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# CHAPTER 1

## *PREFACE - GENDER ANOMALY*

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*"O Lord! Why have you not given woman the right to conquer her destiny?  
Why does she have to wait head bowed,  
By the roadside, waiting with tired patience,  
Hoping for a miracle in the morrow?"*

*- Rabindranath Tagore*

**R**abindranath Tagore, India's greatest poets and Nobel prize laureate expressed his anguish at the inequity of the situation of women in India. His words are still prophetic today. The nineteenth and twentieth centuries saw a succession of women's movements, first around burning social issues like sati, widow remarriage and women's education, and then around the Freedom Struggle itself. Mahatma Gandhi the father of the nation said there was no occasion for women to consider themselves subordinate or inferior to men. He underlined, "Of all the evils for which man has made himself responsible, none to me is so degrading, so shocking or so brutal as his abuse of the better half of humanity. The female sex, is not the weaker sex. It is the nobler of the two, for it is even today the embodiment of sacrifice, silent suffering, humility, faith and knowledge."

### **GENDER**

The position of a woman is not characterized merely by the biological differences between men and women, but by the dominance of men and the subordination of women. A subordination that is not only supported by men, but sanctioned by customs and traditions made by men, and also sub-consciously supported, reinforced and maintained by women themselves. Hence, gender refers not to the biological sex but to social roles and relations between men and women. The term 'sex' refers to the chromosomal constitution of an individual; whereas the term "gender" refers to the sociological, psychological, and cultural constructions of male and female differences. Gender, denotes qualities of what it is to be either a man or a woman. Reiman identifies three aspects of gender: individual gender identity, the symbolism of gender, and the structure of gender. (Reiman, C. *Opening up Spaces: Engendering Protracted Social Conflict and Conflict Transformation*. Ph.D Thesis. University of Bradford, 2002, p. 79). The first aspect refers to the construction of meanings determining one's individual identity based on social norms. Masculinity is often linked with violence as it denotes egotistical, aggressive, and dominant behaviour. Femininity, on the other hand, entails

the opposite qualities of selflessness and being complaisant. In other words there exists a power symmetry, which results in unequal power relations between men and women; in which women are generally disadvantaged in comparison to men and victims of violence perpetuated against them by men.

The assumption about a woman's appropriate role based on her lesser physical strength and her role in child bearing has been perpetuated over the ages, leading to the oppression of women. In fact, in India, women are noted to have more physical stamina than men and they work more than men, but their work is hardly recognized, since they mainly do unskilled work, and household chores are not counted as work, nor is walking several kilometers to fetch water. During the agricultural season a woman works around 15 hours a day as a labourer, whereas a male on an average works for around 7-8 hours.

It is not only in the home where gender stereo types are perpetuated, but in schools also, teachers encourage boys for higher achievements than girls. Young girls are made to work long hours at home, in fields and as wage labour, whereas boys are encouraged to go to school. During drought or famine, girls in poor households are often given away as bonded labour to money lenders or sold into beggary or prostitution. The girl continuously receives the symbolic message during the socialization process about her inferior position and by the time she grows up and runs her own home she reinforces the same against the interest of her own gender. Text books used, further reinforce the gender biases. Mass media like newspaper, television, cinema and advertisements extol the virtues of marriage, sacrifice and tolerance for girls. Advertisements of insurance companies and banks, enhance the prevailing sentiments inducing parents to invest for the marriage of their daughters and education of their sons.

## **VIOLENCE AGAINST WOMEN**

In Indian lore though women have been eulogized as Goddesses, Saraswati, Laxmi and Durga (the goddesses of learning, wealth and power/defence), but their condition in reality is a sad reflection. Violence against women includes physical, sexual, psychological, and economic abuse. Known as "gender-based" violence because it evolves in part, from women's subordinate status in society. It is often noticed that cultures have beliefs, norms, and social institutions that legitimize and therefore perpetuate tolerance of violence against women. The same acts that would be punished if directed at an employer, a neighbour, or an acquaintance often go unchallenged, when men direct them at women, especially within the family. Added to this is a patronage culture, caste taboos, non-sensitivity on the part of magistracy. As Kofi Annan, United Nations Secretary General rightly said, "Violence against women is perhaps the most shameful human rights violation. It knows no boundaries of geography, culture or wealth. As long as this continues, we cannot claim to be making real progress towards equality, development and peace."

Women cutting across all boundaries of caste, creed and religion are victims of violence due to the accumulated baggage of age old social, religious and cultural mores. There are several parallels between the lives of both Hindu and Muslim women, and in the violence that they face by virtue of their gendered roles. Women of both communities are expected to be deferential to men, and are targets of oppressive practices by so called religious leaders, have no control of economic resources and are valued only for their biological role in reproduction. Thus “Hindu women” and “Muslim women”, though essentially two religious identities belong to the same social category, and are expected to behave in a similar manner. As a social entity a “Hindu woman” and a “Muslim woman” are at par, but the law markedly differentiates between them, since the personal laws of the religion they belong to, determines their rights in terms of marriage, divorce, inheritance, right to children etc.

Violence against women in India has become formalized and ritualized through ritual, and custom. It has several forms : rape, child sexual abuse, trafficking in women, domestic violence, pornography, selective abortion of female foetuses and dowry deaths are all forms of violence which denigrate the dignity of women. Despite a plethora of laws there is little change in the mind-set of the people and perhaps also because of insufficient education and/or tradition of women being confined to household activities. Sex selection/sex determination further adds to this adversity. Advance technology is increasingly being used for removal of foetus (may or may not be seen as commission of murder) but it certainly affects the sex ratio and further perpetuates crimes against women.

The reality of women’s existence is that they have to persistently resist violence against them on a daily basis, whether it be the family or husband or his relatives or acquaintances. Women may be victimised simply because they are women, or because their property is seen as more vulnerable, or due to their individual life style, or simply because of their perceived lesser physical strength. Often after repeated abuse which the woman is unable to control she becomes demotivated to such an extent that she may give up hope that their own actions can effectively change things. The effects of violence can be devastating to a woman's health as well as to other aspects of her physical and mental well-being. In addition to causing injury, violence increases women's long-term risk of a number of other health problems, including chronic pain, physical disability, drug and alcohol abuse, and depression. Women with a history of physical or sexual abuse are also at increased risk for unintended pregnancy, sexually transmitted infections, and adverse pregnancy outcomes.

The United Nations General Assembly passed a Declaration on Elimination of Violence against Women (48/104 of 20 December 1993) in which the term "violence against women" was defined in Article 1 as *“any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women,*

*including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life”.*

Further, according to Article 2, violence against women encompassed, but not limited to, the following:

*(a) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;*

*(b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;*

*(c) Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.*

A woman alone is not in a position to challenge gender-based discrimination and abuse and hence allows crimes to be committed with impunity. Sexual violence is treated as a crime against the honour of the family or against decency, rather than against women's right to bodily integrity; in rape cases the sentence is reduced where the perpetrator agrees to marry the victim; there is inadequate protection for trafficked women etc. In other words, failing to hold perpetrators accountable not only encourages further abuses, but also gives the message that violence against women is acceptable or normal. According to the NCRB in the 35 cities having population over 10 lakh, (identified as Mega cities as per population census 2001), a total of 21,861 cases of crimes against women were reported in the year 2005- an increase of 4.1 per cent. Delhi accounted for 31.2% of Rape cases, 34.7% of Kidnapping & Abduction cases, 18.7% of Dowry Deaths, 17.1% of Cruelty by Husband and relatives and 20.1% of Molestation cases. Bangalore, Mumbai and Jaipur booked more cases under Special & Local Laws among the mega cities. 27.3 per cent (480 out of 1,759) of cases under Immoral Traffic (P) Act and 59.3 per cent (265 out of 447) of Dowry Prohibition Act cases were booked in Bangalore city alone. Similarly, 13.4 per cent (236 out of 1,759) cases under Immoral Trafficking Prevention Act were booked in Mumbai city and 81.6 per cent (31 out of 38) of Indecent Representation of Women Prevention Act cases were booked in Jaipur city alone.

Basically violence against women in India can be divided into attacks which are physically, sexually, or property oriented. Though women are victims of all kinds of crimes including theft, robbery or murder, but only those crimes of which they are victims as a result of their gender are being summarized in this DIRECTORY.

Gender Violence throughout a woman's life cycle comprise the following:

|             |   |
|-------------|---|
| Pre-Birth   | Sex determination tests, sex selective abortions, foeticide, battering during pregnancy, coerced pregnancy;                 |
| Infancy     | Female infanticide; emotional and physical abuse; neglect and differential access to nutrition, education and medical care; |
| Girlhood    | Child marriage; sexual abuse (specially by family members and acquaintances), child trafficking and prostitution            |
| Adolescence | Economically coerced sex; sexual abuse; rape; sexual harassment; forced prostitution; trafficking in women                  |
| Adulthood   | Abuse by husband, domestic violence, dowry and dowry death, sexual harassment at the workplace, rape;                       |
| Elderly     | Abuse of widows; widow murder.  |

## LAW

Feminists argue that maintaining the appearance of dispassionate neutrality, law is able to quietly go about its task of assisting in the reproduction of the conditions which subordinate women as well as other disadvantaged social groups. By assuming gender neutral language laws masks the extent to which law is permeated by male constructs and male standards. The concept of a "reasonable man" so popular with the courts, does not include women. If women are to be reasonable within the legal meaning of the term they must adopt male standards of reasonableness, for example in the case of domestic violence. The law either bypass the gender issue entirely or focus solely on why females fail to resemble males in their behavior. The defense counsels use gender stereo types to make their defense more persuasive to the court, which are mostly irrelevant and have no factual basis e.g. like attacking the character of the girl. Gender stereo-typing stifles the criminal justice system's greater goal of gender equality as enshrined in the Constitution of India. Further gender stereo-typing can result in personal stigmatization, or harm women as a group. However, gender stereo-typing is often used to justify mitigation in punishment or the underlying rationale for criminal law defenses. Thankfully, the courts in India display a rare sensitivity and render them inadmissible as one will discover on going through the commentaries of different cases in the book.

The elimination of gender based discriminations is one of the fundamentals of the Constitutional edifice of India. Gender discrimination AND VIOLENCE, impact our lives. It is the realisation of the fact that it can happen to any of us which will bring about a change in social perception. In fact the Constitution empowers the State to adopt measures of positive discrimination in favour of women for neutralizing the cumulative discriminations and deprivations which women face. Violence against

women is an obstacle to the achievement of the objective of equality, and violates and impairs the enjoyment by women of their fundamental rights. Further it is enshrined in the Constitution of India that it is the duty of every citizen to denounce such practises which denigrate women.

Internationally there is a willingness to consign certain practises in the 'private' sphere, which is not the law's business, for example domestic violence. But with emerging jurisprudence, things are changing, for example the passing of the Protection of Women from Domestic Violence Act, 2005(43 Of 2005). The notions of what is public and what is private retain a central importance which transcends analysis of purely domestic law, and is seen also in relation to international law. Hilary Charlesworth has argued that the public/private dichotomy explains the different treatment under international law of differing crimes [*Charlesworth H., Chinkin C., & Wrights S., "Feminist approaches to International Law"* (1911) 85 AJIL 613]. Thus genocide, torture and violence in armed conflict may all attract sanctions. However, international law has been slow and cautious in its approach to the specific problems which women suffer in wartime, in particular rape by members of armed forces. International has also proven inept in changing cultural practices which particularly affect women. In fact despite India being a signatory to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), has ratified the Convention in June 1993 with three qualifications. These include two Declaratory Statements under article 16(1) of the Convention which pertain to elimination of discrimination against all matters relating to marriage and family relations; and under article 16(2) pertaining to compulsory registration of marriages. Articles 14 and 15 of the Constitution of India guarantee equality before the law and non-discrimination on the basis of sex. The Declaration of to the CEDAW Convention violates the spirit of the Constitution in so far as they provide, that discriminatory laws shall not be dealt with, unless the community wants them to be amended.

The crimes against women have been specified under various provisions in the Indian Penal Code i.e. Sections 376, 366, 354, 304B, 306, 498A and 509, I.P.C. Domestic violence has also been covered under the Indian Penal Code by recent amendments. There are special laws like Commission of Sati Prevention Act, 1987, Dowry Prohibition Act, 1961, Immoral Trafficking Prevention Act, 1956 and Medical Termination of Pregnancy Act, 1971 dealing with crimes against women.

Empirical evidence shows, violence against women and crimes against women are spiraling, many of them going unreported. According to the National Crime Records Bureau, (NCRB) Ministry of Home Affairs, Govt of India statistics a total of 1,64,765 incidents of crime against women (both under IPC and Special legislations) were reported in the country during 2006 as compared to 1,55,553 during 2005 recording an increase of 5.9% during 2006. Andhra Pradesh, accounting for nearly 7.2 per cent of the country's population, has accounted for 13.0% of total incidents of crime against

women in the country by reporting 21,484 cases. Uttar Pradesh, with nearly 16.5% share of country's population has accounted for 9.9% of total crime against women by reporting 16,375 cases during the year. Most alarming is the fact that Delhi is among the top two States (alongwith Tripura) in the order of crime rate.

The highest pendency percentage in the disposal of arrested persons was recorded in cases of 'Importation of Girls (53.2%) (123 out of 231), and the lowest pendency percentage was observed in 'Sexual Harassment' (10.6%) (1,459 out of 13,804). Police could establish the charges with as high as 88.3 per cent (12,191 out of 13,804) persons in Chargesheeting of arrested persons in cases of 'Sexual Harassment', followed by 'Molestation' (82.8%) (42,921 out of 51,840) and 'Hurt' (82.4%) (4,37,802 out of 5,31,503). The lowest level of charge-sheeting in disposal of arrested persons was witnessed in cases of 'Importation of Girls' (46.3%) (107 out of 231) as compared to the National average of 77.5% (24,90,168 out of 32,12,565) for all IPC crimes.

