

WOMEN'S MOVEMENT AND THE LEGAL PROCESS

Lotika Sarkar

The Indian Social Reformers and the British relied heavily on legislation to eradicate social evils which had an adverse effect on the status of women. Some of the legislation enacted were to prevent child marriage, permitting remarriage for Hindu widow, abolish sati and prevent female infanticide. This reliance on legislation continued even after independence mainly with the object of fulfilling the constitutional mandate of equality of sexes, equal opportunity in employment and broadly to bring about a society where there would be Justice - Social, Political and Economic - for all.

While acknowledging the need for legislation, Jawaharlal Nehru emphatically maintained that "legislation cannot by itself normally solve deep rooted problems. One has to *approach them in other ways too*, but legislation is necessary and essential so that it may give that push and have that *educative* factor as well as the legal sanctions behind it".¹

There was a spate of legislation in the fifties dealing mainly with the family law of the Hindus and with the rights of women workers.² But failure to adopt the 'other ways' referred to by Nehru, led to most of the legislation remaining ineffective as the Committee on the Status of Women in India's (CSWI) report proved conclusively. To break the stranglehold of patriarchy in a male dominated society required a special effort both in educating the public and particularly those who were to implement and interpret the laws.

As observed by the CSWI, the executive branch of the government seldom makes an effort to set up the machinery to educate the women for whose benefit many of the socio-economic legislations were put on the statute book. The situation has not changed very much over the years and the same indifference of the executive branch continues. For example, the amendment to the Dowry Prohibition Act in 1986 requires a list to be made of all presents given to the bride and bridegroom which should be signed by both the parties. Apart from the fact that this is hardly known to the persons, it has not even been made mandatory. The reason for this provision is that at the time of the break up of the marriage, the difference between what the husband claims as his and what the wife claims as hers will be narrowed down.

Another legislation definitely intended to help the much harassed and abused wife is the amendment in the Indian Penal Code which has made cruelty to the wife by her husband and/or his relatives an offence. Cruelty per se is an offence and this does not have to be linked to any illegal dowry demand.³ If more young women and their parents know about this, many deaths of young women either by suicide or murder can be avoided. The credit for spreading the knowledge even to a limited number of

persons of this provision, goes to the active women's groups but more is needed remains to be done as this can really be a preventive measure. Even the mass media has often been conspicuously silent about social legislations passed by the government.

After examining a large number of cases, the CSWI held the judiciary and the legal profession as equally responsible for the dismal state of affairs, because their patriarchal attitudes and values had, by and large, prevented them from improving the situation by providing adequate interpretations and meaning to the constitutional mandate of equality.

This comes out clearly when the judges have to deal with the conflict between the wife's right to employment and the husband's conjugal rights as perceived by them. In some cases where the wife wishes to continue with her job or where the conditions of her employment require that she lives in a place which is not the matrimonial home, the husband has demanded that she should give up her job, failing which he will demand restitution of conjugal rights or judicial separation. In one such case, the Punjab High Court⁴ upholding the right of the husband said "any working woman entering matrimony by necessary implication consents to the obvious and known marital duty of living with a husband as a necessary incident of marriage." No mention was, however, made of the obvious acceptance by the husband that she would continue with her employment when knowingly he married a working woman, who at the time of marriage had given no assurance that she would give up her job. Nor was any reference made to cases where a husband may be transferred to a place outside the matrimonial home and he is unable to take his wife with him. What happens then to his marital duty to live with the wife?

The Allahabad High Court⁵ made a grudging concession to the wife's right to continue with her employment when the income she earned was necessary for running the family. They held that when a "wife feels that it is necessary for her own upkeep and the bringing up of her children that she should work, the decisive voice must be her own..." However this left the question unanswered as to their right when her income was not necessary for running the family.

The welcome change came in a case from Delhi where Deshpande J, as he then was decided the case of the wife's right to continue with her job for very different reasons. Even though this was a case where the wife was earning much more than the husband and the latter was constantly demanding more money from her and her family, he decided the question on the basis of the constitutional mandate of equality of the sexes. He said "Article 14 of the Constitution guarantees equality before law and equal protection of law to the husband and wife. Any law which would give the exclusive right to the husband to decide upon the place of matrimonial home, would be contrary to article 14 and unconstitutional for that reason"⁶. As all these cases are from different High Courts, it still remains to be seen what the Supreme Court will decide in this so called conflict between the wife's right to work and the husband's conjugal right.

It would appear that patriarchal values and indifference to the constitutional mandate of equality of sexes and social and economic justice for all, affected both the judicial and the executive branches. The former was to interpret the new laws and the other to implement them but both were victims of a male dominated society and laws passed to improve and change the status of women remain unimplemented. The role of the legislative branch appeared to be only to legislate but not to question whether the laws were being implemented and if not, to study where the lacuna was.

Nothing brings this out more clearly than the legislation dealing with the prohibition of dowry. For almost two decades while the dowry menace kept spreading along with violence, little was done. It needed the Dehej Virodhi Chetna Manch - a coordinating forum of a range of organisations through its various forms of struggle like street corner meetings, neighbourhood demonstrations, dharnas, public marches to draw the attention of the government and to make it finally act. The Manch in its memorandum in 1982 had expressed the view that the "increasing incidence is symptomatic of the continuing erosion of women's status and devaluation of female life in independent India".⁷ It was only in 1984 after repeated demonstrations, meeting and seminars that the law was hurriedly amended.

While amending the law, many of the recommendations of the Parliamentary Committee's group unanimous recommendations were completely ignored. Two of the recommendations made were a ceiling on the gifts which could be given at the time of the marriage and prohibiting ostentatious marriages. Some of the states had their own laws before the central legislation which already had provisions about the number of guests to be invited to the wedding and the number of items could be served to the guests.⁸ But the government ignored these recommendations.

Changing Social Perceptions, Reinterpretations of the Constitution and the Role of the Judiciary - The Case of Adultery

A case in point was the judicial approach to the criminal offence of adultery criticised by the CSWI.⁹ It was challenged as being violative of the constitutional mandate of equality. The continuance of this law in this age and the judicial approach to it brings out clearly the values which govern the law makers and those deciding the cases. The offence of adultery in the Indian Penal Code permits the husband to prosecute the paramour of his wife without giving any corresponding right to the wife to prosecute the husband when he has extra marital relations, or the right to prosecute his paramour. Understandably the offence of adultery was challenged as violating article 14 as it gave different treatment to men and women.¹⁰

But the Court adopted a paternalistic attitude and held that the wife who is involved in an illicit relationship with another man "is a victim and not the author of the crime. The offence of adultery is considered by the legislature as an offence against the sanctity of the matrimonial home ..." Of course they add that "Law does not confer freedom upon husbands to be licentious by gallivanting with

unmarried women".¹¹ If he does so he runs the risk of his wife bringing an action for separation. Why this double standard? The Court does not bother to explain least of all justify. When the Law Commission was considering the amendments to the Indian Penal Code, Anna Chandi, the only woman member, had raised the point that the provision of adultery being a criminal offence should be deleted as "It is the right time to consider the question whether the offence of adultery... is in tune with our present day notions of women's status in marriage",¹² but her suggestion was turned down by a predominantly male Commission.

It is interesting that even as late as 1986, the Supreme Court¹³ held the same provision in the Penal Code to be not discriminatory as according to them neither husband nor the wife could sue each other. The offence was only directed at the 'outsider' who violated the sanctity of the matrimonial home when the outsider was a man. The fact that a woman 'outsider' violating the matrimonial home in the same way could not be prosecuted was regarded as being a case of reverse discrimination in favour of women rather than against her.¹⁴

Surely this is a clear case where the entrenched values of the judiciary is making them bend backwards to protect the matrimonial home showing scant consideration for the dignity and rights of the wife as an individual.

