

# MAHILA PANCHAYAT (WOMEN'S COURT) ALTERNATIVE DISPUTE RESOLUTION BODY IN INDIA WITH SPECIAL REFERENCE TO PUDUKKOTTAI DISTRICT

\***R. RADHA**

Ph.D. Research Scholar, PG and Research Department of History, H.H.The Rajah's College, Pudukkottai,

\*\***Dr.C.IYATHURAI**

Professor and Head, PG and Research Department of History, H.H.The Rajah's college, Pudukkottai

## **Abstract**

In India, The termination of the practice of Sati in 1829 by the Alien Government was the first instance of legislative intervention to put an end to a social evil called Sati. According to this tradition-sanctioned practice, women were violently pushed into the burning pyre of their dead husbands. This was a historic law to check violence against women in the Subcontinent. The operation of the traditional arrangement of dispute resolution or the state- sponsored Alternative Dispute Resolution (ADR) arrangement, to deal with women's marital and related family problems, is normally discussed under legal pluralism or Unofficial Law. Family Courts were designed to be more informal in terms of procedure and as a result, they became more accessible and less intimidating to the poor and ignorant female litigants. In family courts, lawyers legalistic jargon and strict rules of procedure and standards of evidence were dispensed with. The usual adversarial relationship between petitioner and the defendant, observed in regular courts of law, was replaced by the spirit of conciliation.

**Keywords: Termination, Alternative, Legalistic, Intimidating, Defendant**

## **INRODUCTION**

In India, The termination of the practice of Sati in 1829 by the Alien Government was the first instance of legislative intervention to put an end to a social evil called Sati. According to this tradition-sanctioned practice, women were violently pushed into the burning pyre of their dead husbands [1]. This was a historic law to check violence against women in the Subcontinent. The British East India Company, basically a trading company, emerged as a paramount political after the decisive victories over the Marathas in the North and the Sultans of Mysore in the South. After military successes, the British Company was emboldened to intervene in the cultural practices of the native population and sought to

bring about social reform, with the active support of the new class of western educated Indian elite like Raja Ram Mohan Roy.

But after the 1857 Revolt, the colonial government did not pursue its reformist agenda through legislative intervention for fear of repeat of 1857 outburst. The strategy of finding safeguards for women, to protect themselves against violence, with the help of Acts of Legislature, was picked up again in 1929 when Dr.Muthulakshmi Reddy fought the social evil of Devadasi System through a piece of legislation. It was followed by the law on the Age of Consent to prevent child marriages.

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The Independent India has passed several Acts of Parliament to protect women against violence [2]. The Factories Act of 1948, Special Marriage Act of 1954, Hindu Marriage Act of 1955, Suppression of Immoral Trafficking Women and Girls Act of 1956, Hindu Succession Act of 1956, Maternity Benefit Act of 1961, Dowry Prohibition Act of 1961, Equal Remuneration Act of 1976, Child Marriage Restraint (Amendment) Act of 1976, Indecent Representation of Women (Prohibition) Act of 1986, Protection of Women from Domestic Violence Act of 2005 and the Tamil Nadu Prohibition of Harassment of Women (Amendment) Act of 2002, were designed to protect women against violence.

Legislative intervention to rectify a social evil like Sati works but not necessarily always. In the case of Sati, there are still some places where it is practiced. This is because Sati is a perfect woman who accompanies her husband even to the other world. In fact, they still have a temple for Sati. At the same time, the law against Sati has almost eradicated this blemish on our body politic.

This gap between what law prescribes and what the society accepts, is more palpable in the case of dowry. There is a law against dowry, giving as well as receiving. It is now a cognisable offence. According to the Dowry Prohibition Act of 1961, dowry is defined as the demand or acceptance of money or materials, as the precondition for marriage. This Act was justified because many young brides were tortured to death by demanding costly gifts and huge sums of money as dowry.

But in the Hindu tradition, Sridhan is that portion of wealth, which is the exclusive property of women and it is passed from mother to daughter. Sridhan includes gifts of money, property, jewellery or a

share in the family business. While Sridhan is the property of women, dowry includes gifts given at the daughter's wedding, not just to her but also to her husband and in laws, in the form of household goods etc to furnish the home of procreation.

