

the Prime Minister to request him not to omit Muslim women from the purview of Section 125 of the Indian Criminal Procedure Code. To our surprise and shock, inspite of giving a patient hearing to our plea and giving assurance to consult the women before finalising the bill, Prime Minister has gone back on this word and brought Muslim Women (Protection of rights on Divorce) Bill 1986, a regressive bill, in the Parliament. We only hope that the strong protest from all women's Organisation will compel the Government to withdraw this Bill.

13. There is a demand for opening branches of Samiti in different states.

Our branch in Bombay is functioning very effectively for the last two years. Samajwadi Mahila Sabha (Maharashtra) with its five thousand membership is an affiliated member organisation in the last four years. Like in Goa our branches have already started functioning in different States.

14. Samiti represented at the NGOs Conference at Nairobi.

In the International Conference of Women's decade, the Samiti was represented ably by its two members. Smt Ranjana Kumari was the member of the Planning Committee of 'Women Law and Development Forum.' and Ms Rani Jethmalani, Advocate Supreme Court participated in the discussion and made valuable contribution.

Thus the Mahila Dakshata Samiti, in brief, is constantly working towards the emancipation of women.

It is now given recognition by the Government and has been authorised to register F.I.R. in the cases of Crimes against women.

Samiti grieves at the loss of its active member, Late Smt Vrinda Sen who expired after a long illness.

Before I conclude, I must express my gratitude to all the members of the Samiti and its sympathisers who cooperated on carrying out various activities of the Samiti.

—Suman Krishnakant
Secretary

Report of the Workshop on, "Relevance of Law to Women : An Introspection of Action and Future Perspectives."

MANORAMA BAWA

A workshop was held on 10th & 11th August, 1985 by the Mahila Dakshata Samiti to discuss various issues concerning women. The theme of the workshop was, "Relevance of Law to women : An Introspection of Action and Future Perspectives." The workshop brought out the limitations in the law, in social institutions, social and judicial attitudes, in accomplishments and strategies used by women's Organisations. The focus of the workshop was on :

- i) Grassroot strategies.
- ii) Organisational strategy
- iii) Networking and dissemination of information.
- iv) Institutional support
- v) Public interest litigation.

The workshop reviewed personal laws pertaining to customs and traditions and focussed attention on the discrepancies and gaps in the law relating to women—and their problems. The theme of the workshop was categorized as :—

1. Constitutional issues and Personal Laws
 - a) Religious laws
 - b) Tribal laws
2. Violence
 - a) Domestic violence
 - b) Dowry threats and extortions
 - c) Abortion
 - d) Sexual harrassment at Work.

3. Land & Property
 - a) H.U.F. Coparcenary property and stridhan
 - b) Succession intestate and testimony under Hindu and Christian laws.
4. Maintenance and Custody
 - a) Section 125 of Criminal Procedure Code
 - b) Divorce laws
 - c) Custody and Guardianship under Hindu law
5. Labour
 - a) Minimum wages
 - b) Discrimination on basis of sex in employment

Mrs Pramila Dandavate, President of the Mahila Dakshata Samiti extended a warm welcome to the Chief guest and other eminent jurists, speakers, guests and participants. She elaborated on the activities of the Samiti which were not only a theoretical but also action oriented. The Samiti has done commendable work in mobilising public opinion against exploitation, Injustice and social practices affecting women in the country. On behalf of the Samiti she felicitated Justice P.N. Bhagwati and Justice Rajinder Sachar on taking over charge as Chief Justice of India and Chief Justice of Delhi High Court respectively.

The workshop was formally inaugurated by the Chief Justice of India, Shri P.N. Bhagwati. In his inaugural address, he emphasized the role of voluntary agencies and social action groups in the implementation of the existing legislation as this association will secure the effective participation of the people. He strongly condemned the continuing evil of dowry and advocated economic independence for women not only to overcome the oppression against them but also to remove discrimination in law even though they enjoy equal rights constitutionally. Ms. Rani Jethmalani elaborated on the purpose of organising the workshop, which was to examine various laws pertaining to women and the discrepancies in law. She introduced the theme of the workshop and laid stress on the need for reforms in existing laws in the areas of :

Matrimony, Divorce maintenance and Custody, sexual harassment, inheritance rights, economic equality and removal of sexual discrimination in employment; and setting up of family Court for easy and quick dispensation of justice :

Papers were presented dealing with various aspects of law for women and the reforms required there in to make it more relevant to women's issues. The various groups of the workshop were addressed by eminent jurists, social workers and experts in related fields followed by group discussions and recommendations for further action. After the inauguration the groups were divided and each group discussed a specific issue.

