WOMEN, LAW AND CRIMINAL JUSTICE

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Preface

Women, Law, and Criminal Justice is a multidisciplinary field that scrutinizes the intricate relationship between gender, legal systems, and the administration of justice. This area of study investigates how women encounter and navigate the law, highlighting the unique challenges and disparities they face within the criminal justice system. It delves into various aspects, including the prevalence of gender bias in law enforcement practices, sentencing discrepancies, and the impact of societal norms on women's interactions with legal institutions.

Furthermore, Women, Law, and Criminal Justice encompass a wide spectrum of legal domains, ranging from criminal law to family law and human rights law, all of which intersect with women's experiences. This includes examining legislation related to issues such as domestic violence, sexual assault, reproductive rights, and gender-based discrimination, and exploring how these laws are implemented and enforced.

Moreover, this field critically evaluates the efficacy of legal frameworks and policies in addressing the specific needs and rights of women within the criminal justice system. It examines strategies for enhancing access to justice, bolstering victim support services, and advocating for gender-sensitive approaches in law enforcement and adjudication processes.

Additionally, Women, Law, and Criminal Justice shed light on the role of advocacy, activism, and policy advocacy in advancing gender equality and justice for women. It underscores the significance of legal empowerment initiatives, community-based interventions, and international conventions in combating gender-based violence and discrimination, and promoting women's rights within legal and criminal justice contexts.

Women, Law, and Criminal Justice underscore the need for ongoing research and analysis to identify systemic inequalities and inform evidence-based policy reforms. By amplifying the voices and experiences of women within the criminal justice system, this field seeks to foster greater accountability, transparency, and equity in legal and law enforcement practices. Overall, Women, Law, and Criminal Justice serve as a vital platform for advancing gender justice and human rights within legal systems worldwide.

The book on Women, Law, and Criminal Justice offers a comprehensive examination of the gendered dynamics within legal systems and the criminal justice process, addressing issues of equity, discrimination, and reform.

–Author

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Laws against Domestic Violence

In 1983, domestic violence was recognised as a specific criminal offence by the introduction of section 498-A into the Indian Penal Code. This section deals with cruelty by a husband or his family towards a married woman.

Four types of cruelty are dealt with by this law:

- Conduct that is likely to drive a woman to suicide,
- Conduct which is likely to cause grave injury to the life, limb or health of the woman,
- Harassment with the purpose of forcing the woman or her relatives to give some property, or
- Harassment because the woman or her relatives is unable to yield to demands for more money or does not give some property.

The punishment is imprisonment for upto three years and a fine. The complaint against cruelty need not be lodged by the person herself. Any relative may also make the complaint on her behalf.

Section 498-A of the Indian Penal Code covers dowry-related harassment. As with other provisions of criminal law, a woman can use the threat of going to court to deter this kind of harassment. The Indian Penal Code also addresses dowry deaths in section 304-B. If a woman dies of "unnatural causes" within seven years of marriage and has been harassed for dowry before her death, the Courts will assume that it is a case of dowry death. The husband or in-laws will then have to prove that their harassment was not the cause of her death. A dowry death is punishable by imprisonment of at least seven years. When filing an FIR (First Hand Report), in a case where a woman is suspected to have been murdered after a history of torture due to dowry demands, the complaint should

be filed under section 304-B rather than under section 306, which deals with abetment to suicide. Section 306 should be invoked when a woman commits suicide because of dowry-related harassment.

A woman can make her husband to execute a "bond to keep peace", or a "bond of good behaviour" through the Executive Magistrate who can order the husband to put a stop to domestic violence. The husband can also be asked to deposit securities (*i.e.* money or property) that will be forfeited if he continues to act violently.

- *Kaveri vs. Neel Sagar and Anr:* The relevant facts show that the petitioner had filed an application under Section 23 of Protection of Women from Domestic Violence Act seeking restraint order against the respondents and seeking direction to provide her residential accommodation and to pay sum of ₹ 15000/- pm as interim maintenance. The respondents in this case were mother and brothers of the petitioner.

  The petitioner is an employed woman, has been working with Indian Airlines in store department and living separately from her brothers and mother admittedly since 2002; although the respondents alleged that she was living separately since 1999. Both the Courts below had come to the conclusion that interim relief either of separate residence or claiming amount from brothers or mother could not be granted in her favour under the Protection of Women from Domestic Violence Act since it was not the claim of the petitioner that she was not able to maintain herself rather she had claimed she had spent ₹ 1 lac in construction of first floor of the house where respondents No. 1 and 2 were residing.

  The Courts below came to the conclusion that petitioner being employed and living separate and being a major having her own independent source of income was not entitled to relief. The facts that the petitioner is employed and has been living separate and leading an independent life are undisputed facts. The court found no ground to interfere with the orders of the Courts below in petition under Article 227 of the Constitution of India.
- *Pooja Saxena vs. State and Anr. [MANU/DE/2748/2010]:* Facts relevant for the disposal of this petition are that the petitioner Pooja Saxena filed a complaint of dowry demand and harassment against her husband (respondent No. 2) with CAW Cell and on the basis of the said complaint, after preliminary enquiry and on the recommendation of the senior police officer, an FIR No. 232/2009 under Sections 498A/406/34 IPC was registered against respondent No. 2 Sameer Saxena and others at P.S. Roop Nagar.

  Respondent No. 2 Sameer Saxena, as a counterblast to the aforesaid FIR, filed a petition under Section 156(3) Cr.P.C. seeking direction for registration of FIR under Section 3 of the Dowry Prohibition Act, 1961 against the petitioner and learned ACMM, vide order dated

10.03.2010 directed the SHO, P.S. Roop Nagar to register an FIR on the basis of the allegations made in the petition under Section 156(3) Cr.P.C. and investigate the matter in accordance with law.

Respondent No. 2 in his petition under Section 156(3) Cr.P.C. contended that the petitioner in her complaint to CAW Cell, which formed basis for registration of FIR No. 232/2009 under Sections 498A/406/34 IPC P.S. Roop Nagar, as well as in her petition Section 24 of the Hindu Marriage Act and in her petition under Section 12 of the Domestic Violence Act, 2005 made categoric allegations that demand of dowry as a precondition to marriage was made by the husband and in-laws of the petitioner and pursuant to that demand huge dowry was given which, prima facie, amounts to admission of commission of an offence under Section 3 of the Dowry Prohibition Act, 1961 by the petitioner and her parents.

Thus, he has strongly urged for the quashing of the FIR No. 59/2010 registered pursuant to the impugned order dated 10.03.2010 of the learned ACMM. The court held that it is obvious that the petitioner and her parents were confronted with the unenviable situation either to concede to the demand or face the loss of honour of their family in the society, and if under that fear, the petitioner and her parents conceded to the demand for dowry, they cannot be faulted as they were victims of the circumstances. Given the aforesaid facts, Section 7(3) comes to the rescue of the petitioner and in terms of the aforesaid provision, she cannot be subjected to prosecution for the offence under Section 3 of the Dowry Prohibition Act, 1961.

The court found it difficult to sustain the impugned order dated 10.03.2010 of learned ACMM vide which he had directed registration of FIR against the petitioner herein ignoring the protection extended to the petitioner under Section 7(3) of the Dowry Prohibition Act 1961. Accordingly, the impugned order of learned ACMM and the FIR registered in furtherance of said order were quashed.

FEMALE FOETICIDE

Female foeticide is a heinous act and an indicator of violence against women. Women in India have suffered a lot and have swallowed innumerable atrocities for so many generations. Be it wife battering, rapes or dowry deaths, she has been suffering and subjected to discrimination. The homicide of women exists in various forms in the societies all over.

Female foeticide is one of the worst case scenarios which women expect in this country. Ironically some of the worst gender ratios, indicating gross violation of women's rights, are found in South and East Asian countries such as India and China. It is because of this reason that the sex ratio of girls to boys in many parts of the country has dropped to less than 800:1,000. The United Nations has expressed serious concern about the trend.

The determination of the sex of the foetus by ultrasound scanning, amniocentesis, and in vitro fertilization has aggravated this situation. Although no moral or ethical principle supports such a procedure for gender identification.

The situation is further worsened by lack of awareness of women's rights and by the indifferent attitude of governments and medical professionals. In India, the available legislation for prevention of sex determination needs strict implementation, alongside the launching of programmes aimed at altering attitudes, including those prevalent in the medical profession.

The private foetal sex determination clinics were first established in the states of Punjab, Haryana and Delhi. The practice of selective abortion became popular from the late 1970s. Surprisingly, the trend is far stronger in urban rather than rural areas, and among literate rather than illiterate women, exploding the myth that growing affluence and spread of basic education alone will result in the erosion of gender bias.

The need for a dowry for girl children, and the ability to demand a dowry for boys exerts considerable economic pressure on families to use any means to avoid having girls, who are seen as a liability. There are even posters in Bombay advertising sex-determination tests that read: "It is better to pay ₹.500 now than ₹.50,000 (in dowry) later!!!"

Women and Developments in Reproductive Technology Abortion was legalized in India in 1971 (Medical Termination of Pregnancy Act) to strengthen humanitarian values (pregnancy can be aborted if it is a result of sexual assault, contraceptive failure, if the baby would be severely handicapped, or if the mother is incapable of bearing a healthy child). Amniocentesis was introduced in 1975 to detect foetal abnormalities but it soon began to be used for determining the sex of the baby. Ultrasound scanning, being a non-invasive technique, quickly gained popularity from rich to the poorest. Both techniques are now being used for sex determination with the intention of abortion if the foetus turns out to be female.

Most of those in the medical profession are part of the same gender biased society. It is scarcely surprising that they are happy to fulfill the demands of prospective parents. Medical malpractice in this area is flourishing, and bans on gender selection, for example in Maharashtra, have had little effect.

Prenatal sex determination with the intention of preventing female births must be viewed as a manifestation of violence against women, a violation of their human rights. The pregnant woman, though often equally anxious to have a boy, is frequently pressurized to undergo such procedures. Many women suffer from psychological trauma as a result of forcibly undergoing repeated abortions. Moreover, demographers warn that in the next twenty years there will be a shortage of brides in the marriage market mainly because of the adverse juvenile sex ratio, combined with an overall decline in fertility.

Given the lower value placed on women in Indian society the impact on society should not be underestimated. The sharp rise in sex crimes in Delhi have been attributed to the unequal sex ratio. According to Chinese estimates, by 2020 there are likely to be 40 million unmarried young men, called guang guan, in China, because of the adverse sex ratio. A society then is prone to dangers like more women to be exploited as sex workers, increases in molestations and rapes.

The Government of India passed the Pre- conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act In 1994, with the aim of preventing female foeticide. It was later amended and replaced in 2002 by the Prenatal Diagnostic Techniques (Regulation and Prevention of Misuse) Act without properly implementation ever.

Contravening the provisions of the Act can lead to a fine of ₹ 10,000 and up to three years imprisonment for a first offence, with greater fines and longer terms of imprisonment for repeat offenders.

The research done to assess the implementation of the 1994 Act in South Delhi revealed serious failures in management and implementation there was lack of commitment and motivation with widespread corruption and little knowledge in clinics of the provisions of the Act.

To prevent this practice in Indian society is a serious challenge. It must involve:

- Ensuring strict implementation of existing legislation.
- The advocacy of a scientific, rational, and humanist approach.
- The empowerment of women and a strengthening of womenâ??s rights through campaigning against practices such as dowry.
- Inculcating a strong ethical code of conduct among medical professionals, beginning with their training as undergraduates.
- Simple methods of complaint registration, accessible to the poorest and most vulnerable women.
- Wide publication in the media of the scale and seriousness of the practice.
- NGOs should take a key role in educating the public on this matter.
- Regular assessment of indicators of status of women in society, such as sex ratio, and female mortality, literacy, and economic participation.

It is now or never otherwise it will be too late for us, to erode the deep-seated attitudes and practices against women and girls in our country.

Abortion was punishable under Indian Penal Code but it was legalized with the passing of Medical Termination of Pregnancy Act, 1971.This act along with its revised rules was envisaged as a mile stone in the modernization of Indian society through laws. Doctors are against the ban on amniocentesis because it will lead to an underground practice in the field.

TRAFFICKING

Trafficking is defined as a trade in something that should not be traded in for various social, economic or political reasons. Thus we have terms like drug trafficking, arms trafficking and human trafficking. The concept of human trafficking refers to the criminal practice of exploiting human beings by treating them like commodities for profit. Even after being trafficked victims are subjected to long term exploitation.

According to a recent survey women are bought and sold with impunity and trafficked at will to other countries from different parts of India. These girls and

women are sourced from Dindigal, Madurai, Tiruchirapalli, and Chengalpattu in TamilNadu, Gaya, Kishanganj, Patna, Katihar, Purnea, Araria and Madhubani from Bihar, Murshidabad and 24 Parganas in West Bengal, Maharajgunj from UP, Dholpur, Alwar, Tonk from Rajasthan, Mangalore, and Gulbarga and Raichur from Karnataka. These women and girls are supplied to Thailand, Kenya, South Africa and Middle East countries like Bahrin, Dubai, Oman, Britain, South Korea and Philippines. They are forced to work as sex workers undergoing severe exploitation and abuse. These women are the most vulnerable group in contracting HIV infection. Due to unrelenting poverty and lack of unemployment opportunities there is an increase in the voluntary entry of women into sex work.

Trafficking both for commercial sexual exploitation and for non-sex based exploitation is a transnational and complex challenge as it is an organized criminal activity, an extreme form of human rights violation and an issue of economic empowerment and social justice. The trafficking of women and children causes untold miseries as it violates the rights and dignity of the individual in several ways. It violates the individual's rights to life, dignity, security, privacy, health, education and redressal of grievances.

TRAFFICKING IN INDIA (AS REPORTED BY DIFFERENT PERIODICALS)

In India, Karnataka, Andha Pradesh, Maharashtra, and Tamil Nadu are considered "high supply zones" for women in prostitution. Bijapur, Belgaum and Kolhapur are common districts from which women migrate to the big cities, as part of an organised trafficking network.

Districts bordering Maharashtra and Karnataka, known as the "devadasi belt," have trafficking structures operating at various levels. The women here are in prostitution either because their husbands deserted them, or they are trafficked through coercion and deception Many are devadasi dedicated into prostitution for the goddess Yellamma. In one Karnataka brothel, all 15 girls are devadasi.

Women and children from India are sent to nations of the Middle East daily. Girls in prostitution and domestic service in India, Pakistan and the Middle East are tortured, held in virtual imprisonment, sexually abused, and raped. In Bombay, children as young as 9 are bought for up to 60,000 rupees, or US$2,000, at auctions where Arabs bid against Indian men who believe sleeping with a virgin cures gonorrhea and syphilis.

About 5,000-7,000 Nepalese girls are trafficked to India every day. 100,000-160,000 Nepalese girls are prostituted in brothels in India. About 45,000 Nepalese girls are in the brothels of Bombay and 40,000 in Calcutta. Calcutta is one of the important transit points for the traffickers for Bombay and to Pakistan. 99 per cent women are trafficked out of Bangladesh through land routes along the border areas of Bangladesh and India, such as Jessore, Satkhira, and Rajshahi.

70 per cent of students surveyed at a wealthy high school seek a career in organized crime, citing their reasoning as "good money and good fun." (surveyed student)

METHODS AND STRATEGIES OF PREVENTION

The UN's Protocol contains a number of provisions aimed at preventing trafficking. State parties are required to establish policies, programmes and other measures aimed at preventing trafficking and protecting trafficked persons from re-victimization. The existence of vulnerable situations of inequality and injustice coupled with the exploitation of the victim's circumstances by the traffickers and others cause untold harm to the trafficked victim who faces a multiplicity of rights violations. Therefore policies, programmes and strategies that address prevention have to be unique with a focus on and an orientation towards all these issues. Accordingly the prevention of trafficking needs to be addressed not only in relation to the source areas but also in the demand areas the transit points and the trafficking routes.

Strategies in all these areas have to be oriented towards the specific characteristics of the situation and the target groups:

- The best method of prevention is its integration it with prosecution and protection. Prosecution includes several tasks like the identification of the traffickers bringing them to the book, confiscating their illegal assets. Protection of the trafficked victim includes all steps towards the redressal of their grievances thus helping the victim survive, rehabilitate and establish herself/himself. Thus prosecution and protection contribute to prevention.
- The strategies should address the issues of livelihood options and opportunities by focusing on efforts to eradicate poverty, illiteracy etc. There should be special packages for women and children in those communities where entry into CSE may be perceived as the only available option. Education and other services should be oriented towards capacity building and the consequent empowerment of vulnerable groups.
- Gender discrimination and patriarchal mindset are important constituents and catalysts of the vulnerability of women and girl children. This manifests itself in several serious violations of women's rights such as high incidence of female foeticide and infanticide and the discrimination against women in health care, education and employment. Since these are vulnerability factors that trigger trafficking prevention strategies need to be oriented accordingly.
- Natural calamities and manmade disturbances do exacerbate the vulnerability situation. Therefore relief and aftercare programmes need to have specific components focused on the rights of women and children.
- At the micro level the prevention of trafficking in the source areas requires a working partnership between the police and NGOs. Public awareness campaigns and community participation are key to prevention programmes. Prevention is best achieved by community policing.

- Political will is an essential requirement to combat trafficking.
- Creating legal awareness is one of the most important functions of any social action programme because without legal awareness it is not possible to promote any real social activism. Legal awareness empowers people by making them aware of their rights, and can work towards strengthening them to develop zero tolerance towards abuse and exploitation.
- Immigration officials at the borders need to be sensitized so that they can network with the police as well as with NGOs working on preventing trafficking.

Help lines and help booths are very important for providing timely help to any person in distress. The Ministry of Social Justice and Empowerment is considering collaboration between government agencies and NGOs for setting up help lines and help booths that can provide timely assistance to child victims. It will be appropriate if the Child lines all over India, NGOs working on child rights, missing person bureaus and police help lines are linked together as a formidable tool against trafficking.

- Fateh Chand v. State of Haryana [AIR 2009 SC 2729]

The prosecutrix Geeta was detained and forced to have sexual intercourse with the appellant and was later involved in flesh trade.

The Hon'ble High Court had dismissed the appeal against the judgement and order of Additional Sessions Judge, Faridabad dated 12.8.1988 and 16.8.1988 convicting and sentencing the appellant to undergo R.I. for seven years and to pay a fine of ' 500/-, or else to further undergo R.I. for six months, under Section 376 IPC and R.I. for five years and a fine of ' 500/-, or in default to further undergo R.I. for six months under Section 366 IPC. However, it was directed that both the substantive sentences of imprisonment shall run concurrently.

Supreme Court did not see any merit in the appeal and the same was, accordingly, dismissed. Appellant was on bail. His bail bonds and surety bonds was cancelled. He was to be taken into custody forthwith to undergo the remaining part of the sentence.

In response to the petition, the court issued in notices to the central and state governments to file replies to central government. The central Supervisory board, State Governments under the administrations. And to appoint appropriate authorities at district and sub-district level. Directions stated that the list of the members appointed should be published in the print and electronic media. Appropriate authorities were further directed to send a quarterly report to the central supervisory board. public awareness against the practice of pre-natal sex determination.

Supreme Court directed state governments to take further steps to enforce the law and the secretary. Department of family welfare was directed to file an affidavit indicating the status of actions taken. Supreme Court directed 9 companies to supply the information of the machines sold to various clinics in the last 5 years. Details of about 11,200 machines from all these companies and

fed into a common data base. Addresses received from the manufacturers were also sent to concerned states and to launch prosecution against those bodies using ultrasound machines that had filed to get themselves registered under the act. The court directed that the ultrasound machines/scanners be sealed and seized if they were being used without registration. Three associations' *viz.*, The Indian Medical Association [IMA], Indian Radiologist Association [IRA], and the Federation of Obstetricians and Gynecologists Societies of India [FOGSI] were asked to furnish details of members using these machines. Since the supreme court directive 99 cases were registered and in 232 cases ultrasound machines, other equipment and records were seized Today there is an estimated 25000 ultrasound machines in the country, of these 15000 have been registered. State governments have communicated to the central government in writing the according to official reports received, they are satisfied that sex determination services are no longer being provided in their respective states.

INDECENT REPRESENTATION OF WOMEN

Is the woman the target-audience a product/service is aimed at? In other words, is she the primary consumer of the product/service advertised? Or is she herself the product or service? This is the basic ambivalence that leads to the great, unending debate on the portrayal of women in advertising, mainly in the electronic media. We all know the stereotypes—the femme fatale, the super mom, the sex kitten, the nasty corporate climber. Whatever the role, television, film and popular magazines are full of images of women and girls who are typically white, desperately thin, and made up to the hilt—even after slaying a gang of vampires or dressing down a Greek legion.

Indian social reality is intermeshed with diverse cultures that are reflected in variant gender relations ranging from patriarchal forms to matriliny. The portrayal of this complex range of gender subjectivity can provide an appearance of media's simultaneous sensitivity and bias on gender issues. The prevalence of gender discourse has ensured that the impact of gender differentiating structures in terms of atrocities such as sati, rape, female foeticide, denial of access to facilities and resources (credit, health care, property) and poor quality of participation in availed avenues is well reported. Such coverage is interspersed with images of typed male-female roles, beauty as an empowering product and female honour as the epitome of Indian culture. Moreover, the lack of formalized structure allows the media to selectively appropriate and represent gender issues contextually in conjunction with the dominant socio-political norms.

Thus gender representation in the media is open to the influence of competing tendencies, be it the market, cultural capital, communalism, electoral politics or women's empowerment articulations. The derogatory representation of women in the media is more a social, cultural and economic problem than purely a physical one. The subjection of woman to indecent representation is a global one. Moreover, the lack of formalized structure allows the media to selectively appropriate and represent gender issues contextually in conjunction

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On screen, they simper and sob, plot and pamper, whine and weep. Whether in serials or in advertisements, the woman is the one that's exploited or waiting to be.The subjection of woman to indecent representation is a global one. But it is more the visual impact that is emphasised in Oriental cultures like India. The reason is simple. The Asian-Oriental woman's moral and social status is mainly determined on the basis of the degree of exposure of her physical form to public view. Some advertisements portray features of women as things that are separate and more important than the true image of a woman. They push perfection to a great extent that there seems to be no scope for inner beauty. Women advertising redefine women attractiveness as something that is away from natural. It is an unattainable ideal.

The model portrays a flawlessness in them that is an impossible perfection erodes self esteem of women. The advertisements that end a message across women that, only if they acquire beauty as depicted by advertising images can they attain happiness and bliss in life motivate these women to take extreme steps to achieve that appearance. They desire for these products and buy them. However they finally feel frustrated because these standards are rather unattainable. The advertisements thus make women believe in beauty myths, which are not practical and achievable in real life.

The mainstream channels on the other hand have women either warring with the mother-in-law or plotting to win someone's husband, or playing the cringing wife to the hilt.

According to Anupama Mandloi, Sony's on air programming director "That's not the kind of women you would find working behind the scenes in television. They're the kind of women who work far better as characters on television with their strengths, their values and so on. Very few working women are shown on television. Actually, the women on television and the women behind television are two different entities."

This, despite the fact that there is an army of creative young women working on scripts and sets of serials, apart from the production departments of channels. In the final analysis, it is the portrayal of women that appeals to audiences that dominates.

As Anita Kaul Basu, the brain behind Synergy Communications says, "It's a dearth of ideas. Either they go over the top, portraying women as archetypal vamps, or they are projected as docile doormats. There's no middle ground."

Tamara Nedungadi, who is directing the offbeat Kittie Party for Zee, says "It is a fact that all serials don't cater to all people. However, the only thing I object to is that women are never shown as taking a stance. They are never shown taking decisions. The decisions taken by them are usually determined by either her husband or in-laws." Despite this, both shows and advertisements continue to be loaded in favour of men or showing indecent representation of women in Indian media scenario.

IMPACT OF ADVERTISEMENTS

Portrayal of women in media has a bearing on 'shaping the social approaches and attitudes towards women'. Portrayal of women in media has a bearing on 'shaping the social approaches and attitudes towards women'. Advertisements of Fair and Lovely which discriminates against the skin tone of women, ICICI advertisement which linked women's protection to her marital status alone, LIC advertisement which talks about education for sons and marriage for daughters as if daughters don't need education, etc were cited as warped portrayal of women.

A few years back, a huge hoarding of Tanishq Jewellery opposite Maurya Lok Complex, Patna beamed - 'Buy 24 carat gold and let your daughter stay in peace at her "Sasuraal." The emphasis was on dowry system.

Various Women's Organizations in Bihar at once took this into notice and the hoarding was ultimately removed. One shocking advertisement on the hoarding beamed: "Spend a few rupees today (ultrasound and abortion), save lakhs of rupees in dowry for the future;" thus projecting the female child as a burden. Even advertisements of beauty products make women feel inadequate. Women with disabilities are extremely critical of the way the ads are exploiting their vulnerabilities and limitations. "The scantily dressed model becomes the ideal dream woman for many young middle class girls. The beauty pageants mushrooming all over India create expectations from thousands of young women as to what should be the size and weight of an ultimate woman," says a woman activist. Women in sex roles as sati-savitri, vamps; men as breadwinner, decision-maker are more blatant. 'Which man who really loves his wife can say no to Prestige Pressure Cooker?', 'beauty that promotes courage' - Ponds Dream Flower talc ad.

The Advertising Standards Council of India (ASCI), a self-regulating body set up in 1980 by the advertising agencies, advertisers and the media, had formulated a code by which advertisers regulate themselves. It ensures the

truthfulness and honesty of representations and claims made by the advertisements and checks that ads are not offensive. This code applies to advertisements in newspapers and magazines but also to ads appearing on Televisions, Radio and Cinema or on walls in forms of hoarding and posters. 'Is it being applied'? There is only one answer - "NO".

Similarly the portrayal of women in other forms of media *i.e.* print media etc, in films, TV serials etc are also indecent, which do not need any explanation.

WOMEN AND VIOLENCE (THE UN WAY)

In a statement to the Fourth World Conference on Women in Beijing in September 1995, the United Nations Secretary-General, Boutros Boutros-Ghali, said that violence against women is a universal problem that must be universally condemned. But he said that the problem continues to grow.

The Secretary-General noted that domestic violence alone is on the increase. Studies in 10 countries, he said, have found that between 17 per cent and 38 per cent of women have suffered physical assaults by a partner.

In the Platform for Action, the core document of the Beijing Conference, Governments declared that "violence against women constitutes a violation of basic human rights and is an obstacle to the achievement of the objectives of equality, development and peace".

THE WORK OF THE SPECIAL RAPPORTEUR

The issue of the advancement of women's rights has concerned the United Nations since the Organization's founding. Yet the alarming global dimensions of female-targeted violence were not explicitly acknowledged by the international community until December 1993, when the United Nations General Assembly adopted the Declaration on the Elimination of Violence against Women. Until that point, most Governments tended to regard violence against women largely as a private matter between individuals, and not as a pervasive human rights problem requiring State intervention.

In view of the alarming growth in the number of cases of violence against women throughout the world, the Commission on Human Rights adopted resolution 1994/45 of 4 March 1994, in which it decided to appoint the Special Rapporteur on violence against women, including its causes and consequences. As a result of these steps, the problem of violence against women has been drawing increasing political attention.

The Special Rapporteur has a mandate to collect and analyse comprehensive data and to recommend measures aimed at eliminating violence at the international, national and regional levels.

The mandate is threefold:

- To collect information on violence against women and its causes and consequences from sources such as Governments, treaty bodies, specialized agencies and intergovernmental and non-governmental organizations, and to respond effectively to such information;

- To recommend measures and ways and means, at the national, regional and international levels, to eliminate violence against women and its causes, and to remedy its consequences;
- To work closely with other special rapporteurs, special representatives, working groups and independent experts of the Commission on Human Rights.

INCEST, RAPE AND DOMESTIC VIOLENCE

Some females fall prey to violence before they are born, when expectant parents abort their unborn daughters, hoping for sons instead. In other societies, girls are subjected to such traditional practices as circumcision, which leave them maimed and traumatized. In others, they are compelled to marry at an early age, before they are physically, mentally or emotionally mature.

Women are victims of incest, rape and domestic violence that often lead to trauma, physical handicap or death.

And rape is still being used as a weapon of war, a strategy used to subjugate and terrify entire communities. Soldiers deliberately impregnate women of different ethnic groups and abandon them when it is too late to get an abortion.

The Platform for Action adopted at the Fourth World Conference on Women declared that rape in armed conflict is a war crime — and could, under certain circumstances, be considered genocide.

Secretary-General Boutros-Ghali told the Beijing Conference that more women today were suffering directly from the effects of war and conflict than ever before in history.

"There is a deplorable trend towards the organized humiliation of women, including the crime of mass rape", the Secretary-General said. "We will press for international legal action against those who perpetrate organized violence against women in time of conflict."

A preliminary report in 1994 by the Special Rapporteur, Ms. Radhika Coomaraswamy, focused on three areas of concern where women are particularly vulnerable: in the family (including domestic violence, traditional practices, infanticide); in the community (including rape, sexual assault, commercialized violence such as trafficking in women, labour exploitation, female migrant workers etc.); and by the State (including violence against women in detention as well as violence against women in situations of armed conflict and against refugee women).

In the Platform for Action adopted at the Beijing Conference, violence against women and the human rights of women are 2 of the 12 critical areas of concern identified as the main obstacles to the advancement of women.

COMMITMENTS BY GOVERNMENTS

Governments agreed to adopt and implement national legislation to end violence against women and to work actively to ratify all international agreements that relate to violence against women. They agreed that there should

be shelters, legal aid and other services for girls and women at risk, and counselling and rehabilitation for perpetrators. Governments also pledged to adopt appropriate measures in the field of education to modify the social and cultural patterns of conduct of men and women. And the Platform called on media professionals to develop self-regulatory guidelines to address violent, degrading and pornographic materials while encouraging non-stereotyped, balanced and diverse images of women.

DEFINING GENDER-BASED ABUSE

The Declaration on the Elimination of Violence against Women is the first international human rights instrument to exclusively and explicitly address the issue of violence against women. It affirms that the phenomenon violates, impairs or nullifies women's human rights and their exercise of fundamental freedoms.

The Declaration provides a definition of gender-based abuse, calling it "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".

The definition is amplified in article 2 of the Declaration, which identifies three areas in which violence commonly takes place:

- Physical, sexual and psychological violence that occurs 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;
- Physical, sexual and psychological violence that occurs 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;
- Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.

GROUNDWORK IS LAID IN VIENNA

The importance of the question of violence against women was emphasized over the last decade through the holding of several expert group meetings sponsored by the United Nations to draw attention to the extent and severity of the problem.

In September 1992, the United Nations Commission on the Status of Women established a special Working Group and gave it a mandate to draw up a draft declaration on violence against women.

The following year, the United Nations Commission for Human Rights, in resolution 1993/46 of 3 March, condemned all forms of violence and violations of human rights directed specifically against women. The World Conference on Human Rights, held in Vienna in June 1993, laid extensive groundwork for

eliminating violence against women. In the Vienna Declaration and Programme of Action, Governments declared that the United Nations system and Member States should work towards the elimination of violence against women in public and private life; of all forms of sexual harassment, exploitation and trafficking in women; of gender bias in the administration of justice; and of any conflicts arising between the rights of women and the harmful effects of certain traditional or customary practices, cultural prejudices and religious extremism.

The document also declared that "violations of the human rights of women in situations of armed conflicts are violations of the fundamental principles of international human rights and humanitarian law", and that all violations of this kind — including murder, systematic rape, sexual slavery and forced pregnancy — "require a particularly effective response".

OTHER KINDS OF VIOLENCE AGAINST WOMEN

Traditional Practices

In many countries, women fall victim to traditional practices that violate their human rights. The persistence of the problem has much to do with the fact that most of these physically and psychologically harmful customs are deeply rooted in the tradition and culture of society.

Female Genital Mutilation

According to the World Health Organization, 85 million to 115 million girls and women in the population have undergone some form of female genital mutilation and suffer from its adverse health effects.

Every year an estimated 2 million young girls undergo this procedure. Most live in Africa and Asia — but an increasing number can be found among immigrant and refugee families in Western Europe and North America. Indeed, the practice has been outlawed in some European countries.

In France, a Malian was convicted in a criminal court after his baby girl died of a female circumcision-related infection. The procedure had been performed on the infant at home.

In Canada, fear of being forced to undergo circumcision can be grounds for asylum. A Nigerian woman was granted refugee status since she felt that she might be persecuted in her home country because of her refusal to inflict genital mutilation on her baby daughter.

There is a growing consensus that the best way to eliminate these practices is through educational campaigns that emphasize their dangerous health consequences. Several Governments have been actively promoting such campaigns in their countries.

Son Preference

Son preference affects women in many countries, particularly in Asia. Its consequences can be anything from foetal or female infanticide to neglect of

the girl child over her brother in terms of such essential needs as nutrition, basic health care and education. In China and India, some women choose to terminate their pregnancies when expecting daughters but carry their pregnancies to term when expecting sons. According to reports from India, genetic testing for sex selection has become a booming business, especially in the country's northern regions. Indian gender-detection clinics drew protests from women's groups after the appearance of advertisements suggesting that it was better to spend $38 now to terminate a female foetus than $3,800 later on her dowry. A study of amniocentesis procedures conducted in a large Bombay hospital found that 95.5 per cent of foetuses identified as female were aborted, compared with a far smaller percentage of male foetuses.

The problem of son preference is present in many other countries as well. Asked how many children he had fathered, the former United States boxing champion Muhammad Ali told an interviewer: "One boy and seven mistakes."

DOWRY-RELATED VIOLENCE AND EARLY MARRIAGE

In some countries, weddings are preceded by the payment of an agreed-upon dowry by the bride's family. Failure to pay the dowry can lead to violence.

In Bangladesh, a bride whose dowry was deemed too small was disfigured after her husband threw acid on her face. In India, an average of five women a day are burned in dowry-related disputes — and many more cases are never reported. Early marriage, especially without the consent of the girl, is another form of human rights violation. Early marriage followed by multiple pregnancies can affect the health of women for life. The report of the Special Rapporteur has documented the destructive effects of marriage of female children under 18 and has urged Governments to adopt relevant legislation.

VIOLENCE PERPETRATED OR CONDONED BY STATES

Custodial Violence Against Women

Violence against women by the very people who are supposed to protect them — members of the law enforcement and criminal justice systems — is widespread. Women are physically or verbally abused; they also suffer sexual and physical torture. According to Amnesty International, thousands of women held in custody are routinely raped in police detention centres worldwide. The report of the Special Rapporteur underlines the necessity for States to prosecute those accused of abusing women while in detention and to hold them accountable for their actions.

VIOLENCE AGAINST WOMEN IN SITUATIONS OF ARMED CONFLICT

Rape has been widely used as a weapon of war whenever armed conflicts arise between different parties. It has been used all over the world: in Chiapas, Mexico, in Rwanda, in Kuwait, in Haiti, in Colombia.

Women and girl children are frequently victims of gang rape committed by soldiers from all sides of a conflict. Such acts are done mainly to trample the dignity of the victims. Rape has been used to reinforce the policy of ethnic cleansing in the war that has been tearing apart the former Yugoslavia.

The so-called "comfort women" — young girls of colonized or occupied countries who became sexual slaves to Japanese soldiers during the Second World War — have dramatized the problem in a historical context. Many of these women are now coming forward and demanding compensation for their suffering from Japanese authorities. "Such rape is the symbolic rape of the community, the destruction of the fundamental elements of a society and culture — the ultimate humiliation of the male enemy", the report by the Special Rapporteur noted. It stressed the need to hold the perpetrators of such crimes fully accountable.

Violence Aagainst Refugee and Displaced Women

Women and children form the great majority of refugee populations all over the world and are especially vulnerable to violence and exploitation. In refugee camps, they are raped and abused by military and immigration personnel, bandit groups, male refugees and rival ethnic groups. They are also forced into prostitution.

Legal Steps to Criminalize Violence Against Women

In recent years some countries have taken significant steps towards improving laws relating to violence against women.

For example:

- In July 1991, Mexico revised its rape law in several important ways. A provision was eliminated that allowed a man who rapes a minor to avoid prosecution if he agrees to marry her. Now judges are required to hand down a decision regarding access to an abortion within five working days.
- On 9 June 1994, the Organization of American States adopted the Inter-American Convention to Prevent, Punish and Eradicate Violence against Women (also called Convention of Belém do Parà), a new international instrument that recognizes all gender-based violence as an abuse of human rights. This Convention provides an individual right of petition and a right for non-governmental organizations to lodge complaints with the Inter-American Commission of Human Rights.
- In Australia, a National Committee on Violence against Women was established to coordinate the development of policy, legislation and law enforcement at the national level as well as community education on violence against women.
- In 1991, the Government of Canada announced a new four-year Family Violence Initiative intended to mobilize community action, strengthen Canada's legal framework, establish services on Indian reserves and in Inuit communities, develop resources to help victims and stop offenders, and provide housing for abused women and children.

- In Turkey, a Ministry of State for Women was established whose main goals are, among others, to promote women's rights and strengthen their role in economic, social, political and cultural life. Legal measures are being adopted towards the elimination of violence against women. The establishment of special courts to deal with violence is envisaged. Psychological treatment for abused women is also planned, along with the establishment of women's shelters around the country. Specially trained female police officers could provide assistance to victims of violence.
- In Burkina Faso, a strong advertising campaign by the Government as well as television and radio programmes on the unhealthy practice of genital mutilation were launched to educate and raise public awareness about the dangerous consequences of such an "operation". A National Anti-Excision Committee was established in 1990 by the present head of State. Today, the practice of genital mutilation has been eliminated in some villages of Burkina Faso. In others, there has been an incredible drop in the number of girls excised: only 10 per cent of the girls are excised compared to 100 per cent 10 years ago.
- Some countries have introduced police units specially trained for dealing with spousal assault. In Brazil, specific police stations have been designated to deal with women's issues, including domestic violence. These police stations are staffed entirely by women.

Ensuring that Laws are Obeyed

These examples illustrate some steps taken at the national level towards the eradication of violence against women. Combating and eradicating this scourge require enhanced and concerted efforts to protect women at the local, national and international levels.

States have tended to adopt a passive attitude when confronted by cases of violations of women's rights by private actors. Most laws fail to protect victims or to punish perpetrators. Passing laws to criminalize violence against women is an important way to redefine the limits of acceptable behaviour.

States should ensure that national legislation, once adopted, does not go unenforced. State responsibility is clearly underlined in article 4 of the Declaration on the Elimination of Violence against Women, which stipulates that "States should exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons".

Any approach designed to combat violence must be twofold, addressing the root causes of the problem and treating its manifestations. Society at large, including judges and police officers, must be educated to change the social attitudes and beliefs that encourage male violence.

Challenging Traditional Attitudes

The meaning of gender and sexuality and the balance of power between women and men at all levels of society must be reviewed. Combating violence against women requires challenging the way that gender roles and power relations are articulated in society. In many countries women have a low status. They are considered as inferior and there is a strong belief that men are superior to them and even own them.

Changing people's attitude and mentality towards women will take a long time — at least a generation, many believe, and perhaps longer. Nevertheless, raising awareness of the issue of violence against women, and educating boys and men to view women as valuable partners in life, in the development of a society and in the attainment of peace are just as important as taking legal steps to protect women's human rights.