The philosophy, according to the Court, underlying this provision appeared to be that "Social good will be promoted by permitting them to 'make up'". But added that it was not necessary for the Court to subscribe to the philosophy as their job was only to judge the constitutionality of the provision. The Preamble to the Constitution clearly posits dignity of the individual as the basis for the other guiding principles of justice - liberty, equality and fraternity. In upholding the constitutionality of the provision the judges seem to overlook this.

Despite judgements of the type referred to above, however the late seventies brought about a remarkable change, thanks to the pressure of the women's movement. The clear demand of the women's organisations was for changes in law and the policy which continued to treat women as second class citizens by violating the constitutional mandate. Repeated demands by women's organisations, backed by facts and figures and forcible arguments, made a definite impact on a section of the judiciary.

Violence against Women, the Women's Movement and Changes in Criminal Law

The most significant of the legislations brought about as a result of the women's movement have been in the field of criminal law. The rising violence against women - the growing incidence of cruelty and harassment within the family, which often did not stop at physical torture, but ended in death - reported daily, became the first rallying issue for women's protests on a large scale. While the press and the sensitive section of public opinion began to be shaken by the evidence of such growing atrocities even inside the urban educated middle class families

- hitherto, perceived and lauded as the most 'progressive', 'modern', 'enlightened' and 'protective' in their attitudes to women - women's organisations began to press for various ways to empower women to exercise their rights effectively, and participate fully in the process of national development. These legislations have been to change (a) the law of rape enacted over a century ago; (b) the Dowry Prohibition Act (1961) - which had become a classical example of a paper tiger; (c) laws to punish cruelty to women by husbands and in laws which often drove women to commit suicide. Certain radical changes were made in the Evidence Act also when in cases of custodial rape, gang rape, rape on a pregnant woman the presumption would be absence of consent of the woman. Each of these came in response to the demands of the women's movement.

Rape - Advance, Anomalies and Ambiguity - Role of the Government and the Judiciary

The case which triggered off a tremendous agitation by women's organisations not only at the national level but also covering various states was *Tukaram v The State of Maharashtra*¹⁵, popularly known as the "Mathura Case". Mathura was a young tribal girl between 14 and 16 years of age - according to the medical opinion. She was called to the police station and detained - an act violative of criminal procedure itself.¹⁶ She was then raped by the Head Constable and molested by the police constable. The Sessions Judge disbelieved the medical opinion and held that there was no satisfactory evidence that she was below 16 years - legally accepted as the "age of consent" for sexual intercourse. He rejected her statements of rape by holding her to be a 'shocking liar' and though willing to concede that there had been sexual intercourse, did not hold it to be without her consent. The policemen acquitted by the Sessions court were however convicted by the High Court on appeal. They then appealed to the Supreme Court, which reversed the conviction, and acquitted the constables. While reversing the decision to the High Court, the Supreme Court held inter alia that there were no marks of injury and "their absence goes a long way to indicate that the alleged intercourse was peaceful".¹⁷

Rapes of young girls had taken place earlier and unjustifiable acquittals had not been uncommon. What set in motion the demand for retrial was the fact that Mathura was a young tribal girl, who against the prescribed procedure of law had been summoned to the police station in the evening and raped by the very persons who are supposed to be the upholders of the law. Four law teachers wrote an Open Letter to the Chief Justice regretting that this was "an extraordinary decision sacrificing human rights of women under the law and Constitution".¹⁸ It further pointed out that "no consideration was given to the socio-economic status (of the victim). The lack of knowledge of legal rights, the age of the victim, lack of access to legal services and the fear complex which haunts the poor and the exploited in Indian police stations". It requested the Court to hear the case by a larger Bench and not "snuff out all aspirations for the protection of human rights of millions of Mathurars in the Indian countryside".¹⁹

The agitation which followed the Open Letter as also the demonstration before the Supreme Court demanding that the case be reheard compelled the Government to move for amendment of the law of rape which was of 19th century vintage. The Government asked the Law Commission "in view of the strong public opinion", to study "not only the substantive law relating to rape but also the rules of evidence and the procedure followed in criminal trials".²⁰

The Law Commission did a commendable job incorporating many of the suggestions of the four law teachers who had opened up the debate, and women's organisations, after detailed discussion with many of the Delhi based women's groups. The Commission justifiably felt that incorporation of their suggestions in the law of rape would mean that victims of rape would not be harassed during investigation and trial, that trials would be speedy and police would be compelled to discharge their duties efficiently and promptly.²¹

The law was thus drastically amended, and the concept of *custodial rape* as a crime more heinous than ordinary rape accepted. The acceptance of this, it was hoped, would ensure that sexual abuse of women in custody, care or control, by various categories of persons would be prevented. *The major gain of the movement was the new legal presumption of the absence of consent in all cases of custodial rape, rape of pregnant women and gang rape, solely on the statement of the victim.*

But so deep is the hold of patriarchal values, that in spite of repeated demands marital rape has not been recognised as an offence. Legal anomalies add to such prejudices. While the minimum age of marriage for girls was raised to 18 years by amending the Child Marriage Restraint Act, the age of consent for sexual intercourse under rape law has remained fixed at 16 and in case of wives 15 years. Thus there can be no charge of rape against a husband who forces sexual intercourse on his wife, if she is 15 plus in age. This anomalous position has been deliberately overlooked by the legislators, *even though the Law Commission had pointed this out.* The current demand of women's organisations is that this provision should be deleted and forcible rape with a wife whether she is below 18 years of age or above should be considered to be rape.

But the expectation of the Law Commission (though the Government did not accept many of their very admirable recommendations)²² or of the women's organisations that the amended law, with all its publicity would drastically reduce the crimes of molestation and rape were believed. The figures reported to Parliament (Lok Sabha) of reported rapes are - 7321 in 1986; 7755 in 1987 and 8342 in 1988. The 1994 figures given in the Appendix are even more depressing. It was clear that even after a decade of the amended law very little change for the better has taken place. But what is most depressing is that the law regarding custodial rape which had been hailed by all as a major gain is also being violated. A study done by the Peoples Union for Democratic Rights has shown that in Delhi itself there have been 12 custodial rapes since 1989 and not a single conviction.²³

What have been the obstacles in the amended law, limited though it is in some respects, from being implemented? One major contributory factor has been the failure to create an awareness among especially the lower ranks of the police force. It is at the police station that the victim of rape has to go and it is here that she needs to be told about the necessity of medical examination and what should go into the FIR and what are her rights. In at least two cases, the Sessions Judge has passed strictures on the Delhi Police when a married girl of 18 years was gang raped. The Judge commented that it "was most unfortunate that the dreaded criminals go scot free in the most heinous crime of gang rape simply because of police apathy and indifference ... *Unless the investigating officers and station house officers are made accountable for production of witnesses in the Court this sorry state of affairs is bound to prevail, I hope the higher police authorities will take stock of the situation and do something in this respect*".²⁴

The second case was even more astounding where the young woman was gang raped by four police men while she was in their custody, after her husband had been beaten up. The police did not even bother to register the case on the plea that she had made different statements to the legal aid cell and to the police verbally. She had as she said, given a written complaint to the police.²⁵ If cases like this could happen in the capital city, one wonders what happens to hundreds of Mathuras who are raped and seek justice. Preventing the very first steps of reporting and registration frustrate all efforts to pursue the case.

It would be unfair to conclude from some cases that the judiciary has not been sensitised by the campaign both during Mathura case and later during the amendment of the law. But the attitude has been ambivalent. Extreme sensitivity was shown in *Bharwada Bhoginbhai Hirajibhai v State of Gujarat*²⁶ where the Court states clearly that not acting on the testimony of a victim of rape and requiring corroboration is *adding insult to injury*.

