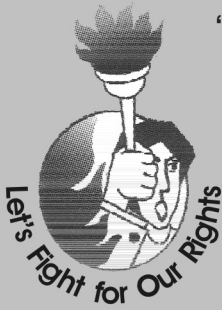


'Nyay Darshan' Publication

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Our Rights



Respect, Dignity, Recognition
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**Need of review of
the Supreme Court judgement
on cruelty against women
(Section 498A IPC)**

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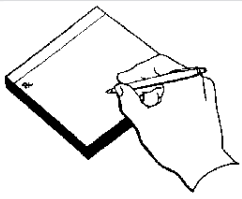


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Editorial

Need of review of the Supreme Court judgement on cruelty against women (Section 498A IPC)

On July 17 the Supreme Court made an order on IPC section 498A dealing with cruelty against women. This Section came into being in 1983, almost two decades after the Dowry Prevention Act of 1961 and two decades before the Domestic Violence Act, 2006. These laws were not found adequate to punish perpetrators of cruelty committed against women. A long drawn women's movement resulted in enacting a IPC Section 498A to punish offenders of committing cruelty against women. This section states that if a woman is subjected to cruelty by her husband or his relatives, they could face imprisonment for upto three years, in addition to a fine. An offence under 498A is cognizable, non bailable and non compoundable. So the husband and his close relatives accused of the offence of cruelty could be arrested by police without warrant. Being a non-bailable offence they are forced to seek bail in a court. Being a non compoundable offence the victim and the accused cannot compromise and find an amicable solution to their family problems.

Section 498A is perhaps the most reviled of all laws dealing with marital disputes, especially among men's rights groups who have been campaigning to have it scrapped. They often cite its frequent "misuse" and hold up court judgements to validate their position.

In a recent case, *Sneha Sharma vs. Rajesh Sharma* the Supreme Court said, "This Court had earlier noticed the fact that most of such complaints are filed in the heat of the moment over trivial issues. Many of such complaints are not bona fide. At the time of the filing of the complaint, implications and consequences are not visualised." This results in harassment of family members and may "hamper any possible reconciliation and reunion of a couple".

It then went on to issue a few directions to prevent 'misuse'. Police or a magistrate will have to refer every complaint to district-level Family Welfare Committees which will have as members "paralegal volunteers, social workers, retired persons, wives of working officers". No arrest can be made until this civil society committee submits its take on the complaint. The order lists a few other safeguards for the accused, including grant of bail within a day irrespective of whether the dowry items are recovered. It also states that in case of husbands, who stay outside India, there should be no red corner notices issued or passports impounded. The only exemption to these directives are cases where there are "tangible physical injuries or death".

Many Social and legal activists believe that the Supreme Court judgement amount to a near "repeal" of Section 498A. By insisting on death or physical injury the judgement ignores emotional violence. Instead of ensuring shelter for abused women, the concerns of the court is more about protecting the rights of the accused.

A study by Kolkata based organisation Swayan shows that 10 per cent of all complaints under 498A were found to be true on investigation. 90 per cent were declared false on account of ‘mistake of fact or of law’.

Decrying the court’s argument that the low conviction rates under 498A – 14 .4 per cent in 2012 and 15.6 per cent in 2013 – are proof of its misuse, the All India Democratic Women Association (AIDWA) states, “In our experience, the low conviction rate is not at all indicative of whether cases are false. In many cases, investigation is not properly conducted, statements of material witnesses are omitted, and evidence is improperly collected. Furthermore, as domestic violence occurs in the confines of home and family, convictions under section 498A IPC are notoriously difficult to achieve.”

Kirti Singh, legal convener of AIDWA says, “The Supreme Court judgment is based on the presumption that women file false cases, that they are mostly liars even though there is no finding in the specific case that the woman had filed a false complaint.”

The Law Commission in 2012 held “that the abuse or misuse of law is not peculiar to this provision (Section 498A). The existing law should be allowed to take its own course rather than over reacting to the misuse in some cases.”

The direction made by the Supreme Court that the police or a magistrate must refer every complaint under Section 498A to a district level family welfare committee to get its opinion before arresting the accused persons can dilute the law and its implementation. This procedure will discourage victims of cruelty to take legal action in time because the extra – judicial family welfare committees may act like “kangaroo courts” or “vigilante justice groups”.

The court has given the power of the police to welfare committees who will decide whether an offence has occurred and whether a women has suffered cruelty. Thus the aim of the powerful law is defeated. What the court should have done was to give guidelines to police officials how to deal with complaints under Section 498A in an efficient and effective manner and how to deal with police misusing their powers to make a quick buck.

To make the present law effective it is advisable to amend the law to make itailable and compoundable, so that family problems can be solved amicably and relationship can be maintained for the welfare of all. The law as it stands today can destroy families.

Strong action must be taken against anyone who abuses law by filing frivolous complaints. No law should be misused. An allegation by a woman is not enough to make an arrest. The police must investigate the matter and then register a complaint under section they deem it.

Considering the above facts and suggestions it is hoped that the Supreme Court will review its July 17 judgement to make this law an effective shield for the women victims of cruelty and to maintain family welfare.

P. D. Mathew, S. J.
(Advocate)

Need to develop a new and modern judicial system to dispense justice speedily

Q. Is there a judicial crisis in India?

A. Definitely yes. About 3 crore cases are currently pending in various courts of India.

Q. Who has recently asked the Supreme Court judges to give up 5 days of summer vacation?

A. Chief Justice Khehar. It is a timely request.

Q. Should the judiciary have a summer vacation?

A. No. But the judges may be allowed to take leave when they need.

Q. Where does the root of the problem of delay lie?

A. In the lower courts.

Q. Should every court have data under the “date filed” column to identify delays?

A. Yes. But a number of courts does not have this data.

Q. Are all courts computerised today?

A. Only some are computerised.

Q. What should be included in computerisation?

A. It must include within its ambit the standardisation of data collection across courts and not merely computerisation within silos.

Q. How can a great deal of accountability and trust be brought into the judicial system?

A. By bringing simple metrics like frequency of case, disposal per judge or categorisation of subject matter with respect to judges.

Q. What is required to decide on elevation of judges?

- A.
- The collegium should have more data points to objectively decide on elevation of judges
 - The CJJ’s office and High Courts should have a live dashboard which can update them on the performance of the High Courts, justices, and the aggregated data of the lower courts, with simple colour coded markers for the various KPIs.

Q. Should new technology be used for data collection?

A. Yes. Artificial intelligence is fast maturing and with further advances in machines learning, standardised data collection can assist judges in forming judgement.

Q. What is the new system used in China to reduce the workload of judges?

A. A software developed by Nine Research Institution in China helped 300 judges handle 1,50,000 cases, reducing their workload by one - third.

