdiction.

Smt. Poonam Sharma lodged a complaint in against Crime Women's Cell on 30.7.1992, for offences under Section 498A and 406 IPC completing investigation - a charge sheet under Section 173 CRPc submitted to all petitioners 1 to 6 (husband and everyone).

Comment: The discretion in the hands of judges can prove double edged; it can help the victim or it can overlook the same by inadvertence. Where human lives are involved, much care has to be exercised in all seriousness by the courts.

- *Maintenance*
- *Maintenance to working women*
- *Marital Status & maintenance*
 - *Void & Voidable marriages*
 - *Immovable assets*
 - *Delay in application*
- *Discrimination between women & women*
 - *Right of maintenance to children*

Maintenance

The right of maintenance to a wife & children is the obligation of the husband and this also forms part of the personal law. Apart from this the CRPC enacted in 1898 provided for a right of maintenance. Irrespective of the personal laws, the wife and dependent children have a right to move the court for relief against the husband or the father who neglects or refuses to maintain his dependent family members. In this respect one could see a sort of uniformity achieved in this area of family law. The obligation understandably confined to the husband or the father with no corresponding obligation being placed on the wife or the mother. Today we are governed by the new CRPC 1974. This extended the right to demand maintenance to the indigent parents and to the divorced wives; thus the obligation continues to be on the man. Today economically independent women can not only maintain themselves and their children but also the husbands. Exclusion of daughters from the obligation of maintaining their parents/husbands/children may be used as an argument for depriving women of their rightful share in father's property.

Maintenance of Working Wife :

Thus the present law prohibits extending maintenance to working wife or the one who gets into matrimony after divorce. Unlike the right given under the criminal law, where the claim depends on the husband having, "sufficient means" under Hindu law, her right is absolute and the husband cannot take the alibi of inadequate means to deny maintaining her. Even previous order of the criminal Court will not bar her right to seek further relief in a civil court. But she loses her right, if she deviates from the path of chastity, her right to maintenance will get altered unlike under the CRPC, where her right will be affected only if the wife is living in adultery at the time of her claim. Past character will not affect her right to maintenance. However, the courts until the latest amendments to CRPC could only award a maximum of Rs. 500/- as maintenance; but now it is left to the discretion of the Courts to decide the quantum of maintenance weighing the status and genuine demands. Besides under the Hindu Adoption and Maintenance Act 1956, she gets a real maintenance. As per judicial opinion, just and adequate fare with nothing for clothing, residence as also for medical attendance and treatment falls short of maintenance and these are, "minimal in a civilized society" the court, while assessing the reasonable works of the claim, takes into consideration various factors like the position and status of the parties and whether the wife is justified in her claim or not.

As per codified Hindu law in pendente lite (pending suit) even the expenses of a matrimonial suit will be born by either of the spouse, if one of them has no independent income. The same principle will also govern the payment of permanent maintenance which the court will fix.

While the right of maintenance is recognized in all the different laws, the common problem faced by most women even amongst the very few who know of their rights, is the

expense and delay in first getting an order from the court. Often a counter claim is made by the husband for restitution of conjugal rights in order to defeat or at least delay her right. Even when the order for maintenance is made, the husband very often fails to pay after a few months and this entails the wife's repeated visits to court and undergoing tremendous delay, harassment and expense. The arrears of maintenance are treated as a debt whose recovery is by the ordinary procedure on par as laid down for all other debts. This is very often expensive and time consuming.

In order to minimize the hardship caused by non payment of maintenance, and to ensure certainty of payment, we recommend that all maintenance as in the order should be deducted at the source by the employer (as done in the case of income-tax). Where it is not possible to deduct at the source, as in the case of a businessman or a self-employed person, the arrears of maintenance should be recovered as 'arrears of land revenue or by distress'.

Marital Status and Maintenance:

1993 8 : 1993 Cr LJ 2930.

Claim for maintenance - Not valid without marital status being affected or disrupted by matrimonial Court - Claim has to be agitated under Section 18 - See Hindu Marriage Act (1955) S. 25.

Smt. Chand Dhawan v. Jawaharlal Dhawan. 1993 AIR SCW 2548 (2556 to 2560): 1993 Cri. LJ 2930: (1993) 2 Hindu LR 203: 1993 SCC (Cri) 915. S 25. (as amended by Act 68 of 1976), 24, 28 - Permanent alimony or maintenance - Claim for - by wife - Not valid without marital status being affected or disrupted by matrimonial Court - Claim to maintenance in such cases - Has to be agitated under Hindu Adoptions and Maintenance Act.

(1986) 1 Hindu LR 363 (Punj & Har), AIR 1989 Bom 220, (1990) 2 DMC 208 (Madh. Pra.), AIR 1991 Bom 440 and AIR 1989 Andhra Pradesh 8 Overruled.

Without the marital status being affected or disrupted by the matrimonial Court under the Hindu Marriage Act, the claim of permanent alimony was not to be valid as ancillary or incidental to such affectation or disruption. The wife's claim to maintenance necessarily has then to be agitated under the Hindu Adoptions and Maintenance Act. 1956.

In contrast, without affectation or disruption of the marital status, a Hindu wife sustaining that status she can live in separation from her husband, and whether she is living in that State or not, her claim to maintenance stands preserved in codification under S. 18 (1) of the Hindu Adoptions and Maintenance Act. The Court is not at liberty to grant relief of maintenance simpliciter obtainable under one Act in proceedings under the other. As is evident, both the statutes are codified as such and are clear on their subject and by liberality of interpretation, inter-changeability cannot be permitted so as to destroy the distinction on the subject of maintenance. Relief to the wife may also be due under S. 125 of the Code of Criminal

Procedure whereunder an order of maintenance can be granted after contest, and an order of interim maintenance can be made at the outset, without much contest.

Ashok Kumar Singh v. Vltth Addl. Session Judge, Varanasi. 1995 AIR SCW 4132.

Vanamala (Smt.) v. H.M. Ranganatha Bhatta. 1995 (5) SCC 299.

Maintenance - Wife obtaining divorce by mutual consent - Not barred from claiming maintenance by invoking sub-section (4) of S. 125.

Smt. Jaitunbi Mubarak Shaikh v. Mubarak Fakruddin Shaikh and another, 1999 CRI. LJ. 3846

Maintenance - Petition by Muslim wife - Plea of husband in his written statement that his marriage had been dissolved at an earlier date in talak from - Fact of dissolution of marriage at an earlier date is not proved - Filing of written statement containing such plea amounts to dissolution of marriage from date on which such a statement is made.

Maintenance - Ground of impotency of husband - Failure on part of husband of sexual life - Husband unable to gain potency - Sufficient ground for wife to live separately - Wife entitled for maintenance.

Metropolitan magistrate took cognizance of 498 A & 406 IPC But the ASJ in revision held (4 under Section 498.A/34 IPC also is made out for all the petitioners but Under section 406 IPC.

The offence of cruelty was said to be a continuing offence. The Court held ASJ's order is not legal and valid and hence is not sustainable. Metropolitan magistrate has no territorial jurisdiction while the offence stopped the day the wife had left her matrimonial home.

Void and Voidable Marriages :

Unless pronounced as orders of the Court, innocent victims suffer a whole life time with stigma attached to them for no fault of theirs.

In a Punjab Haryana H.C. Case of Manjeet Kaur Vs. Surinder Singh, marriage could not be consummated due to impotency of husband; and Pipe test was a conclusive proof of impotency. Instead the husband alleged that his wife had illicit relationship with another. The judgment and decree of the matrimonial court is reversed and the marriage of the parties annulled. The wife's petition under the Hindu Marriage Act 1955 succeeds. Some of the High Courts have taken judicious decision as in the case of Sunita Mishra (1(1994) DMC 438 M.P., H.C. C.R. No. 450 of 1992 (450 of 1993) Vs. Sanjay Kumar Mishra. While the non-applicant husband has filed a suit for nullify of marriage the applicant wife sought maintenance @ rate of Rs. 500/- p.m. together with Rs. 1000 as expenses. Based on S.C. decision in Anita V. Laxmi Narayan 1992 AIR SCW 1053 where the wife is required to undertake long journeys to appear in the court to contest the suit for divorce, it is the obligation of the court to

provide a sum for her to meet the said obligation. Revision allowed by enhancing the amount of maintenance from Rs. 400/- to Rs. 500/- p.m. and litigation expenses from 800 to Rs. 1000, all other condition remaining the same.

There is definitely marginal change in amendment of the law and also in interpreting it in favour of the victim. As for the claim of maintenance by wife, either deserted or divorced, the legislature has eased the restriction hitherto imposed under Section 125 CRPC fixing Rs. 500 as the maximum to be granted to the claimants. At present there is no limit imposed, it is purely left to the discretion of the courts. To that extent, the women who have no other source of income for themselves or their children can claim reasonable amount befitting their life style lived so far. However, it needs to be noted that the courts have also admitted claims for shelter besides food education and other expenses.

Immoveable Assets:

However, in claiming maintenance, the cases get protracted when it refers to immovable assets of the husband and party. In many cases attempts have been made to sell away the property merely to deprive the separated or divorced woman of the right to claim. A delayed claim of maintenance by wife from husband who contracted a second marriage - has also been contested in courts and even the High Court of Allahabad in Ratan Lal Vs. Lind Addl. Sessions Judge 1(1994) DMC 20. Allahabad H.C. Civil Misc. Writ Petition No: 8753 of 1990- decided on 6.10.93.

The respondent was married as per Hindu rites above 23 years - Ratan Lal beat his wife, Smt. Padma and thrown her out of the house. Smt. Padma started living with her parents. After the father's death, she was left with no means to sustain herself. The learned counsel for the petitioner referred to the case of Vali & Narain V. Smt. Pardharia 1980 Allahabad and submitted that since Padma was living separately it must have been with mutual consent and acquiescence to the second marriage.

Delay in Application :

Hon'ble Deoki Narain J in Udit Narain's case observed that as the wife has acquiesced to the second marriage of the husband on the assurance that she would get maintenance there was no sufficient ground for her to live separately and she was maintained by the father of her husband so long as he was alive. The court held that she is not entitled to maintenance. In belated application case of Ratan Lal Petitioner Vs II Addl. Sessions Judge, Mathura & Ors., Respondents sought that the belated application under Section 125 CRPC ought to be rejected. On the contrary, the judge held that on mere ground of delay of the application under Section 125 CRPC, it ought not to be rejected. She is very modest and shy. Many of them do not move out of their domesticity and they do not like to go in for litigation which is tiring, time consuming and expensive. A deserted wife may be able to sustain herself for some time but when she reaches a breaking point and is no more able to bear the pangs of

hunger and pennilessness, she is entitled to approach the court. Her right of claiming maintenance is a continuing one and the legislature has taken care by not providing any period of limitation for making an application. The writ petition is devoid of merit and is here by dismissed.

Comment: Strange reasons are projected for escaping the rightful responsibility of offering maintenance to their separated wives or divorcees. The courts by and large have been sympathetic to such claims by the separated wives. Even mutual consent divorce do not bar claim to maintenance.

The legal right to maintenance for the separated/divorced wife and her children is regrettably challenged by attributing extraneous reasons about the character of his wife and her antecedents. Many women who are thrown out of their matrimonial homes have almost landed in a state of destitution and threatened annihilation and abuse by unwanted elements. If law cannot be honoured where can the women seek justice?

Discrimination between women:

Discrimination in India is not merely against women: There is discrimination between women and women. While all other sisters enjoy the fruits of legislative benefits, Muslim women are deprived even of reasonable maintenance on divorce. Even if paid back, it could normally not sustain her for life. Hence various attempts have been made by government and non-governmental organizations to extend the benefits under Section 125 of CRPC. Muslim Women Protection on Divorce Act 1986, as it was held by the Supreme Court. The Act incorporates section 125 and hence there is no need for dispute.

The constitutionality of legislation was upheld but re-interpreted to ensure adequate protection for divorced Muslim Women. The Act was introduced to nullify the effect of the decision in Mohamed Khan Vs Shah Bano Begum & Ors (1985) (2) SCC 556 in writ petition (Civil) No. 868/1986 un reported.

Lack of economic independence for a woman has been the main reason for her continuous subjugation. Judicial activism has been instrumental in the law regarding maintenance taking great strides in the last decade. Judicial decisions have strengthened the right, widened the range of beneficiaries, defined the duration of the right and bettered the content of the law in other respects.

In "Md. Ahmed Khan Vs. Shah Bhano Begum" AIR 1985 - SC 1945", the Supreme Court, while dealing with the right of maintenance of Muslim divorced women under section 125 of Criminal Procedure Code, held that if the divorced wife is able to maintain herself, the husband's liability to provide maintenance ceases with the expiration of the period of iddat, but if she is unable to maintain herself she is entitled to take recourse to Section 125 of the Code. Various passages from the Holy Koran were relied upon, in coming to the conclusion that there is an obligation on Muslim husbands to provide for their divorced wives.

The Judicial activism of the Hon'ble Supreme Court in Shah Bhano case was negated by the enactment of the Muslim Women (Protection of Right on Divorce) Act 1986.

In "Rohtash Singh Vs. Ramendri" (2000(3) SCC 180), the Hon'ble Supreme Court held that a woman has two distinct rights for maintenance. As a wife, she is entitled to maintenance unless she suffers from any of the disabilities indicated in Section 125(4) of the Criminal Procedure Code. In another capacity namely, as a divorced woman she is again entitled to claim maintenance from the person of whom she was once the wife. A woman after divorce becomes a destitute. If she cannot maintain herself or remains unmarried, the man who was once her husband continues to be under a statutory duty and obligation to provide maintenance to her.

Maintenance of Muslim Wife :

In Motiur Rahama Vs Sabina Khatun 1994 (3) Crimes 236=11 (1994) CCR 1260 page 241 & in para 30 where in it is stated.

In the present case the Talaqnama dated 30.11.92, there is no evidence worth its name in this case to show that such an attempt for reconciliation and settlement was made by the revision petitioner; the judge held against the revision petition that the revision petition sought divorce to cancel paying maintenance on the ground of Talaq. The revision is devoid of merits and there is no illegality/irregularity in the order, passed by the Judgment of the Magistrate in RI MP No. 2922 of 1995 Criminal Revision dismissed.

Right of Maintenance to Children:

The Muslim Woman (Protection of Rights on Divorce) Act 1986 applies only to Muslim women. Her divorced husband is required to pay reasonable and fair provision and maintenance for a period of 2 years to the child from the birth. Unlike section 125 of CRPC there is no restriction to the quantum of maintenance. Since the maintenance allowance from the divorced father is only upto the age of 2 years of the child, section 125 CRPC is applicable. The mother has to apply on behalf of the child before the magistrate court or family court. The proceedings are similar as in the case of 125 CRPC.

Noor Saba Khaton Vs. Mohd Quasim - 1997 (6) Supreme Court Cases 233 A short but interesting question involved in this appeal by special leave whether the children of Muslim parents are entitled to grant of maintenance under section 125 CRPC and in the case of female children till they get married. Dr. Justice Anand held that under section 125 CRPC the maintenance of the children is obligatory on the father (irrespective of his religion) and as long as he is in position to do so, and that the children have no independent means of their own, it remains his absolute obligation to provide for them. For children of Muslim parents, there is nothing in section 125 CRPC which exempts a Muslim father. The provisions are not affected by Cl (b) of section 3 (1) of the 1986 Act and indeed it would be unreasonable,

unfair, inequitable and even preposterous to deny the benefit of section 125 CRPC to the children only on the ground that they are born to Muslim parents.

The S.C. has delivered this compassionate judgement leading to real social justice - in the case of :

Gaurav Jain Vs. Union of India (8) SCC P.114 (1997) 39F. Directive Principles of State Policy - Arts 21, 14,15,24,38,46 & 32. In this Public Interest Litigation on Rights of children and obligations of the State - Held that 'Right to equality opportunity, dignity, care, protection and rehabilitation to be part of the mainstream of social life' (for children of Prostitutes). They have the right by way of rehabilitation (not maintenance) from the State.

Over the past thirty years women in the movement have been absorbed in the past and the present. We have rediscovered our history shared our experiences, defined our needs. After four thousand year of patriarchy, we have tried to expand human experience beyond male-dominated thought, acons of history where half the human race was not counted, not written about and existed only in the shadowy margins of men's lives. This has meant testing, and being critical of, every system and all assumptions, values and definitions.

Women have spent a great deal of time discussing, defining and arguing over the different idological positions of different groups of feminists. It is time now for women to put aside those kind of discussions and to delieniate the kind of world we would like to see if we were given the chance to create it.

All these things are possible with the knowledge and technology we now have. Given all the parooof of how wasteful both of people and resources, the old ways have been envisioning a new world order is an urgent necessity, not some capricius" feminine dream".

Doris Anderson

Cruelty

- *False complaints by husband to police*
 - *Judicial Separation*
 - *Allegations adultery not cruelty*
 - *Void marriages*
 - *Fraud not cruelty*
 - *Cruelty / harassment 498-A*

CRUELTY

The right to divorce in set conditions is sanctioned by law. But in a host of cases, a husband alleges invariably, that cruelty is perpetrated by the wife. They even produce fraudulent pieces of paper allegedly signed by the wife. The courts have been careful in examining the facts and could detect the fraud on the part of the husbands. The courts have ruled in favour of the passive victims of desertion/divorce. Besides, they attribute adultery on the part of the husband as a cause for seeking divorce.

Cruelty has been attributed to wives exercising rights on their husbands.

False Complaints to Police :

In family court appeal No: 12 of 1992 decided on 26.8.93 Anil Dinanath Rana Vs. Aruna Anil Rana - Bombay High Court 1 (1994) DMC 9. Under Hindu Marriage Act Section 13(1) (ia) appellant husband filed petition for divorce - alleging quarrelsome nature of wife and threatens to commit suicide - false complaint to police - wife alleged ill treatment, starvation, loss of job, abuse and insult to her mother and father - circumstances though compelling to approach police, she did not lodge a complaint Family Court correctly appreciated the recorded/evidence - held no reason to interfere - appeal dismissed.

Desertion by wife - Judicial Separation :

Again in Hema Rajendra Shevate Vs. Rajendra Bhartbhan Shevati DB (1) (1994) DMC 55 family court appeal No. 45 of 1992 - Decided on 16.9.93. Respondent husband filed a petition for divorce on ground of cruelty and desertion - family court did not establish cruelty-dispute not very serious - passed a decree for judicial separation instead of passing a decree for divorce, for 8 years the parties were living separately - there was no room for reconciliation and hence decree of judicial separation to the respondent husband granted.

Comment: After ten years the legally declared separation is pronounced. One wonders whether this delayed justice in many other cases too is worth seeking. New mechanisms have to be thought of to settle disputes locally at the Panchayat, block or district levels. This will reduce the harassment and trauma they go through.

In a similar case II (1999) DMC 396 (SC). Supreme Court of India, in case of Smt. Vijayalaxmi Vs. Balasubramanian - Respondent. Civil appeal No. 2966 of 1997 - decided on 11.8.99 - Hindu Marriage Act - 1955 Sections 13(1) (I-a), (I-b) husband filed a petition for divorce on grounds of cruelty and desertion by wife. The family court granted judicial separation. Wife filed an appeal in the Madras H.C. against the impugned judgment. H.C. allowed the appeal and dismissed the husband's petition both on grounds of cruelty and desertion. He never cared to visit his third child in his in-laws' house. The Division Bench of the High Court and the Supreme Court could see through the fraudulent statement of the husband and relieved the wife by their just order.

In a path breaking judgment, Judge Mr. S.M. Sidickk of the Madras H.C. in Saleem Basha Vs. Mumtaz Begum in Criminal R.C. Nos. 1000 + 999 of 1995 decided on 22.4.98 - observed

Courts while considering question of limitation for an offence under section 498A i.e. subjecting a woman to cruelty by her husband or the relative of her husband, should judge raise that question in the light of Sec. 473 of the Code.

Surendra K. Arya v. Prem Chander Sharma (Punjab & Haryana High Court) Adultery and cruelty-plea of adultery not pressed. Plea that wife had obtained a job of lecturer against his wishes and without his consent, plea that these acts amount to cruelty-rejected on facts found that appellant was responsible for this sorry state of affairs. II (1994) admc 462.

Allegation of Adultery :

Civil Appellant First appeal No. 107 of 1989 - decided on 27.11.1992.

FB. (1994) DMC 480 A.P. HIGH COURT

Swamidas Ravi Prasad v. T. Kasturi Bai and Another

Indian Divorce Act 1869. Section 10-Adultery-guilt in matrimonial cases to be proved beyond reasonable doubt - allegation vague - reliance on letter does not inspire confidence- no reference to the allegations of adultery in other proceedings - clearly an after thought - decree of dissolution of marriage not sustainable - held, correct.

Fraudulent marriages - void :

(SC II (1994) DMC 150/Supreme Court of India)

Jolly Das alias Moulik - v. T. Ranjan Das

Civil Appeal No. 4070 of 1994 (Arising out of Special Leave Petition. No. 17739) decided on 14.5.1994.

Special Marriage Act, 1954-Section 25 (iii) - fraudulent misrepresentation obtaining consent - for marriage-signatures on blank papers - registered at Calcutta - not consummated for 8 months - or lived together for 8 months- story of love marriage - except the marriage certificate. There are no traces of marriage nor love - whether it is a fit case for declaring the marriage void? (yes)

II (1999) DMC 734 (SC) I Supreme Court of India,

Gian Singh Vs. State of Rajasthan

Criminal Appeal Nos. 5798 of 1999 - decided on 14.5.1999

Constitution of India 1950, IPC 1860-Sec., 498A-CRUELTY - Decree of divorce- impounding passport of father-in-law: direction to return on execution of Bond-appellant settled down in England - His son married Indian girl-marriage went through rough wheather-Decree of divorce asked by the Court of England - appellant facing criminal prosecution launched by father of

erstwhile daughter-in-law under section 498A, IPC - his Passport impounded; if passport not released, he will be compelled to remain in India until final end of criminal proceedings - on the one side legal proceedings has to reach its normal course and on the other the agony of the appellant who cannot go home is genuine - directed ACJM to return passport of appellant on executing a bond for sum of Rs. 3,00,000/- with two sureties of like amount - appeal disposed of.

Cruelty :

II (1999) DMC 247 (SC)/Supreme Court of India:

Arun Vyas and Anr - appellants. V. Anita Vyas & Anr - respondent.

Criminal Appeal No. 574 of 1999- decided on 14.5.1999.

Criminal Procedure Code 1973, sections 468(2) © 473 - order of magistrate that complaint barred by limitation and discharge of appellant cannot be faulted with. Section 498A- CRUELTY: DELAYED COMPLAINTS: PROVISIONS OF SECTION 473, Criminal P.C. To be liberally construed in favour of wife - if on the facts and in circumstances of case, it is necessary so to do in the interests of justice. Held, in complaints under section 498A, the wife will invariably be oppressed, having been subjected to cruelty by the husband and the in-laws. It is, therefore, appropriate for the Courts, in case of delayed complaints, to construe liberally section 473 Criminal P.C. in favour of a wife who is subjected to cruelty, if on the facts and in the circumstances of the case it is necessary so to do in the interests of justice. When the conduct of the accused is such that applying rule of limitation will give an unfair advantage to him or result in miscarriage of justice. The Court may take cognizance of an offence after the expiry of period of limitation in the interests of justice. This is only illustrative and not exhaustive. Result: Appeal partly allowed.

Fraud not Cruelty :

In (1999) DMC 146 (SC) / Supreme Court of India.

SUMITRA Bank etc. - v. State of West Bengal- Criminal Appeal No. 527 of 1989 with Criminal Appeal Nos. 461 & 462 of 1989-decided on 29.7.99.

Comment: The Courts could vigilantly and sensitively see through the alleged cruelty exercised by wives on the husbands and declared them as fraud and appeal dismissed.

A Regressive Judgement :-

In the following pages Judges J.D. Kapoor of the Delhi High Court has tried to prove that Sections 498A/406 IPC are misused by the women as also by the Police. He goes on to State that, "investigations into these offences be vested in Civil authorities like executive magistrates and after his finding as to the commission of the offence, cognizance should be taken by no police officer below the rank of an ACP for the offences U/Sec 498A/406 IPC & DCP for the offence U/Sec 304-B IPC in dowry death should be vested with investigation..."

In the explanation to cruelty in Cl. (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..."

Law as deterrent can prevent many illegal acts and dowry demand is an offence under the Dowry Prohibition Act. Instead of welcoming the daughter-in-law/wife, the first reaction is to the inadequate and unsatisfactory gifts which are not necessarily legal or lawfully permitted. It is not mere mentioning of the Hero Honda that was not presented, it was reiterating as demand for dowry and besides it, the sum of Rs. 50,000/-

The genesis for later suicides and dowry deaths start from the blatant greed expressed immediately after marriage. The guilt & fear that the wife carries with her definitely causes injury to her mental well being if not yet physical injury is inflicted upon her.

Saying at one breath that thousands of such cases are lying in the courts and at the same time branding every petition or cry of the affected woman as misuse has not been fair. An Hon'ble judge recommending that 498A/406 IPC should be made bailable if there are no physical injuries caused and it must be made compoundable are undeserving & even unwarranted. How difficult it was for the women's movement to fight for 498A to be inserted after the Mathura rape case is every ones knowledge.

The following judgement instead a helping the aggrieved women at large has set a signal for a regressive step.

104 (2003) Delhi Law Times 824 Delhi High Court

J.D. Kapoor, J.

Savirti Devi - Petitioners versus Ramesh Chand & Ors. - Respondents

Crl. Revision No. 462 of 2002 Decided on 19.5.2003

The Petitioner's allegations in brief are that after marriage her in-laws specially her father-in-law and her husband and brother-in-law did not like the dowry articles and expressed unhappiness that they were not given Hero Honda and cash of Rs. 50,000/- The wife of the elder brother of her husband Mr. Mukesh and the sister of her husband did not like the clothes given to them. Ms. Mukesh represented that if only sanjay had married her sister, then he would have got more dowry. The main allegation of harassment were against the husband and father-in-law. There were no demands of dowry by other relatives.

The main contentions of the learned counsel for the petitioner is that non-acceptance of the gifts by respondents and others tantamount to harassment and cruelty as defined in Section 498A, IPC.

Section 498A IPC provides as under :

Whoever, being the husband or relative of the husband of a woman subjects such women 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 wilful 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 to meet such demand".

Having extensively quoted Lord Tucker & Lord Denning as also lines from the American Jurisprudence, Hon'ble Judge - Mr. J.D. Kapoor observed that the changes of misappropriation of dowry articles & stridhan were framed only against the husband and father-in-law & other relatives were discharged. Offence U/Sec 498-A, IPC i.e. "harassment of the wife by the husband & his relatives for inadequate dowry or non-fulfilment of demands of dowry was framed against the husband and father-in-law alone.

"So far criminality attached to word, "harassment" is concerned, it is independent of, 'Cruelty' and punishable in the following circumstances".

- (a) Where the harassment of the woman is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security.
- (b) Where the harassment is on account of failure by her or any persons related to her to meet such demand.

The judge quoting that ... neither every cruelty nor every harassment has element of criminal culpability, for the purposes of section 498A and referred to the case of SC in Dr. N.G. Dastane Vs. Mrs. S. Dastane 1 (1981) DMC 293 (SC) (1975) 2 SCC 326 "The inquiry therefore has to be whether the conduct charges as cruelty is of such character as to cause in mind of the petitioner a reasonable apprehension that it will be harmful or injurious for him to live with the respondent. It is not necessary as under English law that the Cruelty must be of such a character as to cause 'danger' to life, limb or health or as to give rise to a reasonable apprehension of it is a higher requirement than a reasonable apprehension that it is harmful or injurious for one spouse to live with the other".

The Hon'ble Judge also quoted SC in V. Bhagat vs. Mrs. D. Bhagat II (1993) 2 All E.R. 398) on mental cruelty broadly defined as which inflicts upon the other party such mental pain & suffering as it would make it impossible for the party to live with the other.

The judge while dismissing the petition remarked that non acceptance of gifts might have hurt her feelings but by no stretch of imagination Sec 498A or 406 IPC are involved.

The judge further commented upon "the misuse of the provisions of Sec 498A/406 IPC to such an extent that it is hitting at the very foundation of marriage itself and has proved to be not so good for the health of the society".

"Once complaint is lodged U/Sec 498A-406 IPC whether, there are vague, unspecific or exaggerated allegations or there is no evidence of any physical or mental harm or injury inflicted upon woman that is likely to cause grave injury or danger to life limb or health, it comes as an easy tool in the hands of the police and agencies like Crime Against Women Cell to hound them thousands of such complaints & cases are pending and are being lodged day in and day out".

".... To start with marital offences under Sections 498A/406 IPC be made bailable if no grave physical injury is inflicted and necessarily compoundable...."

".... There is growing tendency to come out with inflated and exaggerated allegations roping in each and every relation of the husband and if one of them happens to be of higher status or of vulnerable standing, he or she becomes an easy prey for better bargaining and blackmailing". Petition dismissed.

Comment :- Judge J.D. Kapoor's judgement of the Delhi High Court not only appears a sweeping verdict but that almost may mislead people and courts to disbelieve the validity of Section 498A, IPC.

The Hon'ble judge seems to have totally overlooked the socialisation and conditioning of girls in the Indian Society. A newly wed young wife is expected not to react and to smile over any pungent remarks made on the gifts she brought to her in-laws home. Hair splitting definitions made by the judge between cruelty and harassment appears very far-fetched. If the young bride has not implicated all others in the in-laws family, it is laudable instead of imputing a motive on her for mentioning only her husband and her father-in-law in her complaint.

"A milestone in the women's movement campaign on domestic violence was the enactment of Section 498A of the IPC in 1986. Section 498A criminalises mental and physical cruelty to a woman in her matrimonial home and addresses domestic violence arising from causes that may not be related to dowry harassment. It is an inherently bold and progressive legal provision, in that the burden of proving innocence lies on the accused. Like dowry, cruelty to a woman is a cognisable and non-bailable offence."

Abetment to Suicide

ABETMENT TO SUICIDE

There is no concept of victimology in India; nevertheless there are judgements passed with sensitivity as well as there are some crude rulings. "No woman unless of unsound mind will resort to suicide; having burnt or strangled herself." The husband and the in-laws plead not guilty. What is the difference between slaughtering of animal and of a woman, that too young brides who come with lot of hope to enjoy marital bliss in the matrimonial home. We see no justification in courts being lenient to the accused when there is a foolproof evidence to the crime committed by the accused.

The women just married are pushed to the brink to commit suicide and end their lives to be free from torture, harassment and cruelty.

1 (1994) DMC 506 Punjab & Haryana H.C. Suresh Kumar & Ors. Vs. State of Punjab Criminal Appeal No. 72 58 of 1989 dt. July 30, 1993.

