

**THE PROTECTION OF WOMEN FROM DOMESTIC
VIOLENCE IN INDIA: A CRITICAL ANALYSIS**

**A Dissertation to be Submitted in Partial Fulfillment of The
Requirement for The Award of Degree of Master of Laws**

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I. CHAPTER INTRODUCTION

1.1 INTRODUCTION

Even though women constitute half of the Indian population they have been discriminated against men and have suffered denial and are suffering discrimination in silence. Self sacrifice and self denial are their nobility and fortitude and they have been subjected to all kinds of inequities, indignities and discrimination. Every day, throughout the world, women are subjected to extreme acts of physical violence, which take place within the beguiling safety of domesticity. The violence is severe, painful, humiliating, and debilitating. And it is common.

Domestic violence is usually meted out to women in secret and the sufferings of its victims take place in silence. According to Sidney Brandon, “Statistically it is safer to be on streets after dark with a stranger than at home in the bosom of one’s family, for it is there that accident, murder and violence are likely to occur”. The position of women vis-à-vis men has relegated to subordinate position. They have lacked power socially, economically, culturally and politically. Domestic or family violence meted out to women in family is one of the leading causes which obstructed the amelioration of women. Hence there is a need to strengthen and ameliorate the position of women and to treat her with dignity.

The Constitution of India has guaranteed certain rights which are fundamental in favour of women. Right to equal justice and right to live with human dignity are equally available to women. The Supreme Court and various High Courts have also given positive interpretation to the rights of women in India. Freedom from sexual harassment and right to work with dignity, protection against arbitrariness, women’s right to her stridhana, protecting women from cruelty, right to privacy of a women, right to conduct in camera proceedings, right of the State to make special provisions for women, right of mother to act as natural guardian even when the father is alive and equal pay for equal work are some of the instances where in the Courts have tried to ameliorate the position of women in India. The State is entitled to make special laws for the benefit and protection of women. As the woman’s physical structure and the performance of maternal function placed her at a disadvantage in the struggle of subsistence and her physical well being becomes an object of public interest, special legislations are inevitable. State can positively discriminate in favour of women by

making special provision to achieve social, political and economical justice and accord them parity.

1.2 DEFINATION OF DOMESTIC VIOLENCE

Domestic violence is an extremely complex and vicious form of abuse, committed most often within the four walls of the family house and or within a particular deep-rooted. Power dynamic and socio-economic structure, which do not allow even the acknowledgement recognition of this abuse. Meaning and detection of domestic violence itself the most demanding task.

To be honest, there is no appropriate definition for domestic violence in Indian law. This does not mean that acts of domestic violence are not punishable in India. There is no exact prototype of domestic violence it differs with households, individuals and situations. The impact of domestic violence depends upon its severity. Domestic violence could result in anything from death to minor attacks. There could be a situation where this violence results in causes devastating psychological impairment.

“According to Black’s Law Dictionary, “domestic violence mean violence between members of a households, usually spouses an assault or other violent act committed by one member of a household against another”¹

The meaning of domestic violence and the range of acts which a noun to domestic Violence will become clear form a look at the general laws, criminal and civil, which Address acts which could constitute domestic violence.

The criminal Law in India is contained primarily in the Indian Penal Code, 1860 (IPC).The IPC is supplemented by special laws, which defined and punish specific offences.

[The Indian Penal Code] Under the IPC, ‘ culpable homicide’ is defined as causing death bonding an act.

- With the intention of causing death.
- With the intention of causing such bodily injury as is likely to cause death.

¹ Black’s Law Dictionary p.25

- With the Knowledge that it is likely to cause death. Culpable homicide amounts to murder unless it is committed without premeditation in a sudden fight or in the heat of passion upon a sudden quarrel and without the offenders having taken undue advantage or cruel or unusual manner.²

Where the death of a women is caused by any burns on bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage, and if it is established that the wife had been subjected to cruelty by her husband or his relatives, the death is termed a “dowry death”. The husband or relative who subjects the wife to cruelty is presumed have caused the dowry death and will have to prove that the death was not a result of the cruelty.³

Female infanticide or forcing the wife to terminate her pregnancy is also a form of domestic violence recognized as offences under the IPC. Often victims of domestic violence, especially brides harassed for dowry are driven to commit suicide. Abetment of suicide of a delirious person is an offence punishable with death or life imprisonment. Abetment of suicide is also an offence punishable with ten years imprisonment. Causing bodily hurt is a common form of domestic violence. The IPC defines hurt as causing “bodily pain, disease, pain or infirmity to any person.” A hurt may be ‘grievous’ if it results in serious injury such as a fracture loss of, hearing or sight, damage to any member or joint etc.⁴

Another common form of domestic violence is in the form of the wrongful restraint or confinement of the spouse within her matrimonial home. Use of force and assault on the spouse, other common forms of domestic violence, are also punishable under the IPC.

While many progressive nations have legislated on marital rape, our la has so far only conferred a limited recognition. Non consensual sexual intercourse by a man with his own wife may be an offence if she is living separately under a decree of separation or any custom. In many a violent marriage, the spouse subjects the wife to acts of sexual humiliation. Interestingly the IPC even addresses such forms of violence – the

²Section 299 IPC

³Section 498A of IPC

⁴Section 319 read with 321, 323 and 324 of IPC

provision for ‘unnatural offences’. However, this provision has rarely been used in the matrimonial context.

A common companion of domestic violence is the misappropriation of the spouse’s property so that she is economically crippled into subjugation. The IPC addresses this situation too. If the husband or his relative dishonestly misappropriates or converts to his own use any property, which the wife has entrusted him with, he is liable for the offence of criminal breach of trust.⁵

In, 1983 matrimonial cruelty was introduced as an offence in the IPC. Cruelty was defined as “any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life or limb or health of the woman”.⁶ It includes harassment of the woman in connection with demands for property and the like.