"Why should the evidence of the girl or the woman who complains of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion? To do so is to justify the charge of male chauvinism in a male dominated society".²⁷

What were the facts of the case? The father of a young girl misused his position with two of his daughter's friends, tricked them into entering the house when his daughter was not there and subjected them to sexual harassment. The court refers to the act of the accused as "shockingly indecent and is a crime of which a serious view must be taken". But when it comes to giving the sentence of rape what is the attitude of the judge? The Court was overtaken with sympathy for the accused who had lost his job. The incident had occurred almost seven years ago and he "must have suffered great humiliation in the society".²⁸ The ends of justice would, therefore, be met according to the judges, if the sentence of two and a half years imposed by the High Court is reduced to 15 months. For sexually molesting two young girls - they being friends of his daughter - the Court is moved by his plight and gives the ridiculous sentence of 15 months for one of the most

heinous offences.

The second case is that of the rape of a young teenaged girl from an orthodox Muslim family who had eloped and been disowned by her parents.²⁹ The rapist was a police officer. Having removed the husband to the police station on a false charge, he forced his way into the hotel room where the young girl was waiting for her husband and forcibly raped her. When the husband returned they lodged a complaint. Even though the trial court held the policeman guilty of rape, on his appeal the High Court acquitted him. The High Court judgement brings back memories of the Mathura case, as the High Court observed that the girl "is not only prone to make improvements and exaggerations, but is also a liar disclosing a new story altogether to serve her interest".³⁰

The tenacity of a women's organisation - Stree Atyachar Virodhi Parishad of Nagpur was instrumental in filing an appeal to the Supreme Court against the acquittal. The women's organisation was also a party to the appeal. Fortunately, the case went before sensitive judges like Justice Ahmadi and Justice Fathima Beevi who had no hesitation in referring to the High Court's observation referred to above as being not only harsh but totally unwarranted. As in Mathura's case, the High Court had also regarded as an important factor that there were no marks of physical violence on the women. The Supreme Court rejected this point by underlining the fact that the police officer being a strong man was able to overpower her easily and take her by force. *Even more important was the fact that he was in police uniform and therefore a man in authority while she was helpless and all alone.*

The patriarchal bias, however, comes out when it is a question of sentence for rape. Having observed that when "a person in uniform commits such a serious crime of rape on a young girl in her teens, there is no room for sympathy or pity. The punishment must in such cases be exemplary".³¹ The Court demonstrated its view of this 'exemplary punishment' - five years rigorous imprisonment when the punishment for rape is not less than 7 years but which may be for life.

Both these cases bring out some interesting facts. The sensitivity of the judges has extended to realise that conventional forms of resistance like marks of injury should not be considered when the victim is a young girl faced by a much older and stronger person. Secondly, the judges appreciated the intention behind the law that in such cases the statement of the victim that she has been raped should not require corroboration. But when it comes to giving the punishment it is forgotten that:

The offences against women in India has been scaling new peaks from day to day. That is why an elaborate rescanning of the jurisprudential sky through the lenses of logos and ethos has been necessitated.³²

The third case³³ which needs to be noticed is because of two interesting factors:(a) the contribution of women's organisations' pressure on the Chief Justice to have a review of a judgement on rape. As the judgement was of the Supreme Court there could be no appeal. This is the first case where the judges were

pressurised in reviewing their own judgement. This had been a demand in Mathura's case but on a technical ground of delay, the Court had turned down the demand; and (b) the perverse way the evidence is looked at by the judge in order to disbelieve the victim's evidence. In this case the Court concluded that the woman had been raped by a police officer. In spite of this conclusion, the Court decided to reduce the sentence *below the mandatory minimum provided by law*.

Here as in most of the other cases - the victim was a young woman who had been forcibly taken to Jammu, raped there and brought back to Haryana. During the trial court, Prem Chand's (one of the accused policemen) counsel referred to the victim, Suman Rani, as being a "woman of questionable character and easy virtue with lewd and lascivious behaviour and as such her version is not worthy of acceptance". The influence of this observation on the Court can be measured since it does mention it in the judgement. Having held Prem Chand the police man guilty of rape, the Court proceeded to reduce the mandatory minimum punishment for rape from 10 years to 5 years, because of the conduct of the victim - without explaining clearly what was meant by conduct.

The judgement created a furore among women's organisations, as also against the defence counsel, a reported progressive (He was the President of the People's Union for Democratic Rights), for having referred to Suman Rani, victim of rape in such terms. The spontaneous agitation compelled the counsel to resign from the presidentship of the PUDR and apologise for his behaviour.

The mounting criticism against the judgement ultimately led the court to review³⁴ its decision. The review began by regretting the fact that there was a controversy about the judgement and reiterated the fact that they had held the police officials to be guilty of rape, but special and adequate reason which made them go below the mandatory minimum was "the peculiar facts and circumstances of the case coupled with the conduct of the victim girl..." What these peculiar facts or the conduct of the victim were they did not elaborate, except to mention the delay of five days in lodging the complaint. How a young girl could be expected to lodge a complaint in Jammu where she did not belong and particularly when she had been raped by the police there, the judge never bothered to consider. Earlier also many of the judges had referred to the fact that rape is the kind of crime which is not reported immediately. Many factors have to be taken into account, the trauma of the victim, the attitude of the parents and above all when it is by the police the fear of harassment after reporting, all work as inhibiting factors against prompt reporting.

The review did not enhance the sentence again falling back on a technical ground. But the review judgement ended by observing that:

The court is second to none in upholding the decency and dignity of womanhood and we have not expressed any view in our judgement that character, reputation, or status of a raped victim is a relevant factor for consideration by the court while awarding the sentence to a rapist.³⁵

It is worth quoting from the public statement issued by the Mahila Sanyukti Morcha (Joint Women's Front) comprising of 15 women's organisations to the Chief Justice of India on 24th February 1988.³⁶

The 1983 Criminal Law Amendment was not enacted to protect 'virtuous' women, rather its purpose was to prevent police officials from committing sexual violence against women who were in their custody. The Law seeks to redress the unequal power relations between such officials and the hapless woman in their clutches. In reducing the sentence the Supreme Court has demonstrated not only a continued patriarchal bias, but also a retreat to a conservative ideology which views rape only as an attack on a woman's chastity, and not as an offence against human rights and dignity.

There is no doubt that the mounting criticism from women's organisations made the defence counsel accept his mistake and resign from the post of President of a civil rights organisation and made the Court review its judgement. The drawbacks, however, remain. Delays in reporting a case may provide "special and adequate reason" to a Court to defeat the main objective of the law. Nor would Counsel stop using character of the victim in defending the accused in rape cases. Nor would most of them offer regrets afterwards, as in the present case.

The demand for amendments to the law of rape and the need to train police officials to be sensitive to the plight of the victim who comes to the police station to lodge a complaint about rape, has in a sense become of secondary importance in the face of an alarming rise in child rapes which are taking place all over the country. At the time of the amendment to the law of rape, this problem had not surfaced. Thus neither the Law Commission, nor the women's organisations or legal academics/activists had made any special mention of it. Apart from asking for removal of the anomalous position where rape cannot be committed on a young wife if she is above the age of 15 years, there was no other specific suggestion.

The phenomenal rise in this crime is of concern not only to women's organisations but even to the judiciary particularly some of the more sensitive judges. In a recent case³⁷ of child rape, the victim was only 8 years old at the time of the incident. Ending the judgement the Court said that it was with

Deep concern, we may point out that though all sexual assaults on female children are not reported and do not come to light yet there is an alarming and shocking increase of sexual offences committed on children..... Children are ignorant of the act of rape.... and become easy pray for lusty brutes...Such offenders who are a menace to the civilised society should be mercilessly and inexorably punished in the severest terms.³⁸

The Supreme Court sentence was seven years imprisonment and a fine of Rs. 25,000 to be paid to the victim. In the same case, the High Court had held the accused guilty only of the offence of 'outraging the modesty of the woman' and fined him Rs.

1,000 on the ground presumably that her hymen had not been ruptured, therefore it was not rape. While describing the accused's "activities" as a "menace to society", the High Court apparently thought a sentence of fine was adequate as "there is nothing to show that he is indulging in his nefarious activities" and he was gainfully employed. The judicial approach to even child rape, therefore, is neither uniform, nor necessarily humane, intelligent or well informed in common child psychology. There are certainly problem areas which call for special understanding by the judges, and child psychology, especially of girls used to discrimination, subordination and repression is hardly an area of knowledge taken up by many members of an overwhelmingly male judiciary. Far too much still depends on the individual sensitivity of the judge trying the case.