-
- Q. What is the role played by lawyers to drag cases pending for a long time without trial?**
- A. Lawyers who charge per appearance have a vested interest in getting repeated further.
- Q. Can use of video conferencing help for fast trial of cases?**
- A. Yes. Video conferencing is statutorily provided but rarely available in practice and infrequently used even if available.
- Q. On when should accountability be fixed for causing repeated delays in dispensing justice?**
- A. On individuals and lawyers responsible for it.
- Q. Should case management in procedure law in India be overhauled?**
- A. Yes, to reduce the time taken for each case.
- Q. What should not be done by the judiciary?**
- A. Judiciary should not encroach in the domain of the executive. Eg. Liquor ban imposed by the Supreme Court in high ways.
- Q. When can high pending of cases in courts decline?**
- A. Only with effective measurements, process overhaul, contestant feedback, and by equipping the judiciary with technology and modern tools. This alone can enable the emergence of a new and modern judicial system with the capacity to dispense justice speedily. Justice delayed is justice denied.
-

Judgements must be written in simple language without legal jargons

- Q. Should ordinary people understand the content of judgements framed by courts?**
- A. Yes.
- Q. What is the criticism of some judgements?**
- A. They are incomprehensible. So often one has to hire an English professor to interpret the judgement.
- Q. What is the suggestion?**
- A. That judgement must be written in simple English.
- Q. What is the art of judgement writing?**
- A. Brevity and clarity. A judgement must unite reasoning and decision. A good judgement should reserve one third of the space for arguments, one third for what has been said in preceding cases and one - third for decision.

Q. Should a defeated party know why he lost the case after reading the judgement?

A. Yes. A judgement must be easily understood by judges, lawyers and the laymen.

Q. What is the reason for using big words in judgments?

A. To show how learned one is. So some write a lot and go around in circles.

Q. Should this impulse be resisted?

A. Yes, to create more certainty and clarity for those who must implement the judgement.

Q. In what matter should judges be trained?

A. In the basics of language and articulation

Q. Does writing of a long judgement with verbosity delay justice?

A. Yes.

Q. For whom is a judgement written?

A. For a consumer of justice, often an ordinary man who suffered injustice.

Q. Who has to pay for a judgement?

A. The common man.

.....

Are our governments working *sab ka saath* for *sab ka vikas*?

Q. What did our retired President Mukherjee say recently?

A. He spoke about mob frenzy and intolerance in the country and talked about the forces of darkness to be kept away.

Q. Who condemned mob killings?

A. The Prime Minister and other Ministers.

Q. What is the core reasons for the above?

A. Minds of people especially the majority population are indoctrinated with sectarian antipathy that reflected in the senseless lynching and killings of Muslims.

Q. Why were they killed?

A. Merely because of the crime of being Muslims.

Q. Can we say that by allowing such killings the state is moving towards a conflict with the largest minority in the country?

A. Definitely yes.

Q. What does some BJP politicians believe?

A. That they can build the country without the help of minorities. No wonder the BJP did not bother to give a single ticket to a Muslim in the UP elections.

Q. Is this the right way of going forward to develop the nation *sab ka saath*?

A. Definitely not.

Q. What are the special characteristics of our nation?

A. This is a nation with a hundred languages, castes, and faiths ranging from animism to monotheism. This nation has most visually challenged people and leprosy affected people in the world.

Q. What is the origin of terrorism?

A. Oppression and suppression of poor people who suffered injustice from a majority which enjoyed life.

Q. What must be done by government to prevent terrorism and communalism?

A. Government must act in time. The PM must speak in time, not two years later, Timely action is needed.

Q. Why our police are not taking legal action in time against lynching and killing of Muslims?

A. Fear of politicians and political interference in their functioning. Police instead of taking strict action sanctioned by law, look towards the ruling party officials.

Q. Will all these have negative effect and impact on our democracy?

A. Yes. If the state is slack on issues of social cohesion, the nation will pay for it.

Q. Is it true that 90% of the killers get away without punishment?

A. Yes. It is not a testimonial for our justice system or our secularism.

Q. Are our governments working *sab ka saath* for *sab ka vikas*?

A. Definitely not.

.....

Violence in the name of cow slaughter: Duty of the government

- Killing in the name of gau bhakti, or devotion to cow, cannot be accepted.
- No one has the right to take law and order into his hands.
- Cow vigilantism and lynchings are criminal acts.
- The continuing violence in the name of the cow has become a rash and hate crime.
- Some anti-social elements are creating anarchy in the country.
- Every state government must take action since law and order is primarily state responsibility.
- All political parties must condemn the hooliganism.
- Lynching Muslims in the name of cow is not merely a law and order problem. It can be part of the communal hatred for Muslims.
- Police have failed to do their duties when lynchings of Muslims were going on.

- They are reaching late, becoming bystanders.
- They demonstrate greater zeal in filing cases against the victims.
- Many politicians speak more in defence of cows and slaughter of cattles than on the equal rights and special protections that government in a constitutional democracy owe to their most vulnerable groups of citizens.
- P.M. Modi and Sangh Parivar leaders should not deny the gravity of these crimes or condone them. They must warn the mobs and tell them not to act in the name of their party and spoil its name.
- Every state government responsible to maintain law and order must act firmly whenever such violence happens. The Centre must support the states in this matter to punish the guilty and to prevent future crimes.

.....

Communal politics: A dangerous trend

Q. What is the cause of murder of one young Muslim 19 - year - old man travelling in a train Haryana's Ballabgarh on pre-Eid day?

A. 'Beef' excuse.

Q. Why did the perpetrators bring 'beef' excuse?

A. To swing the administration and public opinion their way.

Q. What was the admission of the SHO of Government Railway Police at Ballabgarh on the incident of murder?

A. He escaped himself from his responsibility of rescuing the youths stating that such things happen.

Q. What is revealed by the sequences of events related to this case?

A. That the brothers were victims of a hate crime to which the police were bystanders.

Q. Why such crimes are taking place?

A. Because the atmosphere of communalisation is increasing fast. The signal that goes out to lawless mobs and even policemen is that it is open season to attack minorities on the mere imputation of carrying beef.

Q. What is the consequence of this trend?

A. This trend is extremely dangerous for a diverse country like India.

Q. What should be done by authorities to stop this trend?

A. They must stand with the victims and assure justice will be done. They must also ensure that tough punishment must be given to the perpetrators of crimes based on religious beliefs.

Q. What else should be done by the government to bring communal harmony and peace?

A. Withdraw unjust food laws or rules restricting cattle trade that hit the whole economy and certain employment.

Q. What is the effect of pursuing a religious agenda in politics?

A. It undermines the security of the country and break down of law and order. Communalism as a political tool comes with hefty collateral damage. All especially the government and politicians must wake up to this dangerous reality.

Q. What did William Butler Yeats say on this matter?

A. He said, "Once you attempt legislation upon religious grounds, you open the way for every kind of intolerance and religious persecution".



Decriminalisation of politics

Q. Should convicted MPs and MLAs be barred from contesting elections for life?

A. Yes. It is necessary to sanctify democracy and democratic governments.

Q. What is the view of Central Government on this issue?

A. The Centre is against the life ban on convicted politicians.

Q. What is the present rule?

A. At present, the Representation of the People Act bars a convict from contesting elections for six years after release from prison.

Q. What is the view of the Election Commission?

- A.
- It is reluctant to give its free view. It seems it is influenced by the Centre's stand against life ban on convicts from contesting polls.
 - It wants to set up special courts for speedy trial of criminal cases faced by elected representatives.

