

**Facilitating the Fulfilment of State Obligations  
Towards Women's Equality**

**Baseline Report**

**Rights of Women in Relation to Marriage in India**

**Association for Advocacy and Legal Initiatives (AALI)**

ADVANCED UNEDITED VERSION

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## INTRODUCTION

### **ISSUE: RIGHTS IN RELATION TO MARRIAGE**

#### **1.1 Women's Rights Background**

"Women's rights are human rights" and "personal is political" are not just empty slogans. They were evolved by the global women's movement in response to the marginalisation of women and their issues. This was a demand by women, for recognition of the realities of their lives. It was years of work before the global community realised that women do not have to be imprisoned or in an occupied territory, to experience violation of their rights<sup>1</sup>.

As Bunch and Reilly (1994) have commented, more women die each day from various forms of gender-based violence than any other type of human rights abuse. The types of abuse range from female infanticide and disproportionate malnutrition of girl children, to coercion, battery, mutilation, sexual assault and murder. These are faced by women in all regions of the world through all the stages of their lives<sup>2</sup>. These experiences of violation are often within the perceived safe space of their own homes.

Justification for such gruesome acts of violence are entrenched in culture and tradition and it is difficult for women to challenge them. The education and socialisation that women receive from their family, society and institutions make them accept this as their fate. Access to rights in the public sphere is largely dependant on exercise of rights in the private space, which in turn, is controlled by the rights available in the public sphere. For example, during elections, there are state sponsored media campaigns to educate people on their right to vote, independence of choice or the mode of exercising their franchise. This is a civil and political right. The same state does not use its media to inform women of their right too be free from violence and to life with dignity in the domestic sphere, implying that these are lesser rights. Yet, these are the rights that ensure her access to education, mobility and life skills, which would enable her to vote in an informed manner.

“Despite the guarantee offered by the Indian Constitution and the Universal Declaration on Human Rights towards ensuring the political and civil, as well as the social and economic rights of women and men, the practise of human rights monitoring has been in accordance with a male-oriented rights hierarchy. Political and civil rights have been traditionally seen as outranking the social and economic, and as such, the former have been in the focus of most monitoring activity, by governments and non-government

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<sup>1</sup> Based on quotations by Ms. Charlotte Bunch.

<sup>2</sup> 'A Critique of Human Rights and Citizenship: The Right to Development as a Gender Sensitive and a Holistic Approach to Human Rights" Draft Copy

bodies. Social and economic rights which include rights to shelter, food, reproductive choices, property and social security, are seen as 'non-justiciable' rights. The violation of these rights is therefore a 'minor offence' and the redress is usually left to the responsibility and 'good-will' of national governments. These rights obviously represent the concerns that are most critical to women, as they make up 60% of the world's poorest and 90% of the land-less.

The inability of women to access and enjoy all the rights enumerated in mainstream treaties and domestic laws has been because of the division of spheres in which rights are to be accessed. This public and private divide is largely created and maintained by policies and social institutions. The public arena has more often been seen as the sphere of states and governments and the private sphere, that of the family and economy. This division of spheres of work and politics on the one hand (the public arena) and the private sphere of the family on the other, is gendered, since it is men who are often assumed to occupy the public arena and women who are assumed to be "naturally" part of the private sphere. This division is compounded by the lack of recognition to the family as an arena in which there are issues of enjoyment and access to rights<sup>3</sup>."

The fact that women had to wait till 1993 for a Declaration on Violence against Women is a clear indication of the lack of recognition of women's experiences that informs mainstream activism and human rights. The Convention on the Elimination of All Forms of Discrimination Against Women, (CEDAW Convention) was the first comprehensive charter of women's rights. It addressed these rights in a holistic manner and rejected the public/private divide in the prioritisation and placement of rights. It was also the first legal instrument, which in addition to defining equality and non-discrimination, also laid down that a state has obligations towards ensuring rights within the public and private spheres. It also recognised that tradition and culture either directly oppress women or are used as arguments to oppress women. This severely limits, if not ends, their access to human rights. The Convention places an obligation on the State to change practises.

States have demonstrated a great reluctance in ratifying a treaty that addresses issues, which are placed within the personal or private spheres but it is these issues that lead to women being denied equal rights. The rights articulated in the Convention are perceived as non-justiciable, which can be ensured only through programmes for change and development, this would involve state expenditure. States are reluctant to take on this added fiscal liability. However, the work of local, regional and international women's movements has created an awareness that led to the ratification of the Convention, albeit with declarations and reservations, especially in relation to substantive articles like Article 5 and 16 which address the rights of women in the personal sphere. They state the following:

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<sup>3</sup> Based on A Critique of Human Rights and Citizenship: The Right to Development as a Gender Sensitive and A Holistic Approach to Human Rights: Draft Copy.

#### Article 16 (1):

State Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:

- (a) the same rights to enter into marriage;
- (b) the same right freely to choose a spouse and enter into marriage only with their free and full consent;
- (c) the same rights and responsibilities during marriage and at its dissolution;
- (d) the same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;
- (e) the same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;
- (f) the same rights and responsibilities with regard to guardianship, wardship, trusteeship, and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;
- (g) the same personal rights as husband and wife ,including the right to choose a family name , a profession and an occupation;
- (h) the same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration..."

#### Article 5:

"State Parties shall take all appropriate measures: a) To modify the social and cultural patterns of men and women with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority and superiority of either of the sexes or on stereotyped roles for men and women...."

The most contested obligations of the state, yet perhaps the most critical for women, are contained in these two articles<sup>4</sup> of the CEDAW Convention. It is under these articles that the state has the obligation to intervene in the private sphere. The Government of India has clearly demonstrated lack of political will in addressing women's rights when it ratified the CEDAW Convention with the following declaration

#### Declaration:

"i) With regard to articles 5(a) and 16(1) of the Convention on the Elimination of All Forms of Discrimination against Women, the Government of the Republic of India declares that it shall abide by and ensure these provisions in conformity with its policy of

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<sup>4</sup> Please refer to Pages 8 and 9 for the text of Article 5 and 16 of the CEDAW Convention

non-interference in the personal affairs of any Community without its initiative and consent.

ii) With regard to Article 16(2) of the Convention on the Elimination of All Forms of Discrimination against Women, the Government of the Republic of India declares though in principle it supports the principle of compulsory registration of marriages, it is not practical in a vast country like India, with its variety of customs, religions and level of literacy."

This declaration results in the denial of rights for women in the private sphere. The State has declined to interfere with the personal laws, which define the rights of women within marriage or at the time of its dissolution, inheritance and property rights. This translates as the unwillingness of the state to engage in reform of laws, which are discriminatory to women.

Despite this declaration, the country has received concluding comments from the Human Rights Committee, on rights related to marriage and the status of women. In that context, The Human Rights Committee has observed:

"16. While acknowledging measures taken to outlaw child marriages (Child Marriage Restraint Act), the practice of dowry and dowry related violence (Dowry Prohibition Act and the Penal Code) and sati-self-immolation of widows- (Commission of Sati (Prevention) Act), the Committee remains gravely concerned that the legislative measures are not sufficient and that measures designed to change the attitudes which allow such practices should be taken. The Committee is also concerned that giving male children preferred treatment persists, and deplores that practices such as foeticide and infanticide of females continue. The Committee further notes that rape in marriage is not an offence and that rape committed by a husband separated from his wife incurs a lesser penalty than for other rapists. The Committee therefore recommends:

"that the government take further measures to overcome these problems and to protect women from all discriminatory practices including violence. Additional information should be provided in the State party's next periodic report on the functions, powers and activities of the National Commission for Women. "5

The State is obliged even under the International Covenant on Civil and Political Rights to ensure equality for women in relation to their rights in marriage. The declaration to Articles 5 and 16 of the CEDAW Convention does not absolve the Government of its liability to take measures to protect women from discriminatory practices that violate their rights in the personal sphere.

India was one of few states to ratify the Beijing Platform for Action without brackets, accepting the standards and programmatic content outlined in the document. Despite the declaration to Article 5(a) and 16 of the Women's Convention, it is aware of its

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<sup>5</sup> Concluding Observations of the Human Rights Committee: India. 04/08/97. CCPR/C/79/Add.81. (Concluding Observations.Comments)

responsibilities in addressing violations of women's human rights and experiences of discrimination, in public and personal spaces. The argument most often forwarded is that the Platform for Action does not create any legal obligation and therefore, its ratification does not translate into any obligation on the part of the state. However, on ratification the CEDAW Convention is a legally binding document and Articles 1-4 clearly outline the range of obligations the state is to undertake in order to ensure equality for and non-discrimination against women. While the obligations are created by the Convention, the substance of its fulfilment, i.e., what is to be done in order to fulfil these obligations, is contained in the various documents that have come out of the major conferences held for women by the UN.

The above concerns as well as the Articles of the CEDAW Convention are in absolute harmony with the Constitution of India, which declares that India is a welfare state and provides for equality for all its citizens, regardless of sex, caste, religion, colour or race<sup>6</sup>. As stated earlier, it will be impossible for women to access and enjoy rights in the public domain, if her rights are violated and oppressed in the private sphere. The challenge before the state is to design laws, policies and programmes, which address the experiences and concerns of women and encourage and ensure women's participation in the formulation of such laws, policies and programmes, in order to respond to their experiences rather than perceptions of their experiences. It has the obligation of ensuring that all the rights of all the citizens are secure all times.

In instances of violation of rights in marriage, the State is seen as having no role to play in addressing the situation as such matters fall within the personal sphere. Under the CEDAW Convention the State is obliged to ensure that women are able to access and exercise their rights, in all situations and spaces. The State has to necessarily engage with the cultural and traditional practices of its people and to ensure that women are not oppressed because of these customs. The argument of non-interference in the personal domain is no longer acceptable as it is used in an extremely political manner. The definition of 'personal' becomes fluid. On the one hand personal denotes the domestic environs and on the other it is used to indicate the priorities of a particular political interest group in a community and women become the victims of this non-interference by the state.

Women need the right to make decisions in relation to wanting the marriage or not, the person with whom the marriage will take place, an equal say in the choice of residence, and in all other decisions, as an independent and empowered equal citizen. Her status or gender role as a 'home-maker' should not influence the authorities, who are to ensure that her access and exercise of all her human rights, at all times, in all situations, in all spheres is safe and secure.

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<sup>6</sup>Articles 14, 15 and 16 of The Constitution of India

## 1.2 Rationale

Marriage is between two individuals and as such is a personal issue between the two individuals concerned but in a social system which is patriarchal, caste oriented and feudal, it is important to un-package this relationship, to surface the issue of rights and responsibilities, so as to recognise exploitation and beneficiaries in the institution. It is generally assumed that the issue of rights in marriage would reflect socio-economic rights. However, what is at stake here is not only a woman's right to nutrition, health and education but also her right to freedom of expression, movement and life itself. The impact of access to socio-economic rights makes a woman even more vulnerable and narrows her options. Her lack of access to education or property reduces her ability to leave an abusive relationship. Therefore, marriage is one institution where this interdependency, indivisibility and the inherent nature of rights are clearly visible and the disadvantage of insecure rights amply demonstrated.

Most of a woman's rights, as determined by law, also place her in the above context. Marriage gives her a distinct identity before law and in society. This identity is constructed through religious, social and community perception of her identity rather than her identity per se. Her situation is further complicated by the plural system of law practised in our country. The personal laws, which focus on marriage, divorce, maintenance, custody of children and inheritance, are based on the different religious and traditional practices of the community, all of which subscribe to the ideology of male supremacy. This further reduces a woman's access to her rights and becomes the framework in which she perceives herself and her rights, which are not determined on the grounds of her being a woman but on the basis of her identity as a Hindu, Muslim, Christian, Parsi or a woman governed by customary practices of her tribe.

This report examines the issues according to the framework provided by Article 16 (1) of the CEDAW Convention (shown previously), as this article takes a holistic perspective of the rights in relation to marriage. This provision, which articulates the core rights for women, is one of the most reserved articles in the Convention. The article envisages a host of rights that are to be ensured for women by the State at every stage of the marriage:

- at the time of entering into marriage,
- during marriage,
- on dissolution of the marriage.

Along with Article 5 of the CEDAW Convention (also shown previously), the critical nature of rights of women in the private sphere and the crucial need for the state to intervene in this space to ensure women's human rights is clearly outlined. This report will examine certain violations of rights and discrimination experienced by women, the causative factors and the corrective steps to be taken by the State to ensure women's access to rights within the family. This issue gains importance in the light of the declaration made by the Government of India to Articles 5 and 16 of the CEDAW Convention. It is for this reason that we decided to focus our report on Article 16 (1) of

the Convention to understand the reason for the declaration<sup>7</sup> and raise awareness that this must be removed if the State is to fulfil its obligations under the Convention.

The State must ensure that its policies and laws protect the rights of women and facilitates their access to these rights. The State, by ratifying the CEDAW Convention and signing the Beijing Platform for Action, 1995 has clearly shown its awareness and acceptance of international standards for women's rights. The declaration is then, essentially a statement of faith and demonstrates the willingness of the state to work towards domestic intervention to ensure women's rights.

### 1.3 Objectives

This report was undertaken to assess the position of women in marriage, the factors that inhibit her access to rights and the obligation of the State to take corrective measures to ensure the empowerment of women and their equal participation in this sphere.

The main objectives are:

- **Understanding**  
To create a holistic understanding of women's experiences of discrimination in relation to marriage.
- **Assessing**  
To assess and analyse the institution of marriage and the rights related to it, in terms of the material disadvantages experienced by women as a result of discriminations experienced.
- **Reality**  
To examine the state initiatives to secure women's rights, in relation to the institution of marriage, especially in light of its declaration to Article 16 (1) and 5(a) of the CEDAW Convention.  
To surface NGO initiatives which facilitate women's access to their human rights, especially in relation to marriage.
- **Advocacy**  
To create a document to help focus on the changes needed in State policy, programmes and laws, which, when implemented would ensure the elimination of discrimination against women in the private sphere as the first step to access of rights in the public sphere.

### 1.4 Scope

The idea for this report was started by a study conducted by AALI and other organisations in 1998 about marriage rights for women. NGO's from two states were interviewed and brought with them case studies of various women that they had dealings with. Through their information we were able to analyse the situation for women in these regions and collect data. The issues that we chose to emphasis and report on, as shown in chapter one which is devoted to this baseline study, are ones that are common for women across the country. Though only comparatively few cases were used in our baseline

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<sup>7</sup> For text of the Declaration refer to page 3.

study, it is important to keep in mind that our intent is not to say that the primary data from that study apply to all women in India, but to say that the issues we were inquiring about apply.

It is not possible to exhaustively examine every violation and discrimination experienced at every stage of marriage. However, to show the linkage in the discrimination at every stage, as well as to outline the seriousness of the discrimination and violation at every stage of marriage, we have selected three areas, shown in this chart, which amply demonstrate women's experiences of discrimination.

<b>Entry</b>	<b>Early Marriage Forced Marriages</b>
<b>During</b>	<b>Inter-spousal Abuse</b>
<b>Dissolution</b>	<b>Divorce Widowhood</b>

Even within this limited focus we found that an exhaustive study was not possible, due to reasons like, lack of data and general information. This, though limiting the in-depth nature of the study, has not been a barrier to presenting a holistic picture of women's experiences. It has been possible to draw general conclusions from specific

situations, which are similar to all women, cutting across caste, class and community barriers.

The starting point of this report is rights oriented, as it seeks to examine the status of rights of women in relation to marriage. The issues of identity and marginalisation on the basis of this identity are understood to be contributory factors rather than as experiences of discrimination. Similarly, law is understood to be a state initiative to secure rights of citizens rather than a definer of rights. The distinctions in the personal laws are not as much the focus as the vulnerability of women's rights, which are left unprotected on the basis of identity.

In this report we have accessed as much existing material as possible on the issue. This was difficult as authors have not dealt with rights in marriage as a single theme but looked at different issues within the institution, such as domestic violence, property rights of women etc. The different writings were collated and woven together, so as to form a holistic picture and pattern. We also need to state that a lot of work has not been done in this area, as theorising the issue is a relatively recent phenomenon and the theory is still in the stage of development.

## **1.5 Chapter Divisions**

For the purpose of clarity, we have decided to format the report in a way that shows the status of women's rights through out the course of marriage. There are, therefore, three basic chapters that present this time line beginning with Rights On Entry then Rights During and finally Rights at Dissolution of Marriage. To provide further analysis, we have broken these chapters into subcategories that we found to be most important. Our reason for choosing these sections to focus on is explained in the following section.

### **1.5.1 Evidence of Disadvantage**

As was stated before, statistical data in the area of rights in marriage, at any stage, is hard to find, however, the very fact that child marriages, forced marriages, spousal abuse, etc. exist is evidence enough to show that women as a group are disadvantaged in our society. Therefore, we have devoted this first section to defining these situations that women are constantly subjected to as proof of their oppressed status.

### **1.5.2 Contributory Factors**

It is critical for us to analyse the degree of access of rights by women in a patriarchal society. Equally important is to study the correlation between the lack of access to rights women have due to the social system within which these rights have to be accessed or exercised. The status of women in society, the manner in which they are brought up, their nutrition, the orientation they receive, the education they have access to and the opportunities that are available, affects their ability to access rights.

Cultural and traditional practises are legitimised by religion, which provides the ideological and moral basis for the accorded status and institutionalised roles of men and women in society. As opposed to the public sphere, where an individual does not greatly influence the rights accessed, in the private sphere religious or community identity becomes the deciding factor. However, the rights that are denied in the name of community identity and religion are those that are crucial to women, for example, their access to equal rights in property or to maintenance. Access to these rights determines her ability to leave an abusive relationship and take control of her own life.

Likewise, the socialisation of women, which is greatly influenced by religion, is another contributory factor to women's lack of rights. The very way that girls are taught to be accepting and non-active hinders their ability to seek out the rights that are theirs by law but are not enforced in society.

### **1.5.3 Effects on Women**

The relationship between the contributory factors and the effect arising out of them is reciprocal. On one hand, the discrimination women face, abetted by the various contributory factors leaves them palpably disadvantaged; on the other, the effect of being disadvantaged furthers their vulnerability to discrimination and disables them from challenging their own situation. The tools for changing their situation would necessarily flow from accessing their right to employment, property, access to reproductive rights etc, which are dependant to a large measure on their accessing their right to education, nutrition and decision-making. The limited access that women have to their rights in the personal or private spheres impacts on their ability to access rights in other spheres.

The following matrix shows the link between the issues of marriage and the effect of the denial of rights on women.

Evidence of Disadvantage	Contributory Factors (Causes and Barriers)	Rights Violated: Effect of Violation
1. Early Marriage	Culture and traditional factors Value on marriage Control over sexuality Lack of political will to contain the practice.	<b>Rights denied:</b> Rights to childhood Right to education Right to health. Right to equality of opportunity <b>Effect:</b> Ill Health, High Mortality Inability to access support Increased vulnerability to violence
2. Forced marriage	Culture/tradition Control over sexuality Woman seen as symbols of family/community/caste honour Lack of support structures (familial and State) Absence of life skills Value on marriage Social pressures	<b>Rights denied:</b> Right to mobility and decision making. Right to equality of opportunity Right to education/employment opportunities Right to decision making Right to Choice Reproductive rights <b>Effects:</b> Increased vulnerability to violence. Control over sexuality Instances where choice is exercised can lead to social excommunication, even murder, and rape
3. Spousal abuse	Religious and traditional sanction Cultural acceptance Low social value of women. Economic dependence Lack of alternatives for women (familial and/or state support structures) Trivialisation of the issue by law enforcing authorities Lack of adequate family laws regarding custody, divorce, maintenance etc. Lack of recognition of domestic violence as an offence. Attitudes of the judicial system	<b>Rights Denied:</b> Right to physical integrity Right to life, to sexual and reproductive choices including right to bear a child, leading to foeticide and infanticide Right to freedom of movement Right to equality before law Right to choice Right to matrimonial assets Right to economic independence Right to custody of children <b>Effects:</b> Constant abuse – physical and mental (leading to loss of self image) Denial of opportunities, leading to poverty, murder, marital rape Forced to continue in a violent situations Forced to compromise material rights Forced to stay in the matrimonial home Forced to compromise/lack of life choices Deterioration of physical and mental health

4. Widowhood/ Divorce	Religion and tradition (for certain groups) Social pressures Value on marriage Financial dependence Absence of support structures (familial or state) Devoid of socio-economic and political power Lack of political will to address the issue	<b>Rights Denied:</b> Right to life with dignity Right to freedom of movement Sexual and reproductive Rights Right to equal treatment before the law denied Right to property denied Right to custody and guardianship denied <b>Effects:</b> Renders her powerless/unable to challenge her own status Dependent on others, who might not provide shelter, abandonment Murder, sexual exploitation Leaves her vulnerable to exploitation and violence Economic burden of bringing up children and herself Re-marriage is prohibited in some groups and forced in others Right to choice is completely denied Austere living code is enforced Murder, witch-hunting, sexual exploitation Re-marriage is prohibited in some groups and forced in other Identity of a widow is forced on the woman Honour ideology is forced
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### 1.5.4 Government Initiatives

The primary duty of a state is to ensure the well being of its citizens and to make secure their legitimate rights. Law and policy are the two initiatives through which the state fulfills this duty. Law and policy are not only blueprints of a state's political commitments to its people but also guidelines it can follow to ensure the well being of its citizens.