It is also important in order to prevent violence that non-violent means be used to resolve conflict between all members of society. Breaking the cycle of abuse will require concerted collaboration and action between governmental and non-governmental actors, including educators, health-care authorities, legislators, the judiciary and the mass media.

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Laws and Women: The Anti-Sati Regime

When reading the account of the Sradh ceremony entitled "The Ideal Sati" in your paper of the 23rd, I was greatly struck with a sentence written in a letter by the poor woman shortly before she set herself on fire. She writes, "I shall not be able to bear widowhood." The feeling expressed in this sentence I feel sure is at the bottom of the sad and most regrettable occurrence. As everybody knows, a Hindu widow is a most pitiable person. She is an object of scorn, slighted on every possible occasion, even her very presence is considered an omen of bad luck. She is the household drudge, oppressed by everybody with whom she comes in contact, and often in every possible way treated most disgracefully. I say that it needs an extraordinary amount of courage to face a future of this kind, and to know that there is no alleviation, no chance of a happier life. The great majority of women would rather face death than a life of such untold misery. In this case the Hindus have nothing whatever to glory in, but should rather hang their hands in shame, and see in it the necessity for great and immediate improvement in their treatment of Hindu widows. Let them treat their widows properly, and we shall hear no more of this horrible sati.

While the above piece clearly indicates a possible reason and solution to the problem of Sati, one cannot help but feel that on a more general level, the horrors of Sati seem to have been reawakened through this piece. Sati, in the simplest terms, is a practice that is prevalent among Hindus, where the widow burns on the pyre of her husband because, it is thought, her rightful place and her duty is to be beside her husband always and even in death, she should not

leave her husband and must accompany him. In India, the legal regime has been responsive to the problems faced by women in India and a slew of measures have been taken by all organs of the government to ensure that the women of this country are emancipated.

For the prevention of Sati, the Commission of Sati (Prevention) Act, 1987, was one such measure adopted which continues to be a concrete step in this direction. Attempts for framing this legislation were started after the notorious Sati killing of Roop Kanwar. Sati, as such, is defined by the Act in Sec. 2(c) as:

The burning or burying alive of:

(i) Any widow along with the body of her deceased husband or any other relative or with any article, object or thing associated with the husband or such relative; or

(ii) Any woman along with the body of any of her relatives, irrespective of whether such burning or burying is claimed to be voluntary on the part of the widow or the women or other-wise

The Act makes it illegal to abet, glorify or attempt to commit Sati. Abetment of Sati, including coercing or forcing someone to commit Sati can be punished by death sentence or life imprisonment, while glorifying Sati is punishable with 1–7 years in prison. Like all other legislative measures the Act has seen its share of violation and it is not safe to conclude that the problem has ended.

This Central Act witnessed parallel attempts by the Madhya Pradesh legislature which were started after the Roop Kanwar incident.

Lord William Bentinck was, however, the earliest person to ban the practice in 1829. This was done after several attempts made by the social reformers.

While several reasons have been attributed to the practice of Sati, the letter, as cited above, raises valid, pertinent and prevalent questions of the condition of women, especially the Widows, in Hindus. Though the letter was written in 1911, the condition of women in India, especially in rural India seems to be pretty much on the same lines. While the numbers have, obviously, gone down because of good governance, we need to do a lot more so that widows do not need to resort to committing Sati.

For this reason, issues of empowerment are very important and it is heartening to note that we have progressively introduced, progressive legislations which have assisted in the progress of women and widows!

At the same time, these policy measures, while they have targeted women at large, do not look at widows specifically. I suggest introducing more direct measures which help in the emancipation of widows especially in Hindus. I do remember going to several temples and I witnessed widows dressed in white, sitting in corners, having being thrown out of their homes, for no fault of theirs.

WOMEN ARE NOT FOR BURNING

The 19th century is remembered for many reasons. It is the century when industrialisation gathered steam, and when the more powerful, richer nations of the West established colonies for themselves in Asia and Africa.

But the 19th century was in very many ways also the 'age of women'. The struggle for women's rights in every sphere began from this period, whether it was for rights related to education, as citizens, rights that aimed to improve women's role in the domestic sphere, etc. The struggle was influenced greatly by the radical thoughts that spread in the wake of the French Revolution of 1789.

In the 19th century things were changing in India too, especially in two provinces — Bengal and the Bombay Presidency, as Maharashtra was then called.

With British rule came the spread of English education and the birth of a new middle class of people who worked in offices in the British set-up. A group of radical, new-thinking reformers arose, who, conscious of the backward ways of Indian society, were determined to change things.

The changes that began from this period were to have a huge impact on later decades. For instance, the movement against caste in Maharashtra had its roots in the state when the Peshwas, who represented the dominant Brahmins, were forced to retreat. The well-known reformer from Bengal, Ram Mohun Roy, who fought for reform, was influenced greatly by Sufi ideas of religious reform.

Indeed, it was in Bengal that advances towards a women's movement were first noted. These were two-pronged — the advancement of women's education and the pressing campaign for the abolition of sati. The movement to improve the condition of widows also had a lot of support, but progress in this area was limited.

This column will look at the development of women's rights in India. It will try and fill in the colour and details that your school textbooks leave out. In the rest of this article we will look at the practice of sati and how it was defeated by Ram Mohun Roy.

The Abolition of Sati

In 1815, a pamphlet written in Bengali caused quite a stir in Calcutta. It was on the evil custom of sati and was written by Ram Mohun Roy who had already made a name for himself by speaking up for reforms in society, the need to improve the condition of women especially, and, equally important, to ensure that women received an education. Roy was based in Calcutta, a city that was growing rapidly because of new opportunities that followed in the wake of the new rulers. Ram Mohun Roy was born in 1772. He came from an educated, enlightened and wealthy family with trading links. Roy grew up with an awareness of the world around him. He realised that Indian society needed reform, that people needed to be made aware of their ignorance and backwardness, and that such improvements in society were essential, especially in the sphere of women.

The story goes that Ram Mohun Roy was moved to act against sati when, in 1815, he was witness to a most horrifying scene. His brother had just died and Roy saw his sister-in-law, the widow, being dragged to her husband's funeral

pyre where she was burnt alive. It was this first-hand experience of the custom of sati that moved him to raise his voice and embark on a lifelong campaign to ensure that the practice was abolished.

Roy petitioned the government, published pamphlets, and even travelled to England — a long journey in those days — to appeal before the British Parliament to ensure the ban on sati. The more conservative groups in society were opposed to what they thought was an intrusion into the traditional customs and ways of people.

Roy attempted to beat these conservative elements at their own game; when they insisted that sati had the sanction of religion, he quoted the scriptures too, to emphasise that none of the ancient Hindu texts ever sanctioned sati. He underlined the fact that the occurrence of sati showed how much society had 'degenerated'. In response to this, 128 pundits published a manifesto arguing that Roy's opinion was only that of a minority, and that the government could not defy religion and ban sati.

Roy wasn't one to give up. He gathered a lot of evidence, especially from the ancient Hindu scriptures and law books called the shastras, to show that sati was not obligatory and was in fact the least virtuous act a widow could perform. And that it had meaning only if it was done voluntarily.

Roy later translated the 1815 pamphlet into English. While conservative, orthodox elements argued that sati allowed women who lacked virtuous knowledge to acquire such knowledge and gift it to their families (who would be blessed by their act!), Roy argued that women anyway possessed virtuous knowledge, for their lives showed that they were infinitely more self-sacrificing than men. This motif of the 'self-sacrificing and virtuous' woman would feature again and again whenever issues relating to women's rights came into focus.

The Pathetic Condition of Women: Excepts from Roy's Writings

At marriage, the woman is recognised as half of her husband but they are later treated worse than inferior animals. She is generally employed to do the work of a slave. Clean the place early in the morning, whether hot or cold, to scour the dishes, to wash the floor, to cook night and day, to prepare and serve food for her husband, father and mother-in-law, sisters-in-law, brothers-in-law and friends and connections.

If in the preparation or the serving up of the victuals they commit the smallest fault what insult do they not receive from their husband and their mother-in-law and the younger brothers of their husband? …In the afternoon they fetch water from the river or tank and at night perform the office of menial servants in making the beds. In case of any fault or omission in the performance of these labours they receive injurious treatment. (When) the husband is poor she suffers every kind of trouble and when he becomes rich she is altogether heart-broken. All this pain and affliction their virtue alone enables them to support. Where a husband takes two or three wives to live with him, they are subjected to mental miseries and constant quarrels.

These are facts occurring every day and not to be denied. What I lament is that seeing the women thus dependent and exposed to every misery, you feel for them no compassion that might exempt them from being tied down and burnt to death.

The Abolition of Sati in 1829

In 1817, Mritunjaya Vidyalamkara, chief pundit of the Supreme Court (as the position was then called) in Calcutta announced that sati had no sanction in the ancient texts and, in 1818, William Bentinck, who was then governor of Bengal, banned the practice in Bengal. It took another 11 years before the Sati Abolition Act was passed in 1829 when Bentinck was governor general of all of British-ruled India. Passed on December 4, 1829, the sati regulation declared the practice of sati, or suttee, or of burning or burying alive the widows of Hindus, illegal and punishable by the criminal courts.

INFANTICIDE AND SUPPRESSION OF THUGS BY BRITISH IN INDIA

During the early years, the British were engaged in consolidation of the empire in India and laid emphasis on reorganization of administration as well as regulation of economy. Their priority was to promote and protect the British trade and industry. For this order and security ought to be maintained. At this time, the British thought it wise not to interfere in the religious and socio-cultural life in India. Religious faiths and social customs are two sensitive aspects with which Indians are emotionally involved.

Little amount of interference might lead to unrest and resentment against the British Rule. Only after 1813, when the British felt politically safe and secured they stopped forward for introducing changes for transformation or modernization of Indian society and culture.

Two factors primarily promoted the British to introduce a series of reforms for modernization of India on Western model. First, the Industrial Revolution had transformed England into an industrial country. Their industrial interests needed a profitable market for machine-products. They found India the most attractive one. For accomplishment of their aims, India would Bengal transformed to a consumer of British goods.

Modernization of Indian society would develop the taste and demand for consumption of British Industrial products by Indians. Secondly, due to progress in science and technology, new ideas like humanism and rationalism replaced faith and superstition. Those ideas broadened the mind and molded the thought process of the Europeans. A group of European thinkers wanted to spread those ideas all over the world.

In case of India a clash of ideas came upon among the conservatives and the radicals. The conservatives or men of traditional attitude held the view that Indian society and culture was in no way inferior to the European civilization.

They proposed for introduction of changes as few as possible and pleaded that hasty and sweeping changes would affect social stability. On the other hand, the radicals or the men of new thought were critical of Indian society and culture and were in favour of sweeping changes. They considered certain customs as social injustice like caste system, untouchably, the sati, infanticide and the status of women etc.

The radicals received strong support from Rammohan Ray and other progressive Indians. British officials like James Mill, and above all Lord William Bethink, The Governor General of India, Championed the cause of modernization.

LEGISLATIONS OF BENTINCK

Lord William Bentinck came to India as Governor General. His period as governor-general from 1828 to 1835 has been accepted as an important phase of reform. He himself was an advocate of new ideas and always marched ahead with progressive thought. He weighed the welfare of the ruled as the moral obligation of the ruler.

He advocated for good Government and worked for a peaceful, prosperous and modern India. His approach was humanitarian and motto was happiness of the governed. He differed from his predecessors and set precedence for h successors. He abolished of the custom of Sati, suppressed the Thugs, prohibited infanticide and human sacrifice.

Abolition of Sati

Among the age old customs of India, sati was the most inhuman practice. It was a challenge for any civilized human being. The barbarous and horrifying system of Sati drew the attention of Bentinck. Practice of Sati was the burning of the widow in the funeral pyre for husband. It was based on the superstition that by practicing Sati, woman would attain divinity and would goods to heaven. Origin of this social evil is yet to Bengal ascertained. X there were socio-economic motives behind this system. Socially, the Sati was revered by the people. Many of the widows preferred to practice the Sati in the hope of attaining heaven.

It was considered as a religious duty. But in most cases the women feared the tortures and miseries of a widow. With clean shaven heads, dropped in white clothes and prohibited to participate in social functions, the widows lived like animals. Their presence or very sight was considered inauspicious.

To have an unmarried girl in family was a social dishonour. Therefore, social pressure and custom forced people to go for child-marriage and marriage of young girls to old-grooms. It was a common practice among the high castes like Brahmins and Kayastas. In addition the Family members very often forced the widow to death in order to grab her property share. When a widow was unwilling to practice Sati, her relatives put her into the funeral pyre forcibly. It was simply homicide. Even the Brahmins accorded sanction to these practice for money and the ornaments of the widow.

By the time, Bentinck came to India Sati was widely practiced. Even the sister-in-law in Raja Rammohan Ray was burn to death. Then Rammohan Ray became vocal against this atrocity against the women. He pleaded with the Government to stop the System of Sati. Bentinck was moved by the horrors of Sati system and by a regulation in 1829 the practice of Sati was declared illegal. Burning of widow was treated as a crime punishable by court of laws.

As anticipated orthodox Hindus considered the act as clear intervention in the socio-religious life of Indians. They protested against this act by sending protest letters to Privacy Council in London.

But Raja Rammohan Ray argued before the Privy Council in favour of abolition of this practice and succeeded in convincing the Privy Council to authorize the Governor General to proceed ahead. Thus, Bentinck and Ray, both equally deserve the honour for emancipating the destitute widows.

Female Infanticide

Second humanitarian measure was taken to prohibit female infanticide or the practice of killing female children at the time of birth. The Rajputs or other castes of Western and Central India killed female children at the time of birth. Even birth of a girl was considered as curse.

The reasons for such practice were primarily socio-economic nature. First, most of the Rajput clans were involved in continuous warfare and young Rajputs were killed in wars. It was a problem to find grooms for the girls. Second, due to the evil practice of dowry in its worst form, the Rajputs parents found the marriage impossible. When earning livelihood in the unfertile areas was difficult, offering a goods dowry was beyond their capacity.

Third, accommodating an unmarried girl in the family was a social dishonour. Therefore, the girls were killed at the time of birth. Bentinck strictly enforced regulations for prohibition of infanticide.

Human Sacrifice

Another feather in the cap of Bentinck was the abolition of human sacrifice among the primitive Gonds. The tribals offered human sacrifice for the goddess earth in the hope of good harvest. This superstitious practice was a social evil. Bentinck declared this practice illegal and imposed death penalty on the persons practicing it.

Though the practice was not abolished completely, the number of human sacrifice reduced.

Suppression of Thugs

A major achievement of Bentinck was the suppression of the Thugs. The thugs were groups of robbers wandering in the forest and lonely tracts of Madhya Bharat and Uttar Pradesh regions.

They were the nomads and religious fanatics believing in the Goddess Kali. They looted, plundered and killed people on their way and profession was

hereditary. Their areas of operations were inaccessible regions and it was impossible to trace them out since they change their hide outs. Even the disguise of merchants, monks, or pilgrims, they joined travelers on the highways and killed and plundered at opportunity. Sometimes landlords, petty Zamindars and even common people helped the Thugs either to receive the share of the loot or out of fear. The Thugs spread fear in the society and made the roads unsafe.

Bentinck initiated strong actions for suppression of Thugs. He thought it the responsibility of the Government to maintain law and order in the society and to provide security for the people. He used the good services of Captain Sleeman who was well conversant with the profession and movement of the Thugs.

He also declared to punish those who maintained any sort of relation with the Thugs. Captain Sleeman collected information about the Thugs and their hideouts. He kept constant watch on the activities of the Thugs through h agents.

He raided the hideouts of the Thugs and captured them. Bentinck, by law of 1830, imposed death penalty on the Thugs. Many of the Thugs were exiled and many of them surrendered. Gradually the organizations of the Thugs broke down and the roads became safe for the people.

THE COMMISSION OF SATI (PREVENTION) ACT, 1987

An Act to provide for the more effective prevention of the commission of sati and its glorification and for matters connected therewith or incidental thereto.

Whereas sati or the burning or burying alive of widows or women is revolting to the feelings of human nature and nowhere enjoined by any of the religions of India as an imperative duty;

And whereas it is necessary to take more effective measure to prevent the commission of sati and its glorification;

Be it enacted by Parliament in the Thirty-eighth Year of Republic of India as follows:

PART I: PRELIMINARY

1. *Short title, extent and commencement:* (1) This Act may be called the Commission of Sati (Prevention) Act, 1987. It extends to the whole of India except the State of Jammu and Kashmir. (2) It shall come into force in a State on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different States.
2. *Definitions:* (1) In this Act, unless the context otherwise requires.-
   (a) "Code" means the Code of Criminal Procedure, 1973 (2 of 1974);
   (b) "Glorification" in relation to sati, whether such sati, was committed before or after the commencement of this Act, includes, among other things.-
      (i) The observance of any ceremony or the taking out of a procession in connection with the commission of sati; or

(ii) The supporting, justifying or propagating the practice of sati in any manner; or

(iii) The arranging of any function to eulogise the person who has committed sati; or

(iv) The creation of a trust, or the collection of funds, or the construction of temple or other structure or the carrying on of any form of worship or the performance of any ceremony thereat, with a view to perpetuate the honour of, or to preserve the memory of, a person who has committed sati;

(c) *"Sati" means the burning or burying alive of:*

(i) Any widow along with the body of her deceased husband or any other relative or with any article, object or thing associated with the husband or such relative; or

(ii) Any woman along with the body of any of her relatives, irrespective of whether such burning or burying is claimed to be voluntary on the part of the widow or the women or other-wise;

"Special Court" means a Special Court constituted under Sec.9; (e) "Temple" includes any building or other structure, whether roofed or not, constructed or made to preserve the memory or a person in respect of whom sati has been committed or used or intended to be used for the carrying on of any form of worship or for the observance of any ceremony in connection with such commission.

(2) Words and expressions used but not defined in this Act and defined in the Indian Penal Code (45 of 1860) or in the Code shall have the same meanings as are respectively assigned to them in the Indian Panel Code or the Code.

PART II: PUNISHMENT FOR OFFENCES RELATING TO SATI

3. *Attempt to commit sati:* Notwithstanding anything contained in the Indian Penal Code (45 of 1860), whoever attempts to commit sati and does any act towards such commission shall be punishable with imprisonment for a term which may extend to one year or with fine or with both:
Provided that the Special Court trying an offence under this section shall, before convicting any person, take into consideration the circumstances leading to the commission of the offence, the act committed, the state of mind of the person charge of the offence at the time of the commission of the act and all other relevant factors.

4. *Abetment of sati:* (1) Notwithstanding anything contained in the Indian Penal Code (45 of 1860), if any person commitssati, whoever abets the commission of such sati, either directly or indirectly, shall be punishable with death or imprisonment for life and shall also be liable to fine.

(2) If any person attempts to commit sati, whoever abets such attempt, either directly or indirectly, shall be punishable with imprisonment for life and shall also be liable to fine.

Explanation: For the purposes of this section, any of the following acts or the like shall also be deemed to be an abetment, namely:

(a) Any inducement to a widow or woman to get her burnt or buried alive along with the body of her deceased husband or with any other relative or with any article, object or thing associated with the husband or such relative, irrespective of whether she is in a fit state of mind or is labouring under a state of intoxication or stupefaction or other cause impeding the exercise of her free will;

(b) Making a widow or woman believe that the commission of sati would result in some spiritual benefit to her or her deceased husband or relative or the general well being of the family;

(c) Encouraging a widow or woman to remain fixed in her resolve to commit sati and thus instigating her to commit sati;

(d) Participating in any procession in connection with the commission of sati or aiding the widow or woman in her decision to commit sati by taking her along with the body of her deceased husband or relative to the cremation or burial ground;

(e) Being present at the place where sati is committed as an active participant to such commission or to any ceremony connected with it;

(f) Preventing or obstructing the widow or woman from saving herself from being burnt or buried alive;

(g) Obstructing, or interfering with, the police in the discharge of its duties of taking any steps to prevent the commission of sati.

5. *Punishment for glorification of sati:* Whoever does any act for the glorification of sati shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to seven years and with fine which shall not be less than five thousand rupees but which may extend to thirty thousand rupees.

PART III: POWERS OF COLLECTOR OR DISTRICT MAGISTRATE TO PREVENT OFFENCES RELATING TO SATI

6. *Power to prohibit certain acts:* (1) where the Collector or the District Magistrate is of the opinion that sati or any abetment thereof is being, or is about to be committed, he may, by order, prohibit the doing of any act towards the commission of sati by any person in any area or areas specified in the order.

(2) The Collector or the District Magistrate may also, by order, prohibit the glorification in any manner of sati by any person in any area or areas specified in the order.

(3) Whoever contravenes any order made under sub-section (1) or sub-section (2) shall, if such contravention is not punishable under any other provision of this Act, be punishable with imprisonment for a term which shall not be less than one year but which may extend to seven years and with fine which shall not be less than five thousand rupees but which may extend to thirty thousand rupees.

7. *Power to remove certain temples or other structures:* (1) The State Government may, if it is satisfied that in that any temple or other structure which has been in existence for not less than twenty years, any form of worship or the performance of any ceremony is carried on with a view to perpetuate the honour of or to preserve the memory of, any person in respect of whom sati has been committed, by order, direct the removal of such temple or other structure.

(2) The Collector or the District magistrate may, if he is satisfied that in any temple or other structure, other than that referred to in sub-section (1), any form of worship or the performance of any ceremony is carried on with a view to perpetuate the honour of, or to preserve the memory of, any person in respect of whom sati has been committed, by order, direct the removal of such temple or other structure.

(3) Where any order under sub-section (1) or sub-section (2) is not complied with, the State Government or the Collector or the District Magistrate, as the case may be, shall cause the temple or other structure to be removed through a police officer not below the rank of a Sub-Inspector at the cost of the defaulter.

8. *Power to seize certain properties:* (1) Where the Collector or the District Magistrate has reason to believe that any funds or property have been collected or acquired for the purpose of glorification of the commission of any sati or which may be found under circumstances which create suspicion of the commission of any offence under this Act, he may seize such funds or property.

(2) Every Collector or District Magistrate acting under sub-section (1) shall report the seizure to the Special Court, if any, constituted to try any offence in relation to which such funds or property were collected or acquired and shall await the orders of such Special Court as to the disposal of the same.

PART IV: SPECIAL COURTS

9 *Trial of offences under this Act:* (1) Notwithstanding anything contained in the Code, all offences under this Act shall be triable only by a Special Court constituted under this section.

(2) The State Government shall, by notification in the official Gazette, constitute one or more Special Courts for the trial of offences under this Act and every Special Court shall exercise jurisdiction in respect of the whole or such part of the State as may be specified in the notification.

(3) A Special Court shall be presided over by a judge to be appointed by the State Government with the concurrence of the Chief Justice of the High Court.

(4) A person shall not be qualified for appointment as a judge of a Special Court unless he is, immediately before such appointment, a Sessions Judge or an Additional Sessions Judge in any State.

10. *Special Public Prosecutions:* (1) For every Special Court, the State Government shall appoint a person to be a Special Public Prosecutor.

(2) A person shall be eligible to be appointed as a Special Public Prosecutor under this section only if he had been in practice as an advocate for not less than seven years or has held any post for a period of not less than seven years under the State requiring special knowledge of law.

(3) Every person appointed as a Special Public Prosecutor under this section shall be deemed to be a Public Prosecutor within the meaning of Cl. (u) of Sec. 2 of the Code and the Provisions of the Code shall have effect accordingly.

11. *Procedure and powers of Special Courts:* (1) A Special Court may take cognizance of any offence, without the accused being committed to it for trial, upon receiving a complaint of facts which constitute such offence, or upon a police report of such facts.

(2) Subject to the other provisions of this Act, a Special Court shall for the purpose of the trial of any offence, have all the powers of a Court of Session and shall try such offence as if it were a Court of Session, so far as may be, in accordance with the procedure prescribed in the Code for trial before a Court of Session.

12. *Power of Special Court with respect to other offences:* (1) When trying any offence under this Act, a Special Court may also try any other offence with which the accused may, under the Code, be charged at the same trial if the offence is connected with such other offence.

(2) If, in the course of any trial of any offence under this Act it is found that the accused person has committed any other offence under this Act or any other law, a Special Court may convict such person also of such other offence and pass any sentence authorised by this Act or such other law for the punishment thereof.

(3) In every enquiry or trial, the proceedings shall be held as expeditiously as possible and, in particular, where the examination

of witnesses has begun, the same shall be continued from day to day until all the witnesses in attendance have been examined, and if any Special Court finds the adjournment of the same beyond the following date to be necessary, it shall record its reasons for doing so.

13. *Forfeiture of funds or property:* Where a person has been convicted of an offence under this Act, the Special Court trying such offence may, if it is considered necessary so to do, declare that any funds or property seized under Sec. 8 shall stand forfeited to the State.
14. *Appeal:* Notwithstanding anything contained in the Code, an appeal shall lie as a matter of right from any judgement, sentence or order, not being an interlocutory order, of a Special Court to the High Court both of facts and on law.
    (2) Every appeal under this section shall be preferred within a period of thirty days from the date of judgement, sentence or order appealed from:
    Provided that the High Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days.

PART V: MISCELLANEOUS

15. *Protection of action taken under this Act:* No suit, prosecution or other legal proceeding shall lie against the State Government or any officer or authority of the State Government for anything which is in good faith done or intended to be done in pursuance of this Act or any rules or orders made under this Act.
16. *Burden of proof:* Where any person is prosecuted of an offence under Sec. 4, the burden of proving that he had not committed the offence under the said section shall be on him.
17. *Obligation of certain persons to report about the commission of offence under this Act:* (1) All officers of Government are hereby required and empowered to assist the police in the execution of the provisions of this Act or any rule or order made there under.
    (2) All village officers and such other officers as may be specified by the Collector or the District Magistrate in relation to any area and the inhabitants of such area shall, if they have reason to believe or have the knowledge that sati is about to be, or has been, committed in the area shall forthwith report such fact to the nearest police station.
    (3) Whoever contravenes the provision of sub-section (1) or sub-section (2) shall be punishable with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.

18. *Person convicted of an offence under Sec:* 4 to be disqualified form inheriting certain properties.- A person convicted of an offence under sub-section (1) of Sec. 4 in relation to the commission of sati shall be disqualified from inheriting the property of the person in respect of whom such sati has been committed or the property of any other person which he would have been entitled to inherit on the death of person in respect of whom such sati has been committed.

Amendment of Act 43 of 1951: In the Representation of the People Act, 1951.-

(a) In Sec. 8, in sub-section (2) after the proviso, the following proviso shall be inserted, namely;

"Provided further that a person convicted by a Special Court for the contravention of any of the provisions of the Commission of Sati (Prevention) Act, 1987 shall be disqualified from the date of such conviction and shall continue to be disqualified for a further period of five years since his release";

(b) In Sec. 123 after Cl.(3-A), the following clause shall be inserted, namely:

19 "(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 purpose 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."

20. *Act to have overriding effect:* The provision of this Act or any rule or order made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument having effect by virtue of any enactment other than this Act.

21. *Power to make rules:* (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

(2) Every rule made under this section shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Repeal of existing laws: (1) All laws in force in any State immediately before the commencement of this Act in that State which provide for the prevention or the glorification of sati shall, on such comment, stand repealed.

(2) Notwithstanding, such repeal, anything done or any action taken under any law repealed under sub-section (1) shall be deemed to have been done or taken under the corresponding provisions of this Act, and, in particular, any case taken cognizance of by a Special Court under the provisions of any law so repealed and pending before it immediately before the commencement of this Act in that State shall continue to be dealt with by that Special Court after such commencement as if such Special Court had been constituted under Sec. 9 of this Act.

COMMISSION OF SATI (PREVENTION) RULES, 1988

G.S.R. 360(E), dated 21st March, 1988.- In exercise of the powers conferred by Sec. 21 of the Commission of Sati (Prevention) Act, 1987 (3 of 1988), the Central Government hereby makes the following rules, namely:

1. *Short title and commencement:* (1) These rules may be called the Commission of Sati (Prevention) Rules, 1988. (2) They shall come into force on the date of their publication in the Official Gazette.
2. *Definitions:* (1) In these rules, unless the context otherwise requires,- "Act" means the Commission of Sati (Prevention) Act, 1987 (3 of 1988); "prohibitory order" means an order issued under Sec. 6; "section" means section of the Act. (2) Words and expressions used but not defined in these rules and defined in the Act shall have the same meanings as are respectively assigned to them in the Act.
3. *Delegation of power to prohibit certain acts:* (1) The State Government may, by order and subject to such conditions as it may deem fit to impose, direct that the powers of the Collector or the District Magistrate under Sec. 6 may also be exercised by such other officers not below the rank of the village officers.
4. *Prohibitory orders under Sec. 6, how made:* (1) Every prohibitory order under Sec. 6 shall be made by beat of drum or other customary mode, in the concerned village, or in case of town or city, in the locality in which the act prohibited is likely to occur or has taken place. (2) The prohibitory order shall be displayed at some conspicuous place in the area or areas to which such acts relates and a copy thereof shall also be displayed in the office of the officer issuing the prohibitory order and such display shall be taken as a sufficient notice to all persons concerned in the area of areas to which such order relates.
5. *Manner of making order for removal of temples or structures under sub-section (1) of Sec. 7:* (1) Before making any order under sub-section (1) of Sec. 7 for removal of any temple or structure, the State Government

or any other officer authorized by the State Government in this behalf, shall give at least ninety days' notice to the person or persons involved in the acts complained of, and also to the owners and occupiers of the temple or structure proposed to be removed. (2) The notice under sub-rule (1) shall specify-

1. The temple/structure proposed to be removed, its location and other particulars,
2. The owners/occupiers of the temple/structure, and
3. The specific instance or instances or worship or ceremony contravening the provisions of Sec.7. (3)The Government or the officer authorized by the State Government in this behalf shall, after giving reasonable opportunity of being heard to the persons specified in the notice, order the removal of the temple or structure through a police not below the rank of the Sub-Inspector.

6. Manner of making order for removal of temples or structures under sub-section (2) of Sec. 7.-(1) After issue of a prohibitory order under Sec. 6, the Collector or the District Magistrate, or such other officer as directed by the State Government by order under rule 3 shall, before making any order for removal of any temple or structure under sub-section (2) of Sec. 7 give at least ninety days' notice to the owners and occupiers of the temple or structure proposed to be removed. (2) The Collector of the District Magistrate, or such other officer as directed by the State Government by order under rule3, shall follow the provisions of sub-rules (2) and (3) of rule 4 in the case of orders made under this rule.
7. Inventory and forfeiture of the property of temple or structure.- As soon as the order of removal of the temple or structure is executed, the State Government or the Collector or the District Magistrate, or as the case may be, the officer as directed by the State Government by order under rule 3, shall prepare an inventory of all the material and other property obtained after removal of such temple or structure specifying in it the place where it is lodged or kept, and shall forward the intimation thereof to the Special court for declaration of forfeiture of the said material or property to the State under Sec. 13, if the Special Court considers it necessary so to do, and shall also give a copy of the inventory to the owners/occupiers of the temple/structure removed.

3

Rape Laws and Victims of India

Law needs to be more sensitive to the feelings of the victim, who has had a traumatic time and scarcely needs to be reminded of it. Often the victim is abused and humiliated. "Don't try to tell us that you didn't enjoy it."

There are a few points in the law, which are open to debate. Sexual intercourse by a man with his own wife, where the wife is over 15 years of age, is not rape. Sexual intercourse in a custodial situation is deemed an offence (policemen, public servants, managers of public hospitals and remand homes or wardens of jails), even if it is with the consent of the woman. As a whole, the process of law is biased against the victim. If the victim is a minor, the onus is on the accused to prove his innocence. But if the victim is a major, it is up to her to prove her charge. Therefore, the defence finds it worthwhile to prove that the victim is a major. Also, in rape cases, unless the woman is examined medically within 24 hours, it becomes difficult forensically to prove that rape has occurred.

The laws too are discriminatory in nature. According to Section 155 (4) of Indian Evidence Act, "When a man is prosecuted for rape or an attempt to ravish, it may be shown that the prosecutrix (victim) was of generally immoral character." Section 54 of Indian Evidence Act says, "In criminal proceedings (including rape) the fact that the accused person has a bad character is irrelevant, unless evidence has been given (by him) that he has a good character, in which case it becomes relevant."

When the laws themselves carry an inherent bias, how far can the victim be assured of justice?

Rape is a weapon that distorts a woman's sexuality, restricts her freedom of movement and violates her human rights. It leaves a woman feeling exposed,

humiliated and traumatised. A rapist not only violates the victim's privacy and personal integrity, but also causes serious physical and psychological damage.

The law must take a fresh look at itself and take positive steps to make it more difficult for an accused to get judicial reprieve.

Section 375 of the Indian Penal Code (IPC) defines rape. Rape (from Latin rapio, to carry off, to overcome) means an unlawful intercourse done by a man with a woman without her valid consent. In certain cases, when consent is taken by fraudulent means or by misrepresentation, the act is still ûquite rightly-taken as rape. A rapist, for instance can put a gun at his victim's head and obtain consent. Still better, he could ask one of his goons to put a gun on her husband's head and tell her that the gun would go off if she did not relent. Consent could also be had fraudulently by giving her intoxicating or stupefying substances (Cannabis is just one of the many stupefying drugs which can be given to achieve this). Another way of getting consent by fraudulent means is by impersonation. A rapist may slip into the bed of an unsuspecting woman in the thick of night, when the woman, taking him to be her husband not only does not resist, but actively participates in the act. These cases are rare but do occur occasionally. Finally the consent of a woman of unsound mind and of a girl below 16 are not taken to be lawful consent because it is presumed that these women are not in a position to truly understand the nature and gravity of sexual intercourse.

This was the position before 1983 and on the face of it the provisions sound fair enough. Yet Ganpat managed to wriggle out of the legal consequences of his act. If a police officer apprehends a person illegally and insists he will not free the man until his wife submits to the officer, how can one prove rape if she does so? No person in his right mind would imagine that such an act was not rape, yet the law would not recognize it so before 1983. The women had to prove she had not consented. The rapist was considered innocent unless proved otherwise.

The change in rape laws in 1983 improved the situation to a great extent. Among other things, the punishment for rape was made more severe. Before, the punishment prescribed under Section 376 of the IPC provided for a maximum sentence of life imprisonment but there was no minimum limit. Thus, in theory a rapist could get away with a sentence of say, just one month.

In 1983 although the legislature failed to increase the maximum sentence to capital punishment as was vehemently demanded by women's organizations, it prescribed a minimum sentence of seven years' imprisonment. Every rapist on being found guilty thereafter bad to undergo a minimum imprisonment of seven years. Besides, an important provision - Section 376(2) - was added to the IPC. This section introduced the concept of some special kinds of rape and prescribed a minimum of ten years for these cases. Furthermore, in such cases, the imprisonment had to be of a rigorous nature only. These included rape by a police officer within the premises of a police station; rape by a public servant of his junior while taking advantage of his official position; rape by an official in

a jail or remand home of an inmate; rape by someone on the staff of a hospital of a woman in the hospital; rape of a pregnant women; rape of a, girl under 12 years of age end gang rape.

Rape by persons who are in a position of authority *e.g.* police officers, jail wardens, hospital staff etc., is generally termed custodial rape. Gang rape is a situation when a woman is raped by one or more than one person from amongst a group of persons acting in furtherance of their common intention. The important thing is that in such situations each of the persons within the group will be deemed to have raped the women even if each one of them did not actually have sexual intercourse with her. Thus if five men catch hold of a woman and only one ravishes her in order to, for instance, humiliate her husband because of some old vendetta, all the five men will be imprisoned for a minimum of ten years.

It is very difficult for the victim to prove absence of consent especially in cases of custodial rape, so a special section was added to the Indian Evidence Act (IEA). According to the new provision - Section 114A of the IEA - in cases of custodial rape, gang rape and rape of a pregnant woman, if the victim states in court that she did not consent, then the court shall presume that she did not consent and the burden of proving consent shell shift to the accused. This was a major reform in the law.

The legislature did not stop at this. There can be cases when a person in authority can get a women to have intercourse with him "willingly" by offering handsome rewards in return. A superintendent of a jail can offer better living conditions to a woman prisoner if she "willingly" submits to him. Such cases will not amount to rape; nevertheless they do signify abuse of official position. For such cases four special provisions - 376A, 376B, 376C and 376D - were added to the IPC and a, punishment of five years' imprisonment provided. In effect, if a person in authority has had sexual intercourse with a women in his custody, he will firstly have to prove that the women in question had c6nsented. If he can't prove this he will be guilty of custodial rape and shell have to undergo a minimum rigorous imprisonment often years. Secondly, even if he is able to prove that the women did consent, he may not be charged with custodial rape yet he can be imprisoned for five years under Sections 376B, 376C and 376D.

It would seem that enough changes have been made in the rape laws to bring if on per with that of Western countries. However, there are still some glaring deficiencies. For one thing, the law does not provide for separate and speedy trials for heinous crimes such as child rape. The definition of rape too is finite restrictive. For raping a women, penile penetration must be proved. One can ravish a women equally or much more violently by shoving, for example, an iron rod into her private parts. Yet such a man would not be held guilty of rape. Several such cases have indeed come to light.

But the worst thing is the continued existence of Section 155(4) of the IEA, which provides that when amen is prosecuted for rape and if is shown that the woman in question is of immoral character then her evidence will not be taken

into account. It may be argued that this provision offers protection to the accused against false allegations of a women whose character is suspect. Yet consider Section 54 of the same Act. Among other things it says that in cases of rape, the fact that the accused person is a bad character is irrelevant. In effect, for the purpose of proving that a men did rape the prosecutrix, it is irrelevant to show that he has a bed character. If the bad character of the prosecutrix is considered in cases of rape, why not the bad character of the accused too?

In fact, it can be argued that these provisions are unconstitutional as they contravene the equality clause under Article 14 of the Indian Constitution. Is it not highly unfair to apply different standards to the accused and the complainant only in rape cases?

SEXUAL HARASSMENT AND RAPE LAWS IN INDIA

Sexual harassment and rape are two sides of the same coin. Both showcase the power of man to dominate that of women. Both have one victim- 'women'. Both are barbaric in nature; but many people extenuate sexual harassment to rape, just because the victims are not physically harmed. Whereas in rape- the victim is ravished like an animal for the fulfillment of desire and lust of another man. Both have the same object- to undermine the integrity of the victim, physically as well as mentally.

As observed by Justice Arjit Pasayat:

"While a murderer destroys the physical frame of the victim, a rapist degrades and defiles the soul of a helpless female."

Sexual harassment is nothing less than the showcasing of male dominance. Given an opportunity, such men (those committing sexual harassment) would try fulfilling their desire. However, it also not true that all cases of sexual harassment are such- where the accused is guilty of conceiving the intention of a sexual intercourse. But it also depends on each individual case and circumstances, because it may well be the case that the woman may also be at fault. The question is not whether women have the right to bodily integrity, as this right is already adumbrated under Article.21 of the Constitution of India. Article.21, which guarantees the right to life and liberty to men and women both alike- but whether it is really imperative to take a decisive step towards extirpating this evil and make the contemporary and future society a safe haven for women.

According to the official statistics of 1991, one woman is molested every 26 minutes. These statistics refer to the reported cases. Whereas, if the unreported cases were to be included, it would be a matter of seconds- rather than minutes. investigation of Most cases are not reported by victims because of various reasons such as family pressures, the manner of the police, the unreasonably long and unjust process and application of law; and the resulting consequences thereof.