However, inequalities and disadvantages supported by law do not exist in a vacuum, they are given the sanction of culture. Violence against women is not always easily assessed, because perpetrators attempt to justify some practices based on religious or cultural customs. In many cases, a sense of shame keeps women from reporting these incidents. Denial of property rights and adequate housing threatens women in another way, and is worsened by lack of legal protection. Sexual violence against women is used as retribution against men belonging to the same community, specially in the case of sexual violence against dalit women. The Parliamentary Committee on the Welfare of Scheduled Castes and Scheduled Tribes noted that women belonging to these [scheduled] castes and [scheduled] tribes bore a double burden. They were exploited by caste and gender, and were vulnerable to and powerless against sexual exploitation. [*Parliamentary Committee on the Welfare of Scheduled Castes and Scheduled Tribes, Fourth Report on Ministry of Home Affairs, Ministry of Social Justice and Empowerment and Ministry of Tribal Affairs: Atrocities on Scheduled Castes and Scheduled Tribes and Pattern of Social Crimes towards them, New Delhi: Government of India, 2004-2005, para. 1.4. 218*].

### **OBJECTIVE OF THIS DIRECTORY**

The present compendium serves to raise awareness and demystify the law in simple language in order to provoke action in addressing the causes of gender-based violence. Highlighted are the different forms of violence against women and suggested are integrated measures to prevent and eliminate violence based on the views of the Supreme Court and different High Courts. Not only has the Legislature played a proactive role in enacting beneficial legislation but the Courts have also taken a radical view in several areas – property rights, domestic violence, pre-natal and pre-conception sex selection, sexual crimes etc. In the present compendium studied are the causes and consequences of violence against women and effective measures taken by the Courts in India. Every endeavour has been made after sorting to select those cases which form the

key to change, in turn influencing a shift in popular opinion, hence further creating awareness of Supreme Court and High Courts judgements. Cases being selected are those, that promote opinion-change and positive collective action in order to prevent and combat violence against women. Cases where ordinary people and women with little power refused to allow their voices be muffled. The aim of this DIRECTORY is empowerment. Social movements try to empower groups of people. Empowering can also be achieved by spreading knowledge and increasing awareness on women's issues, specially violence against women. Given the growth in the law and its intrusion into family and organized life in India, e.g. the Domestic Violence Act, it is imperative to lend the POWER OF THE COURTS to the NEEDS OF WOMEN, which this DIRECTORY aims to do.

This manual, specifically addressed to groups and individuals, not well versed in legal matters, provides tools to human rights activists and defenders who investigate violence perpetrated against women by non-state actors. Its goal is to offer guidance with regard to the legal problems faced by women. This compendium is divided in the following chapters reflecting how women face violence in almost every facet of life:

#### **BIRTH**

- ? Female Foeticide
- ? Female Infanticide
- ? Education
- ? Children of Female Prisoners

#### **MARRIAGE**

- ? Child marriage
- ? Honour killings
- ? Domestic Violence
- ? Inter-caste marriage
- ? Inter-religious marriage
- ? Right to choose partner
- ? Second marriage
- ? Status as Permanent Resident
- ? Whether husband dependant
- ? Widow murder or Sati

#### **DOWRY**

#### **RAPE**

#### **SEXUAL VIOLENCE**

- ? Assault

- ? Immoral Trafficking
- ? Indecent representation of Women
- ? Kidnapping
- ? Outraging Modesty
- ? Sexual Harassment at Workplace
- ? Unnatural Sex
- ? Violence includes Damage to Reputation

The government is committed to overcoming violence against women by passing and enforcing laws that ensure women's legal rights and punish abusers. In addition, community-based strategies must be developed to focus on empowering women, reaching out to men, and changing the beliefs and attitudes that permit abusive behavior. The multi-dimensional problem of violence against women requires to be tackled by a multi-faceted approach which includes, legislation, judiciary, State officials and public concertedly. Only when women gain their place as equal members of society will violence against women no longer be an invisible norm but, instead, a shocking aberration.

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## CHAPTER 2

# GIRL CHILD

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*I call this the circle of life - and death.  
If you are born a girl, a female, in India, you have:  
The right to be born: (abort the foetus, if it is female)  
The right to live: (kill the infant, if it is a girl)  
The right to nutrition: (starve the baby, if it is a girl)  
The right to health: (neglect ill health, if it is a girl)  
The right to learn: (educate minimally, if it is a girl)  
The right to a childhood: (train in housework and child care, if it is a girl)  
The right to choice: (marry off soon after puberty, if it is a girl)  
The right to reproductive health: (insist on the birth of a boy, not a girl)  
- (Feb 7, 1999 The Hindu)*

**T**oday's girl is tomorrow's mother. But in India the girl child is a victim of violence from the early stages of life, throughout her childhood, upto womanhood. About seventeen per cent (174,123,490) of India's population comprises of girl children under the age of 15 years (Census Data 2001). However, she is discriminated socially, psychologically, economically and sexually; and all forms of violence are perpetuated against her right from the cradle to her grave. The Prime Minister of India, Dr Man Mohan Singh, addressing a national meeting in April 2008, on "Save the Girl Child", underlined societal discrimination against women even before the girl child was born. He said, "The patriarchal mindset and preference for male children is compounded by unethical conduct on the part of some medical practitioners assisted by unscrupulous parents."

Religion, custom, age-old prejudices, etc. have put the girl child in a subservient and exploitable position. Low rates of participation in education, lack of economic independence, value and gender biases operating her, have resulted in girls not only being dependent on men and other institutions of authority like the family, neighborhood and the society, but also vulnerable to violence.

Girls in India, as compared to boys, are at greater risk of dying during infancy. After the first month of life and before they are five years old, girls in India face a higher mortality risk than boys. (Source: National Family Health Survey-3). Kerala, the state with the highest literacy levels, also has the highest female to male ratio, being 1,058, as against Haryana, which has only 861 against the national average of 933 females. Again infant mortality rates are highest in Uttar Pradesh, Chhattisgarh, and Madhya Pradesh, and lowest in Kerala and Goa.

Female infanticide and now, increasingly, female foeticide have seen a rise in recent decades. The girl child is denied the right to be born. Sex selective abortions are being facilitated by the misuse of diagnostic procedures. Parents with the connivance of unscrupulous medical practitioners, use pre-natal sex determination techniques to detect and eliminate female fetuses. Despite legal prohibitions, advanced scientific techniques like chorion villus biopsy, ultrasonography and blood sampling are used for determining the sex of the foetus and aborting the female foetus. Laws are circumvented with immunity specially in the states of Haryana (state with lowest female ratio) and Uttar Pradesh (state with highest population ie 166,197,921). There have been reports of villages in Haryana, where there are no eligible females for marriages as a result of which the brides are being purchased from backward areas, and even being made to marry and service several brothers.

In rural areas where there is an absence of these medical tests or the people are too poor to afford them, they deny the girl child the right to life, by choosing the simpler option of killing her. Traditionally, female infanticide was practiced by certain warrior communities in northern India, though the practice was outlawed by the British in 1870. In a study in Tamil Nadu, it was found that female infanticide was widely prevalent in most parts of the Salem and Periar districts and was catching on in South Arcot and Coimbatore. Of 501 women in Salem, 316 had killed infant daughters. Infants were eliminated using a variety of methods including poisoning, asphyxiation (suffocation) and hypothermia (low body temperature caused by exposure to cold). Respondents reported that infanticide was a fall out of the low status of girls and women. Though, female foeticide, the practice of sex-selective abortions, has taken over infanticide, the practice of killing children at birth still prevails.

In fact, due to the high occurrence of foeticides, infanticides, neglect of the girl child specially during childhood diseases, and abandonment, is depriving India of its women, which has led to the phenomenon of the “missing girl”. The first warning against this scourge was voiced in 1990 by Amartya Sen – an Indian 1998 Nobel Prize winner in Economy – though since that time the situation has worsened. The deficit of women in India and the possible factors responsible for it have aroused attention among demographers, social scientists and women activists who have tried to understand the phenomenon in terms of under-enumeration of women in the census counts, sex-selective abortions, migration, sex ratio at birth, as well as sex differentials in mortality.

Whatever may be the exact cause, it is certain that the discriminatory treatment received by the girl child, more than offsets her natural advantage over boys. Both social practices and cultural ethos undervalue women, which is evident in the sex ratio of their population.

Sections 312-316 of the Indian Penal Code (IPC) deal with miscarriage and death of an unborn child and depending on the severity and intention with which the crime is committed, the punishment ranges from seven years to life imprisonment. The Constitution guarantees every child is given opportunity and facilities to develop in a healthy manner in conditions of freedom and dignity and that the children and youth are protected against exploitation and moral and material abandonment, by guaranteeing them certain rights. But, a large number of children in our country do not have the basic rights to food, shelter, education and a good childhood. In this context, the situation of girl child is even worse.

In order to be able to grow into a skilled and confident woman, a girl child must be nurtured in an environment of dignity and opportunity, but very often she is prone to violence on the basis of gender, thus depriving her of appropriate social and cultural environment.

## FEMALE FOETICIDE

The gruesome practice of female infanticide is as widespread today as it was in the days gone by. The difference is only that in olden times the female baby was done away with after birth, today the same is perpetuated by taking advantage of advanced medical techniques. Unfortunately, medical science is being misused today to get rid of a girl child before birth. Knowing full well that it is immoral and unethical as well as it may amount to an offence, the foetus of a girl child is aborted. As a result there is an imbalance in sex ratio in various States where female foeticide is prevailing without any hindrance. The Census Data 2001 has come up with startling statistics for example the sex ratio in the national capital region of Delhi has plummeted below the national average. This only goes to prove that that in urban areas sophisticated medical procedures are being misutilised for sex determination. In a survey conducted by Social Action Forum for Manav Adhikar (SAFMA) almost 30 % of the respondents admitted to having abortions done after being informed that the foetus was a female. The lack of accountability in the medical profession, the lack of compliance by medical professionals to the law, and the reluctance of the administration to prosecute them, leads to impunity for the service providers. Despite the Health Ministry, Govt of India putting Rajasthan on top of the female foeticide list, the State Medical Council lifted the ban on 30 doctors caught on camera violating the MTP Act and PNDT Act. The conviction of two persons by a fast track court in Bharatpur in June 2007 was an exception. [*Hindustan Times, New Delhi, Nov 14, 2007*].

A field study in Mumbai conducted by Sanjeev Kulkarni (1986, *Pre-Natal Sex Determination Tests and Female Foeticide in Bombay City, The Foundation for Research in Community Health, Bombay*) brought to light the fact that 84% of the gynaecologists admitted to having performed the amniocentesis tests for sex determination. Those who disapproved of the practice of sex selective abortion but engaged in it against their principles expressed their compulsions and helplessness for two reasons: Firstly, due to pressures arising out of unhealthy competition in the health care service sector it was said that if they did not provide abortion care services, some others would have provided them. Secondly, implications in terms of persistent abuse and exploitation that the women have to face back home in case they did not get the abortion done (*Bandeswar, S, Abortion Service Providers' Perceptions: Gender Dimensions, Economic and Political Weekly, Vol XXXVIII No. 21 May 24-30, 2003, pp 2075*).

Prenatal diagnostic techniques like amniocentesis and sonography are useful for the detection of genetic or chromosomal disorders or congenital malformations or sex linked disorders, etc. However, amniocentesis and sonography are being used on a large scale to detect the sex of the foetus and to terminate the pregnancy of the unborn child if found to be female. Additional threats in the form of techniques are also being developed to select the sex of child before conception such as Electrophoresis, Ericsson's Method etc. which involve prior manipulation of the sex of the child. These practices and techniques are considered discriminatory to the female sex and not conducive to the dignity of the women. The proliferation of the technologies may, in future, precipitate a catastrophe, in the form of severe imbalance in male female ratio. The State is also duty bound to intervene in such matters to uphold the welfare of the society, especially of the women and children.

In view of the laxity in implementing the provisions of the "The Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act", and the continuing sex-selection and discriminatory practices against the female child, the Supreme Court has issued landmark directions.

## FEMALE INFANTICIDE

It is said that the gentle touch of a daughter and her voice have a soothing effect on the parents, yet, unfortunately in India the practice of female infanticide still prevails. This barbarious unlawful killing of girl babies has a serious consequence on the balance of the sexes in the population. Societies that practice female infanticide always show many other signs of bias against females.

Methods include stuffing the newborn's mouth with black salt, lacing the milk she drinks with either pesticide, toothpaste, sedatives, the juice of the poisonous oleander berry or the grains of paddy husk that are capable of slitting the tender gullet. Other options involve suffocating the infant with either a wet towel or a bag of sand or drowning her in a basin of milk. One gets to hear of hair raising stories like the instance where the mother refused to nurse the baby girl. In order to silence the infant's famished cries, the impoverished village women squeezed the milky sap from an coriander shrub, mixed it with castor oil and shoved the poisonous potion down the newborn's throat. The baby bled from the nose and then died soon afterwards.

Prevalence of female infanticide in post-independent India, has been reported from Madurai District of Tamil Nadu, Bihar, Orissa, Rajasthan and Maharashtra. According to Chunkath and Athreya *{(1997) Female Infanticide in Tamil Nadu : Some Evidences, Economic and Political Weekly, Vol XXXII (17) WS pp 22}* there is a contagious 'female infanticide belt' that starts from Madurai extends across the Districts of Dindigul, Karur, Erode, Salem, Dharmampuri to North Arcot Districts of Tamil Nadu. While the government of Tamil Nadu was patting itself for eradicating female infanticide, a shallow grave of a female infant was found at Narasingapuram in Vickramangalam block, Madurai District (May 30, 2007 The Hindu).