It is therefore important that we recognise both the advances and short comings brought on by they State through law and policy as well as other avenues. This section shows the positive efforts by the government to improve women’s status, but it is also a critique as we feel that these efforts have not gone far enough.

### 1.5.5 Case Study and Recommendations

The final two sections of the chapters are devoted to case studies done by AALI and also recommendations for change. These recommendations are based on evidence given in the previous sections of the chapter as well as on the case studies, which are the strongest evidence that change is needed.

## **BASELINE STUDY**

### **2.1 Methodology: Process report of the baseline study**

The baseline study “Rights of Women in Relation to Marriage” was the first activity of the project “Facilitating Fulfillment of State Obligations towards Women’s Equality”. The issue coordinator, AALI along with support team Adithi and the issue network agreed that the process of collecting information for the study had to keep the immediate project objectives in perspective. The immediate objectives of the project were to:

- Establish a foundation for a sustained and effective NGO led system for monitoring state compliance with and fulfillment of obligations under the Convention for the Elimination of all forms of Discrimination against Women.
- Contribute to the determination of indicators to assess advances in the achievement of equality.
- Contribute to increasing awareness on the Convention and involvement by women and NGOs in the CEDAW Convention process.

It was agreed that the study process could not be extraneous to the project objectives. Having agreed on this, two consultative workshops were held with the issue network to finalise the process to be incorporated for the baseline study. The workshops held in Lucknow, in the month of December ‘98 and January ‘99 were attended by the team leader, team coordinator, project in-charge, research coordinators, the guidance team and the interns. After much deliberation on the project, its goals and objectives, the utility of the baseline study and available secondary data, it was agreed that two workshops on ‘Rights of Women in Relation to Marriage’ would be held in each of the two states. The participants were from NGOs that were working either directly on the issue of women’s rights or with development organisations working with women. The purpose of these workshops were for:

- Collection of primary case studies, experiences and suggestions on the issue.
- Dissemination of information, raising awareness on the Convention, the project and the issue.
- Expansion of the issue network.
- Strategy planning for the advocacy campaign on the issue.

The four workshops were organised regionally in:

- Lucknow - Central Uttar Pradesh representatives.
- Varanasi - Eastern Uttar Pradesh representatives.
- Sitamarhi - North Bihar representatives.
- Dumka - South Bihar Representatives.

It is to be borne in mind that most of the participants of the workshop, though working with women, were for the first time participating in a dialogue on “Rights of Women In

Relation to Marriage”. The workshop<sup>8</sup> was designed to stress and reinforce concept clarity and then move on to issue discussion and analysis

## **2.2 Status of Available Data**

In the process of collecting the data it was clear that no substantive or comprehensive work has been done on the issue and no holistic analysis is available. The recording of crimes against women is done in a manner to stereotype the issue. The case studies we collected from the NGOs, through the workshops, lacked analysis from a rights perspective. Most were cases relating to violence within the home and the narration dwelt more on the occurrence rather than effect or response it evoked from the various actors including the victim. Hence our collation is more on the types of violence experienced rather than an analysis of the under-pinning causes of the violence experienced. Two charts<sup>2,3</sup> outlining the status of some unreported cases shared by the NGOs are annexed to this report. Most NGOs did not deal with the right to choice, sexual autonomy etc., as a result of which we feel specific primary level work needs to be undertaken on the issue to give us a realistic picture and contribute to building better strategies for intervention.

The manner in which the state has maintained its data as well as the perspective the data has been collated in, is an issue of concern. For instance, the differences in the mean age of marriage and the average age of marriage are differences that are used extremely politically. We faced scarcity of data since our study is rights specific in the context of marriage and the data that was available was for the purposes of studies that were development oriented. We had to engage with "deconstruction" and "reinterpretation" of the available material, instead of using it directly.

## **2.3 Primary Data**

Even in the small surveys conducted with community-based NGOs, it was difficult to surface case studies of domestic violence against women, as domestic violence was not perceived as violence by mainstream organisations.

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<sup>8</sup>For details of the workshop please see Annex 1.

<sup>2,3</sup> Annexe 2 and 3.

Families had arranged the marriages of all the case studies. The present profile of the case studies is as follows:

Region	Number of Cases	Community	Number of Cases	Age group (now)	Number of Cases
Lucknow Workshop	9	Hindu Muslim	2 1	20-24	5
				25-30	2
				60-65	1
Varanasi Workshop	5	Hindu Muslim	2 1	20-25	5
				25-30	
				60-65	
Dumra Workshop	37	Hindu Muslim	8 4	20-25	4
				25-30	18
				30-35	8
				35-40	1
				40-45	1
				45-50	1
				55-60	1
65-70	1				
Dumka Workshop	30	Hindu Muslim Christian	4 3 2	20-25	7
				25-30	10
				40-45	3
				50-55	5
				60-65	2

Perception of violence against women was largely limited to rape, dowry-related harassment or murder. However, out of the hundreds of cases that the NGOs had brought with them to the meetings, we were able to categorise 81 cases as those of spousal abuse. The type of violence faced is contained in the following box:

Region	Sexual Violence	Physical Violence	Mental Violence
Central UP (Lucknow Workshop)	4	8	12
Eastern UP (Varanasi Workshop)	4	6	10
North Bihar (Dumra Workshop)	-	18	18
South Bihar (Dumka Workshop)	7	25	32

Total case studies analysed	81
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In the cases presented at the various workshops, all the marriages were cases of forced and early marriages, as the women had not been asked whether they wanted to get married or not. It is also relevant to state that these were cases that had come for help to NGOs and therefore, were cases of abuse, stress and marriages beset by problems. It is also important to understand that they had approached the NGO after failing to access support and relief from any other sector.

The following table gives an area specific breakup of the number of case studies from the four regional workshops.

**RIGHTS ON ENTRY****Rights at Stake: Entry into Marriage**

- **Right to choose one's partner**
- **Right to decision making**
- **Right to Life**
- **Right to choose one's residence**
- **Sexual and Reproductive Rights**
- **Right to Freedom of Movement**
- **Right to Equality before law**

At the entry stage, the issues are not only the age at which marriage takes place or denial of choice but also the procedure by which marriages are decided. The issues we have chosen for this report are early marriage and forced marriage, as the implications of these issues, which are an amalgamation of socio-economic and civil-political rights, have not been studied closely enough. These issues are clear illustrations of the critical nature of insecure rights in the private domain and its impact on women. By early marriage or child marriage we refer to marriages solemnised in Violation of the Child Marriage Restraint Act (Amendment) 1978, which fixes the age of marriage for boys at 21 and for girls at 18. By forced marriage we refer to an entire range of experience by which women are conditioned to believe that their only salvation is marriage. They are also made to believe that they are the honour of the family and that they cannot marry without the blessings of the family. In India, the cultural pattern is such that a man or a woman or rather a 'good' man or woman will not choose a spouse of his/her own volition. The threat to life starts as soon as this choice is exercised. Even though Forced Marriage may not be strictly an example of discrimination, in reference to men vis-à-vis women it is a clear illustration of how severe and instant the punishment is, where defiance of cultural norms is concerned.

**3.1 Evidence of Disadvantage**

Early marriage is a social phenomenon with religious overtones, practised by Hindus, Muslims and tribals. The reasoning used by the different communities practising child marriage is distinct. Among Hindus, child marriage as a social phenomenon is given a number of reasons such as 'taking away the burden of rearing a girl child as soon as possible', 'that she has to go someday to her own house, the earlier the better so she can adjust to her family', because of the high premium on chastity it is considered best to send her away as early as possible so that she does not succumb to 'temptations or desires'<sup>9</sup>. These justifications are not merely reasons emerging out of personal fears and experiences but are very concretely backed by religion. In the Muslim community and certain tribal cultures, adulthood is linked to puberty and therefore, early marriages take place.

<sup>9</sup> These comments/ justifications came from parents at a village level meeting in Mirzapur, who got their daughters married at a young age'

The common link in all the communities is the confidence in the ability of the elders to take decisions about the lives of dependants/minors. The perception of women as bearers of community honour and identity is so well entrenched that any attempt by them to assert their rights is seen as an attack on the cultural norms of the community and is strongly countered.

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The legal age of marriage in India is 18 for girls and 21 for boys, laid down by the 1978 amendment to Section 5 of the Hindu Marriage Act, 1955 and The Child Marriage Restraint (Amendment) Act, 1978. However, the practice of child marriage continues to take place in many parts of India. In Rajasthan, mass child marriages are conducted on the occasions of Mahashiv ratri and Teej, two Hindu festivals in which even infants in the arms of their parents are married to each other.

In Indian Societies, all communities included, not only is marriage, as an institution, considered essential in every individual's life-span but it is also regarded as something sacred that should not be challenged. What is largely practised in Indian societies as the norm is the archetypal arranged marriage, which essentially means matching two individuals – a male and a female<sup>10</sup>. The matching does not involve individual likes and dislikes but the perceived essentials of marriage i.e. caste, kul<sup>11</sup>, education and economic status of the family. Although, there is a change in the method by which suitable matches are found i.e. through family priests, family friends and elders and today through advertisements in newspapers, especially in urban centres, the core element while seeking partners in marriage remain the same.<sup>12</sup>

There are certain differences in the cultural practices of the different communities. Women of tribal communities do enjoy relative freedom and autonomy in choosing their spouses, which is not available to other women. This freedom should not be construed as access to the right to choose one's own partner as it depends on the customary practises of the tribes and is dependent on certain conditions<sup>13</sup>. Further, the imposition of bride price and the manner in which it is imposed is a clear indication of women's subordinate status

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<sup>10</sup> Due to the absence of acceptance-social and legal to gay and lesbian marriages in India, the study focuses exclusively on heterosexual marriages

<sup>11</sup> Family

<sup>12</sup> Though we were unable to locate data on this issue, as we could not locate a single empirical study on this, we found substantiation in the case studies we collated. All of the case studies had marriages arranged by their families. Fewer than 5% had seen the prospective bridegroom before the marriage

<sup>13</sup> For instance in the Gujjar tribes of Jaunsar Bawar, the woman is allowed to marry of her own choice, in the event of the man being able to pay the bride price. She is also allowed to leave the marriage, if the next man or her father is willing to pay back the price to her first husband. This may provide her access in certain situations to her right to choice, but this access is dependent on external factors, which may not be in her control. And the situation does not indicate her rights. It merely recognises her material value and usability.

in their society. Choice marriages are few and strongly disapproved of in most communities<sup>14</sup>. Inter-caste marriages and inter-religion marriages have been known to start riots.

### **3.2 Contributing Factors**

In this issue, tradition and culture play a more critical role than religion. Child marriage, where the partners are mere infants is confined to certain areas like Rajasthan. What is more wide spread is marriage before puberty. One of the more orthodox Hindu dictates is to marry a girl before she starts menstruating. For other religions the norm is that a girl marries on attaining puberty. The social acceptability of child marriage leads to a total negation of the law, which lays down 18 years as the age of marriage.

No religion expressly prohibits a marriage of choice. A Muslim woman's consent is an essential ingredient in her marriage. Despite this, in many of our case studies we came across a clear unwillingness to allow exercise of choice either by the girl or the boy<sup>15</sup>. These violations are due to pressures of social dishonour rather than religious belief. This desire to control is directly related to the perceived image of women as the sole bearer of the honour of the family and community. Being the 'honour' translates as being under the control of the family or community, as is shown in our case studies at the end of this chapter.

In order to save the identity and honour of the community, women must remain dependants or they might go astray.<sup>16</sup> Marriage is the only destiny permitted to women and the only salvation. Early marriage ensures that a girl marries someone who is not considered a threat to the community honour. This is what informs arranged marriages and child marriages. Thus child marriages and forced marriages are part of the system that ensures control of the sexuality of women.

#### **Socialisation**

Socialisation begins at birth, as does the devaluing of a girl child. The mother of a girl child is instructed to give her less milk. In fact, the mother is given less nutrition so that there is less milk for the girl child. The mother of sons has a certain value attached to her that is denied to the mother of daughters. This practise is not restricted to rural areas or to the uneducated masses. Case study 5 presented in the section 4:5 in our chapter on rights during marriage, is about the wife of a medical doctor who has three daughters. The woman is abused for not bearing a son and her husband threatens to divorce her or take another wife, which makes the woman very insecure. The entire structuring of gender biases is perhaps the most forceful argument that socialisation has a strong influence on the availability of rights or the ability to exercise those rights.

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<sup>14</sup> Refer to the case of Memona discussed later in this chapter under 'Forced Marriage.'

<sup>15</sup> Media clippings, annex 10

<sup>16</sup> History of Dharmashastra, Kane, PV

The adjacent table on the nutritional status of U.P. women in various age groups shows that the lack of nutrition to the girl child reflects on her health as an adult.

Socialisation begins in the family and ironically it is the mother who has the responsibility of orienting her children, especially her daughters, into traditionally acceptable behavioural patterns. She is thus made the agent in perpetuating oppression, eventually giving those in the position of power a set stage to exercise violence. As mentioned earlier, the very socialisation process is institutionalised in the form of various social structures like family, kinship, descent, etc. These social structures are so revered that injustices meted out to individuals, especially women, are not to be challenged. The other external influence in the socialisation process is education, both formal and non-formal. Formal education offers girls chosen streams of specialisation like home-science, arts, commerce, leaving technical and professional courses out of their reach. Even among the educated, urban women there is no value attached to education per se. It is not a tool for her empowerment but is used to enhance her status in the marriage market.

### **3.3 Effects on Women**

Early marriages deprive girls of the right to education. The girls leave their parental home at a young age and have no skills to cope with exploitation in the marital home. The lack of opportunity, especially in the field of education, ensures that the girl is equipped with minimal life skills, which in turn renders her powerless and unable to challenge her own lowered status. This increases her vulnerability to exploitation and violence, completing the circle and ensuring that it is self-perpetuated.

The rationale offered for not sending girls to school is that they are to be married and education is a wasted expenditure. The low enrolment rate of girls in schools and the subsequent high drop-out rates illustrates not only the attitude of the parents towards sending girls to school but also the disinterest and the inability of the system to keep the girls in school, once they have enrolled.

According to the 2001 census, in India 75.85% males are literate as compared to 54.16% of females. The data for the Northern states is far lower. This denial of education affects a woman's access to equality of opportunity and causes her ghettoisation in low paid jobs, usually in the unorganised sector.

A variety of socio-economic factors are responsible for women's lower educational status, including direct costs, the need for female labor, the low expected returns and social restrictions, like early marriage.” Because women's educational levels and improvements in their health status are closely linked, increasing female education is the key to improving their health.<sup>17</sup>”

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<sup>17</sup> Based on Improving Women's Health in India .The quotation is taken from a summary of the World Bank Publication ‘Improving Women's Health in India.’

The correlates in the following table establish a clear link between female literacy, crude birth rate and infant mortality. It clearly indicates that one of the impacts of early marriage, is early pregnancy and high infant mortality.

The following table is from a focused study, conducted in selected districts.

District	% of literate females	Age at marriage	CBR	IMR
Chattarpur	10.24	14.5	42.19	182
Satana	13.26	14.8	41.20	181
Tikamgarh	8.44	14.3	44.48	195
Bharatpur	10.08	16.0	44.02	147
Hardoi	9.52	16.5	42.16	173
Etah	13.10	16.4	39.67	170
Basti	7.94	15.0	41.29	164
Panna	8.66	15.0	45.54	185

Source: Ghosh, Shanti, "Life cycle of Maternal health, Child Health, and Survival", in "Women and Health Report, Voluntary Health Association of India, 1995

Girl babies are given less nourishment and medical attention, thus beginning the cycle of poor health. This affects their future, as their nutritional status in childhood has a direct bearing on their adult health in general and reproductive health in particular. Research has proved that, "iron deficiency, anaemia is widespread amongst Indian girls and women, and affects 50 to 90 percent of pregnant women."<sup>18</sup>

"Female mortality and morbidity rates are linked to overall fertility levels. In India, the fertility rate is 3.4 children per woman. Childbirth closely follows marriage, which tends to occur at young ages, 30 percent of Indian females between 15 and 19 are married. Childbearing during adolescence poses significantly greater health risks than it does during the peak reproductive years and contributes to high rates of population growth. Indian women also tend to have closely spaced pregnancies. Some 37 percent of births occur within two years of the previous birth, endangering both the health of the mother and the survival of the infant and older siblings"<sup>19</sup>.

"Maternal mortality rates, which is related to early pregnancies, are high in India, estimated at 437 maternal deaths per 100,000 live births. This is a result of infection, hemorrhage, eclampsia, obstructed labor, abortion and anemia. Lack of appropriate care during pregnancy and childbirth, especially the inadequacy of services for detecting and managing complications, explains most of the maternal deaths.

Reliable data on mortality and morbidity in pregnancy are scarce and for female morbidity in general, they are almost nonexistent. The limited studies available report high morbidity and malnutrition among girls and women."<sup>20</sup> A younger bride means a

<sup>18</sup> Ibid

<sup>19</sup> Improving Women's Health in India .The quotation is taken from a summary of the World Bank Publication 'Improving Women's Health in India.'

<sup>20</sup> Based on Improving Women's Health in India. The quotation is taken from a summary of the World Bank Publication Improving Women's Health in India.

higher fertility, as proved above. This directly affects the size of the family. This has fiscal implications for the family per se and affects a child's access to quality nutrition and education and accounts for the high infant and child mortality rates. "In UP alone, 1.20 crore children below the age of 4 are malnourished, of which 25 Lakhs suffer from extreme malnutrition. Every 6<sup>th</sup> child in the state is malnourished"<sup>21</sup>

The above proves that:

"A woman's health plays an important role in determining the health of the future population because women's health has an inter-generational effect. The cumulative impact of the low health situation of women is reflected in the high MMR (Maternal deaths constituted 1.1% of the total reported deaths in India, in 1990), the incidence of low birth weight babies, high pre-natal mortality and fetal wastage and consequent high fertility rates"<sup>22</sup> There is no holistic approach to women's health covering her entire life cycle starting from prevention of feticide and infanticide. Health care for women is provided during their reproductive years and even here they are targeted by family planning programs. Equality in health care as envisioned under Article 12 of the Convention is not implemented.

Early marriages also ensure that a whole section of society is marginalised and left out of the development process because of lack of education or ill health. Due to lack of access to equality of opportunity in education, women are ghettoised in the unorganised sectors. This not only negates their contribution to the national economy, it also invisibilises them as a people, who need better interventionary policies to secure their right to participate as productive citizens of the state.

As we have seen earlier the age of marriage is linked to puberty and the choice of a life partner is left to members of the family. When one is not allowed to exercise one's choice it would amount to forced marriage. The effects of forced marriages are about the same as those of early marriages. A woman is denied education, job opportunity, lacks negotiating skills and is weighed down by social pressure to accept her fate. The denial of these rights makes her vulnerable to spousal abuse, leads to physical and mental health problems and maternal mortality.

### **3.4 Government Initiatives**

At the entry level the various state initiatives have been focused on delaying the age of marriage. Other than the legal measures, the state has initiated many awareness-raising programmes through its vast network of national machinery to educate people about the right age of marriage. In addition to this, it also uses state owned media, All India Radio and Doordarshan, the television channel, to educate the people about the ills of child marriage. These messages essentially relate to the physical and health hazards of early pregnancies and on this ground advocate late marriages. The focus is not on rights,

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<sup>21</sup> Uttar Pradesh mein Sabke liye Swasthaya: Nayi Sadi ki Chunautiyan, by Jan Swasthay Sabha, Uttar Pradesh, 2001

<sup>22</sup> Fourth World Conference on Women: Beijing 1995: Country Report: Government of India: Department of Women and Child Development. Ministry of Human Resource Development

choice, education or empowerment. In spite of these efforts by the state they have not been able to stop child marriages. These marriages are not done under the cover of darkness but conducted as mass marriages. No definite or drastic steps have been taken by these departments to eradicate child marriage.

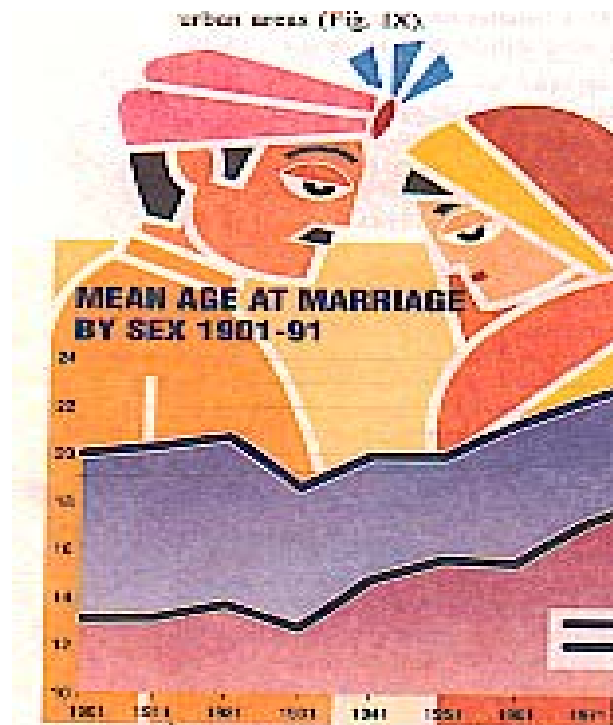
A brief look at the state recordings of age of marriage over the past 20 years would show an upward trend in the recorded age of marriage. This is because of the change in the method of recording the age rather than a real increase in the age of marriage. The recording of the last census threw up the “effective” age of marriage, indicating the age at which the marriage is consummated, rather than the age at which it takes place. Traditionally, most early marriages take place in two major steps. The first step is the actual ceremony of marriage and the second is "gauna" for the Hindus, and "Rukhsati" for the Muslims. "Gauna" and "rukhsati" both refer to the going away of the bride to her marital home. This takes place at puberty, which is the indication of the girl being physically ready for sexual relationship and reproduction.