The Dowry Prohibition Act of 1961 did not succeed in curbing the menace of dowry because Sridhan is a socially accepted norm and this Act takes cognizance of only dowry which is a precondition of marriage. When dowry is masked as Sridhan, the Act becomes inoperative. This Act is mostly misused by parties, who want to settle a score with the estranged groom's party.

The Researcher interviewed select victims of Pudukkottai Study area, Alamelu Mangai charged her husband, Tamil Selvan, among other things, with harassment for dowry. She filed a case against Tamil Selvan, under the Dowry Prohibition Act of 1961, in the All Women Police Station at Pudukkottai. But later she withdrew the case in consideration of her baby girl and the fair name of her family. In other words, social system prevailed over the legal system.

In other words, two systems operate for disputes resolution - one is the British –designed, judicial system where English is the medium of legal arguments even to this day and the other is the traditional system of Village Panchayats where vernacular language dominates. While the British designed Indian judicial system presupposes intricate and complex procedures, which can be decoded only by the English educated lawyers, the traditional system is more familiar and intelligible to the unlettered masses.

## **ALTERNATIVE DISPUTE RESOLUTION**

The operation of the traditional arrangement of dispute resolution or the state- sponsored Alternative Dispute Resolution (ADR) arrangement, to deal with women's marital and related family problems, is normally discussed under legal pluralism or Unofficial Law. This is rightly called unofficial law because these alternative mechanisms do not attempt to enforce the legal provisions against domestic violence etc but resort to persuasive methods and bring about rapprochement between estranged husband and wife and help them to abide by the patriarchy – inspired, social norms of men playing the instrumental role and women playing the expressive role.

## **KHAP PANCHAYATS**

In the pre-modern, pre-industrial period, village panchayats or caste panchayats, called Khap Panchayats, settled all problems, including marital issues. But after industrialization and the promulgation of several legislations in favour of women, these traditional redressal machineries lost their relevance. In fact, Khap Panchayats acted against inter caste marriages and encouraged honour killings and as a result, they have been banned.

## **MAHILA ADALAT**

The need for women to be heard in a non-threatening, easier to understand, dispute resolution forum was strongly felt and this need for informal arrangement of dispute resolution resulted in the emergence of several Women's Courts known by different names like Mahila Panchayat or Mahila Adalat or Nari Adalat or Mahila Mandal (Women's Circle), Nari Nyaya Samiti (Women's Justice Committee) etc.

There is a Dowry Prohibition Act of 1961, which promises legal remedy for those hapless women, harassed by unreasonable dowry demands. Similarly, there is a Protection of Women from Domestic Violence Act of 2005, which provides legal relief for women battered by violent spouses. In spite of these entitlements, made available through legislative interventions, the affected women still seek remedies through non-state, social mechanisms.

A Woman, trapped in a unhappy, marital situation, still seeks first the traditional method of referring the matter to the elders of her husband's family. If these elders were themselves perpetrators of violence at home, she seeks help from her natal family. Normally, the elders from her natal family would advise her to mend her behaviour and adjust herself to the situation so that the abuse may not occur. In case this approach did not work out, elders from her natal family meet their counterparts in the husband's family and this wider social network seeks to resolve the domestic conflicts.

When these informal attempts fail, they go to the Council of Elders, from her own caste or her own religion. For example, Muslim women refer to the Shariat Court, which is a purely religious assembly. In the case of Hindu women, they approach the Caste Panchayat called the Khap Panchayat. Though village level Panchayats, called Council of Elders, resolve family related problems, including violence against women, they are flawed in their pronouncements of decisions because they are invariably all-male assemblies. In the traditional setting, married women could operate only in the patrilocal, post-marital residence. In this social arrangement, the husband would enjoy natural advantage because he would be in the midst of his relatives and members of his clan and this natural social network is likely to support the man rather than the 'stranger' wife.

Secondly, these traditional communities are governed and guided by the ideology of patriarchy according to which there are proper roles for spouses in a marriage male dominance and female subservience. Even in a difficult marriage, the woman is advised about the indissoluble nature of marriage and hence she is instructed to uncomplainingly cohabit with her husband even and cater to the needs of her husband even if he were to treat her badly. According to Karine Bates, "disputes that involved women were settled by male, authorities and male made rules. In other words, these traditional, non-state dispute

resolution arrangements were concerned only about enforcing the patriarchal norms of male superiority and they were totally insensitive to the rights of women.