National women's organisations in the capital have asked the National Commission on Women to treat child rape as a distinct and priority item for special legislation and procedures and not just tinker with the existing law of rape to provide for such cases. Suggestions are being made. One of them is to expedite the trial and have a time limit to save young girls from reexperiencing the trauma. *The case mentioned above took 11 years before the Supreme Court judgement was declared.*

Dowry and Dowry Violence

Another area which has been of great concern to women's groups is the rising incidence not only of demands for dowry but also the accompanying violence. The prevalence of dowry among some sections of the Hindu community was fairly common. A Census study conducted in 1961, however, concluded that the majority of the population still practised the opposite custom of bride-price or bride-wealth not dowry. Among the groups practising dowry, the institution was partly justified as compensation for the girl who would be deprived of a share in her father's property. All gifts given to a girl at the time of the marriage by her natal family, her relatives as well as her in laws were regarded as her stridhan (personal wealth of the women). However, with the enactment of the Hindu Succession Act, there should have been a change but instead demands for dowry kept on increasing, and spread to communities which had never had this practice earlier. Ultimately, with pressure from the members of Parliament particularly the women members, government decided to have a legislation banning the giving and taking of dowry. The Dowry Prohibition Act was passed in 1961.

A look at the Act makes it clear that the policy makers were oblivious of the *spread* and changing nature of this social evil. Dowry was no longer confined to demands made and met at the time of the marriage, but had become a continuous demand made at festivals, at the time of the birth of the grand child, or even to finance the son-in-law's business or education abroad. Lack of commitment to eradicate this menace by strong supportive machinery made the Act totally ineffective, and it was difficult to find any convictions under it partly due to the fact that both the giver and the taker were placed in the same category and punished equally. Which parent having given dowry would then be prepared to report the matter to the police?

The CSWI's Report had drawn the attention of the Government to the situation prevailing and had made various suggestions to make the Act more effective. The only suggestion the Government was prepared to accept was to make it an offence for public servants, by putting it in the Government Service Rules 30 and to ask the Department of Personnel to bring it to the notice of State Governments and Public Sector Undertakings.³⁹ But the Committee's suggestion to make dowry a cognizable offence was turned down as also any other amendment to the Act.⁴⁰

The judicial approach on this issue was more helpful. Though the Bombay High Court refused to consider a demand made by the bridegroom's family as being dowry unless the demand was agreed to be given, the Supreme Court set the record straight.⁴¹ The case was one where during the marriage ceremony the father of the groom demanded that Rs. 50,000 should be paid for the passage (to a foreign country) of his son and his wife, otherwise the marriage ceremony would be stopped. At the intervention of the persons present the marriage ceremony was completed. According to the High Court, dowry was only that which had been agreed to be paid and as the father of the girl had not agreed in this case, it was not dowry. The Supreme Court however regarded the case as falling under the definition of dowry and observed that:

Having regard to the dominant object of the Act which is to stamp out the practice of demanding dowry in any shape or form either before or after the marriage ... a liberal construction has to be given...⁴²

The CSWI's observations and growing protests from women's organisations led to the appointment of a Joint Committee of Members of Parliament from both Houses to review the working of the Dowry Prohibition Act. The Committee reported back in 1981 with several radical suggestions. Inaction by the Government even after a year and the growing menace led to twenty five women's organisation forming the Dahej Viroodhi Chetna Manch (in 1982). This Manch along with many other women's organisations held various protest meetings/marches to draw the attention of the Government to the virtual daily reports of young married women dying of burns. The pressure within and outside Parliament finally led to the amendment of the Act - though in a manner which satisfied neither the women members of the Parliament nor the women's organisations which had been demanding it.

Even before the amendment was passed, a case decided by the Supreme Court brings out clearly how inadequate was the official response to criminal aspects of dowry harassment and the violence which accompanied it leading often to the death of the victim. In *Bhagwant Singh v. Commissioner of Police*⁴³, from the very first day after the marriage the young bride was harassed for dowry. The ill treatment continued and she was finally found dead from burns. Dealing with this case, the Supreme Court first strictured the police for the way they had conducted the investigation. The case was passed from one person to another for investigation. The police's defence was that they could not investigate this case all the time because besides the other cases in hand they had also to look after the day to day work of the police station. The Supreme Court commented that the police did

not display the promptitude and efficiency which the investigation of the case required" and "there is no doubt that the investigation of the case suffered from casualness, lack of incisiveness and unreasonable dilatoriness...⁴⁴

The Judges made very concrete recommendations to improve investigation of dowry cases resulting in death. These included:

- i. Initiating such investigations with appropriately high priority;
- ii. Creation of a special magisterial machinery for the purpose of prompt investigation;
- iii. Adoption of efficient investigative techniques and procedures; and
- iv. Associating a female police officer 'of sufficient rank and status in the police force with the investigation from its very inception'.⁴⁵

The final recommendation of the Court which deserves serious consideration is about extending the Coroner's Act to other cities beyond where it operate already. This would make it "possible for an immediate enquiry into the death of the victim, whether it has been caused by accident, homicide suicide or suddenly by means unknown"⁴⁶ - a very salutary suggestion. It is a great pity that this along with the other suggestions of the Court have not been seriously considered till today. They did not feature at the Conference on Crimes Against Women organised jointly by the Ministries of Home Affairs and Human Resource Development on 30th November 1992.

The Dowry Act was finally amended in 1984 and again in 1986. Many suggestions made by concerned persons, which would have made a proper implementation of the Act feasible were not considered. Even the suggestion of the Parliamentary Committee on putting a ceiling on marriage expenditure and banning ostentatious marriages, (which already formed part of some state legislations) were not considered.⁴⁷

When the 1984 Amendment Bill was being discussed in Parliament, several women's organisations in the capital met to examine the implications of the provision in the Bill. A chart was prepared by the CWDS - comparing the recommendations of the Parliamentary Committee, the Law Commission, provisions in existing state laws, and those in the Bill on specific aspects.

Soon after this meeting, the Women's Division within the Ministry of Welfare, which had been pressing for the amendment, and was not satisfied with the provisions in the Bill called a meeting with women's organisations and women MPS who had served on the Parliamentary Committee, to try for a consensus on various issues, which the Division planned to forward to the Ministry of Law for consideration. Before this could be done, the Bill was enacted on a day when the majority of members of opposition parties were absent. Some of the neglected

provisions were introduced in the 1986 Amendment, but implementation till date has not indicated any more serious political will to eradicate this practice than the passage of the 1984 Amendment.

Even some positive salutary provisions in the Amendment, such as listing of gifts given to the bride and bridegroom signed by the two parties is not made mandatory. *The result is that very few persons are even aware of this requirement.* The list would make it easier for the bride or the groom to get back what was given at the time of the marriage, but today when a marriage breaks down there are the inevitable charges that so much was given but was not being returned, with the responsibility of abuse of law by both sides. This is however, one area where the Dowry Cell, in Delhi now called Crimes Against Women Cell, has been somewhat successful in recovering much of what was really stridhan. Women's organisations have also helped many of the women who claim the return of their belongs to get most of it back.

A major provision in the Amendment was for effective enforcement - appointment of Dowry Prohibition Officers in States and Union Territories. Information about its implementation is not available because until very recently (i.e. the fag end on 1992), the Ministry of Home Affairs - responsible for all such matters under the GOI's rules of business - maintained an attitude that viz-a-vis special legislation for women all follow up and action were the responsibilities for the Department of Women and Child Development, National Women's Organisations pointed this out to the National Commission on Women and requested its intervention as they viewed this position as a denial by the Home Ministry of its Constitutional responsibility for law enforcement. The recent Conference on Crimes against Women - jointly convened by the Ministries of HRD and Home suggests some rethinking/debate within the Government. Even the Union government, which should be the trend setter was a defaulter in his matter.

