



# 4 LEGAL CELL

In accordance with the mandate of the Commission, under **Section 10** of the **National Commission for Women Act, 1990**, the Commission during the year 2008-2009 reviewed various laws. The recommendations on enacting of fresh legislations/policies as well as the amendments to the existing laws, affecting and concerning women are briefly given as under:-

- (a) **Review of Laws undertaken during the period.**
- (i) **Review of Implementation of the Protection of Women from Domestic Violence Act, 2005.**

Domestic violence is an issue that transcends boundaries of race, religion, class and sexual orientation. Women are being subjected to extreme acts of physical violence, which takes place within the sanctity of their home. The violence is severe, painful, humiliating and recurrent and most often the victim is too overcome by feelings of fear, shame and powerlessness to do anything about it. A United Nations international survey titled "Domestic Violence Women and Girls", estimates that in each country 20% to 50% of women suffer domestic violence. In India studies have found that more than 40% of married women reported being kicked, slapped or sexually abused for reasons such as their husband's dissatisfaction with their cooking, cleaning, jealousy, and a variety of other motives.

According to Ms Indira Jaising, Director, Lawyers Collective, the need for the civil law on domestic violence was identified from the experiences gained

through the provision of legal aid to women facing violence in intimate relationships. After nearly a decade of advocacy and consensus building by various women's groups across the country, the protection of women from domestic violence act, 2005 was finally brought into force on the 26<sup>th</sup> October, 2006. The enactment of this law is regarded as a significant step towards realizing equality rights of women.

The limitations of the pre – 2005 legal regime on domestic violence were –

- There was no definition of the term 'domestic violence' that comprehensively reflected a women's experience of violence in intimate relationships.
- There was no law to recognize a women's right to residence or her right to civil remedies.
- Legal relief for violence could only be availed of by women in matrimonial relationships.
- Relief under civil laws involved protracted legal proceedings without the guarantee of a satisfactory outcome.
- Criminal law did not allow space for any negotiations.
- Hence a mechanism to facilitate a women's access to courts was missing.

**Thereafter it was decided that to have a law on domestic violence the following should be included :-**

- Clear declaration of the basic intent of the law, namely, the object of preventing domestic violence.
- A clear and unambiguous statement of the right to be free from domestic violence and the recognition of domestic violence as a violation of the human rights of women.
- Definition of domestic violence, which captures women's experience of abuse with some degree of precision.
- Definition of the 'shared household' so that rights can be protected within that household.
- Relief's that can be given to protect women from violence.
- Infrastructure available to victims of violence that can make the remedy accessible.

As part of the mandate of the National Commission for Women, it was considered essential to engage in an information exchange exercise, where information on the complaints filed as well as action taken by the State Governments in implementing the law, including issues with regard to appointment of Protection Officers, registration of Service providers, problems encountered in implementation of the Act could be collated and evaluated.

With the above objective, the Commission along with the **Lawyers Collective** organized the first workshop on the implementation of the PWDVA on the **11<sup>th</sup> and 12<sup>th</sup> May 2007** at **Mumbai**, the second workshop was organized on **21<sup>st</sup> and 22<sup>nd</sup> June 2007** at **Bangalore**, **Third one was held at Chandigarh on 21<sup>st</sup> and 22<sup>nd</sup> November 2007**, the fourth workshop was held at Jaipur on **11<sup>th</sup> and 12<sup>th</sup> December 2007**

**and last workshop was held at Kolkotta on 9<sup>th</sup> February 2008.**

The workshops were well attended by the representatives from the State Government Departments, the Police, judicial officers and NGO's

### **RECOMMENDATIONS**

Now that we have a law, we have to ensure that it is implemented and enforced so that women for whom it is enacted are aware of it, have easy access to it and use it effectively. Hence the following recommendations:

#### ***Protection Officers:***

- (i) There is a need for appointing full time PO's. Contractual appointments could be considered as is being done so in Delhi and Haryana.
- (ii) Support system consisting of exclusive Pos with adequate staffing should be set up for the implementation of the PWDV Act, so as to be able to achieve the ends of justice expeditiously.
- (iii) NGO's could be considered as PO'S and paid honorarium for the task being performed by them subject to basic minimum facilities such as office, transport, staff, etc
- (iv) The adequate Numbers of PO should be such that they are able to reach to the Taluka/Block level the feasibility of every Panchayat having a women justice committee could also be considered.
- (v) The DIR Index model adopted by the A.P. Police should be circulated in all states with directions that the model be adopted. The Protection Officer should be in charge of maintaining the



DIR index along with process service register to record the serving of summons, etc. by the PO.