1.3 NATURE OF DOMESTIC VIOLENCE:

The family is often equated with sanctuary place where individuals seek love, safety, security and shelter. But the evidence in life shows that it is also place that imperils lives, and breeds some of the most drastic forms of domestic perpetrated against women and girls.

Violence in the domestic sphere is usually perpetrated by males who are, or who have been , in positions of trust and intimacy and power – husbands boyfriends, father , fathers-in-laws, stepfathers, brothers, uncles, sons, or other relatives. Domestic violence is in most violence perpetrated by men against women.

Women can also be violent, but their actions account for a small percentage of domestic violence. Violence against women is often a cycle of abuse that manifests itself in many forms throughout their lives. Even at the very beginning of her life, a girl may be the target of sex selective abortion or female infanticide in cultures where son preference is prevalent. During childhood, violence against girls may include enforced malnutrition lack of

⁵section 405 IPC

⁶section 306 along with section 107 and 34 of IPC

access to medical care and education, incest, female genital mutilation, early marriage, and forced prostitution or bonded labor. Some go on to suffer throughout their adult lives – battered, raped and even murdered at the hands of intimate partners. Other crimes and violence against women include forced pregnancy, abortion or sterilization, and harmful traditional practices such as dowry – related violence, sati (the burning of a widow on the funeral pyre of her husband), and killings in the name of honors.

Domestic violence is present in almost every society of the world. The term can be classified on various bases. Violence against spouse, children or elderly is few of some commonly encountered cases. There are various kinds of tactics that are adopted by the attacker against the victim. Physical abuse, emotional abuse, psychological abuse or deprivation, economical deprivation abuse, etc are the most common kinds of abuses that are faced by the victims.

Domestic violence is not only a problem of the developing or under developed countries. It is very much prevalent in developed countries also. Domestic violence is a reflection of our pseudo civilized society. There is no place of violence in the civilized world. But the number of cases that are reported every year raise a high alarm. And this is not the complete picture, as ;most of the cases go unregistered or unnoticed in everyday life. This is a very dangerous trend creeping in our society and has to be dealt with iron hands.

Women and children are often the soft targets. In Indian society the situation is really gruesome. A significant number of deaths are taking place on daily basis, as a result of domestic violence only. Illiteracy, economical dependency on men folk and the otherwise male dominated society is some of the attributing factors to the problem. Dowry is one of the leading causes that results in violence against the newly-wed brides. Physically assaulting women, making horrendous remarks and depriving them of basic humanly rights are often showcased in many parts of the country. Similarly, children are also made the target of this inhuman behavior.

Serious in-sighting is required in the matter. The double standards and hypothesis of the society members is evident in such matters. Many times, the abuser is either psychotic in behavior or requires psychological counseling for

this errant behavior. But generally domestic violence is a result of cumulative irresponsible behavior demonstrated by a section of the society. Not only the abuser is the main culprit but those who are allowing it to happen and behave like a mute spectator are the partners of the crime. Recently, in India, to cope with the situation, a campaign, called 'bell banjo' was launched. The main

motive of the campaign was to motivate the individuals of the society to raise their voice against the domestic violence happening in home and around. The campaign was a big hit and successfully managed to draw the attention of crowds towards this issue.

1.4 STATEMENT OF PROBLEM

The Protection of Women from Domestic Violence Act, 2005 came into force on 26th October 2006. After fifteen years the fact is that there is a gap between law and its implementation. Though in some cases Courts have tried to give relief by impliedly departing from the existing provisions still the enforcement foundation of this law is weak. In order to make this law effective there are certain social, statutory, administrative problems which needs to be effectively addressed. At present there is no sound policy of government on implementation of this Act. New challenges are there and law implementation mechanism is not adequate and efficient to tackle the problem.

1.5 NEED FOR RESEARCH

In view of the existing problems which are there in the working of the Protection of Women from Domestic Violence Act, 2005, it was of necessity to inquire into the work of the Act and to suggest some measures to make it functionally effective.

1.6 AIMS AND SCOPE

The research has following aims and scopes:

- i) To trace out social background of domestic violence

- ii) To study the concept of domestic violence, kinds of domestic violence and its nature.
- iii) To study the magnitude and form of domestic violence.
- iv) To study the characteristic, patterns and causes of domestic violence.
- v) To find out the effect of religion, caste, culture, education, economic independence and dependence etc on domestic violence.
- vi) To study the impact of domestic violence on aggrieved woman.

1.7 OBJECTIVES OF THE STUDY:

The present study is aimed to study the protection of women's Human Rights with special Reference to Domestic Violence. So the main objectives of this study are the following:

1. To assess the extent various offences on women's status.
2. To assess the extent of Domestic Violence against woman prevailing in various forms in the family.
3. To study the problems of gender justice.
4. To study the reasons of violence against women .
5. To examine how the rights of women are being violated.
6. To discuss the Rights provided to women and their actual enjoyment by the state holders at micro level.
7. To study the reasons for bringing a special legislation on domestic violence.
8. To study the legal frame work on Domestic Violence and problems involved in the enforcement of law against Domestic Violence.

1.8 HYPOTHESIS:

Keeping the above objectives in mind, the following hypothesis is formulated and sub-issues have been formulated wherever necessary:

1. The problem of Domestic Violence against women is present in all the sections of the society irrespective of class, caste region or religion. Causes may be varied from one case to another, but the result is the same.
2. The protection of women from Domestic Violence Act, 2005 is a progressive legislation and redressed mechanism under the Act needs revamping.

1.9 LITERATURE REVIEW

“Particularly all human knowledge can be found in books and libraries, unlike animals that must start a new work with each generation men builds upon the accumulated and recorded knowledge of the past.”