Q. What is the demand of Ashwini Upadhaya, the petitioner in this case, in the Supreme Court?

A. She (a voter) wants elected representatives if convicted should be debarred for life from contesting elections.

Q. What percentage of law makers are alleged law breakers now?

A. 30% of law makers are law breakers.

Q. What is the suggestion made by the EC on electoral reforms?

- A.
- Politics must be decriminalised.
 - Make offence of bribery a cognisable offence.
 - Amend the provisions concerning election expenditure.
 - Prohibit advertisements in print media 48 hours before the close of elections.
 - Prohibit paid news.



PIL opposes Poll Manifestoes in Gujarat High Court

Q. Who has filed the PIL in Gujarat High Court seeking ban on manifestoes by political parties during elections?

A. Managing trustee of an NGO, Sewa Gujarati Jayesh Shah.

Q. What was his argument in the High Court?

- A.
- That the Gujarat High Court should declare that political parties issuing manifestoes is illegal and unconstitutional.
 - That political parties never fulfill the promises made in manifestoes and, hence, such manifestoes are nothing but pieces of paper without any accountability.
 - Manifestoes issued by political parties during the 2014 general elections when manifestoes titled, ‘Ek Bharat, Shreshtha Bharat’ and ‘Sabka Saath, Sabka Vikas’, were issued with high promises.
 - That the ruling party does not make any endeavour to implement the manifestoes.
 - Such violation of poll promises has become routine in India and, hence, such manifestoes are nothing but cheating.
 - Such manifestoes mislead Indian voters for their support and to secure their votes during elections.

Q. What was the last demand of the petitioner?

A. To grant permission to the petitioner to bring political parties, the BJP and the Congress, to the proceedings.



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“Quit India” movement

(P. M. Modi)

- “We should celebrate 15th August, 2017 as Sankalp Parva or the Day of Resolve, and in 2022 marking 75 years of Freedom. We must make 2017 our Year of Resolve. In this month of August, we have to come together and resolve: “Filth, Quit India; Poverty, Quit India; Corruption, Quit India; Terrorism, Quit India; Casteism, Quit India; Communalism, Quit India! Let us launch a mega campaign, Sankalp se Siddhi — Attainment through Resolve — from 9th of August for a new India”.

(On 31/07/2017)

Legal questions and answers

1. Mosques using loud speakers

Q. Can mosques use loud speakers for wake-up calls at 3 am daily during Ramzan?

A. It is customarily done. But many complain about it as it disturbs people's sleep.

Q. Can people complain to authorities against this practice?

A. Yes.

Q. To whom can people make complaints?

A. To mosque administration and to police.

Q. What is the demand of the people?

A. Either take down the loud speakers or mute them.

Q. What are the Supreme Court guidelines on this matter?

- A. • Either the loudspeakers will be uninstalled from the religious places or the caretakers will have to play them in low volumes.
• That loud speakers cannot be used between 10 pm and 6 am.

Q. Is peaceful sleep a fundamental right under Article 21 of the Constitution?

A. Yes. To disturb sleep would amount to torture. It is accepted as a violation of human rights.

Q. Who suffer more due to use of loud speakers in temples and mosques?

A. Old people, sick people and minor children.

Q. What is the aim of Ramzan?

A. Helping people and not for causing distress. Bothering others is against the spirit of Ramzan.

2. Not paying minimum wages to MGNREGA employees

Q. Are State Governments bound to pay minimum wages to workers under MGNREGA?

A. Yes.

Q. Which ministry has to enforce the Minimum Wage Act?

A. The Ministry of Rural Development.

Q. Are all States paying State Minimum Wage to employees under MGNREGA?

A. No.

Q. Is it right?

A. No. It is a violation of their fundamental right.

Q. Who can give direction on it to the State government?

A. High Court of different States.

Q. Who can file writs in High Courts to get adequate wage?

A. The affected employees.

3. Punishment for raping a 5 - year - old girl for six months

Q. A - 25 - year - old man allegedly raped a five – year - old girl repeatedly for six months. She told her dad that the man used to take her to his house when her father went out for work. Her parents filed a complaint in the police station. When he was arrested he confessed the crime. Under what Section of the law can he be punished?

A. Under various sections of the Protection of Children from Sexual Offence and Section 376(2) of the Indian Penal Code.

4. Crack down hard on lynching vigilantes

Q. What did PM Modi say on “lynching by vigilantes”?

A. He spoke against lynching. He said nobody has the right to take the law into his own hands and that indulging in violence in the name of ‘gau bhakti’ is against the ideals of Mahatma Gandhi.

Q. What is the evidence on lynching shows?

A. The evidence suggests that incidents of lynching and assault by cow vigilantes have gone up sharply across the country since NDA took office in 2014?

Q. Has Modi spoke against cow vigilantes earlier too?

A. Yes. He has made similar remarks last year after the flogging of Dalit youths at Una in Gujarat. But little has changed on the ground.

Q. Why cow vigilantes feel emboldened?

A. Because the BJP dispensation and police are lenient towards them.

Q. What should Modi do more to control cow vigilantes?

A. He must speak against them often, even in his *Mann ki Baat* address. His government must adopt a zero tolerance policy towards lynching. Police action against lynching must be publicly extolled. Draconian anti - cow slaughter law brought in since 2014 need to be revised.

5. Use of loud speakers in silence zone

Q. Can people use loud speakers in silence zone?

A. No.

Q. What can be done when people use loudspeakers in a silence zone?

A. File an FIR against them.

Q. Who can file it?

A. Any person disturbed by the loudspeaker.

6. Ostracization of couple over love marriage

Q. Has a community the right to ostracize an young couple for their love marriage?

A. No. The social boycott of the couple is a shocking incident and a shame.

Q. Who has to take up this case?

A. The Human Rights Commission. It has directed the district police chief and social justice officer to enquire into the incident and submit a report within a month.

Q. Who else were treated in an inhuman manner merely on the ground that they mingled with their children?

A. Their parents too.

Q. Does the above action of the community violate the human right of the married couple?

A. Yes.

Q. Can the community leaders enforce the social boycott of the families saying that the families violated the customs and marriage rituals?

A. No.

Q. Can a case be filed against the community leader?

A. Yes.

Q. Under what law can the police register a case against the leader?

A. Under Sections 506 (criminal intimidation) and 509 (word, gesture or act intended to insult the modesty of a woman) of the IPC.

Q. What was the complaint made against the community leader?

A. Making defamatory remarks against the married women.

7. RTE admission

Q. Whom to complain when parents want changes in school allotted to their wards under the Right to Education (RTE) Act, 2009?

A. To the District Education Officer (DEO).

Q. What is the new admission process for 25% reservation in private schools and RTE?

A. Online (from this academic year).

Q. Can allocation of schools be allowed as per choice of parents?

A. No.

Q. Are there clear guidelines on what category students should be given priority in admission?

A. Yes. For instance orphans, destitute and children or migrant workers have to be given priority after which students of BPL category are allotted schools.

Q. Should students who applied for admission in English medium be allotted admission in English medium?

A. Yes. They cannot be given admission in Gujarati medium schools.

Q. What should be done if they are given admission in Gujarati medium schools?

A. They can submit written objection letters to the District Education Officer (DEO).

8. Bovine menace on city roads

Q. Can Municipal Corporation authorities of a city complain to police against cattle - rearers for letting out their bovines on the roads?