I Constitutional Issues and Personal Laws :

India cannot be treated as homogeneous and the individual religious traditions regarding women are in direct conflict with the equality of sexes. Women are affected most by the personal laws of their religion which exist parallel to the provisions in the Constitution emphasizing the differences between various religious groups in the country. This aspect influencing the Indian women in all spheres of their lives was brought out by the workshop effectively. Time and again it has been stressed that women are an integral part of a developing nation and have an important role to play in the development process. Though constitutionally women enjoy the same rights as men, there is a big gap between theoretical possibilities and actual realisation. The Director of the Law Institute spoke of the "dual character of the Constitution" making it a powerful resource for the oppressed and the oppressor. Under the freedom of religion the Constitution permits the practice of various personal laws but discriminatory provisions of some of these go against the equality of status and opportunity guaranteed in the Constitution. The Hindu, Muslim, Christian and even Tribal Law is very discriminatory towards women in all spheres of life. The muslim law is based on the religious tenets as enunciated in the Koran but in practice it is derogatory to women. There is a strong protest whenever there is a suggestion of change in the Muslim Personal Law but the group felt that correct interpretation of the Koranic injunctions is necessary to make it a truly religious law which specifies equality of the sexes. The Christian women are also burdened by the anomalies between the Indian Civil law and the Christian Personal law influencing every aspect of their lives. Marriage in Christianity lays emphasis on mutual relationship between husband and wife but in reality the wife enjoys a secondary position. The discriminatory succession rights as envisaged in the Travancore Cochin Succession Act, 1916 and the Cochin Succession Act are derogatory to women and the revision of these obsolete Acts should be done to bring women at par with men.

The Tribal population in India is governed by their own laws affecting their social and economical life. These laws are not codified and several of them are discriminatory towards women. Among the tribals, the women cannot be members of the tribal council and are restricted in their relationship to other men besides their husbands. Even though they are equal partners in economic activity, women are not the decision making agents. However, they have the right to choose their partners and also the right to divorce.

There were some suggestions regarding a change in the Matrimonial Laws which could help to bring about uniformity and remove discriminations not only in the personal law but other legislation too. These are stated as :

- a) Section 125 of Cr. P.C. which deals with grant of Rs 500/- maintenance to women, need to be amended, Besides it is required that a provision be made for summons to be effected through the publication in the newspaper of the area in which the respondent resides, if he refuses or is avoiding taking summons.

This provision may be added to Section 69 of Criminal Penal Code or in Section 126 of Criminal Penal Code.

- b) In Section 125A a provision for interim maintenance during the pendency of the petition in the court be made, when the petitioner has no other income sufficient to maintain herself.
- c) The limit of Rs. 500/- as fixed in Section 125 (I) should be fixed at 50% of the income of the opposite party.
- d) Clause (b) of Sub-section 3 of Section 12 should be deleted as it is unjust to Muslim women.
- e) An amendment in Section 24 of the Hindu Marriage Act relating to ex-parte maintenance as suggested in Section 125A is required.
- f) The word 'decree' in Section 25 of the Hindu Marriage Act should be substituted by the following words 'Final order decreeing or dismissing the petition.'
- g) Section 27 of the Hindu Marriage Act which deals with the return of the 'Stridhan' at the time of separation requires to be rewarded to do justice to women.
- h) Sub-section I A of Section 13 of Hindu Marriage Act should be deleted and Clauses (viii) and (ix) should be worded as before its amendment of 1964.
- I) Section 494 of the Indian Penal Code should be amended to provide the same right to the wife to prosecute the second woman with whom her husband is married or cohabitating.

Maintenance

The workshop through the presentation of papers and group discussions brought out the discriminatory provisions in the maintenance laws influenced by the personal laws of different religious groups affecting women. The Hindu women are affected by the Hindu Marriage Act 1955 (HMA), the Parsis by the Parsi Marriage and Divorce Act, 1936, the Muslims by the Shariat law, the Christians by the Indian Divorce Act of 1869. The Special Marriage Act of 1954 is applicable to all those who marry under this act irrespective of caste, community or religion. The Hindu Marriage Act maintains that the wife can claim maintenance only if she is divorced or has sought judicial separation whereas according to the Hindu Adoptions and Maintenance Act 1956, the wife can claim maintenance even if there is no litigation but is separated from the husband under justifiable grounds. Thus a Hindu wife can get maintenance without going to a matrimonial court, but a Parsi, Muslim or Christian wife has no corresponding right. The Muslim Marriage Act 1938 only allows the wife dissolution of marriage on the grounds of neglect or failure of the husband in providing maintenance for a period of two years. There is no mention of maintenance for a separated or a divorced wife. The Islamic scriptures do concede this right to divorced muslim wives, though in a limited way. Begum Shah Bano's case was cited as an example

of the divorced muslim womens' plight and the verdict of the Supreme Court in her favour for maintenance is a very heartening and brings Muslim women out of the orbit of the personal law. Section 125 of the Uniform Code of Criminal Procedure 1973 provides maintenance for the wife irrespective of religious codes. In Shah Bano Begum's case the court overruled the husband's liability beyond 'iddat' (the payment of dower) and held that "the liability imposed by Section 125 to maintain close relations, who are indigent is founded upon the individual's obligation to society to prevent vagrancy and destitution. That in the moral edict of the law and morality cannot be clubbed with religion."

The problem of maintenance also pertains to a 'void' marriage under the Hindu and Parsi law. A woman whose marriage is annulled or declared void, is entitled to maintenance. The Christian Law does not have any provision for 'wives' whose marriage has been declared as such. Only those who have taken judicial separation or divorce are entitled to alimony, even Section 125 of Criminal Penall Code is not functional unless the wife is a legally wedded wife. Another problem which was highlighted in the group discussion was related to ceiling in the grant of interim maintenance. The personal laws earmark 1/5th of the husband's net income as alimony to meet expenses of litigation and personal expenses, but the court should be given the discretion to fix the quantum in relation to the party's income and needs. The need for a uniform civil code was stressed as it will help to remove discrimination in the Personal Laws and amendment in the existing law pertaining to women will help extend justice to them and prevent vagrancy and destitution.