Where legislation has really reflected the societal anguish has been the enactment of a special addition in the Indian Penal Code relating to dowry deaths. The Report was given *suo moto* by the Law Commission in 1983. Fortunately the Government did not delay, but proceeded to add this section to the Indian Penal Code. It becomes applicable when a woman dies within seven years of her marriage due to burns or bodily injury or under circumstances which are not normal. The presumption in such cases will be that the husband or his relatives may have caused or brought about the death. The provision, undoubtedly is a step forward to deal with a social menace, but what detracts from its potential effect is the clause that makes it applicable only when there is evidence of cruelty or harassment of the woman by her husband or her in-laws. As this cruelty or harassment is usually within the house where she is living with her husband and/or in laws obviously the only witnesses will be the ones who have subjected her to such cruelty. They are not likely to offer the evidence which will send them to jail. This was brought out clearly in the observation of the Supreme Court in a case where the young woman had died under circumstances which pointed clearly to its being a dowry death. The Court said "it is an offence brutal and barbaric. It is generally

committed inside the house and more often with a circumstance to give an impression that it was a suicidal death".⁴⁸

From the figures available, the cases of conviction where a young girl dies from unnatural causes - are so few because many of the cases are pigeon-holder as accident or suicide. An unnatural death or even a suicide within seven years of the marriage, particularly, when she is a mother should raise a strong presumption that she may have been driven to committing suicide. Often cruelty may fall short of physical cruelty but mental cruelty is no less. This point was made by Justice Desai in explaining the rationale for adding this provision to the Penal Code.

"Short of physical cruelty, mental cruelty making continued existence an intolerable drudgery was not punishable. If ultimately she commits suicide the guilty escaped punishment for want of an adequate provision. Conscience of the modern society violently reacted to this lacuna".⁴⁹

The additions of this provision⁵⁰ and the one for dealing with dowry deaths were expected to make a real dent in the problem and deaths of young women should have come down drastically. But the rising number of deaths of young women reported to Parliament every year, gives a very dismal picture. Commenting on this hiatus, the Supreme Court observed.

"It is not enough if the legal order with sanction alone moves forward for protection of women and preservation of societal values. The criminal justice system must equally respond to the needs and notions of society. The investigating agency must display a live concern and sharpen their wit. They must penetrate into every dark corner and collect all the evidence. The court must also display greater sensitivity to criminality and avoid on all counts "soft justice".⁵¹

While the observation clearly distributes the responsibility between the three arms of the state - law makers, investigative and enforcing agencies and the judiciary - the attitude of the judiciary has been ambivalent and inconsistent to say the least. In some cases the judge has shown great sensitivity in understanding the plight of a young girl alone in her in-laws' house. In other cases the same court has been totally insensitive and without the least justification has acquitted the husband and in-laws for driving a woman to commit suicide.

From the cases which have come before the Supreme Court the attitudes of the Trial Court and the High Court become quite evident. *Women's organisations collectively, and at times singly have been a great asset and have relentlessly carried on the struggle for justice often right up to the Supreme Court.*

One of the cases which brings out clearly the difference in approach of the various courts and the role of the women's organisation is *State (Delhi Administration) v. Laxman*⁵² known popularly as the Sudha Rani case. A young girl married and living with her in-laws, far away from her natal family, was being subjected to persistent

cruelty by husband and others. Shortly before she was to become a mother, her neighbours heard her shout one night 'bachao bachao' and found her burning. She was rushed to the hospital but died finally after struggling for a few days.

This was one of the few cases where neighbours had not only rushed to help (which they had done in some earlier cases also) but were prepared to give evidence in Court. Their evidence made it clear that when they entered the house on hearing her cries for help, *her in laws - brother, mother and worse, her husband were all there as passive spectators*. The story offered was the usual one - her clothes had caught fire while she was warming milk on the kerosene stove, though the gas stove was right there.

The trial Judge accepted the version of the prosecutor and sentenced the mother-in-law, and her two sons of murder. The appropriate punishment in his view for this was death sentence and accordingly he sentenced the three to death.

On appeal to the High Court, however, the pendulum swung to the other side. The High Court, totally ignoring the realities of the situation, not only acquitted all the accused but gave a great deal of importance to a letter which Sudha had written to her sister-in-law (husband's sister) in which she had asked when would she send back mother as Sudha felt that she wanted her mother-in-law's company. *This letter, according to the High Court, was almost conclusive proof that Sudha had an affectionate mother-in-law, how could such a woman burn her daughter in law?* The High Court also glossed over the fact that the night of the fire was bitterly cold, if the mother-in-law was so affectionate why would she send her daughter-in-law to warm the milk in the open where the kerosene stove was kept rather than in the kitchen with the gas stove.

The judgement created a furore among women's organisations. A number of them took the case to the Supreme Court⁵³ and an activist lawyer, Rani Jethmalani took charge of the case. The acquittals were reversed and the husband and mother-in-law convicted and given life imprisonment.

While agreeing with the view that bride burning was serious enough to merit a death sentence, the Supreme Court justified reducing it to a life sentence on the ground that the accused had been acquitted, and there had been a lapse of two years since the acquittal. The paternalist bias of the Court comes out clearly in the concluding observations of the judgement, totally unwarranted by the facts of the case. According to the Court woman:

"has the greater dose of divinity in her and by her gifted qualities she can protect the society against evil. To that extent women have special qualities to serve society in due discharge of the social responsibility".⁵⁴

Apart from displaying a peculiar lapse of memory regarding the conduct of the mother-in-law, the Court also ignored the position of the women's organisations. *They did not want women to be treated as goddesses, but only demanded implementation of the constitutional mandate, and a recognition that a woman too has human*

rights which cannot be violated.

Another case of dowry death also exhibited the insensitivity of the High Court Judges, when dealing with cases of cruelty and harassment of young women by their in-laws and husband. In *Gurbachan Singh v. Satpal Singh*⁵⁵ the young woman died of burns within seven months of her marriage. Not only were there constant demands made for scooters, frigidaires, and also dowry (presumable meaning money), she was mentally harassed by the insinuation that the child she was carrying was illegitimate.

The Sessions Court recognised the fact that there were no burn injuries on the finger tips of the mother-in-law or any of the other members of the family. But on the totality of the evidence, the judge held the in-laws guilty of abetment to suicide and therefore punishable under section 306 of the Indian Penal Code.

On appeal to the High Court the conviction was reversed and benefit of doubt was given to the in-laws. The case went on appeal to the Supreme Court, which held that:

"exaggerated devotion to the rule of benefit of doubt must not nurture fanciful doubts of lingering suspicions and thereby destroy social defence. Justice cannot be made sterile on the plea that it is better to let hundred guilty escape, than punish an innocent. Letting guilty escape is not doing justice according to law".⁵⁶

The Court therefore restored the order of conviction by the Sessions Judge and reversed the decision of the High Court.

A case from Rajasthan⁵⁷ bring out clearly how judges because of their bias against women and their bias against women and their patriarchal values are willing to let a murderer of a young man go free rather than convict him on the statement of a woman victim and a woman doctor. Presumably it was too much to expect that the judges would have to rely on the statements - dying declaration, and the medical statement of both women and convict the husband. The victim in this case was harassed for Rs. 5,000 or an autorikshaw and on her inability to satisfy the demand of the husband and in laws beaten up before her father. Subsequently she died from burns. Interestingly both the Sessions Court and the High Court found "that she did not die of accident, nor she committed suicide". So clearly it was a case of murder. Her dying declaration to the doctors was clear that she had been burnt by her brother in law.

In the face of her clear statements to the doctors and the finding of the Sessions Court Judge, that her burns were not the result of an accident nor had she committed suicide, logically the sentence should have been one of guilty for the accused. But the Sessions Judge decided to acquit on the very flimsy ground that there was a contradiction between the two doctors, one of whom was a woman.