A. Yes.

Q. Under what law can they be booked?

A. They can be booked for attempting to commit culpable homicide not amounting to murder.

Q. Under what law cattle rearers were booked earlier?

A. Under the Prevention of Anti-Social Activities Act (PASA) or for violation of police notification.

Q. What was the content of the offence committed by the cattle rearers?

A. That the cattle rearers were releasing their bovines on major roads in spite of being aware that letting the bovines on such major public roads pose grave danger to commuters.

9. Can a government doctor demand bribe for conducting post mortem of a dead body?

Q. Who is duty bound to conduct a postmortem of a dead body?

A. A doctor of a government hospital.

Q. Can the doctor claim money for conducting the postmortem urgently at night?

A. No.

Q. To transfer the dead body by plane is a death certificate issued by a doctor a necessity?

A. Yes. It must also contain the official stamp on the certificate issued by the doctor.

- Q. What can be done when any government official ask for bribe for doing his official duty?**
- A. Inform the official of the Anti-Corruption Bureau (ACB). They can set up a trap to catch the accused.

10. Using human shield by an army officer is a violation of his human rights

- Q. Can army use a person as a human shield to protect itself from attack by its enemies?**
- A. No.
- Q. Is using a person as a human shield violation of his human rights?**
- A. Yes.
- Q. Can the State Human Rights Commission (SHRC) ask the State Government to pay Rs. 10 lakh as compensation to a man used as a human shield by the army?**
- A. Yes. It can be justified.
- Q. Why?**
- A. Protection of life and liberty of citizens is the basic responsibility of the State Government.
- Q. Which law in India provides for the protection of citizens from human rights violations?**
- A. The Protection of Human Rights Act, 1993.

.....

Do you know?

- ❖ **In a move intended to reduce pollution caused by vehicular emissions, the Supreme Court directed the Centre to take steps to refuse insurance cover to a vehicle that does not have a valid pollution under control (PUC) certificate.**
- ❖ **Prime Minister Narendra Modi may have led celebrations on International Yoga Day, but his government has told the Supreme Court that yoga education cannot be an enforceable fundamental right under the law governing children’s right to free and compulsory education.**
- ❖ **Nearly one lakh children die every year in India due to diseases that could have been prevented through breastfeeding, according to a UN report which said mortality and other losses attributed to inadequate breastfeeding could cost the country’s economy USD 14 billion.**

The Global Breastfeeding Scorecard, a new report by the UN Children’s Fund (UNICEF) and WHO in collaboration with the Global Breastfeeding Collective points out that breastfeeding not only helps prevent diarrhoea and pneumonia – two major

causes of death in infants – it also helps reduce mothers’ risk of ovarian and breast cancer, two leading causes of death among women.

- ❖ **The Supreme Court** on 2nd August outlined a three-tier, graded approach to the question whether privacy is a fundamental right by examining the issue through its intimate, private and public aspects even as it reserved its verdict in the case.

Prior to completion of the two-week-long hearing that attracted arguments for and against conferring fundamental right status to privacy but which saw all parties accepting its intrinsic importance for an individual, a nine-judge bench headed by Chief Justice J S Khehar said privacy could be configured into three zones.

- ❖ **The issue of Article 35A**, which provides special rights to the citizens of Jammu and Kashmir, seems to be heading into a major controversy with the Supreme Court on 14 August saying a constitution bench may examine whether it is gender-biased and violative of the basic structure.

Article 35A, which was added to the Constitution by a Presidential Order in 1954, accords special rights and privileges to residents of J&K and deny property right to a woman who marries a person from outside the State.

The provision, which makes such women from the state to lose rights over property, also applies to her heirs.

- ❖ **The Supreme Court** on 04/08/2017 favoured to introduce an All India common test for selection of judges for lower judiciary, saying that centralised mechanism would ensure appointment of competent judges without any delay and would pave the way for an effective judiciary.

- ❖ **Soon, you may be** able to go shopping at midnight or watch a movie in a theatre at odd hours and have dinner at a restaurant after that if a bill tabled in the assembly by the government sees the light of day.

The bill proposes major reforms for shops and establishments by allowing them to set their own opening and closing hours and stay open seven days a week. If the bill goes through, they can operate 24x7, if timing restrictions have not been set by the state or municipality in public interest.

At present, shops have to shut by 10 pm, commercial establishments by 9.30pm and restaurants 12.30am.

- ❖ **A decades - old bar** against colour blind people from becoming doctors is set to be removed with a Supreme Court appointed panel recommending to the court that the current discrimination on the basis of colour vision deficiency must be done away with. Holding that the MCI rule preventing colour blind people from taking up medical studies is ‘regressive, the Supreme Court had set up the panel in March.

- ❖ **The Supreme Court** continued to subject the debate on constitutional status for the right to privacy to close scrutiny, saying economic rights of citizens and provision for food another essential items could never be a ground to undermine basic fundamental rights.

Talaq, Talaq, Talaq: unconstitutional

Supreme Court Judgement

Q. Who made the judgement on triple talaq?

A. The Supreme Court on 22 August.

Q. Out of 5 judges how many voted against triple talaq?

A. 3 out of 5 judges voted against the practice of triple talaq.

Q. What was the core of the judgement?

A. In this 3-2 verdict the court set aside the centuries old practice of instant talaq or talaq-e-biddat in which Muslim men divorce their wives by uttering talaq three times in quick succession.

Q. What was the judgement of 3 of the 5 judges of the Constitution Bench (Justices Rohinton F. Nariman, UdayLalit and Kurian Joseph)?

A. They called the practice un-Islamic and arbitrary. They disagreed with the view that triple talaq was an unilateral part of religious practice.

Q. What was the minority judgement of Justice J. S. Khehar and Justice S. Abdul Nazeer?

A. They underlined the primacy of Muslim personal law and said that the practice enjoyed constitutional protection and was beyond the scope of judicial scrutiny. They said that the Parliament should consider an appropriate law to deal with the issue of talaq-e-biddat.

Q. What was the decision of Justice Kurian Joseph?

A. He has held –

- triple talaq has no constitutional protection.
- the triple talaq lacked legal sanctity.
- what is held to be unholy in the holy Quran cannot be good in Shariat.
- what is bad in theology is bad in law as well.
- the practice of triple talaq is not an integral part of Muslim religion. It is not part of their personal law.
- merely because the practice has continued for long, that by itself cannot make it valid, if it has been expressly declared to be impermissible.