The second stage may have certain health issues attached to it, however the legal reality of marriage is decided by the first instance of marriage itself rather than the time it is consummated. The ability to exercise choice is still compromised. Even if the marriage is not consummated, it still has to be repudiated by the woman<sup>23</sup> before she reaches the age of 18. The state, for the purpose of its statistics, has chosen to record the age of marriage at the second stage, which creates the impression that certain steps have been taken to address the issue of child marriage and that changes have taken place pursuant to the same.

The above can best be illustrated through the usage of the state data. The Government Of India data quoted in the table shows the mean age of marriage as 19.5. However, even according to their analysis, 19.5 is the age of "effective" marriage which refers to the "consummation" of the marriage rather than the marriage ceremony itself. Under the existing law these marriages continues to be valid and are only voidable and not void ab initio. This indicates the lack of political will of the State while addressing the issue of child marriages.

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<sup>23</sup> Section 13, 1A (iv) Hindu Marriage Act, 1955, which is applicable to Hindu women only. The Muslim women also have the option of repudiating the marriage on attaining puberty.



“The Child Marriage Restraint Act, 1976 {sic} raised the minimum age at marriage of girls to 18 from 15 years, and for boys to 21 years. This was intended to prevent child marriages, early marriages of girls, and consequent early pregnancies and thereby curtail fertility at young ages, birth of premature babies and infant mortality rate. Acquiring higher education and greater employment by women have also played a role in raising their age at marriage.”<sup>24</sup>

The above extract from the country report at the Beijing conference amply articulates our case. It is an irregularity that is acceptable in social terms and is part of our cultural context. It is not a rights issue according to the state.

### State Mechanisms

In spite of the Centre and State agencies creating awareness of the ill effects of early or child marriages, there has been a lack of political will to make provision for the compulsory registration of marriages. This would go a long way in eliminating early marriages. The non-implementation of the Child Marriage Restraint Act (Amendment), 1978 allows people to continue with the traditional custom of child marriages, which are valid marriages unless repudiated by the woman. This was evident from the Bhanwari Devi case, when an employee of a government agency, whose specific job was to prevent

<sup>24</sup> Source: Government of India Beijing report, pg. 15

child marriages, did her duty, she was gang raped by men of the family affected. She is still, seven years after the incident, seeking justice. The impunity with which this law can thus be bypassed contributes to the number of early marriages that take place. The Government of India's Declaration with reference to Article 16 (2), which states the marriage of a child shall have no legal effect, has a direct impact on child marriages. The fact that child marriages are voidable is in direct contrast to the position under Article 16 (2) of the Convention.

The National Commission for Women has intervened in cases where women have been harassed for exercising their right to choose a marriage partner, but in most of these situations, it is the law enforcing agencies that have not risen to the occasion. The lack of gender sensitisation of the police and the judiciary has contributed to their reaction in subverting the law when women have gone against laid down social norms. When the message goes out that the law enforcing machinery of the State can be manipulated to preserve the traditions used to subjugate women, it acts as a deterrent to other women who want to exercise their choice. This contributes to preserving the custom of marriages where the woman is not even consulted.

### Law and Judiciary

The Child Marriage Restraint Act, 1929 amended in 1978 focuses on the age of marriage and the prevention of child marriages rather than the right to choice. The state admits this in its country paper at the Beijing UN World Women's Conference.

**Criminal Law Remedies:** The Child Marriage Restraint Act was enacted in 1929 and amended in 1978 to make the marriage of any woman before the age of 18 to any man before the age of 21 an offence. It holds the parents and the witnesses responsible. The punishment is of a minor nature being simple imprisonment of less than 3 months and a fine. The marriage is not void ab initio but may be repudiated by the woman, after the age of 15 and before the age of 18. A parallel right is not available to men. As a Criminal Act it is applicable to persons of all communities.

Under The Indian Penal Code, one of the definitions of statutory rape is intercourse with a woman below the age of 16, the age is reduced to 15 if the woman is the wife, the offence is non-bailable if the wife is below 12 years of age. Intercourse with a wife over 15 years of age, even if forced, is not an offence. This is not in keeping with the tenor of The Child Marriage Restraint Act (1978, Amendment).

**Civil Law Remedies:** A Hindu wife married before the age of 18 may repudiate the marriage, after the age of 15 and before the age of 18. Even if the marriage has been consummated, the girl retains the right to annul the marriage before attaining majority. Child marriages are not void ab initio and are valid unless repudiated within the stipulated time. It is almost impossible to implement this section, if we take into account the fact that according to law, a woman under the age of 18 cannot institute a suit unless represented by a guardian and in this case it would be the guardian who would have arranged the marriage in the first place.

Gap: The state has declared the age of 19.5 as the age of ‘effective’ marriage, without sharing the definition of “effective”. This refers to the age at the time of consummation of marriage and not the date of marriage as there is a distinction between the two in the country. A marriage, which takes place during childhood is often attended by a post puberty ceremony in which the bride goes to her marital home and it is then that the marriage is consummated. However, under law, the first ceremony constitutes the valid marriage. By taking into account the effective age of marriage and not the real age of marriage while collating averages, the state is denying itself realistic information on which it has to base its future interventions to address women’s rights. The anomaly in the provisions of law for repudiation of a child marriage needs to be addressed.

We have considered the manner in which law creates the space for marital rape. There has been no attempt to repeal Section 6 of the Hindu Minority and Guardianship Act, which expressly provides that the guardian of a minor wife is the husband, even if he is a minor and as such, he is entitled to custody. The Guardian and Wards Act, in Section 21 gives the same power to a minor to be the guardian of his minor wife, extending this power of guardianship even to the wife and child of other minor coparceners, in his capacity as the managing member of a Hindu Undivided Family.

Critical Concern: The government has taken steps to formulate laws to prevent child marriages but has not taken into consideration the right of all human beings to choose their life partners, in an informed manner. The state has not shown any real political will to enforce the law and once the marriage takes place the legal system refuses to engage with it in a manner that would ensure the rights and safety of the girl child involved. The criminal nature of such a marriage is neutralised by the rights recognised in law, for a husband against his minor wife, even if he is a minor.

The disapproval of choice marriages is not directly related to religion but is based more on tradition and culture. The idea of people exercising their choice in marriage is seen as a threat to the family unit, individual choice could result in inter-caste and inter- religion marriages, which is not acceptable in the socio-cultural context of the country, often resulting in inter-caste and inter-community riots. To meet such situations and also in keeping with its stated secular principles, the state enacted The Special Marriage Act, 1954. The Act was passed to ensure marriage between people belonging to different faiths without resorting to conversion.

The Special Marriage Act, 1954: This Act was framed to facilitate marriages between people professing different religions, without conversion. It lays down a list of prohibited degrees of relationship, within which marriages cannot take place. It purports to be a progressive act and makes the registration of the marriage compulsory.

Implementation: The marriages are solemnised by a Marriage Officer who is designated by the state government. In UP, the Additional District Magistrate, (City) is the prescribed authority. Thirty days notice of the intended marriage has to be given and the marriage celebrated within 3 months of the notice. In UP, for the purpose of inviting objections, the photographs of both the girl and the boy along with the marriage notice are displayed on the notice board of the Registrar’s Office for 30 days. The local police

investigation unit is asked to investigate and give a report. The police, as part of the routine, visit the residence of the parties. The process is extremely complicated with a lot of scope for corruption. There are innumerable instances where marriages have taken place within a day and in others the pages recording the marriage have been torn up to destroy evidence. The prominent role given to the police creates a situation where the parties are treated like criminals. This adds to the trauma of individuals trying to marry against the wishes of their family.

Interpretations: As the marriage is registered, we did not come across any case in which the certificate or the marriage itself has been challenged.

Critical Concern: The procedure for registering a marriage under this Act is complex. Couples who marry using these provisions usually belong to different religions and the marriage is invariably against the wishes of the family. Given the violence and the honour attacks on such couples<sup>25</sup>, it is not possible for the couple to have their photographs pasted on notices boards for a month or face a police inquiry which goes to the extent of visiting the homes of the respective parties. As such conversion may be the only course open to them, defeating the very purpose for which this Act was passed.

The provisions of the Act are similar to those of the Hindu Marriage Act. It does not take into account the customs and practises of other religions, which are different from the mainstream Hindu perspective. For example, the degree of prohibited relationship for marriage is the same as The Hindu Marriage Act.

Legal remedies: A Writ of Habeas Corpus is invoked to produce a person who is being illegally detained. In marriages against the wishes of the families, there are instances of parents kidnapping their daughters. In such cases husbands file a writ of Habeas Corpus before the High Court, praying for restoration of their wives. The court has wide powers under the writ jurisdiction and can summon any private or state party in order to satisfy the claim. There is no restriction on who can file such a petition.

Implementation: Writ jurisdiction vests only with the High Courts of each state and the Supreme Court. The provision under Section 97 of The Criminal Procedure Code empowers a Magistrate to pass a similar order.

Interpretation: In cases of marriages against the wishes of the family, the bias of the court seems to be in favour of the parents. In certain cases<sup>26</sup> especially in inter-religion marriages, the girls have not been produced before the court to be examined and judgements have been passed on the basis of technical considerations. This is considered as a culture issue and the judges bring in their own understanding of the issue. The orders passed reflect the mindset of the judge.

Critical Concern: Often, upon learning of the elopement of their daughter the parents file a complaint for kidnapping. There are procedures whereby the girl and the boy can

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<sup>25</sup> Please refer to Section 2:2, Forced Marriages.

<sup>26</sup> Two judgements of the Lucknow Bench of the Allahabad High Court, Annexur 15 and 16.

appear before a judicial or executive magistrate and file their statements and avoid arrest. In the following case studies, we will see that the appearance of the parties precipitates the matter ending in separation. The process of law is not followed and the girl is usually taken to a Nari Nikaetan.

### **3.5 Case Study**

#### **CASE 1**

An 18 year old Hindu resident of Lucknow, N married I S, a Muslim of the same locality, against the wishes of her family. Her family lodged an FIR stating that she was seventeen and a half years old and that she had been kidnapped by I S. To prevent his arrest the couple went into hiding. To ascertain the whereabouts of the couple the police began harassing I S's family. His mother and sister were taken to the police station and were released after the intervention of women's groups and activists. Upon ascertaining that the girl was over 18, the women's groups decided to intervene in her case and help stop the injustice being done to her husband and his family. Till the recording of her statement before the Magistrate, that her decision to marry was an independent one, the girl remained with the activists, stating that she felt insecure elsewhere. The Chief Judicial Magistrate respecting her decision allowed her to go wherever she desired and rejected an application made by the Investigating Officer, on behalf of her family, asking that N be sent to the Nari Niketan. (State run shelter for women.)

#### **CASE 2**

S, 25, a postgraduate Hindu, decided to marry a person belonging to a different faith. Youngest in a family of four sisters and one brother, S's family was against her marriage. Soon after the marriage S made a statement before the Judicial Magistrate that the marriage was of her own choice. Disregarding her statement, her family lodged an FIR alleging that she had been kidnapped and named her husband as a suspect. The newly weds had no choice but to go into hiding.

Her maternal family, in connivance with the state police and other authorities, hounded her and her marital family, forcing them to leave the city. They were then termed as absconders and their property attached. Meanwhile S was trying to record a fresh statement in the court, that she had married out of her own free will and volition and that the charges of kidnapping against her husband be dropped. Instead of recording her statement, the Magistrate questioned her mental health and passed an order sending her to a Nari Niketan. She was taken into custody by the police. The women's organisation dealing with her case immediately appealed to the District Judge and managed to get an order permitting them to take the girl into their custody. Her statement was recorded in a few days and she was allowed to leave. Even after this, she and her husband had to remain in hiding for many months, till the charges of kidnapping against him were dropped.

### **CASE 3**

A, belonging to a higher caste married G, of a lower caste. The marriage was conducted according to Arya Samaj customs. The girl's natal family lodged an FIR accusing the boy and his brother of having kidnapped their daughter. The boy's brother, a government employee, who was arrested and put into jail for two months was suspended from his job. The police refused to record the girl's statement and it was only after a women's organisation intervened with higher police authorities that her statement was recorded. The charges against the boy were dropped but the effect on his family was devastating.

### **CASE 4**

Memona lived in Sudaka village of the Nuh district. She was a Muslim, and a "kureishi" who are "Kasai" (Butcher) by caste. Idris was a local Muslim boy who belonged to the "Mio" caste, which is considered to be superior to "Kureishi". Both castes have had a long-standing feud and inter-caste marriages were not permitted. It was alleged that selling of girls was a common practise in this village and Memona's parents had made a deal to sell her for Rs.15,000/-. In spite of these prohibitions Memona and Idris got married. As punishment, Memona was physically attacked by the villagers and gang raped. Ironically, even her natal family was an active party to this heinous crime.

Assuming that she was dead the villagers threw Memona near the highway. With the help of Idris she managed to reach Delhi, where they sought help and shelter from the National Commission for Women (NCW). Memona's major concern was her parents in-law who were facing threats in the village. The NCW decided to rescue them personally and went to the village along with Memona and Idris. As the car reached the village the local people surrounded it and Memona was taken from the car. The situation in the village was so tense that the NCW had to retreat with Idris. The NCW members asked the Home Minister and the Chief Minister of Haryana to intervene and presently Memona is in one of the Nari Niketans.

### **CASE 5**

In Haryana, in a village less than two hours from New Delhi, a young couple was beheaded by the father of the girl, before the villagers. The young couple belonging to the same caste were residents of the village. They went to Delhi and got married. Six months after the marriage they decided to return home. The news of their arrival reached the girl's father who waited at the crossing with his axe. He beheaded them both. It took a lot of media pressure before the police filed a report, which was closed on the ground of lack of evidence.<sup>27</sup>

### **CASE 6**

Y a 16-year-old girl living in Nagal bloc in Saharanpur, fell in love with a boy from the same village and belonging to the same caste. She lived with her brother in the joint

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<sup>27</sup> Refer to Annexe 4 on Honour killings

family while her parents lived in another township. One night she came home late and on being questioned by her brother she admitted that she had been with the boy concerned. This so angered her brother and her cousin, that they forced her to eat "Sulphas", a poisonous substance, tied her to the 'charpai'<sup>28</sup>, and burnt her to death.

The villagers, who saw fresh ashes in the morning wanted to know who had died. This news reached a village level women's activist, associated with a government programme. Before she reached the spot the family had taken the community into confidence. The community understood the rationale of the brother's action. It was better for the girl to be dead than bring dishonour to the family. The activist was not convinced by the community and threatened them with police action. She asked to meet the family. Everything was normal in the house and the extended family denied the existence of the girl and her alleged death. The activist tried to lodge a complaint but failed, as there was no body or any other proof of a death having taken place. The police refused to co-operate for two reasons:

- (a) there was no such incident
- (b) it was the family's 'personal' matter.

Even the parents of the girl denied her existence. The only person who was willing to talk was the girl's lover who later backed down in the face of community pressure.

Analysis:

The first three cases highlight the implications of a girl's independent decision to marry a man of her choice, a decision which puts her, her husband, her husband's family as well as women's activists groups into confrontational situations with the police. Her natal family disowns her and takes all possible steps to ensure that the marriage is nullified or invalidated, even at the cost of harming their daughter. The police actively collaborate with the girl's family to ensure that the social norms are upheld rather than the law. Another fall-out of these marriages is a potential law and order situations with communal overtones, especially when the bride and groom belong to different religious groups.

The last three case studies are proof of the possibilities of ignoring the rights discourse in the matter of right to choice in marriage. A woman's right to physical integrity, her reproductive and sexual rights, even her right to life are insecure if community and culture are allowed to take decisions on her behalf. We need to understand that these are not stray occurrences but tiny outbreaks in the culture of silence, proving that honour killings do take place in India. Due to lack of serious empirical work on this issue it is difficult to quote statistics, but for us, even if there has been one such death and the state has been unable to respond, it is indicative of the need for better systems. It is apparent that the questions raised by Rakhmabai<sup>29</sup> in 1884, are still in search of an answer.

The method of arranging marriages is the same for both men and women. There is no denying the fact that it is an issue of right to choice and informed consent for both men

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<sup>28</sup> An indigenous bed made with rope and wood.

<sup>29</sup> Gender reform and competing state controls over women: The Rakhmabai case (1884-1888) by Meera Kosambi

and women. All child marriages or marriages before the legal age have to be seen as forced marriages as neither the girl nor the boy are capable of making a choice or giving their consent. It is a decision taken on their behalf, for reasons, which are completely extraneous to the marriage.

Forced Marriages are those that take place against the wishes of the bride or the bridegroom, regardless of their age. There is no statistical data on this because once the marriage takes place and the spouses 'adjust' to each other, the circumstances under which the marriage took place becomes irrelevant. An analysis of the above cases makes it clear that exercise of one's choice, when it challenges or threatens the tradition of the community, caste or group, is not acceptable. This cultural practise of arranged marriages is so deeply entrenched that in the U.K., South Asian families who have been residents there for over a generation, have been drugging their daughters and forcing them into marriage. The U.K police have intervened with Indian Punjabi families to rescue these girls. However, our government has neither shown any such awareness in the matter nor any inclination to assume any role in the process<sup>30</sup>. What we did find in the case studies amply demonstrates the implications of exercise of one's choice in marriage and also the implications of the attitude of non-interference by the state.

### **3.6 Recommendations**

- A process to eradicate the practice of child marriage should be initiated. The state needs to play a part in changing the socialisation process by a strict implementation of the Child Marriage Restraint Act (Amendment of 1978). Legislation alone cannot eradicate this social evil.
- Education and health related programs and schemes for children should involve components that engage with and address the issue of child marriage. The monitoring of these programs should also focus on reasons for absence or presence of the participants/beneficiaries.
- Programs for gender sensitising law-enforcing agencies, with special emphasis on removing the mind set of tradition and culture and promoting the strict implementation of the law in keeping with its spirit would ensure a woman's right to choice.
- Process of registration of marriages should be simplified, keeping in mind the prevalent rate of illiteracy and the state should undertake steps, in a time bound frame, to make compulsory the registration of all marriages.
- Compulsory free education for girls till the level of School Leaving Certificate would delay the age of marriage and teach the girls life skills.
- Structural support for these programs should be identified and implemented with the support of women activists.

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<sup>30</sup> The Hindu, "Forced Marriages in UK": August 1999, Annex 5

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## **RIGHTS DURING MARRIAGE**

### **Rights at Stake: During Marriage**

- **Right to Life**
- **Right to bodily integrity**
- **Sexual & Reproductive Rights**
- **Right to health**
- **Right to Freedom of Movement**

During the subsistence of the marriage, the issue that is a clear indication of discrimination and violation is domestic violence. The manner in which women are made the victims, is an illustration of the disadvantages they suffer due to gendered spaces and law. Domestic violence includes violence against the aged, children and other dependents.

However, in this report we have focused on spousal abuse, as that is a direct form of violence suffered by women. We also felt that the need to examine the existing situation from the perspective of rights of a married woman in relation to her marriage and therefore, it would be relevant to examine the marriage per se, the role of the spouse, the patri-local residence and the abuse by the family, which are also indicators of the cultural context.