- (vi) Role definition and clarity - between the police/WCD/PO/SP

### **Service Providers**

- (i) Notification of Service providers as per rule 11 of the Act is required. Registration of service providers after due verification of their suitability must be done and their phone numbers and addresses must be published and made available.
- (ii) under section 10, a service provider registered under the Act has the power to record DIR and forward a copy thereof to the Magistrate
- (iii) The provision is restrictive and prima facie curtails the NGOs and other organizations who have not registered themselves under the Act or whose registration may not have been done by the concerned authorities, from assisting the women The services have to be accessible to women in remote areas.
- (iv) Map facilities of Government and Government aided services across different geographical regions
- (v) Provision for honorarium to counselors
- (vi) Accountability of service providers – who fail to register and fail to provide services to the aggrieved person

### **Shelter homes and medical facilities**

- (i) Need to notify the facilities available at state, district and block levels

### **Training, Orientation and Dissemination:**

- (i) Training and orientation of all Stake Holders involved in Implementation of PWDVA and also training manual for Pos, SPs, Police and judiciary must be developed separately.
- (ii) Orientation and awareness to other key factors such as the Gram Panchayats and the social justice committees, SHG groups and federations, Anganwadi workers etc. in supporting victims of violence.
- (iii) Awareness on the law, through media campaigns in print, electronic media and other means.
- (iv) Translation of act in all regional languages so that it can be easily disseminated and understood.

### **Central and State Governments:**

- (i) Building a multi-agency response: there is need to build a multi agency response between the Protection officers, Police, Legal Services Authorities, Service Providers, Counselors, etc to aid women facing domestic violence. This response requires coordination amongst the different departments of the Government as well as partnerships with civil society organizations.
- (ii) Adequate allocation of budget for implementation of the Act.
- (iii) Strengthen augment family courts – all cases to be decided by such courts.
- (iv) Increase number of shelter homes – can be outsourced – involve private participation by way of donations from corporate sectors which could be provided tax concessions.

- (v) Need to recognize the role being played by the women commissions in conciliation and mediation of family disputes

***Towards single window clearance/Role clarity***

- Dowry prohibition Act, Section 498A, Domestic violence Act overlap to some extent in sense that they cover various facets of marital disharmony and violence
- State governments have reacted differently to implementation of these Acts – some places we have the police /social welfare departments officers, etc given additional charge to work as dowry prohibition officers /protection officers and in some cases its the Police
- The system Leads to multiplicity of proceeding.
- Directions of the hon'ble Supreme Court judgment dated 18.12.96 in CRL CWP No. 539/86- D.K. Basu vs. State of west Bengal.

***The power to arrest without a warrant should be exercised only after a reasonable satisfaction is reached, after some investigation, as to the genuineness and bonafides of a complaint and a reasonable belief as to both the person's complicity as well as the need to effect arrest.***

- Police in many States now resort to counseling and settlement and do not immediately take action under section 498A. the AP model seeks to achieve this by harmoniously blending the provisions of DV Act and section 498A IPC
- Even on complaints under section 498A IPC the trend is to resort to counseling and rapprochement rather than filing FIRs and charges

and arresting the persons on grounds because the provision is cognizable and non Bail able

- In such a scenario the AP model may serve a useful purpose;
- This may also ensure role clarity between the police and PO's as well as ensure proper coordination between agencies
- Commission strongly feels that counseling should not be carried out by the police, but the police should engage services of a professional counselor or any authority under DV Act and take suitable action thereafter.

