WOMEN'S MOVEMENT'S ENGAGEMENT WITH THE LAW:
Existing Contradictions and Emerging Challenges

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A Concept Note

Through over a century-long history, the women's movement in India has been engaged with law as an instrument with which to negotiate women's rights. To a great extent this strategy has been successful in shaping public consciousness and bringing women's issues on to the national agenda. In the post-independence era, the pressure brought upon successive governments has compelled them to acknowledge inequalities, and address these through laws and policies. Using the space made available by the constitutional guarantee, the movement has pushed for amendments in laws in an attempt to bridge the gap between formal and substantive equality, and to enable women to exercise their rights. At the same time, it has sought to pressurise the state to formulate policies that have a significant positive impact on women's status. Over the past few years, we have seen how this process has had an impact on law-making, particularly in the present context when a slew of changes in existing laws for women, as well as new laws, are on the anvil.[1]

The struggle for rights and justice for women using law as an instrument of change, however, has not been easy, as the social, economic and political structures within which law and the legal system exist actually serve to maintain and reinforce inequalities. Further, differentiation between women based on regions as well as religion, class and caste-based hierarchies, and women's location in unequal and oppressive conditions, has received less attention than it deserves. Such divisions and inequalities persist despite of, and in contradiction with, constitutional provisions of equality, social justice and secularism. Over and above such inherent contradictions, shifts and changes in the socio-political context have been adding to the complexity of both the debate and the struggle for women's rights.

For example, in relatively recent times, the growth of fundamentalism and politicisation of the debate on personal laws systematically cramped the space for expanding the debate on crucial aspects of gender justice. The struggle for women's rights has also become increasingly intertwined with the struggle for developing India's secular-democratic polity, within which men and women from different communities can enjoy the right to adhere to their diverse practices while upholding the rights of women within the framework of the Indian Constitution. Similarly, advancing neo-liberal policies, with their agenda of rollbacks in the labour law regime and introduction of several new areas of vulnerability for women, have compelled the opening of new areas of concern regarding law and social policy, particularly in relation to women workers. In fact, several current features of exploitation, oppression and forms of violence against women that have acquired new prominence have brought into focus the social dimensions and practices (both new and old) that coexist uneasily with constitutional provisions, the laws, and their manner of implementation.

Among other important new areas that have emerged in recent times are the social effects on women of a range of new technologies. The declining sex ratio is one of the significant fallouts of such unethical, commercial and illegal uses of technology, which needs to be addressed in a holistic manner. The effect of the growing nexus between commercial forces and technological advancements can be felt through indicators like the declining sex ratio. Fuelled by politics on population, this has impinged on women's situation in the larger socio-political context, and has been shaped in such a manner that law alone finds itself inadequate to address it.

The above discussion indicates that it is perhaps an appropriate time for us to reflect on how far we have been able to advance women's rights in the sphere of law, review the effects of past successes and failures in this area, and take forward the movement's perspective towards incorporating these emerging areas of concerns. In general, it is still true that in many crucial areas the formal legal system, as well as traditional modes of delivery of justice, have both failed to address the existing ground realities and women's experiences of discrimination, oppression and exclusion. Yet, advances may be seen or anticipated in the number of new laws that have been and are being enacted, in the amendments made to existing laws, and in several significant Draft Bills proposed by the present government, which are pending before the Parliament. At the same time, despite such progresses in lawmaking, several elements of retrogression are also seen to be working their way into the processes involved in conception, applicability and implementation.

It is in this context that the Centre for Women's Development Studies proposed to organise a seminar on ***Women's Movement's Engagement with the Law: Existing Contradictions and Emerging Challenges*** at New Delhi on 20-21 March 2006. The seminar opened with presentations on the women's movement's engagement with law, the first half dealt with the colonial era, and the second focused on the post-independence period. In the overview session presentations focusing on violence against women, and issues related to women's equality and the broad constitutional mandates were made. This was followed by a brief session on the anti-dowry movement and experiences of the Dowry Law. Keeping in mind the changing context, the consultation also reflected on the situation of women's employment and labour laws, the right to property, and access to land. In the end it highlighted emerging issues that need to be understood within the changing paradigm.

A great deal of work has been produced in her honour by her students, so why is it that we are supposed to be honouring her today? She belongs to us. She has been an inspiration, she has been a mentor, she has been a guide, and at times, she has been perfectly capable of blowing one up; she has played all these four roles through all these years. The other thing is that both of us belong to a generation where we feel that when it is time for us to quit, we should quit with our heads held high - and she is quitting. But we are not bidding her farewell. We are just honouring her for having looked after us, for having cared for us, and for having nurtured this institution practically from its birth. She is certainly one of the founders of CWDS - she was teaching at the university at the time, and as soon as she retired she came and said '*Mein haazir hoon*'. Since then she has been with us. That is all I need to say. She has been much loved, and she will be continued to be loved by all of us who work in this sector.

case, and the fierce contestations that it engineered, marked the beginning of the new phase. In the history of nationalism, it brought to the centrestage the question of the consent of women. In drawing to a close a century of male-sponsored reform, it also marked a move towards a definite defence of tradition as a political strategy, which placed the burden on women's embodiment of tradition.

This was more clearly articulated in the debate on raising the minimum age of marriage for men and women. The issue of the ban against child marriage had been brought in earlier. Vidyasagar and Keshavchandra Sen were the pioneers in the nineteenth century. The Native Marriage Act of 1872, which prohibits polygamy, was enacted. Initiated by Keshavchandra Sen and the Brahmos of Bengal, this Act includes provision for legal allowance for divorce without any reference to caste, and declares the minimum age of marriage for girls to be 14 and boys to be 18. The debate was very fierce and in the end, due to the opposition from the Hindu orthodoxy, it was stated that this would apply only to the Brahmos.

The theatre of action then shifted from Bengal to Maharashtra. Malabari took up the case of raising the age of marriage. It was, however, from the 1920s that women became involved in a bigger way with legal reforms. Women like Tarabai Shinde and Ramabai Saraswati had earlier spoken against child marriage, but this issue had not really emerged in a big way till the 1920s, which also marked the beginning of the Gandhian freedom movement as well as the beginning of women's organisations like the All India Women's Conference (established in 1927) and the National Women's Council. During this period the whole issue of child marriage was discussed, and efforts were made since 1922 to raise the age of consent within and outside the marriage. The government had sponsored a Bill in 1925 fixing the age of consent as 14 in extra-marital cases, and 13 in marital ones. This Bill was passed in the Legislative Assembly. However, the government then sought the opinion of all the local governments and administrations to find out how they viewed it. In 1927, Harbilas Sharda introduced a Bill raising the age of consent of girls for 14 and boys to 18, arguing that this was needed to prevent early marriage. At the same time a second Bill was introduced in the Legislative Assembly, called the Children's Protection Bill, by Sir Harisingh Gaur, who later became the first Vice-Chancellor of Delhi University. Harbilas Sharda's Bill was referred to a select committee and it was argued that the Bill should apply not only to Hindus, but to all communities, thus restraining child marriage.

Later, the Joshi Committee was formed with N.N. Joshi as the leader to consider both Harbilas Sharda's as well as Hari Singh Gaur's Bill. The other members of the Joshi committee were Rameshwari Nehru and an English lady, I forget her name. The committee invited women from many parts of India to testify, and give their views. Many women, including my grandmother, went and testified before this committee. This is the time when the AIWC became very active, and took up this issue. Originally the AIWC was advocating for education, but then it felt that women's education could not progress unless the age of marriage was raised. It passed resolutions deploring the effects of child marriage, and, in fact, argued that the minimum age of marriage shouldn't be 14, but should be 16 for girls, and wholeheartedly supported Hari Singh Gaur's Bill. In meeting after meeting, resolutions were passed, and they elected a small committee to watch and report on the progress of the Bill in order to coordinate and direct the activities of the various provincial committees. In each province a small committee was formed to put pressure on their local members of Parliament to pass this Bill. An intensive campaign was launched against child marriage, and to bring people's views to the attention of the legislators. Suggestions were given, campaigns were launched, propaganda meetings were held, lectures were given, articles were written, posters were put up, petitions and postcards were sent with as many signatures as possible to the local members of Parliament demanding the passage of this Bill. The AIWC sent a deputation to the Age of Consent committee which met in Patna, and they came to the conclusion that it would be ineffective to raise the age of consent without also raising the age of marriage. Both these really went together. A deputation consisting of Rameshwari Nehru, Mrs S.R. Das, Sarladevi Chaudhrani, Begum Hamid Ali, Kamaladevi Chattopadhyay and Margaret Kak even met the Viceroy. A second deputation led by Indira Bhagwat met all the European non-official members of the legislative assembly, and tried to impress upon them the importance of this. They met leaders of different political parties as well

Towards the end I would like to say that because the women continued to iterate that their voices were not being heard, the AIWC agreed that women should at least be nominated to the legislative assembly to speak on behalf of the movement, and accepted the name of Renuka Ray. She went into the legislative assembly with the specific task of pushing the reform of the Hindu Personal Law. This was the kind of mandate with which the women's movement had put her there, and if one looks at the debate one may find that she spoke very much in support of the Bill.

One last thing I will say is about the labour legislation. The AIWC had addressed the issues of women workers in tea plantations, jute mills and the textile mills of Bombay, and in the coal mines. These were the four areas in which issues of women workers were taken up, but not with the same vigour and enthusiasm with which the issues relating to property, inheritance, divorce, raising the age of child marriage, etc.,were raised. About the same time the International Labor Organization (ILO) passed the Convention of 1935 banning women from working underground in coal mines all over the world. Therefore, the Government of India had to agree. But they resorted to it only during World War II. Thus, while women were withdrawn, owners of the coal mines wanted them to continue. The emphasis was not so much on improving the condition of women workers; instead, the ground of women's withdrawal was made out to be immorality. These women were sexually harassed underground. The AIWC said that in case women were prohibited from working underground, they should be provided with alternative occupations and alternative training so that the family income was not affected. They again allowed it because they wanted coal, and they wanted women to work.

The AIWC also asked for facilities like crèches, playgrounds, adult education facilities, maternity benefits for women working in the textile mills, government work departments, and coal mines. However, the Maternity Benefit Act was not passed till about 1961, though the efforts for it were begun much earlier. Time and again they kept saying that women must get ante-natal care, post-natal care, maternity benefits, maternity hospitals, etc. These were the issues on which the women's movement in the pre-Independence period focused, and achieved some success, though not as much as they had wanted. This lack of success was partly because the government was not very keen on bringing any legislation which would challenge the traditional religious and male bastion. Even after the Sharda Act was passed, they ensured it was not strictly implemented because the whole policy was to not interfere with the personal and private lives of Hindus or Muslims lest it created anti-British sentiments.

POST-INDEPENDENCE ERA, LAW AND WOMEN'S MOVEMENT

Kirti Singh

The women's movement has played a vital role in the introduction and amendment of various laws concerning women after independence. In fact, it would be true to say that had it not been for the women's movement, most of these laws would not have been passed or amended. Conversely, it would also be true to say that in areas where women's legal status has not improved, it is largely because of the lack of prioritisation by the women's movement. This is true, for instance, in the area of family law/laws within the home. Since the late 1970s, the women's movement has largely been preoccupied with laws related to violence against women, since they have been essentially reacting against various forms of widespread violence like dowry-related violence, rape, other forms of sexual assault, female foeticide, etc.

The laws that were passed at the initiative of the women's movement or large constituents of it included the introduction of various family laws immediately after independence, which reformed the Hindu personal laws, led to the introduction of the Dowry Prohibition Act, 1961 and the amendments made to it in 1983,

Act (the general and secular law of Succession). However, in 1976 an amendment was introduced stating that if two Hindus were married under the Special Marriage Act, they would be governed by the Hindu Succession Act instead of the Indian Succession Act so that the Mitakshara joint family system could continue. In fact, as is well known, till the 1980s major women's organisations asked for a Uniform Civil Code. After the Shah Bano controversy, it became clear that the demand for a UCC was not supported by large sections of Muslim women and others, apart from being opposed by Muslim fundamentalists. It also became clear to the women's movement that the issue of the uniform civil code need not necessarily bring about equal laws, and therefore the demand for it might be counter-productive. The BJP, for instance, was also demanding a UCC, but was clearly not interested in equal rights for women. Therefore uniformity per se would not lead to equality. Meanwhile, AIDWA came up with the demand for equal rights and equal laws, which meant that within each community we should demand substantive equality. This articulation of the process of reforms was a major contribution from the women's movement, and paved the path that future reforms would follow. AIDWA also suggested that apart from changes within each community-based personal law, general laws in areas where no laws existed could also be demanded. These were areas such as domestic violence, registration of marriage, marital property, etc. In fact, the reforms in the Indian Divorce Act were the result of many years of community-based intervention under the leadership of Christian women's organisations like the Joint Women's Programme and the YWCA, which held several meetings with women and lobbied with leaders within the Christian community, including religious leaders.

I will now come to the second broad trend that I see in post-independence law reform. This is the introduction of laws that define and recognise certain acts of violence against women. The history of how the women's movement participated and was a primary force behind these demands is documented in press cuttings and articles. The formation of committees like the Dahej Virodhi Chetna Morcha and the piloting of bills through Members of Parliament like Promilla Dandewate are well known. The result of this intervention by large constituents of the women's movement and parliamentarians who were a part of the women's movement resulted in certain gender-sensitive laws that were innovative and pathbreaking. For instance, a new offence called dowry death was introduced in the IPC. This offence defined a new species of murder, which occurred in specific Indian situations. The definition took into account the fact that in cases of dowry death, it is difficult to gather evidence and there are normally no eye witnesses. Similarly, a new offence of cruelty was incorporated in the IPC to punish the husband and his relatives for dowry harassment and for physical and mental torture. The Dowry Prohibition Act itself for the first time sought to define the offence of giving and taking dowry, and punishing it. An amendment to this Act in 1986 shifted the burden of proof to the accused person. The shifting of the burden of proof was an amendment that went against the gender neutrality of established rules of evidence in criminal law, which stipulated that the burden of proof lies on the person making the allegation. Similar gender-sensitive provisions that took into account the Indian context and behavioural patterns of an Indian woman in certain situations were introduced in the rape law amendments of 1983.

Further, since the early 1990s various progressive women's organisations and NGOs have been suggesting a complete overhaul of the provisions relating to sexual assault in the IPC. A recent Criminal Law Amendment Bill redrafted by AIDWA regarding this was based on an earlier Bill, which had been prepared by a sub-committee of the National Commission for Women in 1993. This Bill enlarges the definition of rape to include within it all the different types of penetrative sexual assault. Till now, under Section 375 of the IPC, rape meant penetration of the vagina by the penis, and did not include penetration of the vagina by other parts of the body or by objects. It also did not include forced anal and oral sexual intercourse. The enlargement of the definition of rape is especially applicable to child rape cases, since in a number of these cases penetration only took place by objects or parts of the body like fingers, etc. This Bill also recognises various forms of child abuse and seeks to redefine molestation and 'eve-teasing'. Further offences like stalking, and persistent sexual assault and incest, which are not a part of the IPC, are sought to be included.

years later are these the advances or regresses that we have made? Unless that happens it is very difficult to speak on that subject. Anyway, let me start with some good news.

We have had a good judgment that was delivered at the Sessions Trial Court on Saturday which dealt with case of paedophilia - the Anchorage judgment. We do not know what will happen in the High Court, but I see this judgment as a significant one. But before the Anchorage case we've had other cases - the Swiss Couple Case and the Freddie Pitt case in the Goa High Court. Let me just talk about these three cases because it is very fresh in my mind, and are highlighted in the papers.

When we talk about violence, rape, sexual harassment, etc., there is a particular framework within which we speak. Even when we talk about trafficking, it is predominantly gender, the male-female relationships, the subordination and violence on women in these relationships, that we focus on. Here you have cases where a rape happens within a city, within an area, and in communal conflicts, where you deal with rape at one level. It could also be trafficking within the country or a region, or women or children being trafficked for the purpose of brothel prostitution. The elements of penetration, violence inflicted, non-consensual sex, commercial sex, etc., exist in these kinds of violence.

Now when we talk of paedophilia, we are entering a new domain where the First World - Third World issue predominates. Specifically, when we see this in India in these specific cases, it is children who are poor and vulnerable who are used for sexual purposes. A common element in all these cases is that foreigners came to India, and they used children who are very poor for sexual purposes. Now sexual purpose need not be gender specific. It could be same sex or heterosexual. What is created here is not necessarily penetrative sex, but creating images using the camera, the laptop; photographs were generated and sold in the global market where India becomes a very important destination. I do not know how much it is prevalent in Delhi, but in Bombay, Goa, Kerala, on the beaches it dominates aspects of sex tourism.

I will discuss the commonality of these cases and how these cases were followed up. Freddie Pitt's case was followed up consistently by Sheela Barse. An important aspect of this case was that a lot of pornographic material was seized, I think around 3,000 photographs or so. Here children were injected with certain hormones so their genital organs got enlarged. They were pinned to the bed and photographed in these positions. Then these photographs were used for sexual and commercial purposes. A relevant issue in this case is the manner in which a child is supposed to give evidence against a person who has done this under the guise of being an authority, and a benevolent saviour of these poor children. Here, for the first time, I think the Rules of Evidence were supposedly reconsidered. In these cases when a child was being cross-examined, it was said that the child need not be in the same room with the accused. The child can be behind a screen or behind a glass door. This is crucial to determine how well a child will be examined in a court of law. Freddie Pitt's case landed in conviction because of the efforts that people like Sheela Barse put into it. For years and years she followed up this case, and moved to the High Court, and then the Supreme Court, went back to Trial Court, and finally the case ended in conviction.