--- Joph W. Best (1977)

“The literature in any field forms the foundation upon which all future work will be built.” Without knowing the past we can not do something new in the field of research. If we want to do some new work in a subject, it is very necessary that we should know the past of that subject. Domestic violence is a dark reality that cuts across distinctions such as economic status, sexual identity, religious affiliation, and age. It is a complex and emotionally charged subject that is often swept under the carpet, labeled as a private family matter. Despite the fact that the Domestic Violence Act has been enacted in India, society generally continues to view domestic violence as a private matter. It is a complex social problem that requires the cooperation of different parties such as health, education, and law to resolve. Attitudes need to be changed so that society does not accept domestic violence, as an acceptable part of human relations.

The researcher had studied following books, literatures of previous researches, articles and journals for the project applying Doctrinal Research:-

- ❖ Protection of Women from Domestic Violence Act, 2005 for the provisions of the act and definitions of the words used in the act and proceeding under this act. Researcher had read the act also to know about powers of the officers under this act, rights against the domestic violence, punishment and procedure for complaint and most important what comes under domestic violence.

- ❖ By section 498A of Indian Penal Code, 1860 the researcher studied about the cruelty and punishment for it.
- ❖ By the Dowry Prohibition Act, 1961 the researcher came to know about domestic violence related to dowry or cruelty for the reason of dowry.
- ❖ By NFHS survey report on domestic sexual violence 2006 the researcher came to know the recorded cases or complaint against domestic violence and the actual data is much more than this report.
- ❖ By news articles the researcher find out the cases and current situations about the domestic violence against women.
- ❖ The researcher had also reviewed several websites and law journals which he finds the leading cases and their judgements and guidelines by the Honourable Court.

The researcher had also studied “Commentaries on the Protection of Women from Domestic Violence Act, 2005, book by S P Sengupta, Kamal Law House, 2011 Edition. “Law relating to Protection of Women from Domestic Violence”, written by Dr. Neelam Kant & Sanyukta Singh, Orient Publishing Company, Second Edition 2011. The Protection of Women from Domestic Violence Act, 2005, book by N.A. Zubari, Allahabad Law Agency, Delhi, 2008. Indian Constitutional Law, by Prof. M.P. Jain, 5th Edition, 2007. Law relating to Women and Children, Second Edition, by Mamta Rao, Eastern Book Company, Second Edition 2008. Gours, Empowerment of Women in India, Law Publishers (India) Pvt. Ltd. Allahabad.

The researcher had also reviewed some articles like Jyotsna Sharma, “Legal status of live-in-relationship in India”, 2012 Cri.L.J. Journal 181, Lalit Dhawal and Kusum Chauhan, “Domestic Violence: Causes, Consequences, Legislative and Judicial Response, Indian Bar Review, Vol. XXXIV (1 to 4) 2007, Justice A.K. Sikri, PWDA Act, 2005: Implementation and Enforcement, Nyaya Deep, NALSA, Vol. IX, January 2008 and Raghunath Patnaik, “Nipping Gruesome Intra-family Gender Issues” , Journal of Indian Law Institute.

1.10 RESEARCH METHODOLOGY

The present is mainly doctrinal study. However partly empirical when it comes to Domestic Violence Act and its effectiveness on the society. Socio – legal study of the

problem with special reference to the human rights is also carried out. The sexual offences against women in the domestic scenario are critically analyzed and then the problems involved in domestic violence are understood though the social – legal study is an inter – disciplinary study and a significant method in legal theory. Law and society are interlinked and law cannot be separated from social progress.

Social – legal research deals with the legal research in the field of the social sciences. Most of the present problems can be materialized with close study of social conditions of the society. Because most of them are connected with local customs., personal laws and convections adopted in municipal law.

1.11 SCHEME OF CHAPTERS

The present research work/study has been systematically arranged into seven chapters.

The **first chapter** i.e., **Introduction**, introduces the study and the research methodology adopted by the researcher for conducting the present study. The research methodology includes the significance of the study, statement of problem, need of research, aims and objectives of the present research, the research hypothesis, type of research, research methodology including doctrinal method used in the research.

The **second chapter** is titled, “**Position of women in India and concept of domestic violence**”. The chapter starts by introducing the scheme and objectives of the said chapter. Historical overview of women’s position in India wherein position of women in Vedic, Post-Vedic, Medieval, British and post-independence India is discussed. Concept of domestic violence including definition and kinds of violence including physical, sexual, verbal and emotional, economic and demand of dowry has been discussed. Magnitude and forms of domestic violence has been discussed in relation to violence on girl child, married women, widow, elderly women, unmarried women and women living in relationship in the nature of marriage. The social, personal, psychological, economic and legal causes of domestic violence have also been discussed. Lastly the social, economical, psychological impact on rights of women along with impact on rights of women has also been elaborately discussed.

The **third chapter** is titled, “**National and International and provisions relating to the Women Empowerment**”. The chapter starts by introducing the scheme and objectives of the said chapter. International law and rights of women is discussed wherein, the United Nations Charter, 1945, Universal Declaration of Human Rights, 1948, Convention on the Political Rights of Women, 1953, International Covenant on Civil and Political Rights International Covenant on Economic, Social and Cultural Rights Declaration on the Elimination of all Forms of Discrimination Against Women 1967, Convention on the Elimination of all Forms of Discrimination against Women, 1979, Declaration on the Elimination of Violence against Women, 1993, The United Nations Committee on the Elimination of Discrimination against Women, 1982, Vienna Declaration and Programme of Action, 1993, Beijing declaration and Platform for Action fourth World Conference on Women, 1995, Optional Protocol to the Convention on the Elimination of all Forms of Discrimination against Women, 1999 has been elaborately discussed, 1966, , 1966, .