In instances where women have reported such illegal and unwelcome behaviour, there have been significant victories in the past decade or so. Also considering the fact the sometimes these victories are achieved after a wait of a

decade or so. In Mrs. Rupan Deol Bajaj vs Kanwar Pal Singh Gill, a senior IAS officer, Rupan Bajaj was slapped on the posterior by the then Chief of Police, Punjab- Mr. K P S.Gill at a dinner party in July 1988. Rupan Bajaj filed a suit against him, despite the public opinion that she was blowing it out of proportion, along with the attempts by all the senior officials of the state to suppress the matter.

The Supreme Court in January, 1998 fined Mr.K P S.Gill ₹.2.5 lacs in lieu of three months Rigorous Imprisonment under Sections. 294 and 509 of the Indian Penal Code.

In N Radhabai Vs. D. Ramchandran, when Radhabai, Secretary to D Ramchandran, the then social minister for state protested against his abuse of girls in the welfare institutions, he attempted to molest her, which was followed by her dismissal. The Supreme Court in 1995 passed the judgement in her favour, with back pay and perks from the date of dismissal.

VISHAKA'S CASE

It was in 1997 in Vishaka Vs. State of Rajasthan and others, that for the first time sexual harassment had been explicitly- legally defined as an unwelcome sexual gesture or behaviour whether directly or indirectly as:

1. Sexually coloured remarks
2. Physical contact and advances
3. Showing pornography
4. A demand or request for sexual favours
5. Any other unwelcome physical, verbal/non-verbal conduct being sexual in nature.

It was in this landmark case that the sexual harassment was identified as a separate illegal behaviour. The critical factor in sexual harassment is the unwelcome ness of the behaviour. Thereby making the impact of such actions on the recipient more relevant rather than intent of the perpetrator- which is to be considered.

In the abovementioned case, the judgement was delivered by J.S.Verma. CJ, on behalf of Sujata Manohar and B.N.Kirpal, JJ., on a writ petition filed by 'Vishaka'- a non-Governmental organization working for gender equality by way of PIL seeking enforcement of fundamental rights of working women under Article.21 of the Constitution.

The immediate cause for filing the petition was the alleged brutal gang rape of a social worker of Rajasthan. The Supreme Court in absence of any enacted law (which still remains absent- save the Supreme Court guidelines as stated hereunder) to provide for effective enforcement of basic human rights of gender equality and guarantee against sexual harassment, laid down the following guidelines:

- All the employers in charge of work place whether in the public or the private sector, should take appropriate steps to prevent sexual harassement without prejudice to the generality of his obligation, he should take the following steps:

(a) Express prohibition of sexual harassment which includes physical contact and advances, a demand or request for sexual favours, sexually coloured remarks, showing pornographic or any other unwelcome physical, verbal/non-verbal conduct of sexual nature should be noticed, published and circulated in appropriate ways.
(b) The rules and regulations of government and public sector bodies relating to conduct and discipline should include rules prohibiting sexual harassment and provide for appropriate penalties in such rules against the offender.
(c) As regards private employers, steps should be taken to include the aforesaid prohibitions in the Standing Orders under the Industrial Employment (Standing Orders) Act, 1946.
(d) Appropriate work conditions should be provided in respect of work leisure, health, hygiene- to further ensure that there is no hostile environment towards women and no woman should have reasonable grounds to believe that she is disadvantaged in connection with her employment.

- Where such conduct amounts to specific offences under the Indian Penal Code or any other law the employer shall initiate appropriate action in accordance with the law, by making a complaint with the appropriate authority.
- Victims of sexual harassment should have the option to seek transfer of the perpetrator or their own transfer.

As stated by the Supreme Court, these guidelines are applicable to:

(a) The employer or other responsible persons or other institutions to prevent sexual harassment and to provide procedures for the resolution of complaints;
(b) Women who either draw a regular salary, receive an honorarium, or work in a voluntary capacity- in the government, private or organized sector come under the purview of these guidelines.

Preventive Steps:

1. Express prohibition of sexual harassment should be notified and circulated.
2. Inclusion of prohibition of sexual harassment in the rules and regulations of government and public sector.
3. Inclusion of prohibition of sexual harassment in the standing orders under the Industrial Employment (Standing Orders) Act, 1946 by the private employers.
4. Provision should be made for appropriate work conditions for women.

Procedure pertaining to filing of complaints:

- Employers must provide a Complaints Committee which is to be headed by a woman; of which half members should be women.
- Complaints Committee should also include an NGO or other organization- which is familiar with sexual harassment.

- Complaints procedure should be time bound.
- Confidentiality of the complaints procedure has to be maintained.
- Complainant or witnesses should not be victimized Or discriminated against- while dealing with complaints.
- The Committee should make an annual report to the concerned Government department and also inform of the action (if any) taken so far by them.

Miscellaneous Provisions:

1. Guidelines should be prominently notified to create awareness as regards the rights of the female employees.
2. The employers should assist the persons affected, in cases of sexual harassment by outsiders or third parties.
3. Sexual harassment should be discussed at worker's meetings, employer-employee meetings and at other appropriate forums.
4. Both Central and State governments are required to adopt measures including legislations to insure that private employers also observe these guidelines.

A K.CHOPRA'S CASE

Apparel Export Promotion Council Vs. AK.Chopra case, is the first case in which the Supreme Court applied the law laid down in Vishaka's case5 and upheld the dismissal of a superior officer of the Delhi based Apparel Export Promotion Council who was found guilty of sexual harassment of a subordinate female employee at the place of work on the ground that it violated her fundamental right guaranteed by Article.21 of the Constitution.

In both cases the Supreme Court observed, that " In cases involving Human Rights, the Courts must be alive to the International Conventions and Instruments as far as possible to give effect to the principles contained therein- such as the Convention on the Eradication of All forms of Discrimination Against Women, 1979 [CE DAW] and the Beijing Declaration directing all state parties to take appropriate measures to prevent such discrimination."

The guidelines and judgements have identified sexual harassment as a question of power exerted by the perpetrator on the victim. Therefore sexual harassment in addition to being a violation of the right to safe working conditions, is also a violation of the right to bodily integrity of the woman.

PROVISIONS OF THE INDIAN PENA CODE

In cases where the accused sexually harasses or insults the modesty of a woman by way of either- obscene acts or songs or- by means of words, gesture, or acts intended to insult the modesty of a woman, he shall be punished under Sections.294 and 509 respectively. Under Sec.294 the obscene act or song must cause annoyance. Though annoyance is an important ingredient of this offence, it being associated with the mental condition, has often to be inferred from proved facts. However, another important ingredient of this offence is that the obscene acts or songs must be committed or sung in or near any public place.

Section.509 of IPC, comes into effect when there is an intention to insult the modesty of any woman by the offender by uttering any word, making any sound or gesture or by exhibiting any object, with the intention that such word or such sound be heard, or that such gesture or object be seen by such a woman, or by intruding upon the privacy of such a woman.

Thus, this Section requires:

1. Intention to insult the modesty of a woman.
2. The insult be caused by
   i. Uttering any word or gesture, or
   ii. Exhibiting any object with the intention that such word, gesture, or object be hear or seen by such a woman, or
   iii. By intruding upon the privacy of such woman.

RAPE LAWS IN INDIA

"The law of rape is not just a few sentences. It is a whole book, which has clearly demarcated chapters and cannot be read selectively. We cannot read the preamble and suddenly reach the last chapter and claim to have understood and applied it." - Kiran Bedi., Joint Commissioner, Special Branch.

In the Mathura rape case, wherein Mathura- a sixteen year old tribal girl was raped by two policemen in the compound of Desai Ganj Police station in Chandrapur district of Maharashtra.

Her relatives, who had come to register a complaint, were patiently waiting outside even as the heinous act was being committed in the police station. When her relatives and the assembled crowd threatened to burn down the police chowky, the two guilty policemen, Ganpat and Tukaram, reluctantly agreed to file a panchnama.

The case came for hearing on 1st June, 1974 in the sessions court. The judgement however turned out to be in favour of the accused. Mathura was accused of being a liar. It was stated that since she was 'habituated to sexual intercourse' her consent was voluntary; under the circumstances only sexual intercourse could be proved and not rape.

On appeal the Nagpur bench of the Bombay High Court set aside the judgement of the Sessions Court, and sentenced the accused namely Tukaram and Ganpat to one and five years of rigorous imprisonment respectively. The Court held that passive submission due to fear induced by serious threats could not be construed as consent or willing sexual intercourse.

However, the Supreme Court again acquitted the accused policemen. The Supreme Court held that Mathura had raised no alarm; and also that there were no visible marks of injury on her person thereby negating the struggle by her.

The Court in this case failed to comprehend that a helpless resignation in the face of inevitable compulsion or the passive giving in is no consent. However, the Criminal Law Amendment Act, 1983 has made a statutory provision in the face of Section.114 (A) of the Evidence Act, which states that if the victim girl says that she did no consent to the sexual intercourse, the Court shall presume that she did not consent.

In Mohd.Habib Vs State, the Delhi High Court allowed a rapist to go scot-free merely because there were no marks of injury on his penis- which the High Court presumed was a indication of no resistance. The most important facts such as the age of the victim (being seven years) and that she had suffered a ruptured hymen and the bite marks on her body were not considered by the High Court. Even the eye- witnesses who witnessed this ghastly act, could not sway the High Court's judgement.

Another classic example of the judicial pronouncements in rape cases is the case of Bhanwari Devi, wherein a judge remarked that the victim could not have been raped since she was a dalit while the accused hailed from an upper caste- who would not stoop to sexual relations with a dalit.

In another instance of conscience stirring cases, Sakina- a poor sixteen year old girl from Kerala, who was lured to Ernakulam with the promise of finding her a good job, where she was sold and forced into prostitution. There for eighteen long months she was held captive and raped by clients. Finally she was rescued by the police- acting on a complaint filed by her neighbour.

With the help of her parents and an Advocate, Sakina filed a suit in the High Court- giving the names of the upper echelons of the bureaucracy and society of Kerala.

The suit was squashed by the High Court, while observing that ' it is improbable to believe that a man who desired sex on payment would go to a reluctant woman; and that the version of the victim was not so sacrosanct as to be taken for granted.'

Whereas, in State of Punjab Vs. Gurmit Singh8, the Supreme Court has advised the lower judiciary, that even if the victim girl is shown to be habituated to sex, the Court should not describe her to be of loose character.

The Supreme Court has in the case of State of Maharashtra Vs. Madhukar N. Mardikar, held that "the unchastity of a woman does not make her open to any and every person to violate her person as and when he wishes. She is entitled to protect her person if there is an attempt to violate her person against her wish. She is equally entitled to the protection of law. Therefore merely because she is of easy virtue, her evidence cannot be thrown overboard."

Also the Bandit Queen case10, which depicts the tragic story of a village girl. Phoolan Devi- who was exposed from an early age to the lust and brutality of some men. She was married to a man old enough to be her father. She was beaten and raped by him. She was later thrown out of the village- accused of luring boys of the upper caste. She was arrested by the police and subjected to indignation and humiliation. Was also kidnapped and raped by the leader of dacoits and later by the leader of a gang of Thakurs- who striped her naked and paraded her in front of the entire village. This is truly one story that shows the apathy of the existing society.

In Chairman, Railway Board Vs. Chandrima Das, a practicing Advocate of the Calcutta High Court filed a petition under Article.226 of the Constitution of India against the various railway authorities of the eastern railway claiming

compensation for the victim (Smt. Hanufa Khatoon)- a Bangladesh national- who was raped at the Howrah Station, by the railway security men. The High Court awarded ₹.10 lacs as compensation.

An appeal was preferred and it was contended by the state that:

a. The railway was not liable to pay the compensation to the victim for she was a foreigner.
b. That the remedy for compensation lies in the domain of private law and not public law. *i.e.* that the victim should have approached the Civil Court for seeking damages; and should have not come to the High Court under Article.226.

Considering the above said contentions, the Supreme Court observed:

"Where public functionaries are involved and the matter relates to the violation of fundamental rights or the enforcement of public duties, the remedy would be avoidable under public law. It was more so, when it was not a mere violation of any ordinary right, but the violation of fundamental rights was involved- as the petitioner was a victim of rape, which a violation of fundamental right of every person guaranteed under Article.21 of the Constitution."

The Supreme Court also held that the relief can be granted to the victim for two reasons- firstly, on the ground of domestic jurisprudence based on the Constitutional provisions; and secondly, on the ground of Human Rights Jurisprudence based on the Universal Declaration of Human Rights, 1948 which has international recognition as the 'Moral Code of Conduct'- adopted by the General Assembly of the United Nation.

After having studied the case laws, it is necessary to also study the definition of Rape as given in the Indian Penal Code, 1860. As per Section.

375 of IPC a man is said to commit the offence of rape with a woman under the following six circumstances:

- Sexual intercourse against the victims will,
- Without the victims consent,
- With her consent, when her consent has been obtained by putting her or any person that she may be interested in fear of death or hurt,
- With her consent, when the man knows that he is not her husband,
- With her consent, when at the time of giving such consent she was intoxicated, or is suffering from unsoundness of mind and does not understand the nature and consequences of that to which she gives consent,
- With or without her consent when she is under sixteen years of age.

Further explanation provided to the section states that penetration is sufficient to constitute the sexual intercourse necessary to constitute the offence of rape, whereas the exception leaves out marital rape altogether if the wife is not under fifteen years of age.

MARITAL EXCEPTION

In R Vs. R12, the House of Lords widened the scope of criminal liability by declaring that the husband could be charged as a principal offender in the rape

of his wife. This decision seems to have obliterated the protection of the husband from such prosecution under the doctrine of marital exemption. This exemption was based upon the belief under which the wife was regarded as the husbands' chattel. She was supposed to have given a general consent to her husband as a natural implication of the marriage. This has now become an outdated view of marriage in England.

However, the above decision of the House of Lords has not been followed in India- where marital exemption to the husband 'still exists'.

Section. 375 therefore requires:

(a). Sexual intercourse by a man with a woman;

(b). The sexual intercourse must be under any of the six circumstances given in the section.

Criminal Law Amendment Act, 1983:

The Criminal Law Amendment Act has substantially changed Sections.375 and 376 of the IPC. Several new sections have been introduced therein- *viz.* Sections. 376(A), 376(B), 376(C), 376(D) of the IPC.

Section. 376(A) punishes sexual intercourse with wife without her consent by a judicially separated husband.

Section. 376(B) punishes for sexual intercourse by a public servant with a woman in custody.

Section. 376(C) punishes sexual intercourse by superintendent of jail, remand house, etc. whereas,

Section. 376(D) punishes sexual intercourse by any member of the management or staff of a hospital with any woman in that hospital.

These new sections have been introduced with a view to stop sexual abuse of women in custody, care and control by various persons- which though not amounting to rape were nevertheless considered highly reprehensible.

Attempt to Rape

In cases where an indecent assault is made upon the person of a woman, but where rape is not committed- the culprit is charged with Section.354 of IPC, because unless the Court is satisfied that there was determination in the accused to gratify his passion at any cost, and inspite of all resistance, such person is not charged with rape.

Section.354 of the IPC prescribes punishment for anyone who assaults or uses criminal force to any woman with an intent to outrage her modesty. An indecent assault upon a woman is punishable under this section. Rape is punished under Section.376; but the offence under this Section is of less gravity than rape. And also because a person who is guilty of attempting rape cannot be allowed to escape with the lesser penalty of this section.

An indecent assault, *i.e.*, an assault which right minded persons would consider as indecent- accordingly any evidence explaining the defendants conduct, or whether any admission by him or otherwise is admissible to establish whether he intended to commit an indecent assault, as is stated under Section.21 sub clause (2) of the Evidence Act, which reads:

Section.21 (2): An admission may be proved by or on behalf of the person making it, when it consists of statements of the existence of any state of mind or body, relevant or in issue, made at or about the time when such state of mind or body existed, and is accompanied by conduct rendering its falsehood improbable.

Impediments to Justice

In the present circumstances when offences against women are on the rise- when young girls are raped by their doctors, by presidential guards in broad daylight, the definition of rape to be of any deterrence- falls extremely inadequate. It does not address forced penetration of objects and parts of the body into the vagina and anus; and forced oral or anal intercourse.

It also does not recognize other forms of sexual assaults- like protracted sexual assault by relatives, marital rape etc. as aggravated forms of rape. This causes grave injustice to many victims. In many cases of child rape, the child has been penetrated through fingers or by objects or been force to perform oral or anal sex; yet this is not considered rape by the Courts.

Adding to this is Section. 155(4) of the Evidence Act, which allows the victim to be questioned of her past sexual history- which the defence uses to humiliate the victim in the Courtroom.

One of the major obstacles in delivering justice in rape cases is the poor quality of investigations. The reason behind this ranges from gender bias and corruption to the general inefficiency of the police. In many cases the police have even refused to lodge the FIR or have lodged incomplete FIR. The victims are not taken for prompt medical examination, because in cases of rape, or attempt to rape- medical examination of the victim and of the accused soon after the incident often yields a wealth of corroborative evidence. Therefore, such an opportunity should not be lost by the police.

The manner in which some courts have interpreted the law or assessed the evidence has often proved to be an obstacle also. Inspite of Supreme Court judgements to the contrary, lower court judges often insist on evidence of physical resistance or marks of injuries to hold that a woman has not consented. A woman's evidence without corroboration is not considered sufficient.

The long time that is taken to complete a rape trial often by allowing senseless adjournments; and the giving of evidence by the victim in the presence of the accused and the harsh cross examination in the Court are some other major obstacles.

As observed by Krishna Iyer, J. in Rafique's case:

"When a woman is ravished, what is inflicted is not mere physical injury but the deep sense of some deathless shame… judicial response to Human Rights cannot be blunted by legal bigotry."

Therefore rape laws in order to be of great deterrence, must have a cooperative victim, professional investigation, diligent prosecution; and an expeditious trial. For otherwise it shall not be the law, that fails, but the applicants, the process and application. Failure of law reflects the failure of the society to protect and serve humanity.

In view of the above, the Supreme Court has laid down the following guidelines for the trial of rape cases:

- The complaints of sexual assault cases should be provided with legal representation. Such a person should be well acquainted. The Advocates role should not merely be of explaining to the victim the nature of the proceedings, to prepare for the case and assist her, but to provide her with guidance as to how she might obtain help of a different nature from other agencies- for *e.g.* psychiatric consultation or medical assistance.
- Legal assistance should be provided at the police Station, since the victim may be in a distressed state. Guidance and support of a lawyer at this stage would be of great help.
- The police should be under a duty to inform the victim of her right to a counsel before being interrogated.
- A list of lawyers willing to act in these cases should be kept at the police station.
- Advocates shall be appointed by the Court on an application by the police at the earliest, but in order that the victim is not questioned without one, the Advocate shall be authorized to act at the police Station before leave of the Court is sought or obtained.
- In all rape trials, anonymity of the victim must be maintained
- It is necessary to setup Criminal Injuries Compensation Board with regard to the Directive Principles contained under Article. 38(1) of the Constitution of India. As some victims also incur Substantial losses.
- Compensation for the victims shall be awarded by the Court on the conviction of the offender and by the Criminal Injuries Compensation Board- whether or not a conviction has taken place. The Board will take into account pain, suffering, shock as well as loss of earnings due to pregnancy and child birth if this accrued as a result of rape.

The National Commission for Women be asked to frame schemes for compensation and rehabilitation to ensure justice to the victims of such crimes.

As observed by Justice Saghir Ahmad, "Unfortunately a woman in our country belongs to a class or group of society who are in an disadvantaged position on account of several social barriers and impediments and have therefore, been victims of tyranny at the hands of men with whom they, unfortunately, under the Constitution enjoy equal status."

Conclusion

The courts and the legislature have to make many changes if the laws of rape are to be any deterrence. The sentence of punishment, which normally ranges from one to ten years, where on an average most convicts get away with three to four years of rigorous imprisonment with a very small fine; and in some cases, where the accused is resourceful or influential- may even expiate by paying huge amounts of money and get exculpated. The courts have to

comprehend the fact that these conscienceless criminals- who sometimes even beat and torture their victims- who even include small children, are not going to be deterred or ennobled by such a small time of imprisonment. Therefore, in the best interest of justice and the society, these criminals should be sentenced to life imprisonment.|

However, if they truly have realized their mistake and wish to return to society, the Court and jail authorities may leave such men on parole; but only after they have served a minimum of half the sentence imposed on them.

It is outright clear that sexual offences are to be excoriated, but if death sentence is given to such convicts- so as to deter the rest, then no doubt that the graph of rape cases will come down considerably- but it may also happen that those who commit such offences- simply to leave no witnesses or evidence, may even kill their victims and dispose off their bodies (whereas it is observed that in most cases- it is the victim who is the only source of evidence in most cases), thereby frustrating the main object of the Indian Penal Code and the legislature.

Studying the laws, the process, the application of those laws, one thing is certain- the entire structure of justice needs an over haul, otherwise the victim shall no longer the woman, but humanity.

MARITAL RAPE AND THE INDIAN LEGAL SCENARIO

Marital Raperefers to unwanted intercourse by a man with his wife obtained by force, threat of force, or physical violence, or when she is unable to give consent. Marital rape could be by the use of force only, a battering rape or a sadistic/obsessive rape. It is a non-consensual act of violent perversion by a husband against the wife where she is physically and sexually abused.

Approximations have quoted that every 6 hours; a young married woman is burnt or beaten to death, or driven to suicide from emotional abuse by her husband. The UN Population Fund states that more than 2/3rds of married women in India, aged between 15 to 49 have been beaten, raped or forced to provide sex. In 2005, 6787 cases were recorded of women murdered by their husbands or their husbands' families. 56 per cent of Indian women believed occasional wife-beating to be justified.

Historically, "Raptus", the generic term of rape was to imply violent theft, applied to both property and person. It was synonymous with abduction and a woman's abduction or sexual molestation, was merely the theft of a woman against the consent of her guardian or those with legal power over her. The harm, ironically, was treated as a wrong against her father or husband, women being wholly owned subsidiaries.

The marital rape exemption can be traced to statements by Sir Mathew Hale, Chief Justice in England, during the 1600s. He wrote, "The husband cannot be guilty of a rape committed by himself upon his lawful wife, for by their mutual matrimonial consent and contract, the wife hath given herself in kind unto the

husband, whom she cannot retract." Not surprisingly, thus, married women were never the subject of rape laws. Laws bestowed an absolute immunity on the husband in respect of his wife, solely on the basis of the marital relation. The revolution started with women activists in America raising their voices in the 1970s for elimination of marital rape exemption clause and extension of guarantee of equal protection to women.

In the present day, studies indicate that between 10 and 14 per cent of married women are raped by their husbands: the incidents of marital rape soars to 1/3rd to ½ among clinical samples of battered women. Sexual assault by one's spouse accounts for approximately 25 per cent of rapes committed. Women who became prime targets for marital rape are those who attempt to flee. Criminal charges of sexual assault may be triggered by other acts, which may include genital contact with the mouth or anus or the insertion of objects into the vagina or the anus, all without the consent of the victim. It is a conscious process of intimidation and assertion of the superiority of men over women.

Advancing well into the timeline, marital rape is not an offence in India. Despite amendments, law commissions and new legislations, one of the most humiliating and debilitating acts is not an offence in India. A look at the options a woman has to protect herself in a marriage, tells us that the legislations have been either non-existent or obscure and everything has just depended on the interpretation by Courts.

Section 375, the provision of rape in the Indian Penal Code (IPC), has echoing very archaic sentiments, mentioned as its exception clause- "Sexual intercourse by man with his own wife, the wife not being under 15 years of age, is not rape." Section 376 of IPC provides punishment for rape. According to the section, the rapist should be punished with imprisonment of either description for a term which shall not be less than 7 years but which may extend to life or for a term extending up to 10 years and shall also be liable to fine unless the woman raped is his own wife, and is not under 12 years of age, in which case, he shall be punished with imprisonment of either description for a term which may extend to 2 years with fine or with both. This section in dealing with sexual assault, in a very narrow purview lays down that, an offence of rape within marital bonds stands only if the wife be less than 12 years of age, if she be between 12 to 16 years, an offence is committed, however, less serious, attracting milder punishment. Once, the age crosses 16, there is no legal protection accorded to the wife, in direct contravention of human rights regulations.

How can the same law provide for the legal age of consent for marriage to be 18 while protecting form sexual abuse, only those up to the age of 16? Beyond the age of 16, there is no remedy the woman has.

The wife's role has traditionally been understood as submissive, docile and that of a homemaker. Sex has been treated as obligatory in a marriage and also taboo. Atleast the discussion openly of it, hence, the awareness remains dismal. Economic independence, a dream for many Indian women still is an undeniably important factor for being heard and respected. With the women being fed the

bitter medicine of being "good wives", to quietly serve and not wash dirty linen in public, even counseling remains inaccessible. Legislators use results of research studies as an excuse against making marital rape an offence, which indicates that many survivors of marital rape, report flash back, sexual dysfunction, emotional pain, even years out of the violence and worse, they sometimes continue living with the abuser. For these reasons, even the latest report of the Law Commission has preferred to adhere to its earlier opinion of non-recognition of "rape within the bonds of marriage" as such a provision may amount top excessive interference wit the marital relationship.

A marriage is a bond of trust and that of affection. A husband exercising sexual superiority, by getting it on demand and through any means possible, is not part of the institution. Surprisingly, this is not, as yet, in any law book in India.

The very definition of rape (section 375 of IPC) demands change. The narrow definition has been criticized by Indian and international women's and children organizations, who insist that including oral sex, sodomy and penetration by foreign objects within the meaning of rape would not have been inconsistent with nay constitutional provisions, natural justice or equity. Even international law now says that rape may be accepted a s the "sexual penetration, not just penal penetration, but also threatening, forceful, coercive use of force against the victim, or the penetration by any object, however slight." Article 2 of the Declaration of the Elimination of Violence against Women includes marital rape explicitly in the definition of violence against women. Emphasis on these provisions is not meant to tantalize, but to give the victim and not the criminal, the benefit of doubt.

Marital rape is illegal in 18 American States, 3 Australian States, New Zealand, Canada, Israel, France, Sweden, Denmark, Norway, Soviet Union, Poland and Czechoslovakia. Rape in any form is an act of utter humiliation, degradation and violation rather than an outdated concept of penile/vaginal penetration. Restricting an understanding of rape reaffirms the view that rapists treat rape as sex and not violence and hence, condone such behaviour.

The importance of consent for every individual decision cannot be over emphasized. A woman can protect her right to life and liberty, but not her body, within her marriage, which is just ironical. Women so far have had recourse only to section 498-A of the IPC, dealing with cruelty, to protect themselves against "perverse sexual conduct by the husband". But, where is the standard of measure or interpretation for the courts, of 'perversion' or 'unnatural', the definitions within intimate spousal relations? Is excessive demand for sex perverse? Isn't consent a sine qua non? Is marriage a license to rape? There is no answer, because the judiciary and the legislature have been silent.

The 172nd Law Commission report had made the following recommendations for substantial change in the law with regard to rape.

- 'Rape' should be replaced by the term 'sexual assault'.
- 'Sexual intercourse as contained in section 375 of IPC should include all forms of penetration such as penile/vaginal, penile/oral, finger/vaginal, finger/anal and object/vaginal.

- In the light of Sakshi v. Union of India and Others [2004 (5) SCC 518], 'sexual assault on any part of the body should be construed as rape.
- Rape laws should be made gender neutral as custodial rape of young boys has been neglected by law.
- A new offence, namely section 376E with the title 'unlawful sexual conduct' should be created.
- Section 509 of the IPC was also sought to be amended, providing higher punishment where the offence set out in the said section is committed with sexual intent.
- Marital rape: explanation (2) of section 375 of IPC should be deleted. Forced sexual intercourse by a husband with his wife should be treated equally as an offence just as any physical violence by a husband against the wife is treated as an offence. On the same reasoning, section 376 A was to be deleted.
- Under the Indian Evidence Act (IEA), when alleged that a victim consented to the sexual act and it is denied, the court shall presume it to be so.

The much awaited Domestic Violence Act, 2005 (DVA) has also been a disappointment. It has provided civil remedies to what the provision of cruelty already gave criminal remedies, while keeping the status of the matter of marital rape in continuing disregard. Section 3 of the Domestic Violence Act, amongst other things in the definition of domestic violence, has included any act causing harm, injury, anything endangering health, life, etc., … mental, physical, or sexual. It condones sexual abuse in a domestic relationship of marriage or a live-in, only if it is life threatening or grievously hurtful. It is not about the freedom of decision of a woman's wants. It is about the fundamental design of the marital institution that despite being married, she retains and individual status, where she doesn't need to concede to every physical overture even though it is only be her husband. Honour and dignity remains with an individual, irrespective of marital status.

Section 122 of the Indian Evidence Act prevents communication during marriage from being disclosed in court except when one married partner is being persecuted for n offence against the other. Since, marital rape is not an offence, the evidence is inadmissible, although relevant, unless it is a prosecution for battery, or some related physical or mental abuse under the provision of cruelty. Setting out to prove the offence of marital rape in court, combining the provisions of the DVA and IPC will be a nearly impossible task.

The trouble is, it has been accepted that a marital relationship is practically sacrosanct. Rather than, making the wife worship the husband's every whim, especially sexual, it is supposed to thrive n mutual respect and trust. It is much more traumatic being a victim of rape by someone known, a family member, and worse to have to cohabit with him. How can the law ignore such a huge violation of a fundamental right of freedom of any married woman, the right to her body, to protect her from any abuse?

As a final piece of argument to show the pressing need for protection of woman, here are some effects a rape victim may have to live with:

- Physical injuries to vaginal and anal areas, lacerations, bruising.
- Anxiety, shock, depression and suicidal thoughts.
- Gynecological effects including miscarriage, stillbirths, bladder infections, STDs and infertility.
- Long drawn symptoms like insomnia, eating disorders, sexual dysfunction, and negative self image.

Marriage does not thrive on sex and the fear of frivolous litigation should not stop protection from being offered to those caught in abusive traps, where they are denigrated to the status of chattel. Apart form judicial awakening; we primarily require generation of awareness. Men are the perpetrators of this crime. 'Educating boys and men to view women as valuable partners in life, in the development of society and the attainment of peace are just as important as taking legal steps protect women's human rights', says the UN. Men have the social, economic, moral, political, religious and social responsibility to combat all forms of gender discrimination.

4

Adultery Laws in India

Adultery is a voluntary consensual relationship between a married individual and someone who is not his/her lawful spouse. Adultery is considered as legally wrong and is a punishable offence. The act of adultery is a crime which breaches the marriage vows and is detrimental to public morals. It is regarded as illegal in some countries and certain laws have been passed to keep a check over adultery. Although adultery is not a criminal offence, it may have legal consequences and the individual concerned may be penalized and punished especially if the case is pertaining to divorce.

History: In ancient Greece and Roman world, there were harsh laws against adultery but these were applicable only if the female was married. But these laws were not relevant if a man maintained sexual relationship with a slave or an unmarried female. The Bible too forbids adultery and the seventh commandment clearly states this. In customary Judaism, both the parties were equally responsible for adultery but it applied only if the female partner was married. Lord Jesus also abhorred adultery and considered that even looking at a female lustfully is equivalent to adultery.

According to ancient Hindu laws, only the felonious female were punished and killed while the husbands were considered equal to god and were left off with warnings only.

Adultery laws: The legal definition of adultery varies from country to country. Laws related to adultery vary from statute to statute and at some places adultery is considered a crime and the adulterer may even have to face death penalty while at some places it is not punishable. In few statutes, if either individual is married to someone else, both parties to an adulterous liaison are culpable to

the crime. Christian, Jewish, Islamic and Hindu traditions condemn the act of adultery and in Islam; the adulterers especially the female may be stoned to death. According to Indian jurisdiction, the adultery law comes under Section 497 of the Indian penal code. There are two laws pertaining to adultery:-

Section-497- Adultery "Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both. In such case, the wife shall not be punishable as an abettor."

Section-498- Enticing or taking away or detaining with criminal intent a married woman"Whoever takes or entices any woman who is and whom he knows or has reasons to believe to be the wife of any other man, from that man, or from any person having the care of her on behalf of that man, with intent that she may have illicit intercourse with any person or conceals or detains with that intent any such woman, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both".

Our society abominates marital infidelity and these laws have been passed to maintain and preserve the sanctity of marriage.

ADULTERY LAWS FOR INDIAN WOMEN

Adultery is the consensual or voluntary sexual relationship of a married man with someone other than his wife and a woman with someone other than her husband. Although, the legal definition of adultery and laws pertaining to adultery varies from country to country, the basic essence remains the same. It points to an illicit and illegal correlation which breaches the marriage vows and affects the sanctity of marital relations. Laws against adultery are likely outcome of regulation and ethnicity claiming that marriages must be monogamous. Adultery law falls under the criminal law of India and has been put under chapter XX that deals with the offences concerning marriage.

According to Section-497 of Indian penal code- "Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both. In such case, the wife shall not be punishable as an abettor."

Section-498: Enticing or taking away or detaining with criminal intent a married woman Whoever takes or entices any woman who is and whom he knows or has reasons to believe to be the wife of any other man, from that man, or from any person having the care of her on behalf of that man, with intent that she may have illicit intercourse with any person or conceals or detains with that intent any such woman, shall be punished with imprisonment of either description

for a term which may extend to two years, or with fine, or with both. Throughout the world, the female committing an adulterous act is also liable for punishment but Indian women are an exception for adultery laws and they cannot be punished under the law for committing adultery. The wife is not guilty of offence, not even as an abettor to the crime. The case can be filed by the husband of the female partner against the man with whom she had adulterous liaison (not against his wife) stating that he illegitimately intimidated and lured his wife into the relationship.

These laws were passed in 1860 during the British era and at that time the social status of women in India was pitiable. They were not independent economically and were considered as an object. The structure of the society was a lot different from what its today and several social evils were prevalent during those days. Polygamy, child marriages and sati system were common and since women were observed as a property of men, it was their utmost duty to safeguard their property. Women were subjugated and exploited by men and this led to the framing of such laws which punished only men which must be the seducer and women were not considered wrongful.

Although, considering today's times, the scenario of the society has changed and women are socially and financially independent and they may be the seducer and not always victim or innocent. This customary law does not seem to be in consonance with the recent times and doesn't apply equally to both the genders.

ADULTERY DIVORCE

Adultery is the act of indulging in any type of consensual physical relationship with a person other than the spouse. An adulterous relationship is established between two individuals who are not married to each other. Since this correlation is voluntary, it can also be termed as an extra marital affair or infidelity towards one's partner. While the legal definition of adultery may vary from country to country but it is considered as a crime and a punishable offence by almost all religions. It is also regarded as one of the major reasons for divorce by almost all jurisdictions.

Adultery has a reasonably recognized meaning in the marital laws and is considered a valid ground for applying for divorce, if either partner breaches the marital vows and commits an act of infidelity. Marriage is a highly regarded as an institution, and is a sacrament as well as civil contract, so infidelity in marriage is definitely a sin. Adultery is considered as an offence against marriage by both the Penal law and the Matrimonial law in India and anyone committing an adulterous act can be punished under law.

Adultery is counted as a criminal offence and has been placed under chapter XX that deals with offences relating to marriage. While filing for a divorce on grounds of adultery, substantial evidences are required to establish the same. The grieved party needs to gather significant proofs in support of his/her case to prove infidelity by his/her spouse. This can be done with the help of a detective agency which may gather information and photographs which may help the

grieved party to prove his/her spouse's adulterous act. The evidences must be significant and related to places and dates where the adulterous party and co-respondent may have met in isolation.

Usually, there are no direct evidences against adultery and it has to be proven with the help of circumstantial proofs such as; photographs of the spouse with a third person at secluded place where they may get intimate or at places like hotels where they may get an opportunity for physical relationship. Since, it is difficult to have an eyewitness to prove an illicit relationship; it can be proved indirectly by showing evidences such as hotel bills or travel records. Also, their public display of affection or their letters, SMS's etc. can be used as evidence against the offending party. In India, divorce can be easily granted on the basis of adultery once it has been proved in the court.

Before applying for divorce against adultery, the partner must think of its consequences and life thereafter. Life becomes more difficult even after obtaining divorce. In India, divorce still carries a social stigma and if the person concerned is a woman, it becomes more difficult for her to survive herself financially.

If the separating couple has kids, they are the ones who suffer the most. It's better to confront your spouse as soon as you become aware of their illicit affair rather than immediately dragging him/her to court. If it's the first time, it is advisable to forgive the very first act of depraved conduct and give a chance to save your marriage. Especially, if your spouse is ready to admit the mistake and promises not to repeat it again, then you must reconsider all prospects to give a second lease of life to your marriage.

HINDUISM AND ADULTERY

Adultery is a consensual physical correlation between two individuals who are not married to each other. According to Hinduism dictionary," Adultery is sexual intercourse between a married man and a woman not his wife, or between a married woman and a man not her husband." In Hindu shastras, adultery is considered as a serious breach of dharma. Hinduism considers marriage as a sacred and a highly sanctified relationship.

Traditional view of Hinduism: - Hinduism is not based on a particular scripture or the wisdom of a lone spiritualist; instead Hinduism is a set of values and customs which have evolved over a span of time. Its ethnicity has been derived from varied religious activities developed in the Indian subcontinent that had common ideology, ethics and beliefs which represents its central dogma.

Hinduism is an elaborate fusion of assorted religious trends and can be viewed from 3 major perspectives:

1. The Vedas
2. The Upanishads
3. The epics and the Puranas

It had always been sanatan dharma for Indians, an eternal religion for Hinduism. Manusmriti was the eternal code of conduct for ancient Indians and the general public followed it religiously which say:- "Day and night woman

must be kept in dependence by the males (of) their (families), and, if they attach themselves to sensual enjoyments, they must be kept under one's control." "Her father protects her in childhood, her husband protects her in youth, and her sons protect her in old age; a woman is never fit for independence."

"While creating them, Manu allotted to women a love of their bed, of their seat and of ornament, impure desires, wrath, dishonesty, malice, and bad conduct." Women were regarded as an object and property of men. Adultery was actually a married woman getting involved with a man other than her spouse. Adulterous relations or extra marital affairs involving a married woman attract more severe punishments than the ones involving an unmarried woman.

Hinduism does not support adulterous liaisons and it is considered a moral sin. Individuals who get involved in treacherous or illegitimate relationships have to face a lot of public disrespect and societal humiliation, generally in the rustic regions, where the social order is still conventional. Particularly in case of women, the consequences of adultery are much worse and extra marital affairs involving married women are rarely overlooked or pardoned. According to Hinduism, marriage is a sacrosanct association, which is not limited to one birth and extends over several lives. It is necessary to maintain the purity of marriage and to uphold matrimonial vows. Breaking the consecrated promise and the union of marriage recognized with deities as witness is a profanity and an appalling karma.

Adultery is being severely dealt with in ancient Hindu law books for ethical as well as social reasons. Adultery may lead to perplexity of castes, decrepitude of family standards and societal disarray.

According to Vishnu Purana 3.11, "A man should not think incontinently of another's wife, much less address her to that end; for such a man will be reborn in future life as a creeping insect. He who commits adultery is punished here and hereafter; for his days in this world are cut short, and when dead he falls into hell."

Adultery has never been accepted in Hinduism and even today the Indian society treats it as a wrongful deed.