In the Swiss couple case, an elderly couple was coming over to India every six months. They used to stay at fixed places, for instance, in Bombay it was South Bombay, the Gateway of India, the Colaba area, etc., where a lot of poor urchin children stay. These children were picked up and taken to a resort, where they were photographed. It was a taxi driver who alerted the child rights groups. The child rights group followed up the case and found six girls who had been used for this purpose. The couple was found at the beach resort and was arrested. This case again landed in a conviction at the Trial Court in record time, and thereafter the accused moved to the High Court for a reduction of sentence. An important issue that came up was that the fine imposed in the lower court was Rs 5,000. At the higher court level, the fine was increased to 1 lakh for each of the children, and the sentence was reduced to half. The message that the High Court sent out in this case was that one can buy justice, that a fine or monetary punishment is correlated to your imprisonment or the sentencing pattern.

purview of Section 376 IPC, we had to use Section 377. This is in cases where the father is molesting the daughter, uncles and grandfather are molesting the children, institutions are molesting the children, or the case of paedophiles. Therefore, Section 377 has to be contextualised from different angles, and we need to have a much more complex understanding of Section 377. It has to be located within the parameters of Section 376, and unless we have a new Sexual Assault Bill which provides a new definition of sexual violence and sexual assault. We cannot see Section 377 merely as a weapon in the hands of the police to abuse people in same-sex relationships. This makes the situation very difficult for people like us, who in fact are on both sides; advocating for child rights as well as the rights of people in same sex relationship. How do we position ourselves? How do we get every player on board before we think of enacting a statute? The recommendation to abolish Section 377 was put forward in 1993 by the Women's Commission. But there was no debate. This agenda was not brought on a common platform, but came as a reform for Section 376. Thus we really need to bring it on board, and see how these cases are developing.

I can only tell you about cases that have come on the western coast in Goa and Bombay. I do not know of similar cases, which may have come about in other states. However, this is a characteristic of the globalised market, in a globalised world where everything is up for sale. This is particularly from the perspective of the Third World where we want to sell everything, including female sexuality or child sexuality. How do we position ourselves in terms of safeguards? What are the safeguards that are needed to be placed? And, in particular, the reason why India is occupying an important position is because Thailand has enacted stringent laws. Earlier the location was Thailand, now it is Sri Lanka and Bombay. This is one issue we really need to look into.

As far as dowry and the Domestic Violence Act are concerned, I feel that somewhere we also need to be self-reflective about these issues. Let me start in 1980, where all violence was linked to dowry, and somewhere 498A or 304B was framed within the context of an anti-dowry movement, and not in the context of a movement focused on violence against women or domestic violence. Somewhere we had created a social and a legal understanding of dowry as the cause of domestic violence. It has taken us 25 years to have a much more complex analysis of violence within the home, which we now call domestic violence, and which includes the natal as well as the marital family, and link it to civil injunctions and civil laws. Usually we all know that when a 498A case was filed, abused, misused or underused, the husband would in each case come home, beat up the woman and throw her out. We've had a series of cases where the husband went to court and got an injunction against the wife, stating that as this woman has filed a criminal case against her husband, she should not be allowed to enter the matrimonial home because it is dangerous for the husband and his family to have such a woman in the home. Or else we've had judgements that reported that filing 498 A cases against abusive husbands is construed as cruelty and therefore they can obtain divorce on this ground. Or when a woman declared her intentions of committing suicide that in itself is construed as cruelty to the husband. The whole interpretation of cruelty under Section 498A boomeranged against women in most cases.

Today our situation in the civil courts is such that if a woman goes to ask for divorce or any kind of maintenance or protection, all that the husband's lawyer has to say is that she has filed a 498A case, and immediately the judges' attitude changes. This is common in a so-called progressive place like Bombay, where the judges are supposed to be progressive. Filing of a case under 498A itself is perceived as cruelty towards the husband. In that sense, the Domestic Violence Act may help. It brings remedies into a civil statute and gives protection to a woman, because here the law is not about arresting the husband or punishing him, but about securing civil rights for a woman. Though these injunctions exist in CPC prior to the enactment of the Domestic Violence Act, they were not used, or were underused, or there was not enough awareness among women's groups regarding these provisions. Now that the Domestic Violence Act campaign has brought this issue to the fore, I think it will become easier for judges and others to understand the protective aspect of the domestic violence situation, where civil remedies are needed and women need to be protected.

provisions being brought in by women. Questions are being raised as to why the special reservation? Why is it that a principal of a woman's college has to be a woman? Why is it that women's institutions have to be headed by women? Why is it that the clerical positions are reserved for women? Those kinds of employment reservations or other guarantees have been questioned by people other than women. Consequently, the courts have also been placed in a strange situation where if they strike it down, such provisions become anti-women, and if it upholds the contention then the question arise who is this women that you are constituting?

Consequently, the courts have also essentialised women. A woman is supposed to be a caring, loving creature. All the caretaking tasks of society have been placed at the door of the biological woman, and consequently a whole range of problems have emerged. On the other hand, I find Soumitri Visvanathan's case as one of the most interesting. She had gone to court and said that if I am moving around with a man, how is that your concern? Why should there be this provision about punishing adultery? In earlier cases, it was the man saying that you are not punishing the woman, you are in some way legitimising immorality. The court said that we can't doubly victimise her, it is a policy choice. In Soumitri Visvanathan's case it was the woman who came to the court and raised issues about her own sexuality, her agency, her choice. Justice Chandrachur responded and reacted more or less in the same way as responses that had come in earlier.

I am just trying to state and highlight the discourse of equality that has come to court. Sometimes it is the woman asserting equality, sometimes it is other people asking why she wasn't following norms of equality. In asking for special treatment, you are asking for a breach of the whole notion of equality. And the necessity for distinguishing these two kinds of cases has not really been appreciated, so that when you ask for a certain kind of assertion, it is used as an instrument to control the sexuality of a woman. This is a new way of looking at the issue, and we should be reflecting on.

The other was the whole employment reservation issue, Kirti had touched upon the Daniel Lattifi case, or the Muslim Women's Protection of Rights law. I find it an extremely interesting judgment, which is somewhere trying to straddle these issues. You recognise the fact that tradition, custom and the family play an important role. If you align the woman on your side and put tradition and religion on the other, you again put her in a particularly difficult situation that requires her to choose between the community or her own religion and rights. This places a particularly vulnerable section in a very difficult position. The court has just cut through the whole issue and not spoken about the equality that this woman is entitled to. It has not entered into questions of what the requirements of individual religions are. Every human being requires certain basic minimum rights, and that is how you read the equality provision as well as the Muslim Women's Protection of Rights Act issues. They said that a woman is entitled to maintenance till the *iddat* period. Once the period is over, no monthly maintenance has to be paid, and that is the end of the matter. They need to come out of this and have to speak about reasonable provisions, which is more on the lines of providing for some kind of matrimonial property rather than giving out the monthly handouts that one had to give earlier, and which ended at a certain point in time.

I think this is a judgment that requires close reading, and is somewhere also trying to speak about the right of equality as a basic minimum human entitlement. A similar instance came about in the second air hostess case, where the court stated that the age of retirement had to be the same for male and female employees. One should say that after the age of 55 we have given women that many more alternatives, instead of saying that after 55, you retire. If the women want choices, if they prefers to have their last four-five years on ground duty while they prepare for retirement, give them those alternatives rather than stating that if men work till the age of 58, so must women.

I am trying to look at the constitutional mandate on equality in several ways. One way of interpreting the right to equality is to respect human beings as ends in themselves, as individual units, who are to be respected for their contributions and would not be seen as utilities. The fact is that the range of hierarchies undercuts and prevents society from functioning properly. The discrimination debates reveal that we have

because women's rights have tended to be circumscribed by other constitutional guarantees of community rights, which was also present in the context of the Partition and communalisation of politics within which the Constitution was being framed. So this attempt was made to assure communities that their rights were not going to be trampled upon, nor their issues of identity infringed upon. However, the government and judges have been hesitant, or have gone overboard because of their own prejudices, as we can see in some judgments in Muslim women's rights cases where they tried to make comments that were not required. I think there is a tension between that community and individual rights, which is becoming more apparent as the women's movement gets more articulate on this specific instance of the denial of justice and equality, and the continuance of discriminatory practices both within the law, and in terms of social aspects.

Lastly, I will just tell Mrs. Nayar that while we are happy that the law has been finally passed, if you are suggesting that we have not been talking about the law, I disagree. We have been talking about it for more than 10 years. It's the government which took 10 years to pass the law. The movement has been talking about the issue of domestic violence all across the country, which of course doesn't mean that every woman in India knows about it, just as every woman in India doesn't know about the many other laws that are present. The movement has been lobbying for this law. The movement has been in fact pushing for it, and debating how to bring in domestic violence within the ambit of civil laws, and the options that can be provided.

Subhashini Ali

There are many things that one can say, but I will restrict myself to one or two matters of great concern, which we all should try and do something about. Amitaji ended on a very optimistic note, but I am afraid I do not share that optimism. What we are also experiencing is tremendous judicial intervention in rolling back many of the rights that have been fought for for so many years. We have seen what some judges have tried to do with 498A and even the age of marriage, among other issues. The other point is that the implementation machinery is awfully faulty, which often militates against the manner in which justice is being done. For example, we have had a very disturbing piece of news from Tamil Nadu, which could have appalling implications all over the country. This relates to provision for the dowry prohibition officer under the Dowry law, which often exists on paper. However, none of us have ever met any such officer in that particular incarnation. It is someone in the administration who is also been given an added responsibility. Well, there has been a terrible judgment recently in which a lawyer and his family were accused of dowry harassment. He pleaded that because the dowry prohibition officer had not done the job that he was supposed to, the judgment of the court was infructuous. His plea was upheld by the court and the hearing was stayed. This is terrifying, because I don't think anyone here has heard about any dowry prohibition officer actually doing any of the jobs that they are supposed to under the law against dowry. FIRs are not being registered in many parts of Tamil Nadu because the cops fear being hauled up in court.

So when we talk about the Domestic Violence Bill, I think there is still some chance as far as the final framing of the rules is concerned to get some of the suggestions on board. The Protection Officer is envisaged under the law, though AIDWA at least has always been opposed to this inclusion. This implies adding another layer of bureaucracy, which will lead to further complications and corruption. So in the light of what is happening in Tamil Nadu, we need to rethink about acceptance of this provision, which might actually mean that the Domestic Violence Act will not be able to benefit people. This is something we need to be concerned about.

Finally, I would like to say that female foeticide is probably one of the biggest areas of violence, and now we are coming to know that the PNDT Act is the least implemented of all the laws in the country. But what is more scary is the fact that in a place like Maharashtra, which can be called one of the most progressive states, there was a sting operation conducted in which a member who was designated as the appropriate authority was found to be conducting sex determination tests, informing people where they should go for

the issue of questioning the woman every time a rape happens. It is not only the police and the judiciary who indulge in this, but also the people who are supposed to be progressive do the same.

So how do issues of law and morality operate? The issue is that girls do engage in sex work and feel that sex work in itself is not bad. Now you know that you are going to bring out a legislation where soliciting is not going to be a crime anymore, and that which is going to be the case with this 52-year-old women also. That she as a sex worker will not be arrested, it will be the client who will be arrested when the Bill comes in. However, while sex work has not been made an offence, but dancing has, and a whole lot of girls are arrested everyday on the pretext that they were in bars. Though dancing has been prohibited, you can still work in bars - you can still serve, and what's happening now is even worse. As the girls now have to be companions, they do not have money, so they sell sex for Rs 50 and Rs 10, and AIDS groups are shouting themselves hoarse over this issue. At every stage women's groups in Bombay are split in half over this debate.

However, we have somehow been unable to deal with the issue, and in the women's movement itself there is a cloak of morality, respectability and marriage. Men says sex work is okay because it is confined to the red light areas, as otherwise our daughters are going to be looked at as bar dancers. The bar dancers are a category. This is an issue that should be brought on board because this is a new and evolving category that has challenged our notions on sexuality, morality and ethics. A lot of the girls arrested are Bangladeshi. I do not even want to talk about the Bangladeshi bar dancer issue, because there is no debate on citizenship and fundamental rights, and after the judgment in the Assam case, the Supreme Court has pronounced that they do not have these rights. The police say that the root of terrorism is in Bangladesh . So all these girls are picked up. They are about to be deported, but nobody has raised the issue.

Kirti Singh

I just want to make two points. One is that there are definite issues that we need to take up. There is the issue concerning labour, unorganised labour. We don't have legislations as yet on domestic labour, unorganised labour, or self-employed labour. Second, we need to take up issues around honour killing, and think about ways to deal with it. It is a specific crime located in the Indian context, and I think we have some examples in the legislations that we have made when dealing with specific Indian crimes like dowry. Third, we also have to look at aggravated forms of rape, for instance in Gujarat, and see how we are going to deal with communal rapes. These are some of the issues that have not been dealt with by our laws, and we need to look into them. At the same time, we have to start looking at the implementation of the law - where we have failed, how we have failed, can we do anything about it? How are we going to counter issues for instance in the dowry case or about Section 498 A where it is said that this law is being misused by women?

Flavia Agnes

I have to add only one thing about the neutrality issue in rape cases, and 498-A cases. My concern has to do with the child custody cases - the amount of pressure that is there on women, and the manner in which women are bulldozed in child custody cases. There is again a backlash, and at times husbands don't pay any maintenance while women are supposed to provide access to them. Often courts talk down to women and humiliate them. This is horrifying, and women often say leave me alone, leave my child alone. However, the courts are insensitive on this issue.

Chair: Indu Agnihotri

Indira Jaising is well-known enough. She has been with the women's movement, with various social movements as well as in movements where the law has been used as an intervention. Through her legal practice she has intervened and used cases to reinterpret rights and notions of women's rights. She is a senior advocate based in Delhi, and has been practicing law for more than 30 years.

can be levied against them? I personally believe that this set of issues has remained unaddressed, particularly from the women's movement. Some of us have made efforts to address these issues within our own situations. I have tried to raise these issues myself. I haven't really found any linkages, which leaves me to introspect ponder on why this is so. The only answer that I have been able to come up with is that the law, law reform and judicial interpretation have not become a political issue in our consciousness. Because it has nor been viewed as a political issue, neither it has not become the subject matter of political debate. As far as I am concerned, it is not enough to say 'don't debate these issues because there are contempt of court laws'. The Constitution of India says that the behaviour of a judge cannot be discussed in Parliament. There are extremely draconian provisions insulating decision-makers for any such debate. However, the question I am posing is, why is it that we in the women's movement have never seen this as an issue? Why have we never raised these issues? If we are going to entrust an institution with such vital functions, why is it that there is absolutely no democratic input going into the shaping of these institutions?.

Let me move on to yet another problem that I have often been asked to talk about. It is a remark that we hear all the time – well, we have such beautiful laws, but they are not implemented. I would like to reflect on the use of this word 'implementation'. What exactly do we mean when we talk of implementing the law? My own view on this is that this problem runs much deeper than a problem of non-implementation, and the sooner we stop using this kind of formulation, the better. The problem has colonial origins, and it goes back to the nature of law-making. The assumption is that we live in a society where everybody knows their rights, and that people will access their own rights in their own way, according to their own needs. As I said, it stems from a colonial framework, or is a given notion stating that it is not the business of the state, but that of the individual to operationalise the law. You may choose to operationalise it, you may choose not to. And this is where non-implementation comes in, because the means with which to implement the law is not available in the law. If they are not available in the law, if they are supposed to be located within individuals, then it is futile to say that the law is not being implemented.

This leads on to the next point, namely the character and the nature of law-making. These have to change, the mechanisms with which you access justice have to change. This is very critical. The content of the law has to be thought through at the stage of drafting the law, not after it has been drafted and given to the general public. This means that you are not just in the realm of substantive law, but that you have gone beyond it. Even if we assume that there is a consensus in society on the norms we want the law to reflect, it is not enough. The question is, how are these norms going to translate into actual practice? I am certainly not aware of any substantive thought that is being given to these issues in India. And this takes you into the whole debate on procedure. What needs to be decoded are procedures. I haven't seen any rich debate on the Criminal Procedure Code, the Civil Procedure Code, the Indian Evidence Act – all of which are meant to be tools to operationalise the substantive content of the law. I think we need a debate. In my opinion, the whole controversy over the Jessica Lal case is located here. Such mechanisms can be built into the law. Now, what are these mechanisms? Let me revert to the point I made earlier - the law is a living organism, and as any other living organism, needs to be constantly fine-tuned to be kept alive. So we need mechanisms that are perpetual, built into the law, permanent review provisions, and which enable us to monitor and evaluate the functioning of the law. There needs to be provisions in our laws which actually set up mechanisms for monitoring and evaluation, say, for example, the law on domestic violence. There is no point in having a law on domestic violence unless you are able to find out whether this law is serving the purpose it is meant to serve. How will you do that unless you have a built-in system monitoring how this law works?

And there, too, you run into problems. How do you monitor the judiciary? What are the mechanisms for monitoring the judiciary? This is the traditional male bastion that has kept away from any form of monitoring, and even its own mandate, namely that of delivering justice, is something that has not been monitored. There is no system by which, say, a particular judge's judgment, can be evaluated. Let me put it this way - there are no evaluation criteria. All we have ever seen are criteria such as, how many cases has a judge

give the person the attention they deserve without insisting that a police officer make a medico-legal report. Thus there is a de-legitimising of the role of the police, and an introduction in its place of the role of NGOs. Then one has to look at aspects of monitoring, evaluation and budgeting. I believe that the laws of the future must contain these within themselves. In other words, the law made by the Parliament must contain within it the budget that the State has committed to that particular law. Such a tradition doesn't exist. I am unaware of any law which does so, but I am aware that in 1994, when Clinton introduced the Violence Against Women Act in the USA, the law itself made a commitment of a certain amount of money charged to the consolidated fund of the State towards the eradication of violence against women, which was actually spent for such purposes. This has never ever happened in any law in India.

Chair: Indu Agnihotri

We will take a few questions. Indu (Indira Jaising) has raised very fundamental questions – the dissatisfaction that we have both with the law and the implementation of the law - and she has tried to place it within the larger framework of the process of law-making as well as the delivery of justice in this country.