Divorce

The panel discussing this topic consisted of eminent jurists and Muslim leaders who clarified the law vis-a-vis women according to religious tenets. After enactment of the Hindu Marriage Act of 1955, all Hindus are governed by it. Divorce is still not acceptable socially amongst the Hindus, none the less the legislation has helped women in asserting their rights as individuals. Divorce can be granted on the grounds of adultery, desertion, conversion to another religion, judicial separation and failure to comply with the decree of restitution of conjugal rights. Under Muslim law marriage is a contract and a man can repudiate the marriage at will whereas the wife has no such right. Codification of Muslim law is required and the correct interpretation of the Koran will help to remove certain misunderstandings regarding women's rights regarding marriage, maintenance and divorce. Both Mr. Shahabuddin, and Mr. Baharul Islam, M. Ps. stressed that there was an urgent need for correct interpretation of the Koran to bring out its true spirit and character. The former described marriage in Islam as a sanctified contract entered into by both parties with sincerity. Casual divorce is not acceptable in society and is undertaken only after all reconciliation efforts have failed. Muslim law allows divorce for women too, even remarriage is permitted, but social norms are to the contrary. All India Muslim Personal Law Committee is reviewing the Muslim law in all spheres and trying to interpret the law according to the Koranic injunctions and remove the gaps between reality and theoretical understanding.

Furthermore, this committee will also codify the Muslim law which has been a long felt need.

All Christians are governed by the Indian Divorce Act according to which both husband and wife can obtain divorce but there is a difference between the rights of the husband and wife and this discrimination is generally not acceptable to Christian women. Christian feminist movements have been raising their voice against discrimination and this workshop provided a forum to voice their opinion. The husband can seek divorce on grounds of adultery by the wife whereas the wife has to prove two offences of the husband before she can obtain divorce. According to Justice Desai "Relationships between man and woman must be made more equal." The Law Commission had prepared a draft bill. The Christian Marriage and Matrimonial Clauses Bill 1960, according to which both parties could seek divorce or judicial separation on equal basis. The Catholic Church allows annulment of marriage on certain grounds which the court of law does not recognise and the divorce granted by the court need not be recognised by the Church. The group strongly recommended the removal of this anomaly through public opinion and a Uniform Civil Code.

Custody and Guardianship

The panel of speakers felt that because of discriminatory laws, the woman has to go through great hardships not only as a daughter and as a wife, but also as a mother where guardianship of her children is concerned. Section 6 of the Hindu Minority and Guardianship Act 1956 (32 of 1956) accepts the father and after him the mother as the natural guardian of a Hindu minor in respect of minor person as well as property. Till the age of five the custody of the child is with the mother and if the minor is removed from his/her mother, the father has the right to move the court under Section 25 of the Guardian and Ward Act 1890, without getting himself appointed as a guardian under the Act. According to the Sub-clause (b) of Section 6 of Act 32 of 1956, the mother is the natural guardian of the illegitimate child and after her the father. The situation is reverse in the case of the legitimate child who takes the surname of the father. The woman sometimes suffers humiliation and hardships for the sake of being with her child due to this lacuna in the law which does not accept her as the natural guardian. Legal procedure regarding custody and guardianship of minor children is a long drawn process causing great emotional stress in the mother and the child. A law is required which should accept the mother as the natural guardian of a minor boy and an unmarried girl and then the father. The law needs to be amended in regard to the testamentary powers to appoint a guardian by mother and father in respect of a minor person and property. Subsection (C) of Section 6 of Hindu Minority and Guardianship Acts needs to be deleted as marrying a minor is legally prohibited.

Domestic Violence and Dowry threats :

This topic in the workshop attracted much attention and participation. By common consensus, the dowry system was considered the biggest hinderance in the emancipation of

women. Dowry extortion, threat, ending in death or suicide, is the result of tradition, age old customs, and distorted attitudes ingrained over the centuries and defying them leads to ostracism in the community. An Indian woman scorned by her in-laws is not welcomed in her parents house either. Statistics show that dowry deaths have not increased but suicides due to parental harassment and mental torture are on the increase. The speakers stressed the need for a strong and effective legislation for suffering women because of the menace of dowry as Sections 498 and 406 of Cr.P.C. afford protection to women against cruelty only. The Supreme Court judgement upholding the concept of "Stridhan" is also in favour of women and this concept of Stridhan can be further safeguarded by registration of a marriage and enumeration of the gifts received at the time of marriage, signed by the nominee of the Registrar of marriages. The strong legal position and the setting up of Antidowry cell have not proved very useful in the face of prevailing social attitudes and due to lack of legal and social awareness. Practical experience shows that laws are inadequate to protect a woman as battering or violence do not necessarily result in disfiguration or mutilation of the body manifestation of which are a necessary for legal action. A facade of "Respectability" is the main obstacle in the exposure of cruelty to women thus preating them from seeking legal aid. Legislation alone cannot help in building "self worth" and prevent emotional derailment. For a positive attitude formation, home and family have a very important role to play and only then response to outside pressures and calls for "awareness formation" will be effective. Economic independence can further equip women to face dowry problems and lead to emotional and financial security. The gifts given to her at the time of marriage, also provide financial security and not make her feel as a commodity. It is required that Section 406 may be used for registering a dowry case to provide legal justification to go into the case and take quick action. A network of a well established homes providing physical and mental health care facilities are required in the country, which can provide refuge to the tortured, harassed, unwanted or homeless woman. The group strongly emphasized affecting attitudinal change towards a female child and not to discriminate against her because of her sex, to eliminate the social evil of dowry.