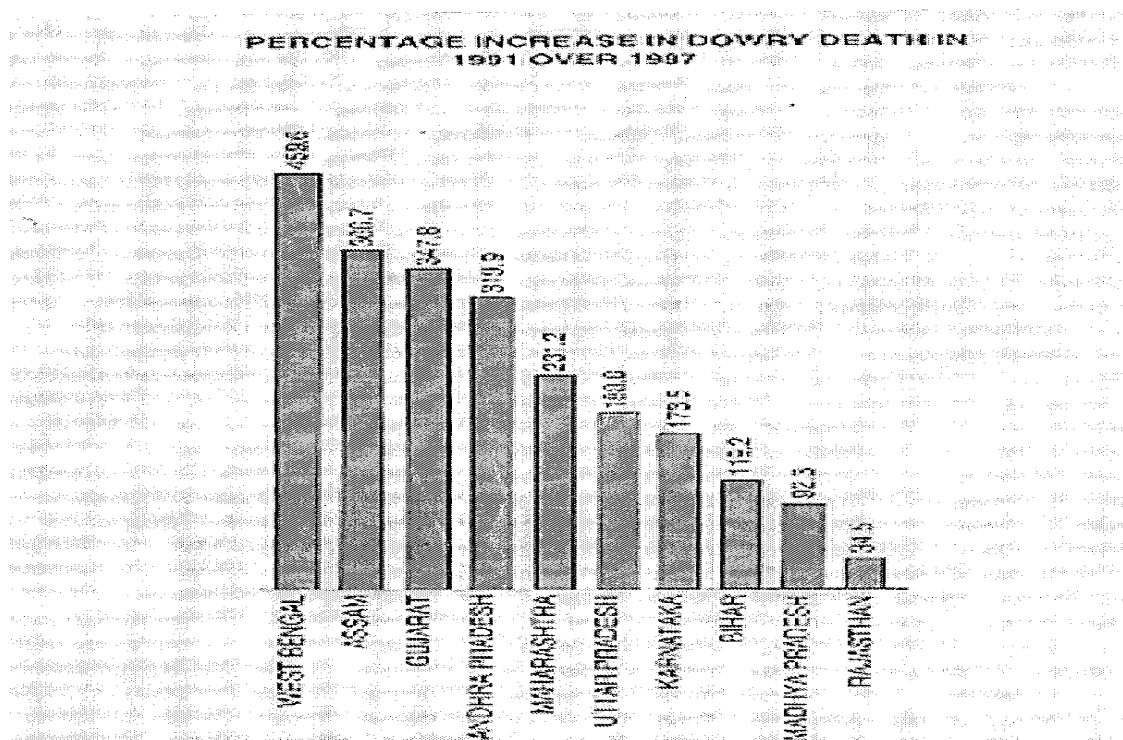
### **4.1 Evidence of Disadvantage**

Domestic violence is a phenomenon experienced by many women irrespective of the community, caste or religion that they belong to. It is a global reality<sup>31</sup>. While some countries recognise it, others either refuse to acknowledge it or acknowledge only a limited part of it<sup>32</sup>. There are many reasons given and excuses made to justify domestic violence. Perpetrators explain that the victims or other external circumstances provoke violence. Wives are not the only victims; it is also directed against small children, aged parents and other dependants in the family. In India, marriage not only makes the woman vulnerable to violence from her husband but also from members of his family.

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<sup>31</sup> A conference organised by Oxfam in Sarajevo on Violence against Women, in November, '98, had participants from nearly 50 countries, who narrated instances and presented papers on prevalence of domestic violence in their country.

<sup>32</sup> South Africa for example, has framed a holistic Domestic Violence Act. India has recognised dowry as a cause of domestic violence against the bride but has failed to recognise spousal abuse or domestic violence with out the demands for dowry.



Source: Annual Report; 1992-92 National Commission of Women

Dowry related violence clearly illustrates the manner in which women are hurt, injured or killed with the connivance of the entire family. Dowry related abuse has elements of both spousal abuse and violence by other members of the family. It is evidence of discrimination against women. It shows how little women are valued and is used to justify continued violence against them. The table below has various aspects of violence related to dowry and illustrates that all the violence related to dowry cannot be bunched together and each needs to be dealt with in its own context.

**Table 1: Crime Against Women For Dowry & Dowry Deaths<sup>33</sup>**

CATEGORY	1990	1991	1992	1993	1994	Feb.95
Dowry murder U/S 498(A),302 IPC	7	3	12	8	9	-
Dowry death U/S 498(A), 304 IPC	14	21	13	8	21	4
Dowry suicide U/S 498(A), 306 IPC	21	8	18	21	34	9
Dowry harassment U/S 498(A), IPC r/w ¾ D.P.Act	30	25	47	37	139	16
Misappropriation of Streedhan U/S 498(A), 406 IPC	38	30	39	35	68	7
Total	110	87	129	109	271	36

<sup>33</sup> Kakodkar, Priyanka, in Times of India, on 29/3/95, seen in Women's Link, V-2 (1) Jan-March,1996

**Table 2: Crime Against Married Women For Other Reasons<sup>34</sup>**

CATEGORY	1990	1991	1992	1993	1994	Feb '95
Murder of married women U/S 498(A) 302 IPC (Suspected infidelity, not producing child, financial crisis etc)	9	17	10	12	10	1
Suicide, U/S 498(A), 306 (Extramarital affairs of husband, husband not agreeing with wife's lifestyle etc)	51	58	67	67	69	5
Harassment U/S 498(A), IPC (Mental and Physical torture, poor-financial condition, liquor addiction of husband, separation from joint family)	113	139	137	129	131	14
Total	173	214	214	208	210	19
Grand Total (TableA+B)	283	301	343	317	481	55

Wife battering is hardly ever recognised as an offence despite the extent to which it occurs. The following chart is from a study<sup>35</sup> conducted by Shireen Jejeebhoy on wife beating in Tamil Nadu and Uttar Pradesh. This study has unearthed many interesting facets of wife beating.

The following table is on the status of wife battering in Uttar Pradesh.

**Table 3: Domestic Violence: Prevalence and Regional Disparities**

	Percent of Respondents			
	Beaten by Husband	Intimidated by Husband	Beaten & Intimidated	Number
Average	40.9	47.5	26.8	1842
<b>Uttar Pradesh</b>				
Total	44.7	58.9	36.9	859
Muslims	44.6	58.6	35.6	421
Hindus	47.7	59.1	38.1	438
<b>Tamil Nadu</b>				
Total	37.2	36.2	16.7	983
Muslims	35.8**	35.6*	14.8*	547
Hindus	38.5**	36.8*	18.6*	436

Note: \* Differences in means compared to Muslims of Uttar Pradesh significant ( $t > 2.0$ )

\*\* Differences in means compared to Hindus of Uttar Pradesh significant ( $t > 2.0$ )

Domestic Violence is recognised by law obliquely rather than expressly and is essentially linked to dowry. The data below on national trends for crimes against women shows no crimes related to domestic violence other than those related to dowry, leaving a yawning gap in the very recognition of spousal abuse.

<sup>34</sup> Ibid.

<sup>35</sup> Wife-beating in Rural India: A Husband's Right? - Evidence from Survey Data by Shireen J. Jejeebhoy.

**Table 4: Crime Against Women – National Trends (Actual Figures)**

Crime Head	1990	1991	1992	1993	1994
Rape	9518	9793	11112	11242	12351
Kidnapping and abduction	11699	12300	12077	11839	12998
Dowry death	4836	5157	4962	5817	4935
Torture	4836	15949	19750	22064	25946
Molestation	13450	20611	20385	20985	24117
Sexual Harassment	20194	10283	10751	12009	10496
Importation of girls	-	-	-	-	167
Sati Prevention Act	-	-	-	-	2
Immoral Traffic (Prevention) Act	-	-	-	-	7457
Indecent representation of Women	-	-	-	-	389
Total	68317	74093	79037	83954	98948

Source: *National Crime Records Bureau, Crime in India-1994, Government of India.*

There is no independent law on domestic violence and this area of physical, mental and sexual abuse has been accepted as a non-serious offence and a matter for counselling rather than specific corrective measures. In the absence of any law on domestic violence per se, as well as a lack of understanding of the issue, it is very difficult to make a proper recording of women's experiences of violence. Further, with spousal abuse the situation is even more complex as it is culturally accepted and is not challenged even by the victims<sup>36</sup>. It is the most approved form of domestic violence, as the husband is seen to have the right to chastise his wife. It is difficult to estimate how wide this experience is, but women of all classes and castes experience it. The case studies we collected from community based NGOs and through our workshops, are mostly of rural women but from other case studies we found evidence of women of privileged classes, castes and with urban background also experiencing spousal abuse.

While studying domestic violence, it is important to examine the context in which the violence takes place so as to understand all the issues that are involved. It is through focused group discussions and in-depth conversation with activists that we realised the vast dimensions of violence experienced by women as wives.

One such dimension is the denial of a woman's right over her own body. The exception to the definition of rape is forced sex within marriage. This is a clear indicator of the acceptance by the State of the husband's legitimate right over the body of his wife, even if she is a minor. No data has been recorded on marital rape, as it is not an offence under our criminal laws.

<sup>36</sup> Wife-beating in Rural India: A Husband's Right? - Evidence from Survey Data by Shireen J. Jejeebhoy.

Another area pointing to the lack of control women have over their body's is reproductive rights. Forced abortions based on the sex of the foetus have become far too common. The sex ratio, over the past hundred years, has been steadily declining. In 1901 there were 972 women per 1000 men. By 1991, there were only 927 per 1000 men! While this fact is due to more than just sex selective abortions, it is a major factor in showing how little girls and women are valued.

## **4.2 Contributory Factors**

Culture and tradition have played a strong role in legitimising violence against women, especially spousal abuse. The strong tradition of, 'doli mein jayegi aur arthi mein ayegi,' meaning, that once a girl enters her marital home only her bier should come out, leans upon religion for legitimacy. All religions emphasise that it is a woman's duty to obey her husband. This ensures that women accept some sort of reprimand as they're due, which in turn leads to acceptance of gross physical abuse. Wife beating is not perceived as a serious issue either by the community or the state. Women themselves, in many cases, do not question this as a violation of their rights. This acceptance by the victims leads to impunity for the perpetrators. It also creates a situation in which, women who do challenge it find they are isolated and ignored.

The case studies illustrate not only a woman's acceptance of violence but also the acceptance by the community, which recognises and legitimises the right of a husband to abuse his wife under the guise of control. Women have been conditioned to accept violence and the few cases in which complaints are registered are ever prosecuted.

In one case study in Saharanpur, Nangal Bloc, a village the sangha organisation rescued a woman who had been badly beaten by her husband, and took her to a hospital. The doctor said it was a medico-legal case and so the sangha women lodged a complaint in the local police station. The Station Head Officer said that in many of these cases the wife would withdraw her charges. To prove his point, he took the husband into another room in the police station and there were sounds like he was being questioned and beaten. The woman kept silent for some time and then requested the sangha women to withdraw their complaint. She felt that after this that he would not hit her again. It was obvious that she was worried about the hurt being caused to her husband. The fact that she was not willing to punish the perpetrator shows her acceptance of religious traditions and her socialisation, which despite personal experience of pain prohibits challenge. She did not foresee the distinct possibility of further physical abuse because of this complaint. The law enforcing agencies are also bound by these traditions and discourage a woman from accessing her right to a home, free from violence.

### **Socialisation**

From early childhood the girl child has been oriented and trained to conform and to accept her fate or lot. She is not equipped to challenge the set structures of society or make her own choices. Above all, society, which believes in keeping the family unit intact, will not provide her with support systems to leave a marriage, even in the face of violent abuse. It is hard for her to confide in her parents and when she does, they are

reluctant to interfere into the affairs of a married daughter as it may entail greater financial commitment or precipitate the return to her natal home, which is then a social liability. Parents who receive letters from their daughters, complaining of abuse, do not react to it until she is murdered and then start legal proceedings. Some even choose to ignore the murder in lieu of marriage to the younger daughter or return of assets. In almost all the cases of bride-burning that we dealt with in Kutch (Gujarat), the parents had prior information of the abuse that their daughter suffered but chose not to respond to her appeal, hoping that over the years everything would become normal

In her article, Nandita Haksar refers to a letter written by a woman before her death, in which she absolves her husband and his family of all responsibility for her death. She continues to refer to her husband as her "god-on-earth"/"master-on-earth" and feels that she would be better suited for him in her next birth. This is the education and orientation that an Indian girl receives from her family, her community and from the society at large. This inability to leave an abusive relationship contributes to her dependence and makes her tolerate spousal abuse. The question asked by society here is not "how can he" but "how much?" The fact that women have no other recourse but to tolerate the beating and other abusive behaviour is seen as her 'tolerance' and as a sign of her being a 'good' woman, who is committed to her family.

Lack of economic independence is another factor that contributes to keep women in abusive relationships. Even though women are entitled to a share in parental property, they cannot access it. A daughter or sister who demands her share runs the risk of ending her relationship with her natal family. She is seen as having a right only to the dowry she receives at the time of and after her marriage. Even over this she has no control as it passes on to her husband and his family. All of this contributes to her sense of dependence, and her vulnerability to abuse. To cite an example, while engaging in a discussion on the property rights of women, a young man spoke proudly about his sister who did not lay any claim to her share in their late father's property. As a matter of argument, when he was asked how he would have felt if she had claimed her share, he refused to acknowledge that something like that could happen and if the woman had claimed her property, she would not have been held in such high esteem.

The immediate cause of wife beating or of sustained violence is attributed to:

- Food
- Dowry
- In-laws
- Alcohol
- Frustration on part of the husband, due to lack of employment, other economic problems etc.
- Sex
- Birth control methods
- Coercing a woman to have an abortion (often due to the sex of the unborn child)
- Coercing a woman to have a child

The list of triggers is unending. None of these factors or triggers can justify abuse. Each impacts on a host of rights that the woman is denied. Many times, the trigger is also seen as the cause of violence and dealt with in that fashion. The women's movement in the Hills of Uttar Pradesh and other parts of the country includes a strong movement against liquor. It is their belief that liquor is the cause of domestic violence, especially spousal abuse. The money spent for alcohol takes away a lot of the household resources and leads to violence as well. The women in many organised sectors protest against the government run liquor stores and demand that they be closed. The movement has adopted many direct action techniques and advocacy with the people to control liquor sale. However, when there has been a complete ban, the Mafia has moved in with illicit liquor and the added complication of criminal activities. The real cause of abuse goes beyond these external causes.

Dowry is also seen as being a cause of spousal abuse or contributing to the violence experienced by married women in their marital homes. Dowry is an indication of the lack of humanism accorded to the woman and though it does impact on the experience of violence of particular women, it cannot be seen as the sole factor or a very important factor, which provokes or prevents violence. It is commonly believed that high dowries can buy some physical security for the woman. However, in the case studies of violence we collected, dowry was not even an issue in the relationship. Women were abused even in cases where the bride price had been paid.

Spousal abuse, we found, has a lot to do with the power factor, in a situation where the husband is assumed to be the owner of the wife. He can hit, he is allowed to hit, he is capable of hitting, it is accepted that he hits and therefore, he hits. Women are abused because they have been taught to be tolerant and because they cannot fight back. They do not have the resources to change the power equations.

While the National and State Commissions for Women have played a pro-active role in investigating dowry deaths, other State agencies responsible for the welfare of women have not set-up shelter homes or any other support structures for women who have suffered spousal abuse. Women, who have suffered spousal abuse and go to such agencies, are usually referred to NGO's who run shelter homes for battered women. The State agencies do not work to empower or rehabilitate the women but lay great emphasis on reconciliation with husbands, leading to a circle of violence that does not end.

The lack of specific laws against domestic violence also contributes to the escalation of abuse within the home. There are no laws to control an abusive husband and grant immediate relief to a battered wife. A woman cannot walk out of the marital home without money for her immediate needs, especially when there are children. This contributes to women staying on in abusive situations.

The police and the atmosphere in police stations are not conducive to women making complaints against abusive husbands. The attitude that assault and battering by a husband are not offences is reinforced by the police who take it upon themselves to counsel the woman, enacting the role of a big brother, advising her to return to her home rather than go ahead with registering a case. This attitude is what the woman continues to face at the

hands of her lawyer and the judge. Even the counselors that she will be sent to by the court, as a last ditch effort to reconcile her to the marriage, will focus on her returning to her marital home.

The factum of marital rape is unknown to Indian law and this vacuum prevents women from taking action against sexually abusive spouses.

### 4.3 Effect on Women

The continuous stress and trauma experienced by women in violent marriages has far reaching effects in terms of their ability to reconstruct their lives. Her ability to make decisions is completely compromised. Her right to bodily integrity is not even recognised by law, which accepts forced intercourse in marriage. The definition of statutory rape includes a wife below the age of 15 or any other woman under the age of 16, thereby excluding marital rape.

This complete absence of reflection of women's rights as human rights by the state is best illustrated by the refusal to guarantee, through law, the right over her own body. The constitutional guarantee of equality of all citizens is not reflected in other laws relating to the rights of women and where laws are in place they are not implemented. The exercise of rights by women then falls short of the constitutional mandate of equality of all citizens.

Lack of control over one's own body leaves no space for a woman to choose methods of contraception or space her pregnancies. A childless woman is stigmatised as barren and shunned by society. She is also seen as a bad omen. A woman who does not have sons is blamed for having only daughters. Modern technology and sex selective abortions are used to ensure a male child. The woman has no choice in these procedures.

Dowry-deaths add to the decreasing sex ratio in our country. A small study conducted in one burns ward of the King Georges Medical College, Lucknow, indicated that the maximum number of women admitted with severe burns or who died as a result of burns were between 18 to 38 years of age. The figures are given in the following table:

**Table 5: Study of Burns Ward, King George Medical College, Lucknow (Jan-May 1999)**

Age Group	Severe Burns	Died
Age unknown	3	3
18-28	11	17
29-38	14	3
39-48	4	3
49-58	Nil	1
59-above	1	2

Bride-burning is synonymous with dowry murders. It had been noticed over the last few decades that many newly married women died due to injuries caused by burns. The state then realised that these were not suicides but homicides. Brides were being burnt if they

were unable to satisfy the demands of their marital family. It is significant that the maximum number of women who were burnt or succumbed to injuries caused by burns happened to be in the age group of 18-38 and were married. There was not a single case where a man suffered injuries due to burns. In Uttar Pradesh a media watch exercise carried out over four months showed that a newly-wed bride is burnt to death for a demand of as little as a motorcycle, a buffalo, a gold chain or Rs.10,000/- (USD 200)!

#### 4.4 Government Initiatives

There are a number of structural programmes of the government that have the potential of addressing women's issues at this stage. In the State of Uttar Pradesh women who are victims of cruelty because of demands for dowry are provided financial assistance of Rs.100/- per month and legal aid of Rs.100/- per month. In the year 97-98, Rs.15.68 lakhs was spent for the former and Rs.16.64 for the latter, from an allocation of 31.81 lakhs and 32.25 lakhs respectively. A special state level Women Cell under the CBCID has been opened and is responsible for setting up all women police stations, to deal with cases of violence against women. The Cell also provides counselling services when the complaint refers to a marital dispute.

The State of U.P., through the following institutions can reach out to many women in the time of crisis and make their rights secure:

• Nari Niketans (Shelter Homes)	4
• Shelter/short stay homes	6
• Protection Homes	5
• Skill Up-gradation/training Refuge Home	4
• Home for Mentally Handicapped women	1
• Family Counselling Centre	24
• Orphanages	-

Most of these institutions are not sensitive to a woman's needs. There is no transparency in the way they are run. Our researchers were denied information about the protection home in Lucknow and they were refused permission to meet with the women in the shelter.

Since the Home was run under the control of The Central Social Welfare Board, permission had to be obtained from them, but the officer in charge was on leave for a month and no one else was empowered to grant permission. Our researchers also pointed out the lack of information available to women about how to access these shelters. There was such confidentiality that the social stigmatisation of women who availed of its facilities was inevitable. The lack of will to provide information bordered on the obsessive desire to ensure that no information was accessed.

The only focus of reproductive health, for more than 40 years, has been family planning and birth control. India has the oldest family planning programme in the world and perhaps the least successful. However, it has managed to ensure some degree of access to methods of birth control for women and that has helped them to access some measure of

reproductive rights. On the other hand, it has also made them vulnerable to increased violence and sex-selective abortions. In Uttar Pradesh, the most populous state in the country, the Government in collaboration with an NGO, State Innovations in Family Planning Services Agency, (SIFPSA), funded by USAID, has worked in the area of family planning. However, there are valid concerns and questions about its approach, which despite the Cairo Declaration, continues to have targets like the government programme.

## Law and Judiciary

Spousal abuse has never been viewed seriously or treated as an offence. There is no specific law to deal with violence within the home. Complaints filed by women are not viewed seriously and pressure is put on them to withdraw the complaint rather than investigate and file charges. Complaints of spousal abuse are filed under the general provisions for battery and assault and thus lose their impact. The Criminal Amendment Act of 1983 introduced Section 498-A to the Indian Penal Code, which is the only section providing relief to a woman who is abused in her marital home. The only acts of violence, which have been viewed with a degree of seriousness, are those relating to dowry and dowry harassment.

The increasing number of dowry deaths led to reassessing the effect of the Dowry Prohibition Act of 1961. Cases of cruelty and torture by the husband or members of his family, which drove a woman to commit suicide or murder of the woman by them, were numerous but the acts of cruelty against a woman were not restricted only to the question of dowry and so Chapter XX-A consisting of Section 498-A I.P.C was introduced to deal effectively with cases of cruelty to a married woman by her husband or members of his family. This was the reasoning behind what is termed The Criminal Amendment Acts of 1983 and 1986, which comprehensively amended The Dowry Prohibition Act, broadening the definition of dowry and its scope, introduced Section 498-A I.P.C, Section 174 of The Criminal Procedure Code, which calls upon the police to investigate a suicide or death of a woman, within 7 years of marriage, if her relatives ask for it and the death raises reasonable suspicion. Section 113A of the evidence Act was introduced, under which when a woman commits suicide within 7 years of marriage and the initial burden of proving cruelty is discharged by the prosecution then the husband and his family shall be presumed to have abetted the suicide. This presumption can be rebutted. These amendments introduced in 1983 did not stop the cruelty, suicides or murder and The Criminal Amendment Act of 1986, for the first time introduced the word dowry death into the law. The offence of taking dowry was made non-bailable. Section 304 B was inserted in the I.P.C., which defined the term dowry death to mean the death of a woman by burns, bodily injury or abnormal circumstances within 7 years of marriage, if it is shown that she had been subjected to cruelty or harassment in connection with a demand for dowry just prior to her death. Section 113 B of the Evidence Act was also added in 1986, it is mandatory in nature and states that if the prosecution proves that the woman was treated with cruelty just before her death the court shall presume that the persons concerned committed the offence of dowry death. This presumption can also be rebutted.