IPC Sec: 306/498A - Abetment to suicide and cruelty/deceased was harassed for less dowry just after marriage

Court observed that Kailasho committed suicide due to harassment at the hands of the accused. The trial Court has already had limited view in sentencing appellants under Section 306. While the in-laws were awarded 4 years RI each, the husband was sentenced to 7 years RI. The court held that 7 years awarded to Suresh Kumar, husband is rather on the harsh side and the same is reduced to five years. The sentence of fine imposed on all appellants maintained. There is no justification for awarding any sentence under 498-A IPC as the ingredients of cruelty being the necessary part of presumption for abetment under Section 113-A of the Evidence Act which covers the latter offence also by necessary implication. Thus the sentence under Section 498 A is hereby set aside. The appeal of the appellants stands partly accepted to the extent referred to above. The appellants shall surrender to undergo the remaining sentence.

Comment: The very amendment to IPC introducing 498A is to cover harassment of the woman within 7 years of marriage in her matrimonial home. But cases were decided not in favour of victims just because immediate report was not made by the wife - considering her socio-cultural entrenchment she is in, she is not sure either to suffer indefinitely or complain. If so when?

**1 (2002) DMC 780 (SC) SC
Girdhar Shankar Tawade (appellant)**

**State of Maharashtra - Respondent
Criminal Appeal No. 463 of 1996 from Judgment and order dated 13.7.95 of Mumbai H.C. in
Criminal Appeal No. 583 of 1989 - decided on 24.4.2002.**

Held: - to have an event sometime back cannot be termed to be a factum taken note of in the matter of a charge under Section 498 A. The legislative intent is clear enough to

indicate in particular reference to explanation (b) that they shall have taken a series of acts in order to be construed as harassment within the meaning of explanation (b). The letters by itself though depict a reprehensible conduct, would not however bring home the challenge to section 498 A against the accused. Acquittal of a charge under section 306, as noticed here in before though not by itself a ground for acquittal under Section 498 A but some cogent evidence is required to bring home the charge of section 498-A as well, with which the charge cannot be said to be maintained. Presently we have no such evidence available on record.

On the wake of the aforesaid convictions as recorded by the trial Judge as also by the H.C. cannot be sustained. The appeal therefore is allowed. The impugned order stands set-aside and quashed. The accused stands acquitted of the charge under Section 498A.

Suicide:

In all cases of suicide, the onus lies on the prosecution to prove beyond all reasonable doubt.

Comment: Do we name the laws as dysfunctional impotent or shall we squarely see through the havoc created by subjective interpretations by the judges?

The inhuman ways in which young women are nagged for dowry and pressurized and pushed to the brink, to commit suicide. Is it not abetment?

One wonders why only brides, the daughters-in-law commit suicide when they are living with their husbands and in-laws. We hardly and rarely come across daughters ending up their lives in their parental homes. This unending discrimination practised between daughters and daughters-in-law has assumed ugly proportions leading to the increasing cases of suicides.

Most often the girls are strangled by the husband or his parents and reported as cases of suicide committed by the deceased.

Abetment of Suicide Section 306 IPC

If anyone commits suicide, whoever abets the commission of such suicide shall be punished with imprisonment of either description for a term which may extend to 10 years and shall also be liable to fine - cognizable - non - bailable, trial by court of sessions and non compoundable too.

Section 307 attempt to murder: It is for the prosecution to prove such intention to cause death. The intention of the accused is covered under this section.

1 (2002) DMC 305 (SC) S.C. of India

Baburam - appellant Vs. State of Madhya Pradesh - Respondent

Murder - disappearance of evidence, abetment of suicide - cruelty - strangulation of deceased/prosecution case not proved beyond all reasonable doubt - doctor in his evidence

was not sure what exactly was the effect of ligature marks - found on body of deceased - evidence uncertain and postulates more than one possible circumstance Regarding: burn injuries on body of deceased, prosecution case solely based on fact that accused was last found in house wherefrom dead body was recovered - witnesses who have turned hostile did not state in their examination that appellant was coming out of a window or at what point of time he came out of the house - no inference against innocence of accused can be drawn- appellant acquitted of charge Under section 201 r/w Section 306 IPC and no cross-appeal filed by state - the court does not think necessary to go into this aspect of the no motive why appellant father-in law should cause death or abet her suicide because of not bringing in sufficient dowry-difficult to believe that appellant, who visited to question his son and daughter-in-law only 3 days prior to the incident and go to the extent of murdering his daughter-in-law. This is extremely dangerous to rely upon prosecution evidence under Sections 302, 201, Section 306 r/w section 498-A.

Comment: This is truly a case of miscarriage of Justice. Why? Because, no reason was attributed to suicide - the fact of burns and strangulation established that the deceased was manhandled. The doctor found ligature marks on the body of deceased. There was no history of any mental, or other ailment of the victim, Bhagwan Devi. Why the Court has not cared to question why the victim was found strangulated? The judge was only focusing on fool proof evidence-expecting the neighbour's evidence that did not come through.

The effort of the judge was diverted to proving the accused innocent than straight coming to question why and how Bhagwan Devi has burn marks on her neck?

The concept of not calling the accused guilty until proved, though good in theory, often proves as a dangerous tool almost negating the victim's case.

State of West Bengal v. Orilal Jaiswal, 1994 AIR SCW 844 (858-859): AIR 1994 SC 1418: 1994 Criminal LJ 2104: (1993) 3 SCJ 315.

Suicide by newly wed girl- Mal-treatment by in-laws-Proof - Complaints about mal-treatment to parents of deceased - Complaint made only by mother of deceased - No complaint by her father - Absence of father's complaint - Cannot be said to raise doubts about prosecution story when prosecution case was that mother-in-law of deceased abused her by saying that she was woman of evil luck - Complaint by father in such circumstances is neither expected nor necessary.

Suicide by newly wed - Mal-treatment - Deceased making complaint about her mal-treatment only to her mother and to no other family member Conduct of deceased is most natural- A newly wed woman is not expected to make her misfortunes public - Absence of complaint to other family members cannot raise doubts about prosecution case.

The abuse and insult hurled on the daughter-in-law usually are not expected to be made public so that the neighbours may have occasions to criticize the improper conduct of the

accused and hold them with disrespect and contempt. Doubts about the genuinenesses of the case of physical torture and abuse by the husband and mother-in-law cannot be questioned for the absence of independent evidence given by the neighbours and co-tenants about such physical assault or abuses hurled on the wife by the accused. We have indicated that ordinarily it is not expected that physical torture or the abuses hurled on the wife by the husband and the mother-in-law should be made in such way as to be noticed by the tenants living in the adjoining portions of the house.

Suicide by newly wed - Mal-treatment - Evidence about physical and mental torture of deceased coming from mother, elder brother and other close relations - Such depositions by close relations need not be discarded simply on score of absence of corroboration by independent witnesses. Abetment of suicide - Victim, newly married girl, not hypersensitive Mother-in-law abusing her to be woman of evil luck - On abortion of victim, mother-in-law abused that she was evil enough to swallow her own baby - Husband of victim assaulting her on occasions and abusing that bridal presents brought by her were of inferior quality - acts amount to cruelty-Accused liable to be convicted under S. 498A.

According to the evidence given by the mother of the deceased; the mother in-law even suggested that being a woman of evil luck (lakshmi) the deceased should not live and end her life. When deceased conceived for the first time she had the misfortune of miscarriage. When the unfortunate daughter-in-law would reasonably expect sympathy and consolation from the mother-in-law, the mother in law abused the deceased in the hospital itself by telling that she was a woman of evil luck.

Comment: The Court should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether cruelty meted out to the victim had in fact induced her to end the life by committing suicide or has it been make belief suicide but in reality abetment to or murder.

Naresh Kumar v. State of Haryana, 1994 SCC (Cri) 502 (503).

Abetment of Suicide of Deceased a married woman died of burns - Letters written by the deceased to her parents and other circumstances on record establishing cruel treatment given to her by her husband and in-laws-conviction proper. In the present case the husband the mother-in-law of the deceased and the brother of the husband of the deceased were prosecuted for an offence of abetment of suicide. The fact that deceased died of burns was not disputed. The circumstances on record established that the deceased was being treated cruelly. Under these circumstances conviction of the accused was proper.

Kahendra Singh v. State of Madhya Pradesh. 1995 AIR SCW 4570.

Offence of abetment of suicide - Ingredients - Mere allegation of harassment made by deceased in her dying declaration against accused - Not sufficient to constitute the offence-Accused already undergone sentence - Substitution of charge under Section 498A for harassment likely to cause prejudice on him - Appeal disposed of as infructuous.

State of H.P. v. Nikku Ram 1995 AIR SCW 3721.

Abetment of suicide - Accused persons alleged to have demanded dowry and treated deceased with cruelty, leading to suicide - No evidence showing deceased has been harassed within the meaning of Exp. (b) of Section 498A - Presumption under Section 113-A of Evidence Act cannot be raised - Offence under S. 306 not made out.

Comment: By and large, in cases of abetment of suicide, the rulings are not uniform; the justification being that each case depends on the facts and the perception of the courts. In Bholakumar and another v. state of Madhya Pradesh Crl appeal no. 207-1993 decided on 26.4.95, the appellant was charged under Section 306 for abetment of suicide of the respondent. The High Court held that the learned ADJ erred in invoking Section 113-A of the evidence Act. Though the death was occurred by burn injuries, it was held that the prosecution did not lead any evidence to prove cruelty. Appellant was thus acquitted. He was released on bail as per sec. 439 Cr. P.C. and on a personal bond of rupees 10,000. It was observed that by mere suspicion alone the accused cannot be convicted. Hence conviction set aside.

Rukmai bai & another v. State of M.P.

Another alibi was taken into consideration that while the death occurred on the 14th July 1985, the statement of witnesses was recorded after 2 or 3 months. As such it was held that it was not tenable. It was held that such a conduct makes evidence unreliable.

In CRL appeal no. 1028 of 1986, decided on 1.7.1995.

In Munnalal Rajkumar & another v. State of M.P. it was held that Tulsibai no doubt committed suicide. There was no evidence to show that she was harassed; also she did not have any issue and hence, the complaint of dowry demand and harassment and manhandling were illegal. There was also delay in lodging a complaint by the brother of the deceased or the kotwal, and there was only suspicion; hence bail bond was discharged and the conviction set aside.

In Lokendra Singh and ors v. state of M.P., the deceased victim had 100% burn injuries and the charges framed were under section 306 and 302 for abetment and murder. This was a CRL. Appeal 424 of 1986 decided on 20th July 1995. It was held that a person charged under major offences could always be charged for minor offences. Hence appeal partly allowed.

Similarly in Ramesh Chander vs. State of Haryana CRL. Appeal 515-3B of 1986, decided on 9.12.1994, it was held that prosecution failed to prove the charge and presumption to abetment of suicide under section 113A of the Evidence Act. Once the prosecution failed to prove that Sunita committed suicide, the question of abetment of suicide does not arise. The conviction set side under section 306 and 498A - and acquitted.

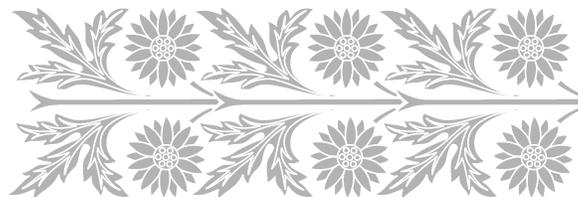
The CRL. APL No. 36 of 1999 and decided on 8th Dec. 1999.

In Urmila Mishra vs. State of Bihar (patna High Court), it was held that the prosecution failed to prove offence, because there were no eye witnesses, no smell of kerosene, none of the witnesses deposed that there was dowry demand made in their presence. In another case from Punjab and Haryana High Court in Crl Misc. no. 28588 of 1999 decided in November 99, delay in lodging the FIR was the reason for acquittal. The tenor in all these rulings by the different High courts is the same.

Comment: All cases of death due to burn injuries have been set aside as mere suicide and not abetment by the husband or his relatives. The High Courts have been consistently pressing for proof and evidence of abetment of the crime. This reflects the mindset of the courts and the failure of the prosecution in all these cases as shown above and have not been pressed upon as cases of human rights violations. There is no quest for social justice but more emphasis is given on technicalities and procedural requirements.

In the sample cases cited above, these are only illustrative to show how the attitude of the Judges of the various High Courts are almost the same and similar. What empowerment of women can we talk of, when even after death departed the poor women, the criminal offenders have been set free on the plea that there has been no fool proof evidence. Some of the judgments of the lower courts have been right but were reversed by the High Courts. Thus any number of offending husbands go scot free without due punishment. Section 305 is for abetment of suicide of child or any person under 18 years of age, insane person, any delirious person, any idiot or a person in a state of intoxication, commits suicide, whoever abets the commission, such suicide shall be punished with death or life imprisonment, shall be sentenced for not less than 10 years imprisonment and shall also be liable to pay fine.

Inspite of this serious punishment incorporated into the section 305, none of the above courts have bothered to look into these provisions, alongwith section 306 of IPC. Was it suicidal or homicidal-probability of deceased committing suicide not eliminated — mental condition of the deceased at the time of making dying declaration doubtful — The medical certificate only states her fit physical condition — Trial court as well as the High Court ignored this aspect of matter while convicting and sentencing the appellant. Appellant is entitled to benefit of doubt-impugned judgment set aside. Result: appeal allowed. This saga goes- on and on.



Bride Burning
Dowry Death

BRIDE BURNING / DOWRY - DEATH

While the socio-cultural impediments slowed down the pace of social change towards better empowerment of women, justice delivery system showed rays of hope for an equitable justice. However, there was room for judicial interpretation — that witnessed independent interpretations of laws in myriad ways from Muthammas case to Vishaka judgement.

Specially in family law matters, judicial concern wavered and went up and down. There is no common rule for use of discretion in either interpretation, delivery of judgment or in sentencing policy.

Whether it was the High Court or the Supreme Court, similar issues were dealt with in many different ways, sometimes delivering positive judgments in favour of women victims and at other times trying to be too strict and technical in passing judicial verdicts.

The whole chapter highlights cases showing how considerate the judiciary was and how indifferent the same judiciary has been in other cases. There is no standard yardstick to measure the motivation of judges writing different judgments on similar issues but in different cases.

To start with, we will be looking into cases at random decided by the many High Courts in Bride Burning Cases.

Prabhudayal v. State of Maharashtra.

AIR SCW1834 (1842): AIR 1993 SC 2164: 1993 Cri LJ 2239: (1993)3 SCC 573: 1993 sce (Cri) 950.

Bride burning - Circumstantial evidence - Demand of dowry and cruel treatment to deceased - Deceased 100% burnt - Total absence of shouts or cries - Medical evidence showing asphyxia was not due to burn. Internal injuries which occur in case of strangulation were found — Total burning of neck to destroy evidence of attempted strangulation - Half burnt post card planted near dead body to indicate suicidal death - Accused persons watching incident through window without any hue and cry or without any serious attempt to save deceased - Held, it was a case of murder and not suicidal death.

Kundula Bala Subrahmanyam v. State of Andhra Pradesh. 1993 AIR SCW 1321 (1333, 1334, 1336) : 1993 Cri LJ 1635:

SCC (Cri) 655: (1993) 30 All Cri C 305.

Bride burning - Circumstantial evidence - Failure of parents of deceased to transfer land in name of her husband - Conclusively established to be the strong motive for accused- Dying declarations by deceased voluntary, consistent and truthful - Medical evidence supporting dying declaration. Subsequent conduct of the accused consistent only with hypothesis of guilt of accused - Conviction of accused was proper.

Comment: In such circumstances it could be said that the prosecution has successfully established all the circumstances appearing in the evidence against the accused by clear, cogent and reliable evidence and the chain of the established circumstances was complete and has no gaps whatsoever and the same conclusively establishes that the accused and accused alone committed the crime of murdering the deceased in the manner suggested by the prosecution. Therefore, conviction of the accused for the offence of murder was proper.

Sarojini v. State of Madhya Pradesh. 1993 AIR SCW 817 (822, 823) : 1993 Cri LJ 1648: (1993) 1 UJ(SC) 112: (1993) 2 Cri LC 41.

Bride burning - Drawing inference of "particeps criminalis" - Factors relevant - Case based on circumstantial evidence - Linkage in chain of circumstantial evidence and motive, duly established - Story of suicide case ruled out - No conflict in opinion of medical experts vis-a-vis cause of death - Accused/mother-in-law convicted - Husband's acquittal converted to conviction by drawing inference of particeps criminalis.

The deceased was done to death by asphyxia and thereafter, the dead body was burnt soaking kerosene on a naked body.

Held, it is obvious more than one had participated in the incidence and the fact that more than one participated in the commission of the crime, the fact that there is no other person inimical to deceased to commit the crime and the fact that it is not impossible for accused husband to immediately leave place of crime and reach a different place committing the crime, would clearly connect him to be a particeps criminis in committing homicide of his wife Rajini. Without his co-operation and participation in committing the crime, on the facts and circumstances, it is impossible for the mother-in-law of deceased alone to commit the crime.

Further, the conduct of accused/husband also was inculpatory. The normal human conduct would be that on hearing the news of the death of his wife he was expected to immediately reach home: to make enquiry for the cause of death and to take further action which are absent in this case. Under these circumstances it was held that husband/accused also was a particeps criminis in committing the crime and as such liable to be convicted under Sections 302. 34 of IPC.

Maniram v. State of Madhya Pradesh. 1994 AIR SCW 211 (212, 213): AIR 1994 SC.

Bride burning - Dying declaration - Reliability - Allegations that accused husband poured kerosene oil on deceased wife, set fire and ran away-Dying declaration recorded by Sub-Inspector in nature of F.I.R. - No attestation from doctor taken to the effect whether patient was conscious or not - Failure to take signature or thumb impression of deceased - No other evidence against accused except dying declaration which was of highly doubtful nature - Accused acquitted.

Bride Burning - Deceased stating in dying declaration that rape was attempted on her and next day she was burnt by accused - Evidence of brother of deceased witness not supporting dying declaration - Dying declaration also not signed by doctor who was present - Held accused could not be convicted for murder.

Hem Chand v. State Haryana, 1994 AIR SCW 4150 (4152 to 4154): 1994 (6) JT (SC 475.

Dowry death - Sentence - Extreme punishment of life imprisonment - To be awarded in rare cases - Wife subjected to cruelty in connection with dowry - Dying an unnatural death - No evidence, however, directly connecting accused - husband to crime - charge under Section 302, not framed against accused - Two sets of medical evidence - Divergent opinion expressed as to existence of injuries on dead body of deceased imposing sentence of life imprisonment would not be proper - Reduced to 10 years R.I. Decision of Punjab and Haryana High Court partly Reversed.

1995 AIR SCW 3326.

Bride burning - Dying declaration inconsistent - Motive not proved. Medical evidence not supporting prosecution case - Mental make-up of deceased indicating that case could be of suicide - Accused acquitted giving benefit of doubt.

Venugopal, Appellant v. State of Karnataka, 1999 CRI L.J. 29 (SC)

Dowry death - Appreciation of evidence - Unnatural death of deceased wife within two years of her marriage - Evidence of prosecution witnesses showing that wife was ill-treated, harassed and beaten by accused husband many times for dowry; their evidence also showed that soon before her death she was ill treated by her husband - Defence plea of suicide, not acceptable - Conviction of accused under Ss. 304-B, and 498-A, proper.

Ram Kumar and another v. State of Haryana 1999 CRI. L.J. 4629 (SC)

Dowry death - Appreciation of evidence - Prosecution case that deceased always complained to her parents about harassment and dowry demand of accused - Performance of a ceremony of younger sister of deceased married in accused's family about a month before incident - Would not belie case of harassment - Similarly non-production of letters written by deceased about ill-treatment - Not sufficient to disprove prosecution case - FIR filed against accused cannot be falsified by allegations made by sister of deceased in her subsequent divorce petition - Accused held were rightly convicted.

Satpal v. State of Haryana. 1999 CRI. LJ. 596 (SC)

Dowry death - Harassment on account of demand of dowry - Excepting one statement of brother of deceased, no convincing evidence to hold that there was demand of dowry and deceased was harassed in connection with - Conviction under S. 304, set aside - Direct and

convincing evidence, however, to show that deceased wife had been humiliated and treated with cruelty on some occasion by accused husband - Conviction under S. 498-A maintained.

Salamat Ali v. State of Bihar. 1995 AIR SCW 2907: AIR 1995 SC 1963.

Dowry death - Common intention - General allegations that demand of dowry was made by accused husband's family member - No clear and cogent evidence involving parents of accused in demands of dowry-Evidence of prosecution witness stating that there were frequent quarrels, but only between accused and deceased wife-Conviction of parents of accused, not proper - However, accused convicted under Sec. 304-B, simpliciter, without aid of Sec. 34.

If gender degradation is a social depravity and massive manslaughter of the human rights of womanhood a daily reality, then Indian culpability as a community, is difficult to dispel. Substantive law is dead if it loses its remedial potency. And it is no consolation to parade Constitutional provisions and statute book pages if in raw life the woman is ever the victim..... we need the specific of a technology to transform criminal justice. But this perspective of human retrieval is distances away. From harsh Macaulay to humane Mahatma is a long cultural haul vis a vis our prison process : to actualisse this, we need a police-prison culture and judicial sensitivity with reverence for womanhood.

Justice V.R. Krishna Iyer

Dying Declaration
Sample Cases

DYING DECLARATION : SAMPLE CASES

In cases of dying declaration, it is a fact, that the dying victim shall not tell a lie. On the contrary, she protects her offending husband and in-laws, either for the sake of the future of her surviving children or for keeping up the prestige of her husband's family. Even when she is almost dying, she is forced by the husband to comply with his version. Conditioned by her culture and upbringing and finding herself entrenched in a helpless state and inimical environment she decides to absolve the offence of the accused. In very few cases, the victim involves the offenders. The FIRs lodged are after her death by her kith and kin. In spite of hurting her own conscience, the victim often reconciles with her fate and saves those who killed her and those who abetted the crime. However, the citadels of justice including the Supreme Court of India and other High Courts have ignored the victims dying declaration as not fool proof evidence and not necessarily authentic.

In the case of UKA RAM V. State of Rajasthan: CRL. Appeal No. 749 of 2000 from judgment and order dated 11.8.1998, Rajasthan High Court in D.B. Criminal Jail A. No. 81 of 1996, decided on 10.4.2001.

1 (2000) DMC 272 (S.C.) Supreme Court of India: held that dying declaration is sole evidence upon which conviction is based, not reliable beyond all reasonable doubt that dying declaration was true, voluntary and not influenced by extraneous consideration. Despite knowing the fact that the deceased was a mental patient - investigating agency did not take any precaution to ensure incident was suicidal or homicidal; probability of deceased committing suicide not eliminated - mental condition of the deceased at the time of making dying declaration doubtful. The medical certificate only states her fit physical condition - Trial court as well as the High Court ignored this aspect of matter while convicting and sentencing the appellant. Appellant is entitled to benefit of doubt impugned judgment set aside. Result: appeal allowed.

1999-(7) SCC 69-vii (1999) SL T 106 (Relied) Dandu Lakshmi Reddy Vs. State of Andhra Pradesh. This Court observed that on the factual situation of a case, a judicial mind would tend to wobble between two equally plausible hypothesis — was it suicide or was it homicide? If the dying declaration projected by the prosecution gets credence, the alternative hypotheses of suicide can be eliminated justifiably. For this purpose, a scrutiny of the dying declaration with meticulous circumspection is called for. It can be made the basis of conviction, otherwise not. It was further held that "in favour of the impossibility of conducting the test on the version in the dying declaration with the touchstone of cross examination, the court has to adopt other tests in order to satisfy its judicial conscience that the dying declaration contained nothing but the truth. In the present case as the dying declaration, which is the sole evidence upon which conviction is based, is not reliable beyond all reasonable doubt, the conviction and sentence of the appellant is not justified. Acquitted of all charges and set free"

Comment: Murder, grievous hurt and cruelty have been totally ignored. Despite the fact that the medical certificate stated that the victim was in a fit condition to give dying declaration. This was interpreted by no less than the Supreme Court that the medical certificate only talked of the victims physical condition and not her mental condition. The Andhra Pradesh H.C. also has ignored the possibility of the dying declaration as being the only truth uttered before the victim passed away. The concept of, "beyond all reasonable doubt" cannot be exercised when the victim is deceased and is no more. It appears that neither the woman's statement when she was alive nor her dying declaration made before her death have been of no material consequence to the courts. Hence, the "judicial conscience" seems to be unpredictable verging on callousness.

In Kishan Lal vs. State of Rajasthan, (CRLI, APPEAL no. 156 of 1998, decided on 17.8.1999) II (1999 dmc 439 (SC), Supreme Court of India.

In this case the Supreme Courts observations are valuable and at the same time contradictory.

The Supreme Court observed that they would proceed to examine the evaluation of any dying declaration. They have defined the dying declaration under the English law and the Indian law/the Court held, "..... Under the Indian law, dying declaration is relevant whether the person who makes it was or was not under expectation of death at the time of declaration. Dying declaration is admissible not only in the case of homicide but also in civil suits. Under the English law, the admissibility rests on the principle that a sense of impending death produces in a man's mind the same feeling as that of a conscientious and virtuous man under oath. The general principle on which this piece of evidence admitted is that they are declarations made in extremity, when the party is at the point of death and every hope of this world is gone, when every motive to falsehood is silenced, and the mind is induced by the most powerful considerations to speak only the truth. If evidence in a case reveals that declarant has reached this state while making declaration within the sphere of the Indian law, while testing the credibility of such dying declaration, weightage can be given of course, depending on other relevant facts and circumstances of the case... In the present case, the dying declaration was made after two months of the alleged incident. It was not at a time when the deceased was expecting imminent death." Neither the postmortem, nor the doctors deposition found burning as the cause of death. The medical report does not talk of any deep burns in the body of the victim. There were two dying declarations conflicting with the depositions of witnesses, hence the trial court rightly rejected while the High Court casually accepted it. The H.C. has committed an error in setting aside the acquittal of the appellant and convicting him under section 302 I.P.C. held, that "the findings recorded by the Trial Court were based on proper evaluation and proper appreciation of evidence on record. Result : appeal allowed.

In Arvind Singh vs. State of Bihar, CRL Appeal No. 887 of 1998 from judgment and order dated 1.5.98 of the Patna High Court in Crl. Appeal No. 187 of 1993, decided on

26.4.2001. I (2001) Dmc 734 (SC) Supreme Court held the evidence of this declaration which depicts that just before a few minutes of her death, the deceased would make a declaration quietly to the mother naming therein all three relations along with the husband who poured kerosene to burn her alive. This is not acceptable, more so having regard to the declaration being made to the mother only. In any event, is it conceivable that the husband along with the father-in-law, mother-in-law, brother-in-law would start pouring kerosene together on the girl-as if each was prepared with a can of Kerosene to pour simultaneously. This not only would lead to absurdity, but reliance on such a vague statement would be opposed to the basic tenets of law. Further it is in evidence that the deceased had an extensive burn including her mouth, nose and lips.' In the circumstances the evidence of the mother about the confession stands belied by itself. The doctor's evidence as in the record will go a long way in the unacceptability of the evidence of the mother.....For dying declaration independent witness may not be available but there should be proper care and caution in matter of acceptance of such statement as trustworthy evidence-Question of dying declaration is not worth acceptance. High Court fell into error in such acceptance of evidence. Dowry death/murder-evidence not sufficient enough to reach irresistible conclusion of involvement of husband as murderer or charged with offence of dowry death under sections 302 & 304B. Other cases quoted were Koli Chunilal and another vs. State of Gujarat (1999) (9) SCC-562 vii (1999) CCR 273 (SC) The court observed that in the absence of the doctor, while recording a dying declaration, the same loses its value and cannot be accepted.

In Harjit Kaur Vs. state of Punjab, (11-1999) dmc 169 (SC) Supreme Court of India: Present G.T. Nanavati & S.N. Phukan JJ. - (Crl. Appeal No. 822 & 823 of 1997-decided in 1999), while it was contended that Parminder Kaur made the dying declaration before the police that it was an accident and that no one was responsible. The Supreme Court held, 'the circumstances clearly indicate that she was not a free person; then it will be ridiculing the poor dying woman's anguish and her expression by way of dying declaration. In Maniram vs. State of M.P., the Court observed that it is no doubt true that before recording the declaration, the officer concerned must find that the declarant was in a fit condition to make the statement in question.

While it was contended that Parminder Kaur made the dying declaration before the police that it was an accident and that no one was responsible. The Supreme Court held, 'the circumstances clearly indicate that she was not a free person then. The reasons given by the Trial Court and the High Court for not considering the first Dying declaration as voluntary and true are quite convincing and we see no reason to differ from them. Therefore, the second Dying declaration cannot be regarded as untrue merely because it is contrary to her statement made earlier. What she has stated in the second Dying declaration appears to be more probable and natural. If she had really received injuries at 2.00 a.m. because of bursting of stove, then her in-laws would have taken her to the hospital immediately and would not have waited till 7.30 a.m. They would have informed the parents of her as early as possible.....we

find that the appellants have been rightly convicted. Both these appeals are dismissed. "The sensitivity of the Judges in this present appeal is laudable unlike in the cases quoted above this is fit to be emulated by courts.

So also in II, 1999) DMC 605 (SC) Supreme Court of India, in Shripatrao appellant versus State of Maharashtra - respondent: Crml. Appeal No. 232 of 1998 - decided on 4.8.1999, held that "the appellant has been convicted under section 302 and 498A, IPC, for causing death of his wife by pouring kerosene over her body and setting her ablaze. The High Court dismissed the appeal as it did not find any good reason to interfere with the judgment of the Trial Court. Held further that all the eight dying declarations are almost consistent. The High Court was, therefore, right in confirming the conviction of the appellant and dismissing his appeal.

Comment: Not all Judgments like these are sensitively passed; though Dying Declaration is normally considered the last truthful statement before death of a person. What anguish the dying Woman must have gone through when being burnt? Not to consider dying declaration as the true evidence will almost amount to dispensing injustice.

The maxim 'falsus in uno falsus in omnibus' (false in one thing, false in every thing) is neither a sound rule of law nor a rule of practice.

Hardly one comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggerations, embroideries, embellishments. It is therefore the duty of the court to scrutinise the evidence carefully and in terms of the felicitous metaphor, separate the grain from the chaff; it cannot obviously disbelieve the substratum of the prosecution case or the material parts of the evidence and reconstruct a story of its own out of the rest" (1965 Supreme Court 277 in Ujagar Abir Vs. State of Bihar, AIR (52) 1965)

Delays in Courts
Civil, Criminal, Family Courts
Women in Custody

DELAY IN COURTS/CIVIL/CRIMINAL FAMILY COURT - WOMEN IN CUSTODY

Claims to equality are often stated in terms of Rights, especially the right to equal treatment within a system of just laws. The Indian Constitution guarantees equal protection under the law and equal rights of suffrage, for example. However in India as may be elsewhere, legal and social equality for women, scheduled castes, scheduled tribes and other marginalized groups has been hard-won and is still incomplete.

Women's empowerment is not a single ideology but a diversity of perspectives on the origin and constitution of gender and sexuality, the historical and structural foundations of male power and female subjugation and the appropriate means of bringing about women's emancipation and equality. Women's liberation movements had such goals as equal educational and employment opportunities, reproductive freedom and women's full participation in politics and creation of cultural images.