***AMENDMENTS PROPOSED TO PWDV Act:***

- (i) Who can write and make DIR's to Magistrate? U/s 9(b) it's the PO's duty to make the Domestic Incident report to the Magistrate, u /s 10 (2) (b) Service providers can record the DIR and forward to Magistrate. Even under the rules (Rule 5) Its only the PO's and SP's authorized to make the DIR.

These provisions are very restrictive and take away the role of the women commissions as well as those associations who are actively engaged in resolving disputes.Its true that such organizations can file applications u/s 12 of the Act but the proviso to section 12, takes away any such role being performed by such organizations, as its made dependent upon the DIR received from PO/SP Even the Police report would be dependent on DIR filed or to be filed by PO/SP. **hence this restrictive provision needs to be amended, authorizing any Statutory Body espousing the cause of women or promoting and protecting Human rights**



**or the police or any NGO to make such report which shall be treated as DIR under the PWDV Act**

(ii) Definition of “**shared household**”, the judgment of the Supreme Court in the matter of S.R. Batra vs. Taruna Batra needs to be reviewed:

The court in the judgment excludes the self-acquired property of the in-laws from the purview of “shared household”. In doing so, the court contradicts the express letter of the law, which in Section 2(s) clearly

Provides that: *“shared household” means a household where the person aggrieved lives or at any stage had lived in a domestic relationship... irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household.* Hence, the PWDVA expressly states that the ownership of the shared household is irrelevant to the question of the right to reside in the shared household [Section 17 (1)]. The court states that the relief sought cannot be granted because the premises in question is not joint

family property, and hence, cannot be “shared household”. This too is contradictory to the express provision of Section 17(1).

Such an interpretation is sure to have adverse implications on applications filed by women in cases of NRI marriages, where the husband brings the bride to his parents’ house, lives there for a month and then goes abroad. The wife continues to reside in this house, which quite probably is the self-acquired property of the in-laws. The Batra judgment interpretation would then automatically require the courts to say that since this cannot be considered to be the “shared household”, the wife has no right to live there regardless of whether he makes provision for her visa or accommodation in the new home? Whether this defeats the very purpose of the Act - protecting women, is but a foregone conclusion in cases such as these.

***Hence, a need for an amendment to the definition section 2 (s) and its suggested that the provision be suitably amended as under:***

Present Provision	Proposed Amendment
<p>Shared household” means a household where the person aggrieved <b>lives</b> or at any stage has <b>lived</b> in a domestic relationship either singly or along with the respondent.</p> <p>(and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any</p>	<p>Section 2 (s) “ shared household” means a household where the person aggrieved resides or at any stage has resided in a domestic relationship either singly or along with the respondent.</p> <p>(or has the right to reside by virtue of the domestic relationship, whether owned or tenanted either jointly or singly by the aggrieved person and the respondent, and includes, in the case of a married women, a household owned or tenanted by either of parents</p>

<p>right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member)</p> <p>irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household.</p>	<p>of the respondent being her lawfully wedded husband or by the joint family of which the respondent is a member, which was or it her matrimonial home)</p> <p>irrespective of whether the respondent or the aggrieved person has any right, title or interest in such shared household.</p>
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The definition of “shared household” under Section 2(s) requires some changes in order to ensure that the interest and legitimate rights of a woman in a domestic relationship and facing violence can be upheld, while at the same time, given the concerns raised by the apex court in the Batra judgment. Therefore, the following amendment to the definition is suggested to meet requirements of ensuring protection to married women who reside in households not owned by their husband but by her parents in law, but which nonetheless her matrimonial home.

However, at the same time, in view of the concern raised by the court, it is also expressly clarified in the new definition that only that household belonging to the parents in law will be “shared household” for the purposes of this Act which has been her matrimonial home. This provides the safeguard as identified in the Batra judgment.

