

### CHAPTER THREE

#### POSITION OF WOMEN IN INDIAN CONSTITUTION

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Dr. B.R. Ambedkar occupies a place of pride among the great leaders, who dedicated their lives for establishing social and economic equality in our nation. Dr. Ambedkar, a pioneer of social awakening among the Indian women and depressed classes by his work which aroused self-respect and dignity in them. Dr. Ambedkar was a learned economist, brilliant and dynamic lawyer, and a legal luminary of international repute. Dr. Ambedkar earned immense fame as the chief architect of the Constitution of India. He possessed constructive outlook. He was an action-oriented politician and socialologist. He made ceaseless efforts to secure to the Indian women, the downtrodden and untouchables a position in the society. Dr. Ambedkar was one of the greatest sons of India. A parliamentarian, scholar constitutionalist of world repute, he has been universally acclaimed saviour of women and untouchables. As a great crusader of the women and downtrodden, he waged a relentless struggle against the old order which was on injustice and was devoid of human dignity. He strove throughout his life to establish a new social order based on principles of liberty, equality, and universal brotherhood. Dr. Ambedkar championed the cause of suffering humanity throughout

his life. In the Indian social system the women and untouchables were the two sections of people that suffered ages together. Hindu religion condemned them as low born human-beings and shouldered no responsibility of uplifting them. Dr. Ambedkar ultimately succeeded in safeguarding their rights in the constitution of India that was promulgated on 26 January 1950. Right from the beginning of his public career he raised his voice against the slavery of women in India. He felt that half the population of India is of women and they were kept out of education condemning them as unquilted for education.

The story of Indian women is unique, as Indian society is trying to combine an ancient a civilization with the progress of modern times. Status women in society denotes her position with others in terms of rights and obligations. In discussions on women's status in any society, the general convention has been to assess, their role in relation to men. Two assessments, firstly the extent of actual control enjoyed by women over their own lives and secondly, the extent to which they have access to decision-making process and are effective in positions of power and authority. The Constitution of India promises to secure all its citizens, justice,

liberty, equality, and to promote fraternity among them all. To realize the goals the constitution guarantees certain fundamental rights. Along with these, certain negative rights prohibiting discrimination or denial of equal protection of law are also guaranteed. The constitution recognized the unequal social position of women and a special clause empowers the State to make special provisions for women and children even in violation of the obligation not to discriminate among citizens. Therefore, special laws have been enacted for the protection of women workers in factories, mines and plantation; and to provide maternity relief to women workers in organized sector. Thus the constitution envisaged a social revolution, brought through the use of law as an instrument of directed social change. Equality of opportunity in public employment and office has helped to ensure a significant position and status to urban middle class, educated Indian women, demonstrated in increasing numbers of women in the public services; and in the position of political power and dignity. The special attention given to the needs and problems of women as one of the weaker sections of Indian society, and the recognition of political equality was, undoubtedly, a radical departure from the norms prevailing in traditional India. The committee on the status of women had identifi-

ed the dilemma of Indian women in the following words: "Traditional India had seen a woman only as a member of the family or group as daughters, wives and mothers and not as an individual with an identity or rights of her own. The radicalism of the constitution and its deliberate departure from the inherited social system in its implicit assumption that every adult woman, whatever her social position or accomplishments will function as a citizen and as an individual in the task of nation-building. These special provisions for women in Indian constitution were the result of social reform movement which began in nineteenth century emphasizing improvement of women's status. These reformers tried to achieve these objectives through social legislation. These social reformers agreed that no substantial social change could be achieved as long as women were deprived of opportunities of self-development and participation. However, majority of them saw women as custodians of the family and responsible for the well-being of children, inculcating in them the cultural values and very few of them thought in terms of women's rights to participate in social functions outside the family framework. After Independence, suggestions of comprehensive reform of Hindu law were accepted by the government. Though there was much resistance to the Bill in the beginning from