These amendments to the Dowry Prohibition Act, the substantive provisions of criminal law and the rules of procedure were necessitated by the low rate of conviction in cases of domestic violence resulting in harassment or death of women. The ill-treatment of the woman resulting in death or suicide is within the four walls of her matrimonial home, where she stands voiceless and alone and the law had to be amended to speak on her behalf.

**Implementation:** Except for the provisions relating to dowry and dowry harassment none of the other sections are widely used. If a complaint is registered, it is usually compromised or settled on monetary terms. An offence committed for dowry is cognisable and non-bailable, which means that the alleged offender can be arrested on the filing of the First Information Report and held in custody till bail is granted by a competent court. In spite of the amendments to the laws, prosecution of these cases is extremely difficult. The law shifts the onus of proof onto the accused, he is presumed guilty, changing the basic principle of criminal law that the accused is presumed innocent till proven guilty. The failure to get convictions in these cases is because of the mindset of the law enforcing agencies, they have not been sensitised to the issue of domestic violence. There are no special courts to deal with crimes against women and as the same law enforcing agencies, dealing with other criminal cases handle these also, the new principle of presumption of guilt is not easily enforced.

In spite of the amendments to The Dowry Prohibition Act a clear definition of dowry still eludes the judiciary. "Interestingly, the legal discourse does not construct a coherent definition of dowry. The succeeding amendments to liberalise the definition, the shifting emphasis on demand and agreement, and the frequent reversals of judgements reflect a competing sense of both, disquiet towards exacerbation of dowry as well as a complacency about the inequitable social structure which underlies dowry"<sup>37</sup>

As such, the entire situation is extremely fluid in terms of ending dowry, or violence related to it, or spousal abuse. Further, judgment after judgment, has openly illustrated the judicial vision of cruelty – physical or mental, as experienced by women<sup>38</sup>.

"A mere slap does not constitute violence"<sup>39</sup>

A number of socio-cultural views held by judges, inform their decision-making and it is therefore essential to examine the content of judgements not so much as to analyse the law but to challenge the manner and context in which it is applied. These prejudices do not flow from corruption but from personal experience and the theory of the 'reasonable man'. The theory of the reasonable man is a legal construct, which chooses to explain particular actions on the basis of 'what would any reasonable man do, in the same circumstances. It is also pertinent to note that a large percentage of judges are men. This test is under challenge by feminist lawyers, as seen in international cases like Kanwaljeet

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<sup>37</sup> M.Mehra "Exploring the Boundaries of Law, Gender and Social Reform", Feminist Legal Studies, Vol. VI no1 (1998)

<sup>38</sup> See Section 2:2 'Evidence of Discrimination', Forced Marriage

<sup>39</sup> 'Gender and Judges', a study by Sakshi

Ahluwalia, in the UK<sup>40</sup>. However, internally, this is still an area of problem, as in matters of domestic dispute, given that there is no specific law on domestic violence, this becomes the subject of ‘personal conditioning’, and reflects in the judgements.<sup>41</sup>

## 4.5 Case Study

The following case studies are from the workshops. Though each case study was different and unique, there were many underlying similarities. We have chosen representative case studies that bring out all the issues that need redress when responding to violence against women in the private sphere.

### CASE 1

S is an urban, post-graduate, upper-caste, 35-year-old woman and has been married for 10 years. She has two daughters from the marriage and has been an abused wife for the entire duration of her married life. In the beginning she would return to her natal home when she was abused. Her husband would come there, apologise and take her back. When S and her husband moved to another city she met a social activist through her children, with whom she also discussed the issue. The next time she was hit and pushed out of the house, instead of going to her family, she went to the activist and stayed with her for two days. She was adamant about not returning to her husband despite all his apologies and promises but she finally gave in because of her need to be with her children. Despite her education, she did not feel confident about her ability to earn her own living and support her children and felt that though she needed intervention to save her from physical abuse, she could not survive without the marriage.

Today, she lives with her husband and children and has started her own garment business. She is much more in control of her life. She strongly believed that the presence of her mother-in-law was the root-cause of the hostility and one of the conditions she imposed for her return was that the mother-in-law be sent back to her village. She believes her relationship with her husband has improved in the absence of her mother-in-law.

### CASE 2

K, 27, was a child bride who had six children before the age of 24, she has been married for 13 years. Of her children, only three boys and one girl have survived. Her husband R works in Punjab as a petty labourer while she lives with the children in the village. R visits the village once a month. She was told about birth control methods by the village Auxiliary Nurse Midwife (ANM). Being afraid of the copper T and other intrusive methods she opted for oral contraceptives but could not use it because of the side effects. She was then told about condoms. Her husband refused to use them and beat her. K shared this with the ANM who advised her to go back to oral contraceptives. K stopped taking the pills and three months later discovered she was pregnant. R wanted her to

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<sup>40</sup> “Sex, Gender and Law”, Susan Edwards

<sup>41</sup> Based on “Gender and Judges” Sakshi

terminate the pregnancy and when she refused, R physically abused her and attacked her with a burning piece of wood. Even the ANM advised her to have the abortion.

### **CASE 3**

In a village in Saharanpur, a women's collective meeting of the Mahila Samakhya programme was disturbed by the screams of a woman. The women ran to investigate and saw a man hitting his wife with an iron rod. The field extension worker intervened, snatched the rod from the man's hand and threw it away. This angered the man so much that he called a meeting of the men in the village and they decided, "a programme which interferes in our family matters and with our rights to chastise women, will not be allowed to function in the village." The District Programme co-ordinator and a consultant from Delhi had to talk to the men for more than 8 hours before a compromise was reached by threatening the closure of all development programmes in the village and police action. It was agreed that the husband should not have used an iron rod and that the field extension worker should not have snatched it but taken the woman away.

### **CASE 4**

C is 40 years old and a "soni" by caste. She is married and has 4 children and belongs to a village in District Banda. She has been a victim of domestic violence since the beginning of her marriage. Her husband would torture her because he did not like her speaking to other men. He would beat her after tying her up or hanging her over the well on the pulley. Other members of the family supported her husband's stand and never tried to rescue her from this violence. C's husband even sold her and their 15 year old daughter to the Thakurs of the village for Rs.10,000/-. They escaped before the Thakurs could take them and came to Karvi. Her husband followed her there and beat her up. As he gave C no money to run the house she started working. She joined the catering unit of Vanangana, a women's organisation. On 21.1.94 her husband battered her with a "Vasuka" and hammer, causing head injuries, he also cut her lips. The children took her to the Government hospital and reported this ghastly incident to Vanangana. On reaching the hospital, the Vanangana group was informed by C and her family members, including her own brother, that she has fallen from the roof. Being aware of the actual facts, Vanangana with the help of the police located the weapons used. Her husband is still underground while C and her sons wait to file a case.

### **CASE 5**

Y is an educated woman married to a Doctor who works in a government owned medical college. They have three daughters and live in an upper class government colony in the capital. At the start of the marriage, her mother-in-law and her husband used to physically abuse her. Y saw it as an effort to mould her according to their family values and tolerated it. In a span of 10 years she gave birth to three daughters by caesarian section, the third pregnancy against medical advice but because of family pressure to have a son. Her husband now threatens her with divorce and/or a second marriage. He uses the fact that she has three daughters to physically and mentally abuse her. Y has been living in constant fear of either being divorced or of her husband getting married again. She sought

help from a women's group and learned that a second marriage would cost a government employee his job and so decided to challenge her situation from within but she lives in a state of constant domestic conflict.

Analysis:

The above cases illustrate the different facets of violence and abuse meted out to women by their spouses. They face physical and mental abuse, their future within the family is not secure if they have not borne a son, they are unable to exercise their reproductive rights, technology is used to discriminate against them from conception and state agents fail to create awareness or enable women to access their rights, using them instead to achieve state sponsored family planning targets. Married women with children and with no economic support find it difficult to live on their own and are forced to continue in abusive relationships. The sheer indifference of all actors: perpetrators, family, community and state, to the violations suffered by women and the acceptance by the community of this violence, closes all doors through which they can access redress. In all the case studies it was the NGOs and women's organisations that formed the support structures.

#### **4.6 Recommendations**

- A comprehensive Act for the prevention of domestic violence, which is victim sensitive, focusing on redressing the situation, in addition to punishing the perpetrator.
- Extensive data collection and primary research should be undertaken by the state, in order to surface a realistic picture of spousal abuse so as to design better and more specific interventions.
- Accessible institutional support in terms of crisis centres, shelter homes etc., which also provide for children of the abused women.
- Transparency in formulating, running and monitoring these institutions should be ensured, as well as participation by the users of the centres.
- Women activists should be involved in the running of these shelters.
- Repeal sections 497 and 498 IPC, which deal with adultery and abduction of married women. The civil laws remedy of making it a ground for divorce adequately covers these acts of a woman leaving a spouse and the same does not need to be addressed by the criminal law statutes.
- An articulate policy on Violence against Women, which incorporates domestic violence and addresses the role and responsibility of the state and private actors in addressing the issue.

### **Rights at Dissolution of Marriage**

#### **Rights at Stake: Dissolution of Marriage**

- **Right to Life with Dignity**
- **Right to Freedom of Movement**
- **Right to Sexuality**
- **Right to Equality before Law**
- **Right to Equal treatment before law**
- **Right to Property**
- **Right to Custody and Guardianship**

Marriages can end in two ways, either by death or divorce. We have chosen to discuss these topics separately since widowhood is more than just a dissolution of marriage, however, the rights at stake for widows and divorcees are similar. Whether the marriage comes to an end because of an action taken by or defended by the woman, resulting in divorce or if it is because of the death of the spouse, where the woman had no part to play, the effects on the woman are not very different. In either case, the woman is single and this status bears its own stigma. Therefore, this chapter contains two sections. We will discuss divorce first since it is more directly related to dissolution.

#### **5.1 Divorce**

Divorce is an initiated action, wherein either the husband or the wife makes a conscious decision to end the marriage. There are many critical issues that are central to the decision and many issues that are to be considered before divorce is initiated. These issues are influenced by the woman's access to finance and the children. As in all other areas, the rights for women are not on par with the rights accorded to men. The personal laws differentiate between the rights enjoyed by women on the basis of the community they belong to. It is critical to examine the status of women in the context of these laws that limit their rights and their access to them.

##### **5.1.1 Evidence of Disadvantage**

India follows a plural system of law and the various religious communities follow their own laws for all matters placed in the 'personal' sphere. The majority of the rights placed in this sphere are related to rights within the family. Access to and exercise of rights in this sphere is important for the empowerment of women. The most critical rights being:

- Right to Divorce,
- Right to Maintenance
- Right to Matrimonial Property
- Right to Custody and Guardianship.

These rights assume greater importance if she has to break a marital relationship while being concerned about her ability to earn and her ability to see or be with her children. These issues are important to a woman, regardless of her religion or community. However, her rights are decided on the basis of her identity as a member of her community.

### **5.1.2 Contributory Factors**

The personal laws governing the different communities have provisions for initiation of divorce proceedings by women. However, the related rights of guardianship and custody, of maintenance and control of property, which are critical for a woman to be able to divorce, act as barriers as they are in favour of the husband. Social attitudes and absence of support systems further limit a woman's options to exercise her right to divorce.

Placing family law in a religious context allows the state to absolve itself of liability with reference to the rights of women in minority communities. Arbitrary usage of 'religious sentiment' as opposed to 'human rights' in the context of women has repeatedly served the state to garner electoral benefits with little concern for women as citizens. The plurality of personal laws add to the complexity of the situation, as the provisions for access to the same right differs, being based on the religion of the woman.

Like divorce, maintenance is also granted under the different personal laws. The disparity in the laws for the different communities adversely affects the rights of women. For example, the maintenance a Hindu wife is entitled to during a matrimonial proceeding has no ceiling and can be granted at the discretion of the judge, based on the husband's earnings, a Christian woman was not entitled to more than one-fifth of her husband's income. This ceiling has now been removed by the amendment act of 2001. Under the Muslim law there is no provision for maintenance after divorce. After the Shah Bano case and the passing of the Muslim Women's (Protection of Rights on Divorce) Act of 1986, Muslim women were denied access to maintenance even under the Criminal Procedure Code. This has been set right to a certain extent by the Supreme Courts interpretation of the Act in a recent case.<sup>42</sup>

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<sup>42</sup> Danial Latifi v Union of India 2001 (7) SCC 740

**Table 1: Grounds of Divorce/Nullity under Different Laws**

	Hindu Marriage Act,1955	Dissolution of Muslim Marriage Act 1939 (applies only to women)	Indian Divorce Act 1869 amended by Act 51 of 2001	Parsi Marriage & Divorce Act, 1936	Special Marriage Act, 1954
Cruelty	Husband & wife Sec.13 (1) (ia)	Wife Sec. 2 (viii)	Husband & wife Sec.10 (1) (x)	Husband & wife Sec.32(e)	Husband & wife Sec.27(d)
Adultery	Husband & wife Sec.13 (1) (i)		Husband & wife Sec.10 (1) (i)	Husband & wife Sec.32 (d)	Husband & wife Sec.27(a)
Desertion	Husband/wife Sec.13 (1)(ib)	Wife Sec 2(ii)	Husband/wife Sec 10 (1) (ix) (2 yr.)	Husband & wife Sec.32(g)	Husband & wife Sec.27(b),
Incurable Insanity	Husband & wife Sec.13(1) (iii)	Wife Sec 2 (vi)	Husband/wife Sec 10(1) (iii)	Husband/wife Sec 32 (b)	Husband/wife Sec.27(e)
Leprosy	Husband & wife Sec.13 (1)(iv)	Wife Sec 2 (vi)	Husband/wife Sec 10 (1) (iv)		Husband/wife Sec.27(g)
Venereal Disease	Husband & wife Sec.13(1)(v)	Wife Sec 2 (vi)	Husband/wife Sec 10 (1) (v)	Husband & wife Sec.32(e)	Husband & wife Sec.27(f)
Disappearance/ Missing/Presumption of death	Husband/wife (7Yrs) Sec.13(1)(vii)	Wife (4 yrs.) Sec 2 (i)	Husband/wife (7yrs) Sec 10 (1) (vi)	Husband/wife Sec 31	Husband & wife (7 yrs.) Sec.27(h)
Conversion to another religion	Husband & wife Sec.13(1)(ii)		Husband/wife Sec.10 (1)(ii)	Husband/wife Sec.32(j)	
Renunciation of the World	Husband & wife Sec 13 (1)(vi)				
No Cohabitation after judicial separation/decreed of restitution of conjugal rights	Husband & wife (1 year) Sec.13, IA(i) & (ii)	Wife Sec 2 (iv) (no co habitation without a decree)	Husband/wife Sec 10(1) (viii) (2 years after a decree of restitution)	Husband/wife Sec. 32 (h) (i)	Husband/wife Sec 27 (1A)(i) & (ii)
Mutual consent	Husband & wife Sec.13, B		Husband/wife Sec.10A	Husband & wife	Husband & wife Sec.28
Bigamy	Wife Sec.13(2)(i)			Wife - Bigamy with adultery Sec.32(d)	Husband & wife Sec.27(1)(A)
Rape, Sodomy, Bestiality	Wife Sec.13(2)(iv)		Wife Sec.10(2)	Husband & wife Sec.32(d)	Husband & wife Sec.27(I)(A)
Option of Puberty	Wife (before 18 years) Sec.13(2)(iv)	Wife (before 18 years and before consummation)			
Imprisonment for 7 yrs.		Wife		Husband & wife Sec.32(f)	Husband & wife Sec.27 1(c)
Impotency/non-consummation	Husband & wife Marriage voidable Sec.12 1(a)	Wife Sec 2 (v)	Husband/wife Sec 19 (1) for nullity	Husband & wife Sec.30	Husband & wife Marriage voidable Sec.25(i)
Fraudulent consent	Husband & wife voidable Sec.12(1) (c )		Husband/wife Sec 19 (4) for nullity		
Pregnancy at the time of marriage	Husband voidable Sec.12(1)(d)			Husband Sec.32( c)	

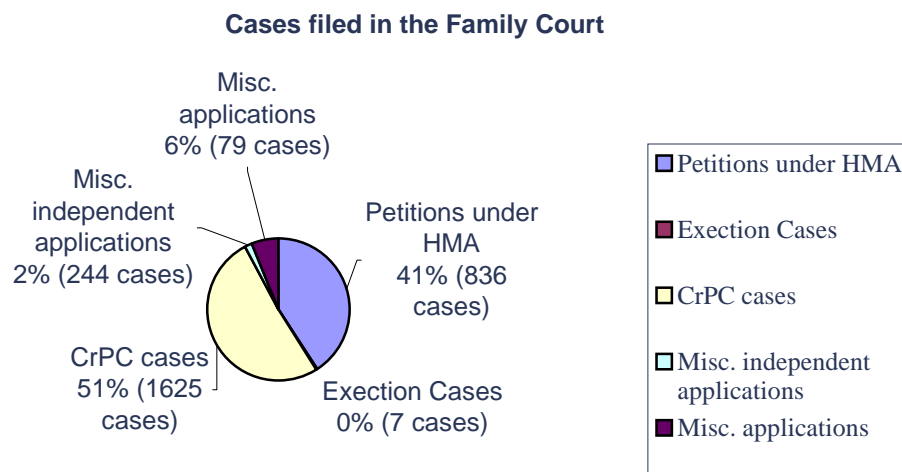
**Table 2: Maintenance of the Wife under Personal Laws and Secular Law** <sup>43</sup>

	Hindu Marriage Act, 1955 (Sec.25)	Muslim Women (Protection of Rights on Divorce) Act, 1986 (Sec.4)	Indian Divorce Act, 1869 (Sec.37)	Parsi Marriage & Divorce Act 1936 (Sec.40)	Special Marriage Act, 1954 (Sec.37)	Criminal Procedure Code 1973 (Sec.125)
Persons entitled to claim Maintenance	Either spouse	Divorced Muslim woman	Divorced or judicially separated wife	Either spouse	Wife	Neglected deserted (1) divorced wife
Persons bound to pay Maintenance	From the other Spouse	i.From the husband during the period of Iddat ii.From Children iii.From Parents iv.From other relatives who would be entitled for a share from her property v.From the State Wakf Board	From the Husband	From the Husband or Wife	From the Husband	From the husband or former husband as 'the case may be'
Conditions to Claim	If he or she is unable to maintain himself or herself	i.Unable to maintain herself and or not being remarried ii.If she is unable to maintain her iii.If children are unable to maintain her iv.If parents are unable to maintain v.If she has no such relatives or if such relatives have not enough means to maintain her, she has no independent living means		Wife being chaste and unmarried		i. Unable to maintain herself
Quantum of Maintenance	Discretionary but for a term not exceeding the life of the applicant	Discretionary	Discretionary but not for a term exceeding her life	Discretionary but not for a term exceeding her life	Discretionary but not for a term exceeding her life	Not exceeding Rs.500/- (This ceiling has now been removed by Act 50 of 2001)
Factors relevant for modification/cancellation	i.Change in the circumstance ii.Remarriage iii.Unchastity iv.Resumption of cohabitation after judicial separation	Remarriage	If the husband is unable to maintain her (Sec.37)	i. Change in the circumstances ii. Remarriage iii. Unchastity	i. Change in the circumstances ii. Remarriage iii. Unchastity	i. Change in the circumstances (Sec.27) ii. Remarriage (Sec.127) iii. Adultery iv. Refusal to live with husband without just cause v. Living separately by mutual consent vi. Any sum payable on divorce under any customary law has been paid vii. Voluntary surrender

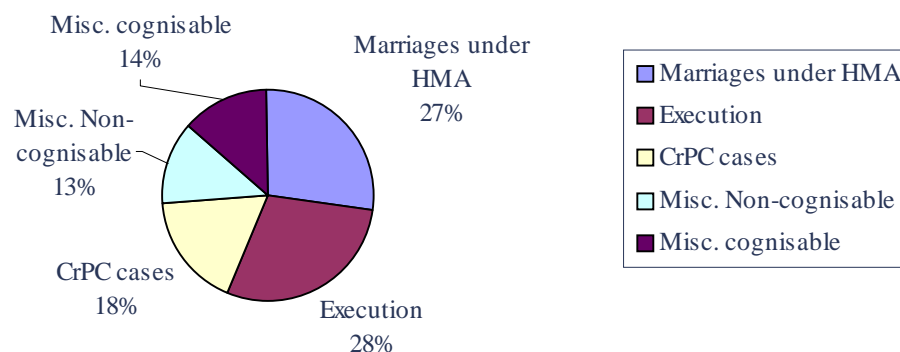
<sup>43</sup> Post Divorce Maintenance And Property Distribution In India, National Commission For Women

The above table shows that a deserted or divorced woman is entitled to maintenance under the law. However, her ability to access and enforce this right is made difficult because of the law's mandate of compromise and settlement.

The chart below illustrates the number of cases filed before one judge in the Lucknow Family Court and the manner in which the different types of cases were decreed. Petitions for maintenance under Section 125 of the Criminal Procedure Code accounted for 51% of the cases filed but only 18% of these petitions were ordered, as compared to 27% of the divorce petitions. Miscellaneous petitions connected to the original suit, accounted for 6% of the cases, of these only 13% were decided. These miscellaneous applications, for the most part, would be applications for interim maintenance. There seems to be an obvious reluctance on the part of the court to decide issues related to maintenance, which for women litigants is the most critical issue.