Discussion

Subhasini Ali

I have a question for Indu and other legal experts. This relates to the monitoring of the delivery of the justice system, and is a crucial one. From my limited experience of the NCW, I know that in spite of all the statutory powers that these commissions have been endowed with, nobody takes them seriously. The only one taken somewhat seriously is the NHRC, because it has an ex-chief justice as its chairman. So I was wondering if something well-drafted could be given to the NHRC to initiate discussions about the lack of the delivery of justice as a violation of very basic human rights, and if they could then institute some kind of monitoring system. I think nobody in India would have either the guts or the prestige to do it, but maybe this could be one way. The right to justice is a very basic human right, and if that is being denied, not because of economic and other means but simply because the courts are not functioning, perhaps this would be one way of tackling this problem.

Vina Mazumdar

I would like to ask you if you foresee any possibility of a decentralisation of the justice delivery system. If the delivery of justice is to go right down to the Panchayat level, what other aspects do we need to take into account? I wanted to convey one of our experiences of undertaking the task of legal literacy among women who were also part of the rural women's organisation. Their response to a short course was that we were merely educating them about their basic rights. This was the pertinent question they asked when Lotikadi was conducting the literacy class. Lotika Sarkar found many of those questions totally unexpected. At the end of the week-long course, the entire group turned around and said, 'we feel so much stronger now that we know we have all these rights. What we now want you to tell us is, what are the responsibilities that come with these rights?' That completely flummoxed Lotika Sarkar. She said that in 37 years of teaching law students, she had never faced such questions. Nobody asked – what are the responsibilities that go with the rights? In the context of the issue that the law has not been adequately politically debated, the question I am raising is more of a political one. It also involves the grassroots women's organisations.

Uma Chakravarty

I think the point Indu made in the preliminary comments is very important. Either you engage with the existing law, or you leave it as it is. However in-built the contradictions of that process, feminist law is a horizon and it is a horizon that we aspire towards. So there may be failures as you proceed forward, but it

is another tragedy. Not only are these demands not being articulated by the women's movement, but they are not even being articulated by the legal community. And because these demands are being articulated by judges, the solutions that are proposed are within the same framework that exists today. Again, because of democratic pressure, because of any number of issues that we are not discussing today, the government has been forced to talk about the issue of decentralisation of justice, but at the end of the day, what they propose to introduce, we don't know. It may be laws such as mobile courts, laws to make courts more accessible to people in villages, etc. I feel we need to put in our suggestions at this stage.

Again, to answer your questions, there was a live debate on this issue. And there are reports published which lay out the whole scheme and the framework of the possibility of Panchayats delivering justice. Nothing happened to those reports, they were shelved and there was never any demand that they be carried forward. One answer could be that it was a different period in history - that was the time when you had amazing judges like D.A. Desai, Bhagwati, Krishna Iyer, the likes of whom you don't see today. This can be one answer to the problem. But yes, if ever there was a possibility, it is today. It does exist because these debates are taking place in the Indian body politic. If we don't give our inputs to those debates at this stage, we will have missed the bus.

I think Uma made her point well. The point that was raised about service providers is a valid one. It has to be taken on board. But what I was trying to do was not just link it with strands in the women's movement. You mentioned the labour movement, which is why I brought up the whole issue of bonded labour. If you look at patterns of legislation, you will see that of course every legislation has to be evaluated at the end of the day to ask does it deliver, does it not deliver - this is why I said the law is a living organism. However, if you look at the patterns from the Bonded Labour Act, atrocities on Scheduled Castes and Scheduled Tribes, some of the legislations relating to women, you should be able to draw out the negatives and positives from these trends. This is why I was linking up and telling you about some of the possibilities that exist, and that went into the making of these suggestions. Perhaps there are no one-on-one parallels between the trade union movement and the women's movement. The experience of the TU movement cannot just be transposed into law-making for the women's movement, and one obvious point of difference is that you don't have that form of organisation. Your point of course becomes relevant when you talk about sexual harassment at the workplace. I would like to have your input on this – how do you view the Supreme Court judgment, which says that the NGO representative will now take decisions on whom to sack and whom not to sack on the grounds of their having committed an act of sexual harassment – how do you theoretically understand this proposition? It is already the law as far as the Supreme Court is concerned. So it is this whole trend that you have to understand - we are not talking about simply about the labour movement, what the NGOs have done to the labour movement, and and whether or not they have displaced the labour movement. Are they also going to displace the function of dismissals? I agree with you that it is a difficult proposition, the tide of history cannot be reversed anymore. You are going to have participation from civil society for implementation of the law. I believe that it is a welcome trend, but where to draw the balance is another issue.

As far as Kirti is concerned, I agree we all have a very political understanding of the 1980s and the 1990s, and while it was a phenomenon of the 1980s, it was not pursued to its logical conclusion. And therefore there isn't sufficient empirical data with us on the basis of which we can evaluate whether these trends that were set in motion in the 1980s have yielded any results. In relation to the question of shifting the burden of proof, I am unaware of a single study on the question of rape laws, and the consequences of shifting the burden of proof. Did it work and make a difference, or did it not?

On the question of asking the NHRC to democratise the functioning of the judicial system - I think it is a good idea and should be pursued. However, the extent of power that is located in an institution is yet another political issue – one the feminist movement has not looked at carefully. For that matter most

SESSION - I

ANTI-DOWRY MOVEMENT AND EXPERIENCES OF DOWRY LAW

Chair: Dr Rajni Palriwala

Unfortunately, I was unable to be here for the first session, but I'm sure there must be some related issues that have already come up. So to some extent the discussion will continue, not least because dealing with dowry and law is of course related to various other themes in terms of gender relations, and women's oppression and the law.

The agitation against dowry took place in the late 1970s and early 1980s, particularly in some urban centres. This agitation was very significant for the women's movement, along with other agitations of that time, against rape, for instance. It did lay a certain foundation for the revival of the women's movement at that time in the country. However, something that in subsequent years many of us looking back have felt about that agitation was that whatever the intentions of those who engaged with the actual movement, the movement did tend to become one that focused on what one could term the distortions of dowry rather than dowry per se. It emerged first in terms of a reaction to violence, to dowry deaths and burnings that were taking place. And so, even in the charter of demands which the DVCM or other organisations might have had, there was a focus on the much larger context as well as the much larger questions related to women's oppression. To some extent the social theme that emerged was that it is not dowry which is the problem, it is when too much dowry is asked for or when people get violent. So the structure of social relations from which dowry emerges are not a problem in themselves, but it is when you have a few people who don't know how to behave that the problem emerges. Now the result of this was that in the years immediately after the anti-dowry agitation dowry seemed to go into hiding to some extent. And even while dowry violence continued, the women's movement was at least armed with weapons to fight, which manifested themselves in terms of the changes that had taken place, as 498A as well as the anti-dowry law itself.

Of course, very soon two different points emerged, which I think brought out the differences very clearly. One point was that whatever you have in the law is very critical for those who wish to use the law. The notions, the ideas with which judges operate, can themselves undermine the law. Or even if they do not undermine the law per se, they can perhaps act in ways that devalue as well as demean the very struggles that are taking place, and put forward the idea that while earlier it was 'bad men' who were creating the problem, now it is 'bad women' who wish to use the law in their favour. So one issue that emerged was in terms of the judges' opinion and values, which of course is a reflection of the fact that within society as a whole, the actual approach to dowry was one that continues to consider dowry as okay, yet ties it up with ideas about gender in terms of women as burden, in terms of the patrilineal household, the patrilineal family and patrilineal property. The other aspect that has emerged is that post liberalisation and globalisation, with the huge increase in money flows, the availability of consumer goods and the increase in inequalities, both economic and social, dowry has now received a huge fillip. It has now become the marker of community identity, class status - and it has also become the means to try and actually achieve mobility. So one issue which then also emerges is that whereas for a brief period, say in the 1980s, dowry was considered not quite right, now it is again very much in the open as an accepted social practice. The last thing I want to say is that we also need rethink the way in which we define and talk about dowry.

dowry and the laws related to dowry and the family and domestic violence will always carry this major level of tension between adjustment and fight, and principles and negotiations. These are things that are real and will always persist, even when we get acceptable principles according to our understanding of the principles of equality and other aspects, and even when we get them accepted in the laws. These will remain social processes which will continue to be reflected in the manner in which the law works itself out.

The anti-dowry movement, particularly in the early 1980s, culminated in the movement led by the Dahej Virodhi Chetna Manch, within which several women's organisations got together for the first time. It also had a presence in the Indian Parliament, and we have at least three major names who were associated with this period – Promila Dandavate, Susheela Gopalan and Geeta Mukherjee - who in Parliament gave voice to the demands of the anti-dowry movement, which was reflected in the series of laws that came in. Not all their recommendations were accepted, and some of the aspects still need to be discussed amongst us. Nonetheless, what were the amendments that took place under pressure from the movement, members of which were on the outside as well as Members of Parliament?

First, in order to deal with dowry-related violence against women, groundbreaking provisions were introduced, like Section 498 A. It was significant because for the first time it ensured that some action could be taken in cases of domestic violence. Today you hear that 498 A is being misused, but what was happening earlier on? There were no laws, women were getting beaten, tortured, and were dying and committing suicide under the pressure. However, the moment there is some resistance, the moment some action is taken, you are going to face some opposition, and this is the experience of every woman, particularly those who live lives embedded in the basic traditions and all that exists and oppresses women. One may disagree, but this is how women actually live. So this provision criminalised domestic violence and that definitely was an important step. What was criminalised was not only physical, but also mental cruelty. This was another major step.

Then for the purposes of rectifying the abysmal lack of serious investigation, as you know, post-mortems were mandated, magisterial enquiry of any woman who died within seven years of marriage was mandated. Along with this you had change in the Indian Evidence Act, which has become a real subject of controversy where there was some presumption of guilt in conditions of torture and harassment, and where a death took place. There was a presumption of the responsibility of the husband or relatives concerned in the matter of the death of the woman under 304 B, and this was also used in 498 A. These were groundbreaking because who believes the woman who is being tortured within the four walls? Those who torture are social beings, they have good relations with several people. This is a specific nature of harassment and torture that takes place within families, so these were necessary steps that I believe should remain with us in the future. However, these are all concerned with dowry-related violence, and should also extend to non-dowry related violence.

What happens to the institution of dowry itself? The CSWI report in 1974 had argued that the major problem in the functioning of the Dowry Prohibition Act, according to which no cases have been registered (they reported only one case, I think from Kerala, which came about in 1974), was that dowry was not a cognisable offence, and so one of the first demands of the anti-dowry movement was that dowry be made a cognisable offence, which was done.

Second, there has been a demand that the definition of dowry should be extended. This is something I agree with, but even at that time dowry was not just what was given in consideration of marriage. Dowry continues as a pressure on the girl's family even after several years after marriage, for instance when the children are born. So the definition is extended to include that which is given before and also after the marriage over a longer period. Punishment for giving and taking dowry was increased, and finally in 1986, in an attempt to follow through the suggestion that there should be a separate machinery to deal with certain cases of dowry, the amendment was brought about for the appointment of a dowry prohibition officer.

extent. The point is, what will happen after the appointment of these dowry prohibition officers? Although dowry has been made a cognisable offence, you have ensured so far that by equating the giver and taker of dowry the complainant will not move. Neither have you got an institutional mechanism that will take cognisance of the taking of dowry. You have to have that institutional mechanism, so the appointment of the Dowry Prohibition Officer appointment was essential.

We have 15 years of experience when it comes to the operation of the police in matters of 498 A, where precisely because some punishments were being meted out there was some kind of police force attached to it. But now Dowry Prohibition Officers are being appointed in order to prevent the police from taking action. We know how greatly pro-women the police are! Anybody who walks into a *thana* will have this common experience, and here you are going to attack the institution of the family, resist violence, and go outside the domain of family to make a complaint, values which are not reserved only for the people who do not wear uniforms - they are very much part of the police attitude and are reflected in their practices. The experience has been that the tendency of the police has been to watch forcible reconciliations rather than actually implement the law. Nevertheless, women are going to thanas.

Now you have the appointment of the Dowry Prohibition Officer at the district level, who is unapproachable, unknown, and too busy either collecting revenue or passing files in the social welfare department. When they were appointed, women's organisations began looking at the process at the state government level, and intervening and seeing how the whole process was being put away. And Tamil Nadu framed Dowry Prohibition Rules in 1998. At that time it invested dowry prohibition officers with the powers of a police officer. In 2004 Tamil Nadu reframed the dowry prohibition rules, superseding the old ones, and made the Dowry Prohibition Officer the only enquiry agents, that too stipulating that they must enquire into the genuineness of the complaint by looking at both parties, adding one more step to the whole process. This comes in 2004, and in September 2005, the Madras High Court delivers this judgment in a particular case, staying the operation of all investigations by the police in dowry prohibition cases. I believe that when we review our entire experience over this period since the anti-dowry movement, two things stand out before us. First, the extreme spread of dowry, its escalation, its changing character; and I also think that if there is a broader mobilisation on this question, we can once again return it to the agenda, from where it has receded precisely because of the over-emphasis on violence. For this to happen, I believe it is important that when we look at the anti-dowry movement of the early 1980s, we remember that there was a feeling against dowry. And I believe that if we take this issue even today, we can encounter this feeling, particularly amongst young girls who are going to be facing this problem.

The second aspect is in relation to the Dowry Prohibition Act itself. We must put this issue centrally before ourselves and before the movement, before the government, before the legislatives, that the giving of dowry should not be the focus of the punishment, and it should be the taking of dowry that should be made punishable. At the same time, in relation to the Dowry Prohibition Act itself, it is important that we at our differing levels evolve ourselves and keep alert as to what exactly is happening with regard to the appointment of this Dowry Prohibition Officer, and what exactly the state governments are doing to the dowry prohibition groups.

INTERPRETATION BY COURTS OF LAW AGAINST DOWRY

Shalu Nigam

I will continue my paper from the point where Indrani stopped. This paper will deal more with what happens in the courts, the kinds of judgements being delivered, and how these can impact women in the long run. We all know how difficult it is for a woman to continue her struggle in the courts, as both as a litigant and as a

with an increasing tendency even in this space age. This is pitiable tragic and pathetic plight of young brides in our society, who start their matrimonial lives with sweet dreams of having their own houses with small kids and loving and caring husbands and leave their own paternal houses with the feeling that in that house they were the '*Amanat*' of the matrimonial families.

In *Pawan Kumar v. State Of Haryana* (1998), it was stated:

> For more than a century, in spite of tall words of respect for women, there has been an onslaught on their liberties through 'bride burning' and 'dowry deaths'. This has caused anxiety to the legislators, judiciary and law enforcing agencies who have attempted to resurrect them from this social choke. There have been series of legislations in this regard, without much effect. This led to the passing of the Dowry Prohibition Act in 1961. In spite of this, a large number of 'bride burning' and dowry deaths continued. To meet this, stringent measures were brought in the Indian Penal Code and the Evidence Act through amendments. It seems sections of society are still boldly pursuing this chronic action to fulfil their greedy desires. In spite of stringent legislation, such persons are still indulging in these unlawful activities, not because of any shortcomings in law but under the protective principle of criminal jurisprudence of benefit of doubt. Often, innocent persons are also trapped or brought in with ulterior motives. This places an arduous duty on the Court to separate such individuals from the offenders. Hence the courts have to deal such cases with circumvention, sift through the evidence with caution, scrutinise the circumstances with utmost care. The present matter is one such where similar questions have been raised, including questions of interpretation of the stringent law.

In a similar tone, the courts have pointed out the failure of law and the legal system and have called for serious introspection by the profession, although it is a different matter that this may not have been done in actual practice. For instance, in *State Of Karnataka v. Venugopal Alias Gopi* (2001), the court held:

> ...This is not the first time that we have come across instances where the acquittal has been facilitated by the Prosecutor and the irony of the situation is that instead of taking corrective action, the State has filed an appeal against acquittal. Where a serious criminal trial is virtually sabotaged internally it is high time that every one in the profession set-up and takes note of what is happening". It further alleged "Even though, with a degree of regularity acquittals result due to so called lapses and defaults, we see a similar pattern in this game which gives one to grave suspicion and we are therefore not prepared to either condone these instances as mere mistakes. There is no place for such defaults to occur in trials of such seriousness and if this happens, the remedy lies in ensuring that it is never repeated because it has resulted in miscarriage of justice in the grossest form. Where the crucial evidence is with-held by the prosecution either by design or otherwise, an appeal Court is powerless in the face of such a record and mechanically filing an appeal is a totally futile exercise and it is ironical that this has happened despite this Court having repeatedly pointed out that no correctives are forthcoming". The court warned "The time has now come for us in the profession to do some serious introspection and take a good hard look at our performance and ask ourselves the all pertinent question as to whether this state of affairs is conscionable? Is it not a blot on the justice dispensation system that such atrocities go unpunished sending out the wrong signals to like-minded others? Society will not condone these lapses, the laws have been promulgated to eradicate these atrocities and it is upto every member of the legal profession to responsibly contribute to the implementation process.

Part 2 of this paper looks at the courts' interpretation of the definition of dowry. Under Section 2 of the Dowry Act, this definition shows that any property or valuable security given or "agreed to be given" either directly or indirectly by one party to the marriage to the other party to the marriage "at or before or after the marriage" would become "dowry" punishable under the Dowry Act. Property or valuable security so as

(complainant wife) and the accused (husband) are separated. Because of separation it is quiet natural that P.W. 1 has developed resentment. This is all moreso when the accused is said to be living with another woman." Further, in *State v. Udayakuma* (2004) the court observed that

> her date of birth being 15-5-1974 she was only minor in 1990s. On this aspect, the learned counsel for revisioner petitioner has drawn attention of the court to the Section 3(4)(a) of the Medical termination of Pregnancy Act and contended that no pregnancy of a minor or lunatic can be terminated expecting the consent of a guardian. It is further contended that consent of A1 (the husband against who the charge was made for forcible miscarriage) would clearly shows that there was no forcible abortion". The court while acquitting the husband from the charge of forcible abortion relied on the consent given by husband and overlooks the fact that when the charge was levelled against him how can he be held as a guardian to give his consent? Further, the court remarked "On account of various disputes between the parties and their separation, it is quiet natural that P.W. 1 would have developed psychological hatred towards her husband A1. There is every possibility of improved versions and the evidence of P.W.1 is to be viewed carefully.