In a village in Jaisalmer, Rajasthan a "barat" or wedding procession arrived after ten years. There are only 12 girls in the village of a population of 2000. A woman supported by her husband decided to initiate a change when she literally gifted life to their female baby, while everybody else around them was killing their daughters; probably because she had already lost three sons before her birth [The Times of India, New Delhi, 6 May 2008]. According to another report, 26 % of Haryana's young bachelors are unable to find spouses because there aren't enough women in the state to choose from, thanks to the prevailing trend of suffocating female babies with common salt (The Statesman). The Kallars of Tamil Nadu are humane enough to spare the life of the first daughter in the family. The survey conducted by SAFMA revealed that 8.2% of the respondents knew someone who had indulged in infanticide. The figure on its own may seem low but the fact that even in the capital such a practice is heard of is a proof of its prevalence.

Contrary to popular assumption, poverty is not the primary reason for propagating this practice, as researchers in Tamil Nadu have discovered. They claim that female infanticide cuts across different socio-economic groups. In 10 districts across India - four each in the prosperous states of Punjab and Haryana and one each in Madhya Pradesh and Tamil Nadu - the sex ratio was only 869 women to every 1000 men as against the national sex ratio of 929 women to 1000 men in 1991. Today, Panchkula district in Haryana has a sex ratio of 823 females to 1000 males, apparently, the lowest in the country. Interestingly, this ratio favours women in the comparatively poorer states of Arunachal Pradesh, Manipur, Meghalaya, Mizoram and Andhra Pradesh.

If the parents don't have the heart to directly kill the baby girl, they may simply neglect her, or abandon her, and allow her to die for want of timely and proper medical assistance leading to her death. Here is a crime that has acquired the unspoken legitimacy of tradition, brooking neither state boundaries nor social strata. It is time for us to assert once again that each woman and girl is unique and at the same time a valuable human being, who is entitled to equal opportunities and universally adopted human rights, no matter where she is born or where she lives.

Girls face constraints in mobility, in acquiring education and even in laughing or recreation. Education can play an important role in preventing violence against women, by empowering them through education, and by promoting better attitudes and practices among students with regard to women's human rights. It is the duty of the State Government to make all efforts to ensure each and every child, specially girls upto the age of 14 are provided with facilities, so that no girl child remains without the benefit of literacy, specially in view of the Constitution (Eighty-Sixth amendment) Act, 2002 by which new article 21 A was inserted which reads as under :

***Article 21A. Right to education.**The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.*

Yet, even today, the girl child is often deprived of the basic right of every child, the right to education. Thus, girls are punished in childhood - for the crime of being born a girl - and continue to pay the price for the rest of their lives. If they begin their education, they are frequently made to drop out, to help their mothers with household chores or take care of their siblings. According to the NHFS-3, among children age 6-10 years, there is a gender disparity in school attendance in rural areas, being higher for boys (84%) than for girls (79%) which further gets pronounced and increases with age. Forty-one percent of women in the age group of 15-49 years had never been to school.

The figures may appear startling, but for this there are a number of inhibiting factors, eg perception about a violent unsafe environment in school often dissuades parents from enrolling girls or may lead to increased rates of school abandonment. One frequently hears of girl students being molested by male teachers. As observed by the Supreme Court in *Madan Gopal Kakkad vs Narain Dubey and Another* [1992 (2) Crimes 168] such offenders are a menace to civilized society. In that case the accused was working as a teacher and gratified his animated passions and sexual pleasures by repeatedly making his student, a girl of tender age, the victim of his carnal desire. The result was that the sacred relation of teacher and his pupil was besmirched. It is not surprising that rural parents are hesitant in sending their daughters to school. Even in the capital of Delhi one hears cases of abuse by school teachers. In fact incidents of sexual abuse appear to be rising in Municipal Corporation of Delhi Schools. Recently reported was the shocking routine abuse of girls studying in Classes IV and V by two teachers, including the principal [The Times of India, New Delhi, Feb. 28,2008].

There is a lack of toilets in schools as a result of which the girls are forced to go out in the open or control the urge resulting in urinal and gastro infections. Parents would rather not educate their daughter than have them bear the shame and embarrassment of

urinating in the open, for every passerby to ogle and putting her in a vulnerable position, by exposing her. Interviews (Lok Sabha Channel) in Pune and Thane districts, Maharashtra showed that making of toilets in schools led to increased attendance among girls. Again the mid-day meal programme of the government and serving of hot meals in schools increased the attendance levels, besides providing for nutrition to the under nourished girl child. The principal objectives of the scheme, contained in the guidelines for National Programme of Nutritional Support to Primary Education, 2004, interalia were:

a) To boost universalisation of primary education (Class I -V) by improving enrolment, attendance, retention and learning levels of children, especially those belonging to disadvantaged sections; and

b) To improve nutritional status of students of primary stage.

To further encourage girls to go to school the State Government should ensure that free education is made available at the primary level, including facilities of good teachers, preferably female wherever possible, good books and toilets, besides other facilities which are required, should be made available. The State is committed to levelling the playing field for girls and women by ensuring that all children have equal opportunity to develop their talents. All girls have the right to quality education, one that prepares them for a productive life.

The commentaries in this chapter reflect the sensitivity of the courts to the social realities of India, and in order to reduce the vulnerability of the girl child and provide her a safe educational environment, the Courts have permitted and upheld reservation in appointment for posts in women's educational institutions for women only. Courts have even taken a serious view of misbehaviour with girl students and refused to interfere in the disciplinary proceedings against the male culprits [Ram Gopal vs Vice –Chancellor 92002 AIR ALL 279)] holding that prudent action of the principal in the interest of the school and educational system should not be interfered with.

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## CHAPTER 3

# MARRIAGE

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**M**arriage is the formal union of a man and a woman, typically as recognized by law by which they become husband and wife. Marriage in Indian society is the most important *samskara* (P.V.Kane, *History of the Dharamsastras, Vol II, Chapter IX, p.427*); but unfortunately for many women it turns out to be a nightmare. Despite religious sanctity being given to marriage and it being held in high esteem, marriage is often the place where women face maximum violence.

In India marriage and its dissolution is regulated by personal laws. All religions delineate a moral and social code of conduct. Among the Hindus, marriage is considered a religious and sacramental union. Couples invoke the blessings of the Gods to unite their hearts and souls, and to make their union inseparable like the union of the two sacred rivers Ganga and Yamuna. Islam considers marriage as one of the most virtuous and approved institutions. The word *zawaj* is used in the Quran to signify a pair or a mate. But in common parlance it stands for marriage. Originally Christianity also regarded marriage as indissoluble, being a gift from God, one that should not be taken for granted. It is the right atmosphere to engage in sexual relations and to build a family life. The Indian Christian Marriage Act, 1872 was enacted to consolidate and amend the law relating to the solemnization of marriages of Christians in India. The Parsi personal law is one of the most comprehensive and modern laws. Every religious text provides for a valid marriage, duties of spouses, and the nature and circumstances that entitle a spouse to a divorce. But in this chapter, we are not discussing the scope and definition of personal laws relating to marriage etc. but limit ourselves to the issue of how marriage becomes an arena of inescapable violence.

Even, Sita the ideal wife, who gave up a life of luxury and opulence to follow her husband into exile, in the jungle; was made to prove her chastity repeatedly. Like most Indian women she yielded to parental authority, obeyed the commands of her husband, served her in-laws, yet in the end she had to raise and bring up her children all alone single handedly. Similarly, today women who are abducted, sexually abused or raped are required to prove that the act was rape and not implied consent. Sita's *agni-pariksha* is symbolic of the burden of proof that society demands from women. Sita's refusal to undergo the second *agni pariksha* and plea to return to the earth's bosom, has been

interpreted by scholars as her sublimation of oppression. An ideal wife, someone who is willing to sacrifice everything, however unjust the terms of sacrifice, in order to preserve her husband's family honour and reputation as a ruler. However, it may be appropriate to interpret Sita's return to her mother's house (earth's womb) as her rebellion and refusal to tolerate more violence against her in the form of accusation, allegations by her husband and society. In a way Mother earth's acceptance of her daughter symbolises the parents willingness to protect and shelter their daughter who has taken the bold step of refusing to accept violence in her marriage.

On the other hand, Draupadi is portrayed as a strong vocal woman who wanted vengeance for the wrong done to her. Draupadi's *vastraharan* or disrobing, when she was having her periods, is one of the most shameful events in our mythological history and still has relevance for Indian society. Her outspoken diatribe against her oppressors reflects badly on the male world and her husbands. Infact, Draupadi also shames Bhismapitamah, who is the head of the family, guardian of the kingdom, by upbraiding his complicity. During her disrobing Draupadi raised the most important legal question of whether a human being can own another human being, and whether a husband owns his wife?

Marriages in India are generally arranged by the girl's parents and they are expected to provide a respectable dowry. Young women are taught to be deferential to men and elders. Her fertility is of vital importance. Infact the moment a woman is married she faces violence in the form of demand for dowry and is even killed and burnt for bringing insufficient dowry. Extravagant weddings and parents' inability to provide dowry are among the ills that prevail society. In the case of *The Secretary, All India Biodynamic and Organic Farming Association vs The Principal Secretary to the Government of Maharashtra and Others*<sup>1</sup> [2006 (3) Bom CR867] the High Court of

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<sup>1</sup> One can imagine the plight of an over burdened woman who besides looking after household chores, has to bear the burden of decision-making in the context of agrarian operations. Due to the alarming occurrence of suicides by cultivators in diverse parts of the State of Maharashtra, the All India Bio Dynamic and Organic Farming Association addressed a letter to the Chief Justice expressing serious concern over suicides by farmers in District Jalna. The Tata Institute of Social Sciences (TISS) impleaded as a party was requested, to submit comprehensive report dealing with the causes of suicide by farmers in the State. The TISS report furnished a family profile of the 36 cases which were studied in detail. The High Court of Bombay by way of illustration, adverted to 4 cases being Case Nos. 1, 2, 11 and 15. In Case No.1 the female head of household committed suicide and is as follows :

Case 1 : A Scheduled Caste (SC) household where the female head of household committed suicide. The household head was looking after all the agrarian operations and managing a landholding of 15 acres. The family purchased six acres of the land in the year 1969 by wealth earned through labour. The major crops were cotton, tur and jowar. The eldest son in the family is a vegetable vendor and the younger son has slight mental disability. The husband of the household head had been physically disabled for the last 15 years. The entire burden of the decision-making in the context of agrarian operations has fallen on the female household head alone. The family incurred a loan on account of crop and construction of well to the turn of Rs.27,000. This loan could not be repaid due the crop failure for three consecutive years. Hence, another loan was taken from private sources. The total cumulative loan from private sources amounted to Rs.33,000 at 5% interest per month. Even this loan could not be repaid and the cumulative loan and the

Bombay noticed inability to arrange finances for marriageable daughters as one of the reasons responsible for farmers committing suicide.

Today the Courts have taken cudgels on behalf of women and have given landmark judgments giving lie to society's glib insistence on the way we honour our women. However, despite "women friendly" laws, forms of oppression and violence are being convincingly rationalized through calculated distortion. Child marriages, forced marriages, caste panchayats and domestic violence are some of the ills of this institution. The girl has little choice in the matter and often she is not even asked. Chilling reminders of feudal ethos remain, when one hears instances of saving family honour eg. a farmer strangulating his daughter for daring to fall in love with a man belonging to a lower caste [Times of India, Delhi 28 Jan'08]. Or a fifteen year old being beaten to death by a mob after a Panchayat gave its verdict against her, for her alleged involvement in a relationship with a man. [Hindustan Times, Delhi April '08]. The panchayat had ordered that she be beaten with sticks but the mob went a step further and killed her, ignoring the pleas of her parents to spare her. In the survey conducted by SAFMA women were asked the question as to what would be the reaction of their parents in case they married on their own volition, without the consent or '*ushirwaad*' of their parents. 50% of the respondents said that in case they decided to marry on their own, initially the parents would be angry and resistant but after the marriage they would give their blessings; while around 12% feared that their parents would kill them.

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interest amount multiplied. This increased the burden on the household head enormously. She committed suicide on 29.12.03. The government gave no compensation.

On the basis of the report, the fundamental causes for suicide by cultivators in the State of Maharashtra were summarised by the High Court. Inability to arrange finances for marriageable daughters was seen as one of the reasons responsible for farmers committing suicide.

## CASTE PANCHAYATS

The present case raises certain important issues of the functioning of illegal extra constitutional institutions like Jati or caste or community or village panchayat, of which women are victims. Recently reported was the death of a fifteen year old who was brutally beaten to death by a mob after the panchayat gave a verdict against her for her alleged involvement with a man. The panchayat had ordered that she be beaten by sticks but the mob went one step further and killed her. According to reports, the panchayat was called in the absence of the woman village head and the members of the panchayat delivered the verdict without giving the parents of the girl a fair hearing (*Hindustan Times, New Delhi April 18, 2008*). Media has tried to highlight, few incident like that of Imrana, Gudia etc., but the instant case, is one out of thousands of unreported cases reflecting the silent suffering of women.

Guided by caste/religious taboos. these Panchayats give verdicts against women for breaking caste-taboos and direct barbarious punishments. Also known as 'honour killings', or honour based crimes, they are motivated by a desire to preserve family or community honour. The victims are predominantly female and the perpetrators are usually male relatives. The members of assembly abet and become executors. The perpetrators of the crime do not allow the law to take its course. Public opinion is sought to be formed in favour of the caste taboos and against the women resulting into punishment of victim and protection of criminals. Anti-social elements, criminal and brokers with the help of muscle power and money enter such Jati Panchayats and exploit the situation for their benefits, monetary or otherwise.