- Q. Who filed the case in the Supreme Court to challenge the validity of the instant triple talaq?**
- A. Few Muslim women.
- Q. What is the length of this judgement?**
- A. 395 pages.
- Q. What did Justice Kurian Joseph say about the minority verdict of the two judges?**
- A. He said, “I disagree with the minority verdict which held that though triple talaq is part of religion, its operation can be stayed (injunctioned) under Article 142 (extraordinary power of the SC) for 6 months to enable the state to frame a law to deal with it. I have serious doubts as to whether, even under article 142, the exercise of fundamental rights can be injunctioned.”
- Q. What was the judgement made by Justice Nariman?**
- A. “That triple talaq did not satisfy the test laid down by the Supreme Court to decide whether the practice was integral to the practice of a faith. Applying the test of manifest arbitrariness it is clear that triple talaq is a form of talaq, which is itself considered to be something innovative, namely that is not in the Sunna, being an irregular or heretical form of talaq...”
- “...it is clear that this form of talaq is manifestly arbitrary in the sense that the marital tie can be broken capriciously and whimsically by a Muslim man without any attempt at reconciliation so as save it. This form of talaq must, therefore, be held to be violative of the fundamental right contained under Article 14 of the Constitution of India. In our opinion, therefore, the 1937 Act, insofar as it seeks to recognise and enforce triple talaq, is within the meaning of the expression ‘laws in force’ in Article 13(1) and must be struck down as being void to the extent that it recognises and enforces triple talaq.”
- Q. Among whom is triple talaq prevalent today?**
- A. Amongst Sunni Muslims.
- Q. Can Sunni Muslims now take recourse to this mode of talaq (talaq-e-biddat)?**
- A. No, as it would be “void ab initio” (illegal at the outset)
- Q. What is their option now?**
- A. Now they have two other modes of securing divorce – talaq hasan and talaq ahsan.
- Q. What is talaq ahsan?**
- A. Under this a Muslim man can divorce his spouse by pronouncing talaq once every month in three consecutive months and this would be signified by menstruation cycle.
- Q. What is talaq hasan?**
- A. As per talaq hasan, divorce can be given by pronouncing talaq “during successive tuhrs (menstruation cycle)” with no intercourse during any of the three of the tuhrs.

Supreme Court judgement on “Cruelty against women” (Section 498A IPC)

Existing laws

- Section 498 states that if a woman is subjected to cruelty by her husband or his relatives, they could face imprisonment for upto 3 years and fine.
- ‘Cruelty’ means any willful act which is of such nature as is likely to drive the women to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the women.
- Cruelty also includes dowry related harassment
- It is a cognizable offence. So the police officer can arrest the accused without a warrant from the court.
- An offence under Section 498A is a non-bailable offence. Bail is given on the basis of discretion of the court.
- It is non-compoundable offence. So the victim is not pressured into a compromise.

Opinions and arguments raised by men against this law

- Several court rulings in 498A cases have derided women for transgressing the sanctity of the family structure.
- The arrest of in-laws in several cases is made simply to satisfy the ego and anger of the complaints.
- The provision of the law are used as weapons rather than shield by disgruntled wives.
- Most of the complaints are filed in the heat of the moment over trifling fights and ego clashes.
- Through the misuse of the provision a new legal terrorism can be unleashed.
- This law was made for the needy but in 98 per cent of the cases it is used by the greedy. So it needs to be scrapped. Whenever there are genuine complaints, women can take recourse under the Domestic Violence Act.
- This law is biased against men.
- This Section is frequently misused to settle scores with in-laws.
- Since this law is frequently misused it must be scrapped.

Supreme Court’s July, 17 direction on misuse of 498A (Rajesh Sharma vs. State of UP)

“This Court had earlier noticed the fact that most of such complaints are filed in the heat of the moment over trivial issues. Many of such complaints are not bona fide. At the time of the filing of the complaint, implications and consequences are not visualised. This results in harassment of family members and may “hamper any possible reconciliation and reunion of a couple”.

Directives:

1. **Police** and magistrate to refer every complaint to district-level Family Welfare Committees.
2. **Committee** must have as members “paralegal volunteers, social workers, retired persons, wives of working officers ”
3. **No arrest** be made until this committee submits its take on the complaint,
4. **Bail** must be granted within a day irrespective of whether the dowry items are recovered,
5. **The only** exemption to these directives are cases where there are “tangible physical injuries or death”.

Opinions of women activists and female lawyers against the judgement of the Supreme Court

- Statistics point to how a vast majority of victims do not take the 498A route against domestic violence.
- The National Family Health Survey-3 data of 2005 - 6 shows 40 per cent of married women aged 15-49 experienced emotional physical or sexual violence at the hands of their husbands.
- Despite this pervasive nature of domestic violence, as the National Crime records Bureau data shows only 1,13,403 cases were registered in the country during 2015 under section 498 A. That is a mere 0.1 per cent of the women who have faced marital violence.
- Of the 1.13 lakh cases filed under the Section in 2015 90 percent were charge-sheeted, only 3,314 cases fell through for being mistake of fact or of law.
- Considering the stigma that comes with a failed marriage, women anyway resort to the section only when they have run out of all options. For many of these women domestic violence is a daily occurrence and had been so normalised in their lives that they take this step (of filing a complaint under section 498A) only in extreme form of violence.
- The Supreme Court’s July, 27 order had effectively watered down the section on many counts.
- The judgement amounts to a near repeal of Section 498A.
- Despite the section being applicable to cases of domestic violence, police refuse to file a case unless the violence is accompanied by a dowry demand.
- The judgement by insisting on “death or physical injury” ignores emotional violence.
- Instead of ensuring shelter for abused women, the concerns of the court is more about protecting the rights of the accused men.
- At the heart of this judgement is the reluctance to recognise violence being perpetrated in matrimonial homes as a crime.
- Even if edifice of family has to stand on battered bodies and bruised minds of women it is alright, but the preservation of the family is more important. This is totally unconstitutional.
- A study by Kolkata-based organisation Swayam, based on National Crime Records Bureau (2005-09) data, shows that 90 per cent of all complaints under 498A were

found to be true on investigation. Ten per cent were declared false on account of ‘mistake of fact or of law’.

- In comparison, complaints declared false on similar grounds are far higher in other IPC cases such as for cheating, kidnapping and abduction, criminal breach of trust.
- It is prejudicial against women when only laws against domestic violence dowry, sexual harassment, or rape are termed as being misused except when the woman commits suicide or dies.
- There have been judgement that have laid down procedural safeguard to prevent any possible, misuse of 498A for instance, In Lalita Kumari vs. State of UP (2014) the court said police have to conduct a preliminary enquiry before registering an FIR under 498A.
- Section 498A was the result of a long-drawn women’s movement that peaked in the 80s. “The law recognised the historical disadvantages faced by women and the stark reality of the everyday lives of many women.”
- The low conviction rate (14.4% in 2012 and 15.6% in 2013) is not at all indicative of whether cases are false. In many cases, investigation is not properly conducted, statements of material witnesses are omitted, and evidence is improperly collected. Furthermore, as domestic violence occurs in the confines of home and family, convictions under Section 498A IPC are notoriously difficult to achieve.

View of the Law Commission

- The abuse or misuse of law is not peculiar to this provision... the existing law should be allowed to take its own course rather than over-reacting to the misuse in some cases.

Final conclusion

The Chief Justice of India must take initiative to REVIEW the judgement.