Part 4 of the paper looks at the concept of dowry deaths while elaborating upon the concept of 'Dowry Demand' under Section 304 B, IPC. In *Shyamlal v. State of Haryana* (1997), it was found from the evidence on record that the deceased was treated with cruelty in connection with dowry, was sent back to her parents' house but was taken back to the matrimonial home 10-15 days before her death. The inquest report states: "The death may be due to frustrations developed in married life." The same report further says that "on the basis of enquiry conducted, the *panchayatdars* have unanimously decided that Vanitha out of sheer frustration experienced by her in her married life, would have committed suicide. This totally rules out that deceased being subjected to any cruelty or harassment for or in connection with the demand for dowry". The apex court held that accused could not be convicted under Section 304 B, IPC, and convicted him under Section 498-A, IPC, only. In this case, the court held that it was imperative for the prosecution to prove that soon before her death, the wife was subjected to cruelty or harassment for or in connection with demand for dowry, and if on the basis of facts there was no such proof, a conviction under Section 304-B of IPC could not be sustained.

In *Dinesh Seth v. State* (2003) it was alleged that the deceased wife was maltreated as she was neither well educated nor fluent in English. She was taunted for her dark complexion and also for not bringing sufficient dowry. She was found dead within two years of her marriage. A case was registered against the husband and her in-laws under Section 498-A/304B/306/34, IPC. The Sessions Court concluded that the deceased committed suicide because of torture and harassment by the appellants and sentenced each of them to undergo rigorous imprisonment for seven years. However, the High Court acquitted the accused from the charges under Section 304 B, IPC. The court opined:

> In order to make out offence under Section 304 B, IPC one of the essential ingredient required to be proved is that the deceased was treated with cruelty soon before her death for, or, in connection with dowry. In the present case there is evidence of harassment caused to Rama (the deceased wife)…. but there is no convincing evidence to suggest that cruelty was for or in connection with the dowry soon before her death.

It further held that "since one of the essential ingredients of Section 304 B IPC remains unproved in this case, the accused cannot be convicted under Section 304 B, IPC".

A plain reading of these judgments leads to several questions pertaining to the manner in which the law against dowry is interpreted by the courts. These are a few judgements which have been taken for the purpose of writing this paper, but there are a large number of others that need to be looked into. These judgements raise issues relating to the sensitivity of the judiciary and the patriarchal biases that operate to

Pratiksha Baxi

When we look at the dowry judgments, often one comes across the issue in the Marriage Bill on whether a marriage has been an arranged one or a marriage of choice. I have always been curious to know whether the one or the other affects the construction of what a good wife is, or influences the outcome of a case, and whether we need to highlight the vulnerability of women who are in marriages of choice through dowry.

Subhashini Ali

I think that dowry is central to our movement because it's something that really strikes at the root of equality. It is based much on the unequal relationship between a man and a woman. Dowry and the expenses occurred at the time of a girl's marriage are an indication of the fact that because inequality exists, to equalise it, dowry is the price that has to be paid. My problem is how to address this, because we've fought for the laws and the laws are turning out to be inadequate. Laws deal with specific acts. But when it is a gamut of so many dimensions, is it really possible to come up with a law which address all the various dimensions? I think this is one problem.

Furthermore, the connection that Vinadi has made between sex selective abortions, their increase, and the prevalence of dowry is very important. But I think we have to see it as more than just that. Rajni said that ostentatious marriages are becoming the norm, they are becoming widespread. We all know that in many parts of the country, in many communities where they have not known of such a thing as having to give something to the bridegroom or his family, this has now become prevalent. Even the Banjaras are now practicing female infanticide because they also have to incur expenditure on dowry.

I think we also need to see this in terms of the reach of market. The new kind of market reinforces inequality between men and women to the extent that expensive marriages are taking place and a lot of buying happens at the time of weddings. When I went to a place like Kanpur, which was dotted with textile mills, to find out in a very informal way about what people were doing when they lost their jobs, I found that most of them were involved in the marriage industry. Marriage is a huge industry today, and spans bands, caterers, dress designers, tailors, tent houses. It is huge, and we see the importance of the market forces in dictating the kind of marriages that people just accept unquestioningly as the norm. You listen to poor people say, well, this is what we have to do. If we don't do this, our daughters are just not going to get married.

So, the role that the market is playing today is in (1) dictating to families what marriage expenses absolutely have to be, and in (2) making sure that the gender inequalities are reinforced through all kinds of advertisements. So far, we were objecting to advertisements that were obscene or that portrayed women in a certain light. But it is actually much more than that. For instance, there are many advertisement which display that the boy's family comes to see the girl and reject her because her fan is not of a particular kind, or the walls are not painted, or she is being rejected because she is dark, then she has to use a particular kind of cream which in itself is objectionable.

Our intervention on the issue of dowry has to go beyond thinking that it is just the law that is inadequate. You cannot have adequate laws on a multidimensional issue such as this. Indrani spoke of the Dowry Prohibition Officer. I was trying to find out in UP who the Dowry Prohibition Officer was. I found that, in fact, Dowry Prohibition Officers themselves didn't know that they were Dowry Prohibition Officers. They were like an Anganwadi worker who is also the census enumerator, also doing pulse polio, also distributing condoms. A Dowry Prohibition Officer is wearing so many hats that he doesn't even know the various hats he has been endowed with. I think the notion that they are going to help us in this battle or ensure justice is totally misplaced.

I'm arriving at the conclusion that the less people one has to deal with to get justice, the better it is. All these layers only mean postponing the delivery of justice. Concentrating only on perfecting a law to deal

Flavia Agnes

I am really uncomfortable with a debate where everything is attributed to dowry. On one level, we start off saying that dowry is different from violence; and yet our demands, our perspective, and our laws reflect somewhere that dowry and violence go together – even though dowry and violence do not go together at all times. Where violence has occurred, the reasons could be dowry or no dowry. In fact, half the time, the matter of violence gets subjugated because the link with dowry is not present.

I think this is a very serious issue that we have not adequately addressed. No matter if a death is a dowry-related suicide or not a dowry-related suicide, a woman has died, there has been violence. And that gets mitigated because the fact of dowry has been so highlighted by the movement that we are not able to discuss violence in the field of criminal law. Today, we have a Domestic Violence Act which provides for civil remedies; so it has been said that 498A can be diluted. So murder becomes suicide, suicide becomes violence and cruelty, and cruelty does not become anything at all. That is one side of the problem.

The other side is that aspect of dowry that is not related to violence at all. There is an aspect of dowry which is culturally related and which reflects the subordinate status of women. But instead if talking about the subordinate status of women, we are putting everything into the dowry debate, the declining sex ratio, female foeticide, and choice marriages, which I think is problematic. Somewhere that discussion has to be separate, or we have to have a very general 'status of women' debate of which all this become a part - the lack of property rights, giving gifts, status, a whole lot of things, and violence as separate issues. At least in the women's movement, we should discuss violence as violence, and not violence as only dowry-related. Even the state and the bureaucrats discuss the matter as 'dowry-related deaths', 'no dowry-related deaths', 'dowry-related suicides' and 'non-dowry related suicides'. What does this kind of categorisation mean? But when a woman is burned, it comes under 304B, for which you get seven years. I wish we can discuss these issues separately and not in one bag.

Rajni Palriwala

I think what was being argued over here was not that dowry is the cause of everything but that dowry is such a difficult problem to deal with because it's tied with multifaceted aspects of women's oppression. How do you tackle dowry, given that it is a problem? You tackle dowry from one angle because women's oppression and the unequal context for women remain. The problem is that very often organisations have found that the police and the bureaucracy are only prepared to deal with violence if it is put into categories they accept. Realising this, women have then also focussed on that issue. Yes, the issue of violence and domestic violence is much wider, and I don't think we can deal with dowry just as an issue of violence.

Shalu Nigam

We definitely need to look at 498A cases. Obviously, there will be all kinds of philosophical and other arguments. As far as the issue of choice marriages is concerned, I have one case here. This is a 2004 judgment. In this case, the accused husband was working as a police constable and the complainant wife was his neighbour in the same village. The prosecution's case was that after the love marriage was performed, the husband's brother instigated the husband to demand jewellery, cash and other items which the girl's parents could not afford. She was ill treated while she was three months pregnant. When she was taken to hospital, she was given sedatives, after which she had an abortion. The lower court convicted the husband for dowry harassment and demand for dowry under the Dowry Prohibition Act. The High Court held that demand made by the husband after three years of a happy married life could not be said to be a demand for dowry relating to marriage. They said that to make it an offence under Section 4 of the Dowry Prohibition Act, dowry should have been given, or agreed to be given, at or before the marriage. Since the marriage was not an arranged one, there was no possibility of giving dowry or being agreed to be given in connection with the marriage. And, of course, we should also look at the whole definition of dowry and whether gifts should be included.

Another way is to mobilise opinion. It gives a weapon in the hands of those who do want to fight it. Of course, the whole construct of marriage and femininity, which are at the core in our society today of what constitutes women's oppression and women's inequality, will remain, and we cannot fight them just through law. A critical issue is that the women's movement has to actually be more direct in its confrontation with this normal marriage contract which is practiced in our society. By 'contract' I mean not in the legal but the social sense. As it has been pointed out, love marriage also partakes in that same contract in terms of women's inequality, women's rights, property, work, the whole gamut. I think that if we are going to tackle dowry socially through a movement, we have to be prepared take on this issue very directly, which might invite all sorts of allegations against us.

This has also led to a reconstitution of a woman's identity. Television has facilitated a kind of communal identity for women, and more and more women now see themselves as having a communal identity. What has happened, in fact, is that their communal identity has elided their gender identity. This has led to a very unfortunate consequence, which is that women have become divided from women. This was something that one saw in Gujarat in a big way, how Hindu women were actively engaged in communal and sexual violence against Muslim women.

What has happened in Gujarat, therefore, needs to be seen in the larger context of liberalisation, growing fundamentalism, and patriarchal violence, all coming together to reconstitute an entirely different notion of sexual violence. Of course, what we saw in Gujarat we have never heard of, never seen, never encountered in history anywhere else. The political motive of this violence was very clear, which was the destruction of an entire community. In this context, what happened in Gujarat has been compared to what happened in the former Yugoslavia and in Rwanda, where sexual violence and rape were used to eliminate whole communities. It was used as a weapon of ethnic cleansing.

The first noticeable thing was the mass nature of sexual violence. Women were killed in full public view; they were first stripped, raped, and then killed. This was witnessed by members of their own community, their own family members, as well as those of the Hindu community, including Hindu women. Since the public, or the members of the Hindu community, including women, witnessed this violence, rather jubilantly at times, it goes to show that there was large social sanction to this violence. It is very important to note that this was not violence that was protested or objected to by Hindu women.

What distinguishes the Gujarat violence from other incidents is that Muslim women continue to live in an atmosphere of hostility. It is still a reality, still something with which the Muslims have to live, with a sense of fear and insecurity. So when we talk about legal redress, we have to keep in mind how we are going to ensure that these women can ever regain a sense of confidence and security. We haven't seen this happen earlier.

The mass violence meant that groups of women were killed along with men. In Naroda Patia, for instance, 98 persons were killed, at least half of them women. Similarly, in place after place, one saw entire families killed. If men were not around, women and children were killed. This sent a very clear message that this was not just an ordinary clash between the men of the two communities. A significantly visible number of women being humiliated and killed in public showed that it was an organised and comprehensive attack for the destruction of an entire community.

There is a pattern behind this. Women were killed so that no evidence was left. The motive was not only destruction but also to ensure that the future of the community was endangered, since a particular form of violence was the mutilation of their sexual and reproductive organs. Rehabilitation has become almost absolutely impossible in all these cases.

The complicity of the State we all know about. The police refused to file FIRs, even to name the accused, and they wound up cases without investigating them. The judiciary also failed because the public prosecutors were largely members of the VHP or the RSS, and they acted as defence lawyers. The ministers, Chief Minister Narendra Modi himself, played a very active role by making provocative calls regarding the 'proliferation' of the community. There was a clear collaboration and collusion between the State, the law enforcement machinery, the judiciary, and a large section of civil society. This raises a lot of questions regarding the implementation and the adequacy of the existing laws.

The inadequacy of the rape law has been debated by women's groups, and one has talked about the need to expand it to include other forms of violence. Other laws on violence, as Kirti pointed out, are very archaic and do not recognise this as a serious crime. Most important, I think, is that we don't have legislation

Two years later, after this incident happened, the case came up for hearing in the trial court. Hasinaben was the first prosecution witness to testify. The defence treated Hasinaben's testimony with suspicion, evoking the normative discourse of "good" women versus "bad" women to prove that she had manipulated her daughter to speak a lie. The mother and daughter were seen as collaborators in a 'conspiracy' against the accused. Noornissa was 12 years old when she testified. She was prepared for the testimony by the prosecutor's [woman] junior. The prosecutor leaves the room, he asks his junior to prepare the child, and he sees the preparation as distinct from tutoring. Tutoring is disallowed in law. I'll just quote a brief excerpt from the preparation.

B: [the lawyer who assisted the prosecutor]: Then what did he do? He made you lie down.
N: He made me lie down and he climbed on top of me.
B: Then he put [*nakha*] his place of urination [*peeshab karne ki jagah*] into my place of urination.
B: You will say this, won't you?
N: (*Silent.*)
B: What did his place of urination look like?
N: (*Silent.*)
B: For how much time did he keep doing like this?
N: (*Silent.*)
B: A lot.
N: A lot.

The attempt to subscribe this lesson in legal language communicates the importance of using specific words as evidence. It emphasises sequential recounting, it localises injury and specifies naming. The description of the act of penetration described above, *peeshab karne ki jagah*, is a "rigid designator" by which children are taught to describe the act of rape in words that are accepted by the court as the child's way of narrating what happened to her. This assumes that the child is not capable of speaking adult words, and if the child is found to be speaking adult words she is disbelieved. The other question was whether the child witness was competent to testify.

So, there were initial questions about where she went to school, what her parents' name was, and where she lived [to establish her competency to testify]. Again, I quote a segment from the [chief] examination.

She was found competent to testify. The examination-in-chief began when the prosecutor asked her:

APP: Do you know why you are in court today? For what have you come here?
N: For rape (*balatkar*). To testify to rape.
APP: Who was raped?
N: I was (*her voice drops*).
APP: At that time, who all were at your home?
N: My mother (*ammi)* and my brother N.
J: turns to the lawyers and says, *ammi*? What is an *ammi*?
APP: In Muslim community, mummy is *ammi* (*in English*).
APP: At that time, who else was there?
N: Shakeel.
APP: At that time, what was the time - day or night?
N: Night.
APP: What happened then?
N: *Abba* said, get some *bidi*.
J: *Abba*? Do you know Gujarati?

N: (*Quiet.*)
J: How much *time* passed? Five minutes, 10 minutes, 30 minutes?
DL: How much *time*?
N: (*Quiet.*)
DL: How much *time*?
N: (*Quiet.*)
J: When he lay you down, climbed on you, moved for how much *time*?
N: Six hours.
DL: Six hours? Do you know the meaning of this? From morning to evening in school it is six hours, when you return home in the evening.
APP: Do you think she understands what's the meaning of minutes? How it should be clear? You are wasting time. (*In English*)
J: A 12-year-old should know. Make her understand, *yaar*[3] (*in Gujarati*).
DL: I will explain. Do you know how much *time*?
N: I do not know.
J (d): That is how much *time* I cannot tell.

By the next question it seemed that Noor would burst out in tears any moment.

Here time is constituted in a mimetic relation to the act of rape. The court is not concerned with the subjectivity of the rape survivor, or the experience of rape as unending, where time freezes. Six hours expresses the experience of violence when the question of duration neither can be captured in everyday categories of temporality, nor does it fade away quickly. The value she ascribes to the duration of the violence is met with ridicule and annoyance. That she cannot tell the duration of time is the only way in which she can testify to the way time freezes, and her testimony meets the limits of legal evidentiary standards. Ultimately, she had to testify that she did not know how much time.

At this moment, the prosecutor decides now he must intervene. So he asks the judge, "Can we give this child, water?" The judge looks very doubtful. He says, "It has not happened till today that we have given witness water in the stand unless they are old or sick." The prosecutor says, "No, we can give. So let us give her water."

Likewise, [there was a discussion on whether she should be given a] stool. She was standing at 46 degrees for two hours in the stand and the prosecutor at some point asked for a stool. Again, the judge said that this was not part of courtroom procedure. A stool was negotiated [and she was allowed to sit]. At some point [of the testimony], she was asked to stand because they felt that she was not answering properly because she was sitting.

The second last issue [that I address] is how the law constructs the child-adult. While the way time is cited is not treated as evidence of childhood, the way injury is cited must retain the suggestion of an innocent childhood. In the chief examination, we saw how as a child witness, Noor had to graphically name the violence - whether there was penetration, etc. The following excerpts demonstrate how the defence constructed Noor as a child-adult.

DL: When he climbed on top of you, he put his urine (*peeshab*) into your urine, then did you cry out?
J (to N): He is asking that you screamed before or after inserting?
N: After putting (*nakhane ke baad*).

(The defence abbreviated the phrase *peeshab ki jagah* to *peeshab*, which means urine, thus emphasising the 'dirtiness' of the act).

Noor continue to wear the watch and began to teach her. She was called in for the cross-examination subsequently.