Sexual Harassment and Abortion :

The panel of speakers discussed the problems, women had to face due to physical inadequacies. Women being the weaker sex are often victims of sexual harassment and exploitation in all spheres including their field of employment. Sexual harassment of women is very common at their place of work and married women suffer the consequences of the strong emotions they arouse in their spouses and by their mixing with the opposite sex there. Economic independence or sharing the economic burdens of the family do not free her from petty emotional tantrums of other members of the family or her husband. Young girls are harassed in public buses and public places and there is no legislation protecting them from this kind of treatment except generate public opinion against it and demand a cell in the educational institutions where necessary action can be taken on the complaints lodged,

Section 354 of I.P.C. should also cover subtle form of sexual harassment in private sector, besides the overt forms, to give protection to women.

The group also discussed the advantages and shortcomings of M.T.P. Act legalising abortion. The M.T.P. Act is meant to emancipate women and safeguard them from the consequences of sexual harassment and assault. It is a legal framework for changing social norms and offers legal abortion to victims who are victims of rape, ill health or are economically poor to support more children. This Act is a step towards Uniform Civil Code covering women of all communities, but rethinking is required to make it more comprehensive to cover unmarried women and widows too. It was felt that the condition in the Act regarding minimum age for abortion should be abolished. In the case of rape, abortion can only be done if the offence has been registered with the police. This condition creates problems and not many cases are registered for fear of publicity. The Act should include a clause, that the rape victim should be required to fill a simple form as an application for abortion. Amniocentesis is used to detect the deformity in the foetus but is also being used to detect the sex of foetus resulting in abortion of the female child. This practice needs to be stopped and some clause is required to be added to discourage the misuse of this technology. Media can help considerably to publicize the M.T.P. Act and related information so that women are made aware of their legal rights. Media can also help to bring a change in social attitudes towards sexual harassment and abortion. Prominent social workers and reformers have helped to generate public opinion against the existing discriminatory laws and have suggested amendments and of involvement of women in framing of laws pertaining to women.

Labour :

The subject of minimum wages and discrimination on the basis of sex in employment has generated heated debates in the last two decades. Constitutionally the woman has equal job opportunities but no legal safeguard for equal wages. Even though a woman is considered the weaker sex physiologically, she plays an important role in economic activity especially in the field of agriculture and industry, besides her home. It was pointed out by the group that special legislation protects women from exposing them to dangerous work during motherhood. The Indian Constitution stipulates that women should not be abused when forced by economic necessity to enter avocations unsuitable to their age and strength.

The International Labour Organisation (I. L. O.) has adopted 18 conventions and an equal number of recommendations with special reference to women workers in industry. India has ratified 7 conventions, and 3 recommendations, are being implemented. Legislation passed by the Government of India such as the Factories Act 1948, The Mines Act 1952, the Employees State Insurance Act 1948, The Plantation Labour Act 1951, The Maternity Benefit Act 1961 contain special provisions for women workers. In addition, the Supreme Court protected by a ruling female employees' right to marry and yet continue in service.

These acts helped to lay down fixed working hours women and put restrictions on the type of employment for women keeping in view their physical capacity. Even the maximum load to be carried by a workman and a woman has been stated in the Factories Act and Mines Act. Though female agricultured workers and domestic workers are not covered by any legislation, the law protects women from work which is not physically suited to them or endangers their lives. Legislation also provides for adequate welfare amenities especially for women such as separate toilets and washing places, creches for infants with provision for their feeding. The Maternity Benefit Act and the State Insurance Act entitles a women 12 weeks of paid maternity leave and is given time off to feed the child once she joins duty. Financial benefits are given not only for confinements but also for miscarriages. The Equal Remuneration Act of 1976, provides equal remuneration to men and women workers to prevent discrimination on the basis of sex in employment. This covers workers in any establishment and extends to whole of India. This group felt that inspite of legal provisions, in practice the woman in the economic field is grossly exploited. As 80% of the women are employed in Agriculture, no legal provisions are made or social security provided for these. Women working in organised industries get the benefit of protective and welfare legislation but those working in small establishments such as hosiery units and domestic units are not covered by the legislation. In the unorganised sector and the private sector where 65% of the women workers are employed, there is no guarantee of equal wages and whenever organised efforts are made women workers are thrown out of employment. Whenever there is a retrenchment, women workers are the first to be affected. Female workers are often unaware of the discrimination practised against them and are hesitant to go through the long process for seeking redress. They are yet to become an effective and organised force in negotiating with the employers for special benefits, though the process of change is already visible. One of the reasons for acceptance of the situation is that many of the laws are unknown to women and secondly, they are surrounded by the ethos of their culture which also does not help in their emerging as a force to reckon with. The problems faced by the women in government offices or public sector are different from those in industry or agriculture. Their personal safety is threatened, the transfer postings disrupt their lives, the service conditions and salaries leave much to be desired. Unless there is a change in social attitudes, legal and political rights are meaningless. The minimum Wages Act requires revision and should be applicable to organised and unorganised sectors. Maternity benefit needs to be extended to all workers in both organised and unorganised sectors and states should enforce laws for provision of creches for children of working mothers.