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New measures proposed by the Supreme Court for rehabilitation of widows

- We appoint a committee of social workers and a lawyer on 10th August to suggest measures to be taken for rehabilitation of widows abandoned by their family and to deliberate on framing a policy to promote widow remarriage in the country.
- Widow remarriage should be encouraged as it might enable our society to give up the stereotype view of widows.
- It is a pity that these widows have been so unfortunately dealt with, as if they have ceased to be entitled to live a life of dignity and as if they are not entitled to the protection of Article 21 (right to life and personal liberty) of the Constitution,
- The committee will comprise social activists Suneeta Dhar, Meera Khanna, Abha Singhal Joshi, advocate Aprajita Singh and one nominee each from NGOs – Help Age and Sulabh International.

- The committee must prepare “a common working plan” for the welfare of widows after examining all prevailing schemes and the reports filed before the court by the government and National Commission for Women
- We grant the panel time till November-end to file its report.
- Although the government had framed many schemes over the years for rehabilitation of widows it failed to uplift their living conditions and they continued to live a miserable life after being dumped by family in place like Vrindavan.
- Steps must be taken to remove the social stigma attached to widowhood and also to rehabilitate them by imparting skills so that they could lead an independent life.

Know your rights

Honour Killings

Q. Can parents stop a boy or a girl who is a major from getting married to a person of another caste or community?

A. No. In *Sujit Kumar v. State of UP* (AIR2002 NOC 265) the Allahabad High Court observed that if a person who is a major wants to get married to a person of another caste or community, the parents cannot stop him or her. In this case the youth was murdered for marrying out of his caste and community. The court stated that harassment, ill-treatment or killing of such persons for bringing ‘dishonour’ to the family must be prevented. Such practice of ‘honour killings’ is a blot on society. The Court directed the police to take strong measures against those who commit such honour killings. The punishment for ‘honour killing’ is death or life imprisonment and fine. The nature of the offence is cognizable and non-bailable.

Dowry Death

Q. What is ‘dowry death’?

A. Section 304-B (1) IPC defines dowry death to mean the following “Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any demand for dowry. Such death shall be called “dowry death” and such husband or relative shall be deemed to have caused her death”. The punishment for dowry death is imprisonment upto 7 years which may extend to imprisonment for life.

Insult to the modesty of a woman

Q. What is “insult to the modesty of a woman”?

A. It means any man utters any word, makes any sound or gesture, or exhibits any object, intending to attract a woman or intrude upon the privacy of such woman, (Section 509 IPC).

Q. What is the punishment for ‘insult to the modesty of a woman’?

A. The punishment is simple imprisonment for a term which may extend to three years, and also with fine.

Disrobing a woman

Q. What is the punishment for assault or use of criminal force to a woman with intent to disrobe her?

A. The new Section 354B states, any man who assaults or uses criminal force to any woman or abets such act with the intention of disrobing or compelling her to be naked shall be punished with minimum imprisonment for 3 years but which may extend to 7 years and also fine, (Section 354B IPC). This offence is cognizable and non-bailable.

Acid attack

Q. What will be the criminal consequences to a person who voluntarily causes grievous hurt by use of acid etc?

A. If a person causes permanent or partial damage or deformity to, or burns or maims or disfigures or disables, any part or parts of the body of a person or causes grievous hurt by throwing acid on or by administering acid to that person, or by using any other means with the intention of causing such injury or hurt or has the knowledge that he is likely to cause such injury or hurt shall be punished with minimum imprisonment for 10 years but which may extend to imprisonment for life, and with fine,(Section 326 A –I PC).

(This Section is newly added in IPC to protect the victims from acid attack. This Section is applicable to both men and women in case of such acid related offence).

Q. What about the fine imposed on the person who commits the crime of acid attack?

A. Such fine should be just and reasonable to meet the medical expenses of the treatment for the victim and it should be paid to the victim.

Q. What will happen to a person who voluntarily throws or attempts to throw acid?

A. If any person throws or attempts to throw acid on any person or attempts to administer acid to any person, or attempts to use any other means, with the intention of causing permanent or partial damage or deformity or burns or maiming or disfigurement or disability or grievous hurt to that person, shall be punished with imprisonment for a minimum term of five years but which may extend to seven years and fine (Section 326B IPC).

Q. What is the meaning of “acid” for the purpose of Section 326A and 326B?

A. Here “acid” includes any substance which has acidic or corrosive character or burning nature that is capable of causing bodily injury leading to scars or disfigurement or temporary or permanent disability.

Q. What is the nature of the above said Sections 326A and 326B IPC?

A. The offences under the said sections are cognizable and non-bailable.

Protection of children from sexual abuse

- Q. What is the number of children in India?
A. 440 million.
- Q. **How many babies are born every year?**
A. 27 million.
- Q. **How many children live in vulnerable conditions?**
A. 40 % of children.
- Q. **How much of the total budget spend on children?**
A. 5 %. Of these 3.5% goes towards education and other support systems like health.
- Q. **How much is spend on child protection?**
A. 0.1% of the budget.
- Q. **What is the situation of child abuse in the country?**
A. Prevalence of all forms of child abuse is alarmingly high in the country – with 66 % physical abuse, 50 % sexual abuse and 50 % emotional abuse.
- Q. **Are there enough laws to punish the perpetrators of child abuse?**
A. Yes. But rehabilitation of victims is not adequate because resources are not available.
- Q. **What is the nature of child sexual abuse?**
A. It is a public health issue that needs immediate action. India has good laws in place.
- Q. **Which are the laws in India enacted to punish child sexual abuse?**
A. Protection of Children from Sexual Offences (POCSO) Act, 2012 and Juvenile Justice (Care and Protection of Children) Act, 2000.
- Q. **Are they implemented properly?**
A. No. Now the focus should shift more towards their implementation at all levels.
- Q. **What is the consequence of child sexual abuse?**
A. Child sexual abuses have consequences throughout the life of the person. That's why rehabilitation efforts need to be strengthened as children require all the support to regain trust in the Society.
- Q. **Who abuse children?**
A. Mostly people who are suppose to protect them – their family members.
- Q. **Should we have child protection and development for the rehabilitation of sexually abused children?**
A. Yes. They must be managed by the State Government with the help of social and child activists.

Sexual offence against children

A. Penetrative sexual assault and punishment

Penetrative sexual assault

Q. When a person is said to commit “penetrative sexual assault”?

- A. A person is said to commit “penetrative sexual assault” if –
- he penetrates his penis, to any extent, in to the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or
 - he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or
 - he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of body of the child or makes the child to do so with him or any other person; or
 - he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person.

Punishment for penetrative sexual assault

Q. What is the punishment for penetrative sexual assault?

- A. Imprisonment for not less than 7 years. It may be extended to imprisonment for life and fine.

B. Aggravated Penetrative sexual assault and punishment

Aggravated penetrative sexual assault

Q. When is a penetrative assault considered as aggravated penetrative sexual assault?

- A. When a penetrative sexual assault is committed by –
- a police officer on a child within the limit or premise of a police station or station house to which he is appointed, or in the course of his duties, or
 - a member of the armed forces or security forces on a child within an area under his command or during the course of his duties, or
 - a public servant, or
 - the management or staff of a jail, remand home, protection home or other places of custody, care established under law, on an inmate of that institution, or
 - the management or staff of a hospital (government or private) on a child in that hospital, or
 - the management or staff of an educational institution or religious institution on a child in that institution, or
 - a gang on a child.