Noor recognised the emphasis in the courtroom on time and perhaps already anticipated the implicit blame that would accrue to her for not being able to read time; for the cross-examination constituted her now as a child and then as a child-adult. The displacement of the anxiety about her trial and her internalisation of blame were concentrated on her watch. Her words were frozen, yet she indicated the effects of the testimony by finding the relationship of words to an object, perhaps one that pointed to her voice. As she left the court that day, Noor shyly said to me that the pen I gave her as a gift at her request would be a *nishani*, an object that would remind her of me. She knew we would not meet again, despite Hasinaben's promise to take me home. Noor and I were, in those brief hours, related to each other in remembrance through objects, a pen and a watch: a complex relationship of words and objects that marked a present that was born in her knowledge that there was no future that could follow that moment.

Dr. Sayeda Hameed

After listening to these two presentations and most of the people here, colleagues and friends who have been witnesses to what happened in Gujarat, many of us who have also been witness to the kind of cases of child abuse that Pratiksha talked about, I feel that it is almost too difficult to say anything. Svati has given a snapshot of the violence against women that occurred during the Gujarat carnage. Each and every word of hers brings images that one feels one has put behind, but not really. I still remember when I was in Ahmedabad during those days, one of my colleagues brought a bunch of photographs and asked me if I would like to look at them. There were some 60-70 images that that froze in my mind. It brought to my mind the image of this young girl who had been continuously raped for four years by her father, and that is the story of Bela in my book.

The situation has been well portrayed by the two speakers. There are national machineries that we are all very well aware of. Vinadi was the one who was instrumental in their even coming into existence. How have the national machineries dealt with this? What, in my capacity as a planner, can we do? We have been pegged at various points in this whole process. I want to read just two little paragraphs from my book.

'When I think back I am struck by how much pain and violence was there as expressed by women who approached me and how I swing between hope and frustration, despair and determination. Even as I write this I realise my tenure in the NCW was strangely like a prison term. Outside the prison lay a world in which I had lived fifty carefree oblivious years. The eight stories in this collection are about women I met in this other world, about their fight and a little bit about mine. Whenever I recall the time my screen brings up faces of hundreds of women each one pleading for my attention, demanding that I listen to their story. Tell her story, why? To plead her case? To deliver justice? Both? Yes, both. But during my three years as member was I able to deliver justice to the women who appeared at my door? Did any state functionary click to attention at my call? I can count on the fingers of one hand the cases, which came to a successful conclusion. Yet I continue to seek justice for the rest of them and for many others. Their stories need to be told so they are not lost in the official records of the State. So that they are heard by a people's bench, so they are not erased from public memory.

My first protagonist is 18 year old Maimoon, a beautiful young woman from the Mewat region of Haryana, now the district of Noo. I saw Maimoon for the first time when she and her husband Idris nervously entered our office. Maimoon had been raped by a village gang, slit from neck to navel and left for dead. But that was not the reason she came to us. This part of the story we heard only after our probing and persuasion. Surprisingly they were not complaining about the beating and torture inflicted by their *biradri* because they dared to love and marry of their own will, but about something else. It did not strike me till much later that women accept violence as a part of their daily lives simply by virtue of being female, mothers, sisters, wives and daughters. All the women whose lives inform my stories displayed enormous pain and tolerance.

Kirti Singh

In a situation like Gujarat, when law and order completely breaks down, we have to think of a different machinery to try cases. We need to look at setting up special tribunals, which will have special prosecutors of the choice of the victims, and cases that will be investigated by a different team than the state police. We can, of course, look at international tribunals, see how they function, what the procedures are that they have adopted to deal with genocide. I think it would be useful if Pratiksha were to look at the Sexual Assault Bill that we have framed and see whether the provisions made for child evidence are adequate. Although we talk about putting up screens, and of letting the child's evidence be recorded prior to the court hearing and then putting the questions to her through a judge, we need to look at that the issue. We also need to look at expert evidence when it's a child sexual assault case, because a child cannot talk the language, and so on. This Bill has already gone to the government, so if we want to add some provisions we'll have to do so now.

Jarjum Ete

Listening to these presentations and every time cases of crime against women are discussed, you feel like going out into the streets and killing people. That is the kind of violent reaction these stories evoke. I come from Arunachal Pradesh. I have been working with the Arunachal Pradesh Women's Welfare Society for the past few years. The organisation is in its 27th year. Right now, I have also been given the responsibility of being the first chairperson of the Arunachal Pradesh State Commission for Women. Sayedaji asked how to translate for you as planners, and I have some suggestions.

From our experiences dealing with murder and rape cases, especially in my state where we don't have the executive and judiciary separated, we find that it is the executive that is also trying to run the courts. But it hardly has the time, since it has other responsibilities. Most cases are pending trial, even in the fast track courts which have, of late, working criminal lawyers.

I am quite cynical about the Indian judiciary; it is not justice oriented. It is more for engaging lawyers as professionals in order for them to earn their bread and butter. Many friends who are lawyers say, you have all these misconceptions about us. I say, just give me one example where you have delivered justice to the victim. They don't. They say it is case of professional ethics. I say, lawyers are the most unethical tribe of professionals. When it is rape or murder, they say it is a crime against the State. The State has no machinery or is not equipped to handle these cases. Most of the time, the public prosecutor is either missing or has loosened up the case so much that the defence lawyer has had a field day. As for financial support for the public prosecutor or government lawyers, there is not enough. They say, "*Hum ko to bahut kam paisa milta hai*" (We get very little money). The criminal lawyer or the defence council is paid so much. Often, we also have this misgiving that government lawyer might be taking money from the other party.

So, in the planning, at least in the budgetary allocations, can we make interventions? When it comes to the separation of the executive and the judiciary, especially in a state like ours we as women are saying that we want to know our tribal customs better, perhaps get them codified, because then every woman would at least know her rights. Today, we also have a new generation of lawyers coming up. Many a times when it comes to crime against women, the cases are pushed back in the council. And in the council, again, there is also this debate on who's rich and who's powerful.

As for young rape victims: maybe an individual sensitisation programme by the government cannot work, but can it be made mandatory as part of the education syllabus in the law faculties? Until and unless a student of law is sensitive to the sensibilities of young women, they cannot be given a certificate. What is possible to do in terms of budget allocations for government lawyers, support, separation of the executive and the judiciary, and also emphasising a sensitive syllabus for lawyers who come up?

immediately after the two papers that have gone before this. The case of Noor is, in fact, a case of a form of family violence. Perhaps one should stop compartmentalising violence in the way we do. I know the gut instinct of every feminist is to say that there is a continuum of violence against women, but I think it is time we theorised this gut instinct to see actual relationships between different kinds of violence. What is the nature of this continuum?

In some senses, what is the nature of the legal language that Pratiksha talked so eloquently about with other forms of misogynistic social expression? Legal language doesn't emerge in a vacuum. It might have models in legality and, therefore, have certain autonomy as a discourse but it is actually predicated on an understanding of a child as someone who is open to abuse from anywhere, whether it is from within the household or from the court. I also think that the notion of the adult-child that you brought out so nicely has its counterpart in terms of what happens with the sexuality of post-puberty girls. How is it viewed? What happens, for instance, in early marriages, which people call child marriages? In fact, child marriages also presume a child-adult as the subject of that bond.

We might try thinking about the kind of communal violence that Svati talked about as an expansion into the public domain of violence that is carried out with impunity within the household. For instance, when you think of sex selective abortion, which is really routinised, Increasing incidences are being reported from Gujarat. The link between violence against one's own women and violence against other women is, I think, much sharper than we recognise. Do we recognise that it actually breaks down the apparent distinction between the Hindu, the Muslim, the Christian, the Sikh, the Jain and so forth, and brings them into another kind of structure, a deeply repetitive patriarchal structure?

DOMESTIC VIOLENCE LAW

Asmita

I have a confession to make. I don't have a paper. What I'll try to do today is present to you the Bill as it exists, a little bit about the campaign which resulted in the formulation of the Bill, and, finally, what needs to be done thereafter. Perhaps that can be discussed. The history of the drafting goes back to 1994, when the NCW had proposed a bill on domestic violence. The Lawyer's Collective came up with the first draft in 1998. Then we did a consultation around the country and tried to reflect to the maximum possible extent the concerns of the women's organisations working with women who faced domestic violence. The NDA government accepted the need for a bill and tabled it in 2001, which was, unfortunately, incredibly inadequate.

The promulgation of the Domestic Violence Law was included in the Common Minimum Programme, and that was also because of a very extensive pressure lobby by different women's organisations. AIDWA was, of course, very much part of it. The UPA government accepted the draft that we had prepared after all these consultations. It wasn't the perfect draft and it wasn't fully accepted. Today, I'll just go through some of the important provisions which need to be acted upon.

The first question that we were asked at the time of having those consultations was: why do you need a law like this? You have Section 498A. You have other kinds of relief. Why a separate law on domestic violence? A lot of it was part of our experience of providing legal aid, and the experiences of other women's rights organisations that supported women facing domestic violence. If you used criminal law, then the first thing the man would do is throw the woman out of the house. So, a lot of women did not take action under criminal law. Another trend was that filing a complaint under 498A often resulted in it being used as a ground for divorce on a petition that was filed by the man. So, the woman was, in effect, penalised for filing a complaint under Section 498A.

would be able to guide the woman to various shelter options, or even assist her in getting shelter, medical, or psychiatric facilities.

The Protection Officer's second role would be to facilitate access to courts. Everyone knows that legal aid is very difficult to obtain in this country. The Protection Officer will act as a liaison between the woman who requires reliefs under the Act and the court. She will help the woman draft her application, get legal aid, help her with the implementation of orders when court so directs. This would be the key element for the implementation of the Act. However, if the woman is empowered enough, and if she does not need the help of the Protection Officer, there is nothing under the Act that debars her from going directly to the court. The Protection Officer is present entirely to assist the woman in getting the reliefs under the Act.

A lot of discussion took place in the consultation on the status of the Service Providers and their exact roles: whether one wanted the Service Providers to be duty bound under the Act and so on. There was very strong opposition to this. The people who attended the conferences asked why the State should be allowed to abdicate its responsibilities. It is the State's responsibility to provide these support structures. NGOs can help, but one can't expect NGOs to take on the entire burden. However, because we cannot deny that NGOs have been playing a big role in providing support to women, this law provides a limited recognition to their work, and prevents any malafide legal action from being taken against an NGO.

The third thing the law does is give a certain authenticity to the records maintained by the NGOs. These are the three ways in which Service Providers have been provided for under the Act. What this Act does is ask for the registration of the NGO, for which they have to enter their names in the books of the authority under the Act, which would be the Protection Officers.

How would that impact upon the other Service Providers who do not wish to register under the Act? To our understanding, there would be no impact. The only thing is that under the Act, you will be vested with certain rights which you will not get if you do not register. For instance, a Service Provider under the Act can record a direct Domestic Incident Report, which is similar to an FIR except that this is a civil law and, therefore, the format is different. These are the kinds of things that a Service Provider not registered under the Act will not be able to do. But nothing will be stopping the Service Provider from taking the complainant to the Protection Officer and getting the Domestic Incident Report registered there. They can always take the woman to the relevant authorities and get the procedures in action.

The other important thing about this law is that while this is a civil law, there is a crossover with the criminal laws. The crossover happens when there is a breach of the order. The court gives an order, say a protection order or a stop violence order or a residence order that prevents the woman from being thrown out of her own house. If this order is breached, then it becomes a criminal offence, a cognisable and non-bailable offence. Accordingly, the procedure will be set in motion.

This Act allows for the collection and compilation of violence figures. When we went to Parliament and were trying to get Parliamentarians to support it, we had to rely on statistics. The problem is that the only statistics that are properly recorded are the NCRB statistics. These are crime stats only of reported cases, so you have no idea about how much violence is actually going on. Even if there is an NGO study, or by other organisations, it is not at a national level. So you'll have different studies that are state-specific or region-specific. We had put in suggestions for the appointment of rapporteurs at the national and state levels to collect information and to scrutinise the implementation of the Act. Unfortunately, that suggestion was not taken by the government and those positions were deleted. We need to think about this. We already have the NCW, so perhaps they could monitor the implementation of the Act.

under the Act that they have to create awareness and have protocols that will help in the implementation of the Act in the most gender-sensitive manner.

As far as the rehabilitation of women is concerned, this is also something which has been raised a number of times in different consultations. We are talking of relief, be it monetary relief or compensatory relief from the husband. This law is not only limited to matrimonial relationships: you are also looking at other domestic relationships. But, at the end of the day, you are looking at the male perpetrator in the domestic relationship. Every practising lawyer knows how difficult it is to seek monetary relief or the Section 125 orders. What we had hoped for and had suggested at the time of the drafting was the linking of this Act with the government's poverty alleviation schemes, which would ensure that in the immediate term the government pays compensation to the woman so that she is not put in an adverse situation. The State could later recover this money from the perpetrator or the respondent. Again, that was a suggestion that wasn't taken up.

I'll briefly run through the rules, because I think that is something that needs to be taken up for further campaign. We were told to give our recommendation of what a draft would look like and we sent one to the NCW. We've got the NCW draft. We are disappointed to see that a lot of the provisions that we had added in our draft are missing from the NCW draft. We would hope that they are brought back in some way. Under the Act, it is very clear that the Central government has to formulate the rules; there is no question of the state governments formulating the rules. The appointments, however, have to be done by the state government. But rules being a form of delegated legislation, we cannot go beyond the Act. The rules have to operationalise different provisions of the Act. We can't create new rights under the rules. The point of difference being between the Lawyer's Collective's proposed draft and the NCW's draft, I'll just try to categorise certain issues and open them up for discussion.

The rules would, first of all, provide for the Protection Officer. Here, the four things that will be important to look at are: first, the eligibility of the Protection Officer, the method of appointing the Protection Officer, the tenure and the jurisdiction of the Protection Officer, and, finally the function of the Protection Officer. There should be a certain minimum qualification for a Protection Officer. Second - and this keeps coming up in every meeting and consultation - we are asked, "How are you going to make sure that these Protection Officers are not themselves biased or act contrary to the interests of women?" So, the need is to sensitise them. Indeed, having a reference to sensitisation under the rules becomes incredibly important - as is, perhaps, a need for training. But we can link these up with the Act, which obligates the Central government to provide training, awareness and sensitisation to the different functionaries of the Act and to the public at large.

The second thing is the appointment of the Protection Officers. At the time of drafting, and also the way the rules have been framed right now, there could be three methods of appointment. One would be creating a completely separate cadre of fulltime officers who will only work towards the implementation of the Act. Unfortunately, this is perhaps not a very practical solution because it then becomes a state subject, raising questions about which department is going to fund these people. The Personnel Department, the DWCD, or any other department? What they told us was that it one asks for a separate cadre, one can forget about it - it is going to take years.

What are the other alternatives? Looking at the way the NCW rules are framed, nomination of Protection Officers is one of the suggested methods. But we think that nomination is not a very good idea - we've all seen the experience of the Dowry Protection Officers, who did not get appointed at all. Deputation, on the other hand, is something that we want to do, and we want to emphasise voluntary deputation. If you look at the way the Lawyer's Collective draft is framed, there is a listing of the various departments from where Protection Officers can be drawn, including Women and Child Development Department, Sports, Social Welfare, Law and Justice, Empowerment of Scheduled Caste and Socio-Economically Backward Communities

at the option of the aggrieved person. If a settlement is reached, then the counsellor will have to record the terms of the settlement and give it to the court, which will have to verify that the settlement was arrived at without fraud or coercion. The counselling sections in the rules are incredibly detailed because we want to avoid any pressure on or coercion of the woman.

Finally, the rules will also try and provide formats for making applications, Direct Incident Reports, giving information to the woman of her rights under the Act, and of the kind of protection orders that she has.

Kirti Singh

I see some problems that are going to crop up. First, I must say that this Act is by far the most outstanding piece of legislation that has been passed in recent times. Getting this Act is a great victory for the women's movement. But there are some conceptual issues that will arise because a couple of things have happened with this Act. One is that although the right of residence has been defined for the first time, it has been defined in situations of violence. Actually, the right of residence does not flow from a situation of violence within the family but is a part of and flows from the act of living together, or the act of marriage.

Having said that, women need the right of residence most in situations of violence. In AIDWA, to begin with, we had asked for a separation of the right of residence from other protective orders. We had said that the right of residence should be put down as a separate law, and that it should be spelled out in which situations it can be accessed. But we realised towards the end that if we wanted the right of residence, this was the best way of doing it, because it was getting accepted by the government.

So now we have the right of residence in this domestic violence law, which is applicable to all Indians irrespective of their religion unlike the provision under the Hindu Adoption and Maintenance Act that is only applicable to Hindu women. The separation of the right of residence from violence within the family does not exist in our law.

Now that we've got counselling and Protection Officers under the Act, we'll have to be very careful how we frame the rules. From our experience in Tamil Nadu, we know how all investigations can be stopped - for instance, by the court, because there is one section that says that the court should look at the Domestic Incident Report before proceeding with the case. We'll have to make it clear in the rules that when a woman comes: a) the court should proceed whether or not there is a Domestic Incident Report by the Protection Officer; b) if there is no Protection Officer, the court should nevertheless appoint somebody else to make the Domestic Incident Report and to assist the woman, or else proceed with the case and ensure that the woman's affidavit declaring that certain state of affairs exist in her house should be enough for her to get interim orders.

Our problem is that the court never believes the woman. The court always says that to issue a notice, it has to first get the story of the other side. Of course, since the woman is liable for perjury if she has lied in her affidavit, the court shouldn't take an affidavit lightly. I think this should be put in. My major worry with the Act is how the court is going to deal with this. Once you go to the court and if the court delays the giving of relief, then the entire effect of the Act will be lost. I know there are sections of the Act which say that notice should only be given for three days and that the whole case should be finished within three months, but at the same time putting the entire burden on the Protection Officer to even serve notice can be counterproductive. Others will talk about whether it will be possible to appoint enough Protection Officers. The bias of the Protection Officers and access to them will present a huge problem.