Land and Property

This group threw light on Hindu Divided Family, Coparcenery Property, Stridhan and Succession laws (Hindu, Muslim & Christian). The inheritance laws in India are not uniform but based on consideration of religion. Each religion has distinct laws which are based on consideration like sex, tradition, belief and customs. The constitution does not discriminate but law does. According to Hindu Law, devolution of property depends upon whether it is

a joint family, coparcenary property separate property or self acquired property. In the joint family property or coparcenary property the son acquires the right by the birth while the female member has no such right. The coparcenary within that family has males as its members and no female can become a coparcenary owner, though a widow or grandmother are entitled to a share. In self acquired property of male interstate, if the property is a dwelling house, the female heirs have the right of share but if the daughter is married she has no right on the dwelling. In devolution of property of the female interstate the heirs are in respect to husband's family. A woman's identity has been restricted to her children and in the devolution of her property, if she has no children, the property is passed on to her husband's heirs and not to her blood relations. The Muslim Law and Parsi Laws of succession suggest giving females, a share equal to half of the share of her male counterpart i.e. a daughters, share is half of the son's. Under the Sunni Law (Hanafi) except the interstate's daughter, son's daughters, mother, true grandmother, all female relationships are excluded. Under the Asharia Law, a childless widow is not entitled to inherit the property whereas the widower does not suffer much.

The Christian Law has two important clauses :

In Travancore Christian Succession Act 1916, the widow and the mother is entitled to life estate in the property which terminates in their death or remarriage also they cannot dispose of the property. Secondly, the female will only inherit in the absence of male heirs (ii) The Cochin Succession Act states that if stridhan' is given to the daughter, she cannot claim inheritance. But if there is no promise of stridhan she receives Rs. 5000/- or 1/3rd of the value of the share of the son, whichever is less.

The Indian Succession Act covers all communities in India, though rights of succession are still governed by personal Laws. The group felt that absolute laws which discriminate between the sexes need to be ratified and updated. A two-pronged attack is necessary in making the laws relevant, first—to update and secondly to work at the grassroot level to bring a change in the social attitudes towards females. The women of different religious group in India are realising the unjust and discriminatory personal laws which are having a grievous impact on their lives. The Christian community has come forward and is demanding changes in the succession acts and removal of discrimination of the sexes in devolution of property. They are also fighting that widows should not only have the right to husband's property but also have the right to will that property. Codification of Law is necessary to bring it up-to-date and to confine the influence of traditions and customs.

Family Courts

The demands for family courts, for privacy and for quick dispensation of justice were expressed by most of the speakers. Efforts have been made to bring the constitutional and legal rights of women at par with men. The legislative rights in areas of marriage, divorce, maintenance, guardianship of children and the right to hold and dispose off property, have

been extended to women through various acts from 1956 onwards. But the legal procedures are so time consuming and prolonged that physically and emotionally women shirk to resort to legal means for the solution of their problems and commit suicide or suffer quietly instead. Family Courts, for dispensation of justice and easy, quick, and correct decision giving procedure, has been the requirement over the past decades. The demand for Family Courts also indicate the keen awareness among women for redressal of their problems. The reasons for demanding family courts are (1) Speedy Justice, (2) reduce costs in getting justice, (3) avoid publicity and public exposure, (4) give humane consideration to women who are victims of age old customs. The Family Court Act of 1984 has been passed and these court will deal with family law matter such as matrimony clauses, marriage, maintenance and alimony, guardianship and custody, education, support of children and settlement of spousal property Section 7 (A) of Family Courts lists its jurisdiction of the above and it was felt that para-familial matters also should be brought under its purview. Family Courts are set up in areas where the population exceeds one million and comprised lawyers, psychiatrists, welfare officers and social workers engaged in finding a solution to the problems before the courts. Thus the concept of family courts implies an integrated broad based service to families in trouble and finding solution to their problems, requiring less formal and more active investigational and inquisitional procedure. The Family Courts can help to avoid procedural delays and preserve and stabilize family life. Although Section 10 of the Act generally lays down procedure under the Civil Procedure Act but it has been stated that the Family Courts have the power to evolve their own rules of procedure which will override all other rules. Sections 14, 15 and 16 of the Act provide for the use of informal procedures and that all types of evidence will be admissible in the court and full recording of evidence is not required. The family court system can succeed only if supported by a well organised support service system with the objective of rendering help in the form of counselling, reconciliation, investigation, legal aid service, and enforcement service to the parties. Marriage counselling is an important support service of the family court in providing pre-marital, marital and family counselling. The speakers emphasized the fact that the success of Family Courts will depend on the availability of trained personnel required to man the courts. It is necessary that there is existence of training and a continuing education programme in which family court judges, the staff of the support services and lawyers should be fully involved. But at present the structure and functions of the Family Courts are still under discussion and some specific improvements are required to make these more functional. The success of the courts will depend largely on the infrastructure and their acceptance by the people.