In the case of *Birju Ram and Another vs State of Rajasthan and Others* [2006 (3) RLW 2090] the High Court of Rajasthan commented on how the victim and her family members had suffered at the hands of extra constitutional Institutions like Jati or Caste or Community or Village Panchayats. If such cases were closely analysed, the act constituted an offence of kidnapping for ransom etc. punishable under Section 364A IPC. The High Court blamed even the so called social or political workers who play a role under the pressure of Jati Panchayat for the sake of votes at all levels i.e. Election of the Gram Panchayat, Assembly or Parliament. It observed that some times the protection of such customs and traditions are given in the name of freedom of religion without understanding that it is not absolute. It is subject to public order, morality and health and other provisions of the Constitution, which includes gender equality and right of women to make a choice about her personal life.

The High Court directed the State government to evolve a mechanism to check the unwarranted activities of people pushing caste taboos for their benefits in the name of Jat Panchayat or any other name.

## CHILD MARRIAGE

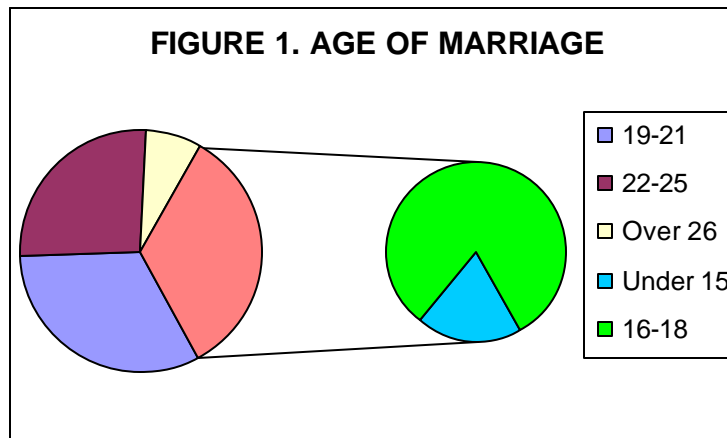
Child marriage is one of the worst denials of a girl child's rights. It denies the girl her right to education and development and her right to decide for herself in a matter as important as choosing her life partner. Household, family and child-rearing responsibilities are thrust upon the girl at a premature age. On top of it all early pregnancies threaten her very right to survival. Child marriage is an indicator of the extent of violence that exists in our society.

The practice of child marriage is quite common in western and southern Rajasthan in India. *Akshaya Teej* is considered an auspicious day for weddings and on this day, even today, thousands of child marriages take place in Rajasthan. Sometimes even toddlers are married off in clear violation of the law. The State government has directed all its elected representatives to ensure that no child marriage takes place in their constituencies. But it is shocking to note, out of 200 members of the State's legislative assembly, 76 were married off when they were below 16 years of age. (The Times of India, New Delhi May 8, 2008)

Misguided or so called well-meaning parents do not realise the negative consequences the child bride is prone to suffer. For example domestic violence, coerced sex, reproductive health problems as underdeveloped bodies and systems are forced to cope with sexual activity, pregnancy and childbirth, etc. The National Family Health Survey (2005-06) reveals almost half (46%) of women got married before the legal minimum age of 18. The median age at first marriage among women is 17.2 years. Men get married more than six years later, at a median age of 23.4 years. Early marriage increases a girl's chances of having more children and hence weakens her own health, immunity and nutrition. Not only she, but her child too is more likely to be underweight and malnourished. Children born to mothers under age 20 are more likely to die in infancy than children born to mothers in the prime childbearing age. Infant mortality rate is 77 per 1,000 for teenage mothers.

Child brides have lesser social autonomy, are prone to sexual exploitation and child trafficking. Traffickers lure poor rural parents in the guise of grooms without any demand for dowry. The minor girls are then sold and trafficked in metros like Delhi, Mumbai, Kolkata even Dubai, where they are in demand. Whether it is the eleven year old *Ameena* of Hyderabad married off to the fifty-seven year old Arab National spotted by an air hostesses on an Indian Airlines flight: or the case of Reena from Rajasthan married off because of her family's extreme poverty to a forty- two year old who chose her in preference to her elder sister, their fate is the same.

The survey conducted by SAFMA revealed that 6% of the girls were married before the age of 15 years and 25 % between the ages of 16 to 18 years (Refer to Figure 1). One of the respondents from Durg, Madhya Pradesh said she was married off at the age of one year only. However, 37 % of the respondents said that the ideal age of marriage for girls was between 18 to 20 years and 37.8 % said it was between 21 to 23 years.



Prevention of child marriages is imperative not merely from the child and human rights perspective but also in the interest of meeting several national goals and Millennium Development Goals, such as decreasing poverty, MMR and IMR. The government has taken an appropriate step in this direction by strengthening the law against child marriage by repealing the Child Marriage Restraint Act, 1929 and enacting The Prohibition of Child Marriage Act, 2006. It includes a provision for appointment of officials with the sole job of preventing child marriages. Yet much remains to be done and it is imperative to conduct an awareness campaign highlighting the dangers inherent in child marriage.

## **THE PROHIBITION OF CHILD MARRIAGE ACT 2006**

**Section 2.** *In this Act, unless the context otherwise requires,-*

*(a) "child" means a person who, if a male, has not completed twenty-one years of age, and if a female, has not completed eighteen years of age;*

*(b) "child marriage" means a marriage to which either of the contracting parties is a child;*

**Section 3. (1)** *Every child marriage, whether solemnised before or after the commencement of this Act, shall be voidable at the option of the contracting party who was a child at the time of the marriage:*

*Provided that a petition for annulling a child marriage by a decree of nullity may be filed in the district court only by a contracting party to the marriage who was a child at the time of the marriage.*

*(2) If at the time of filing a petition, the petitioner is a minor, the petition may be filed through his or her guardian or next friend along with the Child Marriage Prohibition Officer.*

*(3) The petition under this section may be filed at any time but before the child filing the petition completes two years of attaining majority.*

*(4) While granting a decree of nullity under this section, the district court shall make an order directing both the parties to the marriage and their parents or their guardians to return to the other party, his or her parents or guardian, as the case may be, the money, valuables, ornaments and other gifts received on the occasion of the marriage by them from the other side, or an amount equal to the value of such valuables, ornaments, other gifts and money:*

*Provided that no order under this section shall be passed unless the concerned parties have been given notices to appear before the district court and show cause why such order should not be passed.*

**Section 5. (1)** *Where there are children born of the child marriage, the district court shall make maintenance an appropriate order for the custody of such children.*

**Section 9.** *Whoever, being a male adult above eighteen years of age, contracts a child marriage shall be punishable with rigorous imprisonment which may extend to two years or with fine for male adult which may extend to one lakh rupees or with both.*

**Section 10.** *Whoever performs, conducts, directs or abets any child marriage shall be punishable with rigorous imprisonment which may extend to two years and shall be liable to fine which may extend to one lakh rupees unless he proves that he had reasons to believe that the marriage was not a child marriage.*

**Section 11. (1)** *Where a child contracts a child marriage, any person having charge of the child, whether as parent or guardian or any other person or in any other capacity, lawful or unlawful, including any member of an organisation or association of persons who does any act to promote the marriage or permits it to be solemnised, or negligently fails to prevent it from being solemnised, including attending or participating in a child marriage, shall be punishable with rigorous imprisonment which may extend to two years and shall also be liable to fine which may extend up to one lakh rupees:*

*Provided that no woman shall be punishable with imprisonment.*

*(2) For the purposes of this section, it shall be presumed, unless and until the contrary is proved, that where a minor child has contracted a marriage, the person having charge of such minor child has negligently failed to prevent the marriage from being solemnised.*

**Section 12.** *Where a child, being a minor-*

*(a) is taken or enticed out of the keeping of the lawful guardian; or*

*(b) by force compelled, or by any deceitful means induced to go from any place; or*

*(c) is sold for the purpose of marriage; and made to go through a form of marriage or if the minor is married after which the minor is sold or trafficked or used for immoral purposes, such marriage shall be null and void.*

**Section 13. (1)** *Notwithstanding anything to the contrary contained in this Act, if, on an application of the Child Marriage Prohibition Officer or on receipt of information through a complaint or otherwise from any person, a Judicial Magistrate of the first class or a Metropolitan Magistrate is satisfied that a child marriage in contravention of this Act has been arranged or is about to be solemnised, such Magistrate shall issue an injunction against any person including a member of an organisation or an association of persons prohibiting such marriage.*

*(2) A complaint under sub-section (1) may be made by any person having personal knowledge or reason to believe, and a non-governmental organisation having reasonable information, relating to the likelihood of taking place of solemnisation of a child marriage or child marriages.*

*(3) The Court of the Judicial Magistrate of the first class or the Metropolitan Magistrate may also take suo moto cognizance on the basis of any reliable report or information.*

*(4) For the purposes of preventing solemnisation of mass child marriages on certain days such as Akshaya Trutiya, the District Magistrate shall be deemed to be the Child Marriage Prohibition Officer with all powers as are conferred on a Child Marriage Prohibition Officer by or under this Act.*

*(5) The District Magistrate shall also have additional powers to stop or prevent solemnisation of child marriages and for this purpose, he may take all appropriate measures and use the minimum force required.*

*(6) No injunction under sub-section (1) shall be issued against any person or member of any organisation or association of persons unless the Court has previously given notice to such person, members of the organisation or association of persons, as the case may be, and has offered him or them an opportunity to show cause against the issue of the injunction:*

*Provided that in the case of any urgency, the Court shall have the power to issue an interim injunction without giving any notice under this section.*

*(7) An injunction issued under sub-section (1) may be confirmed or vacated after giving notice and hearing the party against whom the injunction was issued.*

*(8) The Court may either on its own motion or on the application of any person aggrieved, rescind or alter an injunction issued under sub-section (1).*

*(9) Where an application is received under sub-section (1), the Court shall afford the applicant an early opportunity of appearing before it either in person or by an advocate and if the Court, after hearing the applicant rejects the application wholly or in part, it shall record in writing its reasons for so doing. -*

*(10) Whoever knowing that an injunction has been issued under sub-section (1) against him disobeys such injunction shall be punishable with imprisonment of either description for a term which may extend to two years or with fine which may extend to one lakh rupees or with both:*

*Provided that no woman shall be punishable with imprisonment.*

**Section 15.** *Notwithstanding anything contained in the Code of Criminal Procedure, 1973, an offence punishable under this Act shall be cognizable and non-bailable.*

**Section 16 (1)** *The State Government shall, by notification in the Official Gazette, appoint for the whole, State, or such part thereof may be specified in that notification, an officer or officers to be known as the Child Marriage Prohibition Officer having jurisdiction over the area or areas specified in the notification.*

*(2) The State Government may also request a respectable member of the locality with a record of social service or an officer of the Gram Panchayat or Municipality or an officer of the Government or any public sector undertaking or an office bearer, of any non-governmental organisation to assist the Child Marriage Prohibition Officer and such member, officer or office bearer, as the case may be, shall be bound to act accordingly.*

*(3) It shall be the duty of the Child Marriage Prohibition Officer-*

*(a) to prevent solemnisation of child marriages by taking such action as he may deem fit;*

*(b) to collect evidence for the effective prosecution of persons contravening the provisions of this Act;*

*(c) to advise either individual cases or counsel the residents of the locality generally not to indulge in promoting, helping, aiding or allowing the solemnisation of child marriages;*

*(d) to create awareness of the evil which results from child marriages;*

*(e) to sensitize the community on the issue of child marriages;*

*(f) to furnish such periodical returns and statistics as the State Government may direct; and*

*(g) to discharge such other functions and duties as may be assigned to him by the State Government.*

## DOMESTIC VIOLENCE

A woman enters the ties of matrimony with stars in her eyes but her dreams are soon shattered. She is assaulted, abused and raped by someone as intimate as her husband. Society is hesitant to recognize domestic violence as 'real' violence, because it happens behind closed doors of the home and justified in the name of family, custom, values, traditions that are taken for granted and never questioned. Innumerable women silently suffer assaults and abuse everyday, inside their homes, across the country. This phenomenon of domestic violence is widely prevalent but has remained largely unseen. Far from being a haven of safety and security, sometimes the family can become a 'cradle of violence'. Much of the violence within a home is directed against female members.

It is a common myth that, domestic violence only happens to poor women. Infact it happens in all kinds of families and relationships. Persons of any class, culture, religion, marital status, age and sex can be victims or perpetrators of domestic violence on women, irrespective of the fact that they may be their wife, mother, sister and even partner. Women often blame themselves and hold themselves responsible continuing to be a victim of domestic violence. They feel it is their fault and that they deserve the 'punishment. No one deserves to be abused. Wives are beaten for not preparing the food properly, arguing with partner, neglecting children, refusing to have sex, or simply talking with other men. Sisters are also battered, again the reasons range from not preparing food properly to ensuring they do not demand their right over the property. Children in homes where there is domestic violence are more likely to be abused and/or neglected. Even if a child is not physically harmed, they may have emotional and behavior problems. In fact a child growing up in a family in which the mother is abused will either develop violent reactions against the father or get inured to violence and get brutalized.