The other thing that often occurs in courts and that we would like to guard against is how counselling goes. Now that counselling has been accepted within the Act, I think the rules should state clearly that counselling can be done only after interim orders are given to the woman - that it is only after she gets an

I think this is going to be the problem. Maybe not for major cities like Delhi and Mumbai, but as we filter down to the districts, this kind of ideology is bound to creep in. Section 125 was amended in 2001 to say that all interim orders should be passed within six months. Now tell me, even in Delhi or Mumbai orders don't come for filing a reply in six months. Of course, it looks very good sitting here in a conference room, but reduced to ground-level courts, litigation is complex. We say that this should happen, that should happen, that report should come. Dowry Prohibition Officers exist only on paper. PNDT Act officers are supposed to be there.

But suddenly we are feeling good that this is [Act] going to happen. I do hope for the best that it is going to happen in the near future. But it is not going to happen in the states that are cash-strapped. There is no money, including in Maharashtra. The extra allocation is not going to come, and the Act will not come into effect because resources don't exist. We used to have orders under the CrPC, Section 39 (interim injunction) of the Special Reliefs Act. We used to get orders in a day or two days or three days. Now, we will not get anything because all the courts will evade their responsibility. They'll say, first go to the authority, first get the report and only then can you go ahead with this.

According to me, all these problems are going to surface. I see no answers. Drafting bills on paper is one thing. I feel really happy that young people like you are involved in the process, and it is nice that we are going to have something. But having been in the movement for 25 years, I'm not as optimistic about the outcome.

I have another problem which has never been surfaced strongly - the right of the non-married partner. A non-married (cohabiting) partner could be a second wife or a man's extramarital affair. At one level, we have a compulsory registration of marriage, as mandated recently by a Supreme Court judgment. But, according to me, compulsory registration provisions become redundant if this Act comes to force. Why should I register my marriage if I get my rights without registering it? I don't have to be the first wife. I get my rights of residence and maintenance and protection orders. I don't need more. A minimum of that much I get. Under Section 125, I'll get as much for my illegitimate child.

If there was no second wife, under Section 50 of the Indian Evidence Act we would be having a presumption of marriage. I think that the presumption of marriage and the registration of marriage become secondary under this Act.

I am very happy because I have two or three second-wives cases that I am handling. As soon as this Act comes into force, there is at least some way I can protect these women's rights. Otherwise, they would have been thrown out of the court despite the interim order that we've got. But if it was a case of first wife, second wife and a single house, or the man is not capable of providing two different shelters, how would we deal with it? 'First wife' and 'second wife', 'marriage partner' and 'non-marriage partner': how are we going to deal with this, more so since we know that Hindu marriages are not monogamous on the ground? These are the major problems that I foresee.

Kumkum Sangari

I was thinking about the Service Providers issue very seriously because our experience in the women's movement of Service Providers in the form of NGOs has largely been that of NGOs that are either offshoots of the movement, involved in the movement or supporting the movement. But we know that with neo-liberalism, NGO-isation is rapidly taking a different shape. We know, for instance, that USAID money is replacing European donors and is sweeping Pakistan and Sri Lanka, and has made very serious inroads in places in India such as Rajasthan and Madhya Pradesh.

And this is really based on an appropriation of women's issues. This massive funding is now coming in to monitor illegal Bangladeshi migrants under the guise of working on trafficking. This money is coming in to

property. What about other forms of natal property? As far as counselling is concerned, there is a provision in the rules which allow for an order of counselling only after interim orders are passed. Also, the reference to the Direct Incident Report is problematic. I'm sure we can include it for the court.

I'd also like to read out section 26 of the Act: "Any relief under this Act may also be sought in any legal proceedings before a civil court, family court criminal court, affecting the aggrieved person and the respondent whether such proceeding was initiated before or after the commencement of the Act." This would mean that there is a certain provision in the law which might help regarding the concern that you [Flavia] have raised: it says that you can add claims under this Act to existing proceedings.

In terms of this Act, a magistrate was chosen because we felt that relief under criminal law is far more expeditious than relief under civil law.

Flavia Agnes
Should we then put maintenance back in the Magistrate's Court?

Asmita Basu
It's under the Family Court. I don't think I need to get into that right now because we are talking about this Act and not Section 125. All I'm trying to emphasise is that this Act is not necessarily only to be proceeded on in the Magistrate's Court. If there are proceedings in any other court, then they can be added to.

You [Flavia] speak about too many officers being there. The point that I have been trying to make continuously is that the Protection Officers and the Service Providers exist only to facilitate and support the woman. The entire process can be bypassed.

As for the rights of the non-married partner, it is happening. The point that this Act makes is that even if you are in an extramarital relationship, you cannot have domestic violence. Furthermore, the right to residence is only vis-à-vis a shared household. If you can't show shared household, you will not get a right to residence. That is a positive thing.

As for growing fundamentalism in NGOs and their Hinduisation, that's precisely the point I was trying to make. You have to specify on eligibility criteria that these kinds of NGOs cannot register. I use the term NGO to denote what a Service Provider should be, but one can also have government facilities register under the Act as Service Providers so that they are duty bound.

I'd like to emphasise that Protection Officers can be bypassed. We should have rules allowing for that to happen. One good thing about the Act is that it allows for the accountability of Protection Officers. You cannot have a Protection Officer say, I don't feel like helping you today. He will be subjected to legal action.

and everybody is happy. There is a very strong ideological attack on minimum wages, the ideology being that if minimum wages are enforced, there will be less employment. (There are also arguments that this is not true.) I want to put it in the recommendation our political view of one or two Acts, laws such as the Minimum Wages Act that touch the majority.

We need new laws for workers. The counter-argument would be that we have so many labour laws, let us implement them. Why do we want new ones? But the labour laws we have don't necessarily impact a lot of our worker population. An Act that has been talked about is the Umbrella Legislation for Unorganised Workers. There is strong political will not to get that passed. Nevertheless, this Act covers the whole area of social protection for workers, on the one hand, and certain minimum labour conditions, on the other.

We need to be sure that the social protection law doesn't hinge on the employer-employee relationship, as all labour law does. Experience shows that when one tries to prove the employer-employee relationship, one spends all one's time proving that relationship alone. One never gets round to enforcing the law. We need to cover those defined as "workers", not as employees. We also need to think about a minimum *income* because minimum wages apply only to employees, not to workers.

Minimum wages can only ensure a minimum compensation for days that one actually works, which is why people really need a minimum income. What manner of new law will ensure a minimum income to everyone who works? We also need to examine policies and laws that promote organising. We need to think of new forms of organising in TUs and elsewhere. The old form of TU organising, where one had an industry and an employer, has led to declining membership and declining results. The issues, therefore, have changed, and they need new forms of organising.

Take the example of street vendors. No employers are present there, but there exist very strong forces against the vendors. One has to organise, bargain, struggle, and deal with those forces. Then, again, TUs are not the only form of organising. We need different forms of organisation, and it is not right to dismiss all NGOs as having nothing to do with workers. There are many types of member-based organisations, including cooperative, *mandals* and self-help groups – all of which are forms of organising that have, unlike TUs, been attracting workers.

We really are in a new era in which the corporate sector has expanded itself into almost every sphere of life. We have judgment after judgment on the issue of labour issue that are people-unfriendly. The small self-employed, especially, are facing an almost unprecedented attack. Similarly, other forms of organising such as cooperatives are also facing an unprecedented attack. With the corporate sector going global, we are going into rapid urbanisation – the building of the 'urban infrastructure'. In that context, the livelihoods of all small workers, small businesses, street vendors, is being rapidly shut down.

We are getting two types of judgment. One, all businesses in residential areas should be shut down. The studies that we have done in slum areas show that at least 1/3rd of houses are used as workplaces. We just got a Supreme Court judgment to get rid of all street vendors. Pavements are for people to work on; one doesn't need any livelihood there. Mumbai has had a similar judgment before this and so have other cities. Last year, we saw three public suicides of street vendors on the streets. This is a measure of their desperation.

As far as the cooperative sector goes, let's take Amul. The issue is that the Amul is a single cooperative, and the NDDB is the one national cooperative that we have always been holding up as a model. And there are forces that want to get rid of the cooperative movement. Our own experiences in the Sewa cooperative bank show that the laws keep us small Lawson purpose. The Reserve Bank of India, for example, refuses to let cooperative banks open branches no matter how successful they are, whereas private banks can have thousands of branches. Furthermore, they have put taxes on cooperatives equivalent to the private sector.

the mushrooming of private schools that have come up like shops - they are not schools, by my definition. All those teachers are getting Rs 800-1,000-1,200. They are not in the 'worker' definition because universities and schools are not considered 'industry'. How do we see to it that they are covered under various benefits? What will happen to all these so-called *Shiksha Karmis* or *Shiksha Mitras?*

How should we include the income or wages of those workers? The vast majority of the workforce is being shoved down to the lower levels and is being paid much less than the stipulated wage declared by any state. For home-based sector workers there is already an ILO convention, but no ratification has taken place in India. I fully agree that it has to be a political process. To push the things, one has to have political debates. As for home-based workers, we wouldn't have got the Indian government to support it if at that particular juncture a new government had come and we had manipulated him into voting in their favour.

On the issue of the kind of law that we will have regarding the unorganised sector – they have prepared something. There were changes suggested that have not been accepted – how we do it. We must also debate on the Rural Employment Guarantee Act. What are we going to do about it, looking at the Act and its implementation process. Women-headed households in the rural area are the houses that should be taken up. But who is the interpreter? Who is the lawmaker? If we look at it in the scenario of socio-economic changes, the State is abdicating its responsibility. The role of the State in making of law and implementation has to be asserted repeatedly. We cannot allow the State to run away, which has been happening since the pursuit of the new economic policies

Subhashini Ali

This is a crucial dialogue that has been initiated only today. This has to be carried forward – the dialogue between the TUs and the women's movement, and why the processes of globalisation impact most adversely on women in all sections of society. Sometimes, women's studies take up important pathbreaking studies, but this good work is not read by anyone other than women.

The way in which the forces of globalisation are exploiting women has not been computed. There are so many ways in which the State is withdrawing. There are responsibilities thrown on the already broken backs of women, those called "just housewives". Anganwadi workers handle huge amounts of work that the government agencies and departments should be doing. The Anganwadi worker has to deal with everything from AIDS to condoms to census enumeration, and to look after the women and children in the village. The list goes on.

This is the maximisation of the exploitation of women who are driven to desperation. I don't think that it has been adequately addressed either by us in the women's movement or those in the TU movement.

There are so many things that have to be taken up and addressed and fought for and struggled against in different and newer and more effective ways. Labour laws are the most flouted of all laws. For most categories of women, they is actually no law at all. In addition to that, I believe that no men will work normally in such low wages or no wages at all and in such unprotected conditions. When we talk of the dowry problem and the marriage expenses of women, we see that not all the young nurses from Kerala are working all over India to earn their dowries. Various places in Tamil Nadu are actually witnessing a kind of slave labour of women.

In Tirupur, there are factories where women are held for three years. They are not allowed to exit even if somebody in their family dies. If a death certificate is produced, they are permitted to go for the *shradh* ceremony. Trade unions can't enter that arena for a gamut of reasons. And the women are young girls who work there because, at the end of three years, they will get Rs 30-40,000 which they feel will then enable them to get married. Department stores in Tamil Nadu are also doing this. The owner of a departmental store will get young girls who belong to his caste with whom he has still

see how they are impacting the child of today. Importantly, when we talk about the child, the mother also comes into the picture. And with the mother comes the whole aspect of maternity entitlements. But the Maternity Benefits Law is just a law on paper, not benefiting women either in the organised or the unorganised sectors. The unorganised sector lists 122 occupations, almost 100 of them carried out by women. Maternity benefits and other welfare activities are not talked about. So, it is important that the women's movement and TUs come together specifically to ensure maternity entitlements would – but we have been talking about it without reaching any conclusion.

Then there is the whole aspect of protection of children, the laws related to it, and the various Acts that cover child protection and crèche facility. Acts regarding mines, factories, and plantations are not literally followed. Nor is the PCPNDT [Act], which, again, is directly linked to the declining sex ratio. You can definitely say that the crèches needed are not there, and that the timings of the crèches do not match with the working mothers' timings. The age at which children should be going to crèches is not specified. Children over the age of three come to crèches, but what about children under the age of three? During a study, we observed that the training was for one day. How much can she learn in one day? Moreover, given that there are insufficient crèches compared to the number of children, how are these 'numbers' going to be allocated? Then again issue arises about the number of crèches and ICDS centres. The recent commitment of the CMP was that there would be universalisation of the ICDS. But we are seeing that children in the far flung hamlets and non-revenue paying villages are not covered by it. Someone talked about the allocation of money for implementing laws, which is a very important aspect we need to look at where the child is concerned: the care and protection of the child cannot be ensured unless enough money is allocated. These are aspects that we need to bring up and work together with the women's movement - we know the TUs are there to support us, but the women's movement has not taken that kind of lead.

DISCUSSIONS

Surinder Jaitley

There are two points that I have to make. First, the studies done by women's studies are not getting into policy formulation or the lawmaking process. There is a lot of appreciation for the results gained from these studies. Twenty-five ago, before the food processing industry was recognised as an industry, at a brainstorming session the then minister of food processing called a meeting of the captains of industry, women's studies, the TUs, and others. They discussed the issue and said that it was going to be a big thing for India for four reasons: to improve the nutritional status of people, to increase employment, to increase earning, to increase foreign exchange, etc, etc. It is a known fact that all over the country, 90 per cent of workers in the food processing industry are women. They were doing it in the traditional set-ups and are doing it in the modernised industry. We pointed out that we had sent the written questionnaire to 30 units for them to tell us the number of women workers they had, and that they all said that they had no woman workers. When we physically visited these units, including the prestigious Kissan and Northlands and others, we found the halls full of women, 200-300 women in a single hall performing all kinds of operations, from technical stuff like cooking and preserving in bottles and tins to cutting and peeling, called unskilled labour.

Having pointed this out and after being assured that these women would not be excluded from the industry when technology came, they asked how this could be done. We suggested that the skills of the women be upgraded. They were already engaged in all these processes: if new machinery came in, skills could be upgraded. We were benignly told that it would be done.

[But] I have never heard any TU talking on behalf of these women. They continue to work in the industry, in the informal sector, without the benefit of crèches, restrooms, or any other facility. I did the study in Delhi, Nainital and Banaras. I don't know how these studies can get into the process of lawmaking and of providing benefits to the women in the informal sector.

ROUND TABLE DISCUSSION ON MAINTENANCE, INHERITANCE AND PROPERTY

Chair: Jyotsna Chatterjee

I am quite concerned and disturbed by the session that we have just completed. In fact, I was quite nervous, having been a part of the women's movement, and then finding a practicing lawyer saying that there are limitations in the law. She also said that we in the women's movement haven't properly engaged with the law. The session that we have before us is on maintenance, inheritance and property. Each religious community has it own personal laws and unless one relates the question of maintenance, inheritance and property with the question of the existing personal laws, it is very difficult to think of addressing the issue of maintenance, inheritance and property. I am reminded about the kind of problems that we had when Mary Roy was trying to struggle to change the Travancore and Cochin Succession Act. Several of us were considering changes in the Christian Personal law at that time. We realised that in Kerala, there was a Travancore Succession Act and a Cochin Succession Act, which would not allow a Syrian Christian woman from benefiting from the property of her father under the Indian Succession Act, which governs other Christians living in India. Mary Roy had to go through a lot of struggle. Finally, she was able to convince the court, managing to establish the fact that her daughter had right to the property of her father.

We were divided, and for the women's movement to take it forward was very difficult. Initially, we thought that perhaps if we had a uniform civil code, it might become a possibility, and we would be able to give some kind of justice to women in the context of inheritance, maintenance and property rights. Of course, we had to change our campaign from struggling for a uniform civil code to let each community try to make changes in its own particular personal laws. What we find today is that the Christians have made some headway by changing their law on divorce and the related question of maintenance. Among Hindus, there was a move three years ago for a woman's right to coparcenary property, but to what extent that would be of help has still not been investigated. In fact, Indira Jaising at one point said that to only think in terms of changing rights of inheritance for Hindu women is not doing justice to - nor is it possible to think in terms of giving equal justice to - all women. And she is arguing again and again for all women to have a common law.

CUSTOMARY LAWS

Jarjum Ete

I was previously engaged with two young lawyers, activists also working with our group. They saw my scepticism about the delivery of justice in the Indian legal system, and how it is inaccessible to the poor, particularly victimised women – they laughed at me: "Ma'am, you have no confidence in the judiciary and yet you are going down for a workshop on legal reforms!" This is the kind of dichotomy that I am walking through as a tribal woman and an activist who has optimism and hope - and particularly in the achievement - of the women's movement. In the beginning, of course, prior to the mid-1990s, we in the hinterlands in the Northeast, especially the tribal women, used to say that that the Indian women's movement did not address our issues. But since 1994 - the pre-Beijing conference, the consultations that we have been having, getting

it is up to the men. If they want to give it, they give it, otherwise you can't take it. Many times, the councils are very insensitive.

In women's organisations, we have dealt with some cases. For example, inheritance: after marriage, the woman has to move out into the patrilocal kind of system. So people who have moveable properties do give it, but from the parental, natal family. Property rights, especially for daughters who have married men outside Arunchali society, do not exist. Even in matrilineal Meghalaya, where we think women inherit the property, it is the youngest daughter who inherits the family property. But, again, the control and management of that property is in the hands of her maternal uncle, who himself would have moved to his marital home. Even in my community and family in Arunanchal, I have seen a case where a married daughter was given access to landed resources. But this access is in terms of livelihood, subsistence and sustenance, not in terms of ownership or transfer of control of the land. When the third generation people who have access to these resources want to sell the land because they have grown some plantation, cannot do so without selling the land. No one is going to buy the plantation without having control over the land. The family had to buy it back - it was my family, my husband had to buy it back and give them the money for the plantation.