Strategies and future perspectives

This session was very crucial as the group had to work out strategies and action oriented programmes to make law understandable and attainable to women. The panel speakers of all other groups also attended this session and expressed their views and there was active participation of the audience too. This session was chaired by the president of the Mahila Dakshta Samiti, Mrs. Pramila Dandavate, Mrs. Jyotsna Chatterjee facilitated

Begum Shah Bano in this session lauding her efforts in fighting persistently for her rights. The judgement of the Supreme Court in favour of Begum Shah Bano is enactment of the secular law in the country. Her efforts and her success will effect the lives of five crores Muslim women and will bring them out of the orbit of Personal Law. Representatives of various women's organisations also took this opportunity to felicitate Begum Shah Bano and congratulated her on her success. The determination with which she fought for her rights is admirable.

RECOMMENDATIONS

A. Constitutional Law-Religious Laws :

1. Equality before the law is enshrined in the Constitution. Adequate measures should be taken to reinforce this.
2. Removal of discrimination in Personal Laws.
3. Condification of Personal Law.
4. Criminal Procedure Code, Section 125, should not be amended to exclude any community from its ambit.
5. A uniform Civil Code.

B. Dowry Prohibition :

1. A special Act against Domestic Violence as C 498 A is not adequate to cover domestic violence against women.
2. Dowry Prohibition Act—recommendational of the Joint Committee should be accepted. Definition of dowry should cover demands made after marriage as has been recommended by the Law Commission.
3. Compulsory registration of marriages and registration of gifts given at the time marriage should be enacted in the law.
4. If a woman dies under suspicious circumstances within seven years of married life or commits suicide all gifts given to her at the time of marriage and upto that period should be returned to her parents.

C.

1. National Commission on Women should be set up at the State and Central levels.
2. There should be a Women's Development Ministry which can included Women's Welfare Programmes.
3. Vigilance Committees of Social workers or advisory Committees consisting of more than 50% women should be attached to police stations.

D. Women at Work :

1. Laws should be enacted to protect the rights of household and self employed women workers.

2. Creation of a fund as maternity benefit fund with contribution from all employers, State Government, and Central Government. This contribution should be made compulsory for all the employers irrespective of their sex.
3. The Social Welfare Ministry should have a cell where complaints regarding the sexual harassment of working women at their place of work can be made, so that necessary action can be taken against the person concerned. It is also felt that the cell should be headed by a women.
4. Minimum Wage Act be taken up for immediate revision and should apply to all workers in organised as well as unorganised sectors.

E. Law regarding Succession and Property Rights

1. All the laws regarding succession and property rights should be reviewed removing the bias against women and the loopholes therein should be plugged.
2. A common law of property rights should be enacted to safeguard the interests of married women.
3. The Mother should be made the natural guardian of the child. The child should be given the option to choose his/her guardian at the age of 13 years instead of 7 years.
4. A provision of interim maintenance should be enacted which should be determined according to the number of persons dependent on the women. The limit put at Rs. 500/- in Criminal procedure Code Section 125 should be changed to 50% of the husband's income.
5. All the Maintenance Acts should be amended in the light of the proposals made in the bill introduced by Mrs. Pramila Dandavate in the parliament.

F. Divorce :

1. The Code of Conduct for the government servants should be revised and should be publicised amongst them to be effective. The interim maintenance clause should be included in the Code of Conduct in case of husband in government service deserting his wife.
2. Emphasis on economic independence of women which includes training in vocational skills.
3. Women's education should be given priority.
4. Reservation in jobs, special consideration for age relaxation for destitute women like divorcees, widows, deserted women, dowry victims etc.
5. Priority should be given to women in respect of jobs as 35% of families have women as bread earners.

6. Imparting vocational and professional training to women for which more technical institutions are required.
7. Reservation of more seats for women for apprenticeship.

G. Temporary Shelter Homes :

1. One thrown out of the home of the in-laws or husband faced with the unwillingness of the parents to accept, the women has nowhere to go. Hence there is an urgent need of shelter homes for such women.
2. Government should give 100% grant to women's organisations involved in family counselling, running shelter homes, public interest litigation and helping destitute women, to facilitate the organisations to work effectively.

H. Family Courts :

1. The structure and scope of Family Courts should be clearly defined and they should be set up at the earliest.
2. Government should publicise the setting up of Family Courts to make them more effective and meaningful.
3. Establish Social Security Cells on the pattern of Bombay or set up Anti-dowry Cells as in Delhi, at the District level all over the country.

Some Suggestions Regarding Matrimonial Law : Urgent Need for Change

Despite many benevolent laws the suffering women have not been able to get their problems solved. This is due to some basic defects in the law of maintenance and marriage. The change in some of these laws will help in getting expeditious reliefs. Some of the problems are being highlighted and some suggestions are mentioned so that law becomes more smooth.

1. Law of Maintenance Under Cr. P.C.

(A) Section 125 Cr. P.C. deal with the grant of maintenance of women, children and parents. This provision is applicable to all persons irrespective of their religion.