"Liberal women's movement have primarily sought the integration of women into the existing socio-political structure. Marxist - socialist orientation seeing women's oppression as part of an entrenched class system is not far from truth and dominated by economic exploitation. Other radical views saw clearly that man-woman relationship as manifestation of historical power-relations. As developing countries and traditional cultures undergo political change along with economic and social modernization, women have sought corresponding abolition of gender inequalities and oppressive cultural practices".

How far law provides for protection of women's rights and punishments on time to the accused is a pertinent question. How violations and crimes are reported, investigated and submitted to the courts for trial and finally how do the courts interpret the law and pronounce judgments are vital to this study.

Civil courts bound by innumerable cases and consequent delays in disposal of cases, criminal courts come with majority of judgments in favour of acquittals, the family law disputes lingering on for settlements even in Family Courts show little or no concern for women.

At the Panchayat level, most of the disputes are settled by the Gram Panchayat, Panchayat Samiti and district level Zila Panchayat. The question is about the cases that came to court. There are no special courts assigned to reach out to the remote villages.

There are two aspects to justice delivery (i) Is that societal justice is part of objectively looking into the case and deliver-judgment (ii) the time taken in criminal trials and appeals is too long-thereby real witnesses, do not show up and crucial evidence gets lost.

Family courts again are burdened with cases transferred by the District Courts and may not strictly adhering to the spirit of the Family Courts Act, thus it ends up as another District

Court or a Civil Court - and then the usual delays ensue. The aggrieved parties do not get quicker justice and are put to untold harassment.

While the courts are within their powers and jurisdiction to correct and avoid any wastage of the court's time, many family courts are interfered with by the lawyers in plain clothes pleading for settlement of cases on time. This protracting tactics leads to delays in passing orders.

Besides, the above, the technicalities also bind the judges; the protracted procedures though unwanted but scrupulously insisted upon and followed by the courts, cause enormous delays and hurt the interest of their clients.

Labour courts are not far from delays. Even maternity benefits provided by law are not complied with by employers, specially the private sector ones. The disputes linger on and delayed settlement enormously hurt the interests of women. Minimum wages prescribed by law is often flouted by the employers. Equal pay for equal work just remains on paper. Cases of due compensation to workers suffering from accidents etc take too long to decide. If this situation continues as it is, what empowerment of women can we expect or hope for?

WOMEN IN CUSTODY

Women in custody in prisons, both under-trials and convicts are almost equated when services are provided to them. The law treats undertrials not as criminals but as persons to be tried and orders passed either for their release or for their conviction. Violations of law demanding production of under-trials in Courts by prison authorities go unnoticed and unpunished.

The under-trials undergo almost full punishment and sentence even without trial though the delay is not condoned by law. The under-trials are almost to be treated as women in difficult or special circumstances - very few under-trials can defend themselves through counsels. Even when found innocent and released, the women carry the stigma of having been in jail. To cap it all, their vulnerability to sexual abuse and innumerable types of harassment they suffer while in custody cannot be over looked.

Women in mental asylums (where a sizeable number of them are normal) are consigned to this unwanted custody, torture and treatment. Their property is being usurped by their kith and kin and they are forcefully pushed into asylums. They carry another type of stigma if and when released and set free from these hospitals. The law on mental health prescribes strict dictates for admission of persons into the hospital asylums and doctors are by law legally bound by strict norms of behaviour/treatment and action. The women refugees and the handicapped both physical and mental, have laws to protect their person and property, and ensure a life of safety and dignity. The violators of such laws are from the public and the various authorities who are accountable and responsible for their well-being.

The poor, the vulnerable get trafficked, sold to brothels and undergo life-long torture on becoming prostitutes. Sexual exploitation, torture, harassment, threat of the police, make them victims of law while the pimps and traffickers go scot free and even bailed out.

Rama Murthy v State of Karnataka

Liberty & Security - prisoners (prison conditions), prisoners (restraining methods) Remedies

Direction for reform of prison conditions issued by Supreme Court

(1997) 2 SCC 642; (1996) 2 CHRLD 103

The petitioner, a prisoner in Bangalore Central Jail, wrote a letter to the Chief Justice of the Supreme Court complaining about conditions there, namely the denial of rightful prison wages, "non-eatable food" and 'mental and physical torture'. The letter was treated as a writ petition under Art 32 of the Constitution and, in light of the respondent's denial of the allegations, the District Judge, Bangalore was asked to investigate the general conditions of prisoners in the jail. In his detailed report to the court, amongst the nine major problems the following are included:

1. Overcrowding in jails adversely affects the health of prisoners and the hygienic conditions and prevents the segregation of convicts.
2. The recommendations of the Law Commission, in Ch 9 of its 78th Report: Congestion of Under trial Prisoners in Jails, particularly as regards the liberalization of bail conditions, would relieve congestion in jails. Accordingly, the authorities concerned are required to take appropriate decisions on these recommendations within six months of the date of this judgment.
3. Directions given by the Court in previous decisions regarding the release of undertrial prisoners on bail where their trials are protracted should be fully implemented (Supreme Court Legal Aid Committee representing Undertrial Prisoners v Union of India (1994) 6 SCC 731 (Ind SC), Shaheen Welfare Association v Union of India (1996) 2 SCC 616 (Ind SC), R D Upadhyay v State of AP (1996) 3 SCC 422 (Ind SC) and 'Common Cause', A Registered Society v Union of India (1996) 4 SCC 33 (Ind SC) followed).
4. A liberal view relating to the prisoner's communication with relations and friends is desirable. There does not seem to be any plausible reason to deny the inmate easy access to communication by post. Visits by a prisoner's spouse are of great importance as denying conjugal rights.
5. Visits to pre-trial prisoners by professionals (such as lawyers) have to be guaranteed to the extent required by the Constitutional right of prisoners to consult, and to be defended by, a legal practitioner of their choice [Art 22 (1)].

Notices are issued to the Secretary to the Government of India, Ministry of Home and the Chief Secretaries of all the States and Union Territories, as to why they should not be asked to act in accordance with the above directions.

Large number of Women undertrials many of them with small children are languishing in jails. Until recently they were not allowed to be given any work, any training, etc. The recent overhaul of the Tihar Jail as also many other prisons in other states have started involving undertrials into vocations and daily chores.

Unless Jail adalats are held in quick intervals, innocent victims kept in custody will suffer injustice. This is an area often neglected and out of sight from the public view.

“As the existing forum dealing with family disputes had been inadequate to meet the demands for justice to women even in terms of processual justice leave alone substantive justice. The Family Courts Act 1984 was passed with a view to creating an appropriate forum for rendering justice to women”.....

.....“The traditional justice delivery system has proved to be ineffective, as the courts resort to mechanical and technical disposal of cases in an anxiety to reduce the pendency of cases in courts. The Fcs are not to be considered as mere machinery for disposing of cases but as social illustrations finding solutions for problems bearing in mind the Welfare of the Family and Children” (NLSU)

Kidnapping / Abduction

KIDNAPPING/ABDUCTION

Atrocities galore are inflicted on innocent children/women - Besides committing crimes on persons: (Section 360 IPC) any minor under 18 years of age for girls and 16 years for boys, one is kidnapping from India and another type is (Section 361) to kidnap the child from lawful guardian. A person of unsound mind and if such a person is taken out of the lawful guardian without his consent constitutes the crime of kidnapping.

Other forms of kidnapping are for maiming, compelling for marriage without her will, procuring minor girl for intercourse with another person, to subject that person to grievous hurt or injury or for slavery etc., again with an intent to steal from the person.

The crimes to be committed consequent to kidnapping or abduction can be of any nature, gravity or dimension i.e. for wrongful confinement or for any misdemeanor or assault on woman/sale/rape etc.

Laws like these, though are available, it is difficult to nab the culprits and prove the crime. Two types of kidnapping are (i) kidnap a minor from India (ii) from the lawful guardian. Vulnerability of age of the minor, its innocence away from the understanding of threats ahead makes kidnapping/abduction a very impending serious and a grave crime.

Abduction: Whoever by force compels or by any deceitful means induces any person to go to a place:

Section 362 Abduction is another way to deny a person freedom and by use of fear/threat or inducement, by any deceitful means or compels any person to go from any place is said to abduct that person.

Vidura Case: In Kerala a case filed by the Kerala State Commission for Women, called the Vidura case where in a minor girl was kidnapped on her way home from school and was allegedly sold to 40 odd persons in a row. The child was raped, gang raped, tortured and was thrown back in front of her parental house after 3/4 months is a pathetic story. The case was dismissed by the High Court for want of fool proof evidence. How long the contours of procedural law takes twists and turns ultimately unable to reach the realm of justice - where does the problem lie? Is it in the drafting of the Bill or lack of interest/shown by the legislators? Or does it lie in judicial interpretation and judicial discretion and judgement?

The children and women get kidnapped and abducted and forced into hellish existence- Their whole life is affected and are left in utter state of despair. Courts can act only after the event and the punishment meted out to the culprits may have a deterrent effect on other criminals. But how do we salvage the affected girl child or woman, who has lost all hopes of leading a normal life of peace and happiness? Rehabilitation may definitely be a need but not a complete solution. Between law and judicial action, there are gaps and unless the

legislatures care to understand how laws operate on the ground, the vicious cycle of criminals, victims, police and courts go round and round.

Nevertheless, this State of insecurity that hangs on the vulnerable demand a serious discussion with law makers and all other stake holders. Law prohibits kidnapping and abduction but these very acts warrant investigation, trial, retrieval of innocent, and punishment of the offender. Many a times due to protracted delays and procedures and the needed crucible test of evidence, justice eludes the victim.

Hariram v. State of Rajasthan. 1992 (2) Cur CC 58 (60) (SC - Abduction and wrongful confinement - Prosecutrix alleged to be abducted against her will and kept at different places- she was taken in a bus and kept in company of another woman - she neither complained to any passenger of the bus nor to the woman - Instead prosecutrix told the woman that accused were her brothers - conduct of prosecutrix showing that she was a consenting party - her evidence not reliable - Accused entitled to acquittal).

Ganga Dayal Singh v. State of Bihar. 1994 AIR SCW 222 (222, 223): AIR 1994 SC 859: 1994 Cri LJ 951: 1994 (2) BLJ 366.

Abduction of minor girl - Circumstances brought on record establishing conclusively guilt of accused - only plea of defence that accused aged 55 years could not have developed fancy for minor girl- negated as fanciful defence by both the Courts - No compelling circumstances found warranting interference in conviction and sentence.

The law per se prohibits abduction. Why extraneous reasons and statements that "prosecutrix did not raise alarm"? She could have been after all threatened with murder. The Court cannot continue to be inept in crucial cases affecting women's life and person. The very fact that a person is abducted, the crime committed warrants action. But this is not the case- there should be no need for any other piece of evidence.

Shyam v. State of Maharashtra 1995 AIR SCW 2169: 1995 SCC (Cri) 851.

Abduction - Prosecutrix not putting up struggle or raising alarm while being taken away by accused - Prosecutrix appearing to be willing party to go with accused on her own- Culpability of accused not established - Conviction set aside. Decision of Bombay High Court, Reversed.

The law on abduction though is part of IPC is not an offence per se attracting punishment. Motives are to be looked into before deciding the case.

*Reservation, Discrimination for
Women in Education
in Employment*

RESREVERATION, DISCRIMINATION FOR WOMEN IN EDUCATION AND EMPLOYMENT

Economic empowerment of women, through the process of affirmative action and Judicial activism, has been the cornerstone of various pronouncements of the Higher Judiciary in India. Strict enforcement of the equality clause under Articles 14, 15 and 16 of the Constitution and protective discrimination in favour of women has gone a long way in improving the educational standards of women and in their confidence in competing on an equal footing with men in matters relating to employment. Courts have come down heavily on the continuing gender bias in Executive action, and have contributed in no small measure for the substantial reduction in the societal prejudices against women's participation in areas and avenues which were hitherto considered a male bastion.

Grant of affiliation, to a women's only college, came up for consideration before the Division Bench of the Madras High Court in "University of Madras Vs. Shantha Bai" (AIR 1954 Madras 67), and the grant of such affiliation was held permissible in view of Article 15(3) of the Constitution, which permitted special measures for women.

30% Reservation for women in selection for admission into MBBS Course, came up for consideration before the Division Bench of the A.P. High Court in "P. Sagar Vs. State of A.P.", (AIR 1968 AP 165), wherein it was held that in view of Article 15(3), no exception could be taken for reservation in favour of women. Similarly in the case of "Padmaraj Samarendra Vs. State of Bihar", (AIR 1979 Patna 266), a Five Judge Full Bench of the Patna High Court held that reservation for girl students in Medical Colleges was valid. In "Amalendra Kumar Vs. State of Bihar" (AIR 1980 Patna Page 1), also the Division Bench of the Patna High Court held that reservation of 20% seats for girl students in Medical Colleges was valid.

In "Oman Oomen Vs. FACT", (AIR 1991 Kerala 129), the Kerala High Court held that refusal to admit women for examination for selection on the ground that the selectees were required to work in the night shift, was held to be discriminatory on the basis of sex and in violation of Article 14 and 15 of the Constitution of India.

The Regulations of Air India which provided for termination of services of Air Hostesses on their first pregnancy, came up for consideration before the Hon'ble Supreme Court in "Air India Vs. Nargesh Meerza" (AIR 1981 SC 1829), and it was held that such a regulation amounts to compelling the poor Air Hostesses not to have any children and thus interfere with and divert the ordinary course of human nature. The termination of service of the Hostesses, under such circumstances, was not only a callous and cruel act but was also an insult to Indian womanhood, the most sacrosanct and cherished institution. This provision was held not only to be manifestly unreasonable and arbitrary, but also to contain unfairness and naked deposition and as such clearly violative of Article 14 of the Constitution.

Since women were not getting their due share in public employment, the A.P. State and Subordinate Service Rules was amended by insertion of Rule 22-A which provides that (1) in matters of direct recruitment to posts for which women are better suited than men, preference shall be given to women, (2) in matters of direct recruitment of posts to which men and women are equally suited, other things being equal, preference shall be given to women and they shall be selected to an extent of 30% of the posts in each category. Challenge to these rules was repelled by the Hon'ble Supreme Court in "Govt. of A.P. Vs. P.B. Vijay Kumar" (AIR 1995 SC 1648) wherein it was held that under Article 15(3) any provision which a State may make to improve women's participation in all activities, under the supervision and control of the State, can be either in the form of affirmative action or reservation. To put it in the words of Mrs. Justice Sujatha V. Manohar:

"The insertion of clause (3) of Article 15 in relation to women is a recognition of the fact that for centuries, women of this country have been socially and economically backward. As a result, they are unable to participate in the socio-economic activities of the nation on a footing of equality. It is in order to eliminate this socio-economic backwardness of women and to empower them in a manner that would bring about effective equality between men and women that Article 15(3) is placed in Article 15. The objective is to strengthen and improve the status of women. An important limb of this concept of gender equality is creating job opportunities for women. To say that under Article 15(3), job opportunities for women cannot be created would be to cut at the very root of the underlying inspiration behind this article. Making special provision for women in respect of employment or posts under the State is an integral part of Article 15(3)."

Preference to lady applicants in furtherance of giving effect to the provision of self-employment of women to the extent of 30% was upheld by the Supreme Court in the case of "Gayathri Devi Vs. State of Orissa" (2000 (4) SCC 221).

The provision in service rules, requiring a female employee to obtain permission of the Government in writing before her marriage is solemnized and denying the right to be appointed on the ground that the candidate is a married woman, came up for consideration before the Hon'ble Supreme Court in "Ms. C.B. Muthamma Vs. Union of India" (AIR 1979 SC 1867) wherein it was held that if a married man has right, other things being equal, a married woman, stands on no worse footing. If the family and domestic commitment of a woman member of the service is likely to come in the way of efficient discharge of duties, similar situation may arise in the case of male member also.

In "P. Katama Reddy Vs. Revenue Division Officer", (1997 (6) ALT 548), the Division Bench of the A. P. High Court held:

"In fact 30% theory of reservation to women in Professional Courses, Jobs, etc., in the State of Andhra Pradesh is a well accepted theory, that a Draft bill for amending the Representation

of Peoples Act, which is pending in the Parliament, proposes women's reservation in Legislative Body, be it Assembly or Parliament, to the extent of 1/3rd and that when there is no reservation prescribed by the State, Constitution, Courts can always prescribe such limits which are fair and reasonable....."

The Judicial service rules, which provided that a married woman could not be appointed as a District Magistrate, since it could affect efficiency of Services, came up for consideration before the Division Bench of the Orissa High Court in "Radhacharan Patnayak Vs. State of Orissa", (AIR 1969 Orissa 267), and the Division Bench held that dis-qualification of a married woman from being eligible for appointment amounts, in substance, to disqualification on the ground of sex only. Marriage does not operate as a dis-qualification for appointment as District Judge in case of men whereas in the case of a married women, they are being excluded from appointment. Such dis-qualification thus being based on sex was held to be unconstitutional.

In the case of "A.N. Rajamma Vs. State of Kerala", 1983 LABIC 1388, the Division Bench of the Kerala High Court, in a case of denial of appointment for women on the ground that the job they were selected for was arduous in nature, held that whether the work is of arduous nature and therefore unsuitable for women must be decided from the point of view of how a woman feels about it and how they would assess it. It is regrettable that decisions of material consequences said to be made in the so called interest of women, purporting to protect the position of women, are generally taken not after any consultation with the representative bodies of women, but unilaterally by the administrators, most of whom carry with them a hangover of the past, the past of male domination in our social set up. The woman is no longer content merely to sit at home expecting the man to earn bread for the family. Both are quite often equal partners in sharing the financial burden of running a home. This social change must necessarily have its impact upon traditional perspectives concerning women's role and that must call for a change in our Laws, particularly so in the light of the Constitutional mandate of equality. Rules should not operate as a deterrent to such change. Time must necessarily come when all posts, excepting those which due to physical reasons a woman cannot take up, must be available to them. The attempt should not perpetuate discrimination, but to obliterate it".

Termination from service of a Lady teacher, in a private school, on the ground that she was married, was held to be obnoxious and opposed to public policy by the Madras High Court in "Ms. Siva Narul Vs. State of Tamilnadu", (1985(2) LLJ 133).

The rule which provided that women shall not be eligible to the Ministerial Establishment of Civil Courts subordinate to the High Court was held by a Division Bench of the Allahabad High Court to be violative of Article 16(2) of the Constitution in "Smt. Urmila Devi Vs. State of U.P.". (1990 LABC 2047).

Preference given to women in appointment as Primary School Teachers, came up for consideration before the Division Bench of the Orissa High Court in "Bijay Kumar Jena Vs. State of Orissa", (1987 LABIC 593), wherein it was held, "that economic dependency of women, a subservient role played by them in social stage are directly related to the educational backwardness of the vast majority of the women. A larger scope of employment for women would to some extent ameliorate the backwardness of women. It is the duty of the State to promote with special care their educational and economic interests". The circular issued by the Orissa Government was held to be valid. Similar is the case, in "J.R. Clement Regis Vs. State of Tamilnadu" a judgment of the Madras High Court reported in 1993 (2) CLR 651.

Reservation of posts of, Enquiry and Reservation Clerks in Railways only for women was held justified by the Delhi High Court in "Charan Singh Vs. Union of India", (1979 LABIC 633), on the ground that malpractices in the reservation office would be reduced and substantial improvement effected if women were employed in the place of men. A similar provision was upheld by the Supreme Court in "Union of India Vs. K. P. Prabhakaran" 1997 Vol. 11 SCC 638.

EDUCATION

- *Free and compulsory education for children in the age group of 6 to 14 enshrined as a fundamental right and early childhood care and education included as a Directive Principle.*
- *Major gains made in female education - for the first time absolute number of female illiterates come down and rate of growth of female literacy outpaces that of male.*
- *Sarva Siksha Abhiyan launched to provide education to all*
- *Government reiterates its commitment to gradually increase allocation on education to 6% of GDP.*
- *40% of budget on education spent for girls and women.*
- *Schools Text books reviewed to remove gender bias and stereotypes.*

LABOUR AND EMPLOYMENT

- *Second Labour Commission makes important recommendations for protection of women workers in unorganised sectors.*
- *Umbrella legislation on social security for workers under formulation*
- *Amendment proposals of many discriminatory provisions in labour laws such as Factory Act etc.*
- *Important initiatives made to quantify the domestic, home based and casual work of women*
- *Programmes on training and skill development*

(CEDAW National Consultation)

Statutory Benefits in Favour of women
Right to Privacy

STATUTORY BENEFITS IN FAVOUR OF WOMEN / JUDICIAL ACTIVISM

The Maternity Benefit Act though provides for nursing breaks to feed the children, this is not being implemented.

Also for enabling the mother to nurse the baby, the NCW recommended that maternity leave of six months shall be given to women so that she can be at home and feed her baby for six months. If statutory bodies recommendations are not heeded by the States, the Courts have to step in. There are other laws governing conditions of work which contain special provisions for the welfare of women. Despite Legislation in this regard, the percolation of benefits in favour of women has not matched legislative intent. Much more needs to be done. Judicial activism, though Substantial, cannot be a substitute for Legislation in this regard.

Bhandua Women :

The Supreme Court in the case of "Bhandua Mukti Morcha Vs. Union of India (AIR 1984 SC 802)", while dealing with a public interest litigation relating to forced and bonded labour, issued guidelines for the benefit of workers in stone quarries which included directions to the Central Government and State Government to ensure that the provisions of the Maternity Act 1961, the Maternity Benefit (Mines and Circus) rules 1963 and the Mines, Creche rules 1966, wherever applicable in any particular stone quarry and stone crusher, are implemented by the mines lessees and the stone crusher owners.

In "Vikramdeo Singh Tomar Vs. State of Bihar, AIR 1988 SC 1782", inhuman living conditions of female inmates of Care Home at Patna came up for consideration. The Supreme Court held that the right to live with human dignity is a fundamental right of an Indian citizen and there is a need for maintaining establishments for the care of women and children who are castaways of an imperfect social order and for whom provision must be made for their protection and welfare. It was held to be incumbent upon the State, when assigning women and children to these establishments, to provide atleast the minimum conditions ensuring human dignity.

The Hon'ble Supreme Court in "Uttarakand Mahila Kalyana Parishad Vs. State of A.P." 1993 Supp. (1) SCC 480 held that where men and women are doing the same work, there was no reason to pay women less and to give them less avenues for promotion.

Daughter's Right vis a vis Son :

The circular of the Government of India, which entitled married daughter of a retiring official to be eligible to obtain Railway accommodation only if her retiring father had no son, came up for consideration before the Hon'ble Supreme Court in "Savitha Vs. Union of India", (1996 (2) SCC 280), and the Hon'ble Supreme Court, after a very apt quote - "son is a son until he gets a wife, a daughter is a daughter throughout her life", held the said circular to be wholly unfair, gender biased and unreasonable.

In a Judgment, reported in "THE HINDU" on 12.12.2000, the Madras High Court, while holding that women could not be excluded from employment in the Night Shift and such a provision in the Factories Act was unconstitutional and it violated Article 15 of the Constitution, framed guidelines for factories to follow for employee women in the night shift, especially to deter and penalize sexual harassment, provide transport and canteen facilities for women etc.

Right to Privacy:

A woman's right to privacy is inviolable. Unauthorized intrusion therein, is not only deplorable but is an insult both to Womanhood which we claim to respect and to the civilized society which we claim to belong to.

Challenge to the validity of section 9 of the Hindu Marriages Act, which provides for restitution of conjugal rights in "T. Sareetha Vs. Venkata Subbaiah" (AIR 1983 AP 356), was upheld by the A.P. High Court on the ground that the remedy was barbarous, savage and violated the right of privacy and human dignity guaranteed by Article 21 of the Constitution.

The High Court observed that "a decree for restitution of conjugal rights constitutes the grossest form of violation of an individual's right to privacy. It denies the woman her free choice, whether, when and how her body is to become the vehicle for procreating of another human being. The woman loses her control over her most intimate decisions and the legal right to privacy guaranteed by article 21 is flagrantly violated by a decree of restitution of conjugal rights".

This far reaching Judgment was however frowned upon by the Delhi High Court in "Harinder Kaur Vs. Harinder Singh" (AIR 1984 Delhi 66), wherein it was observed that "Constitutional law in the home is most inappropriate. It is like introducing a bull in a China Shop. It will prove to be a ruthless destroyer of the marriage institution and all that it stands for. In the privacy of the home and married life, neither Article 21 nor Article 14 should have any place".

The right to privacy for women was recognized by the Supreme Court and in the case of "State of Maharashtra Vs. Madhukar Narayan Mardikar" (AIR 1991 SC 207) it was held that even a woman of easy virtue is entitled to privacy and no one can invade her privacy as and when one like. So also it is not open to any and every person to violate her person as and when he wishes. She is entitled to protect her person if there is an attempt to violate it against her wish. She is equally entitled to the protection of law. (Mr. Justice Ahmadi's Judgment).

Decency & Dignity :

The right of women to be treated with decency was taken note of by the Supreme Court in the "State of Punjab Vs. Baldev Singh" (1999(6) SCC 172), wherein the Supreme Court held that even in cases where it is necessary to search a woman, the search shall be made by another woman, with strict regard to decency. Failure to do so may not only affect the credibility of the prosecution case, but may also be found violative of the basic right of a woman to be treated with decency and proper dignity.

Equality?
Mother's Right to Guardianship

EQUALITY? MOTHER RIGHT TO GUARDIANSHIP

All personal laws recognize the father as the natural guardian giving the mother only the right of custody. The mother becomes the guardian only after the father's death, or if she obtains a declaration that the father is unfit to be the guardian of the child. The mother is the sole natural guardian overriding the father if the child is illegitimate.

As per section 6 of the Hindu Minority and Guardianship Act, in case of married minor girl, her husband and mother becomes the guardian if the father is dead or has converted to a different religion or taken sanyas.

The Guardian and Wards Act - highly exhaustive having 51 sections dealing with minors person and property - is the substantive law that governs the appointment of guardians for all classes of Indians irrespective of their religion. Hindu Marriage and Guardianship Act is in addition to the provisions of Guradian and Wards Act.

Geeta Hariharan & Anor. Vs. Reserve Bank of India and & another writ Petition. 17th Feb. 1999. ILRI 353 (1999) 2 CHRLD 199 (1999) 2 SCC 228 (2000) 3 LRC 71.

Equality is the cherished spirit and content of the Indian Constitution. However neither the personal laws entitle women to be the legal guardians of their offspring, nor are the secular laws, if any delve on the same. Even the Guardian and Wards Act, though equally applicable to one and all irrespective of religion, caste or creed, 'sex' is glaringly omitted. A mother is not a natural guardian. But Geeta Hariharan's case has been looked at as a breakthrough in judicial history. A father cannot have a preferential right over the mother in matters of guardianship.

Mother may be child's guardian during father's lifetime, Supreme Court 17 Feb. 1999

(1999) 1 LRI 353, (1999) 2 CHRLD 199, (1999) 2 SCC 228: (2000) 3 LRC 71

The petitioners, a married couple, jointly applied to the respondent bank to open a deposit account in the name of their minor son. They expressly stated that they both agreed that the first petitioner (the mother) would act as their son's guardian for the purpose of the investments. The bank advised them either to produce the application form signed by the father or a certificate of guardianship from a competent authority in favour of the mother. The petitioners filed a writ petition under section 32 of the Constitution seeking, inter alia, a declaration that, by failing to recognize a woman's equal right to the guardianship of her children, section 6(a) of the Hindu Minority and Guardianship Act, 1956 and section 19(b) of the Guardian and Wards Act, 1890 amounted to sex discrimination in violation of the constitutional right to equality (Arts 14 and 15). Section 6 provides that the natural guardian

of a minor's person or property is... '(a) in the case of a boy or an unmarried girl the father, and after him, the mother...'. The expression 'natural guardian' is defined in section 4(c) as of the guardians mentioned in section 6. The term 'guardian' is defined in section 4(b) as a person having the care of the person or property of a minor, including a natural guardian. Section 19 provides: 'Nothing in this Chapter shall authorize the Court... to appoint and declare a guardian of the person:..(b) ... of a minor whose father is living and is not, in the opinion of the Court, unfit to be a guardian of the person of the minor'.

In disposing of the writ petition with directions, it was held that:

The Courts are primarily concentrated with the best interests of the child in determining disputes over custody and guardianship. A father may be replaced by the child's mother or any other suitable person by an order of court if the child's welfare requires it.

The word 'after' in section 6(a) need not necessarily mean 'after the death of the father'. It is well settled law that the Constitutional validity of legislation is to be presumed; section 6(a) would be unconstitutional and violate the gender equality guaranteed if it were given this construction. Given the context in which the word appears in section 6(a), it should give the meaning 'in the absence of', referring to the father's absence from the care of the child's property or person for any reason (Jijabai Vithalrao Gajrev Pathankhan & Ors (1970)2 SCC 717 (Ind SC) applied and Pannilal v Rajinder Singh & Anor (1993) 4 SCC 38 (Ind SC) distinguished). Section 19(b) should be construed in a similar manner.

This interpretation gives effect to the principles contained in the 1979 UN Convention on the Elimination of All Forms of Discrimination Against Women, ratified by India in June 1993, and the Beijing Declaration, which directs all state parties to take appropriate measures to prevent discrimination of all forms against women (Apparel Export Promotion Council v A K Chopra (India, Supreme Court, Civil Appeal No 226-227 of 1999, 20 Jan 1999, unreported); since reported in AIR 1999 SC 625 considered).



Marriage
Bigamy
Protection against divorce

Marriage

Prior to enactment of the Hindu Marriage Act, 1955, polygamy was one of the accepted practices among the Hindus. There was no limit on "the number of women, a Hindu man could marry. Widow remarriage was prohibited till reformers like Raja Ram Mohan Roy and Kandukuri Veeresalingam Pantulu made some bold attempts to introduce them. Child marriages were rampant inspite of sustained efforts by certain reformers. The Hindu Marriage Act, 1955 was the first of the codified Hindu Laws. It made elaborate provisions for Hindu Marriages such as Ceremony, Registration, Legitimacy of children, nullity of marriage, judicial separation, divorce, maintenance etc. By the Amendment Act 78 of 1976, Section 13-B was introduced, which provided for divorce by mutual consent. Marriage and auxiliary provisions thereto, in so far as Muslims, Christians and Parsis are concerned, were regulated by the Dissolution of Muslims Marriage Act, the Indian Divorce Act and the Parsis Marriage and Divorce Act respectively.

Lack of uniformity in the Law relating to judicial separation, divorce and nullity of marriage was noticed by the Hon'ble Supreme Court in "Jorden Diengdeh Vs. S.S. Chopra" (AIR 1985 SC 935), wherein the Supreme Court held, that the time had come for a complete reform of the law of marriage and to make a uniform law applicable to all people irrespective of religion or caste.