Appalled by the acquittal, the High Court appealed against the acquittal - a right exercised only when there is a grave miscarriage of justice. Having examined the evidence which the Sessions Judge had done, the Court not only rejected the order of acquittal but held the accused guilty of murder and sentenced him to life imprisonment.

On appeal to the Supreme Court, a requirement of law, the Supreme Court confirmed the order of the High Court. What however makes this particular case significant is the observation of the Supreme court about the conduct of the Sessions Judge. "It is necessary to record that the judge was uncharitable in *discarding the testimony (of the doctor) and doubting her truthfulness principally because she was a woman* (emphasis added), forgetting that she was a doctor of 14 years standing".⁵⁸ The male bias is not only against statements of women victims even when it is a dying declaration but extends to statements of a professional simply because she is a woman. So much for no discrimination on the ground of sex.

In another case of dowry death,⁵⁹ the facts were absolutely clear. Even when the girl was burning, the kitchen door *which had been fastened from outside was not opened*. The neighbours who had rushed in on hearing her cries, demanded it be opened. The mother-in-law and the husband were quite unperturbed when the neighbours finally removed the chain they found the girl burning. The family bluntly refused to take her to the hospital, and when the doctor asked for blood, the mother-in-law told her son not to do anything about it. The young woman made a clear statement that her mother-in-law had poured the kerosene and set her on fire.

The Session Judge almost perversely rejected all this evidence and acquitted the mother-in-law. On appeal by the state to the High Court, the Judge found no difficulty in reversing the order and sentenced the mother-in-law to death.

On appeal the Supreme Court had no difficulty in convicting the mother-in-law and upholding the verdict of the High Court. Dealing with the sentence, the Supreme Court said that a "person who perpetrates a crime without any human consideration must be given the extreme penalty".⁶⁰ But the constraint they faced was that there had been a difference of opinion between the courts - sessions and high court and therefore the sentence could not be death sentence but had to be life imprisonment.

The vigilance of women's organisations and their tenacity in fighting for justice is perhaps nowhere as clear as in the case of *Stri Atyachar Virodhi Parishad v. Chordia*.⁶¹ The dying declaration was recorded, but the victim had referred to her being burnt as an accident. On the basis of this statement, both the Sessions Court and the High Court acquitted the in-laws. The tenacity of Stri Atyachar Virodhi Parishad brought the case before the Supreme Court and the CID report in this case ruled out the question of its having been an accident. In convicting the father and brother-in-law, the Court lauded the role of the organisation and wanted to place on record the useful service that had been rendered by the Parishad who had spent their own money and brought the appeal. "We very much appreciate the object of the organisation and the assistance rendered".

While nothing can really compare with the physical injury to which young women are being subjected, in some ways equally disturbing is the attitude of the judiciary to laws passed to curb some of the practises. The entrenched values of some of our judges which believes in male superiority and the subordinate position of women makes them often forget the constitutional mandate of equality of sexes or the international campaign for human rights for both men and women.

A decision from Andhra, which fortunately the Supreme Court rejected out-right was *Shobha Rani v Madhukar Reddi*.⁶³ It was a case where the young bride was not only highly educated but also came from a fairly rich family. She was pestered repeatedly by her in-laws and husband for money. As the marriage appeared to be on the rocks, the couple agreed to have a divorce by mutual consent. But the agreement fell through. She then petitioned for divorce on the grounds of cruelty and harassment. She produced a letter which her husband had written answering her allegation about dowry demands by claiming that there was nothing wrong in his parents asking for a few thousand. "It is quite a common thing for which my parents are being blamed as harassment".⁶⁴ The trial court rather reluctantly agreed that she was being harassed for money but maintained that "there is nothing strange in his (husband) asking his wife for money when he is in need of it". The High Court also did not find anything objectionable in the husband asking his wife for money. In their opinion if a husband asks his rich wife to give him some money, it was quite natural and understandable.

The Supreme Court, having examined all the evidence, drew a clear distinction between a husband or a wife asking the other spouse for some money and harassing a wife to bring more money because her parents were rich! They came to the conclusion that there was a demand for dowry and it was with the support of the husband. The Court categorically rejected the stand of the lower courts that there was no evidence of harassment or cruelty, pronouncing very clearly that "*there was a demand for the dowry. The demand for dowry is prohibited under law that by itself is bad enough*"⁶⁵ and entitled the wife to get a divorce on the ground of cruelty".

The significant part of the case is that not only the trial court but even the High Court felt that both the mother-in-law and the husband were justified in making the demands for money, because after all the young wife was a rich women. Apparently the Dowry Prohibition Act and its later amendments had made no impact on this section of the judiciary.

There is an interesting parallel in such reactions/attitudes of the judiciary to issues of *what is socially understandable and therefore defensible* with the known preference shown by police personnel - even in women's cells - to bring about a compromise between the contesting parties. It appears that in their eagerness to play this *social reconciliatory role - members of both the professions are apt to ignore their own primary Constitutional duty - to uphold and enforce the law*. Reacting to this tendency among the police - one retired Officer remarked - "conciliation cannot replace investigation - which is the police's primary professional responsibility" (National

Conference on Crime Against Women, 30.11.1992).

These instances of ambiguity/ambivalence/contradiction therefore mask a malaise of which occasional patriarchal outbursts are not the only manifestations. The reformist attempt since the nineteenth century to project the women's question as mainly one of *social progress*, not one of economic justice and political necessity - continues to influence, or dominate the mind, of the middle class. Members of the judiciary and police officers are still drawn mainly from this section. Cases relating to women continue to be viewed as *social* and the laws relating to them - even when they feature in the Penal law, are seen as *social legislation*, and their enforcement therefore can be subordinated to the particular individual's (judge, jury, police, others) own sense of the *social good*, rather than the *rule of law* - which represents the collective democratic and constitutionally valid assessment of the social good.

Can one go a step further and question what lies hidden behind this peculiar (un) professional dilemma? Is it a feeling that the state should not really enter too much into the 'private' domain of the family? Or leave such 'social' tensions to be sorted out by a policy of laissez faire?

The Deorala Sati (Widow Burning) Tragedy and its Aftermath

Violence against women - treating them as expendable commodities was not confined to killing them for dowry, but took a bizarre form in 1987, when a young woman married barely seven months earlier was burnt on the funeral pyre of her husband. This took place in Deorala in Rajasthan, barely half an hour's drive from the main Delhi Jaipur Road. Her in-laws repeated like parrots that in spite of their persuasion that she should not commit *sati*, the young widow had been adamant. Her act was therefore projected as absolutely voluntary. this horrendous crime was witnessed by thousands of people who had come from nearby villages. It was a clear crime as the fact was that the funeral pyre with the widow sitting on it was lit by the husband's brother and hundreds of people had poured ghee on it to ensure that it burnt properly.

The news broke forty eight hours later to the world outside. Women's groups in Rajasthan and elsewhere went straight to the Chief Minister to demand that the young widow's in-laws should immediately be arrested and prosecuted. The Chief Minister and all other persons in authority paid no heed to this demand. In the meantime religious fundamentalists and their political allies glorified the act, and sought to justify it on the right of freedom of religion and religious practices. Hundreds of people came in trucks, walking and by any vehicle available to pay homage. There were many leaders of political parties , who were among those paying homage. One such leader later became a minister in the Union Government. While the State Government remained absolutely immobile the demand grew to build a temple to *sati mata*, at the spot where the young widow had been burnt.

Women's groups, unable to get any response from the political leaders and the Government, went to court and demanded an injunction against the *chunri* ceremony which was to be held ten days after the death of the widow. The High Court issued the injunction simultaneously. The State Government later tried to justify its inaction on the ground that the crowd accumulated for the purpose made it impossible to act.

The demand for government action against those responsible for the killing was not confined only to Rajasthan but grew from many quarters forcing the national government to take a position. Mr. Chidambaram, the Minister for Home Affairs visited Rajasthan and issued a statement condemning "the barbaric and inhuman" act. He was finally driven to it as the agitation spread, demanding prosecution of the culprits and opposing the building of a temple on the site.