The proceedings under Section 125 of Cr. P.C. are initiated by filling a petition. Notice of its given to the opposite party (i.e. husband, if the petition is by wife). The procedure for service is given in Sec. 61 to 69 of Cr. P.C. According to these sections the service has to be effected through a police officer or a process server, by tendering a copy of the summons U/s 69. The service can also be effected by a Registered Cover.

When the wife (or any other applicant) files the petition the husband (or opposite party) avoids to take the summons. In many cases they change their residence. Then it becomes difficult to effect the service. There is no provision for effecting the service by publication. In the Civil Procedure Code the service can be effected by publication, in a daily newspaper having circulation in the area where the respondent resides. In Section 82, Cr. P.C., the system of publication has been introduced for proclamations in respect of absconders. There is no reason why the same should not be introduced of respect of petitions under Section 125 Cr. P. C.

Therefore a sub-section may be added in Sec. 69 of Cr. P.C. or in Sec. 126 of Cr. P.C. It should be as follows :

'Provided that where the respondent avoids to take the summons or regd. cover as provided in Sec. 61 to 69 Cr. P.C. or has left his residence and the petitioner does not know the new place of residence, the Magistrate may order the service to be effected by publication in a daily newspaper normally circulated in the area in which the respondent resides or last resided.'

(B) Under the Cr. P.C. there is no provision for the grant of interim maintenance or ex-parte maintenance. The experience has shown that the service of the respondent take few months to one year. After that the petitioner has to lead evidence and thereafter the respondent. Only after the conclusion of evidence the Magistrate can pass an order for maintenance. It takes one year to 3 years to decree the case and during this long period the petitioner is without any means of subsistence. In a large number of cases, it has been seen that the petitioner has no relative or friend to support and it is almost impossible for her to survive. Even in the Hindu Marriage Act there is a provision for the grant of maintenance pendente lite. There is urgent need to introduce the provisions of interim maintenance and ex-parte maintenance.

In Section 125, Section 125A may be added as follows :

125A—The Magistrate may, at any time the filing of the petition, on being satisfied that the petitioner has no income sufficient to maintain himself or herself and necessary expense of the petition, order that the respondent shall pay the expenses of the petition and such sum every month, during the pendency of the petition, as may be necessary for the support and maintenance of the petitioner as may be just and reasonable.

Provided that the magistrate may pass such an order before notice to the opposite party if he is satisfied that the circumstances are of grave and serious nature requiring an immediate order or interim maintenance and there is sufficient proof of the existence of relationship between the parties as contemplated by Sec. 125 (1).

(C) The maximum limit of Rs. 500/- as fixed by Section 125 (1) Cr. P.C. should be changed to 50% of the income of the opposite party.

(D) Clause (b) of Sub-Section 3 of Sec. 12, should be deleted as it is unjust to muslim women.

II. Hindu Marriage Act.

Under the Hindu Marriage Act also there is no procedure for the grant of Ex-parte maintenance. Many such cases have come to light in which the husband threw out the wife with an infant and she had no relative or friend to support. In some cases it was seen that the child or the wife required an immediate medical assistance. In the absence of such a provision the respondent is able to delay the grant of maintenance to a substantial length of time. Even after the order the respondent files an appeal and the petitioner is deprived of the fruits of the order for a long time. Therefore, there should be an amendment in Sec. 24 of the Hindu Marriage Act and the proviso relating to ex-parte maintenance as suggested in Sec. 125A. Cr. P.C. above should be added.

III. Section 25 of the Hindu Marriage Act reads as follows :

Any Court exercising jurisdiction under this Act may at the time of passing decree or at any time thereafter.....

The word 'Decree' has been interpreted by the Court as an order granting relief to the petitioner. If the petition itself is dismissed then the order will not be deemed to be a decree. Similarly if the husband withdraws the petition filed by him, the order of dismissal will not be a decree. In such cases though the wife is a successful party but she cannot get any permanent alimony. It is causing great injustice and hardship. On the other hand if the wife files any petition for judicial separation or restitution of conjugal rights, the husband is able to take divorce after one year of the decree granted in favour of the wife.

Therefore, the word 'decree' in Sec. 25 of the Hindu Marriage Act should be substituted by the following words 'Final order decreeing or dismissing the petition.

IV. Section 27 of the Hindu Marriage Act is also not happily worded. Section 27 reads as follows :

'The words' which may belong jointly to both the husband and the wife'. It is very difficult to say whether any property was given exclusively to the husband or to the wife or whether it was given jointly. If wife says that some property was 'Stridhan' and files a Civil suit, the husband says it was joint property or was given exclusively to him. If she claims it u/s 27 of the H.M. Act he sets up the plea that it was not given jointly. Therefore, a proviso should be added in Sec. 27 of the H.M. Act.

'provided that the court will have jurisdiction to decide which property was given exclusively to the wife and which property was given jointly to the husband and the wife and the court may also pass order for the return of any such property which was given exclusively to the wife which is shown to be in possession of the husband.

V. Sub-Sec. 1A of Sec. 13 of Hindu Marriage Act is causing great injustice. Under it any party to the marriage can obtain Divorce if the decree of the Judicial Separation or Restitution of Conjugal right stands for a period of one year. Even the guilty party against whom a decree for Restitution of Conjugal rights or judicial Separation is passed can obtain a Divorce. Therefore Sub-Sec. 1A should be deleted. Clause (viii) and (ix) as they stood before the amending Act of 1964.