Numerous reasons compel them to tolerate the violence that is inflicted upon them; they are economically dependent on their husband, they keep quiet for the children's sake, they lack the education and training to take a job of their own, it is their fate; and domestic violence becomes a a way of life. According to the survey conducted by SAFMA almost half the women reported being slapped, kicked, hit or beaten during their marriages. According to the United Nation Population Fund (UNPF) report, around two-third of married women in India were victims of domestic violence. It noted that women with tangible economic assets were less likely to be victims of domestic violence than those who lack them, the report cited Kerala as an example. "In Kerala, a survey found that 49 per cent women without property, reported domestic violence compared with only seven per cent who owned property", it said. According to the National Family Health Survey-3 a substantial proportion of married women reported

that they experienced physical or sexual violence at some time in their lives. The experience of spousal violence ranges from a low of 6% in Himachal Pradesh to a high of 59% in Bihar. Married women with no education were much more likely (at 46%) than other women to have suffered spousal violence. However, spousal violence extended to women who have 12 or more years of higher education, with 12% reporting violence.

Abusers are not easy to spot. There is no 'typical' abuser. In public, they may appear friendly and loving to their partner and family. They often only abuse behind closed doors. They also try to hide the abuse by causing injuries that can be hidden and do not need a doctor. Domestic violence may be physical, sexual, emotional, or psychological. Women tend to justify abuse by their partner by saying that he was stressed-out, drinking, or using drugs. However, abuse is an intentional act that one person uses in a relationship to control the other. They may even blame the victim for causing the violence.

The Protection of Women from Domestic Violence Act, 2005 is a new legislation - which in addition to the existing criminal law - empowers courts to grant protection to victims of domestic violence and other relief. It also includes new concepts such as "civil wrong of domestic violence, the right to reside in a shared household and the right to protection against domestic violence by obtaining protection orders including monetary relief and custody of children orders". The objective of Act is to preserve the family and "regulate and improve matters for the future, rather than pass judgements or punish past behaviour." There are certain criminal remedies that address domestic violence against the wife/married woman but none of them address violence against sisters, daughters, mothers and mothers-in-law. The existing criminal law does not address a woman's needs for residence or maintenance, for instance. The Domestic Violence Act allows women in domestic relations with the aggressor to seek a whole range of civil remedies under a single-window clearance system. The wide definition of domestic violence - physical, mental, economical and sexual - brings under its purview the invisible violence suffered by a large section of women and entitles them to claim protection from the courts.

This new statute finally has provided legal recognition to the problem faced by thousands of women and hopefully will lead to a greater awareness of this issue among the judiciary. The legislation is in place, but it will take time for its effects to be seen, till then deep-rooted social mores continue to prevail.

## **PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005(43 of 2005)**

### **HIGHLIGHTS**

- ? *Any harm, injury to health, safety, life, limb or well-being or any other act or threatening or coercion, etc., by any adult member of the family, constitutes domestic violence.*
- ? *Any woman who is, or has been in a domestic or family relationship, if is subjected to any act of domestic violence can complain.*
- ? *Aggrieved or affected woman can complain to the concerned protection officer, police officer, service provider or Magistrate.*
- ? *Aggrieved woman has right to be informed about the available services and free legal services, from the protection officer, etc.*
- ? *Shelter-home and medical facilities can be provided to aggrieved women.*
- ? *Interim compensation can be made available to the aggrieved woman.*
- ? *Proceedings of the complaint can be held in camera.*
- ? *Every aggrieved woman has a right to reside in the shared household.*
- ? *Protection order by Magistrate can be given in favour of aggrieved women.*
- ? *Monetary relief can be given to aggrieved woman to meet expenses or losses.*
- ? *Appeal can be made to Sessions Court within 30 days from the order of concerned Magistrate.*
- ? *Imprisonment upto 1 year or a fine upto Rs.20,000 or both for breach of protection order by the opposite party.*
- ? *Protection officer can be prosecuted, upto 1 year imprisonment or with a fine upto Rs.20,000 or both for failure of his duties.*

### **Definition of domestic violence.-**

**Section 3.** *For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute **domestic violence** in case it -*

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

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

*(c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or (d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person.*

*Explanation I.-For the purposes of this section,-*

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

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

(iii) "**verbal and emotional abuse**" includes-

(a) **insults, ridicule, humiliation, name calling and insults** or ridicule specially with regard to not having a child or a male child; and

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

(iv) "**economic abuse**" includes-

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

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

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

*Explanation*

*II.-For the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes "domestic violence" under this section, the overall facts and circumstances of the case shall be taken into consideration.*

## INTER- CASTE MARRIAGE

*Since several such instances of harassment, threats and violence against young men and women who married outside their caste, were coming to their knowledge, the Supreme Court found it necessary to make some general comments on the matter. It felt that the nation was passing through a crucial transitional period in history, and the Court could not remain silent in matters of great public concern*

In *Lata Singh vs State of U.P. and Another* [(2006) 5 SCC 475], a landmark judgement the Supreme Court commented on the caste system and need for inter-caste marriages.

The Supreme Court held that this case revealed the shocking state of affairs. There was no dispute that the petitioner was a major, hence free to marry anyone she liked or live with anyone she liked. There was no bar to an inter-caste marriage under the Hindu Marriage Act or any other law. Hence, the Supreme Court failed to see what offence was committed by the petitioner, her husband or her husband's relatives. The Supreme Court was of the opinion that no offence was committed by any of the accused and the whole criminal case in question was an abuse of the process of the Court, as well as of the administrative machinery, at the instance of the petitioner's brothers who were only furious because she had married outside her caste. The Supreme Court was distressed to note that instead of taking action against the petitioner's brothers for their unlawful and high-handed acts the police had instead proceeded against the petitioner's husband and his relatives.

Commenting on the caste system, the Supreme Court observed that the caste system was a curse on the nation and the sooner it was destroyed the better. In fact, it was dividing the nation at a time when we have to be united to face the challenges before the nation. Hence, inter-caste marriages are in fact in the national interest as they will result in destroying the caste system. However, disturbing news was coming from several parts of the country that young men and women who underwent inter-caste marriages, were threatened with violence, or violence was actually committed on them. According to the Supreme Court such acts of violence or threats or harassment were wholly illegal and those who committed them, must be severely punished. India was a free and democratic country, and once a person became a major he or she could marry whosoever he/she liked. If the parents did not approve of such inter-caste or inter-religious marriage, the maximum they could do was cut off social relations with their son or daughter, but they could not give threats or commit or instigate acts of violence and could not harass the person who undergo such marriages.

Commenting on 'honour' killings' of persons who undergo inter-caste or inter-religious marriages of their own free will, the Supreme Court held there is nothing honourable in such killings, and in fact they were nothing but barbaric and shameful acts of murder committed by brutal, feudal minded persons who deserved harsh punishment. Only in this way could such acts of barbarism be stamped out.

The Supreme Court directed the administration/police authorities throughout the country to ensure that if any boy or girl who was a major underwent an inter-caste or inter-religious marriage with another person who was a major, then the couple were not harassed nor subjected to threats or acts of violence, and anyone who gave such threats or harassed or committed acts of violence either himself or at his instigation, was to be taken to task by instituting criminal proceedings by the police against such persons and further stern action taken against such persons, as provided by law.

In the case of *Firoz Alam vs The State of Bihar and Others* [MANU/BH/0074/2007] the ***marriage of a muslim girl to a muslim boy was being opposed by the father of the girl because of the fact that the boy, belonged to a different caste***

An application had also been filed on behalf of the informant, for initiation of enquiry under Section 340 CrPC, on the ground that opposite parties obtained anticipatory bail using a forged document i.e. Nikahanama. On behalf of the opposite parties it was submitted that the said Nikahnama was supplied to them by the Kazi, who performed the Nikah and as such, the opposite parties were not in a position to explain as to under what circumstances, the signature of the father appeared on the Nikahnama. It was also submitted that the marriage of the girl was being opposed by her father because of the fact that the boy belonged to a different caste and due to caste bias they were being harassed by the petitioner. Reliance was placed upon the decision in *Lata Singh vs State of U.P. and Another* [(2006) 5 SCC 475]. The High Court observed that Paragraph 17 of the said decision was relevant in the context of this case. On the basis of the said decision, the High Court held that this application has been filed with a view to harass the husband and his family members as he belonged to a different caste but such acts are not appreciated by the Supreme Court and accordingly, the Interlocutory Application also was dismissed.

## WIDOW MURDER

A woman is identified through either her father or her husband. On the death of her husband, a widow's condition is pitiable, specially for those living in rural areas. After the death of a spouse, women are often forced to adhere to strict codes of dress, demeanour and diet throughout their lives, far beyond the actual mourning period. Social norms restrict their right to property and remarriage is not encouraged. In sharp contrast, widowed men in India aren't subject to the same restrictions. They can own property, and are encouraged to remarry. It is the custom in several communities to lock widows for months in a dark room after their husbands death. Despite laws being enacted, widows are seldom allowed to exercise their rights to maintenance and property.

The plight of widows being beaten and declared "*dain*" or witch and shunned out of the village in order to deny them their share of property, has been well documented in Andhra Pradesh, Assam, Bihar, Chhattisgarh, Gujarat, Jharkhand, Karnataka, Madhya Pradesh, Maharashtra, Orissa and West Bengal. It is not superstition - as is commonly believed - that is at the root of many of these accusations of witchcraft but socio-economic factors like land grabbing, sexually motivated assault, ill health and poverty. According to the National Crime Record Bureau during the year 2000-2001 there were 253 cases of Witch-hunting. Women are hacked, hung or burnt to death. Their families don't escape either; heads of children are smashed on rocks, husbands are beaten to death. Some women escape death but are subjected to different forms of inhuman treatment like- their breasts being chopped off, forced to eat human excreta, or banished from their homes. In short the life of a widow often becomes a living hell. Often out of sheer despondency the widow may commit suicide. Sometimes it is because property is passed on to a woman, and the only way for a male relative to get his hands on it is to get her out of the way. Sometimes it is because the woman has rejected a man's advances. Sometimes it is for political reasons. It is a method to thwart the woman exercising her rights. And it is not always the woman's family, which is involved. For example, there are cases where such identification has been made when upper castes want to grab the land distributed to dalit or tribal families.

In India there are thousands of widows struggling each day against economic hardships, violence and neglect. While little public concern is focused on them, the media tends to highlight aberrations of the practice of 'Sati'. To deny a widow her property rights, she is browbeaten and brain washed by the relatives and in sheer desperation she resorts to ending her life on her husband's cremation pyre; an act strictly prohibited under the Commission of Sati (Prevention) Act, 1987. It is time to rename the law as Prevention

of Widow Murder Act rather than Commission of Sati (Prevention) Act, 1987, because the name of the legislation itself tends to justify the practice. It is pertinent to mention here that according to the Representation of the People Act, 1951, one the grounds on which any election can be declared void, includes any “corrupt practice” which is defined in Section 123(3-B) as under:

*(3-B) The propagation of the practice or the commission of sati or its glorification by a candidate or his agent or any other person with the consent of the candidate or his election agent for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate.*

*Explanation :- For the purposes of this clause, 'sati' and 'glorification' in relation to sati shall have the meanings respectively assigned to them in the Commission of Sati (Prevention) Act, 1987*

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## CHAPTER 4

# DOWRY

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**D**owry is a social evil, and the greed for it is growing exponentially day by day. Even certain communities in which dowry or asking for dowry was relatively less prevalent have succumbed to this evil practice. Newspapers are replete with news items of young brides being tortured and brutally burnt or poisoned due to unsatisfied dowry demands. Civil society is outraged by the brutality of dowry to which women are subjected in their homes. In spite of stringent punitive measures, sections of society are still boldly pursuing this chronic evil to fulfil their greedy desires. The survey conducted by SAFMA clearly brought out the fact that the practice of giving and taking dowry pervades the entire population, irrespective of caste, creed or religion. Today, besides cash and ornaments, refrigerators, air conditioners, automobiles and a whole range of gadgets have become an integral part of dowry. In the survey conducted by SAFMA, the respondents clearly admitted having been given dowry by their parents, at the time of marriage. About 70% said it was in the form of household items, 35% said it was in the form of cash and about 20% said it was in the form of a vehicle.

The ordeal of getting a daughter married off has assumed grotesque proportions and female foeticide and infanticide are among its manifestations. No less to blame, are the parents of the girl who frequently give dowry beyond their means, borrowing if necessary, since they believe their own prestige is at stake. Ironically the girl is rarely asked her opinion in these transactions. The bitter truth is that in most cases of dowry deaths the girl had reportedly apprised her parents of her condition and torture, but the presumed social stigma of having a married daughter return to her parental home, make them unwilling to take her back.

Pertinent to mention here is the concept of *Stridhan* which has often been confused with dowry. *Stridhan* literally means a woman's property. Kane (p.777) refers to Devala and Manu. Devala is quoted as saying that the different forms of *Stridhan* are for the woman alone: the husband cannot lay claim except in times of distress. Manu (9.200) warns that a husband's heirs will incur a sin if they divide the ornaments worn by a woman during the husband's lifetime. However it is not uncommon to find a woman's ornaments being misappropriated by her in-laws. There is no strait jacket formula to distinguish between dowry and *Stridhan*. Retention of *stridhan* by the in-laws attracts Section 406 IPC and giving and taking of dowry attracts provisions of Dowry Prevention Act. The

law is in favour of the woman, if she and her parents say it is stridhan it is stridhan, and if they say it is dowry it is dowry, that is all. There is no record of either. However, Rules framed under Dowry Prevention Act clearly requires preparation of presents list at the earliest, which is to be signed by both the parties. This is rarely ever done. In the earlier days families ensured that proper lists and accounts were prepared while the dowry itself was put on display at a formal function, for all the relatives to take note of so there were numerous witnesses to the transaction. Today, no lists are signed and most of the giving and receiving is shrouded in secrecy and made known only through whisper networks within the social circle.