ADULTERY PUNISHMENT

Adultery according to the law is the consensual sexual intercourse between a married woman and an individual who is not her spouse or between a married man and a woman who is not his wife. Although, adultery is not regarded as a crime according to legal jurisdiction but still it is considered as a matrimonial offence and a wrongdoing by almost all the religions. The ancient religions like Hinduism, Islam and Christianity condemn adultery and treat it as a moral and social sin.

The punishment for adultery varies from country to country and region to region. In Southwest Asia, infidelity has attracted harsh treatments like death sentence. In countries like Iran and Saudi Arabia, the mode of punishment for adultery is stoning to death. Similar strict laws exist in almost all the Muslim

countries and in most of them, the punishment for fornication and adultery is stoning to death. However, this method of punishment has made headlines in the recent past and there had been worldwide protests against such death penalties.

Few East Asian countries like Korea, Taiwan and Philippines still treat adultery as a crime while in China it is not a crime but amounts to ground for divorce.

Bible also treats adultery as a wrongdoing and has prescribed death as an apt punishment. According to the Old Testament, "And the man that committeth adultery with another man's wife, even he that commit the adultery with his neighbour's wife, the adulterer and the adulteress shall surely be put to death." But this has changed in due course of time and death penalty is a rare occurrence in the Christian world. In USA, laws vary from state to state. Although rarely prosecuted, but adultery is still on the statute books and penalty may vary from a fine of few dollars to even life sentence. But in US military, it is an impending court-martial crime.

The European Union has decriminalized adultery and people are not prosecuted for committing infidelity, but it's a solid ground for divorce. In some south-European countries, adultery is punishable and penalties up to a life sentence can be given but this is rarely indicted.

The Indian penal code describes adultery as a punishable offence and chastisement and penalty has been prescribed for committing adultery. The Hindu Marriage Act clearly forbids polygamous marriages and punishment for those who defy the law. Whoever commits adultery shall be punished with an imprisonment which may extend to five years, or with fine, or both. In Indian law books, adultery is still regarded as the transgression of marital property and treats Indian women as sufferers and not the ones who may have initiated the act of adultery and so they are not punishable even as abettors.

Marriage is considered as a sanctified relationship and marital vows are meant for both the spouses to execute their essential responsibilities and remain faithful to each other. Adultery is more of a social and civil offence and portrays greater capriciousness and unfaithfulness of trust towards not only the spouse, but the entire family. Adultery is a consequence of collapsing faith and conscientiousness in a relationship and demands a remedial action rather than penalizing one. The punishments imposed by laws may provide relief to the offended party for a short while but it destroys the sanctity of the marital bond and ruins family life in long term.

ADULTERY MARRIAGE

Adultery is defined as a voluntary sexual relationship between two individuals who are not married to each other. The act of infidelity occurs in marriage when one of the spouses willingly engages in sexual intercourse with an individual of the opposite gender other than the marital partner. Adultery is regarded as a sin and a matrimonial offence and is condemned by almost all religions. Infidelity

in marriage should rather be avoided than repenting later on. An extramarital affair is bound to destroy the faith and trust on which a marriage relies and eventually ends in the breakdown of sacred relationship. Sexual relations outside marriage are still unacceptable in the Indian society and if one of the spouses gets involved in an extra-marital affair, it may lead to breach of marital vows and eventually collapse of marital correlation.

According to the Old Testament, "Marriage is not just a social contract between man and woman; it involves God as well. God is witness to all marriage agreements and insists that couples should be devoted and completely faithful to each other."

Faithfulness is the core of a marital association and is most important in the divine human relationships. Although, adultery is regarded as the adulterous man's wrongdoing against the husband of an adulterous wife but both the individuals committing an adulterous act are viewed as culpable to the crime and an illicit affair is regarded a sin against the community, family and marriage. The punishment prescribed for adultery is no less than death and married people who get involved in extramarital affair may be subjected to this punishment.

Marital disloyalty is often a product of selfishness and pride and can be the indication of a sexual addiction or of a bigger underlying problem within the marriage. The reason behind one partner straying away from marriage bed could be any. In most of the cases, it could be that their innate needs are not being fulfilled by their spouses. Lack of intimacy, communication and compatibility creates a hazardous emptiness within one's heart and this may lead them to go off track. Adultery ruins faith, closeness and confidence. It has a devastating effect on the families, spoils careers and leaves a gloom of hurt and obliteration in its course.

In case infidelity has somehow crept into your marriage, it is your duty to comprehend why it happened as both the partners are responsible if one of the spouses have committed an adulterous act and see whether the marriage can be returned back to normalcy or is there any way out to nurse back your almost broken marriage. If you are the one who had been unfaithful, give some time to think whether you want your marital partner back or you want to move on. If you want to continue with your marriage, then you really have to work hard to reinstate the lost faith, confidence and commitment. The foundations of a stable marriage are loyalty, conviction, devotion, respect and honour and a marriage based on these traits can survive any harsh blow.

If you try and imbed these traits into your belief system, you can definitely recall and re-establish your marriage. But if you are the one who had been offended, then even you need to sit back and think of any underlying problem and try to resolve it. If you want to continue with the marriage, you need to forgive your partner completely and try to rebuild the relationship with a new hope and new promises as only marriage can give you a stability and eternal happiness in life.

ADULTERY ISLAM

Adultery is the consensual sexual relations between two individuals who are not married to each other and one or the other is married to someone else. The definition of adultery varies in different jurisdictions and it is considered as a sin in almost all religions.

Under Muslim law, "Adultery is defined as sexual intercourse by a person whether man or woman, with someone to whom they are not married." Adultery or extramarital sex is considered as the infringement of matrimonial bond and is regarded as one of the foremost crimes condemned by Allah in religious book of Muslims- the Quran.

Zina is an Arabic term used for premarital or extramarital relationship. The act of zina is considered as the most heinous crime and people may be punished harshly for it. Quranic verses prohibiting adultery as said by Allah are:-

"Do not go near adultery. Surely it is a shameful deed and evil, opening roads to other evils." "Say, 'Verily, my Lord has prohibited the shameful deeds, be it open or secret, sins and trespasses against the truth and reason."

"[Under Islamic laws in an Islamic state] it is not lawful to shed the blood of a Muslim except for one of the three sins: a married person committing fornication, and in just retribution for premeditated murder, and [for sin of treason involving] a person renouncing Islam, and thus leaving the community [to join the enemy camp in order to wage war against the faithful]."

Adultery in Islam is one of the most atrocious and dreadful of all sins. Its horrendousness can be determined from the reality that it has been considered equivalent to the deadliest of crimes in Quran. The above stated Quranic verse perfectly explains that.

Adultery is considered as an unforgivable crime, due to its calamitous consequence which affects the person involved, family unit and the society in general. It leads to betrayal and infringes the faith and harmony which is the basis for a satisfying family life; it fritters away the vigour; it knocks off balance; it deteriorates the purity of the character and obliterates the feelings of devotion and loyalty and consequently the individual has to face the fury of Allah and punishment in various forms.

Fornication and infidelity are regarded as unpardonable and reprehensible sins and regarding adultery, the Prophet said, "When adultery and promiscuous behaviour becomes rampant in a nation, Allah will expose them to His chastisement and He will send upon them such (strange) diseases that their own ancestors never heard of."

Brutal punishments are given to men and women who get involved in the sinful act of zina. According to Islamic laws, for premarital sex, the chastisement is 100 lashes, while for adultery the adulterers are punished by stoning to death which is also known as Rajm or severe flogging. However, stoning as punishment for extramarital sex is not stated in Quran but is prescribed in Hadith. Hadith are the verbal mores connecting to the words and conduct of the Islamic prophet Mohammad.

Although, men are exceptional in this case and a married man sleeping with an unmarried woman is not considered adultery but it becomes a crime if the woman involved is married and she practices extramarital relationship. In this case, punishment prescribed for her is no less than stoning to death. Islamic laws are in general callous and ruthless and the method is reputed to be a puritan legal system.

ADULTERY INDIAN PENAL CODE

The word 'adultery' has been derived from the Latin term 'adulterium' and is defined as consensual sexual relationship between a married woman and an individual other than his/her spouse. Almost all religions throughout the world condemn it and treat it as an unforgivable offence. However, this may not be reflected in the legal jurisdictions of the countries but adultery is recognized as a solid ground for divorce in all penal laws.

The Indian penal code also recognizes adultery as a crime and a punishable offence. This law comes under the criminal law of India and has been placed under chapter XX that deals with crimes related to marriage. The laws as stated in the Indian penal code are:-

Section-497- Adultery "Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both. In such case, the wife shall not be punishable as an abettor."

Section-498- Enticing or taking away or detaining with criminal intent a married woman "Whoever takes or entices any woman who is and whom he knows or has reasons to believe to be the wife of any other man, from that man, or from any person having the care of her on behalf of that man, with intent that she may have illicit intercourse with any person or conceals or detains with that intent any such woman, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both". These laws were drafted in 1860 when India was under British rule and the condition of Indian woman was pathetic. During those periods, a man could've several wives and women were socially and economically dependent on men. Women were treated as an object and considered the property of men. Thus, while drafting the laws it was presumed that women are hapless victims, not capable of committing such an offence, instead, it must be a man who will entice her and involve her in an adulterous relationship. But these laws definitely treat a man and a woman unequally in the institution of marriage.

According to these laws:

1. Man is always a seducer and the married woman just an innocent and a submissive victim.
2. Wife is no more than a chattel to her husband and a third person had committed the crime of intruding upon his marital possession by establishing a physical relationship with his wife.

3. Only the husband of the treacherous woman (or a person who had care of the married woman) is a distressed party and he is liable to file a complaint against the third party.
4. There is no provision in the law for a woman to file a complaint against her adulterous husband. If a married man commits adultery with an unmarried woman or a widow or with a married woman with the consent of her husband, his wife is not regarded as an aggrieved party and she is not permitted to make any official grievance against her husband.

Considering the changes our society has witnessed in recent times, the Indian penal code must revise these laws and upgrade them keeping in mind the equality of men and women and enabling women to have more freedom and liberty in making their choices.

ADULTERY IN CHRISTIANITY

Adultery is a consensual physical relationship between a married woman and a man who is not her spouse. Adultery is also known as extra-marital affair or infidelity and is considered a sin in almost all the religions. The definition and chastisement for adultery may differ in different religious conviction, civilizations and legal systems but the basic theme remains the same and points towards betrayal and violation of nuptial promises.

"Thou shalt not commit adultery" – says the seventh commandment. The Old Testament states, "He who commits adultery has no sense and whoever does so destroys himself".

According to Lord Jesus indulging in adulterous feelings is equally detrimental to the soul as a real act of infidelity and both bear the same credence.

He said," But I tell you that anyone who looks at a woman lustfully has already committed adultery with her in his heart."

Adultery is firmly banned by Christianity and has been branded as impure, licentious, blasphemous, capricious and a vile lust by all Prophets. It is acknowledged to be immoral and an offence by true Christians even today and there are few churches which construe adultery to include all sexual liaison outside of matrimony, regardless of the marital status of the people involved. Christianity also forbids all types of unnatural sexual correlations, including homosexuality of men and women and the Bible doesn't consider such marriages valid.

Committing an adulterous act is considered equivalent to a murder and the adulterer becomes a transgressor to the law if he commits adultery. Marriage is regarded as highly sacred amongst Christians and according to the Old Testament:-

"Let marriage be held in honour among all, and let the marriage bed be undefiled; for God will judge the immoral and the adulterous". "Anyone who divorces his wife and marries another woman commits adultery against her" and "If a woman divorces her husband and marries another man, she commits

adultery". "And the man that commit adultery with another man's wife, even he that commit adultery with his neighbour's wife, the adulterer and the adulteress shall surely be put to death." says the KJV New testament.

This statement clearly proves that adultery is considered sinful in Christianity too and both the individuals involved in an adulterous act must be punished and that even death.

Adultery is a treacherous act and people must try to avoid it in all circumstances. All relationships go through various phases and if your marital partner is unable to satisfy your needs, you must try and talk it out rather than finding someone else with better compatibility because again that may be temporary and soon you'll realize your folly. Marriage is the union of a man and a woman and this institution has been formed to instill harmony and peace in life. A couple grows together, create a life together, experience the ups and downs of life and cherish several pretty moments together but adultery, if creeps inside marriage interferes with the natural development of a relationship. Lack of commitment by one partner who looks for excitement outside marriage rather than creating it with their partner destroys the sanctity of marriage and breaches marital vows.

Biblically, adultery is the willful and destructive desecration of the prime, eternalness and sincerity of marriage.

ADULTERY DEFINITION

Adultery- The word itself was forbidden in the Indian culture and people hardly talked about it openly. It was proscribed even to discuss adultery in public places but with the increase in the means of communication and media, these things are no longer considered taboo in the present scenario especially in the metropolitan towns where adulterous relationships are on the rise and marriages are falling apart and homes are breaking down due to this reason.

Perhaps every educated people know that adultery is a sexual liaison that somehow infringes a marital relationship. The true meaning of the word lies in your own perception of an association and that of a bonding. The relationship of marriage was and is still the most sacred correlation in all senses and if someone commits adultery, he/she renounces the marriage vows and breaches the trust and love on which a marriage is based.

Adultery can be defined as "An intended sexual contact between two people of opposite gender who are not married to each other under law". In other words Adultery is a physical relationship between a married man and a woman who is not his wife or between a married woman and a man who is not her spouse. Having bodily contact with someone outside marriage and the dishonesty by a married person to the marriage bed is regarded as adultery. When any man and woman cohabit and bed together without marriage and one or the either is married to someone else, it is considered as an adulterous act. A consensual sexual act between two individuals who are not lawfully wedded to each other is Adultery. Lust, vulgarity or unchastity of thought or an act for someone who is someone else's spouse is adultery.

Adultery is also known as infidelity, philandery, extra marital affair or physical betrayal in marriage. Adultery is different from rape in the sense that adultery is voluntary while rape is not. The consent of both the individuals for a physical relationship is a must for adultery to exist. Earlier, the term was associated with the married woman only who got involved in adulterous act with someone who wasn't her husband but now the term is applied to married men as well and if the either one is unmarried, then he/she is also considered adulterous. Adultery is categorized into two types:-

1. Single adultery- If the relationship is between a married person and an unmarried person.
2. Double adultery- If both the partners involved are married to someone else.

"Thou shall not commit adultery" says the seventh commandment. Bible considers adultery as an immoralist act and an offence. Adultery is an unrighteous act which affects the faith and lives of people and causes a lot of misery for the sufferers. People committing adultery must be punished under law. Legally, the word has been defined in various ways. The legal system or the constitutions of all the countries define adultery in a different way, but the basic theme is physical intimacy outside the marriage with the person who is not the spouse. Alienation of affection or desertion by one partner for a third person is also regarded as a form of adultery by some countries.

Adultery can be defined as voluntary physical relationship between two individuals who are not married to each other amongst whom both or either are wedded to someone else.

ADULTERY CRIME IN INDIA

Adultery is defined under law as a consensual physical correlation between two individuals who are not married to each other and either or both are married to someone else. The actual definition of adultery may vary in different jurisdictions but the basic theme is sexual relations outside marriage. Adultery, also known as infidelity or extra-marital affair is certainly a moral crime and is thought-out a sin by almost all religions.

The western world and particularly few western countries like Finland, Belgium and Sweden doesn't treat adultery as a crime but the Indian jurisdiction considers adultery as a punishable and heinous crime. The union of marriage has a spiritual, communal and lawful authorization in India. Hence, a sexual liaison that flouts this sacred bond implies rebelliousness with common customs. It is a breach of trust as well as infringement of the holy marital promises, conscientiously and ethically held to be revered and does carry a punishment under the decree. Adultery in the realm of crime: In India, adultery is considered as an offence and is punishable under Section 497 of the Indian penal code. The rule comes under the criminal law of India and has been placed in chapter XX which is related to offences pertaining to marriage. The law as stated in the law books is as follows:-

Section-497- Adultery "Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both. In such case, the wife shall not be punishable as an abettor."

Section-498- Enticing or taking away or detaining with criminal intent a married woman "Whoever takes or entices any woman who is and whom he knows or has reasons to believe to be the wife of any other man, from that man, or from any person having the care of her on behalf of that man, with intent that she may have illicit intercourse with any person or conceals or detains with that intent any such woman, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both".

Adultery may not be a serious crime but it does play chaos in the lives of the people concerned. Our Indian society is more conserved and expects faithfulness and loyalty of an individual towards his or her spouse. A person who is committing an adulterous act is always aware of the verity that he or she is violating the basic norms of the institution of marriage and that of the society and credibility and trustworthiness is being targeted.

Adultery may not seem to be gravest of crimes but it does bring out some of the direst consequences. The individual committing adultery is always conscious of the fact that if somehow his/her partner will come to know of his/her liaison, he/she won't take it calmly, indeed that person will have to face a lot of wrath and criticism by the family as well as the society. To be vigilant against such a result, the felonious party may instigate a fierce attack against his/her partner, resulting in a critical fault such as abduction or even murder. Considering Indian laws and the scenario of our society, adultery is definitely a crime in India.

5

Divorce Laws

- Any Any marriage which is solemnized, whether before or after the commencement of the Hindu marriage Act, may be Dissolved by a decree of divorce, by either the Husband or the wife presenting the petition on the following grounds:
  (i) Firstly having had voluntary sexual intercourse with any person other than his or her spouse
    (a) Secondly has treated the petitioner with cruelty after marriage; or
    (b) *Thirdly:* has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition; or
  (ii) Fourthly has changed is religion and has ceased to be a Hindu by conversion to another religion; or
  (iii) Has been incurably of unsound mind, or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent.
    Explanation: In this clause
    (a) The expression "mental disorder" means mental illness, arrested or incomplete development of mind, psychopathic disorder or any other disorder or disability of mind and includes schizophrenia;
    (b) The expression "psychopathic disorder" means a persistent disorder or disability of mind (whether or not including sub-

normality of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the other party, and whether or not it requires or is susceptible to medical treatment; or

(iv) Has been suffering from a virulent and incurable form of leprosy; or

(v) Has been suffering from venereal disease in a communicable form; or

(vi) Has renounced the world by entering any religious order; or

(vii) Has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of it, and that party been alive;

Explanation: In this sub-section, the expression "desertion" means the desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party, and includes the willful neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expressions shall be construed accordingly;

- Either party to a marriage, whether solemnized before or after the commencement of this Act, may also present a petition for the dissolution of the marriage by a decree of divorce on the ground-
  (i) That there has been no resumption of cohabitation as between the parties to the marriage for a period of one year or upwards after the passing of a decree for judicial separation in a proceeding to which they were parties; or
  (ii) That there has been no restitution of conjugal rights as between the parties to the marriage for a period of one year or upwards after the passing of a decree for restitution of conjugal rights in a proceeding to which they were parties.
- A wife may also present a petition for the dissolution of her marriage by a decree of divorce on the ground,-
  (i) In the case of any marriage solemnized before the commencement of this Act, that the husband had married again before such commencement or that any other wife of the husband married before such commencement was alive at the time of the solemnization of the marriage of the petitioner; Provided that in either case the other wife is alive at the time of the presentation of the petition; or
  (ii) That the husband has, since the solemnization of the marriage, been guilty of rape, sodomy or bestiality; or
  (iii) That in a suit under section 18 of the Hindu Adoptions and Maintenance Act, 1956, or in a proceeding under section 125 of the Code of Criminal Procedure, 1973 (or under the corresponding section 488 of the Code of Criminal Procedure, 1898), a decree or order, as the case may be, has been passed

against the husband awarding maintenance to the wife notwithstanding that she was living apart and that since the passing of such decree or order, cohabitation between the parties has not been resumed for one year or upwards; or

(iv) That her marriage (whether consummated or not) was solemnized before she attained the age of fifteen years and she has repudiated the marriage after attaining that age but before attaining the age of eighteen years.

*Explanation:*This clause applies whether the marriage was solemnized before or after the commencement of the Marriage Laws (Amendment) Act 1976.

1. *Corresponding law:* This section corresponds to s. 27 of the Special Marriage Act 1954, s. 10 of the Divorce Act 1869 and s. 32 of the Parsi Marriage and Divorce Act 1936.
2. *Object and scope:* The object of this section is to specify the grounds on which a decree for divorce may be obtained by a party to the marriage. This Act is the first Central legislative interference in the customary law of divorce among Hindus. It provides for the grounds of divorce. This section has two parts, the first part dealing with the right of divorce by either party to the marriage, and the second part dealing with the right of divorce by the wife only. The first part of this section places both the husband and the wife on equal footing so far as the right of divorce is concerned. The second part places the wife in a privileged position for the purpose of divorce. The ground of divorce as specified in sub-secs. (1) and (3) of s. 13 are identical to those of judicial separation under s. 10 of the Act. Thus, s. 10(1) and sub-secs. (1) and (2) of s. 13 stand on the same and one legal platform.

The Act protects the customary divorce which is outside its scope and not dealt with in specific terms. This will be evident from the provision of s. 29(2) of the Act. It is enough for the exception in s. 29(2) of the Act to operate to prove that there has been as a fact such a customary divorce or dissolution of a Hindu marriage. It is necessary for the parties to such a divorce or dissolution of the Hindu marriage to go again before the court under s. 10 or s. 13 of the Act and obtain sanction of the court in order that this divorce or dissolution may be rendered valid. The words "Nothing contained in this Act shall be deemed to affect any right" in s. 29(2) of the Act clearly indicate the limited scope of s. 13 of the Act, limited in sense that it will not override the provisions in special enactments conferring right to obtain dissolution of the Hindu marriage.

In P.C. Prema vs A.P. Sreekumar the Supreme Court held that the marriage between the parties was rightly under s.7 of the Madras Marumakkathayam Act 1933 and the husband was directed to pay rupees one lakh as ex gratia compensation to the wife.

Lord Denning in Landmarks in the Laws has observed: There is no longer any binding knot for marriage. There is only a loose piece of string which the parties can untie at will. Divorce is not a stigma. It has become respectable. One-parent families abound".

THE CONCEPT OF DIVORCE UNDER MUSLIM LAW

Firm union of the husband and wife is a necessary condition for a happy family life. Islam therefore, insists upon the subsistence of a marriage and prescribes that breach of marriage contract should be avoided. Initially no marriage is contracted to be dissolved but in unfortunate circumstances the matrimonial contract is broken. One of the ways of such dissolution is by way of divorce. Under Muslim law the divorce may take place by the act of the parties themselves or by a decree of the court of law. However in whatever manner the divorce is effected it has not been regarded as a rule of life. In Islam, divorce is considered as an exception to the status of marriage. The Prophet declared that among the things which have been permitted by law, divorce is the worst. Divorce being an evil, it must be avoided as far as possible. But in some occasions this evil becomes a necessity, because when it is impossible for the parties to the marriage to carry on their union with mutual affection and love then it is better to allow them to get separated than compel them to live together in an atmosphere of hatred and disaffection. The basis of divorce in Islamic law is the inability of the spouses to live together rather than any specific cause (or guilt of a party) on account of which the parties cannot live together. A divorce may be either by the act of the husband or by the act of the wife. There are several modes of divorce under the Muslim law, which will be discussed hereafter.

Modes of Divorce: A husband may divorce his wife by repudiating the marriage without giving any reason. Pronouncement of such words which signify his intention to disown the wife is sufficient. Generally this done by talaaq. But he may also divorce by Ila, and Zihar which differ from talaaq only in form, not in substance. A wife cannot divorce her husband of her own accord. She can divorce the husband only when the husband has delegated such a right to her or under an agreement. Under an agreement the wife may divorce her husband either by Khula or Mubarat. Before 1939, a Muslim wife had no right to seek divorce except on the ground of false charges of adultery, insanity or impotency of the husband. But the Dissolution of Muslim Marriages Act 1939 lays down several other grounds on the basis of which a Muslim wife may get her divorce decree passed by the order of the court.

There are two categories of divorce under the Muslim law:

1. Extra judicial divorce, and
2. Judicial divorce

The category of extra judicial divorce can be further subdivided into three types, namely:

- By husband- talaaq, ila, and zihar.
- By wife- talaaq-i-tafweez, lian.
- By mutual agreement- khula and mubarat.

The second category is the right of the wife to give divorce under the Dissolution of Muslim Marriages Act 1939.

Talaaq: Talaaq in its primitive sense means dismission. In its literal meaning, it means “setting free”, “letting loose”, or taking off any “ties or restraint”. In

Muslim Law it means freedom from the bondage of marriage and not from any other bondage. In legal sense it means dissolution of marriage by husband using appropriate words. In other words talaaq is repudiation of marriage by the husband in accordance with the procedure laid down by the law. The following verse is in support of the husband's authority to pronounce unilateral divorce is often cited: "Men are maintainers of women, because Allah has made some of them to excel others and because they spend out of their property (on their maintenance and dower). When the husband exercises his right to pronounce divorce, technically this is known as talaaq. The most remarkable feature of Muslim law of talaaq is that all the schools of the Sunnis and the Shias recognize it differing only in some details. In Muslim world, so widespread has been the talaaq that even the Imams practiced it. The absolute power of a Muslim husband of divorcing his wife unilaterally, without assigning any reason, literally at his whim, even in a jest or in a state of intoxication, and without recourse to the court, and even in the absence of the wife, is recognized in modern India. All that is necessary is that the husband should pronounce talaaq; how he does it, when he does it, or in what he does it is not very essential. In Hannefa v. Pathummal, Khalid, J., termed this as "monstrosity". Among the Sunnis, talaaq may be express, implied, contingent constructive or even delegated. The Shias recognize only the express and the delegated forms of talaaq.

Conditions for a valid talaaq:

1. *Capacity:* Every Muslim husband of sound mind, who has attained the age of puberty, is competent to pronounce talaaq. It is not necessary for him to give any reason for his pronouncement. A husband who is minor or of unsound mind cannot pronounce it. Talaaq by a minor or of a person of unsound mind is void and ineffective. However, if a husband is lunatic then talaaq pronounced by him during "lucid interval" is valid. The guardian cannot pronounce talaaq on behalf of a minor husband. When insane husband has no guardian, the Qazi or a judge has the right to dissolve the marriage in the interest of such a husband.
2. *Free Consent:* Except under Hanafi law, the consent of the husband in pronouncing talaaq must be a free consent. Under Hanafi law, a talaaq, pronounced under compulsion, coercion, undue influence, fraud and voluntary intoxication etc., is valid and dissolves the marriage.
    a. *Involuntary intoxication:* Talaaq pronounced under forced or involuntary intoxication is void even under the Hanafi law.
    b. *Shia law:* Under the Shia law (and also under other schools of Sunnis) a talaaq pronounced under compulsion, coercion, undue influence, fraud, or voluntary intoxication is void and ineffective.
3. *Formalities:* According to Sunni law, a talaaq, may be oral or in writing. It may be simply uttered by the husband or he may write a Talaaqnama. No specific formula or use of any particular word is required to constitute a valid talaaq. Any expression which clearly indicates the husband's desire to break the marriage is sufficient. It need not be made in the presence of the witnesses.

According to Shias, talaaq, must be pronounced orally, except where the husband is unable to speak. If the husband can speak but gives it in writing, the talaaq, is void under Shia law. Here talaaq must be pronounced in the presence of two witnesses.

4. *Express words:* The words of talaaq must clearly indicate the husband's intention to dissolve the marriage. If the pronouncement is not express and is ambiguous then it is absolutely necessary to prove that the husband clearly intends to dissolve the marriage.

EXPRESS TALAAQ (BY HUSBAND)

When clear and unequivocal words, such as "I have divorced thee" are uttered, the divorce is express.

The express talaaq, falls into two categories:

- Talaaq-i-sunnat,
- Talaaq-i-biddat.

Talaaq-i-sunnat has two forms:

- Talaaq-i-ahasan (Most approved)
- Talaaq-i-hasan (Less approved).

Talaaq-i-sunnat is considered to be in accordance with the dictats of Prophet Mohammad.

The ahasan talaaq: consists of a single pronouncement of divorce made in the period of tuhr (purity, between two menstruations), or at any time, if the wife is free from menstruation, followed by abstinence from sexual intercourse during the period if iddat. The requirement that the pronouncement be made during a period of tuhr applies only to oral divorce and does not apply to talaaq in writing. Similarly, this requirement is not applicable when the wife has passed the age of menstruation or the parties have been away from each other for a long time, or when the marriage has not been consummated.

The advantage of this form is that divorce can revoked at any time before the completion of the period of iddat, thus hasty, thoughtless divorce can be prevented. The revocation may effected expressly or impliedly. Thus, if before the completion of iddat, the husband resumes cohabitation with his wife or says "I have retained thee" the divorce is revoked. Resumption of sexual intercourse before the completion of period of iddat also results in the revocation of divorce. The Raad-ul-Muhtar puts it thus: "It is proper and right to observe this form, for human nature is apt to be mislead and to lead astray the mind far to perceive faults which may not exist and to commit mistakes of which one is certain to feel ashamed afterwards"

The hasan talaaq: In this the husband is required to pronounce the formula of talaaq three time during three successive tuhrs. If the wife has crossed the age of menstruation, the pronouncement of it may be made after the interval of a month or thirty days between the successive pronouncements. When the last pronouncement is made, the talaaq, becomes final and irrevocable. It is necessary that each of the three pronouncements should be made at a time when no

intercourse has taken place during the period of tuhr. Example: W, a wife, is having her period of purity and no sexual intercourse has taken place. At this time, her husband, H, pronounces talaaq, on her. This is the first pronouncement by express words. Then again, when she enters the next period of purity, and before he indulges in sexual intercourse, he makes the second pronouncement. He again revokes it. Again when the wife enters her third period of purity and before any intercourse takes place H pronounces the third pronouncement. The moment H makes this third pronouncement, the marriage stands dissolved irrevocably, irrespective of iddat.

Talaaq-i-Biddat: It came into vogue during the second century of Islam. It has two forms: (i) the triple declaration of talaaq made in a period of purity, either in one sentence or in three, (ii) the other form constitutes a single irrevocable pronouncement of divorce made in a period of tuhr or even otherwise. This type of talaaq is not recognized by the Shias. This form of divorce is condemned. It is considered heretical, because of its irrevocability.

Ila: Besides talaaq, a Muslim husband can repudiate his marriage by two other modes, that are, Ila and Zihar. They are called constructive divorce. In Ila, the husband takes an oath not to have sexual intercourse with his wife. Followed by this oath, there is no consummation for a period of four months. After the expiry of the fourth month, the marriage dissolves irrevocably. But if the husband resumes cohabitation within four months, Ila is cancelled and the marriage does not dissolve.

Under Ithna Asharia (Shia) School, Ila, does not operate as divorce without order of the court of law. After the expiry of the fourth month, the wife is simply entitled for a judicial divorce. If there is no cohabitation, even after expiry of four months, the wife may file a suit for restitution of conjugal rights against the husband.

Zihar: In this mode the husband compares his wife with a woman within his prohibited relationship *e.g.*, mother or sister etc. The husband would say that from today the wife is like his mother or sister. After such a comparison the husband does not cohabit with his wife for a period of four months. Upon the expiry of the said period Zihar is complete.

After the expiry of fourth month the wife has following rights:

(i) She may go to the court to get a decree of judicial divorce
(ii) She may ask the court to grant the decree of restitution of conjugal rights.

Where the husband wants to revoke Zihar by resuming cohabitation within the said period, the wife cannot seek judicial divorce.

It can be revoked if:

(i) The husband observes fast for a period of two months, or,
(ii) He provides food at least sixty people, or,
(iii) He frees a slave.

According to Shia law Zihar must be performed in the presence of two witnesses.

DIVORCE BY MUTUAL AGREEMENT

Khula and Mubarat: They are two forms of divorce by mutual consent but in either of them, the wife has to part with her dower or a part of some other property. A verse in the Holy Quran runs as: "And it not lawful for you that ye take from women out of that which ye have given them: except (in the case) when both fear that they may not be able to keep within the limits (imposed by Allah), in that case it is no sin for either of them if the woman ransom herself."

The word khula, in its original sense means "to draw" or "dig up" or "to take off" such as taking off one's clothes or garments. It is said that the spouses are like clothes to each other and when they take khula each takes off his or her clothes, *i.e.*, they get rid of each other. In law it is said is said to signify an agreement between the spouses for dissolving a connubial union in lieu of compensation paid by the wife to her husband out of her property. Although consideration for Khula is essential, the actual release of the dower or delivery of property constituting the consideration is not a condition precedent for the validity of the khula. Once the husband gives his consent, it results in an irrevocable divorce. The husband has no power of cancelling the 'khul' on the ground that the consideration has not been paid. The consideration can be anything, usually it is mahr, the whole or part of it. But it may be any property though not illusory. In mubarat, the outstanding feature is that both the parties desire divorce. Thus, the proposal may emanate from either side. In mubarat both, the husband and the wife, are happy to get rid of each other. Among the Sunnis when the parties to marriage enter into a mubarat all mutual rights and obligations come to an end. The Shia law is stringent though. It requires that both the parties must bona fide find the marital relationship to be irksome and cumbersome. Among the Sunnis no specific form is laid down, but the Shias insist on a proper form. The Shias insist that the word mubarat should be followed by the word talaaq, otherwise no divorce would result. They also insist that the pronouncement must be in Arabic unless the parties are incapable of pronouncing the Arabic words. Intention to dissolve the marriage should be clearly expressed. Among both, Shias and Sunnis, mubarat is irrevocable. Other requirements are the same as in khula and the wife must undergo the period of iddat and in both the divorce is essentially an act of the parties, and no intervention by the court is required.

Divorce by Wife

The divorce by wife can be categorized under three categories:

(i) Talaaq-i-tafweez
(ii) Lian
(iii) By Dissolution of Muslim Marriages Act 1939.

Talaaq-i-tafweez or delegated divorce is recognized among both, the Shias and the Sunnis. The Muslim husband is free to delegate his power of pronouncing divorce to his wife or any other person. He may delegate the power absolutely or conditionally, temporarily or permanently. A permanent delegation of power

is revocable but a temporary delegation of power is not. This delegation must be made distinctly in favour of the person to whom the power is delegated, and the purpose of delegation must be clearly stated. The power of talaaq may be delegated to his wife and as Faizee observes, "this form of delegated divorce is perhaps the most potent weapon in the hands of a Muslim wife to obtain freedom without the intervention of any court and is now beginning to be fairly common in India".

This form of delegated divorce is usually stipulated in prenuptial agreements. In Md. Khan v. Shahmai, under a prenuptial agreement, a husband, who was a Khana Damad, undertook to pay certain amount of marriage expenses incurred by the father-in-law in the event of his leaving the house and conferred a power to pronounce divorce on his wife. The husband left his father-in-law's house without paying the amount. The wife exercised the right and divorced herself. It was held that it was a valid divorce in the exercise of the power delegated to her. Delegation of power may be made even in the post marriage agreements. Thus where under an agreement it is stipulated that in the event of the husband failing to pay her maintenance or taking a second wife, the will have a right of pronouncing divorce on herself, such an agreement is valid, and such conditions are reasonable and not against public policy. It should be noted that even in the event of contingency, whether or not the power is to be exercised, depend upon the wife she may choose to exercise it or she may not. The happening of the event of contingency does not result in automatic divorce.

Lian: If the husband levels false charges of unchastity or adultery against his wife then this amounts to character assassination and the wife has got the right to ask for divorce on these grounds. Such a mode of divorce is called Lian.

However, it is only a voluntary and aggressive charge of adultery made by the husband which, if false, would entitle the wife to get the wife to get the decree of divorce on the ground of Lian. Where a wife hurts the feelings of her husband with her behaviour and the husband hits back an allegation of infidelity against her, then what the husband says in response to the bad behaviour of the wife, cannot be used by the wife as a false charge of adultery and no divorce is to be granted under Lian. This was held in the case of Nurjahan v. Kazim Ali by the Calcutta High Court.

Dissolution of Muslim Marriages Act 1939

Qazi Mohammad Ahmad Kazmi had introduced a bill in the Legislature regarding the issue on 17th April 1936. It however became law on 17th March 1939 and thus stood the Dissolution of Muslim Marriages Act 1939.

Section 2 of the Act runs thereunder:

A woman married under Muslim law shall be entitled to obtain a decree for divorce for the dissolution of her marriage on any one or more of the following grounds, namely:

- *That the whereabouts of the husband have not been known for a period of four years:* If the husband is missing for a period of four years the

wife may file a petition for the dissolution of her marriage. The husband is deemed to be missing if the wife or any such person, who is expected to have knowledge of the husband, is unable to locate the husband. Section 3 provides that where a wife files petition for divorce under this ground, she is required to give the names and addresses of all such persons who would have been the legal heirs of the husband upon his death. The court issues notices to all such persons appear before it and to state if they have any knowledge about the missing husband. If nobody knows then the court passes a decree to this effect which becomes effective only after the expiry of six months. If before the expiry, the husband reappears, the court shall set aside the decree and the marriage is not dissolved.

- *That the husband has neglected or has failed to provide for her maintenance for a period of two years:* It is a legal obligation of every husband to maintain his wife, and if he fails to do so, the wife may seek divorce on this ground. A husband may not maintain his wife either because he neglects her or because he has no means to provide her maintenance. In both the cases the result would be the same. The husband's obligation to maintain his wife is subject to wife's own performance of matrimonial obligations. Therefore, if the wife lives separately without any reasonable excuse, she is not entitled to get a judicial divorce on the ground of husband's failure to maintain her because her own conduct disentitles her from maintenance under Muslim law.
- *That the husband has been sentenced to imprisonment for a period of seven years or upwards:* The wife's right of judicial divorce on this ground begins from the date on which the sentence becomes final. Therefore, the decree can be passed in her favour only after the expiry of the date for appeal by the husband or after the appeal by the husband has been dismissed by the final court.
- *That the husband has failed to perform, without reasonable cause, his marital obligations for a period of three years:* The Act does define 'marital obligations of the husband'. There are several marital obligations of the husband under Muslim law. But for the purpose of this clause husband's failure to perform only those conjugal obligations may be taken into account which are not included in any of the clauses of Section 2 of this Act.
- *That the husband was impotent at the time of the marriage and continues to be so:* For getting a decree of divorce on this ground, the wife has to prove that the husband was impotent at the time of the marriage and continues to be impotent till the filing of the suit. Before passing a decree of divorce of divorce on this ground, the court is bound to give to the husband one year to improve his potency provided he makes an application for it. If the husband does not give

such application, the court shall pass the decree without delay. In Gul Mohd. Khan v. Hasina the wife filed a suit for dissolution of marriage on the ground of impotency. The husband made an application before the court seeking an order for proving his potency. The court allowed him to prove his potency.

- *If the husband has been insane for a period of two years or is suffering from leprosy or a virulent veneral disease:* The husband's insanity must be for two or more years immediately preceding the presentation of the suit. But this act does not specify that the unsoundness of mind must be curable or incurable. Leprosy may be white or black or cause the skin to wither away. It may be curable or incurable. Veneral disease is a disease of the sex organs. The Act provides that this disease must be of incurable nature. It may be of any duration. Moreover even if this disease has been infected to the husband by the wife herself, she is entitled to get divorce on this ground.
- That she, having been given in marriage by her father or other guardian before she attained the age of fifteen years, repudiated the marriage before attaining the age of eighteen years, provided that the marriage has not been consummated;
- *That the husband treats her with cruelty, that is to say:*
  - Habitually assaults her or makes her life miserable by cruelty of conduct even if such conduct does not amount to physical illtreatment, or
  - Associates with women of ill-repute or leads an infamous life, or
  - Attempts to force her to lead an immoral life, or
  - Disposes of her property or prevents her exercising her legal rights over it, or
  - Obstructs her in the observance of her religious profession or practice, or
  - If he has more than one wives, does not treat her equitably in accordance with the injunctions of the Holy Quran.