The **fourth chapter** is titled, “**Protection of Women’s Rights with Reference to Domestic Violence Act,2005**”. The chapter starts by introducing the scheme and objectives of the said chapter. In first part scheme of implementation machinery has been elaborately discussed. In second part research has been conducted to understand and present the views about the factual and statutory problems which are there in existence and which has obstructed the effective implementation of the Protection of Women from Domestic Violence Act, 2005 and on the basis of that to suggest some measures or best practices for effective implementation of the same.

The **fifth chapter** is titled, “**Judicial Approach Towards The Domestic Violence**”. The chapter starts by introducing the scheme and objectives of the said chapter. This chapter studies concept of domestic violence, powers and duties of protection officers, service providers under the Act, procedure for obtaining orders of reliefs and certain other miscellaneous provisions given under the Protection of Women from Domestic Violence Act, 2005. In the span of last seven years the Supreme Court of India and various High Courts have interpreted the provisions of the Act in some cases purposively and in some cases by strictly adhering to the rules of evidence. The judicial interpretation of the Act has been discussed elaborately.

The **sixth chapter** is titled, “**Problems in Implementation and Misuse of Rights**”. The chapter starts by introducing the scheme and objectives of the said chapter. In effective implementation of the Protection of Women from Domestic Violence Act, 2005 the researcher has discussed the role of an advocates handling the cases of domestic violence, Protection Officers, Service Providers, Police Officers, Judicial magistrates First Class, State Government and Legislature. The researcher is of the view that if parameters suggested by him are complied by these bodies then the PEDVA 2005 can be made functionally effective.

The **seventh chapter** which is the last chapter is titled, “**Conclusion and Suggestions**”. Herein the researcher has given all pervading and wholesome conclusion of the main study. This is followed by various suggestions and proposed amendments in the existing law with a view to improve the working of it and making it functionally effective.

II. CHAPTER

POSITION OF WOMEN

IN INDIA AND

CONCEPT OF

DOMESTIC VIOLENCE

2.1 INTRODUCTION

In spite of advancement of civilization and cultural revolutions women in India is still ignored, vulnerable and oppressed class of the society. Women are facing severe tribulations in their home than outside. In a patriarchal system like ours the violence took place behind closed doors, the very doors which are meant to protect women from outside world. They are relegated to a subordinate position and are subjected to violence without any fault on their part. In the present century when the whole world is awakening to the call of enlightened feminism, India still wallows in primordial misogyny¹ .

Because of the biological weakness of a woman she has been subjected to physical domination of men. Due to some unwritten codes of conduct, customs, culture, habits and prejudices women in India are vulnerable and exploited class of the society. The Code of Manu directed that a wife should be considered of no more importance than a chattel of her husband. The Hindu joint family structure based on male coparcenary denying women the right to property² or the issue of maintenance to a divorced Muslim woman is the example of it³ . Violence against women is not a new or recent phenomenon rather women have been the victim of the ages in all religions, cultures and societies. Hence it is essential to take historical overview of women's status in India.

¹ . Crime against Women and Protective Laws, Shobha Saxena, Deep and Deep Publications, New Delhi, 1995

² . Now the daughter by birth become a coparcener in her own right in the same manner as a son and have a same rights in the coparcenary property as she would have had if she had been a son

³ . In *Mohd. Ahmed Khan v. Shah Bano Begam*, AIR 1985 SC 945; the Court held that, a Muslim woman can claim maintenance under section 125 of the Code of Criminal Procedure, 1973. But Muslim women was excluded from the purview of section 125 by the Muslim Women (Protection of Rights on Divorce), Act 1986.

In *Daniel Latif v. Union of India*, AIR 2001 SC 3958; the validity of the 1986 Act was challenged on the ground that Act when compared with section 125 of the Code of criminal procedure, 1973 is discriminatory against Muslim divorcee women. The Court negated the contention and held that, not only during iddat period but the husband is liable to maintain divorced woman beyond iddat period and the scheme contained in the impugned Act is equally beneficial.

2.2 HISTORICAL OVERVIEW OF WOMEN'S POSITION

The plight of women in Indian at present is very much discussed in relation to the violence they have suffered from male dominated society. In our tradition bound society proper assessment of position of Indian women through the ages is required.

2.2.1 WOMEN IN VEDIC PERIOD

The Vedic period is characterized as a golden period in case of women as it was based on equal justice where women were allowed to participate actively in all sphere of human life without any discrimination. The status of women was totally based on equality, liberty and cooperation. The elevation of the feminine principle pervades Vedic thought⁴. The social structure in the Vedic period admitted the equality of women and they enjoyed a fair amount of freedom.

Women were allowed to study in Gurukul and enjoyed equality in learning the Vedas. There was no discrimination between male and female. Men used to regard women as partners in managing the affairs during Grihastha Vanaparashtha and Sanysa asram in life and consequently women enjoyed a quality of life comfortable to that of men⁵. The wife has been called as a companion of husband and was blessed to live as a queen in the house of her husband⁶. The word, "Dampati" so often used in the Vedas, characterized both husband and wife. This word has accorded very significant status to women. The girls belongs to the higher societies were even allowed to undergo upnayana (thread ceremony) rite for a long time⁷.

In that period custom of polygamy was very rare and was confined in ruling class only. The system of dowry was also prevalent in royal and rich families through movable gifts but it was not in the shape of demand. The widow could marry again or could undertake the recourse of liveratge (niyoga). There was no custom of pardah. Women even enjoyed equal rights in the matter of

⁴. Domestic Violence against Women: Legal Control and Judicial Responde, Dr. Preeti Misra, Deep and Deep Publications Pvt. Ltd. 2006

⁵. V.K.Dewan, Law relating to Offences against Women, 1996

⁶. Law relating to Women and Children, Dr. Mamta Rao, Estern Book Company, Lucknow, 2005

⁷. Gours, Empowerment of Women in India, Law Publishers (India) Pvt. Ltd. Allahabad,

selecting a life partner in marriage. The women in Vedic period thus enjoyed equal status to men by participating in religious rites and were instrumental in upholding dharma.