With the aim to check the growing menace of the social evil of dowry The Dowry Prohibition Act, 1961 was enacted; making it punishable, not only the actual receiving of dowry but also the very demand of dowry made before, or at the time, or after the marriage where such demand is referable to the consideration of marriage. The Act has been amended numerous times and the salient features of the amended Act vide Act No. 43 of 1986 include:

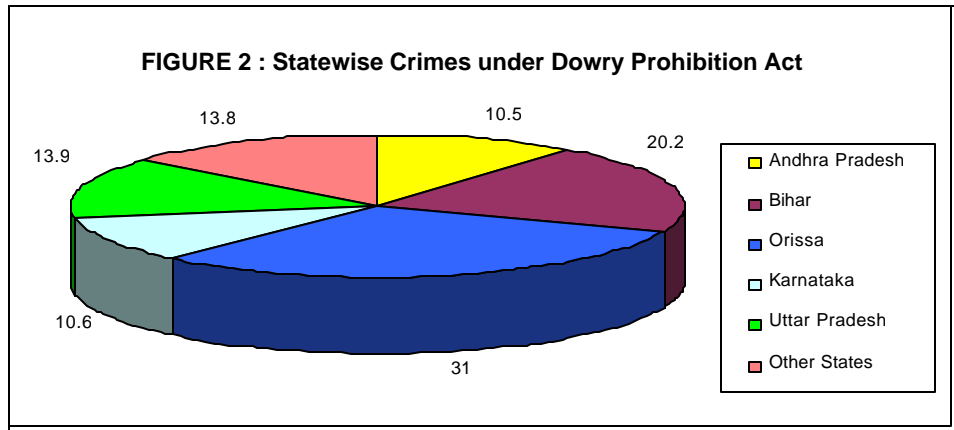
- ? Minimum punishment for taking or abetting the taking of dowry has been raised to five years and a fine of not less than Rupees fifteen thousand.
- ? The burden of proving that there was no demand for dowry will be on the person who takes or abets the taking of dowry (Section 8A).
- ? Dowry is forbidden but gifts are allowed.
- ? The provisions of the Act cannot be invoked against the giving of presents at the time of marriage to the bride without any demand having been made provided that such presents are entered in a list in writing, containing a brief description of each present; the approximate value of the present; the name of the person who has given the present; and where the person giving the present is related to the bride or bridegroom, a description of such relationship . The said list shall be signed by both the bride and the bridegroom as per the Dowry Prohibition (Maintenance of Lists of Presents to the Bride and Bridegroom) Rules, 1985.
- ? Any advertisement in any newspaper, periodical, journal or any other media by any person offering any share in his property or any money in consideration of the marriage of his son or daughter is banned. The person giving such advertisement, and the printer or publisher of such advertisement will be liable for punishment with imprisonment of six months to five years or with fine of upto Rupees fifteen thousand.

- ? Offences under the Act are made non-bailable and non-compoundable (Section 8).
- ? Provision has also been made for appointment of Dowry Prohibition Officers by the State Government for effective implementation of the Act. The Dowry Prohibition Officers will be assisted by Advisory Boards consisting of not more than five social welfare workers (out of whom at least two shall be women).

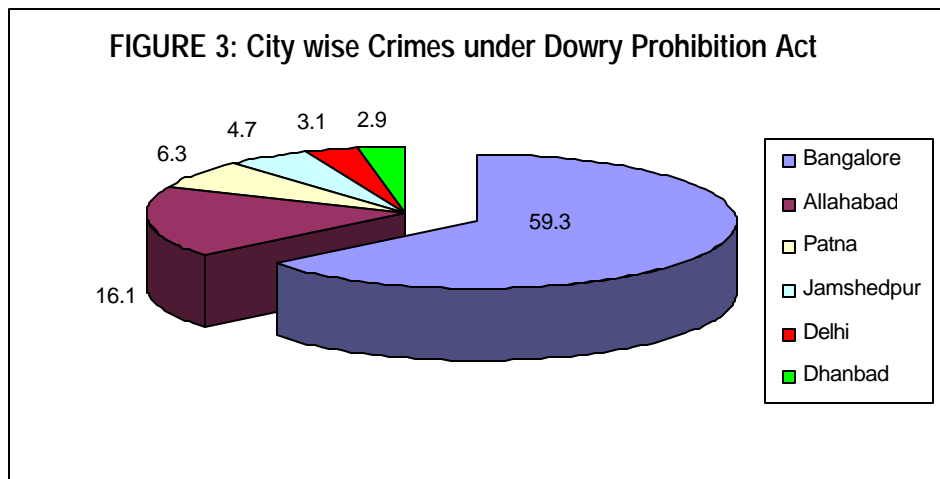
Consequently the Legislature introduced an amendment in 1983 in the Indian Penal Code by introducing a new Section 498A relating to cruelty to married woman. By an amendment in 1986 the offence of 'dowry death' was also inserted as Section 304B. The law of evidence was also amended by inserting Section 113 relating to presumption of abetment of suicide.

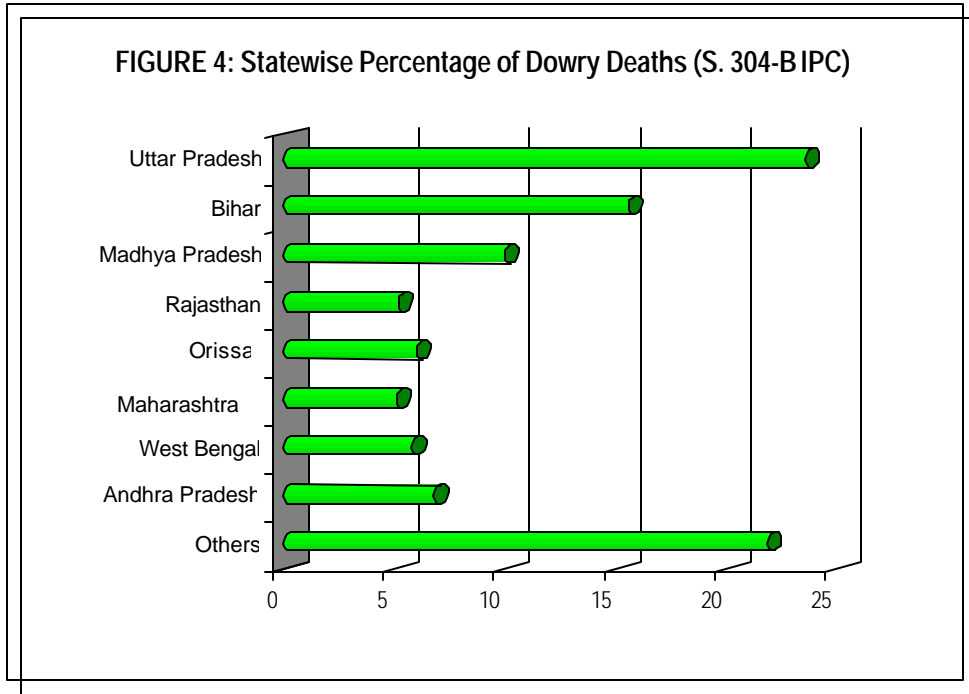
The role of the Courts is undoubtedly important in interpreting any statute. Thankfully the Courts have always upheld the object which the statute seeks to achieve while interpreting any of the provisions of the Act. However, there is an increasing tendency among parents of the girl who in their anxiety to get the boy's family convicted, rope in all relations of the in-laws in the dowry complaint. This tendency strongly criticised and discouraged by the courts, tends to frivolise the issue and is likely to affect the case of the prosecution against the real culprits. In fact the Supreme Court has observed [*Bhagwan Das vs Kartar Singh and Others* 2007 (7) SCALE 167] that it often happens that there are disputes and discords in the matrimonial home and a wife is often harassed by the husband or her in-laws. However, mere harassment of wife by husband due to differences per se does not attract Section 306, if the wife commits suicide but if the suicide was due to demand of dowry soon before her death then Section 304B IPC may be attracted, whether it is a case of homicide or suicide.

Despite legislation and a sensitive judiciary, dowry related crimes are on the increase. It is estimated that in 2006 there have been an estimated number of 63,128 cases of 'Cruelty' by husband and relatives, out of which the conviction rate was 21.9%. 'Torture' cases in the country have increased by 8.2% over the previous year (58,319). 14.5% of these were reported from Andhra Pradesh (9,164). The highest rate at 13.7% was reported from Tripura as compared to the National rate at 5.6% (Source: Crimes in India 2006- National Crimes Record Bureau). Figure 2 below shows that the maximum number of crimes related to dowry are in the States of Bihar and Orissa.

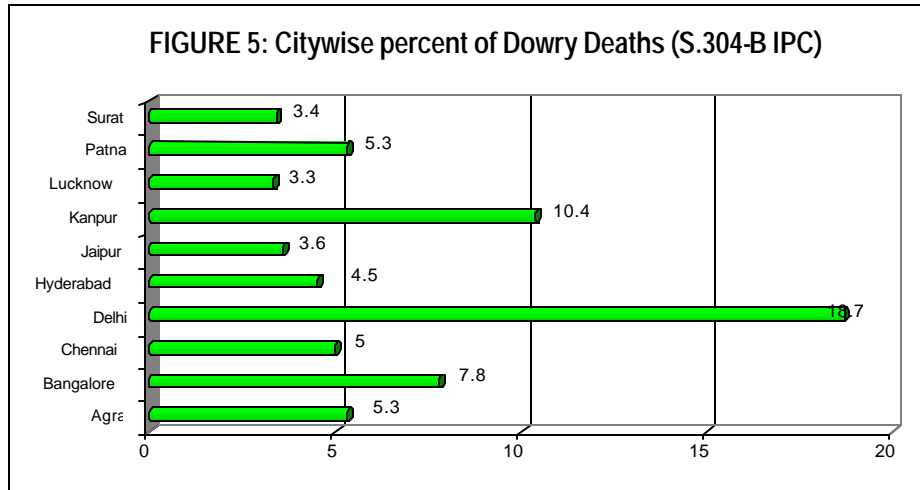


Normally one is under the impression that the social evil of dowry is more prevalent in North India but the figures of the Crimes in India 2006-National Crimes Record Bureau bely this claim. Figure 3 below reflects that the maximum number of cases registered under Dowry Prohibition Act, 1961 are in Bangalore, followed by Allahabad.





It has been estimated that in 2006 there were 7,618 incidences of Dowry Deaths (registered under Sections 302, 304B IPC), being 0.4% of the total crimes in India and the conviction rate was as low as 33.7%. These cases have increased by 12.2% over the previous year (6,787). Figures 4 and 5 reflect the statewise and citywise percentage of dowry deaths respectively, with the maximum number of dowry deaths being reported from the state of Uttar Pradesh and city of Delhi. Infact in the survey conducted by SAFMA almost half the marriages broke off before being solemnized due to the parents being unable to cough up sufficient dowry. 29% of the respondents said they knew of a dowry death in the family.



Unless there is a strong awareness in the minds of the people, unless the entire society believes that dowry is an evil, unless the entire society objects to the demand for dowry, and refuses to give dowry, the evils of dowry will remain in society. SAFMA survey brought out the fact that in almost 90% cases the reasons for giving dowry was social pressure and honour of the family. It is in this light that this directory assumes significance. The purpose of compiling this directory is to make both women and men aware about a women's right against dowry demands and to live a life free from fear and violence.

## **DOWRY PROHIBITION ACT, 1961**

**Section 2. Definition of “dowry”-** In this Act, “dowry” means any property or valuable security given or agreed to be given either directly or indirectly -

- a. by one party to a marriage to the other party to the marriage; or
- b. by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person,

at or before (or any time after the marriage) in connection with the marriage of the said parties, but does not include dower or ‘mahr’ in the case of persons to whom the Muslim Personal Law (Shariat) applies.”

*Explanation II:* The expression “valuable security” has the same meaning as Section 30 of the Indian Penal Code (45 of 1860).