Bigamy

The present law restricts jurisdiction of the court to the place where the bigamous marriage was performed or where the husband and wife last resided. This causes difficulties to the wife who may have to move on after being abandoned by her husband. Therefore; the provisions of the Criminal Procedure relating to jurisdiction should be widened to include trial for bigamy in a court within whose jurisdiction the wife ordinarily resides.

Art. 44

Smt. Sarla Mudgal v. Union of India. 1995 AIR SCW 2326: AIR 1995 SC 1531: (1995) 3 SCC 635 Implementation of - Securing "uniform civil code" for citizens of India - Supreme Court requested Govt. of India through Prime Minister to have a fresh look at Art. 44.

Per Kuldip Singh, J: - the respective personal laws were permitted by the British to govern the matters relating to inheritance, marriages etc. only under the Regulations of 1781 framed by Warren Hastings. The Legislation - not religion - being the authority, under which personal law was permitted to operate and is continuing to operate, the same can be superseded, supplemented by introducing a uniform civil code. In this view of the matter no community can oppose the citizens in the territory of India. The Successive Governments till-date has been wholly remiss in their duty of implementing the constitutional mandate under Article 44. Therefore, Supreme Court requested the Government of India, through the Prime Minister of the country to have a fresh look at Article 44 of the Constitution of India and "endeavour to

secure for the citizens a uniform civil code throughout the territory of India." Per R.M. Sahai, J.: - Ours is a Secular Democratic Republic. Freedom of religion is the core of our culture. Even the slightest deviation shakes the social fibre. 'But religious practices, violative of human rights and dignity and sacerdotal suffocation of essentially civil and material freedoms, are not autonomy but oppression'. Therefore, a unified code is imperative both for protection of the oppressed and promotion of national unity and solidarity. But the first step should be to rationalize the personal law of the minorities to develop religious and cultural amity. The Government would be well advised to entrust the responsibility to the Law Commission which may in consultation with Minorities Commission examine the matter and bring about the comprehensive legislation in keeping with modern day concept of human rights for women. The government may also consider feasibility of appointing a Committee to enact Conversion of Religion Act, immediately, to check the abuse of religion by any person. The law may provide that a man should not have another wife unless he divorces his first wife. The provisions should be made applicable to every person whether he is a Hindu or a Muslim or a Christian or a Sikh or a Jain or a Buddhist. Provision may be made for maintenance and succession etc. also to avoid clash of interest after death.

This would go a long way to solve the problem and pave the way for a unified civil code.

Expression "Void" in S. 494-Scope - Second marriage of Hindu husband after his conversion to Islam - It is void marriage in terms of S. 494 - It is violative of justice, equity and good conscience - said marriage would also be in violation of principles of natural justice.

Conversion to Islam and marrying again would not by itself, dissolve the Hindu Marriage under the Act. The second marriage of Hindu husband after his conversion to Islam would, therefore, be in violation of the Act and as such void in terms of Section 494, I.P.C. Any Act which is in violation of mandatory provisions of law is per se void. And the apostate husband would be guilty of offence under S. 494, as all the four ingredients of S. 494, are satisfied in the case.

AIR 1977 Bom 272, Approved.

(1965) 1 All ER 812, Distinguished.

1 (2000) DMC 266 (FB) I P. Venkataramana Reddi, Krishna Saran Srivastava

A.P. Appeal No. 2066 of 1996 - decided on 27.7.98 - A. Abbayolla M Subba Reddy Vs. Padmamma (A.P.)

Hindu adoption and maintenance Act 1956 - maintenance - Bigamous relationship - marriage void: 2nd wife not entitled to maintenance - second marriage void when first wife is living.

Sec 18 (1) connotes only legally wedded wife of Hindu - such wife alone entitled to claim maintenance from husband - no intention of legislature in void marriage, bigamousship recognized maintenance.

Held under the provisions of H.M. Act, a second marriage contracted while the first marriage is subsisting is, 'void'. Further held that "The right of a Hindu wife for maintenance is an incident of the status of matrimony.

The claim of the respondent for maintenance whose marriage is void against the appellant is not maintained. The judgment and decree in the file of the principal subordinate judge Chittoor is set aside. The suit is dismissed.

Section 494 : Bigamy:

Ananda Dagadu Jadhav V. Rukminibai Ananda Jadhav. 1993 SCC (Cri) 868 (868, 869)
Bigamy - Quantum of sentence - Accused facing trial for more than 17 years - sentence of imprisonment for 5 years reduced to period already undergone and fine of Rs. 1500 enhanced to Rs. 3000 - Fine imposed against all accused directed to be paid to first wife as compensation.

Abetment of bigamy - Quantum of sentence - Sentence of imprisonment till rising of Court and Fine of Rs. 500 imposed by High Court - Supreme Court declined to interfere.

The Supreme Court further held that much misapprehension prevails about bigamy In Islam. To check the misuse many Islamic countries have codified the personal law, "wherein the practice of polygamy has been either totally prohibited or severely restricted. (Syria, Tunisia, Morocco, Pakistan, Iran, the Islamic Republics of the Soviet Union are some of the Muslim countries to be remembered in this context: But ours is a Secular Democratic Republic. Freedom of religion is the core of our culture. Even the slightest deviation shakes the social fibre. 'But religious practices, violative of human rights and dignity and sacerdotal suffocation of essentially civil and material freedoms, are not autonomy but oppression'. Therefore, a unified code is imperative both for protection of the oppressed and promotion of national unity and solidarity....."

Conversion of Hindu to Islam with a view to remarry during the subsistence of the earlier marriage was frowned upon by the Supreme Court in "Lily Thomas Vs. Union of India" (2000(6) SCC 224) wherein it was held that a person who mockingly adopts another religion where plurality of marriage is permitted so as to renounce the previous marriage and desert the wife, cannot be permitted to take advantage of his exploitation, as religion is not a commodity to be exploited.

Section 10 of the Indian Divorce Act, which provided different grounds for dissolution of marriage vis-a-vis men and women was held by a Full Bench of the A.P. High Court in "Youth Welfare Federation Vs. Union of India", (1996 (4) ALT 1138), to be inconsistent with Article 14 and 15 as there was no justification to differentiate between a Husband and his wife and to subject the wife to more onerous grounds to obtain divorce than the Husband. It is reported in "The Hindu" on 16.12.2000, that the Indian Divorce (Amendment) Bill 2000 was introduced in the Rajya Sabha on 15.12.2000. This bill, described as a comprehensive

legislation to govern marriages, divorce and other allied aspects of Christians brings about changes in Christian divorce law made on the basis or recommendations of the Law Commission and the National Commission for Women.

Protection Against Divorce:

To marry or not to marry and if so whom, may well be a private affair but the freedom to break a matrimonial tie is not. The society has a stake in the institution of marriage. There is no difference between the case of a man who intends to cease cohabitation and leaves his wife, and the case of a man who, with the same intention compels his wife, by his conduct, to leave him. The threat of divorce coupled with lack of an independent source of livelihood has often been the cause for women to bear the brunt of a tortuous married life. Judicial activism has to some extent ameliorated the helpless condition of women and has more often than not justifiably leaned in favour of women in proceedings of divorce.

AIR 1994 Supreme Court of India

(from Delhi High Court)

I.A. No.1 of 1993 in Civil appeal No. of 1987 dt. 19.11.1993 V Bhagat v. Mrs. D. Bhagat

Hindu Marriage Act 1955 Section 13(1) (ia) - Divorce sought because of mental cruelty- and petition by husband - ground of adultery by wife, a Vice-President in a Corporation. In her statement in writing said her husband and members of his family are lunatics - insanity runs through the family.

The Court held: Before parting with this case, it is necessary to append a clarification because there are allegations and counter allegations; a decree of divorce cannot be passed nor is mere delay in disposal of the case-proceedings by itself a ground. These are really some extraordinary features which warrant grant of divorce on the basis of pleadings (and other admitted material).

Held the petitioner for divorce H.M. Case No.1 of 1986 pending in the Delhi High Court is withdrawn to the file of this court and is allowed. The marriage between the parties is dissolved. In the circumstances the allegations levelled by the petitioner against the wife are held, "not proved" the honour and character of the respondent-wife stands vindicated.

There shall be no order as to costs. Petition allowed.

Right to Property
Widows Right to Property
*Right of Daughters and grand daughters/
unmarried/in property*
Intestate Succession to property by tribal women

Right to Property:

Property is one of the important endowments or natural assets to accord opportunity, source to develop personality, to be independent, thus effectuating the right of equal status and dignity of person to women.

In "Pratap Singh Vs. Union of India AIR 1985 SC page No. 1695", the Hon'ble Supreme Court repelled the challenge made to Sec. 14(1) of the Hindu Succession Act, which provided that any property possessed by a female Hindu, whether acquired before or after the commencement of the Act, shall be held by her as a full owner and not as a Limited Owner. The challenge to the validity of Sec. 14 (1) was on the ground that the said section favoured Hindu women, on the ground of sex, to the prejudice of male members of the Hindu community. The Supreme Court held that Sec. 14(1) was enacted to remedy to some extent the plight of Hindu women and that there was hardly any justification for the men belonging to the Hindu Community to raise any objection to the beneficent provisions contained in Sec. 14 (1) on the ground of hostile discrimination, since the said section was protected by the express provisions contained in clause (3) of Article 15 of the Constitution and was a special provision enacted for the benefit of Hindu women. The ambit and scope of Section 14(1) of the Hindu Succession Act was considered by the Supreme Court and its beneficial effect in further empowering women was taken due note of in "Jagannathan Pillai Vs. Kunjithapadam Pillai" (AIR 1987 SC 1493), "Thotasesha Rathamma Vs. Thota Manikyamma (1991(4) SCC 312), "C. Masilamani Muddaliar Vs. Idol of Sri Swaminathaswami" (AIR 1996 SC 1697), and "Velamuri Venkata Siva Prasad Vs. Kothuri Venkateswarlu" (2000 (2) SCC 139).

Judicial emphasis of Gender equality as the prime consideration in interpretation of statutes conferring property rights on women, has encouraged legislation in this regard. The Andhra Pradesh Legislature adopted a Bill on 24.9.1985 to confer equal right to property on Hindu women. A new Chapter II-A was inserted into the Hindu Succession Act consisting of Sections 29-A, 29-8 and 29-C. Section 29-A stipulates that in a joint family governed by the Mitakshara law the daughter shall by birth become a coparcener in her own right and have the same rights in the coparcenary property as she would have had if she had been a son. It makes the daughter's right to ancestral property direct and absolute. Section 29-B provides for the devolution of such interest by survivorship. Section 29-C gives preferential right to acquire property in certain cases.

The impact of this amendment has been far-reaching. It has had its share of critics who believe that this is the beginning of the end of the Joint family system which has been the bedrock of Hindu Civilization for centuries. The Supreme Court paved way for other courts to follow it as a precedent while deciding cases of women's right to property.

Comment: The men never wanted to part with property in favour of women as they normally would hold on to political power which even reluctantly and that they are not willing to share.

If only equal rights to property with that of the boys are given to girls, the dowry extortion leading to dowry death can be totally avoided and eliminated as also child marriages, to a large extent, sale of girls etc.

Property Rights of Women/Widows :

Another important area of concern for the judiciary relates to property rights of women. The two important laws have transformed the Hindu women's right to inherited family property. One is Hindu Women's Right to Property Act 1937 and the Hindu Succession Act, 1956.

Kotturu Swami Vs. Setra Verrawa, a Hindu widow who was wrongfully dispossessed filed a suit for possession in March 1956 before the passing of the Hindu Succession Act 1956. The Court said that on coming into force of the said Act, she must be regarded as a female Hindu who possessed the property for the purposes of section 14 and so she became a full owner of it.

The Supreme Court has almost flexed quite far to interpret the section 14 as also the Hindu female's other situational status to her advantage. If not for such a liberal interpretation most of the widows would have been deprived of their right to inheritance of what is there due.

The famous Mary Roy's case (1986) (2) SCC 209, where the Supreme Court held that the Indian Succession Act will apply to the Christians of Kerala after the integration of states. Christian women, the Court said, cannot be given a lesser share in inheritance under the old state law.

Remarriage by Hindu widow

Hindu Marriage Act 1955-Section - 24 Remarriage by Hindu widow effect to succeed late husband's property well settled that succession never remains in abeyance; widows right to succeed does not stand forfeited on her remarriage at a later date - whether correct? (yes)

II (1995) DMC 326

Bombay High Court

Babu Rao Parashuram Ukharde & Ors. - Appellants

Vs.

Smt. Laxmibai & Ors. - Respondents

Hindu Marriage Act 1955. Section 7 (1) ceremonies for Hindu marriage - Gandharva form of marriage between parties belonging to Maratha Community - Performance of Ceremonies like Laganhome, saptapadi etc., not necessary in case of Gandharva marriage.

Widows Right to Property (Contd.)

The double discrimination suffered by widows in India have left many to destitution and vulnerability to abuse. Specially in cases of property, which even if willed to the surviving

widow has been challenged. The lot of widows in Brindavan tell us a story of desertion, fraud deprivation of their right to shelter and property and who are left in a state of social ostracism and stigma. The governmental policies for social justice and empowerment are not able to change the attitudes of people including the field workers and officials. Unless radical changes are thrust on society, the hope appears far remote. In such a situation the judgment of the Supreme Court in the case of Maslamani Mudaliar & Ors. Vs. Idol of Sri Swaminathaswami Thirukoil & Ors brings fresh air in the desert lives of widows :

Widow entitled to full ownership of property

Supreme Court 14 July 1998

AIR 1998 SC 2401; (1998) 2 CHRLD 451

S, a Hindu man who died in 1946, bequeathed the 'right, control and ownership' of his property to his wife D, for whom he was obliged to provide maintenance, for her lifetime. His will was challenged by the respondents (cousins of the deceased) and a compromise decree was drawn up to the effect that his property should remain in D's 'ownership and possession' during her lifetime. After D died in 1969, the respondents filed a suit for possession of the property on the grounds that D had only limited rights to the property and had never had full ownership of it within the meaning of Section 14(1) of the Hindu Succession Act 1956 (the 1956 Act). Section 14(1).

Hindu Succession Act 1956 made drastic changes in the structure of Hindu law of inheritance and succession by removing traditional limitations on the powers of a Hindu widow to deal with her husband's property in her possession, in lieu of her right to maintenance and by granting her absolute ownership rather than limited rights.

**C. Masilamani Mudaliar & Ors V Idol of Sri Swaminathaswami Thirukoil & Ors
Equality Property Women**

Widow entitled to full ownership of property left to provide maintenance

Supreme Court 30 Jan 1996

(1996) 8 SCC 525; AIR 1996 SC 1697; (1996) 3 CHRLD 320

A Hindu man bequeathed certain property to his wife S and his cousin's widow J, for whom he was duty - bound to provide maintenance. The property was to be shared equally by S and J but not sold during their lifetimes. His will further provided that, should one pre-decease the other, the survivor would have the right to enjoy the property 'in its entirety' and that it should be held in trust for religious and charitable purposes after the death of both of them. After J died, a power of attorney holder appointed by S arranged for the property to be sold to the respondents. This was challenged by beneficiaries of the trust.

**RIGHT OF DAUGHTERS AND GRAND DAUGHTERS TO OWN LAND V S Govindasamy (deceased)
by LRs & Ors V Director of Land Reforms, Madras & Ors
Property women
Unmarried daughters and granddaughters capable of owning land
Supreme Court 12 Feb. 1998
(1998) AIR SC 1005**

Under the Tamil Nadu Land Reforms Act 17 of 1970, Section 5 (1) the ceiling for land holdings is 15 standard acres for a 'family'. Under Section 3 (14), family includes unmarried daughters or grand daughters although, under Explanation II to the section. In the case of persons governed by Hindu law, 'unmarried daughters' and 'unmarried grand daughters' shall not include those in whose favour land has been voluntarily transferred by parents or grandparents.

Under Explanation II, unmarried daughters and grand daughters in whose favour land has been transferred by parents or grand parents on account of natural love and affection or in whose favour a preliminary decree for partition has been passed subject to conditions are not considered unmarried daughters or granddaughters for the purposes of the Act. as recipient of her grandfather's lands, falls into this exception. Thus, her land holdings are not part of her father's family lands. Lands gifted to an unmarried granddaughter cannot be included in holdings of her family. She has to be treated as a separate 'person', holding the lands as full owner and the holdings of G's family are to be re-determined exclusive of the lands gifted to her. The appeal is allowed.

**Madhu Kishwar & Ors V State of Bihar & Ors; Juliana Lakra v State of Bihar
Equality : Property : Women's Work
Women's rights to life and livelihood adversely affected by succession laws favouring men
Supreme Court 17 Apr 1996
Kuldip Singh Punchhi J, K Ramaswamy J
(1996) 5 SCC 125; AIR 1996 SC 1864; (1996) 3 CHRLD 322**

Sections 7, 8 and 76 of the Chotanagpur Tenancy Act 1908 (Bihar) provided that, for members of 'Scheduled Tribes', intestate succession to property favours the male line. This was challenged as a violation of various Constitutional Rights including equality before the law, non discrimination and the right to life (Arts 14,15 and 21 respectively).

In suspending the effect of the impugned provisions it was held that:

- The customs of tribal peoples are many and varied and a court should not lightly superimpose on them the values of the Constitution.
- It is not appropriate in the abstract to declare particular customs of tribal peoples to be inconsistent with the Constitution. Each custom needs to be examined in the light of all the circumstances of the case.

- The inheritance and succession provisions do not deal directly with rights to land, but rather, with classes of tenants.
- There is no justification for implying as a matter of statutory interpretation that the male-specific references in the challenged provisions should be construed as referring to both men and women but it is not appropriate to strike down the provisions as violating Arts 14 and 15.
- The right to life (Art 21) also incorporates the right to livelihood and any person deprived of the latter can complain of a breach of the former.
- The impugned provisions strip the dependent family females of their interests in the land in favour of males from both inside and outside the family. Upon the death of a male with rights to land, therefore, the females' right to livelihood is removed.
- The combined effect of the impugned provisions of the Act is suspended 'so long as the right of livelihood of the female descendants of the last male holder remains valid and in vogue'; that is, until they choose other means of livelihood by abandoning the land or releasing their rights to it.
- The State of Bihar is directed to 'comprehensively examine' the issue of male preference in succession under the Act and to examine recommending to the national Government the removal of similar provisions in the Hindu Succession Act and the Indian Succession Act insofar as they affect the Scheduled Tribes of Bihar.

Dissent:

- India is a signatory to the United Nations General Assembly's Declaration on the Right to Development and has ratified the Convention on the Elimination of All Forms of Discrimination Against Women, both of which are enforceable in India pursuant to the Protection of Human Rights Act 1993.
- The state is responsible for the promotion, protection and implementation of the equality, anti-discrimination and right to work occupation provisions in these international instruments. It should also facilitate women realizing the right to economic development and social and cultural rights.
- The law must be flexible and adaptable in order to meet the needs of a changing society. Customs inconsistent with the fundamental rights guaranteed by the Constitution cannot remain.
- The wording of the impugned provisions of the Act must be read down and interpreted so that references to the male sex include the female sex.
- Women of the Scheduled Tribes are entitled, therefore, to succeed to the estate of a father, husband or brother in equal share with the male heir(s).

Dowry Prohibition
Offences against women trafficking in human being

Dowry Prohibition:

The practice of dowry has emerged as a major social evil in contemporary India. In early days the idea behind giving dowry to girls at the time of marriage was to provide them with some financial security at the time of need. This custom, which had its origins in sublime sentiments, has now become a curse. The disconcerting aspect of the problem is that higher education and economic stability of young men, instead of serving to reduce the problem, seems to have aggravated it. The educated section shamelessly contribute to its perpetuation by demanding higher amounts or costly articles as dowry as of right. Here the offence has taken the garb of an inalienable right of the groom's family. This evil practice has slowly started spreading to other religious groups like Christians and Muslims also. The Dowry Prohibition Act, 1961 was enacted to provide an effective check to dowry deaths which were continuing despite the then prevailing laws. Its object was to prohibit the evil practice of giving and taking dowry. Since this objective was not achieved, drastic amendments were brought in by amending various provisions of the 1961 Act and the related provisions under the Indian Penal Code and the Evidence Act. The earlier definition of "dowry", which was limited to the time at on or before the marriage, was extended to the period even after the marriage under Act 43 of 1986. Similarly sections 304-B and section 498-A were introduced into the Indian Penal Code. Various other amendments were brought in bringing more stringent provisions in order to stop the onslaught on the life of the married woman.

The evil effects of dowry, bride burning and other offences and the ineffectiveness of legislative measures to curb this evil has been taken due note of by the Judiciary. In "S. Gopal Reddy Vs. State of A.P.". (AIR 1996 SC 2184) the Hon'ble Supreme Court held that the "Dowry Prohibition Act is a piece of social legislation which aims to check the growing menace of the social evil of dowry and that purposive approach for interpreting the act is necessary. The alarming increase in cases relating to harassment, torture, abetted suicides and dowry deaths of young innocent brides has always sent shockwaves to the civilized society, but unfortunately the evil has continued unabated. Awakening of the collective consciousness is the need of the day. Change of heart and attitude is needed. A wider social movement not only of educating women of their rights, but also of the men folk to respect and recognize the basic human values is essentially needed to bury this pernicious social evil. The role of the courts under the circumstances, assumes a great importance. The courts are expected to deal with such cases in a realistic manner so as to further the objectives of the legislation. This disease, which has now assumed cancerous growth, needs to be eradicated with firm determination." It is suggested that the enforcement of reformistic laws like Dowry Prohibition Act, the Child Marriage Restrain Act, should be entrusted to a separate administration with which social workers and enlightened members of the community should be associated. NCW recommended that the party that demands dowry should be punished and the giver, who is forced to give, must be spared atleast to complain for a fixed number of years until things improve. Hardly there are cases of dowry extortion since not one party is free to complain. And the Act is hardly and not fully implemented.

OFFENCES AGAINST WOMEN: TRAFFICKING IN HUMAN BEINGS

Trafficking in human beings and sexual exploitation of innocent and helpless women has been continuing for centuries. In India, prostitution was traditionalized and entire communities were forced to continue this abhorrent trade. On the strength of Article 23(1), which prevents traffic in human beings, the Suppression of Immoral Traffic Act, 1956, (renamed as the Immoral Traffic (Prevention) Act, 1956), was enacted which aims at abolishing the practice of prostitution and other forms of trafficking. This Act was made pursuant to the International Convention signed in New York on 9th May, 1950 for the prevention of immoral traffic and the number of UN Declarations on the issue. The Andhra Pradesh Legislature enacted the Devadasis (Prohibition of Dedication) Act, 1988 to prohibit the practice of dedicating women as Devadasis to Hindu deities, idols and temples etc. Indian government was instrumental in drafting the SAARC convention against Trafficking of women & children.

The Immoral Traffic Prevention Act merely seeks to prevent commercialized prostitution or to punish those who live on the earnings of prostitutes or exploit them. The Act does not consider aspects pertaining to health of the prostitutes. Because of its limited scope, the Bombay High Court (AIR 1990 355) in a judgement, upheld Goa legislation that empowered a Health officer to hospitalize a patient suffering from infectious disease if that person was without lodgings or without medical supervision, or living in a place where more than one family lives, or her presence was dangerous to her neighbourhood. The legislature also gave powers to the govt. to isolate the persons suffering from HIV positive; the courts were giving a right of representation. The order of the court observed: "The court will be too ill equipped to doubt the correctness of legislative wisdom, even if there is doubt about the correctness of a policy decision. But such power has to be very cautiously exercised, the field of exercise; being very limited".

There is hardly any case of conviction of traffickers while the number of trafficked girls and women are swelling into unlimited numbers. The torture that minor girls go through and their state of helplessness demand answers and solutions from the Civil Society, the Government and the Judiciary. This has become a lucrative business corroding the very fibre of society and the victim's health and her right to life and dignity.

The Chief Justice of Bombay High Court giving orders for raids to retrieve minors trapped in Bombay brothels categorically said that it was not his responsibility to organize rehabilitative measures for them; a similar response came from the police too. There was no preparedness shown by the Executive Departments to grapple with the problem of rehabilitation of the rescued girls.

In 'Vishal Jeeth Vs. Union of India' (AIR 1990 SC 1412), which was a public interest Writ Petition filed for putting an end to the Devadasi and Jogin traditions which flourished in some parts of the country, the Supreme Court, after tracing various Constitutional and Statutory

provisions, expressed its concern that inspite of stringent and rehabilitative provisions of law under various acts, the desired results had not been achieved. Remarkable degree of ignorance or callousness or culpable indifference is manifested in uprooting this cancerous growth. Various guidelines were issued including measures to be taken to curb child prostitution, provision for social welfare programmes, and provision for adequate rehabilitative homes etc.

Even more tragic and unfortunate is the case of rape victims wherein the victim becomes the target of social ostracism and the offender, more often than not, goes scot free. Judicial activism, in this area, has largely been instrumental in moulding public opinion. Sensitivity in faovur of the victim and no mercy to the offender is the repeated reminder of the Constitutional courts in "State of Punjab Vs. Gurmeet Singh" (1996(2) see 384), "State of A.P. Vs. Gangula Satya Murthy" (AIR 1997 se 1588), "State of Maharashtra Vs. Priya Sharan Maharaj" (AIR 1997 SC 2041), "State of Karnataka Vs. Krishnappa" (2000(4) SCC 75), and "State of Rajasthan Vs. N.K." (2000(5) scc 30).

The need to monetarily compensate victims against tortuous acts of Govt. employees was taken note of by the Supreme Court in the case of Chairman, Railway Board Vs. Chandrimadas (2000 (2) - SCC - 465). While dealing with the case of a foreign woman being raped by certain railway employees, the supreme Court held that if any employee of the Central Government commits acts of tort, the Union Government, of which they are the employees, can, subject to other legal requirements being satisfied, be held vicariously liable for damages to the persons wronged by these employees. The Supreme Court confirmed the compensation of Rs. 10 lakhs awarded by the Calcutta High Court as compensation to the Bangladeshi even through a foreign national.

The 11th SAARC Summit, held in January 2002 in Kathmandu, adopted two significant conventions, the convntion on Prevention and Combating Trafficking in Women and Children for Prostitution, and the Convention on Regional Arrangements for the Promotion of the Welfare of Children. The adoption of these conventions is expected to be instrumental in checking trans-border trafficking for the purpose of prostitution, and improving the overall status of children in the region. The conventions are also aimed at the repatriation and rehabilitation of victims of trafficking, and the prevention of women and children's involvement in international prostitution networks.

(UNIFEM)

Rape Laws
Judicial Response
Offences against women
Insufficient indicators used by courts
Trial in Camera

RAPE LAWS / JUDICIAL RESPONSE

“A socially sensitised judge was a better statutory armour against gender outrage than long clauses of complex section”.

With the crime graph continuing to rise up and up, the women’s movement and the government started scrutinizing where the laws failed? Is it the law per se as is drafted and enacted contain ambiguities and lacunae or the rules of procedure thwarted their application? Both the lacunae in the laws and the overpowering technicalities were identified. Any amendments to be made to laws, small or big, demanded the legislature’s initiative and acquiescence. After protracted deliberations, arguments for and against, the amendments to change the laws were initiated. The pressure exerted by the women and the public outcry against the Mathura gang rape case acquittal by the Supreme Court were instrumental in bringing about wide ranging amendments to the Indian Penal Code, the Criminal Procedure Code and the Evidence Act. Section 375 of IPC defined ‘rape’ as, when a man is said to commit rape, who except in the cases: i] against her will, ii] without her consent, iii]. With her consent, putting her or any person she is interested in fear of death, iv] when at the time of giving such consent by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent, v] with or without her consent, when she is under 16 years of age. Explanation: Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Section 376: Punishment for rape- to not less than seven years but which may be for life or for a term which shall not be less than seven years.

Section: 376A. intercourse by a man with his wife during separation.

Section:376B: intercourse by public servant with woman in his custody misusing his official position.

Section: 376C: intercourse by superintendent of jail, remand home etc.

Section:376D: intercourse by any member of the management or staff of a hospital with any woman in the hospital.

Even with stringent punishment, hardly any substantive improvement took place at the ground level. The rate of conviction of the offenders in rape cases has dipped low significantly in the post reform years. The insensitivity of the criminal justice administration, primarily the police did not show any major change; the victims continued to suffer nonetheless. In the case of the State of Punjab vs. Gurmit Singh and others (AIR 1996 SC 1393) the charge was of abduction and rape of a sixteen year old girl; the Trial court acquitted the accused. The Supreme court observed against the trial court for disbelieving the prosecutrix and quite

uncharitably branded the girl as one of loose morals. What shocked our judicial conscience more was the inference drawn by the trial court basing its judgment on no evidence and not even on a denied suggestion to that effect. After convicting the accused, the Supreme Court observed that matters of this nature must be dealt with sensitivity. The Judge held "a murder destroys the physical body of the victim, a rapist degrades the very soul".

"The track record of India's judicial system in dispensing justice in rape cases has been anything but exemplary" To reiterate this statement, the five accused having gang raped a saathin Bhanvari Devi of Rajasthan working with the women's development programme and struggling hard to prevent child marriages in Bhatari village during Aakha Teej period did not receive justice from the courts. The accused were acquitted on the plea that they were elderly people and of social standing belonging to higher castes etc. This judgment was not only preposterous but biased and senseless. Here in this case, the rape was committed to punish and to demoralize the saathin and with a view to ostracize her in the community. Rape is being used for various reasons, to denigrate the woman in public and to grab her land or property and to make her servile for the whole life. It is the show of male power both feudal and patriarchal in nature. The regrettable part is that the judiciary at the lower levels have not imbibed the spirit and wisdom of the apex court judges (Supreme Court).

India is a signatory to the UN Convention on the elimination of all forms of discrimination against Women and the, Universal Declaration of Human Rights. However, the feudal mindset of the lower court judges have been static and totally unmindful of the changes in our policies and commitments.

Comment: It is here that the Supreme Court and the High Courts not merely reverse the judgments of the lower courts, but can take suo motu notice of erring decisions and transfer the case files to the Supreme Court and pass judicious orders. Number of cases can be quoted to see how the judicial mind works:

1. **Custodial Rape** : Nathu Ram v. State of Haryana, 1994 AIR SCW 417 (420) 1993 (3) SCJ 672: An Illiterate taking his daughter-in-law for treatment to a clinic doctor who told him that he would cure her with the help of his Guru (the accused) and gave her some tablets. He called his guru and in his presence the patient was asked to lie down inside the curtain space. The old man was asked to fetch some hot water. When the man returned, he found the doctor and the alleged guru in their knickers and the patient was lying unconscious with her clothes folded. In this case "it was held that, it is the apparel that proclaims'. Is it custodial rape and misuse of his professional license as a doctor? Supreme Court can not merely punish the accused but give directives to the government for appointment of a lady doctor in his place. Doctors in village clinics in the country have been exploiting innocent and ignorant persons, particularly women and girls. The victim has a right to compensation and the accused should be severely punished.