This traditional mode of redressal of grievances of women generates several anti-women fatwas and diktats by the Council of Elders [3]. In certain places in India, these traditional councils act as moral police and issue fatwas against young women wearing tight pants or using mobile phones [4]. These Councils even encourage honour killings in order to curb deviant behaviour and coerce the members to conform to the prescriptions of patriarchy.

Feminists objected to the practice of traditional mode of dispute resolution on the grounds that the Council of Elders validated only the 'male breadwinner ideology' in which the women's role is one of dependent housewife and it deliberately ignored the rights of women, as outlined in the constitution as well as elaborated in different Acts of the Parliament. At the same time, these feminists were unhappy with the extant judicial system, designed to enforce the rights of citizens, including the rights of women in the country. Activists in the women's movement argue that the British- designed judicial system is too expensive for the poor litigants from villages. From the time the First Information Report is filed by the police through different stages of the judicial proceedings, money has to be spent either as legitimate court fees or bribe to grease the palms of the police personnel. Since the judicial proceedings are mostly in English, lawyers have to be appointed and they do not come cheap. Even to avail the free Legal Aid Service, they may have to wait in a long line for their turn. In short, seeking help through the present judicial system is expensive and also time consuming.

Secondly, all judges are invariably males, with limited representation of women judges. No wonder patriarchal values colour the judgement of male- dominated courts of official law. Male judges tend to be paternalistic towards women litigants and they harp on the theme of women's conformity to expected standards of feminine propriety rather than attempt enforce the rights of women, elaborated by several legislative enactments[5]. Judges try to persuade female litigants to reconcile with their husbands because it would be better for women to continue the martial relationship even if badly treated rather than the status of single women, with all the attendant economic and social hardships [6]. This is a clear case of social norms prevailing over enforceable entitlements of legal rights of women, under the constitution of India as well as under the several women friendly Acts of the Parliament.

There is another important reason why women shy away from the Courts. In India, it is considered shameful for a woman to take a family dispute to a court. Family disputes are deemed to be private affairs and it is not considered proper for women to complain before strangers in a court of law and expect a judge to arbitrate. This attempt to refer the family issue to a court is not socially acceptable behaviour on the part of women.

It was this dilemma between informal dispute resolution method, as evolved by the traditional Council of Elders, and the formula application of official law, as enforced by the British designed judicial system, that triggered the growth of several versions of women's courts, which attempt to combine the informalism of traditional system with the formalism of a judicial system. When the Government of India found that the British-designed judicial system was overloaded with pending cases and people were losing faith in the extant judiciary for various reasons like corruption, inefficiency, difficult to comprehend procedures, being costly, the Government of India wanted to re-invent the Nyaya Panchayat as an Alternative Dispute Resolution Agency. These Nyaya Panchayats of post-independent India differed from the traditional Councils of Elders because the government sponsored Nyaya Panchayats were an elected body while the traditional Panchayats were built on ascriptive foundation. Secondly, the re-invented Nyaya Panchayats administered the law of the land while the traditional councils at villages passed judgments on the basis of local customs. But these Nyaya Panchayats did not work the way it was expected to work and soon Nyaya Panchayats became moribund [7].

When the attempt to provide an alternative route to justice at the village level, failed to deliver the goods, activists demanded an alternative dispute resolution system and the result was the formation of Lok Adalat or People's Court. These Lok Adalats were designed to provide easily accessible legal remedies, which were denied to the economically and socially challenged sections in the common law courts. The main advantage with the formation of Lok Adalats is that the regular courts were de-congested of too many litigations, which were waiting for disposal for several years. In addition to relieving the common law courts of overloading of cases, these Lok Adalats also helped to create an ambience where informal negotiations rather than formal litigation was facilitated. Mediators were appointed by the Government, to preside over the Lok Adalats. Since these Mediators were mostly retired judges, legal professionals and social workers, it was easier for the Lok Adalats to adopt informal methods of dealing with the litigants, especially women litigants. But even these Lok Adalats, structured differently from the common law courts, could not escape the flak from the feminists [8].