(iii) The law is also silent as to evidentiary value, which is to be attached to the reports given by PO or their mode of proof. In laws such as land acquisition Act, the sale deed is read as evidence. The report of PO has no evidentiary value. the PO’s would then be repeatedly

summoned by the courts to lead evidence which would adversely affect their functioning

- (iv) Under section 29 of the Act, **orders** of the Magistrate is appealable, which means that even interim orders are subject to appeal. As every order is made appealable so there are no limits, therefore right to appeal and revision under this Act should be amended and appeal should only be against the final orders. For instance in section 28 of the Hindu Marriage Act 1955, orders made by a court under section 25 & 26 are appealable **if they are not interim orders**.
- (v) Alternate Dispute Resolution could play an important role in the implementation of the PWDV Act. –This could effectively lessen the burden on the courts
- (vi) Section 31 states that a breach of order shall be an offence which is punishable with imprisonment extending to one year. At the same time under section 31(3) the magistrate has been empowered to frame charges under section 498A IPC or any offence under dowry Act. The offence under section 32 is cognizable and non-bailable. There appears to be a conflict. In criminal law an offence punishable with imprisonment for one year is called a summons



case. The procedure for trying a summons case is totally different from trying a case under section 498A IPC. this is likely to lead to complications and needs to be clarified

(vii) Only breach of protection orders is an offence. The law is silent on aspect of breach of other orders such as residence orders, custody orders, etc. section 31 needs to be amended to include breach of other orders as well

(viii) **Rule 3** states that tenure of PO shall be a minimum period of 3 years – in case of contractual appointments this may not be a feasible option, as continuous performance of duties, on contract basis, may lead to regularization which the governments may not agree to hence the ready option being resorted to in giving additional function to a government functionary.

**(ii) Revised scheme for Relief and Rehabilitation to victims of Acid Attack**

The Commission had earlier drafted a Bill titled "Prevention of Offences (By Acids) 2008". Subsequently it was suggested to have a scheme on the lines of relief and rehabilitation to victim of rape and accordingly the Commission has formulated a scheme for relief and rehabilitation of Offences (by Acids) on women and girl child which is on the lines of the scheme relating to rape victims. Main features of the scheme are:-

- *Scheme would be administered by the NCW*
- *The authorities at District and State level shall be the same as suggested for the scheme for relief and rehabilitation of victims of rape*

- *Amount up to Rs 5,00,000/- to be immediately provided towards treatment, and further up to the maximum of Rs30 Lakhs*
- *Rs 5 Lakh earmarked towards rehabilitation of the victim*

*The revised scheme has been sent to the Ministry for consideration. Details are at **Annexure-IV***

**(iii) Finalization of Amendments to Dowry Prohibition Act.**

National Commission for Women had organized a Consultation in September 2008 and based on the recommendation prepared with inputs provided by delegates and Lawyers Collective, the proposed amendments to Dowry Prohibition Act 1961 were finalized. The revised recommendations have been sent to the Ministry for consideration. Details are at **Annexure-V**

**(iv) Revised Bill on Protection to Women from Sexual Harassment at Work Place Bill, 2008.**

The draft bill is to provide prevention and redressal of sexual harassment of woman at workplace. The definition of '**aggrieved woman**' besides any woman employee would include any woman associated with the workplace including students, research scholars in any educational institution, university etc It applies to all workplaces in Government as well as private sector, organized and unorganized sectors. The salient features of the draft bill includes:-

- *Constitution of the **internal complaint committee (ICC)***
- *Appointment of District Officer*

- *Constitution of Local Complaints Committee by the District Officer.*
- *Separate provisions for organized and unorganized sector.*
- *Penalty for publication or making known contents of complaint and enquiry proceedings*

*The revised Bill has been sent to the Ministry for consideration. Details are at Annexure-VI*

(v) **Recommendations on Review of the Supreme Court Judgement in SR Batra and Anr. Vs. Smt. Taruna Batra, SLP (Civil) 6651-6652 of 2005.**

The Commission has recommended the Supreme Court decision on shared household as defined in the PWDV Act in the case the Court held that wife is only entitled to claim a right to residence in a shared household, a 'shared household' would only mean house belonging to or taken on rent by the husband, or house which belongs to joint family of which husband is a member. The house in question belonged to mother in law of Respondent and not to Respondent's husband – Respondent could not claim any right in said house. The grounds on which review sought are:

- A. That the Court has interpreted the term "shared household" under the PWDV Act 2005 section 2 (s) in a narrow and restrictive sense in its paragraph 19 to 23 of the judgment;
- B. Court has not taken into consideration the fact that the aggrieved woman lived in the second floor of the shared household at the given address and was in possession of second floor when she was residing with her husband before she left to reside in her parental home due to matrimonial dispute. Aggrieved woman should not have been dispossessed without due process of law;
- C. The Hon'ble Court has ignored the settled principle of law that PWDVA **ensures** that every woman in a domestic relationship shall have a right to reside in a shared household, whether or not she has any right, title or beneficial interest in the same;
- D. Section 17 does not in any way, transfer the title to the property on the woman. Married woman's right to reside in the shared household arises from the status of being married and the said right existed prior to the enactment of PWDVA. This right is thus not dependent on the fact of living for any length of time in the shared household. Hon'ble Court in Mangat Mal Vs Punni Devi (1995) 6 SCC 88, categorically stated the word maintenance in section 14 Hindu Succession Act 1956, must encompass a provision for residence in addition to food and clothing. Thus right to reside in shared household is a pre-existing right of a married woman. Under Section 17, the aggrieved woman's right to live in a shared household is irrespective of the fact that she had marked presence in a shared household or not. [2007(6) MLJ 205 (MAD) T Vandana Vs Mrs. Jayanthi Krishnamachari];
- E. That the Court has failed to take into consideration that even before the advent of the Act, the right of a wife to reside in the matrimonial home, was recognized as part of her right to maintenance, at least in so far as Hindus are concerned. In **B.P.Achala Anand vs**





**S. Appi Reddu and Another (220) 3 (SCC 313),** this Hon'ble Court laid down the law on the point as follows :-

"A Hindu wife is entitled to be maintained by her husband. She is entitled to remain under his roof and protection. She is also entitled to separate residence if by reason of the husband's conduct or by his refusal to maintain her in his own place of residence or for just cause she is compelled to live apart from him. Right to residence is part and parcel of wife's right to maintenance."

- F. It is submitted that such a narrow and restrictive interpretation of "shared household" would give relief to the husband after filing a petition for divorce, or with the intention of filing a petition, connives with the in-laws and deliberately moves out of the house by the in-laws into rented premises and then abandon the wife.
- G. Since the property in question belonged to the mother in law the aggrieved woman could not claim any right in the said house. It is submitted that just because the house was in the name of mother in law it fails to indicate the source of income used to acquire the property. As in the present case the source of income behind the house in question could not be ascertained, the aggrieved woman should not have been denied the right to reside in such shared household.
- H. It's a settled principle of law that the welfare of beneficiary legislation has to be interpreted liberally and in favour of the beneficiary and as PWDVA is enacted for the protection of the

aggrieved women in domestic relationship and aims amongst other to secure a house for a woman, an aggrieved woman's right to reside has to be given priority.

- I. That the PWDVA expressly states that the ownership of the shared household is irrelevant to the question of the right to reside in the shared household [section 17(1)]. The court states that the relief sought cannot be granted because the premises in question is not joint family property, and hence, cannot be "shared household". This too is contradictory to the express provision of Section 17(1). Such an interpretation is sure to have adverse implications on application filed by women in cases of NRI marriages, where the husband brings the bride to his parents' house, lives there for a month and then goes abroad. The wife continues to reside in this house, which quite probably is the self – acquired property of the in-laws. The Batra judgment interpretation would then automatically require the courts to say that since this cannot be considered to be the "shared household", the wife has no right to live there regardless of whether he makes provision for her visa or accommodation in the new home? That such interpretation would defeat the very purpose of the Act.
- J. That such interpretation is bound to create adverse consequences for women fighting for right to shelter. In a case before the Hon'ble High Court at Bombay (appeal from order No 866 of 2007 in suit No.3072 of 2007) Smt Hemaxi Atul Joshi vs. Muktaben Karsandas Joshi and Anr, the Hon'ble Court observed that "That

facts in the case of SR Batra and the present matter are almost similar. Taking into consideration the legal position and facts, the appellant cannot claim any legal right of residence in the house belonging to her mother-in-law...."Even here the said house was in fact the matrimonial home, but the Hon'ble Court rejected the argument.