2.2.2 WOMEN IN POST-VEDIC PERIOD

As compare to Vedic period the position and status of women in post-Vedic period suffered a setback and women were relegated to a subordinate position. Manu imposed various restrictions on rights and privileges of a woman. Women were confined to four walls of the house and were not allowed to participate effectively in day to day life. There was reduction of the age of marriage of girls. The marriageable age of girls was lowered to 9 or 10 years which deprived women from education.

It is the Manu's code that has had the most negative effects on Indian women for countless succeeding generations. He for the first time assigned to woman a definite place in the scale of the society⁸. But as a unit in the society and as a spiritual entity Manu treated woman differently. As a unit of society he was of the opinion that, woman should never be independent. She must be under the constant surveillance of father till her marriage, of husband after marriage and of her son as a widow. It was said that woman should be "loved" but added "protected"⁹.

As a spiritual entity it was said by him that, "where the women are honoured there all deities are pleased and where there are dishonoured there all religious acts become fruitless"¹⁰.

It was during this period only women access to education was denied. The birth of a daughter was treated as a disaster for family. Unanayana or the sacred thread ceremony which was performed to initiate a person into the Vedic studies was prohibited in case of women and shudras, thus closing the door to any formal education. Woman was considered weak and therefore protection. This gradual reduction of women's position was coincided with the

⁸. Domestic Violence against Women: Legal Control and Judicial Responde, Dr. Preeti Misra, Deep & Deep Publications Pvt. Ltd. New Delhi

⁹. K. Dewan, Law relating to Offences against Women, Asia Law House, 3rd revised edition, 2009

¹⁰. Manu-III

increasing authority of man. Manu curtailed down the freedom of women in order to preserve the family structure. Women were not allowed to be a coparcener in joint ownership of the property. In order to partially set off the disability suffered under the notion of joint ownership by male members a special category of property termed as stridhan was recognized¹¹. Manu defined Stri-dhana as gift before the nuptial fire, gift during bridal procession, gifts of love from father-in-law and mother-in-law, gifts made by father, gifts made by mother, gifts made by brother and husband.

2.2.3 WOMEN IN MEDIVAL PERIOD

In the Medieval period violence against women was increased in leaps and bounds when two major cultures Islam and Hindu encountered and interacted with each other. The invasion of the country by Alexander and the Huns brought about further deterioration of position of women. Women's liberty was restricted to large extent due to insecurity and instability. Opportunity was denied in education and community affairs as for security reason movement of women outside home was restricted.

Medieval period is to be known as one of the darkest period for women in the history. On the one hand the Muslim conqueror attempted to impose their coercive norms on the Hindu population while on the other hand the Hindu society itself became more and more rigid curtailing thereby the rights and freedom of the lower castes and women. Due to the invading armies roaming the countryside women were put behind the veil.

As a result of Muslim invasion social evils like dowry, sati, child marriage, female infanticide, polygamy and parda were in vogue in all parts of the country. Under the parda system, women were not only required to live in a secluded apartment in the house, but also they had to dress in an apparel which completely covered their body excepting the eye¹². The presence and prevalence of parda in the Muslim social structure is there because Muslim women have been assigned a subordinate role by men and their adherence to

¹¹. Law and Gender Inequality: The Politics of Women's Rights in India, Flavia Agnes, Oxford University press, 1999

¹². Desai, Neera, Women in Modern India, 1957

the norms of *parda* restricts and limits their role, and thus brings down their social status¹³. Muslim women were kept in an inferior position in many respects. She enjoy no rights whatsoever in matter relating to marriage, divorce and social status and their position remained subordinate to male. Uneducated and devoid of any status women came to be treated as chattels. Patriarchal family system was strengthened and women suffered great disabilities.

2.2.4 WOMEN IN BRITISH PERIOD

At the advent of the British rule the Mughal power was on the decline and the law and order situation was at its lowest ebb. The British Government by and large remained indifferent to the violence against women¹⁴. Child marriage, *sati* custom, patriarchal joint family, the *parda*, a state of permanent widowhood, polygamy, denial of education and property rights to women were very much in vogue. The position of women even during this period reached the maximum degree of deterioration. Women were not treated as an independent person and were suppressed and oppressed at the hands of the male dominated society.

Not only the social institutions and customs thwarted the growth of women but the prevailing ideology also assigned the Indian women an inferior status¹⁵ having no status and personality of their own. Women were regarded unfit for participation in social, political and religious functions of any significance.

However the attitude, behavior and living pattern of Hindu society changed drastically during the British regime due to the education and western impact on the socio-cultural life of India¹⁶. Indian society was then highly influenced by the western values of liberty, equality and respect for individual secularism. The social reform movement of the 19th century and the

¹³. Divorce and Muslim Women, S.A.H. Moinuddin, Rawat Publications, Jaipur and New Delhi

¹⁴. Lalit Dhawal and Kusum Chauhan, "Domestic Violence: Causes, Consequences, Legislative and Judicial Response, Indian Bar Review, 2007

¹⁵. Domestic Violence against Women: Legal Control and Judicial Response, Dr. Preeti Misra, Deep & Deep Publications Pvt. Ltd. New Delhi