In Syed Ziauddin v. Parvez Sultana, Parvez Sultana was a science graduate and she wanted to take admission in a college for medical studies. She needed money for her studies. Syed Ziaudddin promised to give her money provided she married him. She did. Later she filed for divorce for non-fulfillment of promise on the part of the husband. The court granted her divorce on the ground of cruelty. Thus we see the court's attitude of attributing a wider meaning to the expression cruelty. In Zubaida Begum v. Sardar Shah, a case from Lahore High Court, the husband sold the ornaments of the wife with her consent. It was submitted that the husband's conduct does not amount to cruelty.

In Aboobacker v. Mamu koya, the husband used to compel his wife to put on a sari and see pictures in cinema. The wife refused to do so because according to her beliefs this was against the Islamic way of life. She sought divorce on the

ground of mental cruelty. The Kerela High Court held that the conduct of the husband cannot be regarded as cruelty because mere departure from the standards of suffocating orthodoxy does not constitute un-Islamic behaviour.

In Itwari v. Asghari, the Allahabad High Court observed that Indian Law does not recognize various types of cruelty such as 'Muslim cruelty', 'Hindu cruelty' and so on, and that the test of cruelty is based on universal and humanitarian standards; that is to say, conduct of the husband which would cause such bodily or mental pain as to endanger the wife's safety or health.

Irretrievable Breakdown: Divorce on the basis of irretrievable breakdown of marriage has come into existence in Muslim Law through the judicial interpretation of certain provisions of Muslim law. In 1945 in Umar Bibi v. Md. Din, it was argued that the wife hated her husband so much that she could not possibly live with him and there was total incompatibility of temperaments. On these grounds the court refused to grant a decree of divorce. But twenty five years later in Neo-rbibi v. Pir Bux, again an attempt was made to grant divorce on the ground of irretrievable breakdown of marriage. This time the court granted the divorce. Thus in Muslim law of modern India, there are two breakdown grounds for divorce: (a) non-payment of maintenancy by the husband even if the failure has resulted due to the conduct of the wife, (b) where there is total irreconcilability between the spouses.

DIVORCE UNDER VARIOUS ACTS

Divorce is the legal dissolution of marriage. Since India is a land of varied religious communities having their own marriage laws, the divorce procedure too varies, according to the community of the couple seeking divorce. All Hindus as well as Buddhists, Sikhs and Jains can seek divorce under the Hindu Marriage Act 1955. The Muslim, Christian and Parsi communities, on the other hand, have their own laws governing marriage and divorce. Spouses belonging to different communities and castes can seek divorce under the Special Marriage Act, 1956. There is also the Foreign Marriage Act 1969, governing divorce laws in marriages where either partner belongs to another nationality.

DIVORCE BY MUTUAL CONSENT

Seeking a divorce in India is a long-drawn out legal affair, where the period of prosecution takes a minimum of six months. However, the time and money required to obtain a divorce can be considerably shortened if the couple seeks divorce by mutual consent. In this case, estranged spouses can mutually agree to a settlement and file for a "no-fault divorce" under Section 13B of the Hindu Marriage Act 1955. All marriages which have been solemnized before or after the Marriage Laws (Amendment) Act 1976, are entitled to make use of the provision of divorce by mutual consent. However, for filing for a divorce on this ground, it is necessary for the husband and wife to have lived separately for at least a year.

Procedure for Filing for Divorce

The procedure for seeking a divorce by mutual consent, is initiated by filing a petition, supported by affidavits from both partners, in the district court. Known as the First Motion Petition for Mutual Consent Divorce, this should contain a joint statement by both partners, that due to their irreconciliable differences, they can no longer stay together and should be granted a divorce by the court. After six months, the Second Motion Petition for Mutual Consent Divorce should be filed by the couple and they are required reappear in the court. A gap of six months is given between the two motions, so as to offer the estranged couple adequate time to reconsider their decision of dissolving their marriage. After hearings from the husband and wife, if the judge is satisfied that all the necessary grounds and requirements for the divorce have been met, the couple is granted a mutual divorce decree. Some of the important issues on which the couple should have agreed, in their petition for divorce by mutual consent, are custody of child, alimony to wife, return of dowry items or "streedhan" and litigation expenses.

However, if either party withdraws the divorce petition within 18 months of the filing of the First Motion Petition, the court will initiate an enquiry. And if the concerned party continues to refuse consent to the divorce petition, the court will no longer have the right to grant a divorce decree. But if the divorce petition is not withdrawn within the stipulated 18 months, the court will pass a divorce decree on the basis of mutual consent between both parties.

However, not all estranged couples agree on the desirability, grounds or the conditions of divorce. In such cases, one party files for divorce in the court, but the other contests it. This forms the case for the filing of a contested divorce.

Some of the grounds on which either spouse can file for a divorce in India are:

- Adultery on the part of the spouse of the petitioner, or any other sexual relationship outside marriage.
- Willful desertion or abandonment of the petitioner by the spouse, for a continuous period of two years in India, before the date of the filing for divorce.
- Infliction of physical and/or mental torture on the petitioner by the spouse, which may result in danger to life and health of the former.
- Sexual impotency or inability to perform sexual intercourse by the spouse of the petitioner.
- Insanity or suffering from incurable disease by the spouse of the petitioner.

The actual process of filing for divorce, however, begins with the hiring of a lawyer. The importance of having an efficient lawyer cannot be over-emphasized, if one is to get through the complexities of the legal system in India. So whether a person is filing for divorce or contesting one, he/she should see that the lawyer is not only well-versed with laws related to marriage and divorce under the relevant marriage act, but also has adequate experience in guiding his/her client to the best possible divorce deal from the court.

After the petitioner and his/her lawyer have decided on which grounds to file for divorce, a divorce petition is formally drafted and filed in the relevant court.

The petitioner is required to provide his/her legal representative with photocopies of the following documents:

- Income tax statements for the last 2-3 years
- Details of the petitioner's profession and present remuneration
- Information related to family background of the petitioner
- Details of properties and other assets owned by the petitioner

Here it may be mentioned that it is in the interest of the petitioner, to provide all details of his/her marriage to the lawyer. This will not only include facts related to when and where the petitioner and spouse got married, but also details on how problems cropped up in their marriage and the events that finally led to the petitioner seeking divorce. The more honest the petitioner is with the lawyer, the easier it will be for the latter to present a strong case for his/her client.

After the first petition for divorce has been filed, the petitioner can sign a "vakalatnama" is which a document giving the lawyer the authority to represent the petitioner in court. After the petition has been received by the court, it will send a notice and a copy of the petition to the estranged spouse of the petitioner, asking him/her to appear before the court on a specified date. From here on, the legal process of seeking a contested divorce will take its own course.

Alimony

A divorce is not just a dissolving of a personal relationship. Since marriage is a social institution, its dissolution has far-reaching consequences on the whole family. And these consequences are both emotional and financial. The worst sufferers of divorce are women, who are not only find themselves bereft of the means to acquire basic necessities like food, clothing and shelter, but are also left to take care of the children from a broken marriage. To protect their interests, the Indian legal system has consistently tried to better the financial situation of women, by provisions of alimony.

Alimony is the financial support that a spouse is required to provide an estranged partner during and after a divorce. Alimony is usually granted to women, since they are traditionally homemakers, and thus find it difficult to support themselves and their children after a divorce. However, due to the concept of equality of the sexes and with increasingly economic independence of women, alimony can now be sought by either spouse, depending on the particular financial condition of each.

Some of the factors which determine whether alimony is to be paid, how much and for how long are:

- Current financial support. Alimony is generally not granted by the court to the seeking party if the latter is already receiving financial support, during the time of the divorce.

- Duration of marriage. The quantum and duration of alimony depends on how long the couple had been married before filing for divorce. Spouses who have been married for more than ten years, for instance, may be granted lifelong alimony.
- Age of the recipient. Often the alimony granted to a younger spouse is for a shorter tenure, if the court thinks that the recipient can eventually become financially sound, with career advancement.
- Financial position of either spouse. If the divorce takes place between two parties with unequal resources, the higher-earning spouse is generally asked to pay a substantial amount as alimony, in order to equalize the financial condition of the spouses. Similarly, a spouse with very profitable financial prospects is usually asked to cough up the alimony amount.
- Health of spouse. If the seeker is in poor health, the court usually orders the other spouse to pay a high alimony to take care of the former's health care expenses.
- Respective marriage laws. The terms and conditions of alimony, also vary from one personal law to another. Thus, whether and how much alimony the seeker will be granted, will depend upon the laws according to which he/she got married.
- Maintenance by public body. In exceptional conditions, the court can direct that the seeker be paid maintenance after divorce, by a public body.
- While in the Western countries, alimony is an obligation ordered by the court to the financially stronger spouse, in India it is not yet an absolute right of the seeker. Rather the awarding of alimony, its amount and duration are determined by the financial position and family circumstances of the respective spouses.
- Child custody. Another aspect of divorce which leads to a great deal of emotional trauma and legal complication, is child custody. This is because divorce entails the breakdown of the entire family. The child is not only separated from one of the parents, but may also lose other siblings and the wider extended family. The Hindu Marriage Act 1955, has exhaustive laws related to child custody and child support. If the child is below five years, the custody is unanimously awarded to the mother. In case of older children, the custody of a girl child is generally given to the mother, and that of the boy child to the father. Visitation right is an important aspect of child custody, which specifies how frequently of the estranged parent can meet his/her children.
- Child support is intricately linked to child custody, since it is most practical for the parent taking care of the child, to receive financial support for bringing up the child. In an overwhelming majority of divorce cases, it is the mother who is entitled to child support, since she is the primary caretaker of the child or children post-divorce.

However, like alimony rights, child custody and support are also of subject to respective marriage laws of the estranged couple. In case of divorce by mutual consent, the parents should to take the help of a lawyer in order to thrash out the details of child custody and child support. In cases of contested divorce, on the other hand, the receiving parent is best advised to make a strong claim for child support, under the guidance of her lawyer. Finally, it is up to the court to specify the amount and duration of child support, where the divorce is being contested.

NRI Divorce

While the procedure of getting a divorce in India is protracted enough, the situation gets further complicated if the marriage involves one or both non-resident Indians. The Indian legal system does not have very exhaustive divorce laws for marriages with or among non-resident Indians. However if a couple has got married in India under the Hindu Marriage Act 1955, the partners can file for divorce by mutual consent, like other Indians residing in the country.

If both the spouses are residing in a foreign country, Indian law will recognize their divorce according to the laws of that country, only if it is by mutual consent. Even when the divorce is taking place abroad, it is always better to hire a lawyer who is aware of Indian divorce laws relating to non-resident Indians.

The whole procedure of going through a divorce in India is fraught with emotional, social and legal complexities. Besides being an exceedingly traumatic personal experience, partners, especially women, going through divorce face discrimination from their communities and even their families. Moreover, the long drawn-out litigation creates pressure on already stretched resources. However, there are several state agencies as well non-government organizations, which offer legal and emotional counselling and sometimes even financial aid, for spouses going through divorce. The important thing is to keep one's courage through it all and continue to fight for one's own well being.

DISCRIMINATORY PROVISIONS IN CHRISTIAN DIVORCE LAWS

Article 15 of the Indian Constitution forbids any form of discrimination on the grounds of religion or sex but the grounds for divorce as enacted in the 1869 Act were discriminatory to Christian women. Till the Indian Divorce (Amendment) Act was enacted in 2001, Christians were governed by the Indian Divorce Act, 1869. Reforms in Christian personal law became evident through the enactment of the Indian Divorce (Amendment) Act 2001.

INDIAN DIVORCE LAWS: LANDMARK JUDGEMENT IN AMMINI'S CASE

Indian divorce laws are comprehensive as it regulates the provisions relating to filing and obtaining divorces. A landmark judgement was delivered by Justice

Ramakrishnan in Ammini EJ v Union of India(AIR 1995 Kerala 252). Justice Ramakrishnan stated that provisions like section 10 of the Indian Divorce Act of 1869 in any other laws that regulate divorces among other communities. Section 10 reads as follows: 10. When husband may petition for dissolution. Any husband may present a petition to the District Court or to the High Court, praying that his marriage may be dissolved on the ground that his wife has, since the solemnization thereof, been guilty of adultery.

INDIAN DIVORCE LAWS: WHEN WIFE MAY PETITION FOR DISSOLUTION

When wife may petition for dissolution.- Any wife may present a petition to the District Court or to the High Court, praying that her marriage may be dissolved on the ground that, since the solemnization thereof, her husband has exchanged his profession of Christianity for the profession of some other religion, and gone through a form of marriage with another woman:

- Or has been guilty of incestuous adultery,
- Or of bigamy with adultery,
- Or of marriage with another woman with adultery, or of rape, sodomy or bestiality,
- Or of adultery coupled with such cruelty as without adultery would have entitled her to a divorce amensa et toro, or of adultery coupled with desertion, without reasonable excuse, for two years or upwards.

Indian Divorce Laws: Discriminatory Provisions Violate Article 21, Indian Constitution

Justice Ramakrishnan observed that a deserted Christian wife who was unable to secure divorce was tormented by a 'tyrannical and authoritarian law' that violated her right to live with 'dignity' and 'liberty' as enshrined in Article 21 of the Indian constitution. Further, the Kerala High Court held that such discriminatory grounds for divorce were unconstitutional. What does this judgement mean for the Christian woman? Let's find out.

ENABLING JUSTICE TO CHRISTIAN WOMEN IN INDIA – THE ISSUE OF DIVORCE

The Government of India declared the year of 2001 as the Year of Women Empowerment and aptly so, in the context of three important Bills placed before the Parliament dealing with rights of women. The Bills are: Marriage Laws (Amendment) Bill, 2001, Indian Divorce (Amendment) Bill, 2001 and Code of Criminal Procedure (Amendment) Bill, 2001. Presently we are concerned with the Indian Divorce (Amendment) Bill, which was an endeavor to bring about gender justice among the Christian community in India in matters of divorce and matrimonial causes. It was enacted into an Act on 24th September 2001 when it received the President's assent and came into force on 3rd October 2001.

The Indian Divorce (Amendment) Act, 2001 is a very substantial amendment. The parent Act *i.e.* The Indian Divorce Act was legislated in the year 1869 and this was the exact replica of the English Matrimonial Causes Act, 1857. England itself repealed that Act in the year 1923 because it had several provisions that were discriminatory for women, but it is only after 132 years of its inception that amendment has been made to this particular law in India.

For the Christian women in this country, the Act marks indeed a step forward. Compared to most other communities, the Christian women have had much higher literacy rates and there has been much more of awareness and enlightenment. Yet, if we look at the laws governing marriage and divorce among Christian women, we find that they are still 150 years behind our time. Women, particularly from the Christian community, had to wait since Independence till now, even for those laws which the British Parliament had amended as far as their own situation was concerned, to get it amended here in India.

INDIAN DIVORCE ACT, 1869

There are rights that emanate from the divorce law, like the rights of custody relating to property, rights relating to marital status and rights relating to amount of maintenance. An effort was made to make sure that the rights, as far as possible, are in consonance with the Constitutional guarantees of equality and human dignity. Therefore the Indian Divorce Act has now been so developed so as to be in consonance with the Constitutional guarantees of equality and dignity. A look at the impugned provisions of the Act would give a comprehensive outlook. Background of the Act: Christians in India belong to three different traditions *i.e.* (i) Roman Catholics, (ii) Protestants who are the followers of Church of South India (CSI) and Church of North India (CNI), and (iii) Syrian Christians, who are the followers of Greek Orthodox Churches. Apart from these, there are large numbers of Christians among various tribes in the North East region whose customs and traditions are protected by the Constitution. Among the three traditions, only the Roman Catholic Church considers marriage to be a sacrament and subscribes to the doctrine of indissolubility of marriage. The other two Churches namely the Protestant Churches as well as the Orthodox Churches do not have doctrinaire objection to divorce. The early Christian Church (the Eastern Orthodox Church of Syria, Greece etc.) permitted divorce. The theory of indissolubility was evolved later. By 12th century, the Roman Church formulated the Canon law regulating marriages and divorce among Christians in Europe. During the industrial era, the Protestant Reformists broke away from the Roman Catholic traditions. The French Revolution led to the separation of State and Church in France. In 1800 the French Civil Code (Napolean Code) changed marriages from a sacramental status to dissoluble contracts. The doctrine of separation of State and Church and marriages as dissoluble contracts spread all over Europe.

Exhibit I: Evolution of Indian Divorce Act Act, 1869.

Divorce Act in England Canon law The English Matrimonial Causes Act, 1857 The Indian Divorce Act, 1829 The Indian Divorce (Amendment) Bill, 2000 The

Indian Divorce (Amendment) Act, 2001 Canon law The English Matrimonial Causes Act, 1857 The Matrimonial Causes Act, 1923 The Matrimonial Causes Act, 1937 Divorce Reform Act, 1969 Matrimonial Causes Act, 1973.

Following this tradition, in 1857 the matrimonial jurisdiction was transferred from the Ecclesiastical Courts (Church Courts) to Civil Courts (High Courts) and marriages were construed as dissoluble contracts. Limited grounds of dissolving marriages were provided under the Statute for the first time under English Law. Prior to that, a divorce could only be obtained through an Act of Parliament, a procedure which was extremely expensive rendering divorces outside the reach of the commoners.

The English Matrimonial Causes Act, 1857 had been amended in England as early as 1923 by the Matrimonial Causes Act, 1923 putting the husband and the wife on equal footing by making adultery an independent ground of divorce for both the parties. The Matrimonial Causes Act, 1937 added three new independent grounds of divorce *i.e.* desertion, cruelty and insanity and thereby became progressive. Divorce Reform Act, 1969, was thereafter enacted which made irretrievable breakdown of marriage to be the sole ground of divorce. This is replaced by Matrimonial Causes Act, 1973.

The grounds provided in Matrimonial Causes Act, 1937 have been incorporated into analogous Acts governing divorce in India except Indian Divorce Act, 1869. Thus, the Indian Divorce Act, 1869 has not kept pace with the provisions of similar enactments relating to divorce in other communities, which are far more progressive in character. The Act even has not been alive to the amendments made in its parent Act *i.e.* Matrimonial Causes Act, 1857.

Sections 10, 17 and 20 of the Indian Divorce Act, 1869 are most contentious and have made the said Act evidently anachronistic, antiquated and discriminatory contrary to the provisions of the Constitution. Let us have a look at the aforesaid provisions.

Section 10 of the Act provides for the grounds on which spouses belonging to Christian community can sue for dissolution of marriage. In accordance with the provisions contained in the section, the male spouse is entitled to dissolution of marriage on the ground of adultery simpliciter on the part of female spouse but the female spouse is not so entitled unless some other matrimonial fault is also found to be superadded to the adultery which are as below:-

(i) Incestuous adultery;
(ii) Bigamy with adultery;
(iii) Marriage with another women with adultery;
(iv) Adultery coupled with cruelty; and
(v) Adultery coupled with desertion without reasonable excuse, for two years or upwards.

Thus discrimination between the Christian female and male spouses in seeking divorce is writ large as grounds available to female spouses are onerous and, thus, violative of constitutional provisions enshrined in Articles 14 and 15 of the Constitution.

Leaving aside adultery simpliciter, cruelty and desertion without reasonable excuse, for two years or upwards are also not independent grounds of seeking divorce a vinculo matrimonii (a total divorce releasing both the party wholly dissolving the marriage by releasing from their matrimonial obligations) for the female spouses. However, the female spouse is entitled to divorce a mensa et thoro (a partial qualified divorce by which the parties are separated and forbidden to live or cohabit together without affecting the marriage itself) under section 22 of the Act. In other words, the grounds of adultery simpliciter, cruelty and desertion entail a Christian female spouse under the Act only a judicial separation (*i.e.* separation from bed and board) and not divorce proper.

It is evident that Section 10 of the Act makes a distinction between the husband and the wife in the matter of grounds on which they could obtain dissolution of marriage. The grounds of dissolution of marriage, which are available to a wife, are entirely different. The grounds available to a husband are different. Under Section 17, unlike in other personal laws, the District Judge is entitled to grant a decree for dissolution of marriage or divorce. In this case, the decree requires to be confirmed by a full Bench of the High Court.

So, members of the Christian community not only had to wait for a very long time but also had to spend money to go to the High Court. Three judges of the High Court would constitute the full Bench, and it is only after the full Bench confirmed the decree that dissolution of marriage could have been granted.

Section 20 of the Act relates to confirmation of decree of nullity of marriage by a District Judge. Every decree of nullity of marriage made by a District Judge shall be subject to confirmation by the High Court.

The provision contained in section 22 of the Indian Divorce Act, 1869 discriminates Christian female spouses married in church vis-à-vis female spouses of other religions and Christian female spouse married under the Special Marriage Act and the Foreign Marriage Act and thus violative of Article 15 of the Constitution.

Section 34 of the Act enabled the husband to make the adulterer and the wife as co-respondents in a petition for dissolution of marriage and claim damages from the adulterer. Section 35 enables the husband to claim even the costs of the litigation from the alleged adulterer. There is no similar provision for the wife.

Section 36 of the Act provided that an amount not exceeding one-fifth of the property is to be given to the divorced woman as maintenance. This is ridiculous in the present day context when prices soar towards the sky with each passing day. The grant of maintenance should be dependent on the status and the needs of the wife and the status of the husband and vice-versa.

Section 39 provides that in case the wife has an allegation of adultery against her, she loses her property in favour of the husband or the children. There is no corresponding provision that the husband would lose it. When a man filed a case for divorce on the ground of adultery and won the case, then, all the property of the woman, whatever she had, automatically went to the husband. But when

a woman filed a case for divorce on grounds of adultery and got divorce, she did not get any property of the husband transferred to her. This is again gender discrimination. This provision has been omitted under the amended Act.

Sec. 55 provides that there shall be no appeal from a decree of a District Judge for dissolution of marriage or of nullity of marriage or from the order the High Court confirming or refusing to confirm such decree.

The Law Commission's Efforts

The religious hierarchy and also the Government of India realized the need for reforming the colonial laws relating to marriage and divorce of persons professing Christianity and, accordingly, took steps by making a reference to the Law Commission for revision of those laws in the year 1958.

The Commission prepared a unified legislation to repeal the existing Acts governing the subject of marriage and divorce amongst Christian and a unified Bill, namely, the Christian Marriage and Matrimonial Causes Bill, 1961 was appended for introduction in Parliament. The Government, however, at that time wanted the Law Commission to elicit public opinion on the Bill. Subsequently, the Christian Marriage and Matrimonial Causes Bill, 1962 was introduced in the Lok Sabha but the Bill could not come up for discussion in Lok Sabha and lapsed on the dissolution of Third Lok Sabha. The Government did not reintroduce the Bill due to strong opposition from certain quarters of Christian community.

The Law Commission headed by Mr. Justice K.K. Mathew suo moto took up the issue and had pointed out that section 10 of the Act is violative of Articles 14 and 15 of the Constitution and held the view that amendment to section 10 was a constitutional imperative. It recommended that the Parliament may enact a comprehensive law governing marriage, divorce and other allied aspects of the Christians. The Commission, while relying upon observations/judgements of various High Courts, had also urged the Government to take immediate measures to amend sections 10, 17 and 20 of the Indian Divorce Act, 1869. The Committee on Status of Women in India in its Report submitted in 1974 had also suggested amending the Act on the lines suggested by the Law Commission.

However, the Government did not find a congenial atmosphere in view of the situation that arose in view of the judgement in Supreme Court in Shah Banu's case and in view of its avowed policy not to interfere in the personal laws of the minority community unless the necessary initiative for the changes came from the communities concerned. Nevertheless, by the joint efforts of the Churches and the Joint Women's Programme, a draft-unified legislation called the Christian Marriage Bill, 2000 was prepared. No consensus was arrived at on some provisions of the Bill though there was no opposition for the amendments to sections 10, 17 and 20 of the Indian Divorce Act, 1869.

Some of the suggestions made by the Christian community regarding amendments to be made to the Act were:

- Section 7 of the Act to be amended. It provided that English Law constituted as precedents for the purpose of this law.

- Wanted Church courts as parallel courts to be empowered in relation to grant of dissolution of marriages. However, that has not been accepted as it is only the courts constituted under the Constitution and law, which have the legal authority, and the courts constituted by the religions organizations are not formally recognized as far as the Indian law is concerned.
- To create a provision for dissolution of marriage by mutual consent.
- The upper limit of ₹ 500 as maintenance provided under the Criminal Procedure Code be increased keeping in view the standard of living of the claimants.
- The period when the spouses should be living apart for judicial separation was felt to be experimented as two years.
- The civil court can call for the records of the Church courts when parties approach them and verify them and decide on the merits of the case. This would reduce unnecessary delay. In George Sebastian v. Molly Joseph, the Court held that a Christian marriage can be dissolved by only decree of the Court passed under this Act and Ecclesiastical Tribunal have no jurisdiction to pass a decree of divorce.

The Law Commission of India in its Fifteenth, Twenty-second, Ninetieth and One Hundred and Sixty-fourth Reports vociferously voiced the opinion that the Indian Divorce Act has to be amended so as to live up to the Constitutional guarantees provided to its citizens.

Interpretation by Courts – Initiatives for Amendments

The most contentious issue of the Act was Section 10, which clouted of discrimination based merely on the ground of sex. The Act provided for adultery simpliciter to the male as a ground for dissolution of marriage whereas the Christian female was required to prove adultery along with additional grounds of cruelty or desertion etc. It took the concerted efforts of the Courts as well as the Christian community, apart from the active role of the Law Commission, over the years to bring about a change in this matter.

The Supreme Court and various High Courts especially Kerala, Andhra Pradesh, Madhya Pradesh, Bombay and Calcutta in their judicial pronouncements have held the view that the amendments to the sections 10, 17 and 20 of the Indian Divorce Act, 1869 are constitutionally imperative. The courts have held that these provisions, which gave different grounds to both the husband and wife, were discriminatory, smacked of gender bias and, therefore, they considered it necessary that the vacuum created by striking them out had to be filled up again.

The initial reaction of the courts with regard to the discriminatory nature of the Act and its feasibility in the changing context of personal laws was reluctant. The courts opined that it was the Legislature's domain to make laws and that the remedy does not lie with the Courts. It would be pertinent to quote Lord Denning at this juncture: "When a defect appears a Judge cannot simply fold

his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of the Parliament. …and then he must supplement the written word so as to give "force and life" to the intention of the legislature…. A judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out. He must then do as they would have done. A Judge must not alter the material of which the Act is woven, but he can and should iron out the creases."

Section 10 of the Act was challenged before the Madras High Court way back in the year 1953. It was in Jorden Deindeh vs. Chopra, that the Supreme Court suggested a complete reform of the law of marriage and also the inclusion of mutual consent and irretrievable breakdown of marriage as grounds for divorce.

The Court observed that "..it would appear that endeavor on the part of Courts, just as those of the Law Commission and the society in general and the Christian society in particular, have failed to stimulate the legislature in bringing about amendments in 'the Act' so as to uplift the plight of Christian woman which is found demeaning in no small measure." The Court pointed out that though the Indian Penal Code was amended by inserting Sec. 498-A which makes 'cruelty to wives' an offence, ironically the same is not made a ground of divorce for the Christian women. The denial of right of divorce has been held violative of Article 21. In Ammini Joseph vs. Union of India, the court held that Section 10 is violative of Article 21 of the Constitution.

In Mary Sonia Zachariah v. Union of India and Ors, the Court followed the principle that to remove the arbitrariness or unconstitutionality of a provision of law, it can be done by severing the offending portion and saving the beneficial portion. Thus, the Court struck down the offending portions of Section 10 of the Act which rendered it arbitrary and violative of the fundamental rights and retained the beneficial portion.

The provision was challenged by Christian women as violative of Articles 14, 15, 19 and 21 of the Constitution. It was contended that where under other religions women were given independent grounds for divorce, Christians had to prove adultery in addition to cruelty or desertion. The Court observed: "If in the case of spouses belonging to all other religion and even among Christians under certain circumstances, dissolution of marriages is permissible on the grounds of desertion and/or cruelty without proving adultery it will be too harsh, unfair and unjust not to allow such a right of dissolution of Christians governed by the Act alone.

Whatever may be the conditions which existed in 1869 when the Act was enacted and which might have justified the incorporation of such provisions in the Act, it will be difficult to find any justifiable reason in support of the impugned provisions in the light of the provisions in Chapter III of the Constitution guaranteeing various fundamental rights especially Arts. 14, 15 and 21 incorporated". The differentiation provided between the husband and wife with regard to the grounds for dissolution of the marriage was condemned by the

Court. The Court passed an interim order directing the Government of India to take a decision within 6 months on the recommendations made by the Law Commission for amending the Act.

Pragati Varghese vs. Cyril George Varghese is a landmark judgement on this issue wherein a Full Bench of the Bombay High Court held that gender discrimination was the cause for the different treatment accorded to Christian women.

The contentions raised in this case were:

- Section 10 of the Act is archaic and adversely discriminate wives as against husbands merely on ground of sex and also as against wives of other religion and is, therefore violative of Art. 14 and 15 of the Constitution.
- Section 17 and 20 of the Act providing for requirement of confirmation of decrees for dissolution or nullity of marriages are anachronistic and only prolong the agony of the parties to the petition.
- The legal effect of Section 10 is to compel wives who are cruelly treated or are deserted to continue to live as the wife of a man she hates. Such a life will be a sub-human life without dignity and personal liberty and is therefore, violative of Article 21 of the Constitution.
- Under section 22, Christian spouses are not entitled to dissolution of marriage on grounds of adultery, cruelty or desertion but are entitled only to a judicial separation which has the effect of a divorce a mensa et thoro *i.e.* separation only from bed and board whereunder matrimonial bonds continue to sustain. The situation under other personal laws is not as stringent and spouses get the relief of divorce on proving any of the grounds which are independent of other.

The Full Bench has gone at length in considering the various judicial pronouncements on the subject and observed that directions have been issued by Courts to the legislature to bring about suitable amendments to the discriminatory provisions. InSwapna Ghosh v. Sadananda Ghosh, the Calcutta High Court held: "…it is difficult to understand as to why this provision shall not be held to be discriminatory on the ground of sex alone and thus to be ultra vires Article 15 of the Constitution."

It went on further to hold discrimination based on religion as against the Constitutional provisions. "…Time has also come for a reappraisal and reconsideration of the other anachronistic incongruities fundamental and discriminatory in nature manifest not only in procedure but in substantial core provisions of such Act."

The Full Bench in Pragati's case, on the need to introduce 'mutual consent as a ground for divorce' referred to the observation made by Justice Chinnappa Reddy which is as follows: "The history of matrimony in the past has been a movement from ritual and sacrament to reality and contract. ….But the World is still a man's world and the laws are man-made laws, very much so …. divorce by mutual consent should be available to every married couple, whatever religion

they may profess and however, they were married. Let no law compel the union of man and woman who have agreed on separation. If they so desire to be two, why should the law insist that they be one?"

The Court in the above case finally held that the discrimination meted out to the wife, is wholly unreasonable. It held the impugned provisions as ultravires the Act and violative of Articles 14, 15 and 21 of the Constitution. The Court upheld the contention that the offending part of the provisions be severed keeping the beneficial part intact. Thus, the modified section now allows the Christian woman to seek independent grounds for dissolution of marriage. In Sarada Mani v. G. Alexander and Anr, equal grounds for dissolution of marriage were sought to be given to the wife and husband. The Court while referring to the discrimination between grounds available to husband and wife, held that Parliament should immediately take note of the said anomaly and fill in the void by suitable legislation. In this case the petitioner (wife) filed a petition for divorce on the ground that her husband, the respondent was living in adultery with the co-respondent, that he was subjecting her to physical abuse and threats to kill her. The respondent-husband denied that he treated the petitioner with cruelty and counter attacked by saying that it was his wife who has deserted him. The District Judge granted divorce on ground of irretrievable breakdown of marriage and the same came up for the confirmation by the High Court as per the requirement under the Act. The Court observed that there were certain anomalies in the Act in as much it provided different grounds to the husband and wife for dissolution of marriage. Where it provides onerous grounds for a wife to get a divorce, it provides only a single ground for a husband. The Court held thus: "Discrimination is writ large if the situation continues in a manner like this. Therefore, the situation certainly calls for remedial measures if possible without transgressing the well-established principles of statutory interpretation... So long a new legislation does not come to occupy the field, the grounds available to the husband shall be available to husband as well.

In Binoy Mathew's casethe Court held thus: "We feel that it is high time that the provisions regarding confirmation under Secs 17 and 20 of the Indian Divorce Act, 1869 are deleted from the Statute. …But, unfortunately during the last 40 years no step is seen taken to amend the Act by the Parliament by deleting these provisions...We direct the registry to forward a copy of this judgement to the Ministry of Law and Justice, Union of India, the Law Secretary, State of Kerala and also the Chairman,Law Commission of India. "

The Court held a similar view in P. E. Matthew v. Union of Indiais a case on Section 17 of the Indian Divorce Act which requires the confirmation of the High Court of a decree of dissolution of marriage granted by the District Court. It was contended that this provision violates Articles 13, 14, 15 and 21 of the Constitution. The confirmation of a decree for dissolution of marriage by the High Court applies only to the Christians and people of no other religion are faced with this situation. Further that the parties' right to liberty is being curtailed by having to wait till their decree for dissolution of marriage is confirmed and

thereby violative of Art. 21. In this case, the Court held that Section 17 prolongs the agony of the affected parties even though none of the parties is desirous of preferring an appeal. Thus there is no justification for continuation of this procedure especially when no such procedure is prescribed by the other Acts dealing with the dissolution of marriages, namely, Special Marriage Act, 1954 and Hindu Marriage Act, 1955. There is an urgent need for making suitable amendments in the Act. In this light, the High Court directed the Government of Kerala to bring an amendment on the lines of Uttar Pradesh amendment as such an amendment is necessary and expedient. It was held that the subject of marriage and divorce being an entry in the Concurrent List under the Indian Constitution is capable of being amended by the State legislatures if the local situation prevailing in the particular State necessitates such amendment.

The efforts of the Courts of the country, as evident has been no less than any other factor in bringing about the change in the law relating to divorce among Christians and indeed is praiseworthy. Ultimately the Act in its amended form was billed in the Parliament and later enacted in the year 2001.

6

Women, Crime, and Legal Regulation

Crime is that form of deviance that involves an infraction of the criminal law. Not all laws are 'criminal'. Lawyers recognize civil law, constitutional law, and various other categories of legal norm. Civil law, for example, concerns relations among private individuals, such as the contractual relations involved in such areas as employment relations and consumer purchasing.

A person who breaks a contract by, say, unfairly dismissing someone from her or his job or failing to supply goods that are 'fit for their purpose' has infringed the civil law, and action can be taken only by the particular individual affected. The police have no right to become involved, and a completely separate system of courts is involved in hearing any civil case. The outcome of a successful civil case is some kind of 'restitution', such as financial compensation or 'damages'.

The criminal law, by contrast, consists of those legal norms that have been established by the state as a public responsibility, and which the police and the criminal courts have been designated to enforce. Someone who infringes the criminal law can be arrested, charged, and tried at public expense and, if found guilty, will be subject to repressive or punitive penalties such as a fine or imprisonment. The criminal law of a society can cover a wide range of actions.

In Britain, for example, it covers such acts as driving above the legal speed limit, stealing a car, breaking into a house, possessing certain drugs, forging a signature on a cheque, murdering someone, and arson. Penalties attached to these offences range from small fines for speeding to life imprisonment for murder, and, until 1998, execution for treason. The crimes that are most visible or that are perceived to be the most threatening are not necessarily those that have the greatest impact in real terms.

In practice, many minor crimes are normalized: few people report cases of speeding or dropping litter, and the police may often choose to disregard such offences. A different picture emerges, however, from the British Crime Survey, which draws its evidence from a sample survey of the general public.

This survey of victims and potential victims showed a fall in the amount of crime between 1995 and 2005. The peak in 1995, but crime had fallen by 44 per cent by 2005. Both vehicle crime and burglary fell by over a half, while violent crime fell by 43 per cent. The chances of being a victim of crime fell from 40 per cent in 1995 to 24 per cent in 2005. This is the lowest level since 1981. Young men, however, are far more likely to be a victim of crime, while relatively few of those aged over 65 have been victims.

People's attitudes, however, reflected the official statistics and their reporting in the media, with 61 per cent of people believing that crime had risen in the country as a whole. Government policy on minor crime and delinquency in Britain has recently centred around the issue of 'anti-social behaviour' and the 'respect' agenda that emerged during the 2005 general election campaign.

The 'respect' agenda is based on the idea that the low-level criminality and nuisance behaviour that upsets people on a day-to-day basis—petty vandalism, rudeness, drunkenness—should be dealt with through local communities themselves, by inculcating a climate of respect towards other people's property. Improving discipline in schools, for example, is seen as a way of establishing such control. This is seem as an extension of an earlier policy of controlling more serious petty criminality through the issuing of Anti-social Behaviour Orders.

These are orders issued by a civil court, rather than a criminal court, prohibiting a person from specific acts of concern to complainants. Although these are civil court orders, a breach of an ASBO is a criminal offence and can bring the offender under legal control. Public concern over crime relates mainly to theft and violence, which are regarded as being serious enough to warrant sustained attention from the police. This concern, reflected in periodic moral panics, tends to ensure that many of those who are involved in theft and criminal violence do so as a form of secondary deviation.

As a result, many of them develop a criminal identity. In this part as suggested, look at forms of professional and career crime and at those normalized forms of crime commonly called white-collar crime. As suggested, also look at the gendered nature of criminal activity, in relation both to the undertaking of criminal acts and to becoming the victim of crime.

UNDERSTANDING DEVIANCE AND CONTROL AGAINST WOMEN

Deviance is nonconformity to social norms or expectations. For many people, the word 'deviance' is used only in relation to moral, religious, or political norms. The 'deviant' is seen as someone whose behaviour departs from normal moral standards or who deviates from a political or religious orthodoxy. The

sociological concept of deviance, however, takes a broader point of view and recognizes that there can be deviation from social norms of all kinds.

Along with sexual deviants, political deviants, and religious deviants must be counted those whose behaviour runs counter to legal or customary norms more generally—criminals, the mentally ill, alcoholics, and many others. What makes these people deviant is the fact that their behaviour seems to run counter to the norms of a social group. It is this that the homosexual, the prostitute, the child molester, the schizophrenic, the suicide, the radical, the heretic, the Ecstasy user, and the burglar all have in common.

All of them seem to engage in behaviour that is not seen as normal in their society. No form of behaviour is deviant in and of itself. To judge behaviour as deviant is to judge it from the standpoint of the norms of a particular social group.

The defining statement for the sociological study of deviance is Becker's justly famous claim that:

- Social groups create deviance by making the rules whose infraction constitutes deviance, and by applying these rules to particular people and labelling them as outsiders. From this point of view, deviance is not a quality of the act the person commits, but rather a consequence of the application by others of rules and sanctions to an 'offender'. The deviant is one to whom that label has successfully been applied; deviant behaviour is behaviour that people so label.