(vi) **Amendments to the Indecent Representation of Women (Prohibition) Act, 1986.**

To widen the scope of the Act and its applicability electronic media or any other media has been added in the definition of "advertisement". A separate chapter on **provisions relating to prohibition and penalties** has been added. It has also been proposed to appoint a Central Authority to govern and regulate the manner in which women are represented in any document published/broadcast/telecast. Details are at **Annexure-VII**

(b) **Court interventions**

**Raj Kumari Awasthi Vs State of U P - 2008CriLJ2539**

In accordance with the provisions as contained under section 125 (1)(b) & (c) of the Criminal Procedure Code, dealing with the issue of maintenance,

***If any person leaving sufficient means neglects or refuses to maintain-***

- b) *His legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or*
- c) His legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself.

Sub-section 1 (c) which states that "his legitimate or illegitimate child (not being married daughter) who has attained majority, where such child is, by **reason of any physical or mental abnormality or injury** unable to maintain itself," — it's a restrictive provision and there should not be any discrimination between specially able child and such child who has attained majority, particularly girl child. Right to be maintained by a parent having sufficient means should be provided to all unmarried daughters, even after they have attained the age of majority who are unable to maintain themselves. This would prevent vagrancy and destitution of girl child, which is one of the main objectives that the provisions for maintenance seek to address.

In **Raj Kumari Awasthi Vs State of U P - 2008CriLJ2539** the Allahabad High Court observed that Section 125(1)(c) - on a plain reading of the aforesaid provision, it is apparent that a person having sufficient means is only required to maintain his unmarried daughter who has turned major, i.e. after she has crossed the age of eighteen years, only if her inability to maintain herself is due to any physical or mental abnormality or injury, and not otherwise. The position as it stands under this provision is that a college going girl of 18 years, who is not yet married, unless she is unable to maintain herself due to any physical or mental abnormality or injury, can be refused maintenance by her father, who is possessed of sufficient means. But to expect that an unmarried daughter, who is still going to college or staying at home awaiting her marriage, and has no source of independent income to maintain herself can be denied maintenance from her father, who possesses sufficient means only because her inability to maintain herself



is not due to any physical or mental abnormality as required in Section 125(1)(c) of the Code would be extremely harsh and oppressive and in all likelihood violative of Articles 14 and 21 of the Constitution of India.

This provision appears particularly anomalous and discriminatory because in the other clauses of Section 125(1), i.e. in Clauses (a), (b) and (d), a person with sufficient means is required to maintain his wife, his legitimate or illegitimate minor child whether married or not or his father or mother who are unable to maintain themselves and there is no additional requirement for these categories of persons to demonstrate that their inability to maintain themselves is due to physical or mental abnormality or injury for claiming the benefit of this salutary social legislation. The provision also seems contrary to the spirit of Articles 15(3) and 39(e) and (f) of the Constitution of India which veritably enjoin the State to design laws for the welfare of women and children and for ensuring that children and youth are protected from moral and material abandonment. In this view of the matter, ***it was agreed upon that Sub-section 125(1)(c) needs to be amended by the Legislature and the right of to be maintained by a parent having sufficient means should be provided to all unmarried daughters, even after they have attained majority who are unable to maintain themselves.***

Copy of this order be also forwarded to the Law Commissions of India and U.P. and also to the National and U.P. State Commissions for Women for appropriate intervention by these bodies. The Commission agreed with the views of the Hon'ble

Court and filed an intervention application in the High Court of Judicature at Allahabad praying that provision of Section 125 (1) (c) Criminal Procedure Code is discriminatory and violative of the Constitution of India and is liable to be declared ultra vires of the Constitution of India, and accordingly, is liable to be struck down in its present form.

### (c) Seminars and Conference organized

1. A one day "Consultation on Surrogacy and Assisted Reproductive Technologies" was held on 24/4/2008 at National Commission for Women under the Chairmanship of Dr. Girija Vyas.. The guidelines formulated by ICMR regarding ART (Assisted Reproductive Technologies) industry was discussed in the meeting.
2. Workshops on "Indecent Representation of Women" were organized at Mumbai, Kolkata, and Hyderabad. Amendments to the existing law on the subject were discussed in the workshops leading to the amendments to the said Act.