Rate of disposal before one Family Court Judge, Lucknow (Jan '00 to June '00)



The whole idea of divorce runs contrary to the idea of chastity, as understood and propounded by the Brahminical order, which has appropriated the right to accord values to practices. Traditionally the practice of divorce was prevalent amongst castes falling out of the “Varna” (caste) order but after the passing of The Hindu marriage Act in 1955 it was a right given to all Hindu women. In a society where sati is the ultimate model of a good wife, divorce presents the very anti-thesis of the concept of the good woman. The value attached to tolerating a bad husband and continuing in an oppressive relationship is accepted and justified on the basis of a woman’s duty towards her husband.

The Personal Laws of all religions make provisions for divorce, however the stigmatisation of the single woman by society contributes to her inability to access divorce. This stigma affects not only her as an individual but also mark her children and her natal family, affecting the chances of marriage of unmarried sisters. These disadvantages are in addition to the major problems of finding a job, access to legal procedures, financial security, housing and safety from sexual harassment as a single woman.

Religion becomes a contributory factor to prevent women from accessing divorce. All religions forward the concept of the need to keep the family unit intact and this duty is placed on women. Religious teachings then accord negative values to divorce, putting single women at a disadvantage for social and religious functions. For example, among Hindus, women who do not have husbands cannot carry out many religious rituals and divorced women are treated on par with widows. The demand of Shah Bano for maintenance, which sparked off a national controversy, was opposed by the community on the grounds of identity and interference with the personal laws of the community, which had no provision for maintenance after divorce. Shah Bano herself was under tremendous pressure and despite a positive order from the Supreme Court, never executed it. Religion and the community put the pressure on women not to access their rights.

### Socialisation

In the given social milieu, a divorced woman is seen as a single woman. This single status is stigmatised. The factors in that influence culture and tradition and prevent divorce are essentially the same as those that influence her choices, in the process of socialisation. Lack of support systems and economic resources, which keep women in abusive relationships, also keeps them from exercising their option to divorce.

The concept of divorce, unknown under ancient Hindu law was introduced into the community under the Hindu Marriage Act, 1955. The rising graph of divorce led to the passing of the Family Courts Act, 1984 and the setting up of Family Courts in many cities, focusing on litigation involving divorce, maintenance and custody. The underlying thrust of the Act is to keep the family intact. The government has also set-up Family Counseling Centers, other than those found in the Family Courts and Police Stations. These Centers also work on the same lines of preserving the family. When preservation of the marriage takes top priority and the cases are long drawn out, granting of interim

maintenance is not taken up as a priority even though it is of utmost importance to the woman who is forced out of the marital home.

A sample from the Lucknow Family Court illustrates the inordinate time taken for the disposal of cases. At the beginning of February 2001 there were 2483 old cases pending, 24 fresh cases were filed and 53 cases were transferred from other courts, of these only 114 cases were heard and decreed, leaving 2476 cases pending in the court.

Another example is the Family Counselling Centre (FCC) attached to the court. Of the 2561 cases brought to the FCC between November 1995 and October 1997, a total of 808 were resolved and 1753 were sent back to the courts, as a compromise could not be affected. This means 32% of the cases were resolved while 68% had to be referred back to the Family Court as the FCC was unable to resolve the differences between the parties, adding to the delay in legal procedures. Further, the only agenda of these counselling centres is to keep the family unit intact and enormous pressure is put on the woman to reconcile, without going into the root cause of her problems.

The laws governing divorce and its related issues of maintenance and custody contribute to keeping a woman in an abusive situation. The disparity in the grounds of divorce under the different personal laws leave women of some communities without proper recourse to end a marriage which is abusive. Further, the thought of losing children, even though by precedent the courts do not adhere to statute but looks into what would be best for the welfare of the minor, prevents an abused woman from accessing her right through the court. As stated earlier, long drawn out court procedures not only deprive her of maintenance but also drain her limited finances. Except for a section under the Hindu law, Parsee law, Indian Divorce Act and the Special Marriage Act for divorce by mutual consent, all other grounds are fault grounds. Introduction of irretrievable break down of marriage, as a ground for divorce would go a long way in shortening legal procedures.

The Declaration of the Government of India to Article 16 (1) of the CEDAW Convention is on the basis of non-interference with the personal laws of minority communities. As this has no bearing on The Hindu Code and The Special Marriage Act, the provisions of these laws could address the question of discrimination against Hindu women, which the State has failed to do. Further, the Declaration with reference to Article 16(2) results in the failure to take proactive steps to make the registration of Hindu marriages compulsory. This affects women who have to approach the courts for redressal of matrimonial rights, as the factum of marriage has to be proved before these rights can be enforced. When illiterate Muslim and Christian women have documents to prove their marriage, the stand of the Government that the customs, religions and level of literacy prevent compulsory registration of marriages cannot be accepted.

### **5.1.3 Effects on Women**

Looking at the disposal of cases there has been a reversal in the figures, with a decrease in the number of divorces granted and an increase in cases where compromises have been affected. This is in keeping with the basic premise of the Family Courts Act, to effect reconciliation and keep the family unit intact. Another reason for this shift is the tendency

of the men to file a petition for restitution of conjugal rights when a woman seeks maintenance. If the husband's petition is ordered, the wife is denied maintenance on the ground that she has deserted the matrimonial home without just cause or reason.

Given the existing disadvantages faced by women, the issue of economic justice is critical to them when exercising their right to divorce. The provisions of law pertaining to grant of maintenance and the way that they are implemented, the denial of a share in matrimonial assets and property widens the economical disparity between men and women. The Marriage Laws Amendment Acts of 2001 has made some space for women by incorporating provisions for passing interim orders of maintenance within 60 days.

A small survey of the Lucknow Family Counselling Centre indicates a procedure whereby the courts try to effect reconciliation rather than grant divorce.

**Table 3: Cases of compromise and divorce (1 January 1999 to 30 April 2001)  
Family Counselling Centre, Lucknow**

Year	Total no of cases disposed off	Number of compromises	Number of divorces
1999	185	79 (43%)	106 (57%)
2000	156	87 (56%)	69 (44%)
2001(Jan-April)	62	32 (52%)	30 (48%)
TOTAL	403	198 (49%)	205 (51%)

From the table below it is evident that in cases where compromise and settlement are reached, it is with great financial disadvantage to the woman, which would have far-reaching effect on her life choices.

**Table 4: Maintenance cases (23 July 2000 to 27 March 2001)  
Lok Adalat, Lucknow**

Month	Maintenance disputes	Total amount granted as maintenance	Average given to individual women, (One time payment: in lieu of monthly maintenance)
23.07.2000	21	206876	9851/-
22.10.2000	27	953650	35320/-
09.11.2000	08	129515	16189/-
07.01.2000	08	324615	40577/-
Total	64	1614647	25228/-

The law provides for monthly maintenance but during the conciliation proceedings many women opt for a lump sum payment. This protects them from having to take out execution proceedings in the event of the husband defaulting in payment of monthly maintenance. The lump sum amount granted in the above table is extremely low. The Below Poverty Line<sup>44</sup> mark in the country is set at Rs.1000/- family per month. If we take this as the base for our calculations, in the above mentioned cases, the amount sanctioned would last from 9 to 25 months.

<sup>44</sup> The standard recognised by the Government of India to identify poor families.

Another area that is crucial to women when they decide to separate or dissolve the marriage is the question of custody of children. The Courts have repeatedly held that the welfare of the minor is of paramount interest. It has also been held that “ a father’s natural right must give way where the minor’s welfare demands otherwise”<sup>45</sup>. It is therefore relevant to examine the statutory position.

The personal laws for all communities lay down that the father is the natural guardian of a minor child. In a recent case, a mother was unable to acquire relief bonds from the Reserve Bank of India for her child on her own initiative. When the matter<sup>46</sup> was taken to the Supreme Court, it held that the mother could act as the natural guardian. The court reinterpreted the existing provisions to mean that the inability or unwillingness of the father to fulfill all the obligations of a natural guardian would construe his absence and the mother was entitled to be the guardian of the child. The position of the mother as the guardian, after the father, is statutory. The judgment has not considered the inherent discrimination in the law, which does not recognise joint guardianship but grants natural guardianship to the father and after him to the mother. This places the mother at a distinct disadvantage as she has to engage with the complex process of the legal system to get a judicial order appointing her as the guardian, if the father is alive. The man suffers no such handicap leading to the state and private institutions recognising the father as the sole guardian.

Custody is a right that is distinct from guardianship. The following chart brings out the position with reference to Hindus, Christians and Muslims, as laws governing these communities have provided for custody and guardianship as separate<sup>47</sup> issues. The person who has custody of the child need not necessarily be the guardian of the child. In cases relating to custody of a child, the Courts view it from the angle of the welfare of the minor and the statutory provisions are not mandatory.

**Table 5**

	Mother	Father	Other
Hindu Law	Up to the age of 5, in most cases Under the proviso to Sec 6, Hindu Minority and Guardianship Act, 1956)	After the age of 5,	Father’s family, in the absence of both parents, Mother’s family in absence of Father’s family.
Christian Law	As above	As above	As above
Muslim Personal Law	(traditional view) <ul style="list-style-type: none"> <li>• Up to 7years for a girl</li> <li>• Up to weaning, for a boy, (2years)</li> </ul> (other view) <ul style="list-style-type: none"> <li>• Up to puberty for a girl</li> <li>• Up to 7 years for a boy</li> </ul>	<ul style="list-style-type: none"> <li>• After a girl reaches puberty.</li> <li>• After 7 years for a boy.</li> </ul>	As above

<sup>45</sup> Raman Koderan VS Ayyappan Panchali, AIR 1959 Kerala 396: 1959 KerLJ 208: 1959 KerLR 223: 1959 KerLT 280.

<sup>46</sup> Geeta Hariharan VS Union of India, A.I.R.1999 SC 1149

<sup>47</sup> Even though the father is the natural guardian, in cases of dispute for custody, the interests of the minor are supreme.

In the above situations a woman would risk losing custody of her children in the event of her wanting to leave the matrimonial home. However, the courts have intervened to ensure that the interest and welfare of the minor is paramount.

The woman who wants her marriage dissolved by a decree of divorce or loses an action initiated by her husband has the extra hurdle of court procedures to contend with. Women do not have economic independence nor are they equipped to earn their own living. This dependence on the family or the spouse makes a woman more vulnerable to abuse and also keeps her in a violent domestic situation. The lack of familial or state sponsored support structures makes it difficult for her to leave an abusive spouse. The woman has to also fight a legal battle for maintenance and custody of children. With long drawn out court procedures, the woman is not able to re-settle herself in a job or another place. The cost of these proceedings is a drain on her limited financial position. The effect of all this is that women have learned to accept domestic violence as their fate and this behavioural pattern is reinforced in the next generation of men learning to be abusive and the women adjusting to abuse.

#### **5.1.4 Government Initiatives**

The State initiative with reference to divorce was to set up Family Courts for quick resolution of family disputes. The Family Courts Act, 1984, in its preamble states that it is “an act to provide for the establishment of Family Courts with a view to promote conciliation in and secure speedy settlement of disputes relating to marriage” These Courts lay a great emphasis on the conciliation clause and have not implemented the directive for speedy disposal. Divorced women are given a very minuscule reservation in admissions to professional colleges and government jobs.

#### **Law and Judiciary**

**Section 125 Criminal Procedure Code:** This section of The Criminal Procedure Code ensures the right of women to be maintained. The rationale behind this section is to give a quick disposal to cases to prevent vagrancy. The maximum amount that could be granted was Rs500/- This ceiling has now been removed by Act 50 of 2001. The definition of ‘wife’ in this section has been enlarged to mean and include a wife who has been divorced.

**Implementation:** By Family Courts or Criminal Courts when the place of filing has no Family Court. The petition is filed in the court within whose jurisdiction the woman resides, making it easier for women to use this provision of law. As a criminal proceeding, the time taken for disposal is shorter. A warrant can be issued in case of failure to appear before the court or to pay the amount decreed and the fact that the failure to pay attracts a prison sentence is a deterrent against default.

**Interpretation:** This being a provision under the criminal law, it applies to women of all communities. However, divorced Muslim women were taken out of its purview by the passing of the Muslim Women (Protection of Rights on Divorce) Act, 1986. This act was

promulgated for the express purpose of excluding Muslim women and passed in the face of vociferous opposition by the women's movement. It is seen as a huge step back for the rights of Muslim women. The Act was passed to appease the fundamentalist group which saw the award of maintenance of Rs.175/- to Shah Bano, a 72-year old divorced woman, as interference with the Muslim personal law and hence, interference with their identity. Despite the Act, most courts have continued to grant maintenance to Muslim women in their identity as wives. However, as soon as an order of maintenance is passed, the husband comes forward with an unilateral divorce, pays the tiny amount of Mahar<sup>48</sup>, and insists that he has no other obligation. The Supreme Court in *Danial Lattifi v Union of India*, cited above, while upholding that the Muslim Women (Protection of Rights on Divorce) Act as constitutional interpreted the Act in a rather ingenious way making the man liable to “make reasonable and fair provision”, for the life time of the woman, during the period of iddat. This provision is in addition to the maintenance paid during the period of iddat.

Gaps: This provision did not take into account the earning capacity of a husband and limiting the maintenance to Rs.500/- prevented some women from accessing it. With the recent amendment more women are could use this provision but Muslim women are still precluded from its purview. Grant of maintenance is not to prevent vagrancy but enforcement of a right.

Critical concern: There must be speedy disposal of maintenance cases and where maintenance has been ordered the recovery of these amounts must be made easier by direct attachment of salary or income generating property so that the woman is not driven to take long drawn out execution proceeding for piecemeal recovery of the maintenance granted. The amendments of 2001 in the provisions relating to interim maintenance, directing the courts to pass orders within 60 days must be strictly adhered to.

### **5.1.5 Case Studies**

#### **CASE 1**

P, a Hindu had been married in 1973. She has one daughter. Her husband V who was an Engineer never contributed to the upkeep of the house. P took private tuitions and ran the home. In 1994 P was informed by one of V's colleagues that he was having an affair with one S, a former co-worker, for whom he had taken a house on rent. He was also maintaining S and her son by a previous marriage. P verified this and confronted V who became very abusive and pushed her out of the house. With the help of the police P was able to take out 2 suitcases of clothes for herself and her daughter. She was never able to recover anything else from the matrimonial home. V with the help of S impersonated P and cashed her dividends and sold her shares amounting to more than Rs. two lakhs. P filed a petition before the family Court for divorce in 1994 and a suit for maintenance in 1996 and a criminal case filed in 1996 for forgery and impersonation is pending before

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<sup>48</sup> It is a sum of money promised by the husband to the wife at the time of marriage, to be paid on divorce, in lieu of maintenance and is one of the elements of a valid Muslim marriage. The amount fixed is usually very small.

the local magistrate. The suit for maintenance was decreed ex-parte in March 2000 but P has not been able to recover any amount as V resigned his job and sold the matrimonial home, in spite of an order of injunction restraining him from alienating it. P is now driven to file a case against the purchaser. After 7 years P has had no effective remedy.

## **CASE 2**

R, a Hindu was married to N a businessman in 1987. They have 2 daughters. In 1995 N informed R that her father had suffered a heart attack and took her by flight to her father's house and left her there. Her father was well and it had been a ploy to get R out of the matrimonial home. R's clothes and personal effects were sent by N to her father's house. The children had been put into a boarding school the previous year. R did not know why she had been sent out. N wanted a divorce by mutual consent, which R refused to do. A few months later N filed a petition for divorce on the ground of adultery, alleged to have been committed by R with N's cousin. R filed an interim application for maintenance in 1996. N refused to return R's jewellery. He denied liability to pay maintenance on the ground that R was unchaste. Later R came to know that N was living with another woman P. R has no proof but N takes P abroad on his business trips and she is passed off as his employee. R was granted Rs.20,000 per month as interim alimony in October 2001. N is now negotiating a lump sum settlement of 25 lakhs to be placed in trust for the children.

## **CASE 3**

S is a Muslim who was married to a relative A. A year later she had a son, who had speech impairment. A got a job in the Middle East and was away for more than 2 years, when S was notified by post that A had divorced her by pronouncing talak before competent authorities. A married again and now has another child. S who is a qualified medical practitioner wanted to immigrate to Australia but her application was turned down, as the notification of the divorce was not accepted as termination of the marriage. S could not file a petition for divorce under The Dissolution of Muslim Marriages act 1939 as under Muslim law her marriage had already been dissolved by a divorce on A's pronouncing talak. S got over this situation by filing a suit for a declaration that the marriage had indeed been put to an end by divorce.

## **CASE 4**

J had married R in 1980 according to Christian rites and customs. After 6 months R deserted J. Her petition for divorce in 1986 was dismissed on the ground that adultery coupled with desertion or cruelty or bigamy had to be charged and proven. J then filed a petition of Judicial separation, which was allowed. When the courts interpreted the provision for divorce liberally and granted women divorce on the ground of cruelty or desertion, J was precluded from filing a case as an earlier petition had been heard and decided on the same ground. With the amendment of the Indian Divorce Act in 2001, J has filed for divorce once again.

## CASE 5

P, a Christian had married M, a Hindu, under the Special Marriage Act. P was a medical doctor with a lucrative practice while M was a less qualified bank employee. They had two children. M took all of P's earnings and bought a flat in his name. After 12 years of an abusive marriage P felt that M was trying to kill her. She left the house and with the help of the police was allowed to take only her clothes. She was not allowed to take her children. P went into a shelter for battered women and then into a working women's hostel. Her petitions for divorce and custody were taken up for trial about 3 years later. The court felt that the children were well settled with the father and so should not be disturbed. The fact that P had no home of her own went against her. P got her divorce but lost the custody of her 2 children.

### Analysis

The above case studies illustrate the difficulties faced by women when they approach the courts to enforce a legal right. Maintenance petitions are kept pending for years and if the woman is not supported by her natal family she is forced to return to the abusive matrimonial home. The Marriage Amendment Acts of 2001 have tried to remedy this by directing the courts to dispose interim applications for maintenance within sixty days but this is not a mandatory provision.

The case studies also highlight the disadvantage faced by women because of the being governed by personal laws, which are steeped in culturally influenced beliefs rather than on a conceptual understanding of human rights.

The handicaps faced by Christian women had been highlighted before national and international forums leading to the amendment of the Indian Divorce Act and Act 51 of 2001 should to a certain extent mitigate the discrimination and hardship faced by women under the Christian law. All of the women in the case studies were forced to leave the matrimonial home without being allowed to take any asset that belonged either exclusively to them or which had been acquired during the marriage. The concept of division of matrimonial assets is not recognised under the law nor is there any law against domestic violence making provision for a woman forced to leave the matrimonial home. The provisions relating to grant of maintenance are linked to the notion of preventing vagrancy rather than enforcement of the woman's right. The fact that the mother is not the legal guardian under the law gives rise to the fear of losing custody of children. This becomes bargaining point where husbands barter their right to custody of children for the woman's right to maintenance. The effectiveness of the Marriage Amendment Act of 2001 has yet to be tested in the courts of law.

Further, a look at the past legal practices makes it clear, that often the mere existence of a right is not enough. Hindu women have had right to maintenance for over four decades, with very little ability to practice it, as social norms dictate the manner in which courts function, and they then become a space of further violation rather than support and help.

## 5.2 Widowhood

When a marriage comes to an end by the death of a spouse the impact of this loss on the living spouse and his/her ability to cope is influenced by the social ambience in which they live. The acceptance of and sympathy for widowers, but not for widows, is a situation that leads to the rejection of these women. Sometimes this rejection is mitigated by the extra-ordinary circumstances of widowhood, for example, war-widows, but it is never excused. The hardship they face may be different but it still exists. What informs this mass psyche is the memory of sati, where a woman would die with her husband rather than live without him. If divorce is looked upon as the betrayal of one's promise, then widows, it must be assumed, have done no wrong. They have remained in the marriage till the death of their spouse. One would therefore presume that the social and legal system would do everything to ensure that the rights of widows would be made secure and accessible. However, the response reserved for the widow is one of outright rejection that unless she has a son, her life is not worth living.<sup>49</sup>

We should note that the statistical data for this section is rather old, most of it being from Martha Alter Chen's book 'Widows in India', published in 1981. While revising this report, we made an effort to find more up to date information to incorporate, however we found that little research has been done on this topic in recent years and the information that was found was not as helpful as Chen's original tables.

### 5.2.1 Evidence of Disadvantage

After the Kargil war with Pakistan much national attention has been focused on the fate of war widows. The number of deaths and the sheer number of bereaved women has led to sizeable resources being allocated by the state, community and other philanthropic institutions for the settlement of the bereaved families. It has created a unique situation where even communities which had never heard of levitate were forcing young widows to marry the younger brothers of the dead soldiers. The young widow becomes the centre of dispute between her natal family and her husband's family because of resources that have been allocated in her name<sup>50</sup>. She is now a pawn in the game of access to resources. Her own agency has been severely limited and instead of being empowered she has become even more vulnerable to exploitation. This is a clear indication that the state needs to do more than merely hand over resources to address the issues related to widowhood.