Even where there is a consensus over standards of behaviour within a society, these standards may change over time. What was formerly considered as normal, conformist behaviour may come to be seen as deviant. High levels of consensus are uncommon, and it is more typical for there to be rival definitions of normality and deviance within a society. In these circumstances, conformity to the expectations of one group may mean deviating from the expectations of another. Revolutionary terrorists, for example, may be regarded as deviants from the standpoint of established social groups, but they are seen very differently by members of their own political movement.

In all these contested situations, it is the views of the powerful that prevail, as they have the ability to make their views count. This insight is particularly associated with a so-called labelling theory of deviance that is closely linked to symbolic interactionism. This point of view, it is the fact of being labelled as a deviant by the members of a powerful or dominant social group that makes an action deviant. This is why ethnic minorities are in many societies treated as deviant groups if they are seen as violating the normal customs and practices of the majority ethnic group.

Similarly, those women who depart from what is seen as normal female behaviour by, say, entering what are regarded as male occupations, might be regarded as deviant by many men and by some other women. Whether the behaviour of a person is deviant depends upon whose values are taken as being the basis for determining what is to count as normal or conformist behaviour. In this part as suggested, look at a number of forms of deviance.

As suggested, look at the formation of deviant identities through interaction between deviants and the agents of social control. As suggested, show that what is deviant in one context may be conformist in another, and that the critical element is the social reaction that labels behaviour one way or another. Having discussed some of the features that are common to all forms of deviance, drug use and abuse, and sexual difference.

BIOLOGY AND DEVIANCE

In the past, but also in some more recent discussions, the social dimension of deviance has often been ignored. Deviant behaviour has been seen in purely individual terms and as something to be explained by biology. From this point of view, all 'normal' individuals conform to social expectations, and so those who differ must have something wrong with them.

A deviant body is seen as explaining a deviant mind and deviant behaviour. Such a claim ignores the fact that no behaviour—except, perhaps, purely automatic reflexes such as blinking in bright sunlight—can be seen independently of the meanings that it carries and the social contexts in which it occurs.

EVOLUTION, RACE, AND DEVIANCE

For many writers on difference and deviance in the nineteenth century, and still for some today, biology provides the key to explaining human behaviour. Nineteenthcentury evolutionary theory led to the widespread acceptance of the idea that there was a 'great chain of being', an evolutionary hierarchy of species that connected humans to apes and to the lower animals.

The supposed racial divisions of the human species were all accorded their place in this evolutionary hierarchy. It was widely believed that individuals 'recapitulate' the evolution of their species in their own biological development. They go through various animal-like stages in their foetal development and during their later development outside the womb. Particular races, it was held, had developed only to the particular level that was allowed by their biology: the white races had developed the furthest, while the black races showed an inferior development.

White children, for example, were seen as having reached the same stage of evolution as black adults, who had not developed beyond these more 'childlike' characteristics and forms of behaviour. These assumptions underpinned contemporary views of deviance. The nineteenth-century English doctor John Down, for example, classified various forms of mental disability in terms of the 'lower' races to which their characteristics corresponded.

He argued that some 'idiots' were of the 'Ethiopian' variety, some of the 'Malay' or 'American' type, and others of the 'Mongolian' type. His special study of the genetics of the latter group meant that those with Down's syndrome were, for many years, known as 'Mongols'—a derogatory label that continued to be very widely used until the 1970s. Each society tends to see its own members

as being the highest, most-evolved exemplar of the human species. The Japanese, for example, saw themselves as being at the pinnacle of evolution and civilization, and their term for Down's syndrome was 'Englishism'.

The most notorious of these evolutionary approaches to deviant behaviour was the theory of crime set out by Cesare Lombroso, who held that many criminals had been born with 'atavistic' features. Criminals had definite biological failings that prevented them from developing to a fully human level. They showed, perhaps, certain apelike characteristics, or sometimes merely 'savage' features that gave them the distinct anatomical characteristics from which they could easily be identified: large jaws, long arms, thick skulls, and so on.

These atavistic features, Lombroso argued, also led them to prefer forms of behaviour that are normal among apes and savages, but are criminal in human societies. These criminal tendencies were apparent, Lombroso claimed, in their other 'degenerate' personal characteristics: the criminal, he believed, is idle, has a love of tattooing, and engages in orgies. Lombroso claimed that about 40 per cent of all criminals were 'born criminals' of this kind.

They were driven into criminality by their biology. Other law-breakers were simply occasional, circumstantial offenders and did not have the 'atavistic' characteristics of the born criminal. The excesses of Lombroso's theory and the racial assumptions that underpinned it have long been discarded. However, many people still see criminality as resulting from innate characteristics.

Violence and aggression, for example, are often seen not only as specifically male characteristics, but in their extreme forms as being due to genetic peculiarities. It has been proposed, for example, that many violent criminals have an extra Y chromosome in their cells. Some have suggested that rape can be explained as a consequence of normal, genetically determined male behaviour. In the 1990s, the success of the Human Genome Project led to many strong claims about the genetic basis of crime.

The idea of the born criminal was supported in a report that 'Pimping and petty theft appear to be genetically conditioned but a person's genes have little influence on their propensity for committing crimes of violence'. Violence was reported to be due to a 'mild brain dysfunction in early life', and it was claimed that improved standards of health care for pregnant women could reduce violent crime by over 20 per cent. The link between biology and social behaviour is not this straightforward.

While there may, indeed, be a biological basis to violent behaviour—and the matter is still hotly debated—the ways in which this is expressed and the consequences that flow from it depend upon the meanings that are attached to it and the particular social situations in which it occurs. The behaviour of a soldier in time of war involves violence that is channelled into disciplined action against a national enemy. This violence is condoned and encouraged, and it may even be rewarded as heroism or bravery.

The behaviour of someone at a football match who attacks a member of the opposing team's supporters involves far less violence, but it is likely to be

condemned and denounced as hooliganism that must be stamped out. No biological explanation of violence can explain why one act is that of a hero and the other is that of a villain. Of course, this is not to make the absurd claim that it is only the social reaction that differs between the two cases. The point is that, while some people may have a disposition towards violent behaviour, a biological explanation can, at best, explain the disposition.

It cannot explain when and how that disposition is expressed in social action, or is inhibited from expression. Nor can it explain the reactions of others to violence. An explanation of deviance must refer to the processes of socialization through which people learn to give meaning to their behaviour and to the processes of discipline and regulation through which some people come to be identified as deviants and to be processed in particular ways by a system of social control.

SOCIAL REACTION AND DEVIANCE

There are three levels of explanation in the study of deviant behaviour. A first level of explanation is concerned with the existence of the many different forms of human behaviour that occur in any society. Biology may contribute towards an explanation of this diversity, but it can never provide the whole explanation. It is always necessary to take account of processes of socialization.

A second level of explanation is concerned with the variation in norms between social groups, as manifested particularly in cultural and subcultural differences. Socialization takes place within particular social groups, and it is the norms of these groups that provide the standards for the identification of particular kinds of behaviour as deviant.

The third, and final, level of explanation is concerned with the ways in which particular individuals are identified as deviants by others and so come to develop a deviant identity. This is a matter of social reaction and control. In the rest of this part as suggested, outline some of the general processes that are involved in deviance and control and the processes that are common to a range of deviant and conformist identities.

You may like to read this through fairly quickly, not worrying about all the details, and then go on to the discussion of specific forms of deviance in the following parts. When you have read one or two of these parts, return to this general discussion of deviance and control and try to work through its details.

PRIMARY AND SECONDARY DEVIATION

Two key concepts in the study of deviance are primary deviation and secondary deviation, which were first systematized by Lemert. Primary deviation is the object of the first two levels of explanation that we identified higher than. It is behaviour that runs counter to the normative expectations of a group, and is recognized as deviant behaviour by its members, but which is ‘normalized’ by them. That is to say, it is tolerated or indulged as an allowable or permissible departure from what is normally expected.

It is ignored or treated in a low-key way that defines it as an exceptional, atypical, or insignificant aberration on the part of an otherwise normal person. The normalization of the deviant behaviour defines it as something that is marginal to the identity of the deviator.

Many justifications for the normalization of deviant behaviour are employed: A man is seen as aggressive because he is 'under stress' at work, a woman behaves oddly because it is 'that time of the month', a child is being naughty because he or she is 'overtired', an elderly woman steals from a supermarket because she is 'confused', a middleaged man exposes himself in public because he has a 'blackout' and 'did not know what came over him', and so on. What Lemert calls secondary deviation, or deviance proper, is the object of our third level of explanation.

It arises when the perceived deviation is no longer normalized and is, instead, stigmatized or punished in some way. The social reaction and its consequences become central elements in the deviator's day-to-day experiences and it shapes future actions. When public opinion, lawenforcement agencies or administrative controls exercised by the welfare and other official agencies react in an overt and punitive way, their reaction labels the person as a deviant of some kind. This labelling stigmatizes the behaviour and the person, who must now try to cope with the consequences of the stigma. Stigmatization may involve the rejection, degradation, exclusion, incarceration, or coercion of the deviant, who becomes the object of treatment, punishment, or conversion. Those who are stigmatized find that their lives and identities come to be organized around their deviance.

They may even come to see themselves as a deviant—as a 'thief ', as 'mentally ill', and so on—taking on many of the stigmatizing attributes of the popular and official images. Even if the deviator rejects this identity, the fact that he or she is identified in this way by others becomes an important factor in determining future behaviour.

The development of secondary deviation may, initially, involve an acceptance of the negative, stigmatizing stereotypes that others hold of the deviant. Deviants may often, however, be able to construct a more positive image of their deviance and build an identity around a rejection of the stigma.

They accept the label, but, instead of merely reflecting back the public stereotype, they construct an alternative view that reflects their own experiences and those of people like them. They construct accounts—narratives—of their coming to be the kind of people that they are, and these narratives become central features of the construction and reconstruction of their identity. In much the same way that the Black Power movement constructed more positive images of black identity, so such movements as Gay Pride have led to the construction of positive images of homosexuality. Not all deviance results from the conversion of primary deviation into secondary deviation through an external social reaction.

Deviators may, for example, escape the attention of those who would label them, remaining 'secret deviants'. Such people may, nevertheless, move into

secondary deviation precisely because of their attempts to keep their deviant behaviour secret. By anticipating the reactions of others, they begin to act towards themselves in terms of the stigmatized deviant identity, even if they do not embrace this identity themselves. The man who engages in homosexual acts in private, for example, may become drawn into association with other gay people because the risks of his inadvertent exposure as gay in other social situations are too great. There is also the possibility of false accusation. Someone who has not violated expectations may, nevertheless, be labelled as a deviant and processed accordingly.

Such people will experience many of the same consequences as those who have been correctly labelled. Although they may feel a sense of injustice about their wrongful accusation, they may, as a result of their experience of stigmatization, come to act in ways that are quite indistinguishable from other deviants. Such highly publicized cases of wrongful imprisonment for terrorist bombings as those of the Birmingham Six and the Guildford Four highlight the more general situation of false accusation that is apparent in, for example, the child who is wrongly punished by a teacher for cheating or the political dissidents in the Soviet Union who were officially designated as mentally ill.

Primary deviation that is not normalized does not always result in secondary deviation or commitment to a deviant identity. Many people drift in and out of deviant behaviour without being committed to it at all. Because they are not committed to their deviant acts—they do not see them as a fundamental expression of their identity—they are able to abandon them whenever they choose, or when the circumstances are not right.

Conversely, of course, they may feel able—though not required—to deviate whenever the opportunity and the inclination are present. Drift, then, is an important aspect of the structuring of deviant behaviour. Matza suggests, for example, that juvenile delinquency rarely becomes a matter of secondary deviation, precisely because juveniles drift back and forth between deviant and conformist behaviour without ever becoming committed to delinquency as a way of life.

Many of those who become involved in crime do not embrace a deviant identity—they do not see themselves as criminals, burglars, or housebreakers. Rather, they see their involvement in criminal activities as an aspect of the larger social situation in which they find themselves. They may, for example, be long-term unemployed, in serious financial hardship, and faced with the opportunity of illegal gain.

Such people drift into crime for situational reasons, and become secondary deviants only if they are unable to drift out again. Certain opportunities may be denied to them, while other courses of action become easier. They become secondary deviants if the whole structure of interests within which they act—the advantages and disadvantages, rewards and punishments—tend to force them into continued deviance. Those who have been imprisoned for theft or burglary, for example, may experience restricted employment and promotion

opportunities in the outside world that make it difficult for them to abandon their criminal life and to enter or re-enter conventional occupations. Where people do take on a deviant identity, however, their behaviour will be shaped by commitment as well as constraint. Those who have become committed to a deviant identity will be committed to a whole range of behaviours that are associated with that identity. These ways of behaving will seem more 'natural' to them than any others, and they will identify with the behaviours as much as with the label itself. Commitment and constraint generally operate together: a firmly committed deviant is more likely to face disadvantaged opportunities, and a tightly constrained deviant is more likely to feel a sense of difference from others. If their circumstances change, and these constraints alter, they may find it possible to drift out of crime once more.

DEVIANT ROLES AND CAREERS

Where deviance has become a central feature of a person's identity and way of life, it can take the form of role deviance. In this situation, a person's activities become organized into a distinct and recognizable social role to which particular normative expectations are attached. The deviant is expected to act in deviant ways: conformity to these particular role expectations confirms the person's deviant identity! Until recently, male homosexuals, for example, were widely expected to exhibit their deviance by behaving in 'effeminate' ways, and one who conformed to these expectations had adopted the public, stereotyped homosexual role.

Deviant roles, like conformist roles, often have a career structure. This is particularly likely where the role is defined within a group of deviants, rather than by public stereotypes alone. Where the deviant role involves a particular sequence of events and experiences that are common for all its occupants, role deviance becomes what has been called career deviance. This may be highly formalized, paralleling the kinds of career structures that are found in conventional occupations. Full-time thieves, for example, may be members of teams who make their living from their deviance and that have their own internal structures of leadership, reward, and 'promotion'.

When organized as career deviance, the deviant role is likely also to involve what Goffman has called a moral career. This term describes the internal or personal aspects of a career, the specific sequence of learning experiences and changes in conceptions of self and identity that occur as people follow their deviant career. It is a process through which people come to terms with their stigma and their commitment to a deviant identity. With each phase of the public career associated with the role, its occupants must reconsider their past in an attempt to make sense of their new experiences.

They single out and elaborate, with the benefit of hindsight, those experiences that they believe can account for and legitimate their present situation. This is a continuous process in which their personal biography—their life story—is constantly constructed and reconstructed in the light of their changing circumstances.

DEVIANT GROUPS AND COMMUNITIES

Career deviants are especially likely to become involved with groups that support and sustain their identities and that help them to come to terms with the constrained opportunities that they face. Gangs and cliques are formed, clubs and pubs are colonized as meeting places, and organizations and agencies are set up to promote shared interests or political goals. With advances in technology, new forms of support and communication become possible. The spread of the telephone allowed people to maintain distant communication far more effectively than was possible through writing letters, and computer technology now allows global communication through the Internet and e-mail. Those who are involved in two or more of these groups will tie them into larger social networks that bond the groups into cohesive and solidaristic communities with a shared sense of identity. Criminal gangs, for example, may be involved in localized networks of recruitment and mutual support, to which individual criminals and juvenile gangs may also be attached.

These networks form those subcultures of crime that comprise an underworld. The subcultures are means through which skills and techniques can be learned and in which criminals can obtain a degree of acceptance and recognition that is denied to them by conventional groups. Goffman has argued that the groups of 'sympathetic others' that form the supportive subcultures of deviance comprise two distinct types of people: the own and the wise. The own are those who share the deviant identity.

They have a common understanding of stigmatization from their personal experiences, and they may be able to help in acquiring the tricks of the trade that allow a deviant to operate more effectively, as well as by providing emotional support and company in which a deviant can feel at home. The own help people to organize a life around their deviance and to cope with many of the disadvantages that they experience.

The wise, on the other hand, are 'normals' who have a particular reason for being in the know about the secret life of the deviants and for being sympathetic towards it. They are accepted by the deviants and are allowed a kind of associate membership in their activities. They are those for whom the deviants do not feel the need to put on a show of normality or deviance disavowal: they can safely engage in back-region activities with them. The wise can include family members and friends, employees, and even some control agents who have day-to-day contact with them.

The own and the wise together form a network of contacts and connections that support deviants in the construction of their narratives of identity. Some of the wise may actively support deviants in sustaining their deviance, though there are limits to the willingness of people to become too closely involved in activities where the stigma of deviance is likely to 'rub off ' on to them. Active support, then, is most likely to come from the own, and this is particularly true where there is a need for representatives to speak or act for their interests and concerns in public.

Such representatives may sometimes become very active and make a living—and a new identity—out of their role as spokespersons for particular deviant groups. They make a 'profession' of their deviance in quite a novel way, perhaps appearing in the press and on radio and television whenever issues of concern are discussed. There are, of course, limits to this. Only certain forms of deviance are allowed to have the legitimacy of their stigmatization debated in public.

Gays and the mentally ill, for example, have active and important organizations that can lobby for their interests, while thieves and burglars do not. Pressure groups on behalf of those involved in serious crime are, for the most part, limited to campaigns for prison reform and are led by the wise and by reformed offenders.

The general account of deviance and control that we have presented must be treated with caution, as all of its elements will not apply equally to every case of deviance and stigmatized identity. It is a general framework that provides the concepts that can sensitize researchers to the specific issues that occur in particular cases. As suggested, illustrate this by considering a number of forms of criminal behaviour.

PROFESSIONAL AND CAREER CRIME

Theft—stealing property belonging to another person—is one of the few forms of crime to have a highly organized character and to offer the chance of a career or profession to those engaged in it. Theft includes burglary, robbery, forgery, confidence tricks, pickpocketing, and numerous other fraudulent activities.

Not all of these are organized as career crime, of course, and not all of those who drift into theft even make the transition from primary deviation to secondary deviation. School children who steal from shops, for example, rarely continue into a career of thieving.

Nevertheless, theft is, indeed, one of the most organized forms of crime. Career crime is nothing new. Mary McIntosh traces it back to the actions of pirates, bandits, brigands, and moral outlaws who often combined criminal with political aims. If the Robin Hood image of the rural outlaw is a rather idealized fiction, it nevertheless grasps an important element in pre-modern theft. With the growth of towns in the early modern period, opportunities for street and house crime became much greater, and there was a growth in the amount of what McIntosh calls craft crime.

This is the small-scale, skilled theft engaged in by pickpockets, cutpurses, and confidence tricksters. These forms of career crime proliferated through the eighteenth and nineteenth centuries and remain an important part of everyday crime. McIntosh traces the origins of what she calls project crime to a later period. This is large-scale robbery and fraud, and became fully established only in the early years of the twentieth century. It has become the predominant form of theft only since the 1950s.

CRIME AND THE UNDERWORLD

Where rural bandits and outlaws were enmeshed in the surrounding social life of the rural communities from which they were drawn, urban craft crime tended to be based in a distinct criminal underworld. The growth of such criminal areas was first reported in the sixteenth century, but it was in the eighteenth and nineteenth centuries that they achieved their fullest development. The criminal underworld of a city such as London comprised various 'rookeries' that formed the dwelling places and meeting places of craft criminals of all kinds. Segregated from the rest of society, the underworlds provided for the security, safety, shared interests, and concerns of the craft thieves. The underworlds were rooted in the surrounding slum districts of the poor working class. Poverty, unemployment, overcrowding in poor physical conditions, and a lack of leisure opportunities other than the pub, were the conditions under which many people drifted into crime and some became confirmed in a criminal career.

An urban underworld formed an occupational community with a subculture that established norms of criminal behaviour, a slang and argot, and an esprit de corps that sustained the shared identity of the thieves. Central to the underworld code was the injunction not to 'squeal', 'squawk', 'grass', or inform on others. Association with other thieves, and a lack of association with the targets of their theft, inhibited any concern for the feelings of the victims of crime. It also meant that thieves could learn from other thieves the techniques and skills that would help them in their own crimes.

In addition, their leisuretime associates formed a pool of partners in crime. They were able to find markets for their stolen goods, and they could attain a degree of protection and insulation from detection and law enforcement. Underworld life, however, has been fundamentally altered by the urban redevelopment of the inner-city areas and the dispersal of population to the suburbs. One of the principal roots of the London underworld had been in the Spitalfields and Cable Street districts of the East End, where there has been much redevelopment.

While certain central pubs and clubs remain important venues for career criminals, much activity is now more dispersed through the city, and the underworld forms an extended social network rather than being confined to a particular physical locale. Even in the 1960s, however, a tradition of craft crime still survived in Spitalfields, and the surrounding district had high levels of crime: there were especially high levels of burglary, violence against the person, gambling, and prostitution. Much crime, however, was 'petty, unsophisticated, unorganized and largely unprofitable—if often squalid and brutal'.

A subculture of crime continues to sustain career crime, which has, however, changed its character. Alongside older forms of craft crime, project crime has become more significant, and this has also helped to transform the structure of the underworld. Where craft theft involved the stealing of small amounts of money from large numbers of people, project crime involves a much smaller number of large thefts. Growing affluence and, in particular, the increasing scale of business

activity have meant that the potential targets of theft have become much bigger. As a result, criminals have had to organize themselves more effectively and on a larger scale if they are to be successful against these targets. Improved safes, alarm systems, and security vans can be handled only by organized teams of specialists: safe-breakers, drivers, gunmen, and so on. Such crimes, organized as one-off projects, require advanced planning and a much higher level of cooperation than is typical for craft crime. Teams for particular projects are recruited through the cliques and connections that comprise the underworld, and these may sometimes be organized on a semi-permanent basis.

The criminal underworld that existed in the East End of London from the Second World War until the 1960s, for example, contained numerous competing gangs that were held together largely by the violent hegemony of the Kray twins and their associates. The east London gangs engaged in violent feuds with their counterparts from the south London underworld, and the leading members of the East End and south London gangs occasionally met on the neutral ground of the West End.

It is through the subculture of crime that people can be socialized into criminal identities, whether as a craft thief or a project thief. The professional thief, like the professional doctor, lawyer, or bricklayer, must develop many technical abilities and skills. He must know how to plan and execute crimes, how to dispose of stolen goods, how to 'fix' the police and the courts, and so on. These skills must be acquired through long education and training, and it is through his involvement in the underworld that the thief can acquire them most effectively. Based on his detailed study of a professional thief, Sutherland has shown how the person who successfully learns and applies these techniques earns high status within the underworld.

The beginning thief, if successful, is gradually admitted into closer and closer contact with other thieves. It is they who can offer him 'better' work and from whom he can learn more advanced skills. Once successful, the thief dresses and behaves in distinct ways and proudly adopts the label 'thief ' in order to distinguish himself from a mere 'amateur', small-time criminal.

As well as gaining respect within the underworld, he may also gain a degree of recognition and respect from police, lawyers, and newspaper crime writers. These people are aware of his activities and have often accommodated themselves to professional crime: apart from the corruption that sometimes occurs, there may also be shared interests in not reacting immediately and punitively towards all crime.

BURGLARY AS A WAY OF LIFE

One of the few contemporary investigations of career theft in Britain is an investigation of domestic burglaries. Burglary is illegal entry into a building with the intent to steal. Domestic burglary was, for a long time, subject to the death penalty, and from 1861 to 1968 it carried a maximum sentence of life imprisonment.

Following the Theft Act of 1968, the maximum penalty has been fourteen years' imprisonment. In practice, only just under a half of convicted burglars have been given custodial sentences. Recognizing the problems involved in assessing rates of crime, Maguire and Bennett concluded that about 60 per cent of all burglaries were committed by a relatively small number of persistent, career criminals.

The remaining 40 per cent were committed by juveniles who had drifted into delinquency and would, for the most part, drift out of it again. Maguire and Bennett interviewed a number of persistent burglars, most of whom were committed to their criminal careers. They had, typically, carried out between 100 and 500 break-ins during their careers. They combined this with involvement in car theft, burglary from commercial premises, and cheque forgery.

They were mainly young, single, and with no dependants. The men described themselves as 'thieves', or simply as 'villains', and they described their crimes as 'work' from which they could earn a living and from which they would eventually retire. Maguire and Bennett are, however, more critical of this self-image than Sutherland had been. In particular, they highlight a number of ways in which the thieves sought to neutralize the moral implications of their actions through self-serving rationalizations.

Thieves claimed, for example, that any distress suffered by the victims was no concern of theirs. They were simply doing a job, carrying on their trade, and this distress was an unavoidable consequence of their routine, professional activities. This claim was further bolstered by the claim that, in any case, they stole only from the well-to-do, who could easily afford it and who were well insured. In fact, many of their victims were relatively poor council house residents who could ill afford to be burgled.

Similarly, the thieves sought to boost their own status by disparaging the amateurism of the majority of 'losers', 'wankers', 'idiots', and 'cowboys' who carried out unsuccessful thefts. However, Maguire and Bennett argue, it is more accurate to see the persistent career thieves as divided into low-level, middle-level, and high-level categories on the basis of the scale of their crimes. Thieves move up and down this hierarchy a great deal over the course of their careers. High-level burglaries are undertaken by thieves who are members of small networks of committed criminals who keep themselves separate from other, small-time criminals. Sometimes they work alone, and sometimes in pairs, but always they keep their principal criminal contacts within their network. Middle-level burglaries are carried out by those who are involved in larger and less exclusive networks of thieves with varying abilities and degrees of commitment. There is less consistent adherence to the code of mutual support, and less effective contacts with receivers of stolen goods and with other specialist criminals.

Finally, low-level burglaries are undertaken by individual thieves with only loose connections to one another and who are indiscriminate in both their criminal connections and their choice of crimes. It is at the lower level that people first enter burglary, as the loose social networks are closely embedded

in the surrounding structure of the local community. In most cases, this is a process of drift by some of those who have previously been involved in juvenile delinquencies.

When describing their careers, however, the thieves minimized the element of drift and presented a self-image of themselves as people who had chosen to enter careers of crime. Those who drift into lower-level burglary and become at all successful may graduate, in due course, to middle-level or high-level burglary through the contacts and connections that they make. Those in the networks carrying out the high-level burglaries were, in a sense, at the pinnacle of the career hierarchy, though Maguire and Bennett show that they are unlikely to be at all involved in large-scale project crimes undertaken by the London gangs.

Their activities are confined to housebreaking, shop-breaking, car theft, shoplifting, and cheque forgery. They have little or no involvement in such specialist crimes as hijacking lorries, bank raids, or embezzlement. Very few burglars—even those at the high level—make a major financial success of their chosen careers, and most spent at least one period in prison. Imprisonment is not, however, a purely negative experience, as it gives the burglar an opportunity to 'widen his circle of criminal acquaintances, learn new techniques and be encouraged to try his hand at more lucrative offences'.

Nevertheless, few burglars continued with burglary beyond their thirties or forties. Most drifted into what they hoped would be safer forms of work. Entry into legal employment is difficult for someone with a criminal record, and few make the transition successfully. Walsh has shown that some burglars are able to combine career crime with a continuing involvement in legitimate employment—typically short-term jobs in the building and construction industry or in other casual work such as catering and cleaning.

It seems likely that some who retire from burglary may be able to continue or to re-enter such casual and temporary work. Career crime has probably never been a completely self-contained, full-time activity. Even in the heyday of the Victorian underworld of the East End, criminal activities were combined with casual labour and street trading, one type of work supplementing the earnings from the other.

Hobbs has shown how the East End has long been organized around an entrepreneurial culture of wheeling and dealing, trading and fixing, that makes no sharp distinction between legal and illegal activities. Theft may, indeed, be career crime, a way of life, but it does not take up all of a thief 's time and cannot usually provide him with a regular or substantial income. Those involved in thieving, then, must combine it with other ways of gaining an income. Casual labour is combined with their own thieving and the performance of the occasional criminal task for other, more successful thieves.

Those who are themselves more successful may be involved as much in trading and dealing as in thieving, and their entrepreneurial activities are likely to range from the legitimate, through various 'shady' deals, to the criminal. The fulltime criminal is not a full-time thief, even if he stresses this aspect of his life

in constructing his own identity. Much thieving is undertaken by those who are in lowpaid or semi-legitimate work or who are unemployed. There is considerable evidence that the growth of the drugs market in the 1980s has sharpened a distinction between the full-time criminal and the mass of ordinary thieves.

The establishment of a large and extensive market in drugs has connected together the criminal networks of London, Manchester, Birmingham, Glasgow, and other large cities.

This has allowed a greater degree of organization to be achieved in the project crimes that sustain drugtrafficking. Those who are involved in this organized crime, however, have highly specialized skills—for example, in relation to VAT fraud—and are very different from those who steal hi-fis and videos from domestic premises.

The significance of the drug market for ordinary thieves is that it offers possibilities for casual and occasional trading in small quantities of drugs that supplement their more established sources of income.

GENDER, ETHNICITY, CLASS, AND CRIME

The public perception of crime concentrates on robbery, burglary, theft, mugging, rape, and other crimes of theft and violence. The popular view sees this crime as male, working-class activity. Professional crime is seen as the work of certain adult males and as expressing conventional notions of masculinity. This point of view does get some support from the criminal statistics, which seem to show the very small number of women who are convicted of criminal offences; 5.9 per cent of all men in 2000 were found guilty or were cautioned for a notifiable offence, compared with 1.2 per cent of women.

It also appears that the kinds of crimes committed by women are less 'serious' than those committed by men. All parts of Britain show that women have very little involvement as offenders in domestic or commercial theft, vehicle theft, or street violence, though they are often, of course, involved in these as victims. They are, however, more heavily involved in shoplifting than are men, prostitution is an almost exclusively female crime, and only women can be convicted of infanticide.

There is some evidence, however, that the number and types of crime committed by women may have altered since the 1960s.

In a similar way to the crimes of women, many middleclass crimes are not generally regarded as 'real' crimes. While there is a great public fear of street violence and domestic burglary, there is relatively little concern about fraudulent business practices, violations of safety legislation, or tax evasion.

While such offences, arguably, have much greater impact on people's lives than does the relatively small risk of theft or violence, they are either invisible to public opinion or are not seen as proper 'crimes'. In this part as suggested, assess the adequacy of these views of crime, exploring aspects of the crimes of women, ethnic minorities, and the affluent.

DISTRIBUTION BY GENDER, ETHNICITY, AND CLASS

The kinds of crimes that are committed by women, like those committed by men, reflect the gender-defined social roles that are available to them. Both men and women are involved in shoplifting, for example, but women are more likely to steal clothes, food, or low-value items. Men are more likely to steal books, electrical goods, or high-value items.

This reflects the conventional domestic expectations that tie women to shopping for basic household goods in supermarkets, while men are able to shop for luxuries and extras. Put simply, both men and women tend to steal the same kinds of items that they buy. Similarly, men are heavily involved in vehicle crimes, including car theft, while women are heavily involved in prostitution. This involvement in prostitution can be seen as an extension of a normal feminine role that allows implicit or explicit bargaining over sex.

This connection between crime and conventional genderroles is particularly clear in the patterns of involvement that women have in offences related to children. Those who are most responsible for childcare are, other things being equal, more likely to be involved in cruelty to children, abandoning children, kidnapping, procuring illegal abortions, and social-security frauds. Theft by women generally involves theft from an employer by those involved in domestic work or shop work.

Even when involved in large-scale theft, women are likely to be acting in association with male family members and to be involved as receivers of stolen goods rather than as thieves. There are, of course, problems in estimating the actual number of offences from the official statistics but the overall pattern is clear. Because women are less likely to be arrested and convicted for certain offences—something that we look at below—the difference between male and female involvement in crime is exaggerated by the official figures.

The differing patterns of offence do, however, exist. Only in the case of sexual offences is the pattern for male and female involvement more equal, the apparent predominance of women resulting from the fact that their sexual behaviour is more likely to be treated in ways that result in conviction. The sexual double standard means that the authorities normalize much male sexual delinquency, but express moral outrage at female sexual delinquency.

As Smart argues:

- None of these types of offences requires particularly 'masculine' attributes. Strength and force are unnecessary and there is only a low level of skill or expertise required. The women involved have not required training in violence, weapons or tools, or in specialised tasks like safe breaking. On the contrary the skills required can be learnt in everyday experience, and socialization into a delinquent subculture or a sophisticated criminal organisation is entirely unnecessary.

There is growing evidence that members of ethnic minorities in Britain have become more heavily involved with the legal system since the 1960s. They are now especially likely to appear as offenders and, more particularly, as victims

of crime and as police suspects. Housebreakings and other household offences show little variation among the various ethnic groups, about one-third of all households being victims of such crime. African Caribbeans, however, are almost twice as likely as whites to be the victims of personal attacks. This is, in part, a consequence of the fact that African Caribbeans live, disproportionately, in inner-city areas where such crimes are particularly likely to take place.

However, their experiences also have a racially motivated character. The growing victimization of black and Asian people reflects a real growth in racial violence and racist attacks by members of the white population. While criminal acts carried out during the urban riots of the 1980s often had a racial aspect to them, blacks and Asians are far more likely to be the targets of racial crimes than they are to commit them. There has, nevertheless, been a growing involvement of young African Caribbeans in many kinds of street crime. The police hold to a widely shared prejudice that African Caribbeans, in particular, are heavily involved in crime and that special efforts need to be taken to control them. Many studies have shown the racism inherent in police actions that stop black people in the street and subject them to closer scrutiny than other members of the population.

African Caribbeans are more likely than whites, and members of other ethnic minorities, to be approached by the police on suspicion, to be prosecuted, and to be sentenced. This is reflected in a growing hostility of ethnic minorities towards the police, who are often seen as racists rather than as neutral defenders of law and order. Offences carried out by men from the middle classes are generally described as white-collar crime. This term originally referred to crimes and civil-law infractions committed by those in non-manual employment as part of their work.

It is now used a little more broadly to refer to three categories of offence:

1. Occupational crimes of the affluent: offences committed by the relatively affluent and prosperous in the course of their legitimate business or profession. Examples are theft from an employer, financial frauds, and insider dealing in investment companies.
2. Organizational crimes: offences committed by organizations and businesses themselves—that is, by employees acting in their official capacities on behalf of the organization. Examples are non-payment or under-payment of VAT or Corporation Tax, and infringements of health and safety legislation leading to accidents or pollution.
3. Any other crimes committed by the relatively affluent that tend to be treated differently from those of the less affluent. An example is tax evasion, which is treated differently from social-security fraud.

The concept of white-collar crime, then, is far from clear-cut. It does, however, help to highlight the class basis of much crime. The number of people involved in whitecollar crimes is barely apparent from the official statistics, as many go unrecorded. Its status as hidden crime, however, is paradoxical in view of its financial significance.

It was estimated that the total cost of reported fraud alone in 1985 was £2,113 million, twice the amount accounted for by reported theft, burglary, and robbery. Official estimates suggest that the actual cost of all fraud in Britain in 2003 was £13,800 million. The relatively low representation of women in recorded crime is the main reason why female criminality has been so little researched. Lombroso and Ferrero set out a deterministic theory, based on the claimed peculiarities of female biology, which still has some influence in the late 1990s.

They held that women were less highly evolved than men and so were relatively 'primitive' in character. They were less involved in crime, however, because their biology predisposed them to a passive and more conservative way of life. They were, however, weak willed, and Lombroso and Ferrero saw the involvement of many women in crime as resulting from their having been led on by others.

The female drift into crime was a consequence of their weak and fickle character. The extreme position set out by Lombroso and Ferrero has long been abandoned, but many criminologists do still resort to biological assumptions when trying to explain female criminality.

Pollak, for example, held that women are naturally manipulative and deceitful, instigating crimes that men undertake. What such theories fail to consider is that, if women do indeed have lower rates of criminality, this may more usefully and accurately be explained in terms of the cultural influences that shape sex–gender roles and the differing opportunities available to men and to women. Like the crimes of women, the crimes of the affluent have been little researched.

Early discussions of white-collar crime were intended as criticisms of the orthodox assumption that criminality was caused by poverty or deprivation. Those who carried out thefts as part of a successful business career, Sutherland argued, could not be seen as acting out of economic necessity. Sutherland's own account stressed that white-collar crime was learned behaviour and that, in this respect, it was no different from other forms of criminality.

All crime, he held, resulted from the effects of 'differential association' on learning: those who interact more frequently with others whose attitudes are favourable to criminal actions are themselves more likely to engage in criminal acts. This implies that patterns of conformity among the affluent and the deprived, among men and among women, are to be understood in the context of their wider role commitments and the interactions in which they are involved with their role partners.

Those who are predisposed to see criminal actions as appropriate will, if the structure of opportunities allows it, drift into crime. There is no need to assume that women are fundamentally different from men, or that the working classes are fundamentally different from the middle classes.

WOMEN AND CRIME

It appears, then, that women, like men, drift into criminal actions whenever the structure of opportunities is such that it seems a reasonable response to their

situation. The particular situations in which they find themselves are determined by the ways in which sex–gender identities are institutionalized in their society, and so their patterns of criminality are gendered.

Cultural stereotypes about men and women, as suggested, show, are also a major influence on the nature of the social reaction to female criminality. The absence of strong punitive responses to most forms of female crime means that the progression from primary to secondary deviation is less likely to occur. Women may drift into crime, but they only rarely pursue criminal careers.

A form of female crime that seems to be the principal exception to this rule is prostitution. In law, a prostitute is someone who sells sex, and this is almost invariably seen as a female offence. Men involved in prostitution, other than as clients, tend to be seen as engaged in acts of 'indecency' rather than of 'soliciting' for prostitution. Under British law, a woman who has been arrested and convicted for soliciting is officially termed a 'common prostitute' and is liable to re-arrest simply for loitering in a public place. As most prostitution is arranged in public, on the streets, it is difficult for women so labelled to avoid the occasional spell in custody.

They may also find it difficult to live a normal life off the streets:

- It is virtually impossible for them to live with a man or even another woman as it is immediately assumed that such people are living off immoral earnings, thereby making themselves vulnerable to a criminal charge. Also, the legal definition of a brothel, as a dwelling containing two or more prostitutes, has made it difficult for two women to live together even where only one is a prostitute.

In 2006 the government in Britain announced its intention to change the law to allow up to three prostitutes to work together without their place of work being defined as a brothel. The reaction of the police is critical in determining whether a woman who breaks the law is defined as a criminal. Police work is structured around the cop culture, a culture that strongly emphasizes masculinity and that underpins the harassment and abuse of female police officers and the derogation of many female offenders.

Prostitutes, for example, are seen as flouting the domesticity of the conventional female role and have been subject to harassment and entrapment. Nevertheless, prostitutes are often able to establish a mutual accommodation with the police, an arrangement in which each can get on with their job with the minimum of interference from the other. When there is pressure on the police to take action, however, such arrangements break down. In these circumstances, prostitutes are highly vulnerable and can be quite susceptible to police persuasion and suggestion. On the other hand, women who conform to conventional role expectations are seen as in need of protection, and cautioning is more widely used for female offenders than it is for males. There is some evidence that this differential treatment of male and female offenders also occurs in the courts.

Sexist assumptions in court practices have led some to suggest that women experience greater leniency than men. Others, however, have suggested that

greater harshness is more likely. Heidensohn correctly points out that this may simply reflect the well-known lack of consistency in sentencing, though she reports evidence that supports the view that women are treated more harshly.