2. **Right approach by Court** : State of A.P. Vs. P. Narsimha 1994 AIR SCW 2354 [2355] 1994 [2] crimes 263. : Rape: non-disclosure of sexual assault when she met the prosecution witness – held, can be out of fear of reprisal or for protecting her image. Accused held guilty of offence under S. 376 and imprisonment already undergone for three years. and is inflicted as punishment in interest of justice.
3. **Interim Compensation** : Rathinam vs. state of Gujarat 1994 SCC (Cri) 1163 (1164-1165) Custodial rape - unsatisfactory explanation of State government as to the causes of delay in enquiry-State government directed to proceed with enquiries subject only to any stay granted by court or tribunal-further directions to get the stay vacated-interim compensation of Rs. 50,000 awarded to victim, a tribal woman.
4. **Rarest of rare cases** : Murder and rape: 1994 Cal Cri. Lr. 35 (SC) Circumstantial evidence-motive proved. Testimony of independent witnesses relating to presence of accused at place of occurrence-reliable. Recovery of stolen articles-guilt established beyond doubt-conviction under Ss. 302, 376 and 380- 'rarest of rare cases' -death sentence upheld.
5. **Capital Punishment** : Laxman Naik Vs. State of Orissa. 1995 AIR SCW 2057 AIR 1995 SC 1387 [1994] 2 Chad Cri C 104 [SC] Rape and murder accused committing rape on his brother's daughter aged seven years and then killing her-cold-blooded and brutal crime-capital punishment awarded because of the gravity of the crime.
6. **Timely Evidence** : Prosecutrix 14 years old, at the time of commission of crime of rape. FIR lodged by her at earliest possible time. Ku. Narayanamma vs. state of Karnataka 1994 (3) Cri LR. [SC] 223 [225]-medical evidence and of independent witness whom the victim met immediately after the occurrence. -offence of rape made out.
7. **Sensitive Court** : State of U.P. Vs. Babulnath [1994] 31 Cri C 761 [764] [SC] Rape : sole eye witness and corroborated by medical evidence. -evidence of eye witness cannot be said to be unreliable only because his statement is not consistent with report lodged by him. In every individual case the decision is made as per the judge's own reasoning.

Offences against women:

1994 AIR SCW 844: AIR 1994 SC 1418: 1994 Cri LJ 2104.

Offences against women - Requirement of proof beyond reasonable doubt - Not altered by introduction of S. 498 A. The evidence still plays a crucial role in the trial and punishment.

Lack of Evidence : 1995 AIR SCW 3721. Cruelty to wife - Accused alleged to have demanded dowry and treated deceased with cruelty leading to suicide - No evidence showing deceased was harassed within meaning of Explanation (b) of Section 498-A - Offence of cruelty not made out.

Outraging Modesty

1995 AIR SCW 4100.

Justice by Supreme Court : Outraging of modesty of lady L.A.S. Officer - Allegations against top police official in FIR making out offences under Sections 354,509, IPC-Offence not trivial- Section 95m IPC not attracted - Quashing of FIR and complaint - Illegal.

Criminal Assault

(Jem) Pramodh Singh v. State of Jammu and Kashmir. 1995 AIR SCW 3064.

Prosecutrix evidence welcome : Criminal assault on woman - Proof - Prosecutrix a school going girl aged nine years - Her evidence fully corroborated by evidence of her father and other evidence - No explanation by accused as to why a young child and her father would implicate him falsely - Held, conviction of accused was well based.

Insensitive Court : State of Karnataka vs. Sureshababu Puk Raj Porral. 1994 AIR SCW 1026 (1029,1030): AIR 1994 SC 966: 1994 Cri LJ 1216: 1933 (3) Crimes 600. Rape - Victim alleged to be below 16 years - Evidence regarding age, not very convincing - Statement of victim before Police as well as during cross examination that accused did something to her which he ought not to have done - What exactly accused did, could not be elicited - No other evidence to corroborate her testimony -It cannot be inferred that accused had intercourse with her. The Court has not realised the reservation by the girl not to repeat what was done to her. In most rape cases, the victims are subjected to relive the unfortunate incident, the crime of rape. The Courts need to be sensitive in understanding the minor's predicament.

Comment: This is a case short of rape but in no way less than outraging her modesty and using, 'criminal force'. In cases of this nature where the accused could not succeed in his full intentions cannot be absolved of the crime. The inter-connectedness of various stages of attempt to and rape per se have to be looked into in totality.

Insufficient indicators used by Court : Ram Nivas vs. State of Karnataka. 1994 SCC (Cri) Q03 (504). Rape - Prosecutrix, a married sweeperess in a Company - Veracity of her version - Allegations against Manager of having raped her - Prosecutrix alleged to have cried and wriggled out - Neither any injury found on her body nor on accused - Medical evidence not corroborating her version by opinioning that no spermatozoa found in smear and no injury was noticed on her body - Version of Prosexcutrix - Found highly untrustworthy - Accused, acquitted, Judgment of Karantaka High Court - Reversed.

Comment: The poor sweeper, the smallest human in the social hierarchy could not get justice - only because the Prosecution case was for rape and not for other offences. This lacunae in the very construction of offences meticulously separating one from the other cannot lead the Court to view or judge in a comprehensive manner. Hence the idea proposed by NCW to go in for codification of criminal laws pertaining to women was not looked at with the seriousness, that it deserves.

Unjust discretion : Raju v. State of Karnataka. 1993 AIR SCW 3669 (3674, 3675).

Rape - Sentence - Prosecutrix placing reliance on unknown young persons and staying with them in hotel room - Medical evidence supporting her testimony as to commission of rape - Conviction of accused was proper - However, considering young age of accused and circumstances under which they could not overcome fit of passion and committed fact of rape that incident took place long back, the sentence reduced to three years R.I.

Comment: The judgement of the Court has been in favour of the accused, who were in their early 20s/30s and the compassion of the Court towards the accused sound totally misplaced. The victim is nowhere in this criminal justice. She was left high and dry without justice.

State of Himachal Pradesh v. Raghubir Singh. 1993 All WC 1715 (1717, 1719) (SC).

Right Conviction : Rape of girl child - Proof - Clear, cogent and specific statement of prosecutrix - Corroborated evidence of witnesses and medical evidence - Offence duly proved - order of acquittal by High Court found to be biased - Accused held guilty of committing offence of rape.

Dhananjay Chatterjee alias Dhana v. State of West Bengal, 1994 Cal Cri LR 35 (SC) 21.1995 AIR SCW 510.

Cconviction & death penalty : Rape - Conviction - Security guard of apartment, Raping and murdering a resident girl of apartment - Motive, transfer of guard on complaint of victim girl - Presence of accused at place of occurrence, proved - Accused absconding after incident - Accused liable to conviction under Section 376.

Death sentence - Cold-blooded preplanned brutal murder after committing rape on young girl of 14 years by security guard - Case is the "rarest of a rare cases" - Death sentence upheld.

Defective investigation leading to injustice : Karnel Singh v. State of M.P. 1995 AIR SCW 3644: (1995) 5 SCC 518: 1995 SCC (CRI) 977: (1995) 6 JT (SC) 437.

Offence of rape - Appreciation of evidence - Defective investigation - Loopholes in investigation left designedly to help accused at the cost of poor prosecutrix, a labourer - Acquitting accused on that ground - Not justified - It would be adding insult to injury - Justice appears to be tilting towards the rich versus poor.

The following are numerous cases of rape wherein sentencing policy have not been the same. The Courts have been stringent and lenient depending on the facts of the case and the discretion of the judges.

Delay in FIR No. bar : Offence of rape - Complaint lodged less than promptly - Delay in lodging complaints in such cases in India does not raise inference that complaint was false - Reluctance to go to police is because of society's attitude towards such women victims.

Rape - Appreciation of evidence - Evidence of prosecutrix need not be tested with same amount of suspicion as that of accomplice - Rule of prudence that her evidence must be corroborated in material particulars has no application - At the most Court may look for some evidence which lends assurance.

AIR 1990 SC 6581 Foil.

Evidence of prosecutrix not to be suspected : Rape - Proof - Prosecutrix, stating that she was poor labourer, and was working in factory where offence was committed, since last few days only, the accused and co-accused taking advantage of a situation drove another person present, to fetch tea and accused violated her person - Found semen on petticoat and in vagina - That lends assurance to story narrated by prosecutrix - Absence of injuries - Prosecutrix explaining by it stating that she was laid on minute sand - Only explanation was by suggestion that prosecutrix was falsely implicating in order to grab money - Court felt that taking on overall view, it was safe to place reliance on testimony of prosecutrix.

Comment: In spite of medical evidence, still the Court was apprehensive on what grounds is any body's guess. When medical evidence is fool proof where is the room for not relying on the prosecutrix's evidence.

Isn't medical evidence foolproof : Dagdulal v. State of Madh. Pra. 1995 AIR SCW 3104.

Rape - Appeal against conviction - Testimony of prosecutrix that accused was one who committed rape on her believed by lower Courts - Medical evidence not inconsistent with version of prosecutrix- No interference in appeal.

Medical Evidence not inconsistent : Ram Kumar vs. State of Himachal Pradesh. 1995 AIR SCW 3065: AIR 1995 SC 1965.

Custodial rape - Reliable evidence of prosecutrix - Supported by evidence of her husband and evidence of local people who had seen prosecutrix being led to police station by accused constable - Conviction upheld.

State of Andhra Pradesh vs. Bodem Sundara Rao. 1995 AIR SCW/4435: (1995) 7 JT (SC) 90. Rape - Offence established - Conviction - Reduction of sentence by High Court in appeal - Prosecution evidence cogent, reliable and trustworthy - Conviction well founded - Court held :- Reduction in sentence less than prescribed minimum under Section 376, without assigning any special or adequate reason is not justified.

Rape - Sentence - Enhancement of - Heinous crime of committing rape on a helpless young girl of 13/14 years of age - no extenuating or mitigating circumstances available justifying imposition of sentence less than minimum prescribed under Section 376 - Sentence of 4 years's R.I. enhanced to 7 year's R.I.

Jagannivsan vs. State of Kerala. 1995 AIR SCW 3012: 1995 SCC (Cri) 826.

Rape - Prosecution alleged that after sex act, the prosecutrix went to dancing performance- Narrated to her mother after six days that she was subjected to rape or that sexual intercourse was committed without her consent -In fact and circumstances, benefit of doubt could be extended to the accused.

Comment: Of course there is room for relying in the prosecutrix story also because she could be trying to pretend that nothing happened to her - in order to keep up her image in society.

Nagarajan vs. State of Tamil nadu. 1995 AIR SCW 2982: AIR 1995 SC 1926.

Rape - Conviction - Circumstantial evidence - On forcible opening of door of room by police accused and victim found in room - Disinterested witness, present at the spot - Commission of rape, proved by medical evidence - Guilty mind of accused, reflected from his conduct - Circumstances irresistibly pointing at accused - Conviction upheld.

Babnath vs. State of Tripura, 1999 CRI LJ. 607

Attempt to commit rape - Proof - Accused to have entered into hut of prosecutrix and gagged her mouth and raped her - Testimony of prosecutrix supported by witness to whom she reported after incident - FIR specifically naming accused immediately - No question of doubt as to identity, as accused was her next door neighbour - Rape proved - Conviction of Section 376 altered to one under Section 511.

Dilip alias Alamzeb Shantilal Thakkar v. State of Gujarat. 1999 CRI. L.J. 704

Rape - Sole testimony of prosecutrix - No external injury on body of prosecutrix - Accused had posed themselves as police personnel and victims were demoralized thereby - Version of prosecutrix consistent with FIR lodged by her - Her evidence clear, cogent convincing and corroborated with evidence of other witness - Accused identified in identification parade- No motive or enmity to falsely implicate accused - Conviction of accused, proper.

M.C. Prasannan Vs. State. 1999 CRI. L.J. 998

Age of Prosicutrix not known - Hence no conviction : Rape - Proof - Accused, a class teacher of prosecturix alleged to have committed rape on promise to marry her - FIR lodged after three months of alleged incident and only after pregnancy was shown - Is doubtful and suspicious - Evidence showing that victim willingly and with full consent had sexual intercourse with accused - No corroborative evidence to effect that victim was a minor at time of incident - Accused entitled to benefit of doubt.

Rape of a child - inaction by State : Thakarda Babubhai Bhagabhai State of Gujarat 1999 CRI. LJ. 363 Rape and causing death of victim - Accused after satisfying his lust, mercilessly and intentionally killed victim, a girl of 5 years. - Medical evidence and evidence of eye-witnesses sufficient to prove guilt of accused - Conviction of accused under Section 304 II of Penal Code - Appeal against - No interference - However action of State in acquiescing and not taking any action against acquittal of accused for offences under Section 366, 302

and 376 of Panel Code, deprecated -In absence of any action by state / revision by private party, High Court did not take action in view of Section 401 (3) Criminal P.C.

As is well-known in recent years, the crimes against women are on the rise. These crimes are an affront to the human dignity in society. Imposition of grossly inadequate sentence and particularly against the mandate of the Legislature not only is an injustice to the victim of the crime in particular and the society as a whole in general; but also at times such judgement encourages criminals. The courts have an obligation while awarding punishment to impose appropriate punishment so as to respond to the society's cry for justice against such criminals - observed by the Supreme Court in the earlier case of rape on a helpless 13/14 year old girl. "Public abhorrence of the crime needs a reflection through the court's verdict in the measure of punishment. The heinous crime of committing rape on a helpless 13/14 young girl shakes our judicial conscience. The offence was inhumane".

Comment: Enlightened judgements by the Apex Court has contributed as a confidence raiser for the millions of women who were being subjected to untold atrocities and crimes. The trial court being the first forum where the facts of a case unfolds itself with interrogation, thread bare scanned, discussed and deliberated upon, often tend to err by focusing more on the human rights of the accused. Many an innocent victim go out of the court disappointed and without any relief, leave alone justice at the hands of the trial court. If only sensitivity of judges at that level are encouraged and attempted by proper orientation and training programmes the victims may get their due.

Unjust interrogation by Defence : In Domestic Working Women's Forum Vs. Union of India (1995) 1 SCC 14: 1995 SCC (Cri) 7, it was observed that the treatment of the victims of sexual assault during their cross examination in the court regarding relevancy of facts some of the Defence Counsel continually question the Procecutrix as to the details of rape incident not so much to bring the facts but to confuse the victim to point out inconsistencies in her Statement. The cross examination is almost used as a means of humiliating the victim of the crime.

Trial in Camera :

A victim of rape has already undergone traumatic experience and if she is made to repeat over again in familiar surroundings what and how much she was subjected to, she would be nervous and feel guilty carrying a sense of a shame for no fault of hers. This confusing tactics by the Defence Lawyers is against professional ethics. The courts are obliged to act in furtherance of the intention expressed by the legislature and not to ignore the mandate and must invariably hold the trial of rape cases in camera as per section 327 (2) and (3) CrPC.

To quote once again In case of Chairman, Railway Board and Others Vs. Mrs. Chandrima Das and others AIR 2000 Supreme Court 988, the Writ Petition filed for relief of compensation and many other relief for such as eradicating anti social and criminal activities at railway station was sensitively handled by the Supreme Court. The court also held that violation of fundamental rights in this case of gang rape on Bangladeshi woman by railways employees in railway building does not suffer from infirmity of the victim being a foreign national. She

can also be granted relief under public law for violation of fundamental rights on grounds of domestic Jurisprudence based on Constitutional provisions and Human Rights Jurisprudence. Further the court held that Fundamental Rights are available to all the "Citizens" of the country but a few of them or also available to "persons" e.g. Art. 14 guarantees equality before law and equal protection of law within the territory of India is applicable to "person" which would also include the citizen and non-citizen, both.

Supreme Courts due weight to UN Declaration & Covenants :

Comment: The Supreme Court's decision to extend the protection cover, and also guaranteed under Arts. 20 and 22, fulfills the provisions of the Universal Declaration of Human Rights, the Covenants on Civil, Political Rights, Economic, Social and Cultural rights of which India is a party and signatory.

Forward looking judicial pronouncements show a trend of change and gives lot of hope for our vision to succeed. However in some cases like the criminal appeal number 553 with 554 1982 d/- 12.10.93 AIR 1994 Supreme Court 222 (From Karnataka) Raju Vs. State of Karnataka, the court had shown lot of leniency to the accused by expressing doubts on the Prosecutrix who was questioned for placing reliance on unknown young persons. The punishment was reduced to 3 years as against 7 years R.I. excusing the accused who could not overcome their lust. They committed rape in their fit of passion.

Comment: One wonders whether the court is helping the rapists or the women victim who has sought justice at the hands of the court. It is not that the highest judiciary always has been consistent in their judgment in extreme cases of violence (rape, dowry, extortion, bride burning etc.) The fluctuating sentiments expressed through their judgment give wrong signals of despair to the affected/offended victims of crimes.

HIV/AIDS & Right to Privacy :

The courts are also put to difficulties in weighing the pros and cons in cases like AIR 1999 SC 495, (1998) 2 CHRLD 391 with unanticipated and unexpected issues. In a case where right to privacy and right to health/life are juxtaposed involving the question whether the woman has a right to divorce her husband because of him having been tested as HIV positive? It was held that confidential patient-doctor information may be released to protect another's right to life; right to marriage may be suspended where a person is suffering from venereal disease; in such a case in public interest disclosure of medical information may be required. The court held the right to privacy is an essential component of the rights to life and liberty under Art. 21 of the Constitution. It is however, absolute, and may be lawfully restricted for the prevention of crime or disorder, or the protection of health, morals or personal rights and freedoms. The disclosure of the appellant's HIV status did not violate the right to privacy since it had the effect of protecting Y from contracting the disease (Kharak Singh v State of UP & Ors (1964), Rajagopal vs. TN & Ors. (1994) 6 SCC 632 (1996). It was also held that since the right to life includes the right to lead a healthy life, the respondent cannot be said to have violated the rule of confidentiality or the right to privacy by its disclosure of the appellant's HIV status.

Harassment at Work Place
Visakha vs. State of Rajasthan
Apparel export Co. vs. A.K. Chopra

HARASSMENT AT WORK PLACE

Economic exigencies and women's increasing professional competence and liberation of women have led to more and more women taking up jobs in offices in other establishments and industries. Their inferior physical strength has resulted in their exploitation at various stages and in various ways.

The Supreme Court, in "Vishaka Vs. State of Rajasthan" (AIR 1997 SC 3011), taking due note of the hazards to which a working woman is exposed and the depravity to which sexual harassment can degenerate, opined that there was an urgent need for finding an effective alternate mechanism to fulfill this felt and urgent social need of prevention of sexual harassment at work place. In the absence of legislative measures and in view of the absence of enacted law to provide for effective enforcement of basic human rights of gender equality and to guarantee against sexual harassment and abuse, more particularly against sexual harassment at work places, the Supreme Court laid down guidelines and norms for due observation at all work places and other institutions, until a legislation is enacted for the purpose. These guidelines and norms were directed to be treated as law under Article 141 of the Constitution. The guidelines and norms specified by the Supreme Court include the duty of the employer in work places and other institutions, preventive steps to be taken in this regard, criminal proceedings, disciplinary action, complaints mechanism and complaints committee, to encourage workers initiative, creating awareness, and against third party harassment etc. These guidelines would not prejudice any rights available under the Protection of Human Rights Act 1993. These guidelines and norms, were directed to be strictly observed in all work places for preservation and enforcement of the right to gender equality of working women.

In "Apparel Export Co. Vs. A.K. Chopra" (AIR 1999 SC 625), the Supreme Court was called upon to decide sexual misconduct of a superior officer against a subordinate female employee. In the words of Dr. Justice A.S. Anand, the Hon'ble Chief Justice —

"There is no gainsaying that each incident of sexual harassment at the place of work result in violation of the fundamental right to gender equality and the right to life and liberty — two most precious fundamental rights guaranteed by the Constitution of India. In our opinion the content of the fundamental rights guaranteed in our Constitution are of sufficient amplitude to encompass all facets of gender equality including prevention of sexual harassment and abuse and the courts are under a Constitutional obligation to protect and preserve those fundamental rights. That sexual harassment of a female at the place of work is incompatible with the dignity and honour of the female and needs to be eliminated and that there can be no compromise with such violation admits of no debate".

"In a case involving charge of sexual harassment or attempt to sexually molest, the courts are required to examine the broader probabilities of a case and not gets swayed by insignificant discrepancies or narrow technicalities.....Such cases are required to be dealt with

sensitively. Sympathy in such cases in favour of the superior officers is wholly misplaced and mercy has no relevance".

We have to strengthen international accountability, make provision for advisory services and adequate funding, improve the efficiency of the review bodies and bring about increased awareness of human rights by information and education and establish national institutions for promotion and protection of rights - and make "more fluid the interface between international and domestic law".

To reiterate the Supreme Court in *Vishakha Vs. State of Rajasthan*, has held that it is now an accepted rule of judicial construction that regard must be had to international conventions and norms for construing domestic law, when there is no inconsistency between them and there is a void in the domestic law. In the absence of domestic law occupying the field, to formulate effective measures to check the evil of sexual harassment of working women at all work places, the contents of international conventions and norms are significant for the purpose of interpretation of the guarantee of gender equality, right to work with human dignity in Articles 14,15,19 (1) (g) and 21 of the Constitution and the safeguards against sexual harassment implicit therein. Any international convention not inconsistent with the fundamental rights and in harmony with it, must be read into these provisions to enlarge the meaning and content thereof, to promote the object of the constitutional guarantees. This is implicit from Article 51 and the enabling power of the Parliament to enact laws for implementing the International Conventions and norms by virtue of Article 253 read with Entry 14 of the Union List in Seventh Schedule of the Constitution.

"It is pertinent to mention that the immediate cause for filing of this case was Bhanwari Devi's case above mentioned, that is the rape of a social worker, which revealed the hazards to which the working woman is exposed and the depravity to which sexual harassment can degenerate. The Court held that the gender equality and the right to life and liberty contained in Article 14, 15 and 21 of the Constitution were clearly violated as also the right to practice a profession as contained in Article 19(1)(g)". It was of the view that the fundamental right to carry on any occupation, trade or profession depends on the availability of a "safe" working environment. The right to life means life with dignity. The primary responsibility for ensuring such safety and dignity through suitable legislation and the creation of a mechanism for enforcement is that of the legislature and the executive. However, the matter had been brought before the Court indicating that instances of sexual harassment resulted in violation of the fundamental rights of women workers under Article 14 & 19".

The Political Process in India
Women & Politics
73rd & 74th Amdnemtns
Right to Representation

THE POLITICAL PROCESS IN INDIA

“Women in India entered the political process in the early decades of the present century, through their massive participation in the national struggle for freedom under the leadership of Mahatma Gandhi. Gandhiji was able to reach out to women and draw them into the vortex of the freedom movement. Though Gandhi could not fully abandon gender bias and in some way perpetuated the traditional image of the Indian women, he did manage to appeal women to join the movement. Women played a very important role in the Civil Disobedience Movement, the salt satyagraha and the Quit India Movement of 1942. Together, with their participation in movement against the colonial rule, the educated women were simultaneously struggling to get the right to vote and right to get elected”. The reasons were narrow gender roles, restrictive religious doctrines, unequal laws and education, discriminatory socio-economic conditions, male biased leaders or other political elites and women-unfriendly election system. The barriers, while varying among countries typically, are interrelated and mutually reinforcing.

WOMEN & POLITICS

Women have been accepted as voters but not as policy formulators and decision-makers. Women’s movement has for the last two or three decades been demanding more space for women in the representative bodies, but things have scarcely changed. Demands for affirmative action/reservation as an instrument for ensuring more space to women has been repeatedly turned down in India. In India, although 33 per cent reservation was provided for women at grassroot-level and local institutions through the constitutional amendment in 1993, the bill providing for 33 per cent reservation to women in the Lok Sabha and the state assemblies was not passed in 1996. It was not allowed even to be tabled in the Lok Sabha in 1998, and this reflects that the male members refuse to share power. This speaks a lot about the rigid patriarchal approach of the male political leaders. They will not let any effort be made for giving more space to women in politics go waste.

73rd & 74th AMENDMENTS

With the 73rd and 74th amendments of the Indian Constitution, Women at the grassroots have been privileged to get elected to the 3 tier Panchayati Raj System and 1/3 of the Panchayats/seats are occupied by Women. This unique political opportunity gave place to women in rural governnace. 100,000 women though poor are empowered. Similarly, municipalities at the urban areas elected 1/3 women members as Councillors in almost all local self-governing bodies in the country. Women, both in the rural and urban local self governance, are evolving themselves to be effective participants in Politics. Large number of training programmes have been conducted through departments of govt and non governmental agencies.

In spite of this Constitutional mandate that has resulted in massive political participation by women, the male members of the Panchayats could not immediately adjust to this shift in power and sharing of political power with men. In the earlier stages, the male sarpanchas, upasarpanchas and Pradhans tried their very best to dislodge some of the active women panchas/sarpanchas through no-confidence motions in states of Rajasthan and Haryana. Women members valiantly resisted such illegal moves by male PR members; it was the women sarpanchas, panchas who initiated calling the Gram sabhas to settle issues facing the Panchayats. With gaining confidence and power, women panchas in all the 3-tier system are empowered, and are able to understand their rights and responsibilities i.e. the 29 odd duties given in the schedule. The wide base is developing for future contest and participants in elections for legislatures and Parliament.

The irrational protests against the Reservation Bill started by some of the political parties in Parliament have been the unwanted hurdles to women's share in decision making & governance. Not many cases have gone to the Courts. Locally, inter-panchayat disputes are getting settled by and by.

The year 1999-2000 has been declared as the year of the Gram sabha. Thus we can witness direct democracy in operation in the Panchayats for the last three years. The state initiated and passed their own government's Panchayat Acts.

Since the Panchayati Raj system has been conceived as village governance by the elected PR members and peoples participation, this experiment has become a model for the world. Recognising the trials and tribulations in the early years of PR system, today it has become a well established political movement and a base.

Women do suffer constant pinpricks from the male Sarpanchas and members, because of their age old views and mindset about woman's subordinate place in society as against her role in the PR system. The development profile of the whole village has now changed.

Herein lies the vision for true empowerment of women in the new millennium.

True! women need to be made conscious of their role in politics and the importance of their participation in Politics. Political Parties and women's groups are continuously trying to train and mobilize them but centuries of subordination and passivity cannot be wished away in two decades. More than 50 years of Independence has not been able to ensure reasonable space for women in the representative bodies. It has not gone above 9/10 per cent at the centre and state legislatures. Therefore, there is need for affirmative action in the form of quota/reservation for women. It is the prime need of the time. The Supreme Court has a big role to play in correcting this imbalanced monopoly of power in the hands of the male members.

Right of Representation

Empowerment of women would be devoid of content, if the right of representation to political offices is denied. Affirmative action of the state in providing representation and reservation for women in local bodies such as Municipalities, Panchayats as well as Co-operative societies have found approval of Courts and challenges thereto have been negated on the principle of protective discrimination" ("D.M. More Vs. State of Bombay: AIR 1953 Bombay 311", "Ramachandra Mahatn Vs. State of Bihar: AIR 1966 Patna 214", "Om Narayan Agarwal Vs. Nagarpalika: AIR 1993 SC 1440", and "Thovvuru Sudhakar Reddy Vs. Govt. of A.P. : AIR 1994 SC 544".

whereas the Vienna Declaration on Human Rights clearly imposes the obligation to promote the full and equal participation of women in political, civil, economic, social and cultural life, at the national, regional and international levels, and declares the eradication of all forms of discrimination on grounds of sex as priority objective of the international community (Article 18),

whereas the Beijing Platform for Action endorsed gender mainstreaming as an effective strategy to promote gender equality and stated that governments and other players 'should promote an active and visible policy on mainstreaming a gender perspective in all policies and programmes, so that before decisions are taken an analysis is made of the effects on women and men respectively',

whereas gender mainstreaming means incorporating equal opportunities for women and men into all Community policies and activities and has thus been implemented in the work of the Commission, including the European Employment Strategy, the European Strategy for Social Inclusion, the research policy, the European Structural Funds, the policy for cooperation and development, the external relations,

whereas since 1996 the European Commission has adopted a policy of gender mainstreaming and incorporation of equal opportunities for women and men in all Community activities and policies,

(Agnes Hubert - European Parliament)

*Concluding
Reflections*

CONCLUDING REFLECTIONS

20th century India has been the battleground for violence, caste conflict, marginalisation of women and the poor living in underdevelopment. Judiciary has attended to cases to ensure justification and aspiration of the people for their struggle, against all forms of oppression, dehumanization, exploitation and domination by the powerful and the affluent. The current passivity of the enforcement machinery and the civil society have to be addressed. The judiciary is the custodian of human rights of persons and specially the under-privileged and discriminated, i.e. Women and Children.

Throughout the country, ordinary people, more than ever before are feeling helpless and are demanding social justice amidst the prevailing chaos and the monopoly of power enjoyed by men in all spheres of human activity. While the political leadership has almost failed to control the undying patriarchal attitudes of Parliamentarians and legislators in States refusing to share power with the other half of the population; this has increased the discriminatory practices and escalated crimes against women. Also increasingly there is growing awareness and realization on the part of government that unless peace and stability is restored which will be in the establishment of a political environment, enabling women to share freedom, the hope of people enjoying human rights will be a far cry.

Fortunately, the apex judiciary all along in sporadic strides, have given rulings in favour of women in cases that could reach the courts. For a legitimate democracy, the courts realized that injustices perpetrated on women have been the result of dishonoring the Constitutional mandates and the existing legislations. Judiciary has to a large extent with some exceptions noted that struggle for democracy, freedom and equality has been the fundamental thrust in the modern world and that no government can overlook the International Covenants and Declarations focusing on non-discrimination, equi-justice, freedom of expression and action.

In a political system avowedly devoted to democracy, equality and peace, age old attitudes towards women still remain steeped in the hierarchy of judicial administration also. Apart from the judiciary attending to cases that are brought to its door step, it carries with it the responsibility of rightful interpretation of the laws in spirit and content. For instance in violation of both the criminal law provisions against foeticide and infanticide and the special Act (PNDT), the courts have not taken suo-motu notice of the thousands of missing girls and women. A time has come when radical stances of one or two judges in the whole judiciary are not going to change the justice delivery system and its administration. It is the judiciary as a whole that has to assert its role of a Monitoring Mechanism to guard legal provisions from abuse. The recent judgments of the Supreme Court in favour of justice to women whether with regard to her claim for maintenance, guardianship, custody of children, demand for return of her streedhan, her war against men contracting bigamous marriages,

the violation of her person and her human rights in demanding dowry and dousing her to fire, her dying declaration, are looked at with a fresh air of fairplay and justice.

The directives given to executive for early and positive action and the judicial demand for accountability for any lapse in this direction are encouraging us to look for bold visions for change.