India has a population of more than 33 million widows, who account for 8% of the total female population. Among women over the age of 50 the proportion is as high as 50%, which is perhaps the highest in the world. In rural India, widows represent 3% of women between the ages 15-35, 30% of women between the ages 35-39, and 60% of women above the age of 60. One of the most important reasons, for the presence of such a sizeable population of widows is the fact that very few widows remarry<sup>51</sup>. The tables on

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<sup>49</sup> Dhagamwar, Vasudha, "Law, Power and Justice" Sage Publications.

<sup>50</sup> Indian Express, "Forced Marriages of War-Widows", August, 1999, Annex 6

<sup>51</sup> Introduction (p 28-29) - Widows in India, Ed Martha Alter Chen

the following pages record the population of widows in different states in rural areas and widowhood in different age groups.

**Table 6: Incidence of Widowhood in Rural Areas: Interstate Contrasts (1981)<sup>52</sup>**

State	Widows as % of rural female population	Ratio of widows to widowers in rural population	Proportion of Rural Indian widows living in the state	Average age differential at marriage (years)*
Andhra Pradesh	10.5	4.3	10.5	5.7
Tamil Nadu	10.4	3.9	8.2	5.8
Karnataka	9.9	4.6	6.4	6.7
West Bengal	9.5	6.0	9.1	6.5
Maharashtra	9.3	4.4	9.3	5.4
Orissa	9.2	3.7	5.3	5.1
Kerala	8.9	7.7	4.6	5.5
Madhya Pradesh	8.0	2.6	8.0	4.0
Himachal Pradesh	7.7	2.5	0.8	4.7
Bihar	7.5	2.5	11.1	4.9
Rajasthan	7.2	2.4	4.6	4.2
Gujrat	7.0	2.9	4.0	3.6
Uttar Pradesh	6.5	1.4	13.8	4.3
Jammu & Kashmir	5.7	1.4	0.6	5.0
Punjab	5.5	1.6	1.5	3.3
Haryana	4.9	1.5	1.1	3.9
India**	8.2	2.9	100.0	5.0

Notes: \* Difference between the mean age at marriage of males and females (rural and urban areas combined),

\*\* Excluding Assam, where the 1981 census was not conducted.

<sup>52</sup> Source: Dreze (1990), table 6 based on 1981 census data. The states are arranged in decreasing order of the proportion of widows in the rural female population. Quoted in: "Widows in India" Ed. Martha Alter Chen, P 438-439.

**Table 7: Incidence of Widowhood in Different Age Groups and Regions (1981)<sup>53</sup>**

Age Group	North	Central West	East West	South West	All India*
0-9	0.0	0.0	0.0	0.0	0.0 (0.0)
10-14	0.04	0.04	0.03	0.03	0.03 (0.03)
15-19	0.2	0.3	0.3	0.2	0.2 (0.1)
20-24	0.5	0.7	0.9	0.9	0.7 (0.5)
25-29	1.0	1.5	2.0	2.0	1.6 (1.0)
30-34	2.1	2.9	3.6	4.3	3.2 (1.6)
35-39	3.6	5.0	6.3	7.0	5.5 (2.3)
40-44	7.9	9.6	12.3	13.7	10.8 (3.8)
45-49	10.0	14.8	18.1	19.8	15.5 (5.0)
50-54	24.1	27.5	32.2	34.2	29.4 (8.0)
55-59	20.1	30.6	32.7	40.6	30.5 (9.8)
60-64	48.7	55.3	58.1	61.3	55.6 (14.9)
65-69	44.0	59.8	61.5	66.8	57.6 (17.8)
70+	70.5	78.4	78.3	83.4	77.2 (27.8)
All Ages	6.5	8.3	8.5	10.0	8.2 (2.7)

Notes: \* In brackets, the corresponding figures for males.

Source: Dreze (1990), table 6 based on 1981 census data. The different regions have been defined as follows:

North-West: Haryana, Himachal Pradesh, Jammu and Kashmir, Punjab, Rajasthan, and Uttar Pradesh

Central- West: Gujrat, Maharashtra, and Madhya Pradesh

East: Bihar, Orissa, and West Bengal

**In the Jharkhand region of Bihar, of 95 cases of Santhals killed by Santhals, over a 30-year period, 46 were witch-killings, 42 of the victims were women, most of them were widows with land.**

**(Kelkar and Nathan 1991)**

"The belief in Dakans is deep rooted in adivasi mind. When I was talking about dakans to Kesarben (the District Social Security Director), who did not seem to have much awareness of this belief, she called her peon who was an adivasi) and asked him, "Dakan hoi? Dakan boli nai shu karai?" (Do witches exist? What do people do about them?). The peon replied, "Dakanao hoi ben, mari nakhvi pade!" (Yes, sister, witches exist no doubt, and they have to be killed!)" Bela Bhatia on Page 432n 20, "Social Action with Rural Widows in Gujrat", in Martha A Chen's "Widows in India".

<sup>53</sup> Quoted in: "Widows in India" Ed. Martha Alter Chen, P 438-439.

South: Andhra Pradesh, Karnataka, Kerala and Tamil Nadu. This regional division is based on Agarwal (1988)

The extent of the impact of widowhood on the lives of women can be further determined by a casual visit to Vrindavan, Varanasi and Mathura. Here the community angle of the issue is also etched clearly. Most widows begging, singing 'Bhajans' in temples or being sexually exploited, are Hindu, and quite often, Bengali Hindu. The widows, who have sought refuge from specific temples, toil all day long, cleaning, singing, cooking etc, and in return receive a fistful of rice and two Sarees every year<sup>54</sup>.

The other issue that marginalises widows is the belief in 'Churel' or 'Dayan' or 'Dakan,' which all mean witch.

The primary issue before the widows is one of survival and of survival with dignity. In some village communities in South Bihar and eastern UP, we came across instances in which women have been chased out of village communities or the village itself or even murdered on the basis of allegations of being a 'churel'<sup>55</sup> or a witch. Any mishap that takes place in a village, death of children, destruction of crops or of livestock, can be interpreted as an indication of a witch being active in the area and the woman so identified, would in many cases be a widow<sup>56</sup>. This becomes an excuse to do away with the widow who would otherwise be a claimant to property of her deceased<sup>57</sup> husband.

### 5.2.2 Contributory Factors

Religion has a great impact on the status accorded to a widow. A Hindu widow faces a lot more discrimination and violation than widows from other communities. Traditions that have deep-rooted religious overtones impact more heavily on the Hindu widow. The significance of religion and tradition can perhaps be best understood in the context of widowhood.

Historically, it was Hindus who have had the tradition of Sati. Sati means a 'woman of truth.' However, it is used to describe an act in which a woman, whose husband has died, ascends the pyre with him and burns herself along with his body. This act is fairly region specific, being found in parts of North India. It was a practice that was evolved to resolve the issue of widowhood. According to Hindu practices and belief, a woman was born to be subservient to man. Her husband was 'god on earth'. Men had to strive for their salvation but all that women were required to do was to be good wives and serve their husbands devotedly. Even if the husband was "a drunkard, a womaniser and cruel to her",

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<sup>54</sup> See Media Clipping Annex 7

<sup>55</sup> Also known as "dakans" or "Dayans" in other parts of the country. According to Martha Alter Chen, widows are sometimes killed as witches. The main motivation has been economic, the accusers and murderers being male relatives who wish to control the land.

<sup>56</sup> We came across this in the workshops held in Bihar, and in some case studies from Varanasi, as well as on Pg. 52; 55 n6, 213, 423, 432 n20 of the "Widows in India"

<sup>57</sup> Ibid.

it was her sacred duty to serve him without complaint.<sup>58</sup> Once the husband died, the very purpose of her existence was over except in special circumstances like the presence of suckling child. The woman therefore had two options:

- to be dead
- to live in a state of "social death"<sup>59</sup>.

This custom has strong linkages to economic rights as well. In Bengal, where the Mitakshara School of law was followed till the introduction of The Hindu Succession Act, 1956, widows were entitled to a lifetime share in their husband's property. On her death the property reverted to the heirs of her late husband. It is in this region that sati has been practised to a great extent. The majority of the widows who have sought refuge in Vrindavan, Mathura and Varanasi are from Bengal. It can be assessed from this, that the people resented even the temporary alienation of interest in the property to the widow. This perhaps led to the building up of social and religious pressures to commit sati. One of the foremost fighters against this social evil was Raja Ram Mohan Roy, a social reformist from Bengal, who is also one of the pioneers of the Hindu reformist movement.

It is relevant to point out that this practice of institutionalised discrimination against widows is unique to Hindus. However, due to social and cultural influences and a persistent memory of familiar ideology and socially, widows are seen as incomplete persons by other communities as well.<sup>60</sup> Re-marriage is acceptable in a certain age group and within certain caste groups or sometimes in certain regions for specific reasons, but the chances of remarriage are slim, as very few men want to marry a woman who has already been married. This is because of the high premium on chastity as well as the indoctrination that a man does not want a woman who has belonged to another man. Even though the other communities do not follow regressive practices like the Hindus, there is no complete integration of the widows into the community. Widowers in India do not face any such discrimination.

Another form of discrimination against widows is the structured and conscious marginalisation that is practised as a part of the rituals. The manner in which the bangles of a Hindu widow are broken, her sign of marriage wiped off, her colourful clothes changed for white ones, are all violent in the way they drive home the message of widowhood. Overnight she becomes a symbol of inauspiciousness. She cannot participate in any of the auspicious occasions of the family. To quote:

"A widow's social death stems from alienation from reproduction and sexuality, following the loss of her husband, and her exclusion from the functioning social unit of the family. Once a wife ceases to be a wife (especially if she is childless) she ceases to be a person, neither daughter nor daughter-in-law."<sup>61</sup>

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<sup>58</sup> Manusmriti: Instructions written by Manu, a Hindu philosopher of ancient times, who is considered the father of the Sanatan movement, which refers to the "true" Hindu path.

<sup>59</sup> Page 87, and Pg. 64 Widows in India Ed. Martha Alter Chen.

<sup>60</sup> "Widows and Property Rights: A Study of Two villages in Bihar", Seema Misra and Enakshi Ganguly Thukral, in "Widows in India: Social Neglect and Public Action", Ed: Martha Alter Chen

<sup>61</sup> Page 64, Gender, Caste and Labour: the Ideological and Material Structure of Widowhood: Uma Chakravarti, in Widows in India: Social Neglect and Public Action, Ed. Martha Alter Chen.

Socialisation of widows to accept the social verdict of the community is one of the more serious processes of the social system. This in earlier times included physical symbols such as tonsure, giving up of the auspicious symbols of marriage, putting on sombre clothes etc. This prepared the widow for the severe lifestyle she was expected to live after her husband's death. The extent of value added to women, who die before their husbands, the worship offered at the shrines of the 'Sati Matas', or women who have committed sati, all emphasise the benefits of dying a 'suhagan', (married woman).

### 5.2.3 Effects on Women

Martha Alter Chen, in her book "Widows in India: Social Neglect and Public Action", describes the social marginalisation of widows as taking one of the following forms:

- (i) Rumours and accusations: widows are often accused of being responsible for the death of their husband, regarded as sexually threatening and generally considered as inauspicious,
- (ii) Enforced dress and behaviour codes: many widows are under strong pressures to follow a repressive dress code, appearance and behaviour. Some of the traditional restrictions (e.g. shaving of head) have become rare; even among the upper castes, but others (e.g. not wearing the symbols of marriage) remain widespread.
- (iii) Social ostracism: a widow is often excluded from the religious and social life of the community, due to her perceived inauspiciousness.
- (iv) Physical violence: violence against widows primarily takes the form of sexual harassment (young widows being considered as sexually vulnerable and/or promiscuous) or property-related violence (many widows being seen as unwanted claimants on ancestral property).<sup>62</sup>

Even though these practises are most common among the Hindus, other forms of similar discriminations are practised against widows of other communities, in order to remind them of their widowed status and ensure their compliance with the social norms of widowhood.

Further, the socialisation practises, also keeps the widow from demanding her right in her natal home and ensures that she understands that her right in her husband's family is limited. In the event of her having no children it is extremely difficult for her to claim and control her share. She is seen as not possessing any real rights and as an outsider claimant to the land. Widows are not supposed to have desires for worldly goods and any attempt to claim property, is translated as a desire for worldly things. Suffering and sacrifice are the hallmarks of a good woman and especially so for a widow. A married woman eats after every one in the family has eaten but the widow eats only one meal a day. This is

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<sup>62</sup> Page 25, "Widows in India: Social Neglect and Public Action", Ed. Martha Alter Chen.

supposed to keep her life style ascetic and her desires low. Finally, it is to control her sexuality.

In certain states, where widow remarriage is common, levirate marriage<sup>63</sup> is practised. The widow does not exercise her right to choice. She is to remarry in the family of the deceased, preferably the younger brother or any other willing male of the same generation, irrespective of the age. In one case, a four-year old boy was married to a 30-year widow. In other cases, fathers-in-law have claimed the widow. Her own choice and decision are not seen as relevant and the sexual exploitation of the widow is an accepted tradition. A widow who refuses to remarry is looked upon with suspicion.

It is often forwarded, that in order to avoid sexual exploitation widows committed sati. Rajasthan is dotted with sati temples, where women have committed sati in order to avoid capture by the winning forces. This again is related to the honour issue, wherein women are seen as the honour of the community and cannot be made impure by others. These mixed messages are due to varied caste and community based practises. The debate is whether sati was evolved to save the honour of the women or to deprive them of property rights while the issue of a woman's right to life is not addressed.

Under the ancient Hindu text a widow did not inherit the property of her deceased husband. Under the now repealed Hindu Women's Right to Property Act, 1937, women were given a limited estate or life interest, which under the Hindu succession Act, 1956, has been enlarged as her absolute property. The fact that a woman could hold onto property for her lifetime led to deifying sati or abandonment in Vrindavan and Mathura. It is very difficult for a woman to access her share in the property of her deceased husband especially if she is childless. Except for paltry sums distributed under pension schemes the State machinery has chosen to ignore the plight of widows. Lack of financial resources coupled with social ostracism contributes to the marginalisation of widows.

Widows also face economic hardship. Under the law, a Hindu widow, without any other means, is entitled to be maintained by her father-in-law, but this rarely happens. The widow is entitled to a share in her deceased husband's property but this is hard to access without recourse to courts. In regions where remarriage of widows is practised, it is difficult for her to resist a forced second marriage. The ability to live in a place of her choice is restricted as she can be easily sent out of the community or village in the guise of witch-hunting.

#### **5.2.4 Government Initiatives**

Widowhood has attracted a lot of state interest, even from the time of partition, when the state had to suddenly face a host of women, rendered widows or abandoned by their families for various reasons. Even earlier, widows have somehow been seen as a state issue and responsibility and the state has taken steps to provided for them in some measure. Its interventions have taken the following forms:

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<sup>63</sup> Chowdhary, Prem, "Economy of Production and Reproduction in Colonial Haryana", in "Widows in India" Ed. Martha Alter Chen.

- Widows pension of Rs.100/- per month
- Training/skill up-gradation in traditional crafts like knitting etc.
- Incentive to others for rehabilitating the widow through marriage.

The most popular programme for widows, initiated in 1971-72, continues to be the widow pension scheme of Rs.100/- per month, which is sent by money order to the widow who has no other means of survival. This amount is supposed to benefit other dependants of the widow also. The state runs training centres for widows, where they receive skills training in knitting and embroidery, to help them earn their living. In another scheme, a man marrying a widow below 35 years of age is given Rs.11,000/- as an award. In the year 1997-98, Rs.71.50 lakhs was spent on this scheme but there is no follow up data to assess its impact.

Gaps: Most of the state sponsored schemes centre around payment of paltry amounts to the woman in need or giving money as incentives to men marrying them. The state has not taken any concrete steps to empower these women or rehabilitate them in surroundings outside of a family unit. Unless the state takes steps to educate or train them to be financially independent, these state sponsored schemes make no real difference to the lives of women.

### **5.2.5 Case Study**

#### **CASE 1**

D, a tutura by caste and Hindu by religion is 30 years old. She is illiterate. She was married 20 years ago and has three children. Her husband died 5 years ago. Her financial condition was stable before her husband's death and continues to be so even after his death. At the time of her marriage she was given some jewelry and Rs.200/- as dowry. Her uncle and aunt had arranged her marriage.

D does not want to have a second marriage. She wants some women's organisation to help her because she feels she has been shunned by society. D was helped by the Jan Nirman Mahila Sanstha to find a job. D worked as a laborer for some time, then took a loan from the organisation and started her own business. She still remembers how she was treated by society, how she was abused and beaten because she was a widow.

#### **CASE 2**

R, 30 years old is a Harijan by caste and a Hindu by religion. She is not educated and at present is working as a labourer. When her husband was alive she never went out of the house to work but after his death she had to work and earn for herself and her children. Before her husband's death she managed to run the house with the money he gave her. She has four children, 2 sons and 2 daughters. Her husband died 2 years ago. At the time of her marriage she did not give any dowry. Her parents had arranged her marriage.

She wants to marry again but her in-laws are against it. Her younger brother-in-law sexually exploited her. R did not have any space to articulate her feelings nor was there a

women organisation in her area to help her. Her parents were not willing to give her shelter.

R is now being given financial assistance from a social organisation. She accepts she has not received any help from the community. The organisation has also helped her leave her husband's home where she was being sexually exploited and today her condition is much better.

### **CASE 3<sup>64</sup>**

In a village in Gujrat, a militant and active widow in her mid-40s, who was aware of her rights, was exercising control over her inheritance. She was brutally murdered by her nephews who alleged that she was a witch. The caste panchayat, a strong body of the community, which normally intervenes, turned a blind eye because of the political and money power of the murderers. The organisation addressing the issue was able to raise awareness against the perpetrators but unable to achieve justice through formal structures.

### **Analysis**

The above case studies are a clear indication of the situation of widows. Access to their rights is further complicated by their vulnerable status as single women. This deprives them of a life with dignity. Their presence is seen as inauspicious and even their families shun them. Very few find the support of the community or family. In situations where remarriage is a viable option and socially acceptable, it is the question of control over property that is central to the issue and not the woman herself. The other reason for permitting remarriage is for control over her sexuality, which is now the responsibility of the in-laws. The only way she can access control over resources, which were hers, is to accept levirate marriage, here it is not necessary for the man to be single. This man then has actual control over the land that the widow would have received from the dead husband. What is ironic is, that after this said remarriage, if the second husband were to leave the woman, he would still have control over this land. However, the only way a woman can continue to exercise some right over the land is through continued domicile in the marital village through this remarriage. This litany of control, deprivation and violence is evidence of the ways in which widows experience violation of their rights. This helplessness makes them vulnerable to domestic violence. There are many case studies that refer to domestic violence by sons against mothers and of other family members against the aged and the infirm and in most of them the victim is a widow.

Even the present re-settlement of war-widows has brought to the fore the lack of commitment to do something to really empower the widows. The war-widows of the 1971 war have come out to talk about the lack of political commitment to their re-settlement and the recently rehabilitated Kargil widows are talking about the pressures on them from their families as well as the lack of actual rehabilitation. The state has not given proper thought to their resettlement or to their future. Further, by engaging in

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<sup>64</sup> Drawn from "Social Action with rural widows in Gujrat", Bela Bhatia, in "Widows in India"

getting the war-widows remarried<sup>65</sup>, it continues to subscribe to the stereotypical image of marriage as the final and only permanent settlement for women regardless of the continued exploitation being faced them. The focus is on settling the widow and not on empowering her.

On the 11<sup>th</sup> of November 1999 there was a report of ‘widow-immolation’<sup>66</sup>. A 55-year old woman immolated herself on the pyre of her deceased husband. The debate that it sparked was completely focused on whether it was sati or suicide and the general opinion was suicide. The feminist debate ranged from, poverty of the dalit village, to demands of arrest, to ignoring the entire incident, to demands that no one be arrested. The one issue that all groups were in agreement with was ensuring that no temple be built and all attempts at glorification or deification discouraged.

No analysis has yet gone into the role of the state or the responsibility of the state in ensuring that such incidents do not happen. In 1987, after the incident of self-immolation by Roop Kanwar, The Commission of Sati Prevention Act, 1987 was passed. The state has refused to engage with the issue beyond this and has failed in its obligation to provide enabling situations for widows. The Act has not been implemented in the other incidents of widow self-immolation and no steps have been taken to discourage the building of temples. The state has taken no proactive step to denounce this practice as a social evil.

The immolation of Charanshah on 11<sup>th</sup> November, ’99 is a clear indictment of the state and its policies. The state was well aware that the region has witnessed other such incidents, this village is named for a widow who is said to be a “sati” and less than 100 kms. from this village is another temple constructed in the memory of another widow-immolation in 1979. Now the debate over this incident, as to whether it is a suicide or sati demonstrates the lack of will on the part of the state to implement its laws.

### **5.3 Recommendations**

- Laws should be framed for the recognition and division of matrimonial assets.
- Engage proactively with the religious and cultural factors that have contributed to the lack of options available for single women.
- Frame a policy on single women and popularise it using the media.
- Involve and engage abandoned single women in addressing their own situation so as to empower them.
- Re-examine the welfare schemes, especially the ones focusing on re-marriage and meager pensions, to evolve better and more strategic interventions.
- Design institutional support for abandoned women.