Q. Who will be punished for committing gang penetrative assault on a child with a common intention?

- A. All the members of the gang are equally responsible and equally punished.
- h) anyone commits penetrative assault on a child using deadly weapon, fire, heated substance or corrosive substance; or
 - i) anyone commits the same causing grievous hurt or causing bodily harm and injury to the sexual organs of the child; or
 - j) anyone commits the same on a child which –
 - i. physically incapacitates or causes mental illness or renders the child unable to perform regular tasks, temporarily or permanently; or
 - ii. make a female child pregnant; or
 - iii. inflicts the child with human immunodeficiency virus, or any other life threatening or permanently impair the child by rendering him physically, or mentally ill to perform regular tasks.
 - k) anyone commits the same taking advantage of a child's mental or physical disability; or
 - l) any one committing the same on a child more than once or repeatedly, or
 - m) any one committing the same on a child below 12 years; or
 - n) any relative of the child through blood or adoption or marriage or guardianship or any relative or close relative of the parent of the child or who is living in the same or shared household with the child commits the same on such child; or
 - o) any one owner, manager or staff of any institution providing services to the child commit the same on the child; or
 - p) any one in a position of trust or authority of a child commits the same on the child in an institution or home of the child or anywhere else; or
 - q) any one commits the same on a child knowing the child is pregnant; or
 - r) anyone commits the same on a child and attempts to murder the child; or
 - s) anyone commits the same on a child in the course of communal or sectarian violence; or
 - t) anyone committing the same offence again on a child after having convicted for sexual offence under any other law; or
 - u) anyone committing the same on a child and makes the child to strip or parade naked.

Will be punished for committing aggravated penetrative sexual assault

Punishment for aggravated penetrative sexual assault

Q. What is the punishment for committing penetrative sexual assault?

- A. Rigorous imprisonment not less than 10 years. It can be extended to imprisonment for life and fine.

C. Sexual assault and punishment

Sexual assault

Q. What is the offence of sexual assault?

A. With sexual intent –

- touching the vagina, penis, anus or breast of the child; or
- making the child touch the vagina, penis, anus or breast of such person or any other person.
- does any other act which involves physical sexual assault without penetration – is said to commit sexual assault

Punishment for sexual assault

Q. What is the punishment for committing sexual assault?

A. Imprisonment for not less than 3 years. It can be extended to 5 years and fine.

D. Aggravated sexual assault and punishment

Aggravated sexual assault & punishment

Q. When does sexual assault become aggravated sexual assault?

A. When sexual assault is committed by persons (officials and relatives) mentioned in Section 5 (a) to (u).

Punishment for aggravated sexual assault.

Q. What is the punishment for aggravated sexual assault?

A. Imprisonment not less than 5 years. It can be extended to 7 years and fine.

E. Sexual harassment and punishment

Sexual harassment

Q. What is sexual harassment upon a child?

A. When a person with sexual intent –

- i) utters any word or makes any sound or gesture or exhibit any object or part of the body; or
- ii) makes any child exhibit any part of his/her body to any person; or
- iii) shows any object to a child in any form for pornographic purposes; or
- iv) follows or watches or contact a child repeatedly either directly or through electronic, digital or any other means; or
- v) threatens to use, in any form a real or fabricated depiction through electronic, film or digital, or any part of the body of the child or the involvement of the child in a sexual Act; or
- vi) entice a child for pornographic purpose.

Punishment for sexual harassment

Q. What is the punishment for committing sexual harassment upon a child?

A. Imprisonment upto 3 years and fine.

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Union Cabinet clears plan to fail students in class V, VIII

Q. What is the approval given by the Union Cabinet?

- A. • For scraping of the no-detention policy in schools till Class VIII. The cabinet also approved the HRD ministry's plan of creating 20 world-class institutions in the country.
- An enabling provision will be made in the Right of Children for Free and Compulsory Education amendment Bill which will allow states to hold back students in class V and class VIII if they fail in the year-end exam.
- However, the students will get a second chance to take another exam and pass.

Q. What is the present provision of the RTE Act on this matter?

A. Under the present provision of RTE Act students are promoted automatically to higher classes till class VIII. This is one of the key component of RTE Act which came into force on April 1, 2010.

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Legal questions and answers

1. Child Marriage

Q. Which law prohibits child marriage?

A. The Prohibition of Child Marriage Act.

Q. Who has the right to marry?

A. A groom of 21 years and a bride of 18 years.

Q. Who can be informed of a child marriage?

A. Childline officials and police officials.

Q. What documents must be seen before stopping a child marriage?

A. Birth certificate of the groom and the bride.

Q. Who can be punished for child marriage?

A. The adult groom and parents of both sides and those assisting marriage ceremony.

2. 10 years in jail for raping a minor

Q. What are the facts behind this case?

- A. • Two brothers allegedly kidnapped a 16 years old girl, who worked as a domestic help. The girl's father had registered a complaint of kidnapping against an unidentified person with Panigate police station. However, when the girl returned, the police conducted her medical test which confirmed that she was sexually assaulted.
- The investigation revealed that Zaver has pressurized the girl to sign a friendship agreement in which her age was shown as 18 years and his brother Jagdish had signed as a witness.
 - During the trial the girl stated that she had eloped with Zaver out of her choice and thus the charges of kidnapping the girl were dropped against all four of them. However, the charges of rape against Zaver and its abetment by Jagdish were proved in the court.

Q. What were the judgements of additional and special POCSO judge in this case?

- A. He held one of the brothers guilty for raping and his brother for its abetment and sentenced them to 10 years of imprisonment and a fine of Rs 5000. The two brothers were also held guilty under Protection of Children from Sexual Offences Act.

3. Human rights in school text book

Q. Should human right education be introduced in school curriculum?

- A. Definitely yes. The subject must be part of the text books from class VI to X. There must be a specific chapter on human rights education.

Q. Should a committee be appointed to revisit the text books and for incorporating human rights education in school curriculum?

- A. Definitely yes.

4. Sexually assaulting a minor girl

A man of 26 years sexually assaulted a girl of 10 years studying in class V, when she was alone at home. The accused lived in the same neighbourhood. When her mother returned home after work the girl informed her about the incident. She lodged a police complaint.

Q. Under which law can the accused man be punished?

- A. Under Section 354A(ii) (sexual harassment) of IPC and the Protection of Children from Sexual Offences (POCSO) Act, Sections 7 and 9(m) (sexual assault on a child below 12 years)

Q. What punishment can be imposed on him?

- A. Rigorous imprisonment of 5 years.

Anti-conversion bill passed in Jharkhand

Q. Who passed the anti-conversion Bill in Jharkhand?

A. The Jharkhand Assembly. The Bill brought up by the BJP – led government.

Q. What is the demand of the opposition parties?

A. To send the Bill to a select committee. But demand was turned down by the State Government.

Q. What is the next procedure to be followed?

A. The Religious Freedom Bill 2017, will now be sent to the Governor. After his approval it will be sent to the President of India for assent.