Indeed, Edwards has suggested that women are subjected to much closer scrutiny in courts precisely because the female offender is seen as unusual or unnatural. Women are on trial not only for their offence but for their deviation from conventional femininity. Their punishment or treatment is intended to ensure that they adjust themselves back to what is seen as a natural feminine role. Very few convicted women are given custodial sentences.

Men are two or three times more likely to be imprisoned for an offence than are women, and their sentences tend to be longer. The women who are imprisoned are mainly those who have been convicted of such things as theft, fraud, forgery, or violence. Prisons do make some attempt to recognize that women's domestic commitments are different from those of men, and a number of mother-and-baby units have been set up. Some well-publicized cases have been reported, however, of pregnant prison inmates who have been forced to give birth while manacled to a prison officer. Studies of female prisons in the United States have shown how these prisons are important sources of emotional and practical support for their inmates, often involving the establishment of lesbian family relationships. This appears to be less marked in Britain.

CRIMES OF THE AFFLUENT

The crimes of the affluent, the prosperous, and the powerful can be explained in terms of the same motives as any other criminal act. They differ from 'ordinary' theft and burglary only in terms of their social organization and the social reaction to them. The character and motivation of those involved are no more, and no less, pathological than those of any others who drift into crime. White-collar crimes, however, are much less likely to result in full-time criminal careers.

The nature of the social reaction makes the development into secondary deviation much less likely. Much corporate and occupational crime takes place in the financial services industry, where changing patterns of regulation have created greater opportunities for illicit activities. The British financial system was, for much of the nineteenth and twentieth centuries, regulated in a highly informal way. Recruitment to banks, insurance companies, and other financial enterprises took place through an old-boy network centred on the public schools and the Oxford and Cambridge colleges.

The Stock Exchange, as the central institution in the financial system, was at the heart of this system of informal regulation. The system rested on trust and loyalty: those who had been to school together and shared a similar social background felt that they could trust one another in their business dealings. The motto of the Stock Exchange was 'My word is my bond', and many deals were sealed on the shake of hands rather than with a written contract. During the 1970s the government introduced a number of changes to this system of regulation in response to the growing internationalization of the money markets.

This culminated in the so-called Big Bang of October 1986, when the Stock Exchange was finally opened up to foreign competition. New codes of practice were introduced to reflect the more diverse social backgrounds of those involved in the buying and selling of currency, shares, and commodities. The old system of trust could no longer be relied on, and more formal mechanisms were required. The Bank of England was given greater powers of control and supervision, and in 1997 the Labour government created a new Securities and Investment Board to regulate the whole system.

The offences with which the new system of regulation has had to deal are those that have been made possible by the changing structure of the financial system. The investment management firm of Barlow Clowes, for example, set up new offshore investment funds to provide high returns to its wealthy clients who wanted to minimize their tax bills. The head of the company was found to have financed an extravagant lifestyle at the expense of the investors in the funds.

The growth of domestic takeover business made possible massive fraud by some directors and managers associated with Guinness and its financial advisers in 1986. These directors and managers manipulated share dealings to keep up the price of Guinness shares on the stock market and to help its takeover of another company. Their actions were the subject of an official enquiry and, later, a criminal trial that resulted in some of them being imprisoned. Much white-collar crime is low in visibility.

It tends to occur in the context of normal business routines, and it is less likely to be noticed, even by its victims. Fiddling business expenses, for example, is almost undetectable, and many employers treat it as a source of tax-free perks for their employees. Large-scale fraud, when discovered, is more likely to result in an official reaction, though it will often be hushed up if it might suggest a failure of supervision or control by senior managers. Crimes of the affluent are far more likely to be regulated by specialized enforcement agencies than by the police, and this has important consequences for the nature of the social reaction.

These agencies—the Health and Safety Executive, the Factory Inspectorate, the Inland Revenue, and so on—generally have a remit to maintain and promote high standards of business and trading, and the enforcement of the criminal law is only one part of this remit. Their officials, therefore, develop 'compliance strategies' that stress persuasion and administrative sanctions aimed at crime prevention, rather than the detection and punishment of offences. The level of prosecutions is, therefore, very low. Few cases go to court, and very few result in imprisonment. In these ways, the transition to secondary deviation is avoided.

DOMESTIC VIOLENCE

Physical violence as well as explicit forms of aggression are used by the more powerful in the household as methods to ensure obedience of the less powerful and therefore related to power dynamics in a household. At every stage in the life

cycle, the female body is both the objects of desire and of control. Domestic violence includes not only inter-spousal violence, but also violence perpetrated by other family members. Generally, an important part of the power relationship between spouses and their families relates to dowry and its ramifications. There is a wide societal tolerance for wife-abuse, which is very often even considered justifiable under certain circumstance: Disputes over dowries, a wife's sexual infidelities, her neglect of household duties, and her disobedience of her husband's dictates are all considered legitimate causes for wife-beating.

It is only when the torture becomes unbearable or death appeared imminent that most women appeared willing to speak out. Glass defines domestic violence as "anything that is experienced as fearful, controlling and threatening when used by those with power against those without power. Domestic violence includes, harassment, maltreatment, brutality or cruelty and even the threat of assault - intimidation. It includes physical injury, as well as "wilfully or knowingly placing or attempting to place a spouse in fear of injury and compelling the spouse by force or threat to engage in any conduct or act, sexual or otherwise, from which the spouse has a right to abstain". Confining or detaining the spouse against one's will or damaging property are also considered as acts of violence. Ahuja and Visaria have recently conducted studies on 'domestic violence' within marital relationship. *Domestic violence* has been defined as " all actions by the family against one of its members that threaten the life, body, psychological integrity or liberty of the member.

In identifying factors leading to wife beating, both Visaria and Ahuja, in their survey, have tested the co-relationship between wife beating and education. Illiterate women face more violence than literate women. Relationship between abusive behaviour and level of education has been found to be statistically significant. Illiterate women and those with education up to primary level tend to be more subjected to violence as compared to those who had received education beyond the primary level.

However, one has to keep in mind that the per centage of literate women in Gujarat is overall only between 20% to 50%. In one district, Banas Kantha in Kutch, the total per centage of literate women is even lesser than 20%. In contrast a study by Ahuja shows that there is no significant relationship between beating and educational level of the couple. Educated women are beaten as much by their husbands as those who are illiterate or less educated. About one-fourth of the batterers in Ahuja's study were those who were moderately educated and about one-fourth were highly educated.

However, he added that men whose educational attainment is low, are more likely to beat their wife than men who are better educated. Study findings of Ahuja shows that although women of all ages are victims of wife-battering, a larger number of victims are among those with an age difference of unto 10 years between spouses.

Women who experience domestic violence early in their marriage, continue to be subjected to it even with increase in age. His findings point out that family

structure, the presence or absence of children, and the size of the family have little co-relation with wife battering. The study also points out that family income, husband's occupation and employment of women are not co-related with wife battering.

The forms of violence commonly found by Ahuja were slapping, kicking, tearing hair, pushing and pulling, hitting with an object, attempting to strangulate and threatening. Forms of psychological abuse were also found to exist, for instance, verbal abuse, sarcastic remarks in the presence of outsiders, imposing severe restrictions on freedom of movement, totally ignoring the wife in decision-making processes, making frequent complaints against her to her parents, friends, neighbours, and kin much to the embarrassment of the wife.

Some of the reasons given by the women were financial matters, behaviour with in-laws, back-biting, talking to any male without the liking of the husband, asking for money, preventing him from drinking and husbands personality traits. Some of the worse forms of violence has been reported by Visaria in her study, for instance, beating with sticks or iron rod, knives, utensils, blades and ladles, throwing women against objects or bashing their heads against the walls, burning of breasts and vagina. In addition, sexual assaults in the form of both hitting women in the vagina by kicking or forcing her into sexual intercourse were reported by nearly 10% of the women. Some of the women who had become victim of this form of violence indicated that injury in their private parts cannot be noticed by anyone and they would be too ashamed to talk about it to others.

A couple of women also hinted that men know that their wives cannot report such punishment even to their own parents or seek medical treatment due to a sense of shame. Some of the reasons given by women, in the survey done by Visaria is, meals not served properly, economic constraints, financial matters, men wasting money at tea stalls, drinking of alcohol, men feeling that women are paying less attention to the children and vis-à-vis, men feel women have a lot of free time and so on. One of the main cause why domestic violence prevails and continues is the lack of alternatives among the victims.

Women and children may be economically dependent on abusers. Elderly people and children may feel too powerless to escape. Language or cultural barriers may isolate victims from seeking help. Victims generally feel, it is better to suffer in silence than to be separated from loved ones. They keep hoping for improvement, but it is normally observed that, without help, violence gets worse. Victims may also feel helpless, guilty or worthless.

They may feel ashamed of the poor quality of the relationship. Abusers may fear the consequences of seeking help, unaware that continuing as before may be even more dangerous. Family members may be unaware of the help that is available from the local agencies. They may also be unaware of their legal rights. In India we have no provision for protection of a complainant, not even under the Prevention of Dowry Act. A woman who has complained of harassment goes back to the very people against whom she has complained. What security can she possibly feel in such a situation, and how can she continue to act on her complaint? She obviously

continues to be victimised often paying the ultimate price. Many complainants are faced with eviction from the family home, are cut off without maintenance, and are unable to follow the complaint precisely because they have no means to do so. Frequent, unexplained injuries, reluctance to seek medical treatment for injuries or denial of their existence, fear in the presence of certain family member/s, social isolation, disorientation or grogginess, especially in elders indicating misuse of medication and decline in physical appearance and personal hygiene indicating increased isolation and a lack of desire to continue living are some of the indicators of violence

DOWRY HARASSMENT AND BRIDE BURNING

Dowry is a transfer of property from the bride's family to that of the bridegroom, at the time of marriage. Dowry usually subsumes material gifts and cash paid to the bridegroom and his kin. This practise continues even after marriage. The dowry given at the time of marriage is not the only transaction as far as the daughters marriage is concerned. There is a series of ceremonies associated with the girls in the family.

The practice of giving gifts to the husband's family in cash and kind and rituals connected with pregnancy, childbirth and ceremonies for piercing the ear of the girl and so on. The gifts are no longer a token of affection from parents to the daughter, but instead an elaborate demand from the marital family. The commonest elements of dowry in India include gifts for the bride such as clothes, jewels and other house-hold and luxury goods like a refrigerator and kitchen utensils and so on.

These are ideally treated as the bride's *streedan* and form the nucleus of the conjugal estate. Dowry also includes gifts for the son-in-law and other luxury items like scooter, VCR, VCP, and such other gifts for the bridegrooms' parents and other relatives. Over and above, it includes hard cash paid as contribution towards the marriage expenses.

In some cases, dowry is also paid as compensation for the expenditure incurred on the education and other training of the groom. The bridegroom's parents usually keep this money. Some state that this is kept by the parents as security against the bridegroom staying separately after marriage. The practice was a means of giving gifts to the daughter during the marriage, so that the couple can start a life on their own and to compensate her share of the property, as she is otherwise excluded from inheriting parental property. The Dowry Prohibition Act 1961 was amended in 1984, 1985 and 1986.

Dowry deaths constitute a special category of death that was for the first time defined in a part introduced into the Indian Penal Code In 1986, Section 304 stipulates that death of a woman within seven years of her marriage by burns or bodily injury with evidence of cruelty or harassment by her husband or his relatives in connection with a demand for dowry is 'dowry death' and punishable with imprisonment for not less than seven years. Three years prior to this, Section 498 was introduced in the IPC.

This states that 'any form of cruelty, whether it is from a husband or the relative of a husband, to a woman is an offence that is punishable with imprisonment up to three years'. Cruelty, as defined in this section, includes 'any wilful conduct that could cause mental torture, physical injury, or drive the woman to commit suicide, whether in connection with any unlawful demand for property or not'.

The first part of Chapter XVI of the IPC can also be invoked in case of dowry death or suicide. Under sections 299, 300, 301 and 304, culpable homicide, murder and death by negligence are crimes. Section 302 lays down punishment for murder: death sentence or imprisonment for life. Sections 113 and 113 were added to the Indian Evidence Act and can be invoked in cases of dowry murder or suicide. The Code of Criminal Procedure lays down the procedure and principles of investigation into a crime.

Despite a list of legislation protecting the rights of women, most importantly the prohibition of giving and taking of dowry under the Dowry Prohibition Act 1961, women in India are tortured physically and mentally and even killed or driven to suicide by their husbands and in-laws for not bringing sufficient dowry. Dowry related violence against married women by the families they marry into is a phenomenon that is on the increase in the country.

However this data is only a tip of the iceberg, as most of these cases do not get reported unless it reaches an extreme case of death. In an investigation done by Vimochana, the category of dowry deaths in a technical sense only include those cases that had been booked by the police under the relevant sections of law.

The accident cases that have been closed for want of evidence, however are largely due to stove-bursts or kitchen accidents. There are rarely any eyewitnesses who are prepared to give evidence against the murderers as the crime is committed within the four walls of a home and those who are present inside are those who are committing the crime. The large number of these deaths is an indication that the law is not a sufficient deterrent for those who commit these crimes.

The following are some of the reasons why these gruesome murders are registered under accidents. There are pressures on the woman to conceal the truth about the reality even if they are on the verge of dying. Her husband's family often threatens to harm her natal family or her children if she does not declare that it was an accident. Relatives and family members of her natal family also sometimes remain silent, as they fear the husband's family.

The victim's dying declaration, which is supposed to be taken in private by the policeman in the presence of a doctor, is invariably a public procedure. While on one hand the family does not want to get involved in the time-staking and laborious process of legal proceedings, on the other hand the police do not take interest to penetrate this community resistance to look for evidence of what really could have happened. Exposure to the media has resulted in an increasing trend towards consumerism.

People cannot afford the luxuries that are thrust upon them through advertisements targeted at the urban population. They see dowry as an avenue to fulfil their otherwise impossible dreams. The interplay of pre-capitalist values and modern forces with the accentuation of the free market economy and the consumer culture in the era of unequal development have thus become a part of the complex and contradictory fabric of our present-day society. The traditional values of the necessity of marrying a girl for spiritual merit and the modern system of calculation and other considerations of the groom's family in a milieu of inequality and insecurity have brought to the surface a sense of competition and manipulation to the advantage of the bridegroom. The treatment of a daughter-in-law depends very much upon the quantum of dowry she brings along with her before, during and after the marriage ceremony.

However there have been cases when the status of the girl's parents has reduced after the marriage, or there is a loss in the business and the girl is illtreated in the husband's house thereafter. The dowry normally continues for many years after the marriage. Often, the dowry brought by her is taken away after marriage. In times of financial problems in the husband's house, her jewellery and dowry items are normally the first to be sold. For some people, paying dowry at their daughter's marriage is an investment for fetching high dowry through their son's marriage.

Some others, including women discuss on 'marriage with high dowry', with pride. Generally, marriages with pomp and show is preferred. The girls too think it is their right to take dowry with them when they go to the husband's house. People believe that the effective way of equipping women is to resort to dowry in arranging a marital alliance. Another feeling among the mothers-in-law is that when she herself brought dowry from her house at the time of her marriage, why shouldn't she take dowry for her son. Dowry related crime is motivated mainly by greed.

SEXUAL HARASSMENT AT WORK

Sexual harassment of working women is primarily a problem faced by women, that men rarely face this problem and therefore it should be considered a form of sex discrimination.

Sexual harassment as defined by the court stipulates:

- "Such unwelcome sexually determined behaviour as physical contact and advances,
- A demand or request for sexual favours, sexually coloured remarks,
- Showing pornography and any other unwelcome physical, verbal or non verbal conduct of sexual nature".

Burt says "unwanted sexual overtures", has the virtue of parsimony but necessarily concerns intentions and motivation, not just overt behaviour. Defining sexual harassment as unwanted sexual overtures has the same problem inherent in defining rape as unwanted sexual relations. In practise the woman has to prove that the sexual relations or the sexual overtures were unwanted. The male

colleague will go out of the way to prove that the woman is of loose character. Sexual harassment means setting boundaries on the term and differentiating sexual harassment from expressions of sexual interest. Not all expressions of sexuality in the workplace could possibly be called sexual harassment. Men and women do meet dating partners and future spouses at work. Some people may even enjoy sexual jokes and flirting that can be ego enhancing and enrich their fantasy life. National Commission for Women has laid down the code of conduct at work place to prevent sexual harassment of women, which has been sent to all Government offices, Ministries, and Universities with the hope that employers would become more sensitive towards women.

The guidelines highlight that it shall be the duty of the employer to prevent or deter the commission of any act of sexual harassment at workplace would include unwelcome sexually determined behaviour by any person either individually or in association with other persons such as eve teasing, unsavoury remarks, jokes causing embarrassment, innuendo and taunts, gender based insults or sexist remarks and unwelcome sexual overtones in any manner, touching or brushing against any part of the body, molestation or displaying pornographic or other derogatory pictures or sayings.

Recommendations to the National Commission for Women based on the view that the definition of sexual harassment is deficient and that "sexual favours……sought by homosexual or lesbian employers of the same sex" also be included. The Court places an obligation on employers in both the public and private sector to "take appropriate steps to prevent sexual harassment" and "provide appropriate penalties" against the offender.

The criminal law should be resorted to where the behaviour amounts to a specific offence under the Indian Penal Code. The Court also recommends that a complaint made by the victim and that such a committee should be headed by a woman, and not less than half its members should be women. However this guidelines does not specify any time limit for drafting the code. The Court provides that the employer is responsible for drafting codes to prevent sexual harassment in the workplace.

If the power to evolve these codes is to be in the hands of the employer, then given the conservative sexual climate in which we live, what is to prevent the employer from producing a code that encourages gender segregation in the workplace. The codes could be formulated so as to discourage gender interaction in the workplace, or encourage the establishment of same sex schools and universities instead of co-educational institutions. Perhaps more specific guidelines are required which provide that such sex segregation is not an appropriate response for dealing with sexual harassment.

In many cases, it has been found that the committees within the organisations were set up only when there were serious allegations of sexual harassment. Many working women point out that, even if there is an enquiry committee, does anyone really bother to find out what happens to the victim when the enquiry is going on? She is an object of curiosity, sympathy, disdainful glances

or simply isolated by her colleagues. The situation at home is worse. Instead of sympathising with her plight or standing by her, the attitude is one of distrust and suspicion or often humiliation and shame. The work environment where sexual harassment occurs has hierarchy, norms, rules and constraints that profoundly affect the way people behave in that setting. In particular, the formal rules and informal norms of managers affect both the managers and their subordinates. The top management has the power to influence the employee's work habits, style of dress, recreational interests and social behaviour. When the top management tolerates or condones sexual harassment of employees, the standard reverberates throughout the organisation Certain individuals use their positions of relative power to engage in sexual interactions. This type of behaviour clearly constitutes sex discrimination. Male ego problems, sexual perversion, sexual obsession, widow-hood, pornographic materials and media portrayal is said to be some of the reasons for their harassment.

Lawyers facing sexual harassment at work:

- A survey conducted by Sakshi, a Delhi based NGO, in a few major cities reported that 65 per cent of women lawyers interviewed were always or often subjected to, or had observed, verbal or physical sexual harassment from other lawyers. The harassment would take various forms just as to the survey. They include use of stereo-typed role characterisation, sexual innuendo, devaluation of women's work, use of obscene or vulgar language, and comments on appearances and character. The bar report narrates two incidents. In one case, a woman lawyer was openly punched by a male colleague in the High Court premises for refusing to join him for a cup of coffee. When she tried to report the incident, a senior member of the bar dissuaded the police from registering it, on the ground that "it would tarnish the reputation of the Bar". Forty-eight per cent of the women lawyers surveyed also stated that they had heard or experienced remarks or jokes that were demeaning to women.

In a survey done by National Commission for Women of 1200 women, nearly 50 per cent complained of gender discrimination and physical and mental harassment at work. While 40 per cent of the women said they "usually ignored" such provocation, 3.54 per cent said they reported these to their supervisors, 7.8 per cent to their colleagues and 1.24 per cent to the police. About 10 per cent said that they protested against such behaviour while 9 per cent said they warned the offenders. At least 20.17 per cent of the respondents said that no investigation was done on their complaints while 1.5 per cent said police harassed them again instead of making the enquiry. A majority of the respondents 84.97% were not aware of the supreme court judgement given in August 1997, for specific protection of women from sexual harassment at work

SALE OF WIFE

In traditional farming communities, women helped in farming and bridegrooms paid a bride price to her parents. In the past this used to be a token

amount. If a widow or a married woman chose to enter into a live-in relationship with another man, the latter in turn paid the first husband the amount he had spent at the time of the marriage.

This system has, in the last decade become completely distorted with women being sold and resold for astronomical sums and the panchayats and police turning a blind eye to these goings on. With the bride price sometimes running into a lakh or more, '*nata*' brokers have mushroomed around Kotah, Bundi, Deoli, Ajmer and Tonk districts of Rajasthan, whose only job is to keep an eye on prospective women and force them to enter into a *nata* because the local brokers earned a hefty commission out of this deal.

The kind of money at stake can be gauged from the fact that one of the fathers admits to having spent ₹ 62,000 in bringing her back. Realising the selling and reselling of girls had reached rampant proportions, a Deoli based NGO, 'Women's Rights Committee Against Atrocity' conducted a survey in Sandla and Bhanvarthala villages in Tonk District of Rajasthan and came up with some disturbing conclusions.

Of the 517 households surveyed, the survival rate of marriages in the backward classes during the last five years was less than 50 per cent and in some cases as high as 70 per cent. *Nata* exits also in Rajgarh district of Madhya Pradesh. It is the practise of the sale of the women to men in return for a handsome price.

The largest beneficiary is the father of the girl who uses her to gain a neat sum. Closely connected to the issue of sale and resale of women is the custom of child marriage. Unless a boy is committed to child marriage, he cannot indulge in *nata.* Men are prepared to pawn their goats, cows and buffaloes and in well-to-do households, even gold and silver to get a woman.

In all these transactions the woman is never in the picture - she accepts the deal as part of her womanhood. Indira Pancholi, the Co-ordinator of the committee believes, "no household has remained unaffected, there is an unsuccessful marriage in every household here." The Panchayats have turned a blind eye to this jostling around. They are accused more often than not, of siding with the husbands and are blamed for pushing up the *nata* rates.

The *jhagda* money is decided upon in presence of the Panchayat with the amount being written on a document called *Kagli*. "Husbands are selling their wives to get more money and the Panchayats are doing nothing to protect these women", points out the Jaipur based women's rights activist, Kavita Srivastava. She cites an instance of Lalibai, an anganwadi worker, who was harassed to enter into a *nata* after her husband's death.

She refused and had to seek intervention of social activists to escape harassment. " Lack of education and total ignorance of inheritance rights amongst women are the reasons why this practice has continued." Indira Pancholi, the Co-ordinator of the committee believes, "the inability of a bride to return to her marital home would be a triggering factor, especially in cases of *atta satta* agreement where two families exchange children in marriage when they are quite young.

After marriage, the boy's family reciprocate by not sending their son to bring the bride. Entire villages are at war with each other." For instance, Simla Ram, from the village Nappa Ke Kheda of Rajasthan is facing rejection from her college going husband who does not want an illiterate wife. Village custom demands that the husband either comes down himself or sends someone to fetch her. Four years into the marriage, Simla is still waiting to be escorted to her husband's home. Simla is completely against *nata*. She says she would like to settle down only with her husband. Marriages in villages have come under pressure for other reasons as well. Dowry and modern lifestyle demands, including incompatibility, are reasons cited for marital breakdowns and consequently the sale of women.

EVE TEASING

Eve teasing is an act of terror that violates a woman's body, space and self-respect. It is one of the many ways through which a woman is systematically made to feel inferior, weak and afraid. Whether it is an obscene word whispered into a woman's ear; offensive remarks on her appearance; an intrusive way of touching any part of a woman's body; a gesture which is perceived and intended to be vulgar: all these acts represent a violation of a woman's person, her bodily integrity.

Eve teasing denies a woman's fundamental right to move freely and carry herself with dignity, solely on the basis of her sex. Some acts of eve-teasing mentioned by girl students interviewed are; indecent remarks, singing obscene songs, hitting, touching or pinching in crowded places, snatching dupatta and in some cases even forced kissing, mailing anonymous love letters and exhibiting male genital in front of women.. Eve teasing by itself is not an offence under any law, but Sections 294 and 349 of the Indian Penal Code cover substance of eve teasing.

Sections 294 punishes "whoever, to the annoyance of others does any obscene act in any public place, or sings, recites or utters any obscene song, ballads or words in or near any public place" is liable to be punished with imprisonment or with fine. The section is very wide in nature and a person can be hauled up even if the acts forming part of the substance of the offence are addressed to the public at large, provided this cause annoyance. Clearly a girl or a woman who feels annoyed by any obscene song or words can take recourse to the provision of the section and put up a complaint before a police station.

The offence is cognisable, *i.e.* a police officer can arrest the offender without a warrant but it is bailable A graver form of eve teasing is accompanied by the use of gesture indicating threat or use of force. 'Criminal force' has been defined under Section 349 of Indian Penal Code. 'A person is said to use force to another if he causes motion, change or cessation of motion to that other person'. In such a case also, action can be taken against the person using it.

The punishment is such cases are imprisonment for two years or fine or both. The offence is cognisable. Thus, simple eve teasing accompanied with

gesture to use force are punishable under the existing provisions of the Indian Penal Code.. A graver form of eve teasing is accompanied by the use of gesture indicating threat or use of force. In such a case also, action can be taken against the person using it Stereotypically, men are conceived of as natural prey to uncontrollable lust.

Women therefore have to protect themselves at any costs. In an ironic twist of responsibility, women then bear the burden of guilt for an act of violence against themselves. This is the basis for the second typical response to a violation of women's bodily integrity: to exhort women to censor their movements and appearance. Another misconception believes that men who abuse women are rowdy lower class elements. In fact, men who violate a woman's space and body do not belong to any particular social group or class. Eve teasers are there in the family, the neighbourhood, in one's classroom and place of work.

What is perceived as male lust in our culture represents a desperate and frantic inability to communicate with women. This inability often translates into acts that hurt and terrorise. Consider the fact that popular representations of romance, as in film, clearly link up eve teasing to love. This not only naturalises abuse as love, but also legitimises male power over women. In the larger cultural context the man - woman relationships is simply not open to free, unfettered discussions of romance and sexuality. In such a context, communication between the sexes necessarily suffers. There is an influence of the cinema and cheap literature in which sex permeates. The current advertisements trying to promote sale of under garments, towels bed-sheets, etc. by indecently exposing the female anatomy also lead to degeneration of women as a commercial commodity in the mind of man.

There is a rush to the urban area in search of adventure and employment. Away from the restraining influence of the families, the youngsters look for excitement and thrills which they seem to get in acts of eve teasing. Infliction of pain on the eve acts as a stimulant to their sex desires. There is also a lack of fear of punishment or adverse publicity or social disgrace. The police with its insufficient strength and preoccupation with other problems of law and order and courts with their proverbial delays and intricate legal procedures fail to bring most of the perpetrators to book. There are no particular places where eve teasers congregate.

In this sense, no place is really "safe" and inviolate for women. Roads, buses, train, cinema halls, parks, beaches, even a woman's home and neighbourhood may be sites where her self-worth is abused. It does not matter if a woman is alone, with a friend, in a group, or sometimes even with another man. Segregating the spaces that men and women occupy only compounds, not solves the problem.

7

The Criminal Justice System Response

The reporting and subsequent investigation and prosecution of rape and sexual assault are the focus of much of the available research literature on the subject, particularly in Britain. As already indicated, the establishment of specialist police units in Scotland to deal with sexual assault dates back to the mid 1980s, and followed highly publicised research which critiqued existing police practice. The trend towards specialism in this area continued throughout the 1990s, and is now standard across the Scottish police forces. Although the model varies slightly from one force area to another, key components include dedicated interview suites, specialist officers, and a 'victim-centred' approach. In some areas there is also a dedicated forensic suite.

Practitioners acknowledge that there have been significant improvements in the police response to rape and sexual assault complainers over the last 20 years (Christianson and Greenan, 2001), and this is supported by research. A study of 23 women in Sussex who had reported to the police between 1991 and 1993 found that 57% of them felt mostly positive about the response of police officers, while 43% were mostly negative about the response of police officers (Temkin, 1997). None of the women, including those who felt negative about the service overall, felt that they were disbelieved, or that the police were 'heavy-handed ' in their approach.

In addition, the majority of the women (19 out of 23) valued the manner and attitude of the police officers who dealt with them. For the women who were 'mostly negative' about their experience with the police, poor follow up, difficulty accessing information, disbelieving attitudes and insensitive handling were the main features of their complaints about the service.

Temkin concludes that "the believing, sympathetic, non-judgmental attitude of the police, the unpressured pace and supportive manner in which their statements were taken, the access which they had to police officers and to information thereafter and the help and backing they received...during the course of the investigation and afterwards" were the main reasons for women feeling positive about the experience of reporting (Temkin, 2001: 524). Follow-up, she maintains, continues to be a problem, particularly in the area of information on the progress of the case.

These findings are similar to those from a survey of 48 women who reported to police in New Zealand between 1990 and 1994, in which 40% of the women expressed some degree of satisfaction with the police response, and 38% were dissatisfied (Jordan, 2001). The author acknowledges some of the difficulties inherent in measuring 'satisfaction' with a process which by its nature is bound to be distressing. She notes: "Because rape is such an intense and sensitive area, when the police act with professional caring and demonstrate their respect for the victim, this is noticeable and greatly appreciated. When such qualities are lacking, however, their absence is also very noticeable." (Jordan, 2001: 696).

She goes on to explore the balance to be struck between the need (of women) for the process to be manageable, and the need (of police officers) to focus on the end result of that process: "...at the very time that a raped woman is seeking to be believed and validated, the police will be intent on obtaining proof and verification that she is telling the truth. Her need for validation may clash with the police search for verification, and the techniques used by the police in their quest for evidence may threaten and undermine her sense of confidence and safety in them. While she struggles to regain a sense of autonomy following the rape, the police feel they as professionals must retain control of the proceedings." (Jordan, 2001: 701).

Jordan asserts that the achievement of a sense of control over the proceedings need not be achieved by one party at the expense of the other. Citing Temkin, she notes the value women place on belief, respect for the complainer, and a non-judgmental approach by the police (Jordan, 2001).

Recorded crime statistics for Scotland show a steady increase in the reporting of rape (Scottish Executive, 2003). This picture is similar in England and Wales and across Europe (Regan and Kelly, 2003). However, in none of these jurisdictions has the increase in reported rapes been matched by an increase in prosecutions or convictions. In fact, the conviction rate for rape has fallen during the period in which the reporting levels have risen.

In an attempt to identify some of the reasons for this, the Home Office requested a joint inspection by HM Inspectorate of Constabulary and HM Crown Prosecution Service Inspectorate into the investigation and prosecution of rape cases. Their report was published in April 2002. The terms of reference were: "...to carry out an analysis of investigations, decision-making and prosecutions of allegations of rape, from initial report through to case disposal.".

The review covered all offences of rape against women, men and children. In relation to the investigation stage, the key findings echo some of the research findings already discussed, included the need for consistent training of police officers and forensic examiners, and improvements in the physical environments in which interviews and examinations take place. In addition, the review identifies partnership working with other agencies (e.g. through dedicated sexual assault referral centres) as key to improving the response to victims. Improved and standardised recording systems, and a review of timescales needed for submission of files to the Crown Prosecution Service are identified as the main administrative improvements required.

Although the report does not consider the role of forensic examiners in detail, it does note the limitations on choice posed by the lack of female forensic examiners, and the implications of forensic examiners learning 'on the job' rather than through accredited training programmes. The report considers that quality of forensic evidence is crucial to effective prosecution of rape and sexual assault, increasing the likelihood that prosecution will happen, and that a conviction will result (HMCPSI/HMIC, 2002). In addition, it is suggested, any measures which reduce the trauma of the investigative process for individual women are to be welcomed, improving not only the likelihood of achieving a conviction, but also the woman's recovery rate following a sexual assault. This view is supported elsewhere in the literature.

In a study commissioned by Rape Crisis Network Europe (RCNE), Kelly and Regan reviewed recent literature on the conduct and outcomes of forensic examinations. They identify some of the key elements of good practice in relation to forensic examinations, emphasising "the rights and dignity of the victim". These include "speedy response; avoiding the triage system in hospital A&E departments; a private dedicated space; a well equipped examination room; trained and skilled practitioners; female examiners; a streamlined victim-centred information gathering process; time to move at the speed the victim/survivor is comfortable with; protocols and evidence kits which are applied flexibly, according to the facts of the case; space to discuss the process, debrief and undertake crisis intervention, and provision of, or links to, medical follow up and advocacy/support services."

These conditions, they argue, are crucial, both to the quality of the evidence gathered, and to the comfort and health of the complainers (Kelly and Regan, 2003: 12). In their subsequent review of five different approaches to forensic examination, they note that the use of trained doctors is one of the more common models. They identify a number of difficulties inherent in this approach, including problems with recruiting women doctors, the need for participating doctors to take on a generic forensic role, thus perhaps limiting their knowledge about sexual assault, and problems with limited availability of doctors at certain times. They also suggest that there may be limited co-ordination and integration across the services, and an absence of advocacy and support. Some of these issues are addressed by the use of forensic nurses, who have a more extensive role in

providing healthcare advice, advocacy and support to complainers, in addition to evidence gathering and providing forensic reports for the courts. This model is widely used in North America and has several advantages, including a higher degree of specialism, cost effectiveness, and a more holistic approach to health intervention following sexual assault.

A holistic approach is also found in the provision of Sexual Assault Centres, which in Canada are designed to "attend to the medical, emotional, social and medico-legal needs of clients in a prompt, professional, and compassionate manner and to provide leadership in the prevention of sexual assault". These are usually hospital based, often attached to accident and emergency facilities, with a dedicated examination room and possibly interviewing facilities. There are several examples of similar centres in England, including The Haven, a referral centre based in a sexual health setting which provides forensic examination and sexual health follow up in southeast London (Kerr et al, 2003), and the St Mary's Centre in Manchester, which was the first such centre in England. As yet, there are no such facilities in Scotland, although discussions are ongoing in Glasgow about how such a service might be developed (Dutton and Cavanagh, 2003).

Kelly and Regan conclude by identifying the key components required in order to begin developing minimum standards:

- "Privacy through the development of dedicated rooms, or a centre;
- Philosophical principles underpinning practice that emphasises respect, dignity, rights and choice;
- Enhancing forensic practice through capacity building-both the number of trained examiners (often through involving nurses) and their skills base;
- Access to female examiners;
- Ensuring that even if people have to wait for a medical practitioner, that a staff member is available to greet them, take them to the more private rooms, and explain their rights and what may happen next;
- Linking provision of immediate medical care, forensic examinations, crisis and short term counselling, follow up medical care and advocacy;
- Combining service provision with training, awareness raising and system advocacy;
- Leadership within the service, and some form of community accountability;
- Ensuring access is as wide as possible, and that outreach efforts are targeted at under-served populations."

Finally, they note the emerging debate about how far forensic evidence actually influences the outcome of sexual assault trials, citing Canadian research which demonstrates that only documented injury appears to have a predictive influence on convictions. Given the trauma for women undergoing forensic examination, further research would seem to be indicated in this area.

In another report for Rape Crisis Network Europe, Regan and Kelly address the issue of attrition in reported rape cases, raising serious concerns about the

extent to which convictions for rape have fallen across Europe, as shown in their pan-European study. They maintain that this downward trend in conviction rates is contrary to what might be expected, given the role of the women's movement in raising awareness and challenging rape stereotypes, the development of rape crisis lines and other women's counselling projects, the development of training and practice guidelines, increased media awareness and legal reforms. However, they argue that it is symptomatic of a situation in which rape has received little attention compared with domestic violence and trafficking. The study indicates that countries with adversarial legal systems have the highest attrition rate-England and Wales, Scotland and Ireland all have conviction rates below 10%. At 6%, the conviction rate for rape in Scotland is second only to that in Ireland.

The Justice ministries for the countries involved in the study offered a range of technical and procedural 'barriers to successful prosecution', including limited or absent evidence, under-reporting or delayed reporting, lack of support services, delays in court proceedings and 'limited incentives for prosecutors'. The authors contend that, despite a wide range of legal and procedural reforms which have been enacted across Europe since 1980, there is still an absence of good practice in enabling rape complainers to give their best evidence or in supporting and protecting "their dignity and integrity" during the trial process. Overall, they argue, rape is very much 'a forgotten issue' on political and social policy agendas, attracting neither the debate nor the resources which have gone into highlighting domestic violence as a social policy priority. They make a number of recommendations for change, including the suggestion that research should be undertaken to explore the points of attrition in rape cases and identify possible reasons for the increase in attrition.

A small scale pilot study which addresses these issues has already been undertaken in Scotland. The study retrospectively tracked the progress of 191 complaints involving sexual offences through the criminal justice system, by examining crime reports, interviewing police officers, examining fiscal files and interviewing precognition officers and procurators fiscal. Two police forces were involved, one urban and one rural, and seven fiscal offices. Of a total of 47 cases which began as complaints of rape, 17 did not progress beyond the police, a further 15 did not progress beyond the fiscal, and of the 15 which went to court, eight resulted in a conviction (Jamieson, 2001).

Although this seems an improvement on the 22% conviction rate reported in an earlier study, Jamieson notes that more than half of the cases which proceeded to court involved child complainers. A further breakdown of the figures shows that of the nine cases involving child complainers, five resulted in a conviction, compared with only two out of the 14 cases involving an adult complainer. Although Jamieson comments on the range of reasons given in police crime reports for not proceeding, including withdrawal of the complaint, false allegation, and no known suspect, she does not identify any one area of police procedure as particularly problematic. In relation to cases marked 'no

proceedings' by the procurator fiscal, she suggests that the basis for deciding there is 'insufficient evidence' might bear further exploration. Acknowledging that the fiscals interviewed all maintained that decisions should be made on the basis of sufficiency of evidence, and not on the credibility of the complainer, she nonetheless notes: "In the case files we examined, we formed the impression that judgements about credibility were most often recorded in cases in which there is equivocation about the sufficiency of the evidence." (Jamieson, 2001: 80).

The HMCPSI/HMIC report also notes concern about the role of the complainer's credibility in cases where there is limited evidence, and in particular "...found that the prosecutor's approach too often tended to be one of only considering any weaknesses, rather than also playing a more proactive role in seeking more information and trying to build or develop the case." (HMCPSI/HMIC, 2002: 9). Amongst a raft of measures outlined in the subsequent Action Plan it is noted that revised guidance on rape has already been made available to prosecutors, and that a revised training package for sexual offences will be commissioned. In addition, it is noted that the CPS agrees with the recommendation that rape cases should be handled by specialist prosecutors, and that consideration is already being given to how to implement this.

There have been some significant changes in the legislative response to rape and sexual assault over the past three years in Scotland. A recent Lord Advocate's reference on the definition of rape clarifies Scots law and makes it clear that rape is based on an absence of consent, and does not require the use or threat of force. The introduction of the Sexual Offences (Procedure and Evidence) (Scotland) Act 2002 prohibits the accused in sexual offence trials from conducting his own defence, and tightens the restrictions regarding use of sexual history/character evidence.