The State government hastily moved an ill drafted ordinance. The Union Government brought forward a Bill - The Commission of Sati (Prevention) Bill which sought to penalise the act of *sati* - defined as burning or burying alive any widow with the dead husband. The Bill also made 'glorification of sati', which would include justifying or propagating the practice of sati, a criminal offence. A hastily drawn Bill, seeking to pacify the agitation while not antagonising the sections who were claiming that religion justified the practice, naturally contained many flaws. While the statement of Objects and Reasons of the Act make it clear that such a killing of a widow could not be termed voluntary, the Act as finally passed makes an attempt to commit sati punishable. A widow therefore either dies by burning or is buried alive, or if saved in time, faces the prospect of imprisonment for having attempted to commit sati. The Bill was neither publicised nor was there any public debate before the enactment, in strong contrast to the steps the Government had taken during the Rape Bill.

The Commission of Sati (Prevention) Act 1987 brought about a division in the women's movement. A section felt that all sati was murder and there was no need for a separate legislation. The other section felt that Sati Regulation Act of 1829 enacted by the British Raj was still law but ineffective though it clearly stated that burning or burying of a Hindu widow was illegal and punishable. No distinction was sought to be made between the act being voluntary or otherwise. But the British law did not make the widow liable for punishment but the Indian law did. Glorification of sati which was previously not made punishable is today made punishable but in spite of it the women's groups have to remain vigilant every year so that worshipping does not take place in a sati temple.

The significant change brought about after the new act has been to make conviction under the Commission of Sati (Prevention) Act to be a disqualification for a person to stand for election either to Parliament or any state legislature during the period of conviction and for a period of five years after that. Propagation of sati or its glorification will also be regarded as a corrupt practice.

The Deorala case and its aftermath cannot be assessed without setting it in the context of rising forces of revivalism on different sides, and the political chicanery of governments in office. A number of such incidents had been prevented in the past by local public officials, without any pressure from women's organisations or the State/National Governments. They lend weight to the view that existing laws were adequate if anyone wanted to *use* them.

But the government had weakened its position in 1986 by conceding the Muslim fundamentalists' demand that divorced Muslim women be deprived of a right they enjoyed under the Criminal Procedure Code - Section 125 (which is secular and uniform for all citizens) - to a summary maintenance order by the Court against their husbands as protection against destitution. The Muslim Women's (Protection of Rights on Divorce) Act 1986 was enacted despite opposition by women's and all progressive groups, various political parties, enlightened Muslim opinion, poor Muslim women, and a strong section of the ruling party itself. A politically inexperienced Prime Minister, having appeased Muslim fundamentalists (whose base was by no means broad or strong), found himself paralyzed before the rabid revivalism of the Rajputs and other interested sections of the majority community.

The position taken by the women's groups was also not unassailable. The opposition to the Muslim Women's Bill had focussed on the fact that it took away a right from the Muslim women which they had enjoyed with all other Indian women, of summary relief of maintenance from the husband to prevent destitution and vagrancy. It is significant to note that a government committed to upholding the constitution had no hesitation in going against a directive principle which enjoyed the adoption of a uniform civil code. In the matter of maintenance for the divorced wife, Section 125 of the Criminal Procedure code had brought uniformity which was given up in order to appease a section of the Muslims claiming to be leaders. Women's groups failed to note that special laws are easy to bring about, with the Government always falling back on the fundamental right of freedom of religion and *practises*, - which has proved to be a major obstacle in moving to the constitutional goal of social justice.

The support of the women's groups for the law on Sati, moved by the Government of India, was on the ground that it banned glorification of sati - something which the earlier law did not. But it is here that women's organisations failed to get the government to enforce the ban.⁶⁶ The most significant failure was that it failed to unseat the late Kalyan Singh Kalvi from his seat in the Union Government in spite of the evidence of his support to sati. This was even more regrettable as the women's groups had the support even from women members of Parliament whose condemnation of the act cut across party lines.

An area where the violence on women is not so direct but the effect is as adverse is in the area of sex determination. Scientific advance has been misused as amniocentesis was a technique to determine genetic abnormalities at the prenatal stage. Sex determination is essential only in cases of genetic defects which are sex linked and which cannot be diagnosed by any other means. In order to

avoid children having such abnormalities the Medical Termination of Pregnancy Act allows the termination of the pregnancy. But the All India Medical Science had to discontinue the text in 1976 as it was found it was being used for sex determination and if the foetus was found to be a female, abortion followed.

In 1986 the Forum Against Sex Determination and Sex Preselection in Bombay after a systematic campaign pressurised the State Government to pass the Act - Maharashtra Regulation of Prenatal Diagnostic Techniques Act 1886. The nationwide support and international coverage the campaign received made the Central Government set up an expert committee which ultimately drafted a Central Bill The Bill - Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Bill received wide support in the Lok Sabha when it was presented by the Minister in July 1994. But as with many legislations passed after pressure from activists group, the government dragged its feet about implementation. It also ignored many of the suggestions given by the activist group which had guided the implementation in Maharashtra. A very innocuous suggestion that it should be permitted only in government hospitals was also not accepted. Understandably it is not so open with hoardings with ' boy or a girl' being advertised the practice is still continuing.

A totally different area in which the women's groups achieved partial success was in their demand for setting up of Family Courts. The CSWI had in its Report recommended "the adversary system for settlement of family problems be abandoned and establishment of family courts.... where the procedure should be informal and which will adopt the conciliatory method and informal procedure with the aim of achieving socially desirable results.⁶⁷

But unfortunately no action was taken by the government, in spite of the persistent demand of the women's groups. The delay in settling matrimonial disputes, the innumerable adjournments and wrangling over children's custody and guardianship often with the children being produced in courts, led not only to tremendous hardship to the parties but also brought the judicial process in to great disrepute. Cases were referred to, in the Report of the Committee on the Status of Women, where the delay even for restitution of conjugal rights had taken over eight years. The Act was finally passed in 1984 but again without a public debate. Inevitably the provisions are flawed and need quick amendments.

Achieving success, if it can be called that, appeared to be so important that women's groups failed to critically study the Act. The Statement of Objects and Reasons is unexceptionable as it "provides for the establishment of Family Courts with a view to promote conciliation in, and secure speedy settlement of disputes relating to marriage and family affairs". But the provision for the appointment of judges requires that the person to be appointed must be one who will "*commit to protect and preserve the institution of marriage...*" Enough has already been written which will show that judges are not fallible and they too have their male bias and are more often than not steeped in patriarchal values. A number of studies has shown that an act meant for the benefit of the woman has achieved very little success. Delays continue. Women, who are often poor and barely literate, find a court

which seems to be totally insensitive to their requirements. The judges often appear to think that their job is to "protect and preserve the institute of marriage" at any cost. The result is that many times the judges compel "a wailing and weeping wife to go with her husband" as the husband's home is her home. Family Court Act is thus one other legislation which is meant to benefit the woman but has turned out to be quite the opposite. Only persistent demand from all concerned will enable some of the provisions to be amended. If the National Commission of Women makes a study of how the few family courts which have been set up, are functioning, perhaps some changes may be brought about.

The relationship between the Women's Movement and legal processes during the last two decades throws up many lessons. Getting laws enacted was found to be relatively easy in the earlier years - and the Movement has continued to exercise its influence in this sphere sometimes wisely, sometimes hastily.

It has been equally active in demanding *enforcement* or *implementation* - and many organisations have developed real expertise in this field, achieving reluctant appreciation occasionally from the judiciary. *In comparison to the situation prior to '75 women's organisations today are extremely knowledgeable on legal matters, and have recognised such knowledge as an essential ingredient for empowerment.*

Aware of their own limitations in follow up action, or sustainable and effective vigilance, the organisations concentrated their efforts in forcing Government to set up a machinery for this purpose. The National Commission on Women Act 1990 and its present power (vastly different from the original Bill) should be acknowledged as a real achievement of the Women's Movement.