This judicial transition from passivity to action, its asserting in demanding executive accountability have sent waves of threat to indifferent executive in government; nevertheless in the lower courts, where microscopic minority of women complaining of abuses of law and person reach the Courts, the results are disastrous. While some of the lower courts are updating themselves with the latest apex court verdicts, majority of the courts remain unaware of changes either in law or in judicial decisions. Crimes like killing the foetus of the girl child in the womb after pre-sex determination by ultrasound technicians and doctors, the increasing extortion of dowry by bridegroom's parents/guardians etc, the harassment of girls for not bringing adequate dowry, in-laws pressurising the brides and abetting in their committing suicides, bride burning, dowry deaths, criminal assault on women, and rape cases have received vacillating justice from the courts. There is no single or uniform rule in judicial orders/observations or pronouncements. It varies from judge to judge. Even small matters like the validity of jurisdiction of the courts to entertain cases of FIRs filed in Police stations away from the place of occurrence of the offence, courts indulging in questioning the antecedents of the aggrieved women, entertaining cases of alleged soliciting by women, bail in cognizable offences for traffickers, delays in judgments, doubting the evidence of the prosecutrix and demanding eye witness accounts in rape, dowry-death, cases of bigamy, maintenance, getting alibis of personal laws in deciding the veracity of demands for maintenance - **all appear to be that courts are playing a superintendent's role rather than projecting and acting as supreme deliverers of justice.**

Why the judiciary cannot act itself? The question always is answered immediately saying that it is not self-operative. While it is not the duty of the judiciary to execute governmental action, nevertheless it becomes the prime concern and action of the judiciary to question and demand compliance by the executive to the laws of the land as also its binding rules and regulations.

It is well understood that it is not the job of judiciary to legislate but it definitely falls within the judicial realm to point out the inadequacies in legislations, their redundancy or otherwise, whether implementable or are too remote from ground realities.

Governmental policies on women's empowerment made both in the centre and the states without establishing the required infrastructures are infructuous. The departments lie on their oars as long as an Authority does not pin point the inadequacy. Even if the NGOs want to show the mirror to the executive, they carry little weight or credibility. As a mass

movement the women do exert indirect pressure on the government pointing out their various misfunction, non-function and inaction; but only when they receive summons through the courts, it does make the Executive sit up, fearing contempt proceedings.

Family Courts :

Justice delayed is justice denied, the very old maxim is allowed to be totally flouted in the courts, may be due to reasons of heavy pressure of work on the courts, the piling up of arrears, the lawyers seeking adjournments, the executive unable to file replies on time etc. Hence the government in its wisdom passed an act called the Family Courts Act to attend specifically to cases arising from family disputes, conflicts etc. Uninterested persons are appointed as family court judges, mostly from among the senior ones before their retirement. As everyone is a captive of ones professional training, those appointed, do not budge from the protracted procedures, they are used to, in District and Sessions courts. Thus the very purpose of the family courts are nullified The Lawyers unmindful of their professional commitment to social justice, resented establishment of Family Courts because, lawyers are not permitted in the Family Courts to appear.

When Legislation is dishonoured Judiciary can save

A legislative action has been turned down by lawyers. What is the role of the judiciary in this case? Can the judiciary direct lawyers to stop agitation or order punishment by way of disallowing their license to practice? A judicial advisory can be sent to government to appoint a number of lawyers as judges of the Family Courts. The judiciary with its colonial hangover keeps itself far away from reality; so much so even exemplary judgements like in Vishakha case still remain un-implementable in a big way. How about crucial cases concerning women's right to life and dignity are still lying with the High Courts like Bhanvari Devi, Saathin's case of gang rape wherein, the Trial Court, acquitted the accused on preposterous grounds. Why not, as in many cases concerning environmental Justice as the Hon'ble Judge transferred the case on file from High Court to Supreme Court? How about heinous crimes like Sati burning as in Roopkanwar's (Deorala Case) which is notoriously still lying in appeal stage in the Rajasthan High Court?

Judiciary & Objectivity

The pride of the judiciary lies in its boldness and objectivity in passing orders and thus cannot pretend to be lifeless when things around are happening contrary to what laws profess. In the heart of Delhi when, 'Sati mata' was eulogized and glorified by 30,000 person-devotees, the Court, down from the district/Sessions, High Court or Supreme Court all were unmindful and kept a deaf ear. Why not take action on the anonymous note sent by a concerned citizen from Jaipur? Why the government, the Ministry of Home Affairs, was not hauled up for this permissive inaction? The shuttling of the ball from the judges court to government and vice versa has not helped justice nor the poor affected victims.

Absence of Victimology

Precedents to be set up by Courts are not welcome merely on technicalities than on trends of change towards better justice. An unmarried girl, wrongfully called a wife by a truant has no way to punish the fellow except by lodging an FIR. When the police is not able to nab the culprit, the lawyer wants the victim to appear and declare in the court that she has no relationship with the man. She in turn questions and refuses, and asks, "why should I take this initiative when I am not at fault". **Of course, there is no victimology in this country.**

Judiciary caught in technicalities

An innocent wife was sent back to her parents house on the plea that the husband was going out for a while on official tour. When he never turned up, the girl went back to her matrimonial home where she was told that she had no more the right of a wife and that she had been divorced on 'mutual consent'. Fraudulently her signature was forged and there was not even a hint from the husband or mother-in-law about their proposed action. When it went to the court, the question of motive or intent was dismissed and even her case against fraud, was dismissed. The High Court of Bombay upheld the alleged "mutual consent divorce" she went for revision in the Supreme Court and we all are aware of Review petition's response. Whose fault is this? Why the victim is suspected and a cheat husband has been hailed? Where does she go for justice beyond the apex court i.e. Supreme Court?

This is one of the millions of examples to show the inactive, restrictive, technically bound, slave to jurisdictional regulations of the justice delivery system - that stands inflexible and proves of no help to the victim because she has nothing else to prove beyond her agony and anguish.

Judiciary to protect the Constitution

Legislative dithering over 1/3 reservation of seats for women have been left to political parties and Parliament as a political power...sharing issue but not as a Constitutional case for equality or a human rights issue? When the Constitution proclaims equality, why are the judges quiet on this blatant dishonouring of the Constitutional provisions of equality and Equal protection by the Legislatures and Parliament). This also means equal protection of rights (equality). The primary function of the Judiciary with its hierarchy of judicial administrative units is to interpret the Constitution to the spirit and text. How long the issue of reservations will be dangling in the air? Under no law can the male-Parliamentarians claim monopoly over seats in Parliament.

Comment: Recognizing fully the fact that it is the function of the government (executive) to implement the laws passed by the legislature and provide infrastructure and the attendant requirements. Eg, The fundamental right to education - meaning thereby to provide free and compulsory primary education for all children. Of course it is the Ministry of HRD that has

the nodal responsibility as the Executive to implement not merely its commitment but the Constitutional mandate i.e. the Fundamental right to education. If for some reason this important responsibility to fulfill its promises are ignored or dishonoured, the judiciary ultimately takes the responsibility to act upon. What appears to be the urgent need is to force the government to fulfill its legislative promise.

Easy access to Judiciary

So far the Judiciary has been following the rule that any individual or system can invoke its attention either through a writ or by filing a case or even through a letter or Post card, can come in appeal. Judiciary has been encouraging Public interest litigation.

A New Mechanism

What would be the most welcome idea for the judiciary is to have a Monitoring Committee headed by a Judge and to be assisted by selected number of lawyers and a police official (or follow the example of monitoring and guiding, the work of the legal services authority act through a sitting Supreme Court Judge).

A similar mechanism can be improvised to check the increasing incidence of violence against women, economic-political discrimination and systems of social oppression and impediments to women's empowerment etc.

Unless such new and drastic responsibility is taken over by the Judiciary, though technically may amount to trespassing the legislature and executive, any number of visions that we look forward to, may remain a day dream. Judgements like the one in Muthamma Vs. Govt of India, has transformed the concept of women entering the Foreign Service whether married or unmarried. This case law helped in overhauling the Govt. service rules to the benefit of women at large, whose equal rights in recruitment or employment could never be abridged. So also the retirement age of Airhostesses has been increased by a court intervention and judgement.

Mary Roy's case of Christian women's inheritance right in the property of her parents, under the Christian law (of inheritance?) women were deprived of equal rights and the Supreme Court decided that Indian succession Act will give a bright new hope for Kerala Christian women and to the whole community.

Similarly, Supreme Court's observations regarding Human Rights of women lead to its path breaking judgements. Its role is not mere, "fire fighting", meaning thereby to attend to cases that are posted before it, but also to take initiatives to protect the Constitutional and legal rights of people, specially women and children. This should be seriously discussed and new strategies may be evolved.

In cases of violence perpetrated on women, and children, the Indian penal code has been the obiter dicta. But because of non-accessing of IPC sections, special Acts were passed on dowry prohibition, Sati prevention, law against trafficking, against child marriages, against child labour, against discrimination at large, and Family Courts were established to enable quicker justice.

Violence on Women

It is blasphemy that in modern 21 century, in the new millennium, bride burning continues by treacherous and greedy husbands and in-laws. Rape is used as an instrument not merely to outrage a woman's modesty but to deprive her of her name and credentials, to dishonour and ostracise her and to brand her as a witch and to punish her.

“The aspect of severe and progressively escalating physical and mental pain is the most obvious similarity between torture and Domestic Violence. Fear of death due to such violence is also an important factor of control in both torture and Domestic Violence. Physical beating, kicking, isolation, keeping a person for prolonged periods of time in darkness, depriving one of food, purely psychological methods such as instilling fear of death, threats to kill a loved one etc. are all methods common in both torture and Domestic Violence.

Similarly, it is necessary to point out that both torture and Domestic Violence often function along patterns of behaviour. Both, the torturer and the violent intimate, often alternate kindness with active and passive brutality, intersperse it with arbitrary and unpredictable punishment, and undermine the victims morale sustaining hatred for the perpetrator. All these methods work towards exhausting the endurance and manipulating dependency of the victim. These methods highlight the importance of the psychological aspects of torture and Domestic Violence. In other words, these aspects highlight the fact that both Domestic Violence and torture involve creation of an environment of domination through a process of acts and that considering either merely as sets of brutal acts undermines the true nature of such violence.”

Rhonda Copelon (in understanding Domestic Violence as torture (1994)

*Judicial Activism and likely
vision Statement
DNA of Women's empowerment*

JUDICIAL ACTIVISM AND LIKELY VISION STATEMENT

Concluding Reflections (continued) :

These reflections arose out of serious discussions all over the country with legal luminaries who are also holding offices at present. These reflections primarily are for two reasons.

- (i) The lacunae in the laws
- (ii) The dissatisfaction that justice delivery and judicial process create.

These, conversely speaking, with the ideas put below, sooner or later if they get implemented do constitute the missing fine print and pigmentation of a likely vision statement.

If we agree that:

- i] With full faith in the power and integrity of the judiciary it is expected that while interpreting the laws of the land it will help the transformation challenge, for women and society to align themselves to work for the common good.
- ii] It is recognised that the judiciary, through its timely action and decisions, can gear-up the human social systems to impact a new future, within the realm of realities, of freedom, equality, participation at all levels of social values and political action.
- iii] One should expect that, as and where possible, Judicial activism can help women in society to move away from the strong-man rule and inequality to one of a deeply rooted perception for an interrelated human society.

Then, our Judiciary has enormous powers to interpret and demand right and timely implementation as mandated by law. Let us further recall a few important cases and other lacunae and gaps in gender justice process:

- (a) The first is that a Rajasthan village level worker, Bhanvari Devi a Saathin who was gang raped for consciously trying to stop child marriages being solemnised in the village in discharge of her duties; The lower court acquitted the accused on strange reasons and irrational logic. The case even after 10 years and more is in appeal in the High Court of Rajasthan. Why cannot the Supreme Court transfer this case from the High Court on file and offer due justice to the victim woman?
- (b) Eulogising and glorification of SATI are prohibited by Sati Prevention Act - How is it that Roopkanwar a young woman's case of Sati was dismissed by the Court for want of foolproof evidence in Rajasthan, when thousands of on-lookers were party to witness the burning widow on the pyre. Why is it that the apex court could not take suo motu notice of this case where a callous judgement was pronounced by the lower court. This is also a fit case for transfer from the file of the High Court of Rajasthan.

- (c) The Constitutional mandate of equality if not honoured for so long in the case of reservation of seats for women in Parliament and Legislatures, the Judiciary must draw the attention of the government to implement the amendment with immediate effect.
- (d) How long thousands of innocent girls get kidnapped, sold and trafficked and forced into Prostitution. While the govt. has failed to arrest these crimes, the Judiciary has to innovate new strategy to order rescue and immediate rehabilitation of these unfortunate girls.

Supreme Court & Gender Justice

- (I)
- Supreme Court may fix a strict time frame for the government for elimination of child marriages, dowry extortion, sati/bride burning as also effectively stop foeticide and infanticide.
 - Providing impartial gender and social justice to women is a Constitutional mandate and responsibility of the judiciary. While one recognises the impartial judges of the Supreme Court and the High Courts one can also hope that they may orient the lower judiciary too, on gender issues.
 - **Supreme Court may under the Legal Services Authority Act establish "mini-village adalats" inviting retired judges, lawyers and activists to help organising the same or, recommend the same to Government for appropriate action.**
 - Legal counselling cells can and should be provided to the local bodies by the States.
 - Delays in Court-rooms even in cases of maintenance, rape and other atrocities on women have to be delegated to fast track courts / lokadalats / mahila courts / family courts and pariwarik mahila lokadalats.
 - We have noticed that the Family Courts Act is not implemented as per the mandate of the legislation. The pressure should be exerted on the executive by the judiciary to appoint family courts without further delay; and a required number of lawyers can be appointed as judges of the family courts.
 - The judiciary must strike down the redundant laws adorning the shelf and collecting dust. Or, recommend that this be done by the Government.
 - Special investigation machinery has to be established at the initiative of the judiciary; if the learned Courts notice such gaps in enforcement process, the judiciary can take suo-motu notice.
- (II)
- Justice in criminal cases depend much on the committed police investigators and public prosecutors. The judiciary must appoint the right candidates as public prosecutors instead of the practice of their appointment by government. A joint action on this matter can also be instituted.

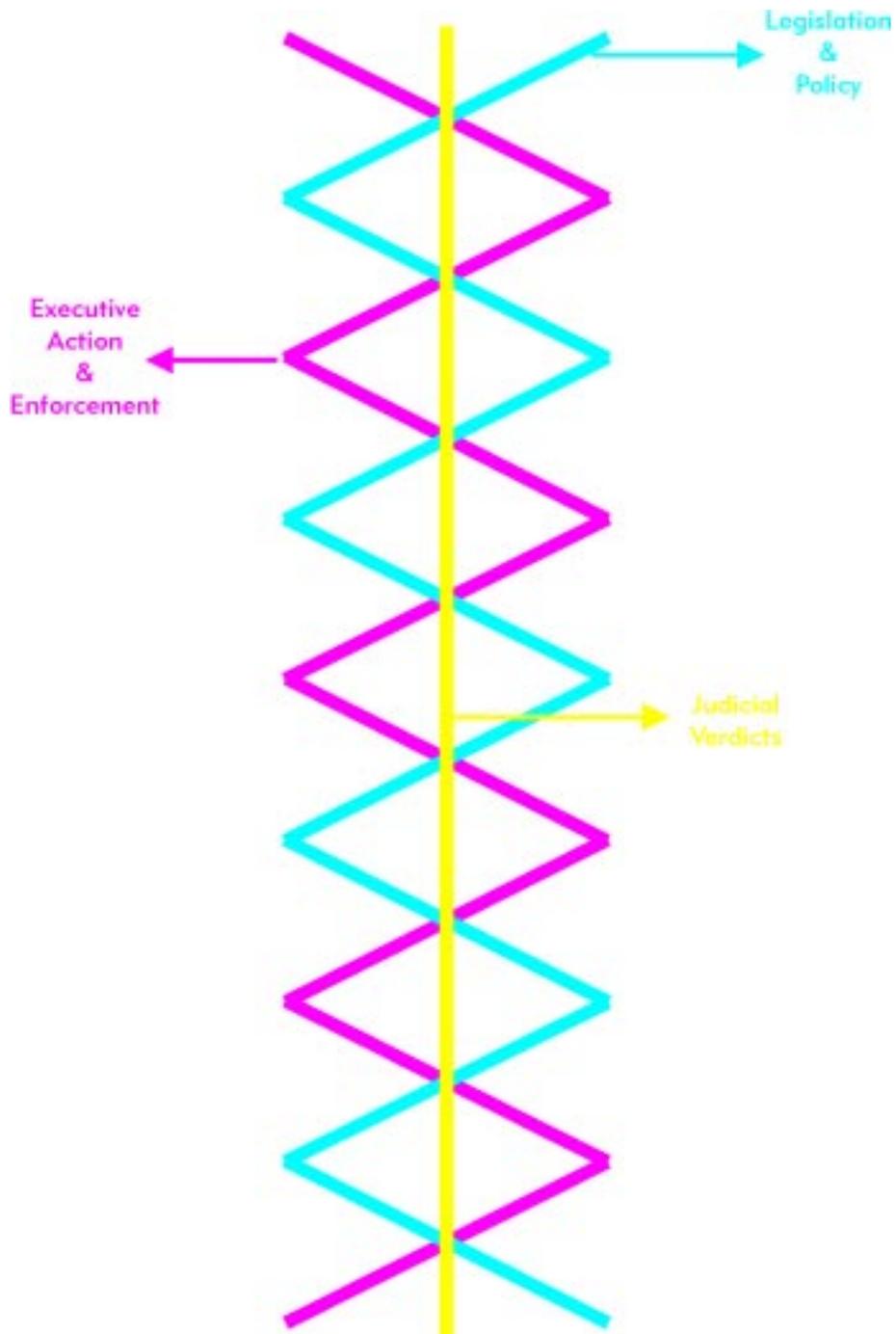
- Out of ten matters that come to the criminal courts, five are of bride burning cases. The women die without any remedy in distant villages. In the interest of criminal justice, Mobile Courts/Roving Courts to be operating at block and village levels must be provided.
 - In the interest of gender justice, as far as possible, presumption as a rule should be introduced in as many offences as is deemed necessary.
 - Cases of rape and sexual assault must be tried in camera. The Constitution as also the civil procedure code offers various facilities to invoke the courts to seek justice.
 - Article 14 and 16 of the Constitution should be read with Article 335 which if invoked will often result in better claims of Scheduled Castes and Scheduled Tribes also with "maintenance of efficiency".
 - The consideration that everyone is innocent "unless proved guilty" though is laudable, often limits the court's freedom in exercising judicial action for gender justice. This needs due change.
 - Reliable witnesses often hesitate to give evidence in public; they need to be protected and their identity should not be exposed. This will enable better evidence and quicker trials in Courts.
 - The girl child suffers incest, trafficking, kidnapping, abduction etc. In the interest of justice the minors should be kept in protective homes instead of sending them back with imposters, pimps, traffickers and brothel owners.
- III.
- Maintenance and compensation to victims of sexual assault, rape, divorce, domestic violence needs to be settled in the shortest time to save women from destitution and harassment.
 - Restitution of conjugal rights has been used as a tool by erring husbands to have an easy access to divorce. It leaves the victim women in great pain and agony. The Courts should be sensitive in rejecting fraudulent pleadings. It is a judicial responsibility to ensure implementation of the Fundamental Rights of women under the Constitution.
 - Adjournment in matrimonial disputes should be avoided.
 - Judiciary has the freedom and power to pass any judgement, interpret the Constitution and the laws. As also take suo motu notice of government not fulfilling the reservation of seats for women in Parliament and Legislatures. The judiciary thus can issue a directive in its own rights to the government.
 - The pathetic condition of writing judgments by the court clerks in the lower courts and High Courts has to be severely checked.

- Review petition as per the Supreme Court ruling cannot be argued in court by lawyers. Stenographers will type the orders and the Review petition get dismissed. This is a mockery of justice delivery. There should be a committee of three judges excluding the one who delivered the judgment in Review Petitions.
- While cases of incest are getting reported in a big way the government should be directed to legislate upon the draft bill on child rape and incest prepared by the National Commission for Women and submitted to the government in the year 1994-95.
- Continuing in-service training needs - to be organised for investigating agencies, the police the judiciary working at the district level, updating their knowledge- Programme need to be organized.
- Judiciary must protect the statutory powers of the National Commission for Women (NCW) as also other institutions serving women's cause. If they deem it fit they can direct the government to give top priority to the recommendations and draft bills on gender justice sent by the National Commission for Women.

The study of major judgements which may hardly make a hundred odd cases in a time frame of ten years and more would not tempt us to believe that out of 500 odd million women of the country were either in a state of empowerment or have no sufficient social injury demanding gender justice. Judgements by themselves sometimes have been much too much of pathbreaking in nature; undoubtedly, such judgements have had a multiplier effect. Nevertheless, there are more judgements of a routine nature which barely can create an impact or ripple towards empowerment; no matter how much one may like with the sea-saw like judicial landscape in terms of its judgements concerning women; scientifically, speaking we cannot deduct a Mega-Trend of women's empowerment, even if one is tempted to say that the judicial system although it is slow, but it is steady. Sadly, one has to conclude it as insufficient, albeit an important element for deleneating a ground vision for the empowerment of the Indian woman.

Metaphorically speaking, if we may use the expression as to what constitutes the DNA of women's empowerment then, its helix would constitute due contributions of the legislature, executive and the judiciary. This symbiosis shall create a due synergetic energy for envisionment.

Figure-2



DNA of Women Empowerment metaphorically speaking demands a unique coordination at all levels - the Legislative, the Executive & the Judicial



Conclusion :
Aspects of a Vision Statement

CONCLUSION

ASPECTS OF A VISION STATEMENT

Our research group posed an interesting question and asked: Why should before we catalogue the impediments or possibilities of a "grand vision design" for women's Empowerment, why not first try to look back and find out how the "envisionment" thought evolved during the freedom struggle and the first two decades after independence?

To this, another consultant added a futuristic query? He pointed out that let's confine our research findings to give a wholesome or an indicative answer, as to :

- (1) What the feminist struggle and movement was like in the recent past of India? How does it differ from the current outcry? Also, how does it indicate and shed light on two more significant points; in that :
 - (a) Firstly, should we not collect our answer in terms of the positive and the negative "trend-signals" behind the women's movement in India;
 - (b) Secondly, should we not give a hard look at the judicial dispensation of the past since its post independence scenario stands covered in the previous section of this report.
- (3) Thirdly, it was repeatedly asked in the group: "whose" vision indeed should be deemed as an ideal construct of a vision statement? This challenge with other suggestions of the task-force chairpersons was duly discussed for weeks in and weeks out and a limited but essential statement entitled "Looking back" got evolved.

Looking Back on past and early period of free India

When we reminisce the visions of the Indian women of past specially the women who fought against the foreign rule for freedom, there do exist some points of success. Step by step, under the Gandhian freedom struggle, women participating in it did succeed in obtaining adult franchise. They also participated in the Home Rule Movement, the Salt Satyagraha and the Quit India movement shoulder to shoulder with men. Many a women courted arrests, suffered torture in the British prisons, where their, "mangal sutras" were forcibly pulled out by the prison authorities. They were ill treated and badly fed. Many of them were subjected to hard labour.

This was the beginning of a conscious women's movement with the beginning of Women's India Association in Madras. Indian National Congress, in the Calcutta session in 1917, passed resolutions recommending removal of sex disqualification in voting. Realising how much the women satyagrahis suffered long term imprisonment and hard labour irrespective of their ill health, personal needs and habits and education they were frequently transferred

from one prison to another; Gandhiji wrote to Women's India Association:- "The manifestation of energy, devotion and sacrifice which thousands of women made during the last satyagraha in India was nothing short of a miracle - women have set a noble example to men by abstaining from claiming special privileges. I want to have their blessings in order that I may not fail to represent the cause that has been entrusted to my hands".

Another stream of women joined the INA of Subhas Chandra Bose, the prominent name amongst them is of Dr. Capt. Lakshmi Saigal. At the social front, the women leaders of South India fought against child marriages, for widow's education and for the abolition of the Devadasi system. Some women took up the cause of the suppression of immoral traffic of women and children. A land mark occurred when Sarojini Naidu led a 14 women member delegation to England and thundered before them against the Montegu-Chelmsford report and demanded that women should be recognized as people when the British were to draw the franchise rules and conditions.

Women of Yesterday & today

However the struggle of the empowerment of women, in the past was limited to just better education for girls, better health facilities and protection for all. In the public life they demanded the right to vote as well as a right to participate in elections. The women of the past looked more towards the social reforms than towards seeking justice from the courts. Ills like child marriage, taboos on women, gender discrimination were considered only social ills that could be tackled through social upsurge and reform. Citadels of power including judiciary were not in their realm of thought as a mechanism to achieve their ends. This stands, in contrast to the post-independence era. During this period, Women's struggle now got focussed more on the legal rights, codifying of the personal laws, seeking access to justice through the criminal justice system of the Republic of India.

In the past although dowry, child marriages, Sati and trafficking were recognised as unhealthy practices, not much effort was attempted by women to stop them. Our women activists, then reposed more faith on individual and community efforts to solve these problems. In the past, the Courts heavily relied on past precedents and earlier judgements of the Privy Council etc. As a contrast, post independence period finds the feminists looking forward for new judgements and better interpretation of the laws. The empowered women of today, however, would like the courts to be more pro-women. They would also like the legislators to include even the provisions of the UN conventions into many of the municipal laws.

Against the above back-drop of the non-violent spirit of the past women's movement, today they have given importance to a militant and uncompromising fight for women's rights. Today, women are more aware of their legal rights. Judiciary, now and then, also involve the activists and committed NGOs to monitor any violation of law such as in the case of child labour, bonded labour, assault on women as well as to assist the courts and prepare broad

guidelines. This is indeed a positive step. This interactive exercise involving the civil society in the justice delivery process is a novel experiment with the establishment of the legal services authority. Women can now seek legal aid; some Mahila Courts are also there to attend to the cases involving criminal offences on women.

Whereas earlier the women's movement was only seeking protection to the women, focussing on biological difference from the males; Women of today are now demanding the human rights of women. Some anomalies, however, still exist. For example, the Child Marriage Restraint Act 1929, though was partly an effort of the reformers of the day when questioned today in the courts, such marriages are declared as voidable marriages, notwithstanding the fact that many child-marriage girls, have grown to be adult women and should not be left at a disadvantage by the Courts.

Judiciary for a new order

We do realise that here the Courts are in a dilemma and in a state of fix. For a new Judicial order and a new vision there has to be a cut off point for several of our out-dated laws.

Thus, today's women's vision is sufficiently different from that of their demands in the past. The initial visualization of the empowerment of women now and in future shall heavily rely upon their creative talent and doggedness to pursue that vision. It is a good sign that women are now more articulate and can have a pragmatic vision. This research study has also delved at length into an array of legislation purported to protect women and the judicial response, both positive and negative, impacting on Women's empowerment.

Be it as it may, the stark fact that stares us is the realisation that women for centuries had remained subservient to the male authority and have suffered oppression and untold atrocities. "Our sacred soil where women are venerated as Shakti and Goddess, there are more women deities in our Pantheon than male divinities. Nevertheless we squeeze the life out of the infant girl immediately after birth. Even before the umbilical cord that links the womb to the infant is severed; life is snuffed out of the new born by administering cactus milk or by forcing a paddy seed into girl child's mouth". As in the past, even today the women could be bought and sold. In spite of the law to the contrary, in the States of Karnataka and Andhra Pradesh, the system of Devadasis still exist as before such as at the Ellmma temple. The practice of women committing sati at the funeral pyre of the deceased husband, though abolished, has been recently repeated in the Panna district, village Tamoli in Madhya Pradesh (See NCW report of 2002 AD). The pity lies in the fact that a law prohibiting Sati, and even glorification of sati as a declared crime punishable severely, exists; but no one gets punished. Likewise the Child Marriage Restraint Act has been there since the 19th Century but still child marriages are solemnized in the open in the several BIMARU States. It was in 1961 that the Dowry Prohibition Act was passed but it has not deterred this unholy practice of demanding dowry. Even burning of brides takes place for not fulfilling dowry demands. Yet another

example is that of Equal Remuneration Act. It remains in the statute books. Also the Child labour Prohibition (Regulation) Act has not yet contained the child labour and bonded labour practice.

Other virulent forms of violation of human rights too persists even now. Child abuse, sexual exploitation, kidnapping and sale of girls, trafficking are crimes. The IPC sets out punishment for attempting and committing the aforesaid crimes. But the number of children sold to brothels and forced into prostitution are countless. Thus the task to stop once for all such mal-practices remains, *inter-alia*, an unfinished part of empowerment agenda. And in this endeavour women do look up to prompt judicial intervention.

Reality at a glance:

A multipronged attack by women's movement has to simultaneously get the legislature/judiciary and the executive, to act in concert. Is then search of a vision an elite exercise? For how can the poor and the oppressed and trafficked women can envision a future for themselves.

The lack of hope for a better future is a major hazard to the well-being of all of us. Our text books, seminars, workshops and conferences on gender justice, all, mirror a serious imbalance in the contemporary sociological facts and its impact for change on the Troika of the Legislatures, the Executives and the Judiciary. As for reforms, more attention seems to be paid to the social pathologies and perplexities than to sources of societal strength and fulfillment of empowerment.

Envisioning a future for whom? by whom?

This leads us to envision not only possible futures but preferable ones too. To explore and achieve these, we require both play of creativity and a sense of realism. Talking of realism we need to take along the prayers of the poor women about her future. Her sighs currently can merely look forward to get her square meals a day, have atleast a thatched roof over her cottage besides some clothing to cover her modesty and to protect herself from the vagaries of weather. How does or can a woman in a remote village, illiterate, ignorant and without knowledge of or access to justice, ventilate her grievance of physical and mental abuse that she has been subjected to? What can be her vision, if not a total helplessness, and to indulge in cursing her own fate? By the same token one can ask: What is the plight of a kidnapped/abducted and trafficked girl/woman sold, forced to succumb to prostitution. At best, her vision can be to escape to freedom one day or some day with the help of a good Samaritan. Or else, her vision is to look for ending her life to free herself from the torture which she undergoes, day in and day out. Her vision gets blurred by fear, torture, threat of even her murder by the pimps and brothel owners. Likewise what can we perceive as a vision of the visually handicapped - to be able to live and to become economically independent and to live happily in a home with people of concern and understanding. So also would be the

visions of a variety of physically handicapped persons. They would also like to live with dignity and expect respect and not just pity from others. They don't want to feel as neglected persons, a castaway but to live with a ray of hope for better days. Likewise, the Women belonging to the scheduled castes and the scheduled tribes, the majority of them uneducated and ignorant, entrenched by caste and sub castes and their way of life, involving countless dos and don'ts, superstitious beliefs, myths and magic. Such women can have a very poor esteem about themselves. Their vision is to look for better treatment by the men, their community elders, caste panchayats etc. Can they even realize that they are also the persons endowed with human rights?

Laws miss social sanction

Likewise the literate, semi-literate and even working women and professionals do not feel free mentally or physically. Most of them have to look to a husband, or an in-law for deciding even the size of her own family; whether to go in for sex-determination test? whether to abort the female foetus? What a tragedy that she does not possess any reproductive health rights - the existing laws notwithstanding! Can also these category of people participate or be a decider of any 'grand environment'? If so, how? Should we look here for Judicial benevolence or that of the politicians and bureaucrats?