within and outside the congress, the opposition to the bill proved that the implications of equality clauses in the constitution had not been seriously appreciated even by those who framed the constitution. Thus, legal position of Hindu women has been improved considerably by the ban on bigamy, the provisions of right of divorce the right to inherit a share of parental property. However, similar reforms have not taken place in all other systems of personal law in India. The Muslim women continue to be victims of polygamy, system of unilateral divorce and absence of maintenance provisions after divorce. The goal of uniform Civil Code mentioned in the Directive Principles of state policy is yet to be achieved. However, in practice, influence of these progressive laws remains doubtful. Largely, people are unconscious of these laws or they are reluctant to change their life styles. Open and mass violation of Child Marriage Restraint Act and Dowry prohibition Act can be mentioned in this respect. Mass participation of people in violation of these laws at different levels also reveals the limitations of legal provisions in bringing out desired social change. Similarly, provisions of Hindu succession Act 1956 remain ineffective in practice as either women are not aware of these provisions or they are not anxious to assert their rights against established norms and practices.

Any empirical enquiry about the efficacy of these legal provisions relating to women, will reveal that they are too radical in context of social reality and traditions. These constitutional and legal provisions should, thus, be analysed in the context of prevailing social reality. In most Indian communities birth of a female child is still treated as a curse and a financial liability. Not long back, practice of female infanticide was prevalent in many parts of the country. Currently also demographic results of 'Amniocentesis' test on sex ratio of population have yet to be studied scientifically. In traditional families still major goal for girls remains marriage. As a result total socialization process for most of the girls is largely confined to the traditional roles of women.<sup>1</sup> The Indian constitution forbids sexual discrimination, guarantees women, social, economic and political justice, liberty of thought and expression and equality of status and opportunity, side by side with men. Article 44 of the constitution lays down that the state shall endeavour to secure for the citizen a civil code. Accordingly ever since the inauguration of the Indian constitution (1950), the subject of reform in the family laws of India and of evolving a uniform civil code for all, has been engaging the attention of many a legal pundit and social reformer. They had a feeling that "the extent

to which a society gives equal protection to its women is a measure of its progress". There was also the realization that laws which protect the rights and interests of women was a greater necessity for a country like India where women with their traditional roles of mother goddess were allowed a back seat in society. The desire to uplift was always there but it remained dormant and suppressed till India became Independent (1947). After that things began to take a favourable turn.<sup>2</sup> It is impossible to argue that the constitution did not permit laws to have special provision for women if the laws were passed before the constitution came into force but permitted the legislature to pass laws in favour of women after the constitution was enacted. If a law discriminating in favour of women is opposed to the fundamental rights of citizens, there is no reason why such law should continue to remain in statute book. But the exception made to Article 15(1) by Article 15(3) is an exception which applies both to existing laws and to laws which the state makes in future. Since the time of Manu law has always accorded special protection to the women. This is because of their physical structure, social status and conditions of the Hindu society. Most of Hindu women are illiterate and ignorant of their legal rights and duties, economically dependent on men, socially



backward, politically un-informed. Accordingly, the framers of the Indian Penal Code and the Criminal Procedure Code provided special provisions for women, including Hindu women. According to section 10 of the Indian Penal Code, 'woman' denotes a female human being of any age or religion. It is proposed to discuss relevant provisions of the Indian Penal Code and of the Criminal Procedure Code now. The Indian Penal Code, in general, does not make any distinction on the basis of sex. It is uniformly applicable to all. This code was enacted in 1860 and came in to force in 1861. Looking to the social conditions and norms prevailing in Indian society, the Penal Code has provided special provisions which afford protection to women who could be victim of the offences relating to her sex. These special provisions may be treated as exception to the above mentioned general rule. But it must be clear that these special provisions are not exceptions but are special offences, because a woman faces many problems in her public and private life because of her womanhood, her social position. For example, the offence of adultery under Section 497 of the Indian Penal Code which provides that a woman who has voluntarily participated in the offence of adultery cannot be punished. It is proposed to discuss this kind of offences in the following passage. The sections

which give special protection to women or deal with the offences which either specially refer to women or protect women are enumerated in the chart below. These offences also include the offences recently added by the Criminal Amendment special offences against women and protection against custodial rape. The list of the offences given in the chart below includes all major offences relating to women under the Penal Code.