Though feminists appreciated the easier procedures, adopted in Lok Adalats, they argued that the mediators also were swayed by patriarchal bias and gently persuaded the litigants to accept a compromise and reconcile with their husbands. Litigants tended to accept such gentle nudges from the Mediators because they were happy about the speedier disposal of the case. But Mark Galanter and Jayanth Krishnan strongly objected to the gentle persuasion and sometimes to the less gentle methods, adopted by the Mediators, to dispose the case through a compromise because the poor litigant was deluded into accepting a much less advantageous award than what the female litigants would have been otherwise entitled to under the law [9]. The same objection was recorded by Laura Nader also. According to her, feminists all over the world, object to this practice of trading justice for harmony because it supports patriarchal

demand for harmony and also helps the garbage cases out of the regular courts [10]. She also argues that diverting women- related cases, involving unequals to ADR agencies for mediation, only helps the powerful (in the patriarchal system, only the males) to prevail over the helpless female victims [11].

As a result, feminists pressed for more stringent laws against gender violence, in order to curb violence against women. Several amendments were introduced in the Dowry Prevention Act of 1961 to check the 'Kitchen Accidents'. But the severity of punishments did not deter the perpetrators because judges themselves, being mostly males, diluted the legal provisions through their male -biased interpretations [12]. This flaw in the implementation of women-friendly legislations, prompted the feminists to demand restructuring of judicial proceedings to enable easier access to judicial remedies. This resulted in the enactment of Legal Aid Services Authorities Act of 1987. This Act provided free legal services to the poor litigants. Further, the Family Courts Act of 1984, established Family Courts in which women litigants could easily realise legal remedies.

Family Courts were designed to be more informal in terms of procedure and as a result, they became more accessible and less intimidating to the poor and ignorant female litigants. In family courts, lawyers legalistic jargon and strict rules of procedure and standards of evidence were dispensed with. The usual adversarial relationship between petitioner and the defendant, observed in regular courts of law, was replaced by the spirit of conciliation.

It was hoped that these Family Courts, designed as special courts for matrimonial cases, did not deliver the goods. The basic problem was that these family courts were not created in large numbers. Secondly, these family courts also were governed more by the ideology of patriarchy and failed to deliver the advantages, available to women affected by domestic violence, in the various women specific laws of the land. Feminists were confronted with the problem of government-generated judicial systems like the Family Courts or Lok Adalats being shunned by women litigants because their decisions were mostly biased in favour of male domination and women subordination under the prevailing social norms of patriarchy. At the same time, the traditional mode of resolving disputes through informal procedures at the village level also was not satisfactory as the traditional social arrangement for dispute resolution, was also tainted by the social practice of patriarchy.

It was this dilemma that forced the feminists to urge the Government for women specific agencies for dispute resolution. The first reform in this direction was the creation of All Women Police Station, which was administered entirely by a band of women personnel. This was significant because the male policeman of the olden days did not show any special consideration for the women complainants. They used to treat women complainants the same rude ways in which they dealt with the male complainants. Since this was the first step towards litigation in the court of law, the rude behaviour of male police

personnel was a major deterrent for women complainants to proceed with the legal proceedings and avail the rights, they were entitled to, under various women -friendly legislations.

The second improvement to facilitate women complainants to seek legal remedies was the creation of Women's Cells in the police stations. Sylvia Vatuk, in her article, "The Women's Court in India: An Alternative Dispute Resolution Body for Women in Distress", describes the operation of such Women's Cells in police stations in Hyderabad [13]. Vatuk reports that the Commissioner of Police adopted the policy of advising the women complainants to delay formally lodging the complaint and with the help of women counsellors in the Women's Cells, attached to the police station, to work out a mutually agreeable settlement with those who had been perpetrating violence against them. Vatuk also reports the presence of trained social workers, employed by the Tamil Nadu State Social Welfare Department, in the three All Women Police Stations, operating in Chennai. These counsellors also subscribed to the same view that estranged couple must be persuaded to reunite because separated women may not be able to support themselves economically. This need for reunion was necessary, especially when they had children and their natal family also was economically challenged. Once again social norms of patriarchy prevailed over the legally constructed women cells in All Women Police Stations, designed to administer official law.