In one particular case of divorce, it said that the father could give in his will financial support for the daughter's education and maintenance. But it didn't make it binding on the father or the husband to ensure the maintenance for the wife and the daughter. And it said that if a man wanted to divorce a woman, he had to pay a penalty of Rs 20,000. On the basis of these council decisions, we did a mobilisation and said: Are you up for Rs 20,000? The women have now got into the traditional councils, and in late February they went into the council meeting in big numbers and said that if the council was not going to take care of this in the meeting, the women were going to take it to the commission. Today, they have something to fall back on. They are challenging, and the councillors are telling them that they would give them the space to negotiate. So something seems to be moving.

In many tribes, for the first time there has been pathbreaking participation of women in the council. They are not authorised decision-makers, but when it came to their inheritance and maintenance, they went in groups in support of the victims and said that they also wanted to have their voices heard. For the first time, sometime last year among a tribe called the Adis in Arunachal Pradesh, a young wife, a graduate, told her husband, a government employee, that she had spent seven years with him and that it was not her fault that they didn't have a baby. You never went with me for medical check-up, she told him. And this is no reason why you should divorce me. And on this ground, she said, I claim my stake on your property. Both had some landed property and one of the plots of land was given to the wife. Because this man was seeking a divorce without any valid ground, his family had to part with the traditional family land. This was a landmark village council judgment.

Unfortunately, there are cases of government servants continuing with the practice of polygamy. Some officers have deleted the name of the wife in the service book records, which effectively disinherits her. So now the commission has come into the picture and there is lobbying with the chief secretary and the governor, who is very proactive, as is the justice of the High Court bench of Gauhati, in Itanagar. They have given us a positive sign but we are yet to get a note from the High Court. We are demanding the application of civil services conduct rules *in toto*, which has been challenged by the men who have been practicing bigamy and polygamy. In these cases, women even don't have access to whatever small benefits they are supposed to get as the spouse of a government servant. In cases where there is no male child, the councils are very insensitive to the women's needs. Furthermore, male child adoption is usually a traditional practice, but no widow can adopt. In one case, a man left a will that if his adopted son didn't take care of the mother's needs, he wouldn't have access to the resources. The council ruled otherwise. Even the will of a dead man was rolled back.

religion and community. Also I would like to put it that they [the tribals] have so many variations, so many customary laws, most of which we know are not pro-women. Patriarchy has been the dominant norm. Customary laws and practices are also the same.

Vasanthi Raman

There has been a big move by many financial institutions in the Northeast to go in for major development projects in the area. There have been closed discussions. Only some NGOs and some people working there have been able to get some information about projects that will affect the whole ecological patterns of the region. Along with that, social relations in the region are going to get seriously affected.

Uma Chakravarty

What we need to factor in is that the mode of development will precipitate changes in the protection of tribal land. Tribal land alienation has been changed in Chhattisgarh and Jharkhand. Whole tribal communities are going to loose their rights through the way in which the corporate world will come in and exploit the land.

Jarjum Ete

In fact, it is very unfortunate that representatives of the Northeast sitting in Delhi are misrepresenting quite a few of our opinions. What Northeasterners speak in Delhi is not always the popular sentiment of the people there. Recently, I saw the most respected Northeasterner in Delhi saying in a e-network that the inland permit of Arunachal Pradesh should be lifted whereas we believe in opening up, because it is one mechanism that has protected my state. And it needs to be continued. I was told that the same gentleman had said in a forum that shamanisms practiced by Arunachali society should be stopped because they are unscientific. Which religion is scientific? It basically depends on faith and beliefs and people. He has been going around doing these seminars in the Northeast on additional infrastructure development. But activists are questioning the issue of additional development: let's talk about basic first.

This is regarding Vasanthi's intervention. We are concerned about the ecological impacts of development in pursuit of which the financial institutions, government institutions, everybody, is jumping into the Northeast. As activists, we had foreseen it 10-15 years ago. The most unfortunate bit is that the people are still not prepared to tackle it. And we have agitations of ethnic related assertions, from the Naga to the Assam movements, but development-related movements are not happening.

As for the draft Tribal Land Rights Bill and the Forest People's Bill: some of us activists from the Northeast had submitted a memorandum almost one and a half years ago to the minister who also looks after the tribal affairs ministry to give us an opportunity to debate on these draft bills, which he hasn't done. It is also very difficult for us to follow up on many things simultaneously. And it is with sadness that I have to own up that I have not been able to make depositions. In fact, the time given to us is so short that we can only react; proactive inputs have not been there.

About the compositions of tribal councils, the traditional councils - they are basically male-dominated. But now, in the new set-up of councils, we are demanding space for women. In some districts, we are amazed to see a great number of women who have been assigned responsibility as council decision-makers. Whether or not they are indecisive or not effective are different issues - at least they are cosmetically there. About the Land Rights Bill, there are two parallel things happening: the Forest Rights Bill, moved by the MOEF, and one moved by the MOTA. Prioritisation of issues is a big question.

My point is that when it comes to women's right to property, Arunachali women raised the issue of property rights as a collective for the first time in 1989. Even at that point of time, my question was: with all these rights, what the various responsibilities that we are willing to take on? The debate is still ongoing. If

much of difference, because both work as service providers. It is difficult to identify fundamentalists from secular groups.

Another point I would like to raise is about our intervention from the gender perspective. This is becoming less, as has been experienced by many networks like the Muslim Women's Rights Network in Bombay, etc. Also, how do communities intervene on women's issues? For instance, we need to look at the manner in which the cases of Sania Mirza, Imrana and Gudia were being talked about in the media. Most of the voices being raised are about the nature of relationships within the institution of marriage, but none of these groups talk about banning dowry. There is lack of prioritisation of the issues being raised and the manner in which they are dealt with.

Another form of dangerous interventions made by these groups is that they are dictating the manner of in which day-to-day life should be led. In other ways, they are dictating the lives of women on issues of what clothes they should wear, what they should or should not do and so on. It is also becoming dangerous for single women, widows, individual women who challenge male dominance in society, and women's groups working against patriarchy. It has become all the more difficult because one could not differentiate between the manners of operation of secular groups from the fundamentalist groups. The challenges posed by fundamentalism are not being dealt with adequately. Two years ago, the Jamat-e-Islami had held a National Human Rights Convention where a lot of our secular friends went and received awards. But it is very difficult for me to attend conventions organised by these fundamentalist groups who stifle women's voices, or to receive awards or share platforms with them. Whether it be Gujarat or the 1992 riots, we can easily point a finger towards the dominant fascism, but the agents of minority fundamentalist groups are not being taken as much to book. We must address this issue.

The local groups that have emerged are being looked upon as statutory bodies. The Jamat-e-Ulema has gained recognition as one of them. The statements that these groups issue about women or any other matter gain legitimacy similar to those of Supreme Court judgments. If the Jamat-e-Ulema issues any statement, everybody debates it. But nobody dares to challenge the existence of these bodies as legitimate entities. For example, we all were concerned about the *fatwa* issued by such bodies in Imrana's case, but at the same time we were happy about their interventions in formulating the so-called 'Modern Nikhanama', thinking that it gives rights to women. But the reality is that it only represses women, in particular, and the Muslim community, as a whole.

The women's movement has not raised its voice against these so-called 'statutory bodies' openly. We put all our energies into fighting fascist forces like the BJP but never fight against this minority fundamentalism with the same energy. There is not much of difference between the two. Both are making attempts to dictate the lives of women. They are intervening to decide issues like marriage, family, bigamy, etc - even decisions like whether the man who rapes a woman should marry the victim or not. In non-Muslim communities, when such decisions are given, it is not taken as a voice of nation as a whole and people raise their voices. For instance, many people were against the case in Haryana in which the man and woman were declared to be brother and sister becase their horoscopes matched. The NHRC also intervened.

But in Gudiya's case, the NHRC did not intervene. Even in Imrana's case, the Central government did not intervene, saying that it was a state matter. This is a dangerous trend. The present government is a sensitive one, which wants to bring in many changes in the laws pertaining to women - but it is quiet on this issue. It probably does not want to lose its vote bank.

This is study of the experiences of 20 divorced women who approached the Darul Qaza. Of the 20 women who were divorced or sought *khullah* or *fasq*, 11 were from the Ashraf family and nine from non-Ashraf family. Three of the women were illiterate and nine were educated up to the secondary level. Eight were graduates and later completed either teacher's training or master's degree with the help of their parents and joint teaching. Four of the women sought *khullah* by the Darul Qaza, 10 of them sought *fasq-e-nikah* by the central Shariat court at Patna, and six were divorced by their husbands in one sitting without any witnesses. Six were divorced because they did not bring enough dowry, or could not meet demands after 10 years of marriage. These women were also not up to the expectations of their husbands in terms of 'beauty' and 'education'. Six of the women who went to Shariat court were victims of physical torture, paradoxically because their good looks created suspicion about their character, high education, not asking *jahez* from their parents, and asserting their social and reproductive rights within the Islamic framework. Four women who took *khullah* were also victimised by their husbands and in-laws despite their best efforts to adjust.

There was a decline from 1994 to 2004-05 in the number of cases that went to the central Shariat court. During 1993-94, the total cases of *fasq* were 239, which dropped to 203 in 1995-96. There was again a decrease from 200 in 1997-98 to 182 in 1998-99. In 2004, according to data from the district Darul Qaza, Muzaffarpur, *fasq* cases numbered 22, declining to 17 in 2005.

The women who were divorced by their husbands didn't get their *jahez*, even for the *iddat* period; only two of them got their *meher* back, and since there was no *nikhanama*, no witness at the time of pronouncement of divorce, they were deprived of their matrimonial rights. They did approach Darul Qaza but, but in the absence of any proof of or witness to their marriage and divorce, and in the absence of their husband on dates fixed by the courts for the hearing of their cases, the cases were dismissed. It is high time that the AIMPLB, the so-called custodian of the community, gave attention to formulating the *nikhanama* and attending to the conditions suggested by the women's organisations who have been working on the *nikhanama* for nearly 10 years. Despite their repeated appeals to the jury, none of the women who went to Shariat court for their *fasq-e-nikah* and the return of their *meher*, maintenance, and *jahez* got them back.

The final judgment was almost three years in the making. And the AIMPLB claims quick justice! For one and a half years, the case was with the district Darul Qaza. When the Qazis found it complicated and the husbands failed to turn up for all the six dates, it was transferred to the central Shariat court, which was located almost 200 km from the place of these women.

Where the custody of the child is concerned, in 18 cases the husband neither claimed the child nor gave any maintenance – the sole responsibility for the woman and the child lay with the her parents, some of whom were retired or had petty businesses. Interestingly, none of these women remarried but all the men got married after divorce, with handsome dowries. Six of the divorced women were working and looking after their children, with the rest dependent on their parents.

The women who sought *fasq* stated that they were under the impression that the proceedings to seek divorce, settle maintenance, *meher,* and other matrimonial liabilities would be less time-consuming, less expensive and, above all, that the judgment would be more in line with *Quranic* prescriptions. Their expectations were wrong. They stated that the way the *maulana* asked questions and pressured only the women to adjust was one-sided. In most of the cases, the women said that they could not explain or express their problems to the Qazi, as they had no female members who could understand their problems and the Qazi remained unconvinced of the grievances the women had, particularly those related to physical abuse and the marks they had on their bodies. Furthermore, the absence of other parties on the said dates, and the tendency of the court to not pursue maintenance and recovery of *meher* and dowry were an added disadvantage.

the Kalbe Sadiq says something in Lucknow in the Shia community, it is going to make more of an impact. It is unfortunate but true. Similarly, if some of those people could be manoeuvred to come to Imrana's help in the horrible situation she was in, that help that they were able to give was, in in her life, more meaningful than what I or Indu or Jagmati or anybody of us could have given. We need to understand the reality of the social problems and pressures that people face. We have to be much more sensitive to that.

The real issue is what she ended on – organising more and more women, Muslims, Adivasis, Dalits, among us. More of them become must become organised as a part of women's movement and throw up their own leaders and spokespersons. I don't think there are any short cuts. These are difficult battles that we all have to engage in.

Sabiha Hussain (*translated from Hindi*)
Zarinaji, I would address your question. It is not that Muslim women's organisations or the women's movement gives any validity to the AIMPLB. It is not a valid or a statutory body. It is a body formed in 1972 and not one that we accept. The main purpose of my study was to ask why we have this body so much credence, particularly when it is not representing the Muslim women's community appropriately. The Muslim Women's Rights Network has been working since 1999, and they are questioning bodies like the AIMPLB. They want to reinterpret statements and not listen to the mullah and the *maulvi* anymore.

Haseena (*translated from Hindi*)
It would have been ideal if we could see women as a homogeneous category. But this is not so. We need to understand and identify the community-related problems as different for different women. We do tend to put forward our understanding as women coming from a particularly community with a certain kind of experience that may have affected us in a certain kind of way. I think the need is to talk about just gender laws and to create mass movements. I also think that we also have to look at the different backgrounds different people come from. So, in the women's movement, it is necessary to identify problems specific to particular backgrounds that the woman comes from. If you look at the Urdu media, you will see that there is an effort to create a parallel system – to have people who only work for the Muslim community, only take decisions for them and so on. This is also seen in the debate over the *nikhanama*, which says that in the event of a dispute between a man and a woman, they will go to the Darul Qaza and will not anywhere else. We need to recognise the fact that women from different communities need different attention.

Svati Joshi
I just think that if we say that we should have a communal identity, we are falling into the trap of fascism. I think we should really be concerned about this – that is what they want – they want us to privilege our communal identities and divide Muslim women from Hindu women. Are we really going to accept it? There is a serious danger here.

Jyotsna Chatterjee
I think that is a matter of debate and we need to go deeper to understand the issue. What has come out as a common factor in these three presentations is the fact that all three participants have informed us a little more about the specific problems that we need to address as women and not as a women's movement. They have also told us is that there is a need to mobilise women from within their community and to link up with the women's movement. The third thing was more empowerment for the groups within their own community. I know that the question of having their own identity has become an extremely important factor, which they need to address themselves in the context of a secular country.

Let me first read the abortion legislation that was passed in 1971 and was implemented in 1972. The MTP in India was considered to be one of the most progressive Act, and fairly liberal. Through this Act, women in India have had access to abortion on request. There are two salient features of this legislation. For the first time in the world, it allowed abortion for reasons of contraception failure, although the explanation for this is a little disappointing, specifying as it does a failure of contraception in the case of married women and unconventional pregnancies. This perspective is regressive and a bit orthodox. The second salient feature was that it doesn't need a signature to seek abortion. As far as I know, the only legislation that could be considered better is perhaps the one in South Africa - for the very logical reason that the entire legal system in South Africa is fare more empowering.

The critique of this legislation is that it tends to over-medicalise this entire process of abortion. The entire decision-making of the indicators for abortion is entirely in the hands of medical doctors. In that sense, the abortion legislation in most other countries gives women larger control. Who interprets legislation, and in what context are the legislations being interpreted? At this point in time, whether for fortunate or unfortunate reasons, the MTP Act is being interpreted extremely liberally. I would like to underscore the ongoing commercialisation of the health sector and of abortion services. The data of the past 10 years indicates that medical professionals have built their empires just by doing the abortion care and service, which is the flip side of these legislations. So, one doesn't really know whether to feel happy about this situation - women do get abortions. The questions to be asked are whether they are safe or unsafe, affordable or unaffordable. And, of course, about the quality of care.

In what context and in what circumstances did the legislation come in? I was extremely surprised to know that such a seemingly liberal legislation came to us almost on a silver platter. The women's movement in India didn't really have to struggle to get such a liberal Act in place. When it came, it was 1972; by then, four five-year plans had gone. In fact, we had the family welfare programme - which was given different titles over time – in 1951, and there is a lot of data to indicate that the State had brought in this legislation because it was obsessed with population control. That is the political reality of the abortion legislation in India. We need to take note of this fact, because with the liberal interpretation that our medical providers are giving it today, we really do not know what will happen a few years down the line. It will depend, I suppose, on the kind of context we will be confronted with. There is so much power that has been given to the medical profession.

The additional feature is that by 1860, the IPC had decriminalised abortion, and that is British legacy. Look at the PNDT Act, I would like to highlight the reasons for women's groups being very particular about keeping the MTP Act untouched and going in for new legislation. This was the strength of the women's movement of that time - foreseeing the problems in it.

Another point that is constantly been made is that women's reality and women's life anywhere in this world is so complex that one can't focus on just one issue and work on it in isolation. Questions are being asked about why people are going in for sex selection, about what's happening in the development sector, what's happening because of globalisation and the commercialisation of the healthcare sector, and how all of it relates to the dowry issue. It is a complex gamut in which one has to look at the entire activism and the PNDT. The PNDT legislation began in the early 1980s from the AIIMS in Delhi, where a clinical trial took place and people going for the amniocentesis test were interviewed. The fallout of that work was disheartening data that said that seven out of eight people sought to know the sex of the foetus even in advanced stages of pregnancy.

In Punjab, which started the advertising, it was the Bhandari centre that offered sex selection. In no time, it had spread to other states, including Maharashtra. Amniocentesis was the only test available then. Over the past 10- 15 years, with the advances in the technology, not only has ultrasonography become possible but also pre-conception selection. This was one of the concerns when the PIL was filed in 2000.

In the international funding agencies that Vinadi talked about, there was a lot of pressure to do something about son-preference both in China and India. In China, the state provided the free first CBS and then ultrasound and then abortion services as an extension of the one-child policy. We also knew of the fact that great technology had been developed in the All-India Institute of Medical Sciences to ensure a son and ensure that daughters are not born. It was probably because of some activists in late 1970s that it was stopped around the 1980s, but by then medical entrepreneurs had discovered this gold mine. In China, the State kept doing it right up to last year, but now they have declared it illegal.