Laws, of course, prescribe and provide for equality to all, irrespective of sex, caste or religion. But who invokes the laws in day to day life? The privacy expected and demanded by families - from non-interference by any external system, individual or group, is almost impregnable. This is the main reason that there is no law yet on domestic violence though a bill submitted initially by NCW is pending enactment in the Parliament. For most of the time women stop reporting about domestic violence. Only when physical injuries perpetuated and need medical attention, the victims are brought to the hospitals for medication and only a microscopic number of these cases get registered as medico - legal cases. Many abuses, harassment and cruelty and exploitation are perpetrated on women when they try to report the matter to the police. It can be a regrettable and sad experience for women to seek police assistance. The Policemen and women are also part and parcel of the same society we all hail from; The male police personnel too is not free from the male chauvinistic socialization they have been exposed to. Even the women police officers who have joined in the lower ranks are subjected to a lot of ridicule and mockery at the hands of the male police. In oral interviews conducted with women police constables posted at various places they have expressed their resentment about this unhappy situation. Having gone through the same recruitment process with men and having succeeded equally in the various tests for entry into the prescribed jobs, the women in police definitely suffer discrimination in the police thanas and other places. In the police force, as in military service, absolute obedience to ones superior's orders is a value and is mandatory. If transgressed, one will fall from the good books of ones boss who could declare her as not excellent, extraordinary or outstanding. Does not this leave no room for

her to conceive of a positive vision about her future, leave alone hoping for ones freedom of expression or appeal to another person in authority. Mercifully, Supreme Court's rulings on Sexual Harrasment discussed earlier in the second section of this report, is like a drop of manna from above.

Our inept executive wings of the government, with ill conceived notions and merrily unmindful of their service rules or laws or even the Constitutional mandates, women's rights or empowerment further militate against. They continue to make biased decisions against independent thinking women employees, whether it is in the government or the public sector. The same happen in the corporate world; While the former two are susceptible to police or legal action by the aggrieved, the latter in business (commonly called as the private sector) suffer the practice of "hire" and "fire" policy. Therefore, there is little freedom for the aggrieved employees to air out their grievances and give complaints in writing, since it can result in a backlash rather than in bringing her due justice. How does then one envision a brighter future for the women who have many things to complain of but are not able to do so because of the fear of being blacklisted and even of losing their jobs. While, "Freedom" sounds a misnomer in such a situation, equality seems far too remote to grasp as it is out of the reach of many a working women.

Laws have definitely freed many children from child marriages; women from being subjected to dowry extortions; widows to be eligible for remarriage and empowered to have equal rights in her deceased husband's property with her son/children. But here too in practice the less said better it should be. In the name of social consciousness the truth remains that community justice, with their rules and regulations overrides the common law and the society, as an entity, they would not honour laws, leave alone putting them to practice. Now and then, the media publishes the news of witch-hunt, killing of young boys and girls who are in love, if they are of different caste. They are often murdered by their own kith and kin. Let's admit that the curve of crime against women, notwithstanding any vision, is not dropping. It is on the rise as before.

In this continuing disregard for the laws of the land, women's rights get ignored to the utmost. Only those who can afford to fight it out in courts and can sustain their money, patience and energy to fight long-lasting litigantions, can possibly and hopefully may get access to justice and continue to pursue their obsession. It can hardly be termed even as a private vision much less this phenomenon becoming part of any vision for tommorrow.

Drawn from the health sector, one can cite another handicap that women in India, suffer in maternal mortality. The complications related to pregnancy are very high, as compared to some of our Asian neighbours; the maternal mortality rate (number of maternal deaths per 100,000 live births) is much lower in East Asian countries. Even African countries like Tunisia and Kenya have succeeded in lowering their maternal mortality rate (310, and 190/100,000 live births respectively). The maternal mortality rate in the U.K. USA and Sweden is 11 and

10 to 100,000 live births respectively. Likewise, our backwardness enfigures a low level of female literacy. It becomes another factor towards high rates of maternal mortality, infant mortality, and cases of female foeticide and dowry deaths. Enlightened doctors and concerned citizens now and then call for a war against female foeticide. In the Usalampatti of the Salem district in Tamil Nadu, the female infanticide has been rampant: The Tamil Nadu State government did try to encourage parents to leave the girl child in the homes set up for children, but there was very little positive response.

To sum up, a key question still remains open for debate, how the majesty of the laws can also be the true redeemer of Social Justice to the poorest of the poor, the vulnerable women folk of India.

What you'll learn : This presentation identifies the underlying dynamic of leadership as an extension of the underlying dynamic of the universe and then explains how to make it available to every individual through the release of natural reflexes, drives and benign addictions. As a result of releasing these innate drives in partnership with nature's optimizing forces, a new leadership development continuum emerges. Based on the addition of creativity, new beliefs, and the increasing comfort with ambiguity and risk, individuals will proceed from the "manager" of existing realities to "transitional change leader" to "transformational change leader" and finally to the "creational leader" who brings totally new realities into existence.

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Some final thought on Likely Vision Statement

What should be a vision statement?

A basket of changes

Marginal Change Scenario

Quantum jump scenario

Cybernetic nodal action

SOME FINAL THOUGHTS ON A LIKELY "VISION STATEMENT"

It is amply evident that the empowerment of women is a multifaceted socio-political obligation. If the society has to move forward, it has to recast and redefine its norms of social behaviour and interaction. The divisive facet and the fragmented social scene of India, be it in terms of religion, caste, community or geographical placement as a tribal or hill area woman, needs to shed a great deal of their past in terms of social practices in order to step-up their inherent human energy in the direction of, if not total, atleast a near equitable homogeneity in the macro national terms. Surely, this is more of an awareness challenge rather than a matter of mere legal interpretation. Awareness has to be given through the most gigantic endeavour, for a country as varied and vast where the historical imprint of centuries after centuries has still been kept alive. This challenge can be met through a massive communication process. The burden of the same shall fall both on the legislative, executive and the mass media apparatus. Surely, the legal decisions, would now and then will cause, by and large, only healthy ripples. But legal decisions seldom lead to changes which can be revolutionary or cataclysmic. History of India bears out how an individual can bring about stormy changes. Raja Ram Mohan Roy's efforts for the abolition of 'Sati' is a case in point. Mass media can also create a heightened awareness; sometimes it is reciprocated with reluctance, sometimes with increased acceptance. The Family Planning efforts are examples of the reluctance and Polio eradication programme is that of acceptance.

In delineating a vision statement we find it difficult to separate the mother from the child. Clearly, State itself has to play a more positive and liberal role wherein the universal values which would define and articulate women's "human rights" of equality with men [including equality of economic opportunity and near equal participatory functioning in the realm of bureaucracy and in the legislative wings of the state] to have a shared and identical value and the required impact. This can receive tremendous positive push by a legal judgement besides a massive awareness programme, in the regional languages, about our laws and how new judgements have responded to women's empowerment. Let's be candid and say that history is a witness in this country; how far a narrow political interest (often described as 'vote bank politics') the legislators have reversed and interfered with positive and desirable legal interpretation: The 'Shah Bano judgement' and its reversal by Parliamentary legislation being a case in point. Even if the entire judiciary from the lowest to the Highest Court of the land be motivated towards such interpretation of the laws of the land that may give a heightened stimulus and direction for women's empowerment, without a due legislative modification and due adjustment and enforcement on the part of the executive, gainful results will seldom appear.

Needed inter-sectoral co-ordinate

The second feature in the empowerment process; thus, emerges very clearly on how the inter-sectoral co-ordination and adjustment should happen if higher economic and political

aspirations of women have to be met. It is not so much a function of reservation as of strengthening women's awareness, educational and learning opportunities on the one hand and their "vocational training in skills & capacity building, on the other". Likewise in a society and its fragmented caste/community oriented social practices, wherein century old superstitious beliefs do not get discarded; no amount of legislations or judicial pronouncements can create a conducive social environment for women in the countryside in particular. For instance, the rights of a girl child or a woman, single or married, for equal nutrition, food or education has to be deemed as equally important as for a male child. Now this fact cannot be enforced by law. Our society has to act fully to grant a mother her rights to nurture her progeny.

What can any judgment achieve, much less indicate of a 'vision' if poverty, unemployment and superstition and squalor, with quaint faith in the supremacy of a male child over a female child, be the compelling social desirables for millions of Indians. It is not the task of the Judiciary to remove poverty or create employment or ban unknown superstitious practices.

Today, even in the 21st century, India still masquerades in the garb of faith, personal beliefs and religion. Many examples can be cited in terms of customary practices and those inherent in some of the personal laws. The Constitution of India which is the Supreme law of the land directs and demands for working towards a 'common civil code'. The judgments cannot precipitate it; it can come only if people who sit in our legislatures and in the Parliament decide to forget the 'vote bank politics', and work for it. Isn't it strange that the women of India are much less of a woman because of the unhealthy trends in the Indian politics?

It is amply clear that the inter-system sectorality that we live in, one system impinges on another, sometimes positively and sometimes negatively. We find the Indian woman caught here adversely. Notwithstanding the stepped up budgetary allocations and planning programmes for the betterment of her life, she continues to be a lesser person. It is a strange paradox. The mismatch and incompatibility of systemic provisions forces us to so articulate our policy that we have to create conditions to get rid of un-coordinated socio-economic virus to spread further, to the betterment of quality in our lives. We need not hereafter see an ugly display of administrative helplessness and hopelessness in the field of child and women welfare and development.

Big words and little impact are indeed the hallmark of "Band-aid welfarism". It is alright to say that we have allocated five times the money for women and child development. But when we look at its reach, spread and impact, one finds how little has happened in the area of education, health, security/environment etc. The Bhanvari Devi, a Saathin of W.C.D. (a grass-root official worker) from Bhatari village of Rajasthan, is a good case in point. In good programmes to eliminate child marriages, we saw one department was focusing on this but another sister departments could not provide the right back-up and protection to this grassroots worker. This ultimately ended in the gang-rape of this committed saathin while discharging her officially prescribed duty. **One can thus multiply many examples of this system-mismatch.**

Often one wonders if, in some extreme situations hurtful to society, the judiciary mercifully through its activism can perhaps act as a ,“SUPRA” God-given system. Here one recalls the clearing of Delhi’s polluted environment which is a good case in point. The judiciary did achieve what executive should have done by itself.

Judiciary has to intervene : Clothed as it is with unquestioned authority of enforcement, to act in future to give judgments which in one stroke may change the fate of the Indian women for a better status and a better life? Will this happen is a matter of conjecture? The clear lesson that emerges here is: inter-sectorality on the administrative front need not become in future a debilitating influence. If it has announced a policy, come what may it should back it up with full degree of enforcement. **The key point that emerges here in articulating a VISION statement is that women’s development and women’s empowerment demand a policy formulation which is holistic in nature and in which there is a visible, and concerted union of purpose on the part of the Judiciary and of the Executive arms of the state.**

Women’s empowerment is not a matter of quick-fixes. Just by making more budgetary allocations and slogan mongering, one does not achieve enough. Because, Women-Empowerment is a matter of national priority. It is a matter of the future of one-half of India’s populace. How can we ignore the fact that, the poverty and greed bred insecurity; the social insecurity to an extent which leads to the murder of a woman via foeticide, infanticide, dowry death and other crimes not only hurts the women folk; but the statistics of these events mount. (see Ministry of Home Affairs and Social Defence Annual Reports and NCRB). **All this tantamount to a national disgrace where one could hold the executive and legislative branches, if not in contempt of the courts, definitely in contempt of the people of this country and other country’s “India watchers’, including the United Nations (UN) system.**

What then a Vision Statement should ‘be’? A few words to elaborate the term “vision” would thus be in order. **A vision is a dream; it’s a statement which could include articulation of some desirable possibilities but essentially it is “what should be” not “what can be”. It could be a measure of social effervescence; it could spell out the administrative energy of change.** Whatever else it be, neither the function of the judiciary nor the intent of the judgment is to dream for a nation. **The Judges deal with societal injury, grievances, disputes and very often executive dithering. They have only the right to interpret the laws of the land. Here and there they may, in paranthesis, point out to the malaise that corrodes this great nation. They may pinpoint to the mischief makers and order them to be put behind the bars. But they are not enunciating the totality of the socio economic and political aspirations of India, particularly, for womens empowerment. By the same token while dealing with a case of the domestic violence or rape or a property dispute involving women they can only ensure that in terms of the existing laws of the land what could meet with the imperatives of justice.**

VISION : A BASKET OF CHANGES

Clearly, therefore, a vision statement could simply be deemed as a basket of changes, in terms of time, to ensure the much missed and needed and much more desirable goals. It can also be put in terms of a time frame: how soon and for how many, in terms of time, should all this 'good' can happen and be duly delivered to the humblest of legally injured woman living in any nook and corner of this Country?

The stated goals of women's empowerment can be achieved notwithstanding the facts that such an achievement is a monumental task for a nation like India. India is a large human system where poverty is its problem number one. All other ills flow from it; India's economic development is unhomogenous, where education and learning capabilities are, not available or if available are, far and few in the far flung places, where unemployment is rampant, where the life of women is paved with one insecurity and threat or another. One can add to it the male prejudice, besides the "caste" dominance. They have yet to yield more freedom and space for women to achieve their potential particularly in the rural India.

Same helplessness exists in the urban India to the decision making areas be it in the public or the private sector of India. Equal opportunity principles for women executives/workers stand floundered, whether for the lack of bureaucratic promotions or managerial and executive opportunities. Besides, as far as the political arena is concerned, enough is known to people to be recaptured here. Good intentions abound. Numerous Committees and Commissions have envisioned the directions of change and yet the political decisions for her due equal space in all walks of life, metaphorically speaking, it is as remote as the sun and the moon are from the planet earth. It is not the intention of this report to present a pessimistic scenario. The point that clearly emerges here, which is more germane to this research project and its findings, is that a "Vision Statement", in absolute terms, is not the offspring of judicial pronouncements.

As a process of change we can look at two distinct possibilities which can be spelt out as (1) Marginal change scenario & (2) a quantum, jump scenario for women's empowerment. Somewhere here, in between the two scenarios, would lie a modest glimpse of women's empowerment 'vision'.

It must be added that any vision statement cannot escape subjectivity: As no two dreams even of the same person can be alike, the intent of a process of change against a time table of achievements or views may vary, but we should maintain a holistic outlook. Here we should also take due notice of mini-indicators which one could cull from the judicial domain.

The Marginal change scenario

In this scenario the process of change for women's empowerment would emerge if we continue with the same rate of change that has characterized our past. The vehicle of change

in the Government of India and the states has been the Five Year Plan mechanism; it is here that any new activity or new programme gets envisaged by the respective Ministry Department or Allied Institution or Agencies. The Indian budget is divided into two parts: there are funds for non-plan activities and funding for plans which incorporate new programmes of change. India has gone through nine plan periods. We have recently finalised the tenth five year plan. Any new idea or any other scheme which is directed to bring about change can thus be incorporated in this five year plan. Many a time these plans, and schemes since they remain pertinent, get a continuance. Each plan in the past has incorporated two or three new ideas and schemes to achieve those ideas. By and large the planning process denotes "business as usual scenario". It holds good in many sectors, and infact, it has led to a former Member of the Planning Commission to remark, a decade ago, that "I feel as if the seventh five year plan is the seventh version of the first five year plan".

Be it as it may, if we look at the funding side in the first year plan it is gratifying that the provisions for women's development schemes is several fold more today in the 10th five year plan.

THE QUANTUM JUMP SCENARIO

In this approach the realisation of a vision is not incremental in nature as is the case with the marginal change scenario. Here the vision realization is based on choosing and preferring certain essential goals. There is an attempt to realize them in as less a time as possible. The management aspects also demand a non-bureaucratic set-up as it has happened in the case of India's agricultural revolution; the so called 'green revolution' or as it has happened in the case of the Amul experiment now called the 'white revolution' we can also look for it in India's entry into the Atomic age and its achievements in the field of space, an entry into the satellite age or that of its progress in the field of Ocean research and our reaching in time to Antartica- all these constitute examples of 'Quantum Jump'. Here there is a stated goal, there is a preference for its early achievement and such declared "mission" stands achieved in a minimum timeframe.

By the same analogy, it is suggested here that any future planning to achieve accelerated development and empowerment of Indian women will have to be dovetailed to certain selective missions. It could be taken on an All India basis. In order to realize such a vision we have to go for a holistic approach; we have to ensure that all systems dealing with women are dovetailed and duly linked in a compatible mould. It should be the task of the nodal Ministry/Dept. of Women & Child Development (GOI).

Besides, another configuration we need to earmark is the one wherein the different women related Commissions, agencies, NGOs, social workers of excellence and several trusts working in the field of women's development, irrespective of caste, religion or political ideology can help each other to create a common platform, which could spell out shared values for a minimum national agenda as a new feminist movement. **The National Commission for Women**

can play here a 'nodal' role. With the above two configurations we have to expose and draw gently and take benefit of the judicial innovations, in terms of, family courts, lok adalats etc. Above all, there is a need to pay serious attention to make the Panchayati Raj system an effective instrument to help the women of India in far flung nook and corners. They could be provided a technical legal arm - even if it provides a "Micro-legal-aid".

The quantum jump scenario provides a fertile ground for innovation and experimentation with new ideas and unorthodox programmes and practices to reach out to women of all strata. Here, by way of illustration based on empirical and field research, **the National Commission, can organize programmes for social mobilization of grassroot women on the lines of the Manglam Project of Pondicherry where, within a short span of time, the illiterate and ignorant women were taught to organize themselves for seeking justice, through a synergetic working group of the non governmental organizations, the government and the local Panchayat system. In a bureaucratic mould, such a programme, could have taken years to achieve, this experiment had yielded results within a year.**

Another example is that of the district Dharmapuri, Tamilnadu. Here in the case of 'Self help groups, the local washerwomen raised funds collectively from amongst other women and they then bought a van. They further learnt driving and drove to Bangalore and collected work of washing uniforms for the commercial houses. In a matter of six months they earned what they could not earn before in 4 to 5 years' time. Besides their economic upliftment, they learnt and practised community participation and sharing of each other's joys and sorrows besides social defense for all women. These are only selective illustrations of success stories of the Empowerment at the grass root level which women in normal, routine- developmental activities, in general, may not enjoy their participatory role as they have in these two goal oriented projects which are a bit time-targeted too. They had the satisfaction of working as a collective body. Their rise of confidence depended purely on their own determination and skills, without looking for any extraneous bureaucratic help.

All such examples encourage us to strengthen the "Self-Help-group" movement. They could be provided with a legal arm as a back-up system.

We can also cite the Nellore women's example who organized and fought against liquor barons and contractors. They pressurized the state government to get licenses of these vendors canceled. They could thus achieve domestic peace and harmony. Money so saved, by both husband and wife, could contribute to the education and health and development of their children. Moreover, this movement had a multiplier effect on village women of other districts too. This 'mission-mode-approach' with participatory flourish, in time targeted goals, can help women at the micro level, to empower themselves, and their villages.

Also, let the concerned authorities make all effort to let the duly elected women in our Panchayats, freely participate, on equal terms with male members. Such an empowerment will

be truly effective towards women empowerment. In fact, this should constitute a big segment of our any future oriented "vision".

Gandhiji, called the "Industrialists as the Trustees of our nation. The corporate sector too should acquire a social face. If they encourage and involve women in planning and execution of programmes and activities at different levels, it will bring a new colour to any "envisionment".

In any vision scheme, the merit of new and innovative ideas too have a valid place. Here a cybernatic mode networking of the governmental apparatus, the industry on the one hand and the NGO and people on the other can pave the way to success in imparting a touch of quality to women's Empowerment.

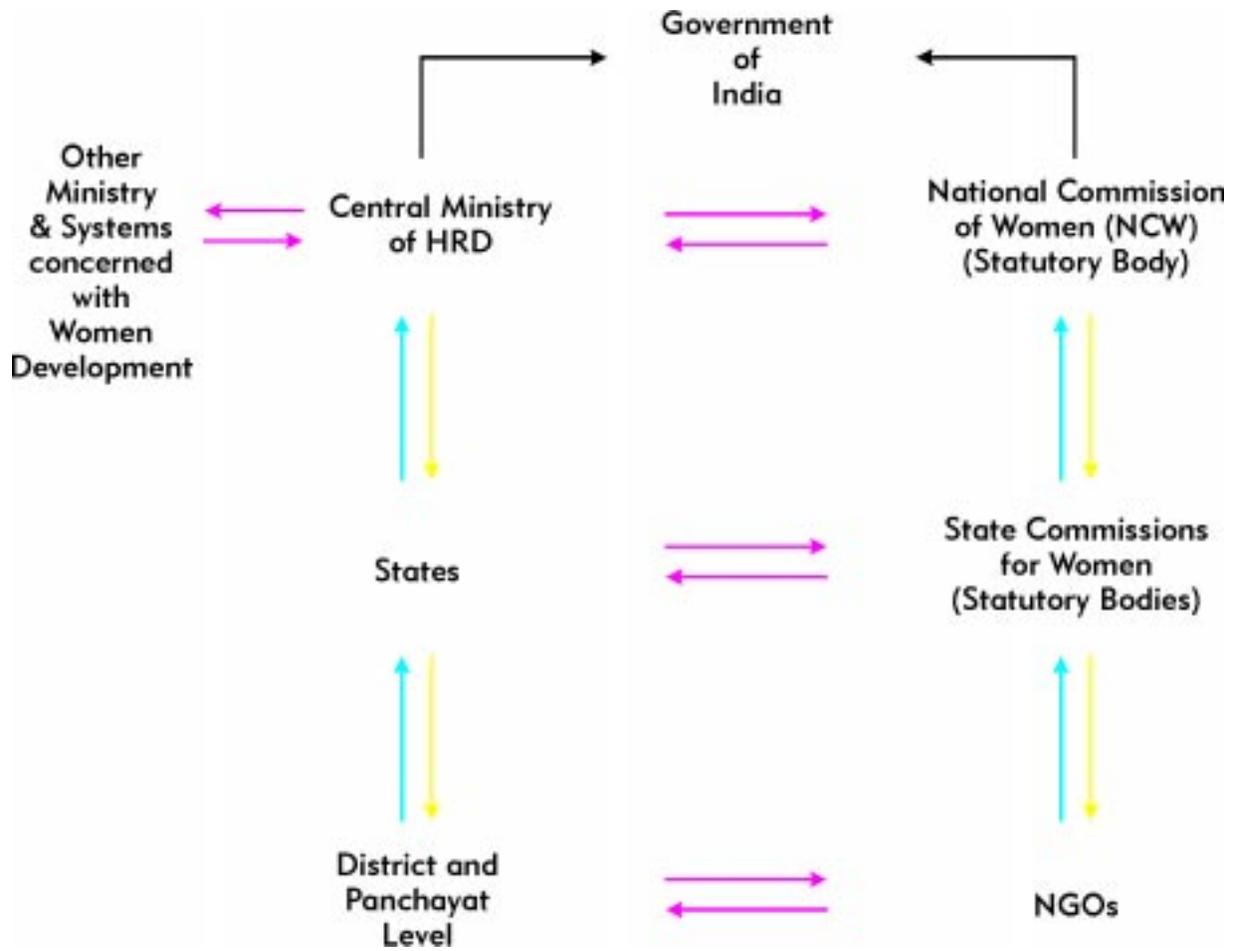
In a final word, let us admit, that the police and the allied enforcement executives do need a heavy sensitising dosage through training and orientation programmes. It shall hold good for the lower judiciary too. All in all our Judiciary if it is fully sensitized, and is vigilant, can play the role of directing, even of correcting, governmental action for ensuring women's due rights.

A synergy emerging out of a coordinating effort between the three main organs of the Indian State (the Legislators, the Executive and the Judiciary) and their continuous interaction with each other alone, will ensure the due empowerment of women and their development as an equal citizen and recipient of welfare and protection.

The two major nodal points to fulfill all that has been said above ultimately lie, if in a Cybernatic mode on the Ministry of Human Resource Development and the National Commission for Women if they can Play their due role. (See Fig.3).

Figure-3

**Cybernetic Nodal Action of M/HRD & NCW
(Intensive Communication/Feedback Mechanism required)**



List I

1. Justice V.R. Krishna Iyer :
Chairperson : Advisory Committee of the Project on Women's Empowerment
Former Justice of the Supreme Court of India
2. Prof. C.G. Raghavan :
Member : Advisory Committee of the Project on Women's Empowerment
Former Dean Law College of Nagpur University
3. Mrs. Margaret Alva:
Member : Advisory Committee of the Project on Women's Empowerment
Chairperson : Parliamentary Committee on Women's Empowerment
Member of Lok Sabha & Former Minister for Women & Child Development Government of India.
4. Padma Seth, former member of NCW and senior consultant UNICEF
and
(Occasional special invitees: key consultants to the Project and other area experts).

Brainstorming meet on Women's Empowerment vis a vis Legislation and Judicial Decisions

April 2002

Participants:

1. Justice Krishna Iyer : Chairperson : Advisory Group of the Project on Empowerment of Women, Former Judge: Supreme Court of India.
2. Prof. C.G. Raghavan : Retd. Professor/Dean, Nagpur Univ. Law College, Member Advisory Group.
3. Mrs. Margaret Alva : M.P. and Chairperson of Parliamentary Committee on Women's Empowerment - Member Advisory Group.
4. Ms. Rani Jethmalani : President : War Law
5. Dr. S.C. Seth : Futurist & Strategic Planner, Fellow WFSF, Moderator of the Brainstorming Session.
6. Ms. Meera Khanna : Joint Secretary: The Guild of Service, Co-moderator - Brain stormi ng.
7. Ms. Pavan Sharma* : Addl. Law Officer, Law Commission
8. Ms. Meenakshi Lekhi* : Advocate
9. Dr. Rama Patnaik* : Reader: Pol. Science, Indraprastha College, Delhi University.
10. Dr. Adarsh Sharma* : Additional Director, NIPCCD.
11. Ms. Sulochana Vasudevan : Project Director (LTA Swashakti), NIPCCD
12. Dr. Ranjana Kaul* : Advocate
13. Dr (Mrs.) Asha Gupta : Principal, Bharati College, Delhi University
14. Ms. Iena Sarabjee : President, Bahai Community
15. Ms. Veena Nayyar* : President Women's Political Watch and former Member, Scheduled Castes & Scheduled Tribes Commission
16. Ms. Nargis Raj Kumar : Consumer Counsel Court - Member FLO

* Chairpersons of special Task forces on Women's Empowerment

17. Ms. Ragini Yechury : Chief Personnel: Northern Railway
18. Ms. Usha Nanda :
19. Ms. Nita Kapoor : Joint Secretary - National Commission for Women, New Delhi.
20. Ms. Reny Jacob : Member: Delhi State Commission for Women
21. Mr. G.N. Ghosh : FAO
22. Ms. Abha Bahadur* : Sulabh International
23. Mr. Hans Joachim Kinderlen : Counsellor: German Embassy
24. Dr. Syeda Hameed : Muslim Women's forum & former Member NCW
25. Ms. Mridula Sinha : Chairperson : Central Social Welfare Board.
26. Ms. Sunita Ganguly : UNICEF
27. Ms. Kalpana Tawaklay : UNHCR
28. Mr. S.K. Guha : UNIFEM
29. Ms. Deepali Nag : WHO
30. Ms. Suparna Kusumkar : ASSOCHAM
31. Mr. R. Saran : LAMARKA
32. Mr. Parminder Singh : Editor: UNI
33. Mr. S. Prakash : Dy. Director NCRB
34. Dr. Seema Vadera : CMO:CGHS
35. Dr. Sharada Jain : President, Lifecare Centre, Delhi
36. Ms. Gowri Eshwaran : Principal, Sanskriti School
37. Ms. Swamy Prakash : Reporter - Indian Express
38. Ms. Lily Thomas : Advocate
39. Mr. Vishru Rao : The Guild & Service
41. Ms. Leena Prasad : Lawyers Collective
42. Ms. Asha Ramesh : Co-ordinator Capacity Building Christian Aid.
43. Ms. Anuradha Mukherjee : Programme Co-ordinator Media Advocacy
44. Ms. Manisha P. Naveen : Project Officer: MARG

45. Mr. S.N. Sharma : Chartered Accountant
46. Ms. Kamal Singh : The British Council
47. Ms. Vimla Mehra IPS : Joint Commissioner of Police, Delhi Police, & Chief Crimes against Women's Cell.
48. Dr. Mira Shiva : Co-ordinator All India Drug Action Network
49. Mr. A.Mccutcheon : Director, VHAI, Programme Officer, Ford Foundation
50. Ms. Shaistha : Teacher / Computer Programmer
51. Mr. Bahuguna S. : Printing Technologist
52. Mr. Sadiq Syed Jilani : Lawyer
53. Ms. R. Runjhun : Secretary, ITISC
54. Ms. Nupur : Secretary, ITISC
55. Mr. Juneja : Secretary, ITISC
56. Ms. Padma Seth : ITISC
57. Mr. Subhash Das : Audio-visuals
58. Mr. Subendhu : Audio-visuals
59. Kalpakam Yechury : Member-in-charge - Environment - AIWC.

**Empowerment of Women Under the Indian Constitution in the
Self-Government Institutions**

PART IX

THE PANCHAYATS

243(d) "Panchayat" means an institution (by whatever name called) of self-government constituted under Article 243B, for the rural areas.

243B Constitution of Panchayats:

- (1) There shall be constituted in every State, Panchayats at the village, intermediate and district levels in accordance with the provisions of this Part.

243C : Composition of Panchayats:

- (2) All the seats in a Panchayat shall be filled by persons chosen by direct election from territorial constituencies in the Panchayat area and, for this purpose, each Panchayat area shall be divided into territorial constituencies in such manner that the ratio between the population of each constituency and the number of seats allotted to it shall, so far as practicable, be the same throughout the Panchayat area.

243D : Reservation of Seats:

- (3) 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.
- (4) The offices of the Chairpersons in the Panchayat 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.

Provided further that not less than one-third of the total number of offices of Chairpersons in the Panchayats at each level shall be reserved for women.

THE MUNICIPALITIES

243P. Definitions:

(e) "Municipality" means an institution of self-government constituted under Art. 243Q.

243Q. Constitution of Municipalities:

- (1) There shall be constituted in every State
 - (a) A Nagar Panchayat (by whatever named called) for a transitional area, that is to say, an area in transition from a rural area to an urban area;
 - (b) A Municipal Council for a smaller urban area; and
 - (c) A Municipal Corporation for a larger urban area.

In accordance with the provisions of this Part;

243T. Reservation of seats:

- (2) Not less than one-third of the total number of seats reserved under Clause (1) shall be reserved for women belonging to the Scheduled Castes or as the case may be, the Scheduled Tribes.
- (3) 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.
- (4) The officers of Chairpersons in the Municipalities shall be reserved for the Scheduled Castes, the Scheduled Tribes and women in such manners as the Legislature of a State may, by law, provide.