Q. What is the punishment provided for forced conversion in the Bill?

A. Imprisonment for 3 years and fine of Rs. 50,000 or both.

Q. What is the punishment for forced conversion of minors, women or members of Scheduled Castes and Scheduled Tribes?

A. 4 years jail and Rs. 1 lakh fine or both.

Q. What is the other provision in the Bill?

A. That a person converting willingly will have to inform the Deputy Commissioner about detail such as time, place and the person who administers the conversion proceedings.

Q. What else is required to implement this law?

A. Passing of its rules and regulations.

Q. What are the arguments of the opposition against the Bill?

- A.
- The bill must be referred to the select committee.
 - The Constitution of India gives freedom (a fundamental right under Article 25) to every citizens to choose, practice and propagate one's religion.
 - There are already penal provision in the Indian Penal Code (IPC) for those indulging in forced conversion using threat or allurement. So there is no need for a separate Bill.
 - The provision to inform Deputy Commissioner before conversion is fraught with problems and can be misused to harass people.
 - One need not seek permission from a government official to exercise one's fundamental right. At best people can be asked to furnish an affidavit.
 - No forceable conversions were registered under IPC in the past. So the new Bill is not required.

- The Bill should be passed only after a thorough discussion as it is a matter of communal harmony.
- The new law does not give freedom to choose practice or propagate religion. So it is a violation of human rights under the Universal Declaration of Human Rights (UDHR) and the Constitution of India.
- Government is using public money for advertisements against conversion to Christianity and thus to promote only one religion and divide the others. This is against the principles of secularism.
- The law of allurements is not clear. The law does not define this term. So it can be misinterpreted against Christians who set up medical camps or hospitals, nursing homes or dispensaries or run schools to serve the poor tribals.

Q. What are the arguments of the BJP MLAs for passing the Bill?

- A.
- There is a demographic change in the State in the last couple of decades. The Christian population has increased 30%.
 - The poor, the Dalit and the Tribal population living in interior areas are converted.
 - That in many places children's names are struck off schools run by missionaries if they do not agree to convert.
 - Sometimes they offered rice or grain to convert.
 - The State cannot be expected to remain a mute spectator in all this.
 - Freedom of religious practice means you are free to explain the good things in your religion, not to increase your population by converting.

Arguments of Christians

- We are free to profess and propagate religion under the Constitution of India.
- We want the government to clarify what exactly would amount to allurements.
- The new law will only give a handle to the right wing organisation to harass the missionaries by filing cases for "force conversions".
- Under Article 25 of the Constitution of India the tribals are free to choose and practice any religion.
- Forced conversion is not genuine conversion or legal conversion.
- The main reasons for conversion of tribals are medical aid, fast healing through Christian prayers and love marriages.
- Conversion to Christianity can give benefits to tribals as members of a Christian minority community and as STs.
- The total population of Christianity in Jharkhand is only 4 – 3 per cent of the total population. So conversion has no effect on the people of Jharkhand.

Legal questions and answers

1. Triple talaq

Q. Does the contention of the All India Muslim Personal Law Board (AIMPLB) that triple talaq is uncodified personal law and this cannot be subject to fundamental rights, hold in today's society?

A. No.

Q. Can a religious practice or unmodified personal law be justifiable, if it is violative of the fundamental rights of women?

A. No.

Q. Can traditions or religious practices have upper hand over the fundamental rights?

A. No.

Q. Does triple talaq violate the fundamental rights of Muslims woman?

A. Yes. So it must be struck down.



2. Assaulting Muslims for carrying meet

Q. Has anyone the right to assault Muslim men for carrying meet?

A. No.

Q. Can police arrest those assaulting them?

A. Yes.

Q. Can the meet be tested to find out whether it was beef?

A. Yes. It can be tested in a forensic lab.

Q. Can cow slaughter be punished with man slaughter?

A. No. Violence cannot be an answer to another violence.

Q. Do people have the right to take the law into their hands when police do not do their job?

A. No.

Q. What is the accusation against police?

A. That police are not implementing the law and are taking bribe to overlook violations of law.

Q. Why farmers are committing suicide?

A. Today farmers cannot sell old cows or bullocks and hence cannot buy new ones. So some poor farmers are forced to commit suicide.

Need of a National law for domestic workers

Q. What is the number of domestic workers in India?

A. About 10 million.

Q. Do they have a specific law to protect their rights and govern domestic work?

A. No.

Q. What is the effect of not having a specific law for them?

A. They can be exploited easily.

Q. What do these marginalised and persecuted workers want?

A. Greater equality and legal rights of workers.

Q. Can law be an instrument of transformation?

A. Yes.

Q. Can the law provide basic rights to domestic workers?

A. Yes. The law can provide them the basic rights due to other categories of workers.

Q. From which communities do domestic workers come?

A. They come largely from regions and communities that are at the bottom of economic and social indices.

Q. What is the relationship between a domestic worker and her/his employer?

A. It is too often a feudal rather than professional relationship. But the law can define it.

Q. Is there a national law that governs domestic relationship?

A. No. There is a need of one.

Q. Which States have some laws and rules to deal with manual workers?

A. Kerala, Tamil Nadu and Karnataka.

Q. What should the Central Government do to protect and promote the rights of domestic workers?

A. It should soon enact a Law for a Domestic Worker's Welfare. It must provide for basic terms of employment like minimum wage, hours of work, notice period and grounds for termination, as well as offence and penalties in case of crimes and disputes.



Points to Ponder

- Q. What is life?**
A. It is a daring adventure.
- Q. For whom all things are possible?**
A. For God.
- Q. What must we do to achieve great things?**
A. We must dream as well as act.
- Q. What is vision?**
A. Vision is the art of seeing things that are not yet visible.
- Q. Plato, how did your inventions happen? Was it by accident?**
A. No. They came by hard work.
- Q. How do we acquire virtue or excellence?**
A. By acting rightly. We are what we repeatedly do. Excellence is not an act but a habit.
- Q. Can you have a positive life and negative mind?**
A. No.
- Q. What is the result of having a positive attitude?**
A. It produces positive thoughts, events and outcomes.
- Q. Why to trust in dreams?**
A. For in them is hidden the gate to eternity.
- Q. Is it right to put down other's faiths by saying my faith alone is true.**
A. No. It is wrong.
- Q. How is speed and life calculated?**
A. Speed is calculated as "Miles per Hour", but life is calculated as "smiles per Hour". So increase your smile and get extra mileage to life.
- Q. How love is shown?**
A. Love is shown more in deeds than in words (St. Ignatius of Loyala).
- Q. How to act?**
A. "Act as if everything depends on you; trust as if everything depends on God.
- Q. What is not our choice?**
A. Birth and death.
- Q. What is absolutely our choice?**
A. The way we live our life. So enjoy it and make each day beautiful.
- Q. What must we trust?**
A. We must trust that everything happens for a reason, even if we are not wise enough to see it.
- Q. What is the effect of good times and bad times?**
A. Good times become good memories, bad times become good lessons.
- Q. Will this day come again in your life?**
A. No. So avoid fights, angeriness and speak lovely things to every person and make this day beautiful.

One - week's course on Human Rights and Justice

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Aim

To train and enable social activists to teach and guide the weaker sections of society how to protect and promote their legal rights.

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*Those who desire to participate in the course may contact **Mr. Patrick Christy.***

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