¹⁶. V.K. Dewan, Law relating to Offences against Women, Asia Law House, 3rd revised edition, 2009

nationalist movement of the 20th century affected the position of women. By these movements question of equal status of women was raised¹⁷. In order to eliminate or eradicate all the evils which thwarted the overall development of women the reformers of 19th century started movement for amelioration of women. Need of education to women was emphasized. The reformers also emphasized the need for enacting progressive social legislation. Raja Ram Mohan Roy, Swami Dayanand Saraswati, Ishwar Chandra Vidyasagar, Mahatma Phule, and other reformers from all parts of the country raised their voice against the unjust practices which hampered the development of the women. Revivalist like Dayanand Saraswati, Swami Vivekanand and Annie Besant believe in reviving the old Vedic society presumed to be ideal for women¹⁸. Raja Ram Mohan Roy's tenacious struggle for the abolition of sati, marks the beginning of the movement for reform on behalf women. Launched during the third decade of the nineteenth century, this movement constitutes an important landmark in the Indian efforts towards emancipation of women¹⁹. Christian Missionaries in Bombay started the first school for girls in 1824. Ishwar Chandra Vidyasagar started at Calcutta another school for girls in 1849. Mahatma Gandhi opposed the social custom of child marriage, prohibition of widow marriage, and custom of parda. The most distinctive feature of this movement was that it was initiated by men. It was only towards the end of century that women joined then fray.

Due to the movement initiated by social reformers the British Government enacted many laws by which attempt were made to eradicate social evils. Pioneering work of some leaders were instrumental in bringing change in the social structure of 19th century. The Child marriage Restraint Act, 1929, The Hindu law of Inheritance, 1929, Hindu Women's Right to Property Act 1939 are some of the notable legislations aimed at women's welfare. Besides these legislations some important Industrial Laws were also enacted making some special provisions for the benefits of women. The British Government in the passage of time thus made efforts to ameliorate the position of women in

¹⁷. Law relating to Women and Children, Dr. Mamta Rao, Estern Book Company, Lucknow, 2005

¹⁸. Neera Desai & Maithreyi Krishna Raj, *Women and Society in India*, Ajanta Publications, New Delhi, 1987

¹⁹. Status of Indian Women: Crisis and Conflict in Gender Issues, Vol-2, edited by Uma Shankar Jha, Arati Mehta, Latika Menon, Kanishka Publishers, New Delhi, 1998

society even though initially it did not interfere in the local customs and culture of the Indians. Efforts were also made to provide education to women. Women's participation in political process was also increased to considerable extent.

The laws enacted during British rule were not enough to bring about a radical change in the status of women. Despite the galaxy of laws, the position of women was not so improved and they were relegated to a subordinate position. Dominant culture prevailed over the law²⁰ and liberation women remained only on paper.

2.2.5 WOMEN IN POST-INDEPENDENCE INDIA

After independence of India the Constituent Assembly was constituted in accordance with the provisions of the Cabinet Mission Plan. The Constitution of India, the precursor of the new renaissance²¹, became effective on 26th January 1950²². The Constitution of India was drafted by taking into consideration the principles of justice, equality and liberty. The framers of the Constitution were well aware about the plight and problem of Indian women. It became the objective of the State to protect women from exploitation and provide social justice to them²³.

To achieve the object certain fundamental rights were guaranteed under the Constitution. Indian women are the beneficiaries of these rights in the same manner as men and some provisions are made exclusively for the benefit of women²⁴. The Directive Principles of State Policy though not enforceable in the Court of law are considered by the State in formulating the welfare policies of the State. Even the Supreme Court of India has read some directive principles into fundamental rights by making them justifiable in the Court of law.

²⁰ . Lalit Dhawal and Kusum Chauhan, "Domestic Violence: Causes, Consequences, Legislative and Judicial Response, Indian Bar Review

²¹ . Indian Constitutional Law, Prof. M.P.Jain, 5th Edition 2007

²² . When the Preamble to the Constitution was adopted on 26th November 1949, few provisions of the Constitution i.e., Article 5,6,7,8,9,60,324,366,367,379,380,388,391,392,393 and 394 came into force.

²³ . Law relating to Women and Children, Dr. Mamta Rao, Estern Book Company, Lucknow, 2005

²⁴ . Article 15 (3) says that, "Nothing shall prevent the State from making any special provisions for women and children".

Being guided and directed by the Constitution of India, Parliament of India has enacted some revolutionary laws for amelioration of women by giving them equal status with men. Parliament has made constructive and positive attempt to remove the social evils, disparities, discriminations and dissimilarities against women²⁵. The Dowry Prohibition Act, 1961, The Medical Termination of Pregnancy Act, 1971, the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse), Act, 1994, The Equal Remuneration Act, 1976, The Immoral Traffic (Prevention) Act, 1956, The Maternity benefit Act, 1961, The Protection of Women form Domestic Violence Act, 2005 etc., were enacted with a view to ameliorate the position of women in Indian society.

Even though these laws are aimed at improving the social position of women a complete achievement of the aim is only possible only be a more and through and conscientious enforcement of these laws²⁶. Protection of women's rights and to ensure their equality is contemplated by various laws. But most of these laws have unfortunately proved to be ineffective in arresting the growing atrocities against women or ensuring their equal rights economically, politically, socially and culturally. In addition to the non-implementation of legislations even a recent trend is to take away these rights which they have already enjoyed. Illegal abortions, dowry death, female infanticide, child marriage, desertion of wife by husband, illegal second marriage, neglect of women and other forms of violence against women is on the rise.

The condition of elderly women especially those of widows are also not satisfactory. Even though widows are now permitted to remarry in the light of Hindu Widows Remarriage Act of 1956, it seldom takes place and is discouraged²⁷. Today also the life of the women is dominated by patriarchal society and is surrounded by violence, neglect and exploitation. The chasm

²⁵ . N.A. Zubari, The Protection of Women form Domestic Violence Act, 2005, Allahabad Law Agency, Delhi, 2008,

²⁶ . Crime, Atrocities and Violence against Women and related Laws and Justice, Laxmi Rao, Amol Publications Pvt.Ltd. New Delhi, First Edition 1998

²⁷ . Domestic Violence against Women: Legal Control and Judicial Responde, Dr. Preeti Misra,Deep & Deep Publications Pvt. Ltd. New Delhi

between the values of a new social order proclaimed by the Constitution and the realities of contemporary Indian society as far as women's rights are concerned remains as great as at the time of independence.