(V) The offences of Bigamy have increased many fold. The husband can prosecute the adulterer u/s. 497 I.P.C. if the wife lives with somebody. But the wife can not prosecute the woman to whom the husband marries or with whom he lives in adultery. The proof of second marriage is impossible. Therefore section 494 of the Indian Penal Code should be amended and it should provide in the case of adultery there would be a presumption of second marriage or the adultery with the husband after should also be punishable u/s. 497 I.P.C.

Custody & Guardianship under the Hindu Law

Relationship of mother and child is unique in nature. According to the latest knowledge it develops right in the womb. Development and future behaviour of the child depends much upon the treatment and the thought process through which mother goes during these crucial months. God is unknown but accepted creator of the manifest and the unmanifest world. Mother is known creator and we are to see how the Hindu Society and the law treats the mother vis-a-vis her children.

Section 6 of the Hindu Minority and Guardianship Act, 1956 (32 of 1956) accepts father and after him mother as the natural guardian of a Hindu minor in respect of minors person as well as property (excluding his or her undivided interest in the joint family property). It further provides that custody of a minor who has not completed the age of five years the custody of a minor whether boy or unmarried girl shall ordinarily be with the father and in case the minor is removed even by his/her own mother, the father has the right to move the court under section 25 of the Guardian and Ward Act, 1890 without getting himself appointed as guardian under the Act (AIR 1925 Avadh 257 and AIR 1957 Allahabad 126). The custody cannot be denied to the father unless he is unfit or it is justified on the ground of welfare of children/child (AIR 1956 Punjab 234 and 1953 Mysore 123).

According to sub-clause (b) of Section 6, of Act 32 of 1956, mother and after her father is the natural guardian of an illegitimate boy or illegitimate unmarried girl. Why this cannot be so in case of legitimate boy and legitimate unmarried girl. To my mind there is no rational idea behind this distinction and if permitted to say the discrimination. The only reason can be on the basis of the right of inheritance and the ability financially to maintain the child. The distinction based on this in my opinion is completely lost in the present day world. Firstly for the reason that the child after coming into enforcement of the Hindu Succession Act, 1956 can inherit equally from the mother as the daughters are equally entitled to the share in their father's property. Not only that most of the mothers are working and are contributing to the income of the family and have the wherewithals to financially support the child. The other possible reason can be the ego of the man based on the consideration of the child and especially the male child carrying the name of the father from generation to generation which would not be the case in case of illegitimate boy or the girl. Today it is not necessary that the boy or for that matter the girl must carry the name or the surname of the father with their own. It is also possible that after attaining the age of majority the boy or the girl may like to drop the name or surname of the father or may even opt to change the religion and therefore there is absolutely no logic in the distinction which the Parliament has thought fit to make in the natural guardianship of the legitimate and illegitimate children.

Whether we look on the question of the guardianship and the custody of the minor children from the point of view of the welfare of the children or from the right of the mother vis-a-vis the father, the clear and unabiguous answer is that the mother alone ought to be preferred to the father. There could be no doubt that the best atmosphere for the welfare of the minor children is the congenial atmosphere of the home in the company of the mother and father together. But as the law stands today it is the mother who is immediately liable to lose the company and the custody of her children in case of a dispute between the parent. There have been cases where this lacuna in law has been exploited by the father and his family members to the detriment of the mother and not only that mothers for the sake of love for their minor children have suffered humiliation, beatings and even burnings at the hands of their husbands and their relation as according to them to leave the children in the merciless hands of the husband and her in laws would be the worst act of selfishness and cowardice. Much of the agony of mothers can be avoided in case the law ensures her the company and the custody of her very life and blood in case the unfortunate separation is to take place between the husband and the wife.

The solace that ultimately the courts will decide the question of the custody of the children based only on the consideration of the welfare of the children irrespective of the rights of guardian under the law is of not much practical significance for the reason of the delay involved in these proceedings. Essentially the whole question has to be decided by the courts on the basis of the evidence and the evidence is not produced in a day and final adjudication is delayed.

July, 1985 Issue of Readers Digest contains an Article "When Parents Steel their Children", and refers to three real life stories of the struggles which the mothers undergo to get back the physical custody of their children after they are stolen by their own fathers when taking them out in exercise of visiting rights granted to them by the courts. The Article also highlights the absence of the International Convention between the countries on 2 "Legal kidnapping" inspite of the meeting of legal experts of 29 countries in Hague in 1976. The difficulties mentioned in the side Article are there also for the mother in India but they become manifold in view of the law which make father the natural guardian of the minor, and according to the article problem can be resolved only by women organisation taking more interest in their matter.

In therefore strongly recommend that we resolve and recommend to the Parliament to amend the law and make the mother and after her father the natural guardian of the minor boy and unmarried girl. The law also needs to be amended in regard to the testamentary power to appoint guardian by mother and father in respect of minors person and property. The provision of sub-section (c) of section 6 of the Hindu Minority and Guardianship Act which makes the husband guardian in the case of married girl also need to be deleted in view of the fact that under the provisions of the Hindu Marriage Act no question arises of minor girl marrying in view of the provisions of sub-section (3) of Section 5 of the Hindu Marriage Act, 1955.