The Solicitor General has recently announced a review of the prosecution of rape and sexual offences in Scotland. All of these initiatives might be expected to improve the treatment of rape complainers and hopefully the attrition rate. Regan and Kelly (2003) recommend that governments evaluate recent and new legal and procedural reforms. A precedent has been set in Scotland with the evaluation of the Protection from Abuse (Scotland) Act 2001, and it would seem that this exercise would bear repeating in relation to the recent sexual offences legislation.

A search of the literature produced little from Canada on rape or sexual assault. As noted earlier in this report, Canada has no specific offence of rape, having made the shift to a broader 'sexual assault' spectrum of offences in the early 1980s. In a recent overview of the Canadian experience, Hague et al note that this creates some difficulty in trying to compare reporting and prosecution of rape in Canada with experiences in the UK, as the figures available from Justice Canada provide the totals for all sexual assaults, across all three of the levels of sexual assault defined in law, and with no distinction made between offences against children and offences against adults.

The legislative reform in Canada also included the removal of the requirement for corroborative evidence in sexual assault cases. In practice, however, it would seem that prosecutors are still reluctant to proceed with cases which do not have some form of corroboration. Hague et al note with some surprise a decline in reported sexual assaults over the five years before their report, and with some disappointment the absence of the kind of detailed data that is available on 'family violence' from Statistics Canada. It would seem that in Canada, as in Europe, rape and sexual assault are 'forgotten issues', despite the best efforts of women's advocacy services.

SOURCES OF CRIMINAL JUSTICE SYSTEM INFORMATION

No matter how much experience you have advocating for victims of violence against women in the criminal justice system, most every case will present you with new and challenging questions.

- A police officer tells you he couldn't make an arrest because the word 'co-habitant' in the domestic violence criminal code doesn't cover two people living under the same roof if they don't have an intimate relationship. Is the officer giving you correct information or is the officer blowing smoke in order to avoid the work of making an arrest?
- A prosecutor says you can't come into his meeting with the victim because that will make you a witness in the case. Is the prosecutor giving you correct information or is the prosecutor blowing smoke in order to split you off from your client?
- A rape victim says the detective demanded that she turn over her diary, but she doesn't want to. Does the victim have a right to say "no" to the detective? Or does the detective have the right to demand the victim's diary?

In order to advocate effectively for your clients you'll need to be able to get answers to literally hundreds of questions like these. And usually you'll need to find the answers quickly. Fortunately, there are many sources of criminal justice information. Some of these sources will take you some time and experience to develop, but others are available to you right now. Your Active Curiosity: Don't wait until your client's life hangs on unanswered questions. Educate yourself daily by constantly formulating questions as you work your clients' cases. Keep a list of the questions at your side, and then dig up the answers at every opportunity. Watch your knowledge grow, and along with it, the power of your advocacy to liberate women's lives.

Own and Read the Penal Code: Your state penal code is the criminal justice system bible. If you are a victim advocate you should own an up-to-date copy of your state's penal code. And you should read and refer to it often. (The companies that publish state codes are often willing to donate free copies to non profit organizations. Ask, and you'll likely receive.) When you first begin reading the penal code you'll probably find the language to be difficult and

unfamiliar. But it won't take long for the legal language to smooth out and come into focus. The penal code will quickly be extremely beneficial to yourself and your clients. A good way to begin making the penal code your best friend is to look through the index for topics that interest you and start reading.

In addition to the Penal Code, there are a number of other state codes that have sections that are relevant to the work you do with victims of rape, domestic violence and child abuse; such as the Evidence Code, the Family Code, the Government Code, and others. On the occasions when you need these, you can find them at your local law library and now, most every state has their full set of legal codes on the internet in searchable form.

Your Local Law Enforcement Domestic Violence Written Policies: Most states require that local law enforcement agencies have written domestic violence law enforcement policies. In fact, not only are these requirements spelled out very clearly in many state's penal codes, the penal codes usually also specify in detail what must be included in the written policies. It's invaluable to have copies of your local law enforcement agency's written domestic violence polices on hand.

These policies are usually clearly written and comprehensive. They set the local law enforcement standards of the procedures, laid out in step-by-step format, that the agency expects their officers to follow when responding to domestic violence calls. Not only are most of these policies a good education on modern police practices. As an advocate, these policies are invaluable for you to point to when officials fall short in their responses to your clients.

Some jurisdictions also have similar law enforcement policies covering sex crimes. And some jurisdictions have law enforcement policies covering district attorney response to domestic violence and rape. Any and all of these polices are public documents and, as such, your police agency or district attorney must give you a copy of these polices when you request them. It's the law. Who says? Look in your state's Government Code for your state's public information act or freedom of information act. In addition to your own local law enforcement policies, it's very worthwhile to look at the law enforcement policies of a couple of the most progressive law enforcement jurisdictions who have written model policies and put them on the internet.

Case Law: Though the state codes contain the laws as written in your state, they won't be able to answer every question you have. No matter how well a law is written there are always going to be gray areas that require further interpretation. These further interpretations are handed down by your state's appellate court in what's known as 'case law'.

For example, returning to the question we started with in which an officer tells you he can't make an domestic violence arrest because the man who lives in the apartment with your client isn't a co-habitant under the meaning of domestic violence criminal law. The Penal Code clearly won't help you here, since the penal code doesn't define all the possibilities of who's a co-habitant and who's not. The answer to the question of who's included and who's not included in the meaning of 'co-habitant' is to be found in the case law.

At some point an individual (a roommate, not an intimate) is convicted of domestic violence. The man says, "How can I be convicted of domestic violence? I'm not in any relationship with this woman, I'm just a roommate." So he appeals the case up to an appellate court. The appellate court agrees with the man and the decision of the appellate court now becomes part of a more finely tuned definition of who is and who is not included in the meaning of 'co-habitant' in the criminal domestic violence law. As you can imagine, searching case law is arduous, especially if you don't have a legal education. But don't despair. Here are some great short cuts, not just for obtaining case law, but for all the many other questions you may have.

800-VICTIMS: California and many other states have established public phone banks to answer victims' and advocates' legal questions. In California, this service is staffed by law students whose job it is to do the legal research for you. Your taxes paid for this excellent service. Use them. Use them over and over again. In California the number to call is 800-VICTIMS.

Just pick up the phone, and ask them, "Does the word 'co-habitant' in the penal code domestic violence law include two people who live under the same roof but who don't have an intimate relationship?" Ask them any other of a million questions that may arise in your client's case. If you don't know if your state has a similar service, call a state legislature's office and ask one of the aides to look up whether or not your state has established a victim's rights answer line.

Individual Experts in Your Community: (People Worth Their Weight in Gold) Believe it or not, it's virtually guaranteed that there are many people in your community who know the answer to your every question. All you have to do is know which person to call and when. As long as the individual is not involved in the case you're calling about, most will be flattered by your request for legal information.

So here's a short list of the people we find most helpful: veteran crime reporters on the local paper, the county law librarian, legislative aides, city attorneys, and local police, prosecutors, probation officers, and judges not associated with the case.

And there's one other set of people you've probably never thought of asking, but who know the criminal law inside and out: criminal defence attorneys-especially public defenders who deal with legal fine points of domestic violence and sexual assault on a daily basis. It's their bread and butter.

So strike up a professional friendship with some of the defence attorneys in your town. They are generally very willing to give you information. And unlike police and prosecutors, criminal defence attorneys aren't usually suspicious that you're trying to bolster your stance against another officer's action. Another way to go if you have a question which has the potential of getting a local official in trouble is to call officials in another county. In fact, it's a very good idea to connect with officials who are national leaders in the field, such as prosecutors or police sergeants who head progressive domestic violence or sex

crimes units in large metropolitan areas. When you do this, make sure you look for people in your own state to assure they are working with the same body of law as you.

Law enforcement Field Guides: Most state Attorney General's Offices produce and annually update a field guide for law enforcement officers- 'everything a police officer needs to know to enforce the law'. These field guides are tight packed, well organized, low priced, and very easy to use. Ask your favourite officer where to get a copy.

Your Local Criminal Justice Record System: Though your local criminal justice system records departments are unlikely to be able to answer your legal questions, they are a gold mine of invaluable information on individual cases. Through your local criminal justice record systems you can obtain: perpetrator histories, statistics, money trails, arrest records, court files, arrest warrants, booking records, lawsuits, dispatch records, and much more. It's essential that you learn your way around these records, and how to obtain them, especially when they don't want to give them to you.

Fortunately, this isn't too difficult. Most of these records are public record documents. And if one clerk won't help you find them, another will. And if for any reason, you're refused access to a document, the one person in your community who you can almost always depend on for knowledgeable help is the crime reporter on your local newspaper. Remember, crime reporters are digging through these records on a daily basis for background on their stories. Call them when you get in a bind.

PIVOTAL ROLE OF THE CRIMINAL JUSTICE SYSTEM

Comprehensive, effective, and nondiscriminatory implementation of criminal justice system powers is essential to ending violence against women, both for freeing individual women and for ending the world wide epidemic of violence against women. No doubt, all segments of society must make profound changes before violence against women will be eliminated. But once there is violence or threat of violence, the criminal justice system is the only sector of society that has the power and authority to step in and stop the violence. The criminal justice system alone is invested with the power and authority to enforce the laws against violence, to carry out a criminal investigation, to arrest and detain a perpetrator, and to provide justice for criminal offences. If the criminal justice system doesn't fully do its part to put the perpetrator under control, you can social work these cases endlessly. In all likelihood the perpetrator will just turn around and easily undo any peace and equilibrium you and the victim have been able to establish in her life.

The pivotal importance of the criminal justice system in stopping violence against women can be illustrated in both the positive and the negative. On the positive side, a handful of diverse jurisdictions around the country that have implemented a consistent, aggressive, and modern criminal justice response to

domestic violence have been able to reduce their domestic violence homicide rates by over 60% in just a matter of years. If domestic violence were a disease, this kind of dramatic reduction in deaths would be heralded a miracle cure.

You may recall a series of studies from the late 1980's which found that arresting perpetrators resulted in only minimal reduction of future violence in the relationship. These studies are still used to argue against the necessity of a strong criminal justice system response, so it's important to be aware of a core flaw, not in the studies themselves, but in the conditions at the time. The system in place at the time consisted principally of arrests by themselves, without the crucial follow-up investigations and prosecutions in place. It was like trying to make the airplane fly with only one wing. It's easy to see that if perpetrators are merely arrested and detained for a couple days and then let go without follow-through, they are likely to be even more dangerous to victims.

It wasn't until the early 1990's when a few jurisdictions, most notably San Diego, CA and Quincy, Massachusetts, began to pioneer the more modern, comprehensive law enforcement approach to domestic violence. In addition to pro-arrest policies, the new approach included a complete police investigation with an eye to prosecution, prosecutorial follow-up, no diversion/no-drop policies, victim support, and intensified probation monitoring and/or correctional follow through. It was only when this full spectrum criminal justice response was applied to domestic violence that the immediate and dramatic reductions in domestic violence homicides took place in those pioneering cities. These positive and striking results have now been successfully reproduced in a number of other jurisdictions throughout the country.

No other approach to domestic violence-not educational, therapy based, and not diversion programs-has shown anywhere near the effectiveness and impact obtained by the implementation of a comprehensive criminal justice response. If anything, studies of non-criminal justice remedies to domestic violence repeatedly demonstrate their ineffectiveness in bringing about any significant reduction in the levels of violence. Given the proven and unequivocal benefits of a full criminal justice response, it's sad that still today, the pivotal importance of good criminal justice system response is still more often manifested in the negative.

On the negative side, the consequences of law enforcement failures to implement their powers on behalf of women are all too evident by tracing law enforcement histories leading up to domestic violence homicides. What's found in case after case where women have been murdered by their partners is a history of gross failures of law enforcement to respond properly to the victims' previous requests for help. Half-baked investigations, officer bias against women, contempt of victims, inadequate prosecution, slap-on-the-wrist sentencing, careless follow-up, and overall system disregard paves the road to one domestic violence homicide after another. Sloppy law enforcement response emboldens the perpetrators, throws the women into despair, and leads to an incalculable number of severe injuries and deaths to women.

A year 2002, Domestic Violence Fatality Review from Washington State aptly names this all too common inadequate law enforcement response to domestic violence "the meaningless processing of cases". All too often, instead of implementing their powers on the victim's behalf, criminal justice officials were found to be carelessly handing the cases off from one to the next. Perpetrators were never really held accountable despite multiple rounds through the system, and ultimately the women were murdered.

When the criminal justice system withholds its powers from victims of rape and domestic violence, it bolsters the perpetrators, and, in fact, increases the danger to the victim. The perpetrators are emboldened by the immense authority behind the system's could-care-less attitude. The perpetrators feel they've been given the ultimate green light to carry on with the violence or to escalate. In fact, once law enforcement responds carelessly, it's not uncommon for perpetrators to invoke law enforcement authority in taunting the victim. "Go ahead, call the Sheriff," Avelino Macias would taunt his estranged wife Teresa, "The Sheriff protects me more than they protect you."

The victim, on the other hand, is dangerously weakened and driven into despair by the system's denial of help. Right at the moment she takes the great risk of exposing her intent to confront the perpetrator by bringing in law enforcement, she is betrayed by inadequate law enforcement response in front of the perpetrator. "Instead of helping me," Teresa had told her mother regarding authorities' responses to her calls for help, "they sunk me even more." Like many victims of domestic violence homicide, Teresa had been driven into such deep despair by the Sheriff's repeated disregard of her more than 25 calls for help, she had given up on calling the Sheriff for help in the weeks before Avelino lay in wait and executed her. Nor do you have to limit your observations to domestic violence homicides to see the harm of law enforcement disregard for violence against women. The same can be seen in the law enforcement histories of so many cases where there are serious injuries. Or in cases of serial rapists or serial child molesters. If you dig out the law enforcement histories in these felony cases, here again you'll most always find a trail of law enforcement disregard of the perpetrator's prior lower level violence against women and children. Given the increased danger to women created by official's denial of protection and justice, it should be clear that any police officer or prosecutor who routinely mishandles violence against women, over the course of his or her career, or even over the course of a year, is more dangerous to women than a hundred batterers and rapists. What's more, if you look at the law enforcement history in cases of serial killers and mass murderers, you'll also frequently find a trail of inadequate law enforcement response to the perpetrator's earlier violence against women. A current case in the news is that of John Muhammad whose sniper killing spree in the fall of 2002 held the entire populace of Washington DC under siege for weeks and resulted in the killing of 13 people and the wounding of 5.

In the two years prior to that killing spree at least three police agencies, the Tacoma PD, the Bellingham PD, and the area Sheriff's Department had failed

to respond properly to Muhammad's domestic violence related crimes against his wife and children and against the mother of Jahn Malvo, Muhammad's juvenile accomplice in the killing spree. These law enforcement agencies never once arrested Muhammad, nor obtained an arrest warrant for these crimes, despite the fact that Muhammad had abducted and concealed his children from his wife for over a year, despite the fact that he had made threats to kill that were heard by credible witnesses, and despite the fact that law enforcement was in touch with Muhammad and had ample evidence to prove those crimes.

As a point of insight into Tacoma Police mentality it's worth noting that in that same time period Tacoma PD had obtained an arrest warrant for Muhammad- But that arrest warrant had nothing to do with domestic violence. Tacoma PD obtained the arrest warrant because Muhammad had shoplifted $27 worth of meat from a Tacoma store. The Tacoma PD took stronger action on behalf of the store owner's loss of $27 worth of meat than on behalf of Muhammad's wife, including when Muhammad abducted and concealed their three children for over a year.

It's also worth noting that in April, 2003, Tacoma Police Chief Brame shot and killed his own wife in front of their two children. The Fallacy of Avoiding the Criminal Justice System. If you are a victim advocate reading this, it may seem silly to belabor the point that effective criminal justice system response is essential to stopping violence against women.

But there are many women in the violence against women movement who are so disgusted by the sexism, the racism, and all the other abuses of power in the criminal justice system, that they are desperately looking for ways to circumvent the system altogether.

They point not only to the system's mishandling of violence against women, but also to the system's persistent discriminatory violations of defendant's rights as well, especially abuses against defendants of color. And the point is undeniably true. The criminal justice system, probably more than any other public entity, abuses its powers in a highly discriminatory manner, and, in fact, frequently actively uses its immense powers to enforce existing inequalities and injustices in the social order.

But it would be as foolhardy to divert women's energies away from the criminal justice system as it would be to advise a minority community not to call the fire department because their current fire department responds in such racist ways. What alternate solution could we possibly create that could respond at one in the morning when a woman has a knife to her neck?

Who's going to investigate when the perpetrator says she started it and he was acting in self defence? Who's going to invest in the necessary equipment, training, and salaries to respond to millions of these cases? And when the perpetrator promises to stay away from the house, by what authority are we going to stop him when he breaks the promise?

And if, for the sake of argument, we were to create such a system, is there any question that the current law enforcement system would not sit idly by?

They would, of course, immediately begin to arrest the members of our alternative system the moment we moved to restrict a perpetrator's freedom. So doesn't that bring us inevitably right back to the confrontation with the current justice system that we wanted to avoid in the first place?

What then? Are we going to make the millions of women who now call the police to secure their safety give up their housing and go into shelters? The kids too? And for how long? And let the violent perpetrators run free? To find more victims? And what about justice? Do we say, oh well, she may have been beaten to a pulp, but as long as she's safe, she doesn't need justice? Do we say that first we must stop all justice system abuses of male defendant's before we demand justice for women? Or do we create an alternate justice system as well as an alternate system of first response?

Or are we going to prevent this violence from happening in the first place? With education? And how many women are we willing to let die before the prevention education sinks in? And since most young boys turn to violence after growing up in violent homes, isn't stopping the current violence against women the first priority of any successful prevention program? And doesn't that bring us right back to the original dilemma? Who's going to step in and stop the current violence that's ravaging millions of women's lives today? What good does it do to tell kids not to play with matches if there's a wildfire raging all around them and the firemen won't budge?

It doesn't take but a few minutes thought to see that when it comes to intervening in the rampant existing violence against women, the criminal justice system as exclusively authorized and empowered by the state is as pivotal and irreplaceable as the fire department is to fighting fires. But it's worth doing the mental exercise if only to beat down once and for all the temptation to give up on dealing with the criminal justice system. It's true the criminal justice system is permeated with abuses. And it's true these abuses can easily endanger and re-victimize victims, as well as victimize defendants. But this is all the more reason we need to confront this system head on, and to remake the current justice system into a system that responds adequately, equitably, and even handedly.

CRIMINAL JUSTICE SYSTEM STILL SKEWED AGAINST WOMEN

We keep being told that feminism has had its day. Women have pulled down all the barriers to their aspirations, have renegotiated their relationships with men and are now scaling the heights that were formerly beyond their reach. The f-word cannot be mentioned without a boo from the sidelines. Girls are doing better than boys in education; they are filling the universities; they are becoming priests. Childcare is being shared, new men are staying at home while their women bring home the bacon. If we are to believe certain newspapers our preoccupations now are simply to ensure our pay is high and our weight is low. A few more legislative changes and all will be well with the world. In many respects it is true that the battle for formal equality has been won. For the most

part, old-fashioned rank prejudice has gone since the laws which underpin formal equality were introduced in 1976. Examples of crude, in-your-face prejudice are much more rare. The case which now has to be made is for substantive equality-treatment as equals, taking account of the real experiences of women and the context of their lives. There has to be greater understanding of the differential effects of policies which, on the face of it, are neutral. It is also important to acknowledge that women are not just one homogenous group. Discrimination now is much more subtle and nuanced and often operates most fiercely at that junction where different forms of prejudice intersect.

When race and class overlap with the social vector of gender, we see in sharp focus the disadvantages still suffered by so many women. Being poor and female makes for a very different experience from that of the middle-class professional. Add the brickbats of racism, and the burden of multiple discrimination can be unbearable. The backlash against feminism takes many forms. Men are the ones we are now to be concerned about. They are being battered; they are having false claims made against them of child abuse because of false memory syndrome; they are being refused access to their children; they are falling prey to shameless hussies who try to get money out of tabloids for their stories. All of it does happen. Men can be used and abused too. Their pain at false accusation is no less. Their loss of their children is just as raw a wound. But the smoke and mirrors used to enlarge these claims are the products of fear that the old arrangements between the sexes might be reconfigured in ways that may be less to the satisfaction of some men. After September 11, American evangelical preachers even claimed that the events were a punishment for the behaviour of feminists and other deviants.

The creation of pilot programmes, where special domestic violence courts will operate a speedy, multi-agency response to abuse is a major development. The many projects within the police, prosecution and penal service to address women's concerns are to be welcomed. There is a desperate need for special units to deal with rape cases and the Crown Prosecution Service is putting them in place. A lot has improved within the courts and legal system. We have more women on the bench and practising in the courts. There is no doubt that the government has taken on many women's issues and taken women's experience of victimisation to the heart of criminal law policy.

However, there has been a rolling of women's concerns into a generalised rhetoric about victims. All victims are bundled up together, when policy-makers should be brave enough to say that cases involving abuse of intimacy and the historic discrimination against women deserve special treatment. However, many ministers live in fear of being ridiculed as being in the thrall of "feminists"; they recoil from the reality that the most ill-treated victims within our system are women and children, and that this is still a reflection of some very disconcerting facts about male violence. What is the gender of most children abused over a long period and eventually killed by parents? From Jasmine Beckford to Victoria Climbie, go through the files of the NSPCC and you will

find that they are almost invariably girls. Of course, boy children are also killed in outbursts of rage or to wreak revenge but the slow torture of children is most often directed at girls. What is the gender of the partner most often beaten in a relationship? What is the gender of those most often sexually violated? When we hear a body has been found, someone killed in a park by a stranger, what sex is the victim? When we hear of honour killings who is found dead? The gendered nature of certain crimes and their victims and the gendered nature of so much law, because it is largely created and administered by men, is still insufficiently recognised or discussed.

Instead of debating all these questions boldly, politicians hide behind the much more acceptable cloak of a generalised heading, marked "victims". Often with victims as their alibi, huge inroads are made into civil liberties. The most troubling and pressing questions are never asked. What is it about men that they are so much more disposed to criminality as a sex? Is masculine violence a feature of a patriarchal culture and why is so much of it directed at women? If so what are we doing about it within the education system? What are we doing to divert men from abuse? Discussions about violence never get to the heart of these issues because they are so disconcerting for us, reaching into dark places where primordial power-play simmers.

If we consider just how our law has historically criminalised aggression-how certain types of antisocial behaviour have been targeted, while others have been either formally or practically left unregulated-then it seems that such law is about male patterns of behaviour and about male standards of acceptable conduct. The law on rape and the minimising of domestic violence are the paradigm examples of this perspective; the law is gendered, especially in relation to violence, and the new gender-neutral language of legislation does not fully disguise this fact. It is why we had to go through such contortions to get the defence of provocation to work for women in domestic killings. Women rarely killed in a sudden blind rage; as the law required, more usually their loss of control arose from despair, like the final surrender of frayed elastic. Only now are the courts shifting to accommodate this different reality. Despite the fact that we know that men and women behave differently and seem to act for different reasons, we still watch governments provide universal theories of crime and formulate general criminal laws that are meant to work in a gender neutral manner. We are just not prepared to face the facts of crime. Sex is the most salient variable when it comes to offending.

Until women and children get justice in the system, certain special processes are justified, including anonymity for complainants in sexual offence cases and anonymity for children at all times. However, at regular intervals, we have to rehearse the arguments about why accused men should not be given the cover of anonymity in some spurious call for equality. Open justice means anonymity should be used sparingly. The coverage of a rape case at times leads to the discovery that the male accused is a multiple offender, because other women are given the confidence to come forward.

Redressing the profound historic failures in relation to women means having to take special steps and the government should be upfront about this. "Gender bias" does include bias against men, and there are cases, particularly those involving child custody, where this certainly applies. The difference is that the majority of men in court are stereotypically viewed as powerful, credible and independent. The men who do invoke negative stereotypical assumptions-homosexual, black, Irish, Arab, vagrant, Gypsy, unemployed-can suffer just as women do.

The law is also disfigured by pernicious stereotypes of women. The punitive pursuit of Maxine Carr, Ian Huntley's former girlfriend, who was acquitted of any involvement in the Soham murders, reveals a continuing belief that women have a special, nurturing responsibility towards children. Women who don't fulfil our expectiations of good womanhood are judged by double standards.

Increasingly, the arena of political change has moved to the courts, where individual cases become a way of raising wider political issues. As Rahila Gupta of Southall Black Sisters says, "It is as though individual pain is the only point of entry into an understanding of a systemic disorder." Law has become a political space for women that is capable of being used as an engine of change. Some of the most high-profile and important cases heard in the courts in recent years have involved women asserting their rights and testing the boundaries of the law: the case of Diane Pretty, who suffered from motor neurone disease, over the right to die; Diane Blood over the right to conceive using the sperm of her dead husband; the women in the military who were dismissed once they became pregnant. And then we have had the terrible appeals involving sudden infant deaths, such as those of Angela Cannings and Sally Clark, where women have been victims of miscarriages of justice, their mothering called into question.

The law is changing but the process is slow and sometimes cosmetic. The old myths and stereotypes of women are still alive, well and being enriched with new cliches; we now have women painted as "ladettes" and binge drinkers to show they were asking for it. What has changed during my professional life is women's expectations. Women are very clear that they will not settle for a system that does not listen to them or take account of their lives; the legal system is becoming wise to that fact. Women have gone through the stage where they did the adjusting; now they expect the institutions to change. The symbol of justice may be a woman but none of us will settle for symbols.

8

The Justice for Women Campaign

In 1997 prison warder Solly Ramontoedi was sentenced to three years correctional supervision for murdering his wife during a maintenance hearing at the Johannesburg Regional Court. Wondering if women and men charged with killing their intimate partners were being treated differently by the courts, the GBVP conducted research comparing the sentences handed down to men and women. And so began the Justice for Women Campaign.

First Objective: Reform of legal defences to murder and the reform of sentencing guidelines/provisions. We conducted three different research studies to help us achieve this aim. We used our research to inform a test case around sentencing women who kill abusive partners. This was the matter of Anita Ferreira, who was sentenced to life imprisonment in 2001 for the murder of her common-law partner. Although Kailash Bhana and Lisa Vetten provided expert testimony around the effects of the abuse on Ms Ferreira, the judge did not think her experiences of domestic violence constituted one of the "substantial and compelling" circumstances permitting him to depart from the mandatory minimum sentences set out in the Criminal Law Amendment Act (no 105 of 1997). We successfully challenged his decision at the Appeal Court in March 2004, when Ms Ferreira's life sentence was altered to a suspended sentence of six years. Ms Ferreira was represented by the Women's Legal Centre and Advocates Karrisha Pillay and Wim Trengrove.

Second Objective: Establishment of review mechanism to allow for the early release of women who have killed abusive partners. Under South African law both judicial and non-judicial remedies exist to alter sentences. Judicial remedies include reviews of, or appeals against, both conviction and sentence, while

non-judicial remedies include parole, the conversion of a custodial sentence to one of correctional supervision, and presidential pardon. We have utilised all of these remedies with varying degrees of success, and three women have been released already (with a fourth awaiting a date for her parole hearing).

Five women have, however, exhausted all legal remedies and have not yet served sufficient time to be eligible for parole. This is where Section 84 (2) (j) of the Constitution, which grants the President of South Africa the power to pardon or reprieve a person from punishment, has become relevant.

Pardon is a discretionary executive power that is both legal and political in nature. Typically, it is a measure of last resort available to convicted persons once all other legal remedies have been exhausted. As our international precedent for a review process, we have referred to the Canadian Self Defence Review, initiated in 1995 following the Supreme Court of Canada's decision in R v Lavellee (1990) 1 SCR 852.

To ensure that the outcome of Lavallee benefited women convicted and sentenced prior to this decision, the Canadian government appointed Judge Ratushny to lead a national review of cases involving women convicted of killing abusive partners, spouses or guardians. Some local precedent for reviews or early releases also exists in South Africa, the most well known being the amnesties awarded by the Truth and Reconciliation Commission to those who made a full disclosure of political crimes committed during apartheid.

Another set of pardons was granted by former-president Mandela to women prisoners who were the primary care-takers of children under 11 years. The latter group of pardons, which subsequently became the focus of the Constitutional Court case President of the Republic of South Africa v Hugo 1997 (6) BCLR 708 (CC), has some bearing on our arguments for early releases. In pardoning this category of women, the President took into account the fact that it would serve the interests of children, given that mothers are generally responsible for child care; that the group of female prisoners in question constituted a very small portion of the prison population; and that the early release of the category of women in question would not bring the administration of justice into disrepute.

Another factor to be taken into account in exercising mercy towards women who kill their abusive partners is the quality of legal assistance they receive. A judge interviewed for one of the research reports stated that he had rarely seen proper arguments and proper evidence of domestic violence put before him in cases involving women who had killed their abusive partners (Ludsin, 2003b). Criminal law experts interviewed for the same study made a similar point about the quality of trial advocacy, observing that legal defences to murder would open up to battered women if the evidence was collected and argued properly.

These various points, taken together with the state's positive duties outlined earlier in the Baloyi decision, constitute the basis for appealing to the President to extend mercy towards this group of domestic violence survivors. Once it is established that this is a group deserving of mercy, decisions would then need

to be made on a case by case basis, depending on the facts of individual women's cases. A blanket pardon is not being proposed. On 23 April 2001 we submitted Maria Scholtz's application for presidential pardon to the Department of Justice and Constitutional Development (through which such applications are customarily first routed before being sent to the President's Office).

Applications for Elsie Morare, Harriet Chidi, Sharla Sebejan and Meisie Kgomo were also filed. The women were selected on the basis that they had exhausted all legal remedies; their abuse could be corroborated (pre-empting accusations that claims of abuse had been conveniently manufactured to escape responsibility); and that they represented a diverse sample of imprisoned domestic violence survivors (challenging race and class-based stereotypes about who is victimised by and who perpetrates domestic violence).

The applications were supported by the National Network on Violence Against Women and the Commission for Gender Equality (CGE).

WOMEN BEHIND BARS

The public has negative stereotypes about women prisoners. Little research has been done to dispute the stereotypes. We do not know enough about why women are in prison, what happens to them in prison, or what challenges they face when they return to community life.

In 2003, the GBVP initiated a study to investigate and quantify the violent experiences of women who have come into conflict with the law. Many of the women we interviewed as part of our study had never before spoken of their abuse.

The study aimed to:

- Develop intervention strategies to help women prisoners who have experienced violence, or who continue to experience violence while in prison.
- Draw up guidelines around reintegration programmes for women into society.
- Make recommendations to the Department of Correctional Services, the police, and other helping organisations.

MONITORING THE IMPLEMENTATION OF THE DOMESTIC VIOLENCE ACT

South Africa is one of a few African countries with a law against domestic violence. The Domestic Violence Act (DVA) (116 of 1998) replaced the Family Violence Act (133 of 1993) to cover a broader range of marriages and domestic relationships.

This research project, started in 2002, focused on the Gauteng Province, and aimed to:

- Examine victims' experiences of domestic violence
- Find out whether the DVA has made a difference and if so, how;

- Find out how effectively the criminal justice system is using the DVA; and
- Make recommendations to the criminal justice system, policy makers and other stakeholders on ways to implement the DVA more effectively.

The GBVP collected data from an urban (Alberton, an urban area east of Johannesburg) and a non-urban court (Temba, a semi-rural area outside Pretoria), to compare implementation practices of the DVA. A sample of 2 005 court files from Alberton and 1 234 from Temba, which were registered between 1999 and 2001, were drawn and analysed. A questionnaire to document the contents of the court files was designed.

COSTING THE DOMESTIC VIOLENCE ACT

The South African government introduced the Domestic Violence Act (DVA) in 1998 (no 116 of 1998). Did they also provide the resources necessary to ensure that the protection promised in the Act materialises for women? Indeed, what would it cost to implement the DVA? This project focused on calculating the costs to the South African Police Service (SAPS), the Department of Justice and Constitutional Development and the Independent Complaints' Directorate (ICD) of implementing the DVA effectively.

The GBVP's calculations drew on data gathered from nine courts and nine police stations in the provinces of Gauteng, Free State and KwaZulu-Natal. The project built on earlier work conducted as part of the Women's Budget Initiative.

CUSTOMARY LAW, TRADITIONAL LEADERS AND THE DOMESTIC VIOLENCE ACT

The Domestic Violence Act can only be enforced in Magistrates' Courts or Family Courts. There is no provision for traditional courts to issue protection orders. Yet there are currently 776 officially recognised traditional authorities in rural areas of South Africa and approximately 12,000 unrecognised traditional ward head courts in rural tribal areas. In 2002 Statistics South Africa estimated that approximately 15.5 million South Africans, representing 36% of the total population, live in tribal villages in the rural areas. The majority of these people are women.

In addition to people living in rural areas, African people in semi-rural and urban areas may also adhere to the tenets of African customary law to a greater or lesser extent. With such a large percentage of people subject to customary law, research on the legal response to domestic violence would be incomplete if it ignored access to justice in rural areas and under customary law. How able are rural women, the majority of whom live under systems of customary law, to obtain protection against domestic violence? This project, exploring aspects of this question, was undertaken in Moretele, an area included in both the provinces of Gauteng as well as North West.

WOMEN'S SOCIO-ECONOMIC RIGHTS AND GENDER-BASED VIOLENCE

Money, money, money: Exploring the link between women's economic circumstances and domestic violence: In this project, the GBVP investigated how resources are distributed and controlled within abusive relationships, and how this affects women's capacity to exercise their choices. In addition, the project explored how organisations that help abused women try to respond to their economic dependence on their men partners.

HOUSING ABUSED WOMEN

Shelters provide women with temporary protection from their violent partners, as well as a space to reconsider their lives and relationships. But women cannot remain in shelters indefinitely. Without alternative accommodation, many may have little option but to return to their abusive partners. A holistic approach to combating domestic violence clearly cannot stop with shelters but must also address women's long-term housing needs. To explore how housing policies do (or do not) accommodate the needs of battered women, the GBVP commissioned an overview of the Department of Housing's work in this area. We then presented our report and recommendations at a national roundtable convened in July 2004 to discuss how to create linkages between the domestic violence shelter network and the Department of Housing. The GBVP's other work around housing and domestic violence drew on a series of interviews conducted with women living in inner-city Johannesburg. Some of these women were living on the streets of Johannesburg, others in abandoned buildings, and some in transitional housing. We explored with them questions around how the different forms of shelter affected their sense of safety and how the shelter itself also sometimes became a source of violence and danger.

PREVENTING GENDER-BASED VIOLENCE

Johannesburg is South Africa's biggest city. Its inner city is a deprived area, grappling with a host of social problems that have emerged from the increasing spread of economic inequality in the province. This problem has been made worse by South Africa's apartheid history, whereby white people occupied more affluent areas and black people poorer, badly serviced areas. The GBVP aimed to contribute towards safer urban environments for women by conducting research to understand how both place and time play a role in sexual violence.

By analysing police rape dockets from six police stations serving inner-city Johannesburg, this research project:

- Mapped where and when sexual violence happens in Johannesburg's inner city;
- Identified how, by designing the city in particular ways, it can be safer for women; and

- Created opportunities to get discussions going around advocacy, education, and awareness raising towards creating environments that are free from sexual violence.

PREVENTING SEXUAL AND DATING VIOLENCE AMONGST YOUTH

A 2001 Human Rights Watch Report, aptly titled Scared at School, confirmed that South African girl learners experience many different kinds of violence. The report said that South African girls are vulnerable to being raped by their classmates, and that they experience violence at the hands of their partners in their dating relationships. Girls described persistent and unwanted sexual harassment from their male counterparts. They said this interfered with their academic work and physical and emotional health. Being very concerned about the extent of gender-based violence against girls in South Africa, the Gauteng Province's Department of Social Development asked the Gender-based Violence Programme to develop a preventative programme around sexual and dating violence.

We designed and ran a programme with learners at Nageng Primary School in Vosloorus,a township in Gauteng's East Rand. The programme included capacity building and training of young women facilitators from the community. It involved educational work amongst the girl learners for two months, after which boy learners were integrated into the process.

The programme ultimately focused on promoting gender equality in practices at school. Cleaning the classrooms was a burden that fell unfairly on the girls. Both the girls and the boys decided to challenge this practice and promote, instead, the idea that cleaning should be shared equally amongst the girls and boys.

UNDERSTANDING INTIMATE FEMICIDE

Three studies were conducted by the GBVP into the phenomenon of intimate femicide (or men's killing of their intimate female partners), the most extreme form of domestic violence. Details of these studies are set out below:

- With our partners the Gender and Health Research Group of the Medical Research Council and the Division of Forensic Medicine and Toxicology at the University of Cape Town, we undertook South Africa's first national study of female homicide. Some of the initial findings have been released in the form of a policy brief.
- We interviewed 14 men currently serving sentences for killing their intimate female partners. By doing so, we hoped to add another dimension to our understanding of why these killings happened.
- We also gathered data on 941 cases of intimate femicide that occurred in Gauteng during 1990 and 1999. This information has enabled us to plot some patterns and trends around such killings.

FEMALE OFFENDERS IN THE COURTS

Since women make up a minority of those charged with criminal activity, they also represent a relatively small proportion of those dealt with by the courts. In 2003/04, 15% of the cases completed in adult criminal courts involved female defendants. As well, women who do appear in court are somewhat less likely than their male counterparts to be found guilty. In 2003/04, just over half (51%) of the cases against women resulted in a conviction, compared with a figure of 59% for men. In addition, because women generally commit less serious crimes than men, they are more likely than their male counterparts to be sentenced to probation. In 2003/04, 40% of women convicted of an offence were given probation as their most serious sentence, compared with 29% of men found guilty. In contrast, women were less likely than their male counterparts to be sentenced to prison: 26% versus 38%.

Women who are sent to jail typically receive shorter sentences than their male counterparts. In 2003, for example, the mean term for women sent to prison was 63 days, nearly half the figure for men whose mean prison term was 120 days. The fact that women receive shorter sentences than men is consistent across all offences, with the exception of attempted murder, criminal harassment, and drug trafficking.

WOMEN, LAW AND CRIMINAL JUSTICE

"Women, Law, and Criminal Justice" is a comprehensive examination of the complex interplay between women, the legal system, and the criminal justice system. This groundbreaking text offers valuable insights into the unique experiences, challenges, and inequalities faced by women as both victims and offenders within the criminal justice system. The book begins by exploring the historical and cultural factors that have shaped women's interactions with the legal system, including societal attitudes towards gender roles, stereotypes, and biases. It then delves into the various ways in which women intersect with the criminal justice system, including as victims of crime, defendants, prisoners, and professionals working within the system. Through interdisciplinary analysis and empirical research, "Women, Law, and Criminal Justice" sheds light on the systemic barriers and injustices that women encounter at every stage of the criminal justice process. It critically examines issues such as gender-based violence, sexual assault, domestic abuse, incarceration, and reentry, highlighting the need for gender-responsive policies and practices within the legal and criminal justice systems. With its intersectional approach, the book also explores how factors such as race, class, sexuality, and disability intersect with gender to shape women's experiences within the criminal justice system. It emphasizes the importance of recognizing and addressing these intersecting forms of oppression to ensure justice and equality for all women. Whether used as a textbook in criminal justice courses or as a reference guide for practitioners and policymakers, "Women, Law, and Criminal Justice" provides a comprehensive and insightful exploration of the complex dynamics of women's interactions with the legal and criminal justice systems, empowering readers to advocate for gender-responsive reforms and social justice.

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