At the interactive session on a Workshop on "Indecent representation of Women". (From left) Dr. Girija Vyas, Mrs. Renuka Chaudhary



At the interactive session on a Workshop on “Indecent representation of Women”. (From left) Dr. Girija Vyas speaking to the press.

3. Consultation on ‘Compensation to Rape Victims.’ was organized by NCW on behalf of MWCD on 19<sup>th</sup> June 2008 at Delhi. **The Consultation was presided over by the Hon’ble Minister for Women and Child Development, Smt. Renuka Chowdhury.** National Commission for Women after consultations with the NGOs and advocates working in this field has prepared the Scheme, which provides for compensation maximum of Rs. 2 lakh to the victims of rape.
4. Consultation on ‘Amendments to Dowry Prohibition Act, 1961’ and Draft Bill on Prevention of Offences by Acid, 2008 was organized by NCW on behalf of MWCD on 18<sup>th</sup> September 2008 at Delhi. **The Consultation was presided over by the Hon’ble Minister for Women and Child Development, Smt. Renuka Chowdhury.**
5. Seminar on “Problems relating to women in North East” was held on 19<sup>th</sup> April, 2008 at Gangtok in Sikkim.

6. Seminar on “Women working in Night Shifts” was held on on 15<sup>th</sup> September, 2008 at Bangalore.
7. A Seminar on “Laws Relating to Marriages-Issues and Challenges” was held on 31<sup>st</sup> Januar, 2009 at Delhi.



At the interactive session of the seminar on “Marriage Issues and Challenges”. (From left) Shri S. Chatterjee, Dr. Girija Vyas, Shri K.G. Balakrishan.

#### **Suo- Moto Case of IAS Rape Convict:**

**The** National Commission for Women’s attention had been drawn to the report appearing in the Media about a rape convict Mr. Ashok Rai having cleared the Civil Service Examination and the High Court reducing his conviction from life imprisonment to five and half years, which he had already spent in the jail.

**Brief of the Case:-** Sunita aged 21 years committed suicide by consuming sulphas tablets on 14<sup>th</sup> April, 2003. A suicide note written by the deceased expressly blamed Mr. Ashok Rai for forcing her to take such an extreme step. The learned Trial



Court convicted Ashok Rai under Section 306/376 IPC and awarded 10 years of rigorous imprisonment for offence under Section 306 IPC and rigorous imprisonment for life for the offence committed under Section 376 IPC.

The Hon'ble High Court, vide the impugned judgment and Order dated 09.02.2009 summarily set aside the conviction of Mr. Ashok Rai for the offences punishable under Section 306 IPC holding that there was no proof of any participative act by Mr. Rai to facilitate the suicide by Sunita so as to sustain conviction under section 306 IPC. The Hon'ble High Court observed that *"considering the totality of circumstances of notice that the appellant and has suffered incarceration for five year and six months and would be entitled to remissions on account of his good conduct in jail; noting further that the appellant has redeemed himself in jail evidenced by the fact that he took his civil services examination and qualified for being appointed to Indian Administrative Services; we are of the opinion that*

*the custodial sentence already suffered by the appellant would meet the ends of justice as a requisite punishment."*

National Commission for Women was concerned that a person convicted of such a heinous crime like rape was attempting to join the government services. NCW sought clarification from DOPT whether such a person convicted for a heinous crime involving moral turpitude is debarred from joining Government Services. The reply from DOPT said that *"success in examination confers not right to appointment unless Government are satisfied after such inquiry as may be considered necessary that the candidate, having regard to his character and antecedents, is suitable in all respects for appointment to the service."*

The judgement sets an extremely retrograde precedent. This was a special case wherein it was decided to approach the Supreme Court in the "rape convict case". The Commission filed an SLP in the Supreme Court against the Delhi High Court Judgment on 16<sup>th</sup> March, 2009.

