

Press Note

15th March, 2011

NCW views and actions on certain relevant issues pertaining to women

1. Marriageable Age

- Under Prohibition of Child Marriage Act, 2006, marriages of boys under 21 and girls under 18 are prohibited.
- The above provision is not in conformity with other sections of the following Acts :
 - (i) Hindu Marriage Act, 1955.
 - (ii) Hindu Minority and Guardianship Act, 1956.
 - (iii) Indian Special Marriage Act, 1954
 - (iv) Indian Penal Code
 - (v) Juvenile Justice Act, 1986.

Under these Acts, different ages are prescribed for the age of bride, bridegroom, what is meant by minor, child, juvenile etc.

- Non conformity makes it difficult to implement legislation as Penal Code does not make it an offence and Personal laws condone it.
- Section 5 and 11 of the Hindu Marriage Act do not authorise the Court to declare a marriage void on the ground that either of the parties is under age.
- In the case of marriage of a minor girl between the ages 15 to 18, the Hindu Minority and Guardianship Act, 1956, states that her natural guardian would be her husband. However, under the IPC, parents of the minor girl can file case of kidnapping against “husband” of the

minor girl (Lajja Devi Case). Due to the grey area, minor girls end up in the protection home and neither with their parents nor with their husband.

NCW has recommended nation wide consultations with various stakeholders from various fields of concern to come up with the recommendations regarding appropriate age of marriage. So far, 3 regional consultations have been held:

- i. New Delhi – September, 2010
- ii. Trivendrum – October, 2010
- iii. Pondicherry – October, 2010
- iv. Kokatta – January, 2011

2. Irretrievable Breakdown of Marriage as a ground for Divorce

The National Commission for women (NCW) supports inclusion of Irretrievable breakdown of marriage as a ground for divorce provided necessary safeguards are simultaneously provided:-

- i. Financial Security for wives and children;
- ii. Division of property

1981 – Bill was first introduced but allowed to lapse as it could be used to the disadvantage of wives. In several pronouncements, the Supreme Court has made a strong plea for incorporating irretrievable breakdown of marriage as a ground for divorce.

The concept of Irretrievable breakdown of Marriage (IBM) can be acceptable if women are provided with adequate protection and safeguard against its misuse. The conditions under which the concept can be implemented are as follows:

Need to define the term “irretrievable breakdown”.

Financial safety of women has to be ensured and also should be defined.

While granting a decree on this ground, court should satisfy itself and under no circumstances pass any decree ex-parte.

A decree of divorce may be refused if the court feels that there is a reasonable likelihood of resumption of cohabitation. For this, a period of at least 6 months must be provided before pronouncing the decree.

The proposed Bill only speaks of maintenance to children and is silent on the issue relating to division of property.

Further maintenance is restricted only to children who are not minor and due to physical or mental health need looking after. The right to be maintained by a parent having sufficient needs should also be provided to all unmarried daughters, even after they have attained majority if they are unable to maintain themselves.

A National Consultation to elaborately discuss the issues was held in Mumbai in August, 2010, more consultations should be held and 6 months time should be given for this purpose.

NCW has formed an Expert Committee consisting of women activists, advocates, representatives of the National Law Institutes & the Law Commission to come up with draft provisions pertaining to property rights and maintenance in case of divorce on grounds of irretrievable breakdown of marriage.

3. **Compensation for rape victims.**

In the case of Sakshi Vrs. Union of India, the Hon’ble Supreme Court directed NCW to draft a Scheme for the Relief and Rehabilitation of Rape Victims. The NCW formulated the Scheme

and sent it to the Ministry of Women & Child Development in 2005.

NCW is very happy that the Scheme formulated by the Commission, after extensive All India Consultations with all stakeholders and NGOs, has been finalized. Under the Scheme, NCW proposed that victims of rape should be provided with interim assistance of Rs. 20,000 in favour of the victim preferably within 15 days to 3 weeks, to be disbursed by the District Board after preliminary enquiry.

On assessment of needs of affected women, the Board may also provide for support service and incur a maximum expenditure of Rs.50,000.

The final amount of Rs.1.3 lacs is to be directly disbursed by the District Board within a period of 1 month from the date on which the affected person gives evidence in the trial or within 1 year from the date of filing of FIR, (whichever is less) in case where the recording of evidence has been unduly delayed for reasons beyond control of the victim.

In special cases, the assistance may be increased by the State Board up to Rs. 3 lacs, in cases involving minor girls, mentally challenged, handicapped women, HIV / AIDS affected women or those who get pregnant because of the rape etc.