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<sup>65</sup> Nari Samvaad, 1 June 1999, p 17, annex 8

<sup>66</sup> The Pioneer, 12<sup>th</sup> November, ’99, annex 9

- Adopt a cohesive and crosscutting approach that involves the various segments of the state and society in addressing the situation.
- A white paper on the interventions made for Kargill widows and the impact of the interventions. The paper should also disclose the resources spent from the state and other agencies on the rehabilitation effort.
- Immediate action to redress the situation of abandoned women in Varanasi, Mathura and Vrindavan and a strict implementation of The Commission of Sati (Prevention) Act 1987.
- A time-bound commission to report on the homes for destitute women.

## CONCLUSION

### 6.1 General Concerns

#### Civil Law Remedies

The state seems only interested in the rights of women when the women are single due to a fear of this status causing them to become corrupt or “bad” women. Due to these concerns civil laws have gone to great extents to ensure that families do not break up, that woman do not leave abusive situations because the idea of a single-adult-woman is more threatening than that of an abused wife.

The amendments to the Indian Divorce Act of 1869 have been a step in the right direction but it could have been used to bring uniformity into matrimonial laws. Under this amended Act a petition for divorce by mutual consent can be filed after 2 years of separation while under the Hindu Marriage Act and The Special Marriage Act the basis for action is one year of separation. Similarly, non-resumption of cohabitation for a period of 2 years after a decree for restitution of conjugal rights is a ground for divorce for Christians while under the Hindu Marriage Act and The Special marriage Act the ground is non-resumption of cohabitation for a period of one year after a decree for restitution or judicial separation.

The anomalies between the matrimonial laws governing the different communities are detrimental to the interests of women and are issues that must be bridged. The right that Muslim men retain for divorce without judicial intervention also causes grave concern.

Recognising the obstacles faced by women in reaching the system and accessing it directly every district has a legal aid cell, under the aegis of the State Legal Aid Board, which provides free legal aid, information, holds legal awareness camps and facilitates Lok Adalats<sup>67</sup>. In 1995, in Lucknow, The Legal Aid Board set up a Family Counselling Centre under the Legal Services Authorities Act, 1987. This centre functions twice a week. These services are provided free of cost and most of the cases are decided within 3-4 months. The mandate of these centres is to bring about reconciliation. Even when the wife complains of domestic violence she is advised to compromise for the sake of children or for economic reasons.

The Legal Aid Board also conducts Lok Adalats in Family Courts to facilitate compromise and reconciliation. In addition to providing free legal aid to poor people, it also provides free legal assistance to women who face problems within the family. Lok Adalats were also set up under the Legal Services Authorities Act, 1987, with the aim of arriving at a compromise or settlement between the parties (Chapter VI, Section 20 (4)) and in cases where the dispute cannot be settled, the record of the case is sent back to the

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<sup>67</sup> Lok Adalats are non formal courts which are held to resolve pending matters with the consent of the parties.

court for disposal in accordance with the law (Chapter VI, Section 20 (5)). These Lok Adalats have no jurisdiction in respect of any case or matter relating to an offence not compoundable under any law.

The focus of the above-mentioned structures is on saving the family and not on ensuring the rights of women. When reconciliation in the sense of returning to the family cannot be effected, these institutions help a woman negotiate for a lump sum financial settlement rather than monthly maintenance. The Legal Services Authorities Act, 1987, is unable to fulfill the goal of reconciliation because its facilitators are not sensitive and they lack training in alternate methods of conflict resolution. The special provisions of the Act have not been properly utilised. Its judges are not appointed in accordance with the Act but from regular services, they receive no special training that would prepare them for resolving family disputes.

The Family Courts were set up for the speedy disposal of cases relating to family disputes but it has not achieved this objective. There are not enough Family Courts and where they have been established there is no infrastructure for counselling. Further, counselling is done by the Counselling Centres and the Court and after a long drawn out process comes back for trial. These institutions try to preserve the family without addressing or ensuring the right to a life and freedom from violence for women.

### Economic Justice

There is a close correlation between economic independence and ability to leave an abusive relationship and so it is also important to examine the laws that legitimise a woman's access to economic rights. It is important to look at this particular area because by limiting a woman's access to economic rights you automatically limit her access to economic independence. This shows again the fear that Indian society has of single-adult-woman as an independent being.

Muslim women always had limited rights in the property of their fathers and husbands. That limited right continues to be available to them, but access is very difficult, due to social pressures. The share of a daughter is half that of a son showing the discrimination against women. Maintenance and divorce are more difficult areas. The first law, which addressed a Muslim woman's right to divorce, The Dissolution of Muslim Marriages Act, was passed in 1939. Under this Act a women can initiate divorce proceedings against the husband on the grounds of desertion, cruelty, failure to maintain her for two years, conviction with a prison sentence of more than 7 years, impotency, insanity etc. Prior to the passing of this Act, divorce among Muslims was only by an act of the parties, under this new Act it can be done by a judicial process however, it has no provision for grant of alimony.

Hindu women had no right to divorce, maintenance or guardianship; neither did she have rights, as a daughter or a wife in property left behind by the man. However, post-1955, a host of rights were legitimised for her, which included the right to inheritance, maintenance, divorce, and custody. Her right to inheritance is a limited right, as she still does not inherit in the same manner as a son in the ancestral property. However, her right

to her father's self-earned property is ensured, except in the dwelling-house. Here, a daughter is given a share equal to a son but she has no right to ask for partition, which constructively deprives her of a share unless her brothers decide to partition the house. Both of the sexes have equal rights to claim maintenance. States like Andhra Pradesh, Kerala and Tamil Nadu have amended the Hindu Succession Act and recognise daughters as coparceners, with the same rights as sons in joint family property. There has been no such change in the northern states. It is difficult for women to access this right to property as partition suits are long drawn out with possession amounting to 90% of ownership. Given that residence after marriage is patri-local, where the woman goes to her husband's house, it is extremely difficult for her to be in possession of property in her natal home, leaving her at a disadvantage. This is in addition to the social pressures, which are guided by the values that a daughter should not claim their inheritance, as she has left her natal home with her dowry.

Christian women now have equal rights to property with the men under the Indian Succession Act. Of equal importance to achieving this right was a case in the state of Kerala in which women fought courageously for recognition.<sup>68</sup> Parsi women get 1/6<sup>th</sup> of their brother's share in the natal property, and that discrimination continues.

A married woman has limited control over property belonging to her husband. Indian law does not recognise matrimonial property and even at divorce adjudicates only on the property given to a woman at the time of or in relation to marriage. Women are not equipped to work and support themselves and maintenance continues to be the only provision by which women may access some measure of economic justice.

The Courts have recognised that the inequality between the sexes is based on economic inequality. The Supreme Court in one case held "We have Constitutional and legal equality for the sexes but even so economic and social equality between the sexes seems a distant goal. The root cause of this inequality between the sexes is social and economic inequality."<sup>69</sup> Though the courts recognise this fact, they seem uninterested in doing much to change the situation for women.

## 6.2 National Programmes

The Department of Woman and Child Development<sup>70</sup>, (DWCD) was created in the year 1985, within the Ministry for Human Resource Development, to give the much needed impetus to the holistic development of women and children. As the national machinery for the advancement of women and children the department :

- formulates plans, policies and programmes
- proposes enactments/amendments to legislation
- guides and coordinates the effort of governmental and non-governmental organisations working in the field of women and children.<sup>71</sup>

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<sup>68</sup> Mary Roy v State of Kerala, AIR 1986 SC 1011

<sup>69</sup> Reynold Rajamani v Union of India, 1982 (2) SCC 474

<sup>70</sup> Source : Annual Report 1998-99, Department of Women and Child Development.

<sup>71</sup> Ibid.

National Commission for Women, (NCW) is a statutory body, set up under the National Commission for Women Act, 1990, and its mandate is to safeguard the rights and interests of women. The policy initiative, which led to the creation of the NCW, was taken by the DWCD. The activities it undertakes to fulfill its mandate are:

- Legal awareness programmes
- Complaints, pre-litigation and counselling cells, looks into complaints and takes notice of:
  - Deprivation of women's rights
  - Non-implementation of laws enacted to provide protection to women and to achieve the objective of equality and development
  - Non-compliance of policy, guidelines or instructions aimed at mitigating hardships and ensuring welfare of women
  - Providing relief to women and taking up issues arising from such matters with appropriate authorities, which include the law enforcing agencies and police departments.
- Commissioning/conducting studies and researches related to issues of women's rights
- Organising and conducting Parivarik Mahila Lok Adalats. (Informal alternative dispute resolution of family disputes.)
- Review of laws and legislative measures
- Preparing new laws/bills
- Undertaking investigations
- Training/sensitising
- Preparing recommendations.

The NCW has been vested with the powers of a civil court when investigating any case provided for under the Act. It can:

- Summon and enforce the appearance of any person, from any part of India, and examine persons on oath
- Require the discovery and production of any document
- Receive evidence on affidavits
- Requisition any public record or copy thereof, from any court or office
- Issue commissions for the examination of witnesses and documents.

Central Social Work Board, (CSWB) was established in 1953, and was registered as a charitable company in April 1969 under the Companies Act, 1956. Its objectives include:

- To promote welfare activities for the general public such as welfare of the family, women, children and the handicapped and give assistance in cases of unemployment, old age, sickness, disablement and other similar cases.
- To render technical and financial aid when necessary, to deserving institutions or organisations including Panchayati Raj institutions.
- To promote the setting up of voluntary organisations in places where they do not exist and to promote additional organisations wherever necessary.
- To study the needs of social welfare organisations from time to time and to evaluate programmes and projects of the aided agencies.

- To organise emergency relief measures in times of calamity.
- To organise and promote training in social work and to organise pilot projects where ever necessary.

The CSWB receives grants form the DWCD for the purpose of translating its objectives into reality. The following are its focus areas:

- Empowerment through Education
- Condensed course of education and vocational training programmes
- Awareness generation programmes
- Economic Empowerment
- Socio-economic programmes
- Support Services
  - Crèches for children
  - Working women's hostels
- Social Empowerment
- Family Counselling Centers with NGOs and Police departments
- Mahila Mandal Programs
- Innovative schemes
- Women victims of atrocities
- Children of prostitutes
- Education of the mentally retarded
- Rehabilitation of prostitutes and their children
- Assistance for needy children: toy, clothes and book bank
- Monitoring and evaluation.
- Publicity and publication:
  - ‘Social Welfare’ in English
  - ‘Samaj Kalyan’ in Hindi

National Institute of Public Cooperation and Child Development, (NIPPCD) is an autonomous body and functions under the aegis of the DWCD. Its main objectives are:

- To promote voluntary action in social development
- To take a comprehensive view of child development
- To develop and promote programmes in pursuance of The National Policy for Child Development
- To develop measures for coordination of governmental and voluntary action in social development
- To evolve a framework and perspective for organising children’s programmes through governmental and voluntary efforts.

Activities undertaken to fulfill the above, it has organised its efforts under two departments:

- Department of Mother and Child Development
- Department of Training and Common Services.

These departments look after six divisions:

- Public Cooperation
- Child Development
- Women's Development
- Training
- Monitoring and Evaluation
- Common Services.

Its essential thrust is on training and research. It is responsible for the training of the Integrated Child Development Scheme (ICDS) functionaries. It also works in the area of law, women's empowerment and violence against women.

### 6.3 Social Movements

The Indian Women's Movement can be acknowledged as one of the "most sophisticated movements"<sup>72</sup>. It has managed to absorb many different streams in order to challenge the violations and discriminations being faced by women and other marginalised groups. It has successfully challenged discriminations within family as well as broader policies based on the social exploitation and victimisation of women. The movement is inclusive and is based on the realities of the problems of women. They have been quick to support distinctive identities, while supporting the challenge of access to rights. Their engagement with socio-economic policies, in the wake of the global pressures and liberalisation, has in no way limited their challenge of exploitation through tradition and culture.

"It is perhaps the only movement today which encompasses and links such issues as work, wages, organisation, environment, ecology, civil rights, sex, violence, representation, caste, class, allocation of basic resources, consumer rights, methods of production, health, religion, community, individual and social relationships, etc."<sup>73</sup>

The initiatives for change and challenge of women's situations have had two major actors: the movement and civil society. They have worked together with the movement, giving the clarion call for change and the civil society building on the achievements. However, this has not always been the case, especially when the violations being challenged have been placed in the personal sphere. Social reform for women in India has been a long journey and a long struggle. The odds against which women have been pitted have been of such magnitude that, despite the distance we have come, a longer journey awaits us. The ending of Sati was signaled in the mid-19<sup>th</sup> century but we are still struggling with its existence. However, the very recognition of the act as a crime does lay the ground for us to challenge its validity.

The NGO movement in India is a gradual evolution of voluntary sector initiatives in the wake of the freedom movement in India and subsequent follow-up in independent India. Earlier the term voluntary organisation and NGO's were used interchangeably.

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<sup>72</sup> Kumar, Radha, 'History of Doings : An Illustrated Account of Movements for Women's Rights and Feminism in India, 1800-1900', Pub: Kali for Women, Page 194.

<sup>73</sup> Ibid.

Gradually, there came a shift in paradigm in the commitment and style of activity of the voluntary and the NGO sectors. The NGOs do not seek to change power relations but explore and create space for dissent within the system. The State and the NGOs have worked together in some issues like education and health programs, eradication of social ills, family planning and micro-credit systems.

The more political challenge of work and wages has found support from mainstream human rights groups as these have not been perceived as exclusively women's issues. However, issues related to violence against women, sexual rights, or issues that challenge women's position intra-community have been areas of isolated activism. However, gathering support on issues related to abuse and violence against women and children, in the private sphere, where the perpetrator is part of the family, is virtually impossible.

Our issue 'Rights of Women in Relation to Marriage' belongs to this area. NGO's believe in solutions through compromise and vouch for working with the community. The Women's Movement can fight for macro changes of policy, law and for better interventions and structures. The anti-dowry and anti-rape campaigns of the Women's Movement made immense inroads in challenging the existing norms and beliefs. However, the follow-up of the changes, the monitoring and usage action has to come from individual units, which are in the local area, the NGOs.

The Indian Women's Movement in all its complexities has heralded a new era in the struggle for gender justice. However, building structures for implementation and monitoring the impact on women's lives has been largely left to institutions that have sprung from and around the movement. The problem is not only with the State structures and the Judiciary but also with societal attitudes. While State structures can work through the media to influence societal behavior and attitude, it has left that task to the NGOs because of its committed workers, its close contact with the community and the time it is able to devote to work towards change. But the biggest gap was the inability of the NGOs' to keep themselves informed of the various efforts and inroads made by the women's movement and draw the linkages between their work and the efforts by the Movement.

Some NGOs have recognised the relevance of supporting women in situation of violence and abuse from their family, in order to ensure that they are able to access the development programs. There has been considerable revisiting of the concept of community-based work and realisation that issues of development cannot be viewed in isolation from women's issues. There is constant room for strengthening the perceptions and engaging development and community-based organisations with women's issues, especially violations in the private sphere.

In the course of our workshops, with many NGO's, on the issues taken up in this study, it was made clear that NGO's are working with women on varied issues like:

- Health
- Non-formal education
- Micro-credit availability for micro enterprises
- Awareness generation

- Training for women

However, when it came to violation of rights within the family, most of the NGO's were limited due to various handicaps. We have listed below the strengths, limitations and recommendations for the NGO initiatives.

#### Strengths

- Women's organisations now exist in most states and districts in the country. Most mainstream NGO's have a women's empowerment component, usually incorporated due to external donor pressures.
- There are small-scale, women oriented organisations, like village-level groups, scattered all over the country, which are trying to effect change through economic empowerment of women.
- The will and commitment to work towards the root-cause of gender discrimination is provided in terms of resource and guidance.
- Initiatives to build a strong and effective women's network for action and mobilisation is ongoing and there is a very clear expression for the need to converge on women's issues.

#### Limitations

- NGO's engage in program activities, effectively achieving set targets but are donor-driven with little space for personal ideology. This hinders work in a sustained, need based manner.
- Lack of access to relevant information at the international and national level.
- Lack of financial and human resources, especially trained professionals.
- Lack of training in handling advocacy issues.
- Lack of influence with state structures, which are predisposed to acceptance of women's situations and compromise.
- Are mostly development oriented and not rights oriented.
- Work at the community level only and do not give a broader paradigm to women's issues.
- Lack sensitivity towards understanding, analysing and dealing with women's issue as men head many of them.
- Lack the ability to analyse and draw micro-macro linkages.
- No effective, strong network of women's groups and organisation.
- Lack the initiative to challenge State run programs that could be detrimental to development and women's issues.

#### Recommendations

- Training in advocacy skills for NGO's.
- Funding organisations/donors to be sensitised to give resource support to NGO's to work on women's rights issue.
- A network of women's group and organisations that could come together in cases of atrocities at a State or National level and act as a pressure group.

- Information dissemination on happenings at international and national levels on the issue of women's rights, for greater solidarity.
- Develop a practical course to enable NGOs and its workers to address, analyse and intervene in issues of Violence against Women.

## 6.4 Recommendations

There has been an obvious lack of interest and focus on the access of rights by women within the home, it is seen as a non-productive area and the state is perceived as an indifferent observer, without any specific role to play. The indifference of the State in this area is one of the causes for the continued violation of the rights of women in the personal sphere. This leads to loss of access to rights or access to the benefits of women-focused development and empowerment programs. The following recommendations focus on State actions, which are necessary for the empowerment of women, in the three issues of this study as well as certain general recommendations.

### General Recommendation

- Immediate withdrawal of declarations on Article 16(1) and (2) of the CEDAW Convention
- Form partnerships with women activists in formulating a policy to address women's issues within the private sphere.
- The policy must be pegged to a time frame and operational processes.
- Women's access to substantive equality must not be linked to the Uniform Civil Code but must be provided by amendments to the personal laws.
- A law reform committee should examine all available legislation for gender disparities and recommend reform to ensure substantive equality. This should be with a special focus on laws relating to:
  - Marriage and maintenance
  - Guardianship and custody of children
  - Property and inheritance
  - Domestic violence
- A continuous process of consultation with women activists must be maintained at all levels of state and central government departments dealing with and formulating policies, which affect women.
- Women's participation in all programs should be ensured, without targeting them to ensure state set targets, as in family planning.

- All parliamentary committee reports dealing with sensitive issues, especially violence against women and children, must be made public and all public records must be maintained in a manner to ensure access to information.
- Right to information, especially with regard to development programs and schemes, new legislation etc should be strictly adhered to.
- Extensive gender training for all state staff on issues related to violence against women. The training should be compulsory for police, shelter home staff and administrative officials in the Departments dealing with issues pertaining to women.
- Specialised gender sensitisation training for all law enforcement agencies including the Bench and the Bar with special emphasis on existing laws, interpretative standards and gender issues. Violence against women should be a special focus.

### Specific Recommendations

These recommendations are addressed at the various departments of the State Government and the concrete steps they would have to take in order to meet the requirements of the general recommendations made above.

#### Department of Home

- Ensure inclusion of gender sensitisation modules, with a special focus on violence against women, in training programs for police personnel, judiciary, teachers and medical staff which should have a duration of at least 20% of the time of the entire training package and build into the system a program for refresher courses. Ensure changes in curricula of primary and secondary level educational institutions to include a human rights agenda with a gender perspective.
- Grant recognition to advocacy groups to participate as legitimate entities in planning and implementing State policies on the rights of women. Thereby ensuring participation and transparency rather than the current confrontational stand that exists between the State and women's groups.
- Articulate a specific policy on women with specific undertakings on issues of violence against women, including provisions for protection, easily accessible shelter, medical facilities, counseling and free legal aid facilities.

#### Police Department

- Encourage women to join the police department with a view to increase the number of women in the police force, especially beyond the Constable level, with

the ultimate aim of having a trained police woman in each police station in the State.

- Institute and strengthen inter departmental links with Hospitals and state run shelter homes.
- Increase the scope, resources and powers of the force allocated to Women Police Stations, so as to enable them to function in an effective and comprehensive manner.

#### Women and Child Department

- Institute processes to ensure transparency in formulating, running and monitoring of State run institutions providing shelter to women. Make provisions that allow for voluntary admission to and departure from such institutions, thereby removing the stigma of categorisation as shelters for destitute and dependent women.
- Institute ‘one stop crisis centers for women’, either in hospitals or at Women Police Stations.
- Drafting and implementing a State Policy for Women that addresses the various needs of women in a holistic manner, rather than targeting them as specialised groups like divorced, widowed or abandoned women. The policy should also address the issues of child marriage, dowry, violence against women and women’s access to State run support facilities.
- Constituting a commission on the status of various state run homes for women and a time specified report.

#### Law Department

- To set up committees to review the laws on rape, dowry and violence against women and make specific recommendations to the Central Government for statutory and procedural amendments.
- Undertake a review and recommend changes of all the Personal Laws, with reference to the provisions relating to marriage, divorce, maintenance, inheritance, guardianship and custody and recommend changes, keeping women’s rights as their focal point.
- Lobby for the passing of an Act against domestic violence and amend all laws discriminatory to women.
- Review the provisions of the Special Marriage Act with special reference to the procedure for registration of the marriage.

- Carry out a review of the constitution and functioning of the Family Courts, Family Counselling Centres and Lok Adalats and evaluate how effective they are in ensuring justice to women, taking into account their stated objective of conciliation and compromise rather than speedy disposal of disputes, with special reference to maintenance.