But as for the private medical business, Professor Menon mentioned that there would be an ethical dilemma. There is a bit of confusion about the use of the English language - 'ethical dilemma' is an euphemistic term. It is a very nice term for an organised medical mafia. There is no 'ethical dilemma'. Those who are doing it are not in a dilemma at all. They are very clear that it is unethical, that it is illegal. To me, it is very clear that the demand was created. We can trace ultrasound machines in heavily medicalised societies like Kerala. In Punjab, there are too many machines. But girls are disappearing in less medicalised societies such as Rajasthan and Orissa. We actually witness girls disappearing within a year of a machine appearing in a town, and from the peripheral taluks within two years. Eventually, two more machines come because doctors discover that this is a gold mine. This is demand-driven marketing. We can discuss it for centuries; I hope there are some girls left to discuss it with.

Leena Prasad
I'm not sure what Sunita meant when she mentioned the domestic violence law. Did you mean to say that it is very complicated and you didn't understand it? The domestic violence law has been drafted in the most participatory manner.

Kalpana Dasgupta
Is there any provision to penalise the family of the woman, or is the woman alone being penalised?

Sabu George
Doctors had a major role in the drafting of the PNDT law in 1994. They were absolutely determined to keep the culpability of women intact. In the amendments in 2002, we tried very hard to remove it, but one of the law secretaries was collared by the doctors and the ministry had to finally compromise. It was by and large diluted. So if you have a good lawyer, get the culpability shifted, but the matter is ambiguous. I'm talking about the culpability of women *per se*. Those who are assisting in it are culpable.

Kalpana Dasgupta
Who else is culpable along with the mothers?

Sabu George
The family is culpable.

Leena Prasad
In law, there is a presumption that if a woman goes in for sex selection, it is the husband and the family who pressurize her to go in for it.

Sunita Sheel
Going back to domestic violence issue, I just want to make a very clear statement not to critique the process. I know that some of my colleagues have been very closely involved with this work. My point was that the entire legal language could be daunting for people who are not, by training or otherwise, adequately exposed to it. That's the constraint I expressed at the individual level.

SESSION - V

IN SEARCH FOR JUSTICE: CONFRONTING 'TRADITIONS'

Chair: Dr. Prem Chaudhary

The presentation is by Jagmati, who is an activist from Haryana and an AIDWA leader.

HONOUR KILLING AND THE ROLE OF CASTE PANCHAYATS IN HARYANA (translated from Hindi)

Jagmati

My presentation is about the experiences and the work that we have been doing for the past 15 years in Haryana under AIDWA on the issue of honour killings and caste panchayats. My presentation is on the basis of that experience, along with a small survey that we had conducted on the victims of honour killings to know their socio-economic background, feelings, aspirations, etc.

First, we start by looking at who these boys and girls are who marry of their choice and who get killed by their families through the *gotra panchayats* of villages. We found that those girls who get killed generally come from poor or lower middle class backgrounds, but with some education. Because of this education, these girls have some vision of a better life. They are better students in the schools in their villages and in colleges. These girls can think independently. The boys whom they agree to marry are trustworthy, with responsible characters, even if they aren't very well off. On a comparative level, the girls wish to choose someone who is trustworthy.

However, not all young people in colleges have the option to go in for choice marriages. They often have relationships, but when it comes to marriage, the girl is betrayed. Frequently, boys buckle under family or societal pressure. Yet, there are girls and boys who are ready to honour their relationship with marriage and also to pay the cost for it. They know very well what could happen to them, their families, and the future generations. In spite of that, these youth risk their lives for the relationship they've made, and in that way are very true characters.

However, the media, especially the print media's way of reporting these incidents is shameful. I think we would have to intervene a little at this level. They usually report these incidents in a negative light as "lovers escape" or "lovers caught", while neglecting the fact that choice marriage is a more democratic form of marriage. In choice marriage, there are no dowry considerations; no family-to-family relations; no caste-to-caste or religious alliances. In fact, here the individual gets related to the individual. Choice is based on an individual's decision and facilitates an individual's freedom. Thus, these marriages are more democratic and have more potential for fulfilling the requirements of the institution of marriage. The question then is: Why do such boys and girls get killed? They are the martyrs of democratic choice of marriage.

If we analyse the traditional form of the institution of marriage in Haryana, a few important points emerge. First, inter-caste marriages are not allowed. Prospective brides or grooms are sought within the same caste, leaving out the first three *gotras* and the neighbouring villages. If one analyses these community codes which govern traditional marriages today, then it seems that they maintain the status quo of the caste

Our experience also tells us this that if interventions are made on the right issues and from the right perspective, recognising their character, then these *khap panchayats* can be seen as being not as powerful as they appear. Ultimately, these are kidnappers and crooks - those who kidnap citizens' rights. They are afraid of the media, fearing that their crime should not be brought to light. They may boast of their power, but in the inside they know that they are criminals.

Knowing all this, we thought of challenging this male-dominated institution. Women are often not allowed in these *khap* panchayats. But when we read about this in the newspapers, two of us (both women) reached the panchayat and said that we wanted to participate in it. They replied that women are not allowed in *khap* panchayats. We countered them and insisted on sitting there, and said because these issues are related to women we could deal with them. They refused but we insisted, becoming adamant. When they saw that we were determined not to leave, they let us sit in the panchayat.

When their discussion got over, we told them that we would speak. But they refused. We persisted and were finally given an opportunity to voice our concerns. We discussed issues related to dowry, infanticide, and unemployment. We told them that they had never raised these basic issues, but that when someone got married of their own choice, they become violent. We argued that women are being bought at a price every day from different parts of the country, but one can never verify their caste. We confronted them with several arguments such as, "You save rapists and kill lovers. What kind of justice is this?" We put these issues before them truthfully and in a straightforward manner. At that point, everyone became silent. Most of the people could understand our point because for a large section of the society, these panchyats are not of much use. These panchayats never raise issues that affect the masses or that pertain to the majority of people or to their problems. Ultimately, the working of these panchayats goes against the majority of people. What are discussed are issues that affect a handful of people. They claim that the whole village is involved in decision-making but this is never the case. The interests of a few are thrust upon the majority. It is a constructed will.

We believe that the section of society that is exploited and often consists of women, Dalits and the poor is allowed to raise its voice, a change is possible. They could address issues in a different manner. Workers' unions, too, could join in the struggle against exploitation. Particularly in case of honour killings, we have been successful to the extent that now cases are being registered. Earlier, people who committed the crime went scot-free.

However, the struggle is not easy. They argue that it is a matter of tradition and brotherhood but we affirm that it is a question of democracy and citizen's rights. They threaten people and compel them to participate in their unlawful activities while we explain to the people the various possibilities and then persuade them. But our dilemma is that when a case is filed, no one is ready to testify as a witness. Even the police say that there is no law that addresses community violence or that can punish the guilty. We are demanding a comprehensive law to address this issue. We insist that the onus be shifted on the accused to prove that he did not commit the crime.

We have been able to come far but we face problems when dealing with the government administration and its machinery. They betray the Constitution and citizen's rights. Instead of protecting the rights of citizens, they protect the culprits. This is where we face problems. Even the agencies meant for the protection of human rights such as the NHRC and the NCW need to intervene in a strong way to protect young girls and boys. Unfortunately, there, too, things get delayed a lot. A lot of times, the case itself is not registered, and even if it it, due to the delay and other technical issues, the culprits go free. Often, they use muscle or money power.

We feel that if after such marriages the couple has to live honourably, a law should be made to ban anti-Constitutional *fatwas* and the activities of these caste panchayats. We've initiated this in the Haryana High

Act. This Act, too, is prevalent in parts of Bihar and Jharkhand, the only two states that have a law in place. But there are no rules that have been made to give effect to the provisions of the Act.

One estimate according to registered cases in the previous decade between 1991 and 2000 says that 536 women have been killed in the name of witch-hunting. But according to the Jharkhand social welfare department, in rural Jharkhand five cases of witch-hunting occur every month – and this is a very conservative estimate. It does not to take into account the interiors of the state, because incidents there are never reported.

What intrigues me most is why in tribal or in Adivasi societies, most violence is related to women, or why most violence in general takes the form of witch-hunting. Violence could be carried out in the form of simple mass murder or simple [individual] killings. his is what prompted me to take up this matter and research this topic. My objectives in this paper will be rooted in an academic discourse that will seek

a) to highlight the multiple dimensions and the social complexities behind this crime
b) to point out the intricate connections between gender, patriarchy, and the colonial and postcolonial intrusions in six districts - Singhbhum, Dhanbad , Ranchi, Hazaribagh, Palamou, and the Santhal Parganas - in Chhotaagpur, what is Jharkhand today. I
c) to situate and contextualise the various analytical models that have come up, borrowing elements from the European models, and analyse the temporal and spatial contexts.

I am glad that these things are being highlighted in the media. I happened to see a film on the *National Geographic* channel. The overall topic related to witch trials in India and it highlighted some elements of witch-hunting, but I did not feel very convinced by the film. The dominant way of looking at this crime is to relate it to land rights, which is true both in the colonial and the postcolonial contexts. It had a massive connection with women and land rights.

In tribal society, only two kinds of women have land rights: unmarried daughters or single women; and widows. And that right is also of two types: the right to a share of the produce for all unmarried daughters, which they can carry to their husbands' homes; the second, meant for widows, is only the right of a life interest in land or its maintenance. When a woman becomes a widow, property is passed on to her, as a life interest and not as ownership, which means that she only has the right to manage the land as long as she is alive. Ownership only goes to the male line. In tribal societies, no woman can own land. If the widow remarries, she loses that right. If she dies, the land passes on to the nearest male agnate. Another part of it is the degenerate form of life interest, which is the right to maintenance in the sense that as long as the widow is alive, she will be given a part of the produce.

But land rights do not explain it all. Otherwise, how do we explain witch-hunts in the plantations and the mines? There are other factors, too - problems of barrenness, cattle or human epidemics, sickness. My basic argument is that the witch-hunts are considerably rooted in the gender and social tensions in Adivasi society, which get legitimacy from the Adivasi economy, cosmology, religion, and folklore. For Adivasis, the world is full of as many disembodied spirits as a jungle is full of trees. So anything that happens - illness, epidemic, death or unnatural catastrophe - is attributable to two factors: the wrath of a spirit, or the work of a witch or sorcerer.

The central element in the Adivasi religion is the seeking of an alliance with helpful, socially and psychologically beneficial deities against the harmful deities. The practitioners of white magic are known as *ojhas*, *matis, jan gurus*, etc, and the practitioners of black magic are known as *dian* or sorcerer. *Ojhas* are mostly male.

A notion of territoriality is also attached to witch-hunting. The witch may be from amongst the tribe or from a lineage in the same village – that is, if thrown out from one village, a witch may not be considered a

legislation or the setting up of industries. It reduced access to land and forests and brought intrusions into the Chhotanagpur plateau.

In the colonial context, I want to highlight the land crisis and the agricultural crisis. In the land crisis, women became the soft targets, with attempts to snatch women's rights. It was a conflict between women's residual rights to land and men's absolute right to ownership. In the late 19th century and the early 20th century, many widows who had access to land were hunted down. Since Adivasis have always depended on traditional medicines, when access to the forests was reduced, they took recourse to *ojhaism* and exorcism. All socio-economic disorders were identified as the work of witches.

In a case in Orissa, during a cattle epidemic, all the women were beaten up and forced to carry dead bullocks to the fields. In Jharkhand, when there was cholera that remained undiagnosed, women were gathered at one place, beaten up, and forced to swallow human excreta. It is believed that human excreta prevent the spirits from entering the polluted. This practice continued in the postcolonial period. The dominant methods of witch-hunting were fines, expulsion from villages, or death. The colonial times saw the monetisation of witches, tribes as well: the women were fined time without end.

In the postcolonial context, there is a range of victims - women marrying the non-tribal Bhikhus, women who deviate from the norms. Also, in the prevalent, exploitative arrangement, non-tribals are using witchcraft to instil fear among the tribals.

DISCUSSION

Janaki Nair (*translated*)
In every village in Bihar, there is an *ojha*, a *dain* and a *chudail.* From our childhood, we have been listening to this. But Bihar has not got as much publicity as Jharkhand. Even in the Santhal Parganas it has not been highlighted.

Kumkum Sangari
You are saying that there are lots of social and other tensions; one gets the sense that ritual among the Adivasis has been permanently stabilised. The notion of the sacred, the notion of ritual has remained the same as it was when it was invented. I have some difficulty there. If this ritual is being embedded within a new set of social and gender tensions, then surely it's not the same as it used to be. So, one can't have a static sacred and moral economy, on the one hand, and a turbulent contemporary economy, on the other. I think that they are both turbulent.

Jagmati, you said that these *khap* panchayats are foundationally entrenched in society and beside the state machinery, with the economic structure from below also perpetuating them. What is the way to change economic structures?

Uma Chakravarty
Jagmati, when did the fines start? After the *fatwa* was issued? There is a dialogue between North India and Pakistan, and the point had come up that in Pakistan, fines were there for some time and became commercialised. The big *zamindars* institute these panchayats and then ask for money through such means. If the issue does not get settled, they kill the girl and boy. Then, what kind of judgments have come from those cases that were registered and have moved forward? What is the response from the courts?

Vina Mazumdar
I saw a film in Kolkata on the *dains*, made by a Bengali filmmaker, and in an area that is pretty close to the one you refer to. But it is clear that the absence of health services in that region is at the root of the increase

women had better access to directions to forests, to nature, that they are the traditional guides. In fact, in the villages, the ritual was for women to lead the herd. All this has definitely made women vulnerable. But there is no major evidence of organised killing of women.

Prem Chaudhary
Is any movement against this? Did Madhu Kishwar's case spur any investigation into this phenomenon?

Shashank Shekhar Sinha
Those who take these cases are either studying the Adivasi movements or are involved in the women's movement. The Adivasi movements are major movements known to all history students. The famous Santhal uprising, the disturbances that took place against the backdrop of 1857, all the rural disturbances in Chhotanagpur, and the famous Birsa Munda uprising are taken as the high points of Adivasi resistance. What is surprising is that these movements also marked periods of the most intense persecution of witches. During these periods, since law and order was suspended and there was nobody to watch them, the Adivasis made a collective effort to 'cleanse' society of all 'evils'.

In the postcolonial context, we find women fighting court cases. Madhu Kishwar herself said in an article that she did not do a very good thing by taking up the case because she was here while the woman, Makibui, was there, and ultimately she eloped and disappeared. She did file a court case but then it wasn't taken very kindly. But, yes, there is evidence of resistance in the sense that the Jharkhand Mahila Mukti Samiti was formed in 1987. In their subsequent conferences, they have been taking up matters and events related to land and witch-hunting.

Another Adivasi movement is a Hinduisation movement, the dominant ideology being that since they had fallen from grace, if they were to return to a position of glory, they were to imitate all those things that were good for them. The Tana Bhagat movement did attack witch-hunting and Christian movements, which have not been so strong. Also, one of the reasons behind the Adivasis adopting Christianity was to get freedom from witchcraft.

Indu Agnihotri
Here have been cases of so-called witch-hunting in Bihar and Jharkhand which came to AIDWA units in these states, which are not very strong units. Attempts were made to see what the ground reality in each case was, rather than falling into the trap of categorising every case as witch-hunting and then countering it at that level. The whole concept of honour is being deconstructed to see what the conflict is and how it is emerging, what are the forces supporting it, which are the forces opposing it. I remember that way back in the 1980s, the Bihar unit followed up some cases. About 88-89 of them were published. But the unit took them up not as cases of witch-hunting but as individual conflicts.

Finally, as many of us have seen strong linkages between new laws passed and old laws implemented, it is important to look for openings in the existing situation and struggle for women's equality. And many of us not from the legal discipline must familiarise ourselves with many debates in our sheer day-to-day activity in the movement. The women's movement has always benefited from this very strong link with committed lawyers. e must recognise the fact that these lawyers, despite all the pressures, have continued to interact with and continue to actively intervene in and on the behalf of the women's movement.

This is what we want to cherish in terms of teaching, learning, professional commitment, and activism. Links need to be maintained and strengthened, otherwise law might take its own course and the movement another. We know the limitations and drawbacks of the movement. But the only way forward is by strengthening those links. It is important that we take this forward with some of the young lawyers, some young women who may not be studying law but are from a social science background. Otherwise, the

Women's Movement's Engagement with the Law:
Existing Contradictions and Emerging Challenges
20-21 March 2006
Conference Room No. 2,
India International Centre, 40 Max Mueller Marg
Lodi Estate, New Delhi 110003

PROGRAMME

20 March, 2006

9.00 a.m – 9.20 a.m. : Registration

9.25 a.m.- 9.30 a.m. : Welcome and Opening Remarks – Dr. Vasanthi Raman
Honouring Prof. Lotika Sarkar - Dr. Vina Mazumdar

9.30 a.m – 11.00 a.m. : Session – Overview
Chair - Dr. Kumud Sharma
Pre-Independence Era and Law Reform - Dr. Aparna Basu
Post-Independence Era, Law and Women's Movement
- Ms. Kirti Singh

Violence against Women - Dr. Flavia Agnes
Constitutional Mandates and Women's Equality
- Prof. Amita Dhanda
Women and Law - Ms. Indira Jaising
- TEA BREAK -

11.30 a.m. – 1.30 p.m SESSION - I: Anti-Dowry Movement and Experiences of Dowry Law
Chair - Dr. Rajni Palriwala
Ms. Indrani Mazumdar
Dr. Shalu Nigam
- LUNCH BREAK -

2.30 p.m. – 3.30 p.m. SESSION - II: Violence against Women
Chair - Dr. Sayeda Hameed
Sexual Violence and its Relation to Communal Violence
- Dr. Svati Joshi
Rape Laws - Dr. Pratiksha Baxi
- TEA BREAK -

SESSION - II (continued)
Chair - Dr. Kumkum Sangari
3.45p.m.-5.00 p.m. Domestic Violence - Lawyers' Collective

21 March, 2006

9.30 a.m. – 11.15 a.m. Chair - Dr. Indu Agnihotri
Women and Law - Ms. Indira Jaising

SESSION - III: Women's employment and Labour Law - Dialogue Between Trade Unions and Women's Organisations