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

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

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

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

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

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

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

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

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

**Section 4-A. Ban on advertisement -If any person,-**

*(a) offers, through any advertisement in any newspaper, periodical, journal or through any other media, any share in his property or if any money or both as a share in any business or other interest as consideration for the marriage of his son or daughter or any other relative.*

*(b) prints or publishes or circulates any advertisement referred to in clause (a),*

*he shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to five years, or with fine which may extend to fifteen thousand rupees:*

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

**Section 5. Agreement for giving or taking dowry to be void. - Any agreement for the giving or taking of dowry shall be void.**

**Section 6. Dowry to be for the benefit of the wife or her heirs.-** (1) *Where any dowry is received by any person other than the woman in connection with whose marriage it is given, that person shall transfer it to the woman-*

*(a) if the dowry was received before marriage, within three months after the date of marriage; or*

*(b) if the dowry was received at the time of or after the marriage within three months after the date of its receipt; or*

*(c) if the dowry was received when the woman was a minor, within three months after she has attained the age of eighteen years;*

*and pending such transfer, shall hold it in trust for the benefit of the woman.*

*(2) If any person fails to transfer any property as required by sub-section (1) within the time limit specified therefore or as required by sub-section (3), he shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to two years or with fine which shall not be less than five thousand rupees, but which may extend to ten thousand rupees or with both.*

**THIS CHAPTER DISCUSSES THE FOLLOWING TOPICS**

**ABETMENT OF SUICIDE**

**ANTICIPATORY BAIL**

**APPEAL AGAINST AQUITTAL**

*Acquittal of husband by giving benefit of doubt and the State not challenging the same by filing appeal, by itself does not justify a conclusion that the prosecution had failed to 'prove the charge' under Sections 304B and 201 IPC against the remaining accused*

**DELAY IN FILING FIR**

**DEMAND OF DOWRY**

*If for convicting any offender, agreement for dowry is to be proved, hardly any offenders would come under the clutches of law*

*Any demand made before or at or after the marriage for any property or valuable security falls within the definition of "dowry". A mere demand for dowry/additional dowry after the marriage also is punishable.*

**DISAPPEARANCE OF EVIDENCE**

**DOWRY DEATH**

*Where it is proved that it was neither a natural death nor an accidental death, then the obvious conclusion has to be that it was an unnatural death either homicidal or suicidal. But, even assuming that it is a case of suicide, even then it would be death which had occurred in unnatural circumstances. Even in such a case, Section 304B IPC is attracted.*

**DYING DECLARATION**

**EVIDENCE**

**QUASHING OF FIR**

**MEDICAL WITNESS**

**OMMISSION OR DEFECT IN FRAMING CHARGE**

*Mere omission or defect in framing charge does not disable the Criminal Court from convicting the accused for the offence which is found to have been proved on the evidence on record.*

**PUNISHMENT**

**SOON BEFORE**

*'Soon before' is a relative term and it would depend upon circumstances of each case and no straitjacket formula can be laid down as to what would constitute a period of 'soon before' the occurrence*

**SUICIDE NOTE**

**VALIDITY OF MARRIAGE IN CHALLENGE**

*Legislations enacted with some policy to curb and alleviate some public evil rampant in society and effectuate a definite public purpose or benefit positively requires to be interpreted with certain element of realism too and not merely pedantically or hyper-technically*

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## CHAPTER 5

# RAPE

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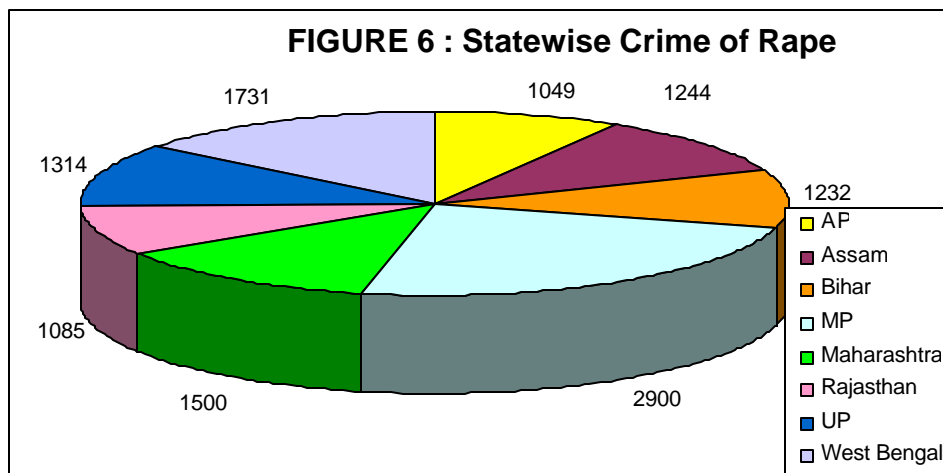
**R**ape is one of the most heinous crimes imaginable. It is the most reprehensible atrocity committed against a woman. Rape is not only an act of monstrosity against the woman-victim herself but also a crime against the entire society which even attaches a social stigma to her. The crime of rape violates a woman's basic human right and her fundamental right, "right to life" as guaranteed under Article 21 of the Constitution of India.

Rape causes not only physical torture to the body of the woman but is also an intrusion upon her mental, psychological and emotional sensitivity, which certainly is irreversible. A woman tends to suffer from a sense of shame for no fault of hers and has to bear the fear of being ostracized by society as well as her relatives, throughout her life. In India there is a tendency to suppress such incidents, specially in rural areas, where notions of honour and prestige are placed on a high pedestal. In case the victim does report the incident, she has to undergo further agony during legal proceedings while reliving the incident again and again and has to undergo insensitive cross examination. Rape is often less a sexual offence and more an act of aggression, aimed at degrading and humiliating women or communicating a message to the whole caste of the woman. It is not infrequent to hear of male teachers gratifying their carnal desires by raping student girls of tender age. A first year student, in Gujarat, was reported to have accused six teachers of repeatedly gang raping her for over six months. No wonder people in rural areas are hesitant to send their daughters to schools, where the staff mostly comprises male teachers. Most experts believe the primary cause of rape is an aggressive desire to dominate the victim rather than an attempt to achieve sexual fulfillment.

Rape and other forms of sexual violence used as a weapon of war in order to humiliate, punish, control, inflict fear among the male members of the community. Women, generally are not directly involved in warfare. The main actors in times of armed struggle are combatants, who are predominantly male. Women have however, the major victims of warfare (*Dr. Charu WaliKhanna, Women Silent Victims of Armed Conflict, An Areas Study of Jammu & Kashmir, India, Serials Publications, 2004*). Marauding armies have frequently taken advantage of women in the course of their military conquests. Hence giving rise to the practise of *jauhar* among Rajput women to save

their honour from the enemy. In Jammu and Kashmir, a generation of women not only found themselves sandwiched between the violence of militants and the atrocities of security personnel, but also had to face the attempts of rabid threats of fundamentalists to foist peddling diktats, for example girls over 14 years of age were asked not to study in the name of religion, or acid was thrown on a girl for not being “modestly dressed”. Media attention was focused in the North East on Thangjam Manorama Devi, a 32 years old lady who was arrested on a memo stating that “a suspected insurgent, explosives expert and hardcore member” of the banned People’s Liberation Army (PLA), was being arrested but was found dead about three hours later, having been raped and shot in her vagina. Newspapers were splashed with photographs of women of the community protesting in the nude against the continued atrocities and the Armed Forces Special Powers Act in Manipur.

Courts have expressed regret and said that it is extremely unfortunate that the respect and honour for womanhood is on the great decline and the cases of molestation and rape are on steady growth in India. This is corroborated by the finding of National Crime Records Bureau (NCRB), which in its latest report, states that there has been a phenomenal eight-fold increase in the number of rapes committed in India since 1971. This stands in marked contrast to other serious and violent crimes. The NCRB data also clearly points to the profile of the average rapist - over 75% were known to the victims. In fact, nearly 10% were relatives. Another disturbing aspect was that about a quarter of the rape victims were minors. The State with the highest number of rapes reported during the year 2006 was Madhya Pradesh, followed by West Bengal (Refer to Figure 6) and the state with the lowest number rapes reported was Sikkim, followed by Goa. [Source: National Crime Records Bureau (NCRB)]



According to NCRB the conviction rate for rapes is appalling, just 4%. The blame lies largely with shoddy investigation and collection of evidence. Barring custodial rapes, the onus of proving rape rests with the victim, and, therefore, with the prosecutor. Here, the role of those who examine the rape victim, and collect evidence sent for testing to forensic laboratories, is crucial. Yet doctors in public hospitals are not given standard operating procedures for examining rape victims. Even the best forensic laboratory can do nothing if the basic evidentiary raw material is either missing or not collected in a proper manner. Besides, in public hospitals, the victim is made to go from one department to another for different examinations. Surely, given what the woman has been through, the system can ensure that such harassment is minimised.

In the circumstances the Courts should deal with cases of rape with utmost sensitivity. As the Supreme Court has held, a socially sensitized Judge, is a better statutory armour in cases of crime against women than long clauses of penal provisions containing complex exceptions and provisions. The Courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. Accused should not be allowed to cling to a fossil formula and insist on corroborative evidence, even if taken as a whole, the case spoken to by the victim strikes a judicial mind as a probable. Judicial response to human rights cannot be blunted by legal jugglery. It is unfortunate that while the legislation exists, there are often inadequacies in its implementation, scope and coverage. Courts should refuse to entertain the preposterous proposition that the rapist is atoning if he agrees to marry the victim. In the case of *Babu Khan* [2004 1 SCALE], the counsel for the State admitted that the victim had given a written complaint but the police did not take the matter seriously and registered a FIR after 3 days. The Sessions Judge convicted the four accused persons of rape but the High Court in appeal acquitted them. The Supreme Court dismissed the appeal against acquittal with strictures to the State that the negligence and utter callousness on the part of the police allowed accused to escape from the clutches of law. This reflects, on one hand, the failure to implement laws effectively and gaps in the justice system which allow violence against women to persist. On the other hand, attitudes of law enforcement officers discourage women from reporting cases; or the police commits serious flaws in the matter of investigation of the case. Besides lack of adequate and consistent gender-sensitivity, training for officials responsible for implementing legislation and policies.

The offence of rape occurs in Chapter XVI of the Indian Penal Code as an offence affecting the human body. In that Chapter, there is a separate heading for “Sexual Offence”. “Rape” is defined in Section 375 and Section 376 deals with the punishment. Two alternative custodial punishments are provided; one is imprisonment for life or with imprisonment of either description for a term which may extend upto ten years. The latter is the minimum, subject of course to the proviso which authorizes lesser

sentence for adequate and special reasons. Sections 375 and 376 have been substantially changed by Criminal Law (Amendment) Act, 1983 and several new Sections have been introduced i.e. 376-A, 376-B, 376-C and 376-D. The fact that sweeping changes have been made reflects the legislative intent to curb with an iron hand, the offence of rape.

### **INDIAN PENAL CODE**

**Section 375. Rape.** - A man is said to commit "rape" who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions:-

**First-** Against her will.

**Secondly.** - Without her consent.

**Thirdly.** - With her consent when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt.

**Fourthly.** - With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

**Fifthly.** - With her consent, 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.

**Sixthly.** - With or without her consent, when she is under sixteen years of age.

*Explanation.* - Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

*Exception.* - Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.

**Section 376. Punishment for rape.** (1) Whoever, except in the cases provided for by sub-section (1), commits rape shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine unless the woman raped is his own wife and is not under twelve years of age, in which cases, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both:

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

(2) Whoever,--

(a) being a police officer commits rape-

(i) within the limits of the police station to which he is appointed; or

(ii) in the premises of any station house whether or not situated in the police station to which he is appointed; or

(iii) on a woman in his custody or in the custody of a police officer subordinate to him; or

(b) being a public servant, takes advantage of his official position and commits rape on a woman in his custody as such public servant or in the custody of a public servant subordinate to him; or

(c) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a woman's or children's institution takes advantage of his official position and commits rape on any inmate of such jail, remand home, place or institution; or

(d) being on the management or on the staff of a hospital, takes advantage of his official position and commits rape on a woman in that hospital; or

(e) commits rape on a woman knowing her to be pregnant; or

(f) commits rape on a woman when she is under twelve years of age; or

(g) commits gang rape,

shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable to fine:

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment of either description for a term of less than ten years,

*Explanation 1.*--Where a woman is raped by one or more in a group of persons acting in furtherance of their common intention, each of the persons shall be deemed to have committed gang rape within the meaning of this sub-section.

*Explanation 2.*--"Women's or children's institution" means an institution, whether called an orphanage or a home for neglected women or children or a widows' home or by any other name, which is established and maintained for the reception and care of women or children.

*Explanation 3.*--"Hospital" means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation.]

**Section 376A. Intercourse by a man with his wife during separation.** Whoever has sexual intercourse with his own wife, who is living separately from him under a decree of separation or under any custom or usage without her consent shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.

**Section 376B. Intercourse by public servant with woman in his custody.** Whoever, being a public servant, takes advantage of his official position and induces or seduces, any woman, who is in his custody as such public servant or in the custody of a public servant subordinate to him, to have sexual intercourse with him, such sexual

*intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to five years and shall also be liable to fine.*

**Section 376C. Intercourse by superintendent of jail, remand home, etc.** *Whoever, being the superintendent or manager of a jail, remand home or other place of custody established by or under any law for the time being in force or of a woman's or children's institution takes advantage of his official position and induces or seduces any female inmate of such jail, remand home, place or institution to have sexual intercourse with him, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to five years and shall also be liable to fine.*

*Explanation 1.--"Superintendent" in relation to jail, remand home or other place of custody or a women's or children's institution includes a person holding any other office in such jail, remand home, place or institution by virtue of which he can exercise any authority or control over its inmates.*

*Explanation 2.--The expression "women's or children's institution" shall have the same meaning as in Explanation 2 to sub-section (2) of section 376.*

**Section 376D. Intercourse by any member of the management or staff of a hospital with any woman in that hospital.** *Whoever, being on the management of a hospital or being on the staff of a hospital takes advantage of his position and has sexual intercourse with any woman in that hospital, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to five years and shall also be liable to fine.*

*Explanation.--The expression "hospital" shall have the same meaning as in Explanation 3 to sub-section (2) of section 376.*

**THIS CHAPTER DISCUSSES THE FOLLOWING TOPICS**

**ABSENCE OF INJURIES**

*It is well settled law that absence of injuries on the person of the prosecutrix would not itself be sufficient to discard the prosecution case.*

**CHARACTER OF VICTIM**

*Even if the victim has been promiscuous in her sexual behaviour earlier, she has a right to refuse to submit herself to sexual intercourse to anyone and everyone because she is not a vulnerable object or prey for being sexually assaulted by anyone and everyone*

**CIRCUMSTANTIAL EVIDENCE**

*Where case rests squarely on circumstantial evidence inference of guilt can be justified only when all incriminating facts and circumstances found incompatible with innocence of accused or guilt of any other person*

**CONFESSION**

**CONSENT**

**DEFINITION OF RAPE**

**DELAY IN FILING FIR**

**DISTINCTION BETWEEN RAPE AND ATTEMPT**

**DISTINCTION BETWEEN RAPE & OUTRAGING MODESTY**

**EVIDENCIARY VALUE OF A PROSECUTRIX**

**IDENTITY OF VICTIM**

**PROMISE TO MARRY**

**QUANTUM OF PUNISHMENT**

**TEST IDENTIFICATION PARADE**

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## CHAPTER 6

# SEXUAL VIOLENCE

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**S**exual violence is an act of sexual transgression which is not consensual, or where the consent has been given under coercion and not freely given. Mostly the victims of sexual violence are women because of their “gender” and this evolves in part from women's subordinate status in society. The person responsible for the violence is usually someone known to the victim, a friend, co-worker, neighbour or even relative and family member. Many cultures have beliefs, norms, and social institutions that legitimize and therefore perpetuate violence against women. The same acts, that would be punished if directed at an employer, a neighbour, or an acquaintance, often go unchallenged when men direct them at women, especially within the family. On the other hand the tradition of stigmatizing the victim persists. Thus, despite a well-developed legal and policy framework, violence against women is rampant.