Some States in India, attempted to resolve disputes through another alternative machinery called Women Lok Adalats, structured on the same lines of Lok Adalats. Silvia Vatuk reports the functioning of Women Lok Adalat in Hyderabad. The Women Lok Adalat was administered by a retired Women Public Prosecutor and a male social worker. These counsellors in Women Lok Adalats, also adopted the same social bias towards patriarchy and advised the complainants to reunite with their husbands, however abusive they might be. In the women Lok Adalat in Hyderabad, as reported by Vatuk [14], both the man and the woman Lok Adalat. If the Women Lok Adalat, after several sessions of counseling, could not resolve the conflict, litigants could go to the regular court, to seek remedy, under the official law.

Another forum, Structured as an alternative dispute resolution agency, was the Maadar Sangham (Centre for Women). This machinery for administering the unofficial law of social norms like family union, was created by the Tamil Nadu Legal Aid Authority. Out of the 5602 complainants, who approached the Tamil Nadu State Legal Services Authority [15] for aid, one third of them, who were mostly involved in matrimonial dispute, preferred pre-litigation mediation and they were referred to the Maadar Sangham, created by the Authority [16]. This Sangham also was gendered and mediation was influenced by the patriarchal value of harmony at home, made possible through male superiority.

## **ALL INDIA DEMOCRATIC WOMEN'S ASSOCIATION(AIDWA)**

Some political parties have introduced Maadar Sangham, like informal systems for resolving domestic conflicts. For example, Shiv Sena, a right wing party in Maharashtra, has formed a women's branch called Mahila Aghadi which receives representations from women victims in the neighbourhood. It is interesting to note that Mahila Aghadi not only adopts persuasive methods to reconcile the couple in conflict but also employs tactics like public threats and shaming and even physical attacks to discourage men from continuing their abusive behaviour [17]. The Communist Party of India also has formed a forum for informal settlement of domestic conflicts and it is called the All India Democratic Women's Association (AIDWA). Unlike the Maadhar Sangham, AIDWA did not always believe in family reunion. Instead they concentrated on the capacity of the victim to stand on her own economically in case she was divorced. For example, in the case of a childless woman, AIDWA suggested completing a certain training programme she had registered before marriage and to find a job [18].

Feminists were not satisfied with any of the Alternative Dispute Resolution Agencies, discussed above because they are male-biased and guided by social values of patriarchy. Hence activists in women's movement demanded All Women, Peer courts for enforcing the unofficial law. The All Women Alternative Dispute Resolution courts are known by different names, in different States, as Mahila Adalat, Mahila Mandal, Mahila Panchayat, Mahila Manch, Nari(Women) Nyaya Samiti etc [19]. The objective of this alternative dispute resolution agency, called Women's Court, is to avoid matrimonial litigation and find a way to reconcile the couple and keep the family unit intact. The Mahila Manch seek to realise this objective by counselling and mediation between the complainant and her husband. This Women's Court persuades the parties to agree to some kind of compromise settlement of their differences, that usually includes commitments by both parties, to change their behaviour that had created the conflict between them in the past.

There is one basic difference between all women courts and other alternative dispute resolution machineries. These all women courts provide relatively congenial space within which a poor, minimally educated and unsophisticated women can feel free to speak openly about the material woes that beset her [20]. In the case of other dispute resolution bodies, there are class and gender differences between the complainants and mediators. All women, peer-led courts present a better model for alternative dispute resolution because they are mostly run by NGOs and mediators are recruited mostly from the same class, from the same geographical, linguistic and cultural background, which the complainants also represent. Further, these recruits for the position of mediators, are sensitised in feminist consciousness and the NGO's philosophy of dispute settlement.

The all women courts, administered by mediators trained in feminist ideology and capable of empathizing with the victims because of their common background, provide a platform for women in distress to air her grievances adequately, without being hampered by feelings of inferiority, embarrassment, fear and powerlessness. The victim feels relaxed in a all women court because she could present her problems to mediators who hail from the victim's background and who share her own assumptions about right and wrong behaviour, who understand, not intellectually but through their own experience what the victim is going through. In other words, the mediators are the victim's peers who could empathize with the victim much better than the educated, middle class mediators.

All women courts meet on a regular basis, on a fixed day and time, every week. They conduct the proceedings in the presence of all the complainants and when one is representing the case, other complainants also listen and sometimes they even participate in the discussions. These peer mediators follow the procedure of maintaining a register in which cases are numbered and dated. Separate files are maintained for each case. They record the advice tendered, details of any agreement, follow up visits etc. These women's courts help the women to write the agreement after discussing the issue with the husbands and others related to the case. If the Women's Court does not succeed in conciliation between the spouses, they accompany the women to the police station to file the case and pursue it in the regular court of law.