In conclusion, one may say that the movement has not shed its excessive dependence on legislation, a legacy from its past heritage. it has now to face up to the far stronger challenges that threaten the rule of law itself for that section of the Movement which likes to retain its 'non-political' label, the preoccupation with law has been a protective cover - which may now come in for some battering.

APPENDIX

**INCIDENCE OF RAPE OF MINORS AND WOMEN
REPORT DURING 1990-92**

State/UT	1990		1991		1992*	
	Minors	Women	Minors	Women	Minors	Women
1	2	3	4	5	6	7
Andhra Pradesh	173	509	211	688	303	763
Arunachal Pradesh	4	18	6	32	12	25
Assam	112	423	103	427	-	442
Bihar	196	731	175	633	-	1019
Goa	5	10	8	18	4	12
Gujarat	78	232	111	253	112	-
Haryana	46	131	60	134	-	215
Himachal Pradesh	29	54	29	91	33	83
Jammu & Kashmir	15	118	9	124	14	123
Karnataka	50	159	59	177	-	150
Kerala	57	174	63	203	73	212
Madhya Pradesh	690	2302	1155	2532	635	2658
Maharashtra	296	859	337	885	-	961
Manipur	3	14	5	13	4	17
Meghalaya	7	29	12	27	5	25
Mizoram	32	63	24	44	24	34
Nagaland	6	1	6	1	6	1
Orissa	28	239	37	285	-	302
Punjab	19	57	20	59	19	61
Rajasthan	88	740	67	803	96	818
Sikkim	4	3	4	9	-	11
Tamil Nadu	66	243	83	250	-	232
Tripura	5	74	11	57	12	73
Utter Pradesh	327	1254	856	1400	-	1735
West Bengal	145	543	152	461	-	290
A&N Island	2	3	1	3	2	5
Chandigarh	6	11	5	7	8	15
D&N Haveli	1	3	0	4	-	1
Delhi	2	150	110	161	172	215
Lakshadweep	0	0	0	0	0	0
Pondicherry	7	10	10	11	3	3
Daman & Diu	0	1	0	1	0	-
TOTAL	2499	9518	3729	9793	1537	10501

* Upto June.

Source: Parliamentary News and Views (Monsoon 1993).

NOTES

1. Quoted in *Parliament Report on Dowry Prohibition Act 1961* reproduced in 1991 (4) S.C.C 298 on pp. 300-301. (emphasis added).
2. Hindu Marriage Act, Hindu Succession Act, Hindu Minority Guardianship Act, Hindu Adoption and Maintenance Act. For women workers, there were special provision in Acts like the Factory Act, Mines Act, Plantation Act. The condition stipulated in the various statutes would enable the women to work under just and humane conditions by prohibiting them from lifting heavy weights, doing night work or work under circumstances which will have a detrimental effect on the health of the women workers.

The Maternity Benefit Act was a woman specific legislation but for some reason it was put into the Directive Principles and not recognised as a fundamental right, as the Congress Party had done earlier in the Karachi Congress. The Maternity Benefit Act was passed only in 1961.

3. Sec 498A was added in the Indian Penal Code, 1860 in 1983 “whoever being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished...”
4. *Kailashwati v. Ayodha Parkash*, L. XXIV P.L.R. 216 (1977).
5. *Shanti Nigam v. R.C. Nigam*, 1971 A.L.J. 67.
6. *S. Garg v. K.M. Garg*, AIR, 1978, Delhi 296, P-301.
7. Palriwala Rajni, Reaffirming Anti-Dowry Struggle 1989, *Economic and Political Weekly*, 942.
8. “...to curb the evil practice of ostentation in the marriage ceremonies ... to prescribe a ceiling on the presents to be made....” *Report of the Lok Sabha Joint Committee* to examine the question of the working of the Dowry Prohibition Act (1982), para 3.7.
9. *Towards Equality*, Report of the Committee on the Status of Women in India, Government of India (1975).
10. *Sowmithri Vishnu v. Union of India*, AIR, 1985 S.C. 1618.
11. *Ibid.* P. 1619.
12. *Ibid.* p. 1620.

13. *V. Revathi v. Union of India* 1988 (2) S.C.C. 72.
14. *Ibid.* p. 76.
15. 1979 (2) S.C.C. 143.
16. Sec 160 Criminal Procedure Code, 1973 deals with the Police Officers power to require attendance of witnesses there is a proviso to the section which states that no woman shall be required to attend at any place other than the place in which she resides. This provision is intended to give special protection to children and women against the probable indignities and inconveniences that might be caused to them by the abuse of power - Kelkar R.V., *Lectures on Criminal Procedure Code* (1980), p.63.
17. Supra n. 15, p. 148.
18. Reproduced in 1979 (4) S.C.C.17-22. The four Professors were Lotika Sarkar, Upendra Baxi and Raghunath Kelkar of the Delhi University, Faculty of Law and Dr. Vasudha Dhagamwar of Pune University, Department of Law.
19. Op.cit, 19
20. Letter of the Secretary, Ministry of Law to the Secretary, Law Commission in Rape and Allied Offices 84th Report of Law Commission, Appendix I.
21. Op. cit Conclusion.
22. Such as deletion of section permitting evidence of past sexual history of the victim, special section to punish an Officer in Charge of a police station for refusing to record or without reasonable cause fails to record when a woman comes to complain
23. Report on Custodial Rape - People's Union for Democratic Rights. Summary Report on *Pioneer*, 26.5.1994.
24. Reported in *Indian Express*, 28.2.1985.
25. Reported in *India Express*, 12.8.1994.
26. 1983 (3) S.C.C. 217.
27. *Ibid* p. 224.
28. *Ibid.* p. 228
29. *State of Maharashtra v. C.K. Jain* 1990(1) S.C.C. 550.

30. *Ibid* quoted on p. 564.
31. *Ibid* p. 567.
32. *Supra* n. 26 p. 224.
33. *Prem Chand v. State of Haryana* AIR 1983 SC 937.
34. *State of Haryana v. Prem Chand* 1990 (1) S.C.C. 249.
35. Op. Cit. p. 252.
36. See Appendices.
37. *Madan Gopal Kakkad v. Naval Dube* 1992 (3) Judgements Today 270.
38. *Ibid.* p. 290.
39. The *Empowered Committee* at its meeting held on 15.12.75.
40. The Committee quite categorically rejected this. It wrote "this is not accepted as a policy for the Centre". *Ibid.*
41. *Jadhav v. Shankar Rao Abasaheb Pawar* AIR, 1983 SC 1219.
42. *Ibid*, p. 1223
43. 1983 (3) S.C.C. 344.
44. *Ibid.* p. 352
45. *Ibid.*
46. *Ibid* p. 353.
47. *Supra* n 8.
48. *Stree Atyachar Virodhi Parishad v. D.N. Chordia* 1989 (1). Scale 330 on p. 334.
49. *Indian Penal Code* (ed). Justice D.A. Desai, p. 1951.
50. Sec. 498A on Cruelty by husband and relatives of husband.
51. *Supra* n 48.
52. 1985 (4) S.C.C. 476.

53. Because women's organisations were made parties to the appeal. The case was also known as *Indian Federation of Women Lawyers and others v. Smt. Shakuntala and others.*
54. Supra n. 52 on p. 508.
55. 1 S.C.C. 445 (1990)
56. *Ibid* p. 449.
57. *Ashok Kumar v. State of Rajasthan*, 1991 (1)I.S.C.C. 166.
58. *Ibid* p. 174.
59. *Lichhamadevi v. State of Rajasthan*, 1988 (2) Scale 297.
60. *Ibid* p. 301.
61. *Supra* n. 48.
62. *Ibid* p. 333
63. 1988 (1) S.C.C. 105.
64. *Ibid* p. 111.
65. *Ibid* p. 115.
66. Rajasthan sleeping over Sati case, *Indian Express*, 8.3.88.
67. *Supra* n. 7, para. 4.233, p. 142.