Violence against women constitutes a pervasive violation of her fundamental rights, as guaranteed in the Constitution of India, and a major impediment to achieving gender equality. There are many modes of sexual violence. Not all include physical contact between the victim and the perpetrator. Examples include sexual harassment and indecent representation of women or for that matter threats, intimidation, peeping, and taking nude photos. Whereas, in sexual violence, where there is physical contact, include molestation, assault, unwanted touching and rape. In fact 2008 began on a sordid note with the molestation of two women in a Mumbai five star hotel. According to the National Crime Reports Bureau (NCRB) Report “Crimes in India 2006”, a total of 1,64,765 incidents of crime against women were reported in the country during 2006, recording an increase of 5.9% over 2005. The so-called hi-tech State of Andhra Pradesh, having nearly 7.2% of the country’s population, has accounted for 13.0% of total incidents by reporting 21,484 cases. Uttar Pradesh, with nearly 16.5% share of country’s population, accounted for 9.9% of crimes against women, by reporting 16,375 cases during 2006. Figures are always impressive but often misleading since they under estimate the problem. Many cases are not reported because victims are afraid to tell the police, friends, or family about the abuse. Often they apprehend, that their story will not be believed and that police cannot help them. Or maybe the fear of being jeered, ostracized or simply embarrassed, makes them remain silent. Victims may also keep quiet because they and their families have been threatened with further harm, if

they tell anyone. The survey conducted by SAFMA revealed on average, at least one in two women had been subjected to eve-teasing in the course of her life, while 43.6% had been subjected to criminal force.

While economists celebrate India's economic growth, we fail to acknowledge that the economy and society are still biased against women. In many parts of the country like Uttar Pradesh, Rajasthan, Bihar, Punjab and Haryana, due to the prevailing feudal and patriarchal culture, women are treated as if they were a piece of property. Often viewed as an economic liability, there is a tendency to hush up incidents of sexual violence, for the sake of the family honour. Unmindful of the physical, psychological and emotional consequences it has on the woman, sexual violence impacts the health of the woman in many ways. These include chronic pain, headaches, stomach problems, and sexually transmitted diseases. Victims become fearful and anxious, may have problems trusting people, they may develop eating disorders and get depressive. Some may even think about attempt to suicide as seen in a case of *Shaik Nagoor vs State* [MANU/SC/7175/2008]. The accused caught hold of the victim and when she threatened him, saying that she would complain to her mother, he in turn replied that, he himself, would complain to her mother saying that she herself called him and thereby, would defame her and her family. Feeling disturbed and suffering from emotional turmoil, the deceased went into the room, poured kerosene and set fire to herself.

Again, there is an escalation of reportage of sexual violence in the media. Undoubtedly, it leads to awareness of the issue but on the other hand, since media, specially the visual media, is a form of entertainment, the repeated depiction of incidences, leads to the people indulging in voyeurism. If so, then the problem is much deeper than censorship, artistic integrity or our freedom of speech, as guaranteed in the Constitution. The case under the sub-head "Media" discusses the right to freedom of expression.

India has a sensitive judiciary. In the case of *Naga People's Movement of Human Rights vs Union of India*. [(1998)2 SCC 109] where allegations had been made, regarding infringement of human rights by personal of the armed forces, in exercise of the powers conferred by the Central Act; the Supreme Court gave specific directions that Army Officers, while effecting the arrest of women or making search of women, or in searching the place in the actual occupancy of a female shall follow the procedure meant for the police officers as contemplated under the various provisions of the Code of Criminal Procedure, namely, the provision to sub-section (3) of Section 100 and proviso to sub-section 160 of the Code.

But the Court also in order to come to a conclusion, that the conduct of the accused was indicative of a determination to gratify his passion or indulge in sexual violence, sufficient material must exist. To convict an offender, criminal law requires proof "beyond reasonable doubt". Ignorance makes women file wrong FIR. Indecent assaults are often magnified into attempts at rape, resulting in the offender being acquitted due to lack of evidence.

**THIS CHAPTER AMONG OTHERS DISCUSSES THE FOLLOWING TOPICS**

**COMPENSATION**

**CRIMES AGAINST WOMEN**

**FOREIGN TOURISTS SAFETY**

**INDECENT REPRESENTATION OF WOMEN**

**KIDNAPPING**

**MEDIA**

**NIGHT SHIFT**

**OUTRAGING MODESTY**

**UNNATURAL SEX**

## IMMORAL TRAFFICKING

Immoral trafficking or Human trafficking in India is a complex process, and often starts with family members handing over responsibility for the safety and well-being of the trafficked person to others known to them, but then ending up trafficked by a third set of persons and into the profession as a Commercial Sex Worker (CSW), commonly known as a prostitute. The term 'prostitute' has always aroused a range of hostile feeling and perceptions. However till date no society has been able to eradicate or abolish it. In India available statistics on trafficking are limited and contested.

The Suppression of Immoral Traffic in Women and Girls Act 1956, now Immoral Traffic (Prevention) Act (ITPA), was enacted in pursuance of India's international commitment on ratifying the Convention for the Suppression of the Traffic of Persons and of the Exploitation of the Prostitution of others (signed at New York on 9<sup>th</sup> May, 1950). **The importance of prevention of trafficking is irrefutable, but somehow, the entire focus of ITPA appears to be on eliminating prostitution rather than prevention of trafficking in persons.** In the continuum of anti-trafficking initiatives, law formulation and enforcement is more or less restricted to the area of raid, rescue, repatriation and to a limited extent the rehabilitation aspect. There is a marked absence of any standard guideline for intervention or law enforcement in preventing trafficking from occurring. Infact the NHRC survey in which data was collected by interviewing 852 police officials (117 senior officials and 735 middle/junior rank officials) presents the following scenario (<http://nhrc.nic.in/ResearchStudies&Project.htm> ) reveals the following

- ? 40% of the police officials were not aware of the issue of trafficking
- ? Only 6.6% of the police officials had undergone some sort of training/sensitization on the issue.
- ? 54.8% police officers give no priority at all to trafficking, 25.3 give it low priority, 12.2% consider it to be a medium priority issue and only 7.7% think it is a high priority issue
- ? Reporting on trafficking appears to be only 40%. As stated by the police officers themselves, 60% of the cases go unreported
- ? The sex-disaggregated data of law enforcement shows that 93% of those arrested, mainly under Section 8 A (ITPA), 95% of those chargesheeted and 90% of those convicted were women

Extreme poverty combined with the low social status of women often results in the handing over by parents of their children to strangers for what they believed was employment or marriage, according to “*ROSHINI : Research Study on Human Rights Violations of Victims of Trafficking*” conducted by SAFMA on behalf of National Commission for Women. In many cases families and other community members close to the trafficked person also benefit financially from the process, further limiting the probability of the trafficked person taking action to escape or bring about the severe consequences of prosecution. Interestingly enough though it is difficult for a CSW to be accepted back into their communities, they visit their hometown at least twice a year by claiming to be working in Delhi in an export house or as a domestic worker. All those involved in trafficking gain pecuniary benefits; beginning from the family who sells the trafficked girl, from the point of recruitment/deception to the point of use of her labour as a CSW. All are direct perpetrators of the crime of human trafficking. However, very little attention is paid to prosecuting recruiters, those involved in supporting this process along the way such as transporters (rickshaw, bus and truck drivers), vendors (dhobis, pheriwalas etc.) and hotel and restaurant workers, who knowingly provide services to traffickers and their victims. The victim is mostly reluctant to make a complaint since the trafficker may be her own family or person known to her. It was not uncommon for families to sell their daughters in times of economic distress or order to avoid starvation.

Public concern on the issue of child prostitution originated in a land mark judgement of the Supreme Court of India in 1990. In response to a Public Interest Litigation on the subject, the Supreme Court ruled that the States and Central Government should initiate comprehensive measures for the rehabilitative care of such children besides elimination of this social menace. During the study by SAFMA “*ROSHINI*” (supra), the CSWs did not admit their entry into the trade as minors, but on probing and calculating backwards the figures are alarming. 61% entered the trade when they were under 21 years of age. As rightly endorsed by the Ministry of Labour there is thus a strong need for protection of CSWs in terms of working conditions, their rights including occupational health and safety provisions. This is particular so in the context of the current HIV/AIDS upsurge as the sex workers without rights in their place of work are unequally vulnerable to infection with HIV and other sexually transmitted disease.

## SEXUAL HARASSMENT AT WORK PLACE

Sexual harassment in the workplace is an extremely sensitive topic. It infringes the Fundamental Right of a woman to gender equality as guaranteed under Article 14 of the Constitution of India and her Right to life and live with dignity as guaranteed under Article 21 of the Constitution which includes a Right to a safe environment.

Officially, sexual harassment in the workplace is illegal, yet women are persistently harassed at their workplace, by employers, co-employees and third parties despite the fact that the Supreme Court in *Vishakha vs State of Rajasthan* [1997(7) SCC.323] has formulated guidelines to address Sexual Harassment until a suitable legislation is enacted in this respect. Courts have been very stern in taking cognizance of cases regarding sexual harassment. The High Court of Delhi recently stated that a man can be accused of sexual harassment at the workplace even if the case of misconduct has been committed outside the office premises. Due to advancement of information technology, the Court referred to the phenomenon of senior private sector officials working from their residence. The High Court further observed that an officer or teacher may work from the accommodation allotted to him. He would not be allowed to say it is not a workplace. The conduct rules clearly stipulate that a government servant shall not indulge in any act of sexual harassment with any woman at the workplace. The expression "any woman" is broad enough to include a woman who may be senior.

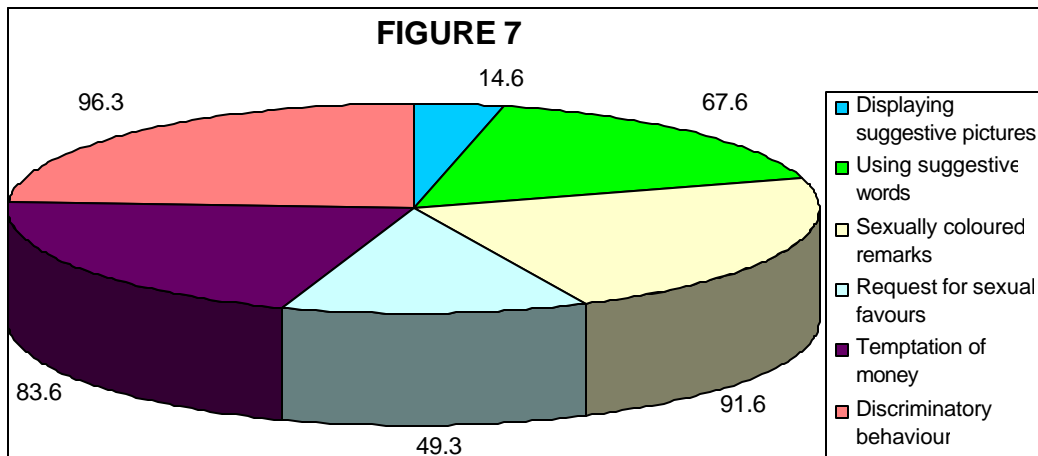
Sexual harassment is a type of sexual assault, and victims of severe or chronic sexual harassment can suffer the same psychological effects as rape victims. Aggravating factors can exist, such as their becoming the target of retaliation, backlash, or victim blaming after their complaining, or filing a formal grievance. Depending on the situation, a sexual harassment victim can experience anything from mild annoyance to extreme psychological damage, while the impact on a victim's career and life may be minimal, or leave them in ruins. The survey conducted by SAFMA of over around 500 women revealed that women working in small offices were more prone to sexual harassment than women who worked in large offices. The victims were hesitant to tell their families because they would insist on their leaving the job which would cause financial loss. They were hesitant to change jobs because they felt that they would experience similar harassment elsewhere also. Married women faced greater harassment with employers telling them that now since they are married why do they worry? The girls preferred to fill the questionnaire themselves since they did not want to answer the questions orally and were embarrassed. Some of the effects the respondents who were victims of sexual harassment stated to have experienced:

- ? Being objectified and humiliated by scrutiny and gossip and having one's personal life offered up for public scrutiny, as a result of which defamation of character and reputation occurs— 25.4 %. The victim becomes the "accused," and

their dress, lifestyle, and private life will often come under attack, while this rarely occurs for the perpetrator;

- ? Decreased work performance as the victim has to focus on dealing with the harassment and the surrounding dynamics and/or effects - 80.3%;
- ? Increase in mental tension - 76.6%. However, only 13% stated to have suicidal thoughts or attempts;
- ? Loss of trust in the types of people that occupy similar positions as the harasser or their colleagues - 99%;
- ? Change of relations with co-employees and weakening of support network since colleagues and friends tend to distance themselves – 60.6 %;
- ? Loss of health – 76.6 %. Some of the health effects that occur range from depression, anxiety, sleeplessness, to shame and guilt; self-blame, fatigue or loss of motivation, feeling powerless, helpless, or out of control, loss of confidence and self esteem.

The types of harassment ranged from showing dirty pictures to requests for sexual favours. Refer to Figure 7 below.



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