Thus after independence attempt has been made by Constitution and various laws enacted by the parliament of India for the liberation of Indian women. Despite this today it cannot be declared that Indian women have got redemption from the clutches of male dominated society. Today also women are relegated to the subordinate position. In rural area the position of women is very worse as compare to urban area. There is alarming increase in harassment, abetted suicides, dowry deaths of young innocent bridges and the present criminal laws are proved ineffective in tackling this menace.

Even though awareness was created during British era and social reformers initiated movement for amelioration of women the reality is that till today Indian women is in the quest of justice. Laws are there but society has not respected these laws. Along with effective implementation of these laws proper sensitization and awareness of society at large is required.

2.3 CONCEPT OF DOMESTIC VIOLENCE

While displaying the significance of women in the world, a great philosopher and poet Mohammad Iqbal said, "If the whole universe is compared with the painting, the women are the glow and colour of it". Women are referred to as the second best god. It was said that a man is incomplete without woman and women were called as Ardhagini i.e., half part of the man.

But today the fact is that women are sufferer of domestic violence at the hands of men and it is one of the major problems which have thwarted the development of humanity. Throughout the world, women are still relegated to subordinate position that has made them more vulnerable to abuse and less able to protect them from discrimination²⁸ . According to Sidney Brandon²⁹ , "Statistically it is safer to be on streets after dark with a stranger than at home in the bosom of one's family, for it is there that accident, murder and violence are likely to occur". Domestic or family violence is one of the

²⁸ . Lalit Dhawal and Kusum Chauhan, Domestic Violence: Causes, Consequences, Legislative and Judicial Responses, Indian Bar Review

²⁹ . Sydney Brandon in M. Borland (Ed.): Violence in Family

leading causes which obstructed the amelioration of women.

2.4 DEFINITION OF VIOLENCE

Violence is a violent behavior intended to hurt or kill somebody ³⁰ . According to Black's Law Dictionary, "Violence means unjust or unwarranted use of force unusually accompanied by fury, vehemence, or outrage, physical force unlawfully exercised with the intent to harm"³¹ .

According to L.B.Curzon's Dictionary of Law, defines violence as "any conduct so that it includes violent conduct towards property as well as towards person's, and it is not restricted to conduct causing or intended to cause injury or damage but includes other violent conduct". Violence is thus behavior of one person which causes injury to the person or property of other. Violence is always unjust as it takes away the right of another person to live a peaceful life. Violence always crosses the boundaries of legality and encroaches in the liberty and freedom of another person and inflicts injury on him. It refers not only to physical act but also mental act by which injured person may suffered from physiological stress and suffering. Besides this the term violence is not only related to the act of a person but it even includes omission to do something. So, even an act of neglect may also constitute violence.

It is to be noted that before 2005 the term, "Violence" has been used synonymously with the term, "Cruelty" as contemplated by section 498-A of the Indian penal Code, 1860 with reference to married woman who has been subjected to cruelty by her husband and his relatives. The Apex Court and various High Courts have tried to define the term cruelty in catena of cases. In *Smt. Raj Rain v. State* ³² , the Apex Court held that, while considering the case of cruelty in the context to the provisions of Section 498-A IPC, the Court must examine that allegations/accusations must be of a very grave nature and should be proved beyond reasonable doubt. Further, in *Girdhar Shankar Tawade v. State of Maharashtra* ³³ , the Supreme Court held that,

³⁰ . Oxford Advanced Learners Dictionary, Fifth Edition 1999

³¹ . Black's Law Dictionary, VIIth Edition, 1999

³² . 2000 Cri.L.J. 4672.

³³ . 2002 Cri.L.J. 2814

"cruelty" has to be understood having a specific statutory meaning provided in Section 498- A I.P.C. and there should be a case of continuous state of affairs of torture by one to another.

Taking note of the above judgments amongst others Supreme Court in *Manju Ram Kalita v. State of Assam*³⁴, observed that "cruelty" for the purpose of Section 498-A Indian Penal Code is to be established in the context of S. 498-A IPC as it may be different from other statutory provisions. It is to be determined/ inferred by considering the conduct of the man, weighing the gravity or seriousness of his acts and to find out as to whether it is likely to drive the woman to commit suicide etc. It is to be established that the woman has been subjected to cruelty continuously/persistently or at least in close proximity of time of lodging the complaint. Petty quarrels cannot be termed as 'cruelty' to attract the provisions of Section 498-A IPC. Causing mental torture to the extent that it becomes unbearable may also be termed as "cruelty".

In *Sanjay Baburao Pathrale v. State of Maharashtra*³⁵, the Bombay High Court observed that, in the context of offence of "matrimonial cruelty" one has to consider family status of the parties. The deceased was well educated, sensitive and newly married young woman. The incident of frequent beatings, denial of conjugal rights, returning of the husband to home under spell of liquor and that he had kept a mistress, considered together, would indicate that the sensitive woman was unable to bear with the regular trouble. The accused husband could have gathered her mental state when she had once attempted to self inflict injuries to her palms. Even so, he continued to tell her to die. This is the conduct which is no short of matrimonial cruelty of high degree as contemplated under sub-clause (a) of S. 498-A of the Penal Code. In *Raju Mahto and Ors. v. The State of Jharkhand*³⁶, the Appellants allegedly tortured victim for non-fulfillment of dowry demand. Allegation was that appellants gave medicine to victim for abortion was not proved. Appellants/in a laws were entitled to be acquitted. However, it was

³⁴ . AIR 2009 SC (Supp) 2056,

³⁵ . 2009 CRI. L. J. 2165,

³⁶ . 2010 CRI. L. J. 3362.

established that appellant/husband demanded money for purchasing vehicle, and when same was not given, he left his wife in hospital and performed second marriage. His conviction and sentence was therefore maintained by the Jharkhand High Court.