**Search for
A Vision Statement
on
Women's Empowerment
vis-a-vis
Legislation
&
Judicial Decisions**

prepared by :
Indian Trust for Innovation & Social Change



**The National Commission for Women
4, Deen Dayal Upadhyay Marg,
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FOREWORD

Women have come a long way in India, but there are miles to go. Gender jurisprudence has travelled a long way in India, but there are leagues to go. With independence came a Republican Constitution loudly pronouncing equality for all citizens, men and women alike. This was, indeed, a historic change in a society for centuries riven with inequalities based on caste, creed and gender. It provided a new vision adumbrated in the Preamble, the Fundamental Rights and the Directives Principles of State Policy. The various declarations at the UN and international conventions echoed the same sentiment of equality of the sexes and India adopted these with great enthusiasm. The Indian legislatures, both at the Federal and State levels, followed suit by adopting or enacting a great number of laws to provide content to these pronouncements, in matters both social and economic. Many an existing law was amended to remove any gender bias in its orientation. Equally positive and constructive was the role of the judiciary, particularly in the higher echelons, and from time to time even at lower levels, when existing laws or judgments were revisited and redirected to accord with the spirit of the new age. Our ears echoe with those resounding judgments delivered from the Supreme pulpit removing with one flourish age-old orthodoxies conflicting with the humanity and dignity of the woman of modern India. Where the law was clear, it was restated with redoubled vigour; where it was weak or ambiguous, the omission was readily supplied; where it was negative, it was struck down by reference to the Preamble or the Fundamental Rights contained in the Constitution; and where even that would not do, *avant garde* ideas were generously borrowed from international conventions or declarations and planted on our jurisprudence.



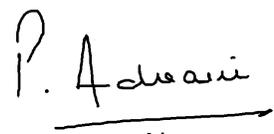
As India launched an ambitious programme of economic regeneration after Independence, an equally impressive campaign of social engineering was also undertaken to release the latent potential of a massive population weighed down by centuries of social stagnation and colonial oppression. The emancipation of women, social, economic and political, was a major plank of this social revolution. It was explicitly recognised that the constitutional guarantee of equality was empty unless women were released from evil social practices, provided access to means of livelihood and given due space in the decision-making fora. The result was a comprehensive programme of social reform,

economic development and political empowerment. It is nobody's case that the Indian woman has reached the El Dorado. Development, social or economic, as we all know too well, is not merely a matter of schemes or resources. Implementation, enforcement and involvement, of individuals and communities, are even more important.

What is true of socio-economic development is equally true of legal advancement. Progressive legislation and positive judicial pronouncements are a necessary but not a sufficient condition for women's legal empowerment. Even in the field of legislation, gaps exist. New issues arise or old issues assume a new urgency in the emerging economic or social milieu. It may be the question of domestic violence or of sexual harassment at the workplace. Or it may be spurred by new technologies, of sex determination for example. Our legislators have been quite sensitive in tackling these issues. Where there is delay, courts have stepped in and laid down guidelines to control behaviour until appropriate laws are enacted. Sometimes the course of law may be obstructed by social conservatism or religious obscurantism. Similarly adjudication is also, after all, a human process and an individual judge's mental preferences or intellectual predilections can influence her/his judgment. More often it is a matter of sensitivity of the society in general to issues pertaining to gender.

But overall the story of feminist achievement on the legal front is a heartening one. It was this story that we wanted documented. The Indian Trust for Innovation and Social Change has done a remarkably eclectic and yet comprehensive job of scanning the field of legislation and judicial decisions having a bearing on women's empowerment and contextualising it in a historical and sociological perspective. Dr Padma Seth, herself a veteran of the feminist world and an ex-member of the National Commission, has, as Executive Director of the Trust, given a rare depth to the vision, now going into the past, now glimpsing the future, and opened up new vistas for research in the area. The Overview, titled "A Vibrant Vision and Militant Mission" by Justice V R Krishna Iyer, a legendary crusader for the underdog, is a feast for the intellect. They both deserve our grateful thanks.

I have no doubt this scholarly study would become the favourite reference material for students and social workers alike who are mapping the progress of women's movement in the area of law and justice.


Poornima Advani

ACKNOWLEDGEMENT

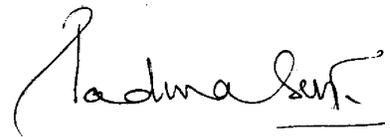
*I thank Dr. (Smt.) Poornima Advani, Chairperson, National Commission for Women and the Members of the National Commission for Women who have sponsored this project on "**Vision Statement on Women's Empowerment vis-a-vis Legislation and Judicial Decisions**", to 'Indian Trust for Innovation and Social Change'. I have benefitted from her mature advice.*

I record my appreciation for the co-operation received from the senior staff of the NCW and in particular for Mr. Sabharwal, Consultant, NCW.

I am grateful to Justice V.R. Krishna Iyer, Chairman of the Advisory Group for this project and its other members. In particular I am beholden to Mrs. Margaret Alva, Member of Parliament for her encouragement and time given for discussion.

My gratitude also to the key consultants to the Trust and to a number of professionals, Judges, Lawyers, Futurist, NGO's, Academics, Government Officials from different cities with whom I had discussions on different aspects of this project.

My final word of thanks is to the participants of the Brain Storming Session and for the presentations therein made by the various Task Force Chairpersons. (See List 2).



Padma Seth

Executive Director

Indian Trust for Innovation & Social Change

An Overview

AN OVERVIEW*

A VIBRANT VISION AND MILITANT MISSION

Justice V.R. Krishna Iyer**

Empowerment, egalite and dignity of women are the desiderata of contemporary womanhood, long subject to undeservedly humiliating inferiority of status, discrimination in civil and political rights and subordination in developmental opportunities. Women are human and, as of right, a radical transformation in women's position is just, fair and necessary to put an end to the current invidiously arbitrary situation. To actualize this dynamic dimension of women's up-gradation, we need planned action which, in turn, must result in a project for change sufficiently comprehensive to meet the challenges in the civil, political, cultural, social and economic dimensions. That is why a vibrant vision which inspires a militant mission, is necessary. Civilised humanity considers the norms of equality and liberty as the basis of just society. The notion of equality has many nuances even as the vice of discrimination operates in many fields. The Universal Declaration of human rights adopted by the United Nations way back in 1948, claims that all human beings are born free and equal in dignity and rights. This egalitarian versatility postulates not merely equality of opportunity in social and economic affairs but realistic unfoldment of personality in all faculties. Only then is it possible to feel that womanhood has gained an environment wherein her worth can blossom as a full human being. The holistic development of man and woman is impossible without social justice which protects the weak and inhibits the strong and in a gender dimension makes the woman no less than the man.

Global jurisprudence, through various Conventions, Declarations, Resolutions and other instruments, has affirmed that the female of the species shall not be invidiously treated from foetal state to final exit, from the cradle to the grave. The world's largest conference where women's rights found full acceptance and special consideration for womanhood was treated as integral part of the equalisation process was the Beijing Declaration, ratified by India. It binds and obligates initiation of national laws to incorporate the Beijing decisions. What is equally important is that international legal instruments, ratified by nations, enable the courts to read into municipal laws, the larger jurisprudence evolved at the global level. Thus a variety of universal instruments, which deal with the girl child, with status of women and with gender discrimination, have become invisibly part of India's justice system. The Supreme Court of India and the High Courts have used these International Instruments in interpretation of Indian Laws and in applying those principles where there is vacant space in the India

*This overview also purports to be the Executive Summary of this Report on Women's Empowerment vis a vis Legislation and Judicial decisions.

**Justice V.R. Krishna Iyer : Former Judge of the Supreme Court and Chairman of the Advisory Committee for this Project.

corpus juris. In short, we have a universal gender jurisprudence applicable to India and beneficial to Indian women consisting of International instruments, Indian statutes and case-law which judicially bind.

Indian Constitutional jurisprudence has emphatically accepted equality of status and opportunity and prohibits discrimination on the basis of sex. Article 14 of the Constitution, proclaiming equality before the law, goes beyond that bare equality through judicial interpretation. Women as a class are different from men as a class in so far as they are entitled to special treatment as a class. Article 15, not merely frowns on discrimination against women but permits especially favourable treatment to women based upon the social realism that they are weaker in economic and social status. The special disabilities of women can be counteracted by special provisions in their favour. The truth is that the fair sex has had an unfair deal in law and life and therefore legal activism at the judicial and legislative levels need to abolish the shameful inequality, indelible stain and incurable wound which is the lot of Indian womanhood. In Muthamma's case (1979 SC 1868) the Supreme Court condemned a rule of victimisation of women in the Foreign Service Rules. The court said, "discrimination against woman in traumatic transparency is found in this rule". The court struck down the Rule as naked bias and violation of equality. In short, not merely is equality guaranteed but discrimination in favour of women has found favour with the Constitution and the Court. Protective discrimination supportive of women is a permissive classification under the Constitution. Special laws can be made and have been made in favour of women and children. Women's physical structure and performance of maternal functions place her at a disadvantage in the struggle for subsistence and her physical well-being becomes a matter of public concern in order to preserve the strength and vigour of the race.

DISABILITIES AND DISCRIMINATORY TREATMENT WOMEN UNDERGO

Globally speaking, civil and political rights, social and economic rights, cultural and gender rights have been unfair to womanhood. Indeed, human rights are not fully enjoyed even now by our daughters, sisters and mothers. It is heartening that the United Nations, in its great instruments, has upheld gender dignity and egalite. It is equally gratifying that the Indian Constitution has, in various provisions, shown special compassion for the weaker sex. We must be proud that our Constitutional jurisprudence unreservedly grants equal status and guarantees equal opportunities to both sexes. We live at a time when Kalpana Chawla has blazed the trail to demonstrate that a woman can excel even in space travel (although the second experiment ended tragically). There is none in India who does not agree with the proposition that woman, if given unbiased environment, can perform in every field with signal success what men may claim they can. We, therefore, proceed from the fundamental fact that socially and politically woman must have equal rights. The reality is a different story and so women have to fight on every front as sisters and daughters, as wives and mothers, as partners in public affairs, as heirs under succession law and economic equals in every field

of human activity, not for condescension nor concession but social justice and equal recognition. This is integral to the gender vision of the nation sans which slavery in disguise may still be the feminine fate. The rule of law is not fair unless the rule of life so transforms women's status as to be equal with that of men and opens up equal opportunity for women in every walk of life. Suffrage is necessary but the ballot alone can not win power for the subject gender. So it is that we have to go beyond the vote to actualization of equality as a social reality. The glory of the equal gender becomes a fact of history only when, from an angle of pragmatism and jurisprudence, it can be demonstrated that the aspirations of womanhood, regardless of religion, region, caste and creed, are not inhibited, but are promoted, by the sex factor. The menstruation of gender justice is not in international instruments, Constitutional provisions and political platitudes but in the dynamics of life itself.

Our statute book, in some measures, supports equal rights but truth to tell, invidious discrimination weakens women's potential. It is heartening, however, that the higher judiciary has been gender-friendly, has upheld Constitutional equality and has exposed the practice of inequality against women. Nevertheless, there is much in the law which is lawless if equality is the test. There is much in politics that reveals prejudice because her very presence in Parliament or public office is negligible although by numerical strength equal power must be shared by both sexes.

WOMEN AND THE LAW

In Constitutional theory there is equality but diehard discrimination harms that claim of women in matrimonial life and divorce rights, in guardianship law, in succession and inheritance laws. Special provision for protection against discrimination is distances away. Even in executive matters there is bias against woman. Just one instance, Muthamma's case, out of many:

The writ by Miss Muthamma, a senior member of Indian Foreign Service, speaks a story which makes one wonder whether Articles 14 and 16 belong to myth or reality. It was a unique example of sex discrimination ultra vires Articles 14 and 16 of the Constitution of India. Rule 8(2) of the Indian Foreign Services Rules, 1961 provided that "a woman member of the Service shall obtain the permission of the Government in writing before her marriage is solemnized. At any time after marriage, a woman member of the service may be required to resign from service, if the Government is satisfied that her family and domestic commitments are likely to come in way of the due and efficient discharging of duties..." "Discrimination against woman, in traumatic transparency, is found in this rule...In these days of nuclear families intercontinental marriages and unconventional behaviour one fails to understand the naked bias against the gender of the species." Both the rules were declared violative of the principle of equality and held discriminatory. (C.B. Muthamma. Union of India, AIR 1979 SC 868).

The political presence of Indian womanhood either as legislators or as ministers, is grossly inadequate. Considerable noise was made promising atleast 1/3rd of the membership

of the House to women. But this tantalizing proposition suffers procrastination with no hope of implementation. In many political parties and trade unions, the situation is different. If woman is to matter, a change in her representation in public life is a sine qua non. In the professions, woman's competence notwithstanding, they have no proportionate standing. Few women lawyers, why? Few women judges, why? Very few women professors, why? Scarce in the presence of abundantly available women, - a la Kiran Bedi, in the police force or in other strategic walks of life. Surely there is invisible discrimination and the process of social justice vis a vis women is iniquitous. In sum, there is a fundamental distortion which demands correction. Occupational injustice coupled with the burden of motherhood, house wife functionalism and other inevitable chores, aggravates her iniquitous fate. There is therefore need for a campaign for gender justice in plural dimensions if equality of the sexes is not to be abracadabra.

In law, there is the room for grievance. Family law, whichever the religion is, titled against the woman. In Hindu law, where discrimination was writ large, statutory reform has gone a long way in doing justice. There is still room for making law equal in favour of the Hindu woman even now. Christian women suffer from discrimination. Luckily, the Travancore Christian Succession Act and the Cochin Christian Succession Act have been struck down by the court. Still, in the matter of inheritance, the law is not fair because implementation of the Supreme Court ruling in Mary Roy's case is resisted. In Islam the situation is worse. Orthodox Islamic opinion protects clamping down pardha on woman and banishing her to the kitchen and bedroom. This is being perpetuated despite Constitutional equality. Even regarding maintenance to divorced woman, Shah Bano case notwithstanding, there is legislative discrimination although the court has interpretatively ameliorated the lot of the forsaken partner. Talaq is trauma for the victim even like the 'four wives privilege'.

The girl child is the Cinderella of law and life. She is neglected and survives under adverse condition. She suffers dowry terrorism and even Sati homicide. Law, in its majestic equality has not helped her at school or place of employment. Sex has become a somber liability. We have to rewrite the law to defend Helen, Fazulin Bi and Sita to secure what is their due. Her heroic exploits thrill the world but women are looked down upon as less than equal. A comprehensive gender code which assures equal opportunity and equal protection as indefeasible norms of justice. This masculine world must change its ethos and eidos. The gender sector has to wage a battle for a fair deal. In this context, the courts come out with flying colours because judicial pronouncements have challengingly upheld women's claims through girlhood and womanhood. A few leading cases may be an apt illustration of the great vision the judges have projected. Case-law, in profound value-set, can be cited to support how the judges have, by their powerful pen, salvaged women from their perilous lot.

Way back in December 1969 a judge of the Kerala High Court (Krishna Iyer J) rejected the argument that a Muslim woman was not entitled to claim maintenance on the distressing ground that her husband has discarded her and married a second wife. The plea that Islam

provided for four wives for every Muslim male was exposed as fallacious and section 488 of the Criminal Procedure Code granting maintenance to a neglected wife was applied. Here is a part of the head note in that case:

S. 488 provides a summary remedy and is applicable to all persons belonging to all religion and has no relationship with the personal law of the parties. It is distressing for a Court to discriminate against Muslim women who have for ages been subjected to several social disabilities clamped down on them in the name of personal laws. The Indian Constitution directs that the State should endeavour to have a Uniform Civil Code applicable to the entire Indian humanity and, indeed, when motivated by high public policy. Section 488 of the Criminal Procedure Code has made such a law, it would be improper for an Indian Court to exclude any section of the community born and bred upon Indian earth from the benefits of that law, importing religious privilege of a somewhat obscurantist order. It behoves the Courts in India to enforce Section 488(3) in favour of Indian women, Hindu, Muslim or other. It follows that Muslim women should not be denied the advantages of para.2 of the provision to S.488(3). There is hardly any doubt that neither the reliance on Art. 25 of the Constitution of India nor the refuge under the sanctions of the Koran can save a Muslim husband from meeting his statutory obligation under S. 488 (K.L.T. 1970 p-4).

In another Muslim matrimonial case, the court (same Judge) upheld a woman's claim to divorce in a case of total breakdown of wedlock. It may be useful to excerpt from the head note the following proposition strengthening the women's case:

Modern legal systems are veering round to the view that while no party can be permitted to benefit by his own wrong conduct and obtain divorce, pleading a breakdown of marriage, public interest demands that formal ending of marriages which remain marriages in name only is but right. When an intolerable situation has been reached, the partners living separate and apart for a substantial time, an inference may be drawn that the marriage has broken down in fact and so should be ended by law. This trend in the field of matrimonial law is manifesting itself in the Commonwealth countries these days. This principle is of Quoranic vintage.

Muhammedan Law-Divorce-When to be granted-Dissolution of Muslim Marriage Act (1939), 8.2 (ix) - Applicability.

The sanctity of marriage is preserved not merely by the morality that permeates it, but by the reality that holds the family together; one without the other spells a breakdown; and so the ground for divorce may well be made out if there is total irreconcilability between the spouses. The Muslim law, independently of Act 8 of 1939, accepts this ground for dissolution of marriage. (KLT 1971 p-664).

A string of cases abbreviated but bringing out the essential concern of the Court may now be given:

1. State of Maharashtra vs. Chander Prakash Kewalchand Jain (1990) (1) SCC 550 this case dealt with the rape of a newly married girl. The Supreme Court observed that the prosecutrix cannot be put on par with the accomplice. She being a victim of the crime, not only is she a competent witness, her evidence should carry the same weight as said, "ordinarily the evidence of the prosecutrix who does not lack understanding must be accepted. To insist on corroboration except in the rarest of rare cases is to equate a woman who is a victim of the lust of another with an accomplice to a crime and thereby insult womanhood."
2. State of Maharashtra v. Madhukar Narain Mardikar (JT 1990 (4) SCC 169, the Supreme Court held that even a woman of easy virtue is entitled to protect her person. Her evidence cannot be thrown overboard on that count. The Court expressed its unhappiness over the manner in which the investigation by the police was casual and defective.
3. Government of A P v. P.B. Vijaykumar (1995) (3) SCALE 163 Reservation of posts for women has been upheld under Art. 15(3) though Art. 16 does not specifically provide for such reservation for women.
4. Vishaka v. State of Rajasthan (1997) 6 SCC 241. 1. relying upon CEDAW and the country's official commitment to it, in addition to the Constitutional mandate, the Supreme Court has laid down guidelines to be followed by employees to prevent sexual harassment of women employees. The guidelines are mandatory till they are replaced by legislation.
5. Mangatmul V. Punni Devi (1995) (5) SCALE 199, the Supreme Court said "Maintenance as we see it necessarily must encompass a provision for residence. Maintenance is given so that the lady can live in the manner more or less to which she was accustomed. The concept of maintenance must, therefore, include provision for food and clothing and the like, and take into account the basic need of a roof over the head. Provision for residence may be made either by giving a lump sum in money or property in lieu thereof'.
6. Saleem Basha v. Mumtaz Begum CRL R.C. No.1 000+999 of 1995-decided on 22.4.98. Judge S.M. Siddickk of the Madras High Court said, "Quran discourages divorce-it permits only after pre-divorce conference attempting for reconciliation" and mediation by both parties. Reference was made to the case of Fazlenbi vs. K. Khader vat (AIR 1980 SC) 1730. Justice Krishna Iyer speaking before the Supreme Court quoted CJ Behard Islam an elaborate judgment replete with quotes from the Holy Quran has exposed the error of early English authors and judges who dealt with Talaq in Muslim law as good even if pronounced at whim or tantrum by the husband; in the absence of serious reasons, no man can justify a divorce either in the eye of religion or the law. If he abandons his wife or puts her away in simple caprice, he draws upon himself the

divine anger, for the curse of God, said the Prophet rests on him who repudiates his wife capriciously.

Action that outraged the modesty of female employees constitute sexual harassment and it is importantly laid down by the judges that physical contact may be absent but still sexual harassment may take place. The court imported international instruments in imparting a liberal approach to the issue.

1999 (1) SCALE 57, AIR 1999 SC 625, (2000) 1 LRC 563, (1999) 2 CHRLD 455

The respondent was removed from his post as an employee of the appellant council after the relevant disciplinary authorities found him guilty of sexually harassing X, a junior employee. He filed a writ petition before the High Court challenging his dismissal. A single judge allowed the petition, finding that the respondent's dismissal was unjustified on the grounds that he had only tried to molest X and had not actually established any physical contact with her. The appellant was ordered to reinstate him. The Division Bench of the High Court upheld this decision and the appellant appealed to the Supreme Court. The appellant, inter alia, relied upon the fundamental rights to equality (Art 14) and life and liberty (Art 21), as well as India's international obligations under the Convention on the Elimination of All Forms of Discrimination against Women, the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Beijing Declaration.

In allowing the appeal, it was held that :

1. In the absence of procedural irregularity, the High Court was wrong to interfere with the findings of fact recorded by disciplinary authorities and with the punishment which they imposed. It is a well-settled principle that, in exercising the power of judicial review, the court is not concerned with the correctness of findings of fact which are reasonably supported by evidence, but with the decision-making process itself (*Union of India v Parma Nanda* (1989) 2 SCC 177 (Ind SC), *B C Chaturvedi v Union of India* (1995) 6 SCC 749 (Ind SC) and *Government of Tamil Nadu & Another v A Rajapandian* (1995) 1 SCC 216 (Ind SC) followed).
2. Sexual harassment is a form of sex discrimination projected through direct or implied unwelcome sexual advances, requests for sexual favours and other verbal or physical conduct by the female employee may affect her employment, unreasonably interfere with her performance at work and create an intimidating or hostile working environment for her (dicta of Verma J in *Vishaka & Others v State of Rajasthan & Ors* (1997) 6 SCC 241, (1999) 2 CHRLD 202 (Ind SC) followed).
3. Each incident of sexual harassment in the workplace is incompatible with the dignity and honour of women and violates the fundamental rights to equality, life and liberty.
4. The respondent's behaviour did not cease to be outrageous for want of physical contact and the observations made by the High Court to the effect that the respondent did not

actually molest X because he did not establish such contact with her are unacceptable. The courts should examine all the evidence to determine the genuineness of the complaint and should rely on the evidence of a credible victim.

5. The respondent's conduct offended against morality, decency and X's modesty. It constituted an act unbecoming of the good conduct and behaviour expected from a superior employee and undoubtedly amounted to sexual harassment. It follows that the punishment imposed on the respondent was commensurate with the gravity of his objectionable behaviour and there was no justification for the High Court to interfere with it. Any reduction in punishment is bound to have a demoralizing effect on women employees and is a retrograde step.

The Courts are obliged to give due regard to international conventions and norms when construing domestic laws particularly when they are consistent and where there is a void in domestic law. Moreover, the Convention on the Elimination of All Forms of Discrimination against Women, (CEDAW) ICESCR and the Beijing Declaration impose obligations on India to further gender sensitise its laws.

WOMEN / EXPRESSION

Depictions of social evils allowed where they advanced film's serious message.

Supreme Court 1 May 1996

A.H. Ahmadi CJI, S.P. Bharucha J, B.N. Kirpal J (1996 4 SCC 1; AIR 1996 SC 1846; (1997) 3 LRC 1

The film 'Bandit Queen' deals with the real life story of PD, a poor, lower caste rural girl who is brutalized by her husband, the upper caste community and the police and is transformed into a revengeful bandit. The film contains scenes including female frontal nudity, a bare made posterior, rape, violence and generally strong language. The Appellate Censorship Tribunal unanimously upheld the film's 'A' certification (i.e. for adult viewing only) without requiring the cuts which had been sought by the Censorship Board. When the film opened for public viewing, the first respondent, a member of the upper caste community depicted in the film, filed a writ petition before the Delhi High Court seeking a ban of the film on the ground that it depicted members of his community as rapists and the portrayal of PD was 'a slur on the womanhood of India'. The writ petition was allowed by a single judge, who quashed the certificate granted to the film and suspended its screening until the Censorship Board carried out modifications and excisions in terms of his order. This decision was upheld by the Division Bench of the High Court. The appellants appealed to the Supreme Court.

In allowing the appeals and restoring the film's 'A' certificate, it was held that:

6. The censorship guidelines under S 5-B of the Cinematography Act 1952, which echo the constitutional restrictions on the guarantee of freedom of expression (Art 19(2)), are broad standards that cannot be read as one would read a statute. The film certification authorities are required to be responsive to the values and contemporary standards of society while ensuring that artistic expression and creative freedom are not unduly curbed. The film must be judged in its entirety from the point of view of its overall impact (K.A. Abbas v. Union of India (1970) 2 SCC 780 (Ind SC), Raj Kapoor v State (1980) 1 SCC 43 (Ind SC), Samaresh Bise v Amal Mitra (1985) 4 SCC 289 (Ind SC) and State of Bihar v Shailabala Devi (1952) SCR 654 (Ind SC) considered).
7. No film that extols or encourages a social evil is permissible but a film that illustrates the consequences of a social evil necessarily must show that social evil. The scenes of nudity and rape and use of expletives in the film, permitted by the Tribunal, were in aid of the theme of the film showing the physiological and physical effect of rape and violence on a village child. They were intended not to arouse prurient or lascivious thoughts but revulsion against the perpetrators and pity for the victim.
8. The court should recognize the message of a serious film and the test that should be applied to the individual scenes is whether they advance the message. If they do they should be left alone, with only the caution of an 'A' certificate. Adult Indian citizens as a whole may be relied upon to comprehend intelligently the message and react to it, not to the possible titillation of some particular scene.
9. Whether the depiction of a social evil is necessary is best left to the sensibilities of the expert Tribunal which gauges public reactions to films. Except in cases of a stark breach of the guidelines, the Tribunal should be permitted to go about its task.
10. Nakedness does not always arouse the baser instinct. The guidelines permit scenes of sexual scene where PD is humiliated, stripped naked, paraded and made to draw from a well within a circle of a hundred men was intended by those who stripped her to demean her. The scene was central to the powerful human story and its effect could hardly have been better conveyed than by showing the scene explicitly. It helps to explain PD's rage and vendetta against the society that had heaped indignities upon her.
11. The rape scene also helps to explain why PD became what she did. Rape is crude and its crudity is what the rapist's bouncing bare posterior is meant to illustrate. Rape and sex are not being glorified in the film. On the contrary, it shows the terrible and terrifying effect rape can have on the victim.
12. Too much need not be made of a few swear words the like of which can be heard every day in every city, town and village street. No adult would be tempted to use them because they are used in this film.

FAMILY REMEDIES - WOMEN

Bodhisattwa Gautam v Subhra Chakraborty

Interim award made to rape victim ending accused's trial, Supreme Court 15 Dec 1995

Kuldip Singh J v Saghir Ahmad J

(1996) 1 SCC 490; AIR 1996 SC 922; (1995) 2 CHRLD 159

The Respondent alleged that the appellant induced her to have sexual intercourse with him by giving her false assurances of marriage. She claimed that when she subsequently became pregnant, the respondent agreed to marry her secretly, despite knowing that the marriage was not valid, but later insisted that she have an abortion. She became pregnant again a few months later and underwent another abortion allegedly at the appellant's insistence. The respondent claimed that, having spent several years cohabiting together, the appellant finally abandoned her. The appellant was charged with committing various criminal offences under the Indian Penal Code and filed a petition to quash the proceedings. The High Court dismissed the petition and the appellant sought special leave to appeal to the Supreme Court. In refusing leave to appeal, the Supreme Court considered whether any further order could be passed compelling the appellant to pay maintenance to the respondent pending the resolution of the criminal proceedings against him. The appellant submitted that he should not be burdened with the liability of paying maintenance to the respondent as he was unemployed. Under Art 32 of the Constitution, the Supreme Court has the jurisdiction to enforce fundamental rights, including the right to life (Art 21). In ordering the appellant to pay interim compensation to the respondent pending the resolution of the criminal proceedings against him, it was held that:

13. Fundamental rights can be enforced even against private bodies and individuals.
14. It is not necessary, for the exercise of the Supreme Court's jurisdiction under Art 32, that the person who is the victim of the violation of his or her fundamental right should personally approach the court. The court can itself take cognizance of the matter and proceed suo motu or on a petition of any public spirited individual.
15. Rape is a crime against basic human rights and is also violative of the victim's most cherished fundamental right, namely, the right to life.
16. Delhi Domestic Working Women's Forum v Union of India (1995) 1 SCC 14 (Ind SC) recognizes a rape victim's right to compensation by providing that it shall be awarded by the court on conviction of the offender, subject to the finalization of a criminal Injuries Compensation scheme by the Central Government. On the basis of the principles set out in that case, the court's jurisdiction to award interim compensation shall be treated as part of their overall jurisdiction to try rape offences and this power should be included in the above scheme.

17. The Supreme Court has, in any event, the inherent jurisdiction to pass any order it considers fit and proper in the interests of justice or in order to do complete justice between the parties.
18. The court is prima facie satisfied as to the truth of the serious allegations made by the respondent and accordingly orders the appellant to pay to the respondent Rs. 1000 (approximately US \$ 27, as at 15 December 1995) every month as interim compensation pending the resolution of the criminal proceedings against him. The appellant shall also pay arrears of compensation at the same rate from the date on which the complaint was filed by the respondent to the present date.

Observation:

The right to life means more than mere animal existence; it means the right to live with human dignity and includes, therefore, all those aspects which go to make a life meaningful, complete and worth living.

Valiant has been the role of the judiciary in the vindication of gender justice. But case-law, creative, imaginative and gender friendly, has its logic and limitation. Judges cannot make law but only interpret it and decide specific cases and controversies within defined bounds although in that process they do make law interstitially. But legislation is essentially a wider function covering vaster spaces and free to weave fabrics of fundamental mutation. So it is substantive codification, radical in transformation of the social order, that we need, an avant-garde operation parliament must perform. Magnificently as the judiciary has acted, they have not and could not usurp legislative functions. It follows that while paying a tribute to the progress achieved by the Bench we still need a great gender code to render unto womanhood empowerment, which is her due. Subjection over centuries must be manumitted, not only by judicial daring but by legislative liberation. Operation Empowerment is legislation in action and goes beyond the passive declaration of equality of the sexes. Grant power to the subjugated sector, make her independence a source of strength, install her in seats where power resides and generate in her, a suppressed half of humanity, that confidence, courage and capacity which will sustain her worth and dignity so as to enhance the human resources of our generation to the common advantage of the world community. No society is free until the last girl child and the last damsel in distress is free. That is the dynamics and dialectics of our age, rewriting vintage subordination, restoring to our vast sister sector the victory of empowerment which belongs to her by human rights culture. Brave new Bharat belongs equally to sister and brother in power, property and pursuit of happiness. That is the militant vision social justice and cosmic jurisprudence project. Coda: We are active partners and march together. We have a world to conquer.

VR. Krishna Iyer

February 10, 2003

Introduction

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