Chart showing offences under the Indian Penal Code  
Protective Women

S. No.	Nature of offence	Section	Minimum punishment	Maximum punishment
1	2	3	4	5
1	Disclosure of the identity of the victim of certain offences, etc.	228-A	-	2 years and fine
2	Obscene acts and songs in Public place	294		3 months or fine or both
3	Dowry death	304-B	7 years	Life imprisonment
4	Causing miscarriage without women's consent	313	-	Life imprisonment or ten years and fine
5	Death caused by act done with intent to cause miscarriage	314	-	10 years and fine
	As above - if without women's consent	314	-	Life imprisonment

contd.

1	2	3	4	5
6	Simple hurt - wife beating	323	-	One year and also fine upto Rs.10,000 or both
7	Grievous hurt - wife beating	325	-	7 years & also fine
8	Wrongful restraint	314	-	1 month or fine upto Rs. 500 or both
9	Wrongful confinement	342	-	1 year or fine upto Rs. 1,000 or both
10	Assault or criminal force to woman with intent to outrage her modesty	354	-	2 years or fine or both
11	Kidnapping	363	-	7 years & also fine
12	Kidnapping of a minor for begging	363-A	-	10 years and also fine
13	Kidnapping or abduct- ing in order to murder	364	-	-ditto-
14	Kidnapping, abudcting or inducing woman to compel her marriage	366	-	-ditto-
15	Procuration of minor girls	366-A	-	-ditto-
16	Importation of girl from foreign country	366-B	-	-ditto-
17	Kidnapping or abudct- ing child of ten years with intent to steal from its person	369	-	7 years and also fine

contd.

1	2	3	4	5
18	Buying of disposing of any person as a slave	370	-	7 years & also fine
19	Selling minor for purpose of prostitu- tion	372	-	10 years & also fine
20	Buying minor for purpose of prostitu- tion	373	-	-ditto-
21	Rape	376	7 yrs./ 10 yrs.	For imprison- ment of 10 years and also fine
	Sexual intercourse with with one's wife living separately	376-A	-	2 years and also fine
23	Intercourse by public servant with woman in his custody	376-B	-	5 years and also fine
24	Intercourse by Superin- tendent of Jail, Remand Home, etc.	376-C	-	-ditto-
25	Intercourse by any member of the manage- ment of a hospital with any woman in that hospital	376-D	-	-ditto-
26	Cohabitation caused by a man deceitfully inducing a belief of lawful marriage	493	-	10 years and also fine
27	Bigamy	494	-	7 years and also fine
28	Bigamy with conceal- ment of former marriage	495	-	10 years and also fine

contd.

1	2	3	4	5
29	Marriage ceremony fraudulently gone through without lawful marriage	496	-	7 years and also fine
30	Adultery	497	-	5 years or fine or both
31	Enticing or taking away or detaining with criminal intent a married woman	498	-	2 years or fine or both
32	Subjecting a woman to cruelty	498-A	-	3 years and also fine
33	Word, gesture or act intended to insult the modesty of a woman	509	-	1 year or fine or both

The Indian Penal Code came into force in 1861.. Out of these 33 offences shown in the chart, 23 offences existed in the original code but new offences, viz., 228-A, 304-B, 363-A, 366-A, 366-B, 376-A, 376-B, 376-C, 376-D, 498-A, specially protecting the women, were added in the due course of time. Thus the number has gone upto 33 offences. These offences were introduced because of the peculiar Indian social conditions and need of the time demanded such acts to be declared as offences. For example the Criminal Law (Amendment) Act 46 of 1983 has provided a new Section 498-A which declares that, "whoever, being the husband or the relative of the husband

of woman, subjects such woman to cruelty, shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine".<sup>3</sup>

THE DOWRY PROHIBITION ACT NO. 28 OF 1961  
as amended by The Dowry Prohibition (Amendment) Act 63

S. (1) This Act may be called the Dowry Prohibition Act 1961.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may by notification in the official Gazette appoint.

S.2 Definition of "Dowry": In this Act "Dowry" means any property or valuable security given or agreed to be given either directly or indirectly -

(a) by any party to a marriage to the other party to a marriage, or

(b) by the parents of either party to marriage or by any other persons to either party to the marriage or to any other person.

at or before or after any time after the marriage in connection with the marriage of the said parties, but does not include dower or mahar in the case of persons to whom the Muslim Personal Law (Shariat)

applies.

Explanation II: The Expression "valuable security" has the same meaning as in Section 30 of the Indian Penal Code.

S.3 (1) If any person after the commencement of this Act gives or takes or abets the giving or taking of dowry he be punishable with imprisonment which may be extend to five years and with fine which shall not be less than fifteen thousand rupees or the amount of the value of such dowry.

Provided that the court may for adequate and special reasons to be recorded in the judgement, impose a sentence of imprisonment for a term less than five years.

(2) Nothing in Sub-section (1) shall apply to or in relation to -

Presents which are given at the time of marriage to the bride (without any demand having been made in that behalf).

Provided that such parents are entered in a list maintained in accordance with the rules made under this Act.

(b) Presents which are given at the time of marriage to the bridegroom (without any demand having been made in that behalf).

Provided that such presents are entered in a list maintained in accordance with the rules under this Act.

Provided further that where such presents are made on or on behalf of the bride or any persons related to the bride such presents are of a customary nature and the value thereof is not excessive having regard to the financial status of the persons by whom or on whose behalf such presents are given.

S.4 Penalty for Demanding Dowry: If any person demands directly or indirectly from the parents or other relatives or guardian of a bride or bridegroom, as the case may be, any dowry he shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years and with fine which may extend to ten thousand rupees.

S.4A - Ban on Advertisement: If any person -

(a) offers through any advertisement in any newspaper, periodical, journal or through any other



media, any share in his property or of any money or both as a share in any business or other interests as considered for the marriage of his son or daughter or any other relatives.

(b) prints or publishes or circulates any advertisement referred to in clause (a) he shall be punishable with imprisonment for a term which shall be less than six months, but which may extend to five years or with fine which may extend to fifteen thousand rupees.

Provided that the Court may, for adequate and special reasons to be recorded in the judgement, impose a sentence of imprisonment for a term less than six months.

S.5 - Agreement for giving or taking dowry to be void:

Any agreement for giving and taking dowry shall be void.

(1) Where the dowry is received by any person other than a woman in connection with whose marriage it is given that person shall transfer it to the woman.

(a) If the dowry was received before marriage, within three months after the date of marriage; or

(b) If the dowry was received at the time or after the marriage within three months after the date of its receipt; or

(c) if the dowry was received when the woman was a minor within three months after she has attained the age of eighteen years and pending such transfer, shall hold it in trust for the benefit of the woman.

(2) If any person fails to transfer any property as required by sub-section (1) within the time limit specified therefor or as required by sub-section (3), he shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years or with fine which shall not be less than five thousand rupees, but which may extend to ten thousand rupees.

(3) Where the woman entitled to any property under sub-section (1) dies before receiving it, the heirs of the woman shall be entitled to claim it from the person holding it for the time being.

Provided that where such woman dies within seven years of her marriage, otherwise than due to natural cause, such property shall -

(a) If she has no children, be transferred

to her parents, or

(b) if she has children be transferred to such children and pending such transfer, be held in trust for such children.

(3A) Where a person convicted under sub-section (2) for failure to transfer any property as required by sub-section (1) or sub-section (3) has not before his conviction under those sub-sections, transferred such property to the woman entitled thereto or, as the case may be, her heirs, parents or children the court shall in awarding punishment under the sub-section, direct by order in writing that such person shall transfer the property to such woman or as the case may be her heirs, parents or children within such period as may be specified in the order, and if such persons fail to comply with the direction within the period so specified an amount equal to the value of property may be recovered from him as if it were a fine imposed by such Court and paid to such woman or as the case may be her heirs, parents or children.

#### S.7 - Cognizance of Offence:

(1) Notwithstanding anything contained in the Code of Criminal Procedure 1973 (2 of 1974) -

(a) No Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence under this Act;

(b) No Court shall take cognizance of an offence under this Act except upon -

i) its own knowledge or a police report of the facts which constitute such offence, or

ii) a complaint by a person aggrieved by the offence or a parent or other relative of such person, or by any recognized welfare institution or organization.

(c) It shall be lawful for a Metropolitan Magistrate or a Judicial Magistrate of the first class to pass any sentence authorised by this Act on any person convicted of any offence under this Act.

Explanation: For the purpose of this sub-section "recognised welfare institution or organization" means a social welfare institution or organization recognised in this behalf by the Central or State Government.

(2) Nothing in Chapter XXXVI of the Code of Criminal Procedure 1973 (2 of 1974) shall apply to any offence under this Act.

(3) Notwithstanding anything contained in any law for the time being in force a statement made by the person aggrieved by the offence shall not subject such person to a prosecution under the Act.

S.8 - Offences to be cognizable for certain purposes to be non-bailable and non-compoundable:

(1) The Code of Criminal Procedure 1973 (2 of 1974) shall apply to offences under this Act as if they were cognizable offence -

(a) for the purpose of investigation of such offence; and

(b) for the purpose of matters other than

i) matters referred to in Section 42 of the Code and

ii) the arrest of a person without a warrant or without an order of the Magistrate.

(2) Every offence under this Act shall be non-bailable and non-compoundable.

S. 8A - Burden of proof in certain cases:

Where any person is prosecuted for taking or abetting the taking of any dowry under Section

3 of the demanding of dowry under Section 4, the burden of proving that he had not committed an offence under these sections shall be on him.

Sec. 8B - Dowry Prohibition Officers:

(1) The State Government may appoint as many Dowry Prohibiting Officers as it thinks fit and specify the areas in respect of which they shall exercise their jurisdiction and powers under this Act.

(2) Every Dowry Prohibition Officer shall exercise and perform the following powers and function, namely -

- (a) to see that the provisions of this Act are complied with;
- (b) to prevent as far as possible, the taking or abetting the taking of or demanding dowry;
- (c) to collect such evidence as may be necessary for the prosecution of persons committing offences under the Act; and
- (d) to perform such additional functions as may be assigned to him by the State Government or as may be specified

in the rules made under this Act.

(3) the State Government may by notification in the official Gazette, confer such powers of a police officer as may be specified in the notification the Dowry Prohibition Officer who shall exercise such powers subject to such limitation and conditions as may be specified by the rules made under this Act.

(4) The State Government may for the purpose of advising and assisting the Dowry Prohibition Officer in the efficient performance of their functions under this Act appoint as advisory board consisting of not more than five social welfare workers (out of whom at least two shall be women) from the area in respect of which such Dowry Prohibition Officer exercises jurisdiction under sub-section (1).

#### Section 9:

(1) The Central Government may by notification in the official gazette make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of foregoing power such rules may provide for -

- (a) the form and the manner in which and the person by whom any list of presents referred to in sub-section (2) of Section (3) shall be maintained and all other matters connected therewith; and
- (b) The better coordination of the policy and action with respect to the administration of this Act.

(3) Every rule made under this section shall be laid as soon as may be after it is made before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and if before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall therefore have effect only in such modification or amendment shall be without prejudice to the validity of anything previously done under the rule.

S.10 - Power of State Government to make rules:

- (1) The State Government may, by notification in the official gazette make rules for carrying



out the purpose of this Act.

(2) In particular and without prejudice to the generality of the foregoing power such rules may provide for all or any of the following matters, namely -

a) the additional functions to be performed by the Dowry Prohibition Officer under sub-section (2) of Section 8B.

b) Limitations and conditions subject to which a Dowry Prohibition Officer may exercise his functions under sub-section (1) of Section 8B.

(3) Every rule made by the State Government under this section shall be laid as soon as may be before the State Legislature.

10. Amendment of Act 45 of 1860. In the Indian Penal Code, after Section 304A the following Section shall be inserted namely:

304B - Dowry Death: 1) 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 relative of her husband for or in connection with any demand for dowry such death shall be called 'dowry death' and such husband or relative shall be deemed to have caused her death.

Explanation: For the purpose of this sub-section 'dowry' shall have the same meaning as in Section 2 of the Dowry Prohibition Act 1961.

2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.

11. Amendment of Act 1974:

In the Code of Criminal Procedure 1973 in the First Schedule after entries relating to Section 304A, the following entries shall be inserted:

Sec- tion	Offence	Punishment	Cognizable or non- cognizable	Bailable or non- bailable	By what Court triable
1	2	3	4	5	6
304B	<b>Dowry Death</b>	Imprisonment of not less than seven years but which may extend to imprisonment of life.		Non-bailable	Court of Session

12. Amendment of Act I of 1872:

In the Indian Evidence Act 1872 after Section 113A the following section shall be inserted, namely:

Sec.113B - When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for or in connection with any demand for dowry the Court shall presume that such person had caused the dowry death.

Explanation: For the purpose of this section 'dowry death' shall have the same meaning as in Section 304B of the Indian Penal Code (45 of 1860).<sup>4</sup>

The Muslim Women (Protection of Rights on Divorce)  
Act, 1986: No. 25 of 1986.

An Act to protect the rights of Muslim women who have been divorced by or have obtained divorce from their husbands and to provide for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Thirty Seventh Year of the Republic of India as follows:

1. Short title and extent:

(1) This Act may be called the Muslim Women (Protection of Rights on Divorce) Act 1986.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

2. Definition:

In this Act, unless the context otherwise requires -

- a) 'divorced woman' means a Muslim woman who was married according to Muslim Law, and has been divorced by, or has obtained divorce from, her husband in accordance with Muslim Law.
- b) 'Iddat period' means in the case of divorced women.
  - i) three menstrual courses after the date of divorce, if she is subject to menstruation;
  - ii) three lunar months after her divorce, if she is not subject to menstruation, and
  - iii) if she is enceinte at the time of her divorce, the period between the divorce and the delivery of her child or the termination of her pregnancy, whichever is earlier.

- c) "Magistrate" means a Magistrate of the First Class exercising jurisdiction under the Code of Criminal Procedure 1973 (2 of 1974) in the area where the divorced woman resides.
- d) "prescribed" means prescribed by rules made under this Act.

3. Mahar or other properties of Muslim woman to be given to her at the time of divorce - (1) Notwithstanding anything contained in any other law for the time being in force, a divorced woman shall be entitled to -

- a) A reasonable and fair provision and maintenance to be made and paid to her within the iddat period by her former husband;
- b) Where she herself maintains the children born to her before or after her divorce, a reasonable and fair provision and maintenance to be made and paid by her former husband for a period of two years from the respective dates of birth of such children;
- c) An amount equal to the sum of Mahar or dowery agreed to be paid to her at the time of her marriage or at any time thereafter according to Muslim law; and

d) All the properties given to her before or at the time of marriage or after her marriage by her relatives or friends of the husband or any relatives of the husband or his friends.

2) Where a reasonable and fair provision and maintenance or the amount of mahar or dower due has not been made or paid or the properties referred to in clause (d) of sub-section (1) have not been delivered to a divorced woman on her divorce, she or any one duly authorised by her may, on her behalf, make an application to a Magistrate for an order for payment of such provision and maintenance mahar or dower or the delivery of properties as the case may be.

3) Where an application has been made under sub-section (2) by a divorced woman the Magistrate may, if he is satisfied that -

a) her husband having sufficient means, has failed or neglected to make or pay her within the iddat period a reasonable and fair provision and maintenance for her and the children or

b) the amount equal to the sum of mahar or dower has not been paid or that the properties referred to in clause (d) of sub-section (1) have not been delivered to her,

make an order within one month of the date of the filing of the application, directing her former husband to pay such reasonable and fair provision and maintenance to the divorced woman as he may determine as fit and proper having regard to the needs of the divorced woman, the standard of life enjoyed by her during her marriage and the means of her former husband or, as the case may be, for the payment of such mahar or dower of the delivery of such properties referred to in clause (d) of sub-section (1) to the divorced woman;

provided that if the Magistrate finds it impracticable to dispose of the application within the said period he may, for reason to be recorded by him, dispose of the application after the said period.

4) If any person against whom an order has been made under sub-section (3) fails without sufficient cause to comply with the order, the Magistrate may issue a warrant for levying the amount of maintenance of mahar or dower due in the manner provided for levying fines under the code of Criminal Procedure 1973 (2 of 1974) and may sentence such person for the whole or part of any amount remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one year or until payment if sooner made, subject

to such person being in defence and the said sentence being imposed according to the provisions of the said Code.

4. Order for payment of maintenance:

(1) Notwithstanding anything contained in the foregoing provisions of this Act or in any other law for the time being in force where a Magistrate is satisfied that a divorced woman has not remarried and is not able to maintain herself after the iddat period, he may make an order directing such of her relative as would be entitled to inherit her property on her death according to Muslim law to pay such reasonable and fair maintenance to her as he may determine fit and proper, having regard to the needs of the divorced woman the standard of life enjoyed by her during her marriage and the means of such relatives and such maintenance shall be payable by such relatives in the proportions in which they would inherit her property and at such periods as he may specify in his order.

Provided that where such divorced woman has children, the Magistrate shall order only such children to pay maintenance to her, and in the event of any such children being unable to pay such maintenance, the Magistrate



shall order the parents of such divorced woman to pay maintenance to her.

Provided further that if any of the parents is unable to pay his or her share of the maintenance ordered by the Magistrate on the ground of his or her not having the means to pay the same, the Magistrate may, on proof of such inability being furnished to him order that the share of such relatives in the maintenance ordered by him be paid by such of the other relatives as may appear to the Magistrate to have the means of paying the same in such proportion as the Magistrate may think fit to order.

(2) Where a divorced woman is unable to maintain herself and she has no relatives as mentioned in sub-section (1) or such relatives or any one of them have not enough means to pay the maintenance ordered by the Magistrate or the other relatives have not the means to pay the shares of those relatives who shares have been ordered by the Magistrate to be paid by such other relatives under the second provision to sub-section (1) the Magistrate may, by order, direct the State Wakf Board established under Section 9 of the Wakf Act 1954 (2 of 1954) or under any other law for the time being in force in State functioning in the area in which the woman resides,

to pay such maintenance as determined by him under sub-section (1) or as the case may be to pay the shares of such of the relatives who are unable to pay, at such periods as he may specify in his order.

5. Option to be governed by the provisions of Section 125 to 128 of Act 2 of 1974:

If on the date of the first hearing of the application under sub-section (2) of section 3 a divorced woman and her former husband declare, by affidavit or any other declaration in writing in such form as may be prescribed either jointly or separately, that they would prefer to be governed by the provisions of sections 125 to 128 of the Code of Criminal Procedure 1973 (2 of 1974) and file such affidavit or declaration in the court hearing the application, the Magistrate shall dispose of such application accordingly.

Explanation - For the purpose of this section "date of the first hearing of the application" means the date fixed in the summons for the attendance of the respondent to the application.

6. Power to make rules:

1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the

purposes of this Act.

2) In particular and without prejudice to the foregoing power such rules may provide for -

- a) the form of the affidavit or other declaration in writing to be filed under Section 5.
- b) the procedure to be followed by the Magistrate in disposing of application under this Act, including the serving of notices to the parties to such applications, dates of hearing of such applications and other matters.

3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days, which may be comprised in one session or in two or more successive sessions, and if before the expiry of the session immediately following the seasons or the successive session aforesaid both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done

under that rule.

7. Transitional Provisions:

Every application by a divorced woman under section 125 or under section 127 of the Code of Criminal Procedure 1973 (2 of 1974) pending before a Magistrate on the commencement of this Act, shall notwithstanding anything contained in that Code and subject to the provisions of Section 5 of this Act, be disposed of by such Magistrate in accordance with the provisions of this Act.<sup>5</sup>

## NOTES AND REFERENCES

- 1 Sushila Agrawal, Status of Women, Jaipur, 1988, pp. 13-17.
- 2 Prithvinath Tikoo, Indian Women, Delhi, 1985, p. 104.
- 3 Sushila Agrawal, Op.cit., pp. 23-28.
- 4 Dr. T.K. Tope, Mahila Va Kutumbvishayak Kayade, (Marathi), Malad (Paschim) Mumbai, 1990, pp. 111-16.
- 5 Ibid., pp. 117-20.