In *Gopi alias Gopalakrishna v. State*³⁷, the evidence of witnesses showed that accused was addicted to vices of playing lottery and drinking liquor. Post-mortem report revealed that apart from ligature mark on neck of deceased there were 5 to 6 burn injuries on her thighs and scratch injuries on left leg and on waist. No explanation was given by accused regarding said injuries on his wife. Since accused was having habit of drinking alcohol it would be natural willful conduct of husband of harassing wife consequently abetting her to commit suicide. Prosecution clearly established that deceased sustained injuries on her person and was subjected to cruelty by accused. Accused was held guilty by Karnataka High Court for offence u/S. 498-A and his conviction of accused upheld. In *Satya Narayan Tiwari v. State of U. P*³⁸, the deceased had been subjected to cruelty by her accused husband and mother-in-law over demand of Maruti Car raised and persistently pressed by them after about six months of marriage and continued till her death. The Apex Court held that, cruelty and harassment is established to have been meted out soon before her death hence conviction of the accused is proper. In *Nachatar Singh v. State of Punjab*³⁹, the Apex Court observed that, a perusal of Section 498A IPC would show that cruelty would mean any willful conduct which was of such a nature as was likely to drive a woman to commit suicide or to cause grave injury or danger to life, limb or health whether mental or physical to the woman.

In *Ashok Mondal v. State of West Bengal*⁴⁰, deceased wife committed suicide at her in-laws place. The complaint was filed against accused husband and in-laws alleging that they subjected deceased to mental torture. There was element of dowry involved in the marriage. Demand of dowry in the form of cash or kind was very much present either at time or after marriage. Thus

³⁷. 2011 CRI. L. J. 4815

³⁸. 2011 CRI. L. J. 445

³⁹. AIR 1976 SC 951,(1976)1 SCC 750

⁴⁰. 2011 CRI. L. J. 2451.

victim was subjected to torture. The Court held that an offence under S. 498A was made out. In *Rupam Pralhad Bhartiya v. State of Maharashtra*⁴¹, husband made wild allegations against his wife of having illicit relations with her own brother-in-law who was of age of her father. No evidence given by husband even by way of preponderance of probabilities for entertaining such suspicion on the character of his wife. It was held by the Court that, act of husband amounts to mental cruelty.

In *Kailash Baburao Pandit v. State of Maharashtra*⁴², wife committed suicide within one year of marriage. Wife was pregnant at that time. Evidence of parents of wife was that husband of victim harassed her for bringing Rs. 2,00,000/- from her parents. Evidence of mother of victim that accused-husband made his unlawful demand on day of incident and did not allow her to talk to victim on telephone. On the same day parents were informed that their daughter had committed suicide. There was nexus between harassment and suicide committed by victim. The Court held that evidence against accused-husband comes under purview of cruelty under S. 498- A.

Recently very wide interpretation has been given to section 498-A of the IPC by Bombay High Court. In *Vasant Bhagwat Patil v. State of Maharashtra*⁴³, the Bombay Court observed that provisions of S. 498-A refer to word 'woman' and not to 'wife'. Protection under S. 498-A is contemplated to married woman and not only to legally wedded wife. In this case accused and deceased were residing together and evidence on record proved that marriage of accused and deceased took place by 'sulagna procedure'. Defence of accused was that deceased was not his legally wedded wife as there was no evidence of valid marriage between them or that their earlier spouses were divorced before marriage hence provisions of S. 498-A would not be attracted. The Court held that the defence of accused is not acceptable and accused subjected his pregnant wife to cruelty and is liable to be convicted under S. 498-A.

⁴¹. 2011 CRI. L. J. 3540

⁴². 2011 CRI. L. J. 4044.

⁴³. 2012 CRI.L.J.65

2.5 DEFINITION OF DOMESTIC VIOLENCE

Thus the term domestic violence means and The problem of domestic violence against women is as old as the world even though the types, frequency, intensity and control of violence against women may vary from time to time or place to place⁴⁴. Domestic violence is a form of oppression which not only endangers the dignity of women as a person but also darkens her future. It has also been described as a “silent crime” which completely shatters the psyche of the women⁴⁵. The doctrine of cultural silence forces women to remain silent and not expose or disclose the violence committed against them in home. Although the home has traditionally been perceived as a safe heaven, but the reality is that women are at a far greater risk of being assaulted in their own houses by a loved one than they are of being assaulted on the streets by a stranger.

The victim’s inability to access the law makes legal remedies ineffective and the four walls of the so-called home render the law incapable of reaching the victims which is even more tragic⁴⁶. Thus violence within the four walls of the house can be termed as a domestic violence. Even though most of the times the term of domestic violence is used synonymously with marital violence the fact is that the scope of it is much wider which includes even violence against children, mother, widow, elderly persons in the family and male person too. But it is pertinent to note that the percentage of the women sufferer is more than that of the men.

According to Black’s Law Dictionary, “Domestic violence means violence between members of a household, usually spouses, an assault or other violent act committed by one member of a household against other⁴⁷ .

The term, “Domestic violence” came to be defined in India for first time under the Protection of Women form Domestic Violence Act, 2005⁴⁸. This act has defined domestic violence as follows:

⁴⁴ . Status of Indian Women: Crisis and Conflicts in