In the area of Pudukkottai, a NGO called STEPS, a women's development organisation, was launched by Daud Sharifa Khanam in the year 2003. It mainly caters to the Muslim women and it offers the Muslim women an alternative to the male-dominated Jama'ats (Mosque Committees), where marital issues were earlier settled. The women Jama'at, under the auspices of STEPS in Pudukkottai, is a Muslim version of women's court where battered Muslim women seek help.

Action India is a Delhi based NGO, which has organized an all women court [21]. Action India was launched as a voluntary, welfare project among the resettlement colonies in Delhi during the Emergency of 1975 to 1977. In 1979, influenced by the growing women's Movement in India, they organised women at the community level. These educated middle class, calling themselves Facilitators rather than Leaders, organised autonomous women's groups called Sabla Mahila Sanghs (Association of Empowered Women). When women in the neighborhood complained about domestic abuse, the Action India decided to establish all-women, conflict resolution bodies called Mahila Panchayats (Women's Councils), in the year 1992.

Between September 2004 to November 2009, Action India is reported to have solved 5720 cases. In other words, in 5720 cases, agreements were signed by the parties concerned in the conflict and when after a few months of follow-up, they did not return to the Mahila Panchayat, it is presumed that the dispute had been resolved [22]. The Action India claims certain positive impact on the welfare of women.

They claim that the victims of domestic violence felt empowered. Secondly, the victims realized that they were not alone in their suffering. Thirdly, victims were provided a platform to articulate their problems, without feeling a sense of guilt or failure. Fourthly, they were able to improve their decision making skills. Finally, the victims of domestic violence were able to develop higher levels of self esteem and self confidence [23].

Despite positive estimation of the role of Mahila Panchayats, there are some negative assessment of their efficiency in curbing domestic violence. Shalini Grover documents that complaints keep coming about husbands not supporting financially their wives, diverting their earnings on extra-marital relations etc. According to Shalini Grover, “There is no significant elimination of domestic violence in low income localities..... or a fundamental shift in their attitudes. The Mahila Panchayat is a salient addition to the array of non-legal institutions that are attempting... to eliminate violence in the conjugal home but given their limited resources, they cannot by themselves bring about rapid change” [24].

Shalini Grover further criticizes that the compromise settlement, brokered by the Mahila Panchayats, ‘only validate the male breadwinner ideology’. These settlements by Mahila Courts only ‘reinforce the understanding that women should subscribe to hierarchical gender roles. Nalini Grover, concurs with Denize Kandiyoti, who maintained that women in a male dominated society, rather than actively resisting patriarchy, respond to the constraints imposed on them, BY TRYING TO MAXIMIZE THEIR OPTIONS WITHIN IT’ [25]. This comment by Kandiyoti, is reinforced by Lemons, when she maintained that “In spite of producing more democratic, women-centred spaces of adjudication, the Mahila Panchayats reinscribe certain gendered norms that they explicitly claim to combat.... since meditations are settled through expressions of the existing gendered hierarchies in which the disputants are mired” [26]. Lemons further argues that the victims of domestic violence are advised by Mahila Panchayat to go back to their conjugal homes and ‘to behave properly and not to pick up quarrels”. In one case, the Mahila Panchayat even advised the victim to apologize profusely to her husband. Lemons argues that this emphasis on compromise ‘undermines the aim of greater equality between men and women that Action India... explicitly espouses’ .

## CONCLUSION

With this background information, the Researcher visited the newly formed Mahila Court in the study area of Pudukkottai. The Researcher was surprised to discover that fact, that the Mahila Court was ‘Mahila’ only in name. It was not a judicial space where women lawyers argued and women judges passed judgement. The Researcher was informed that even the judge need not be a woman. Similarly, the advocates also need not be women. In fact, Mahila Court (Magalir Neethimandram) of Pudukkottai is not the kind of court, envisioned by women activists and academic feminists. Mahila Court of Pudukkottai is

simply an extension of the regular court and it dealt with only women related cases, based on women biased legislations like Protection of Women Against Domestic Violence Act 2005, prevention of Dowry Act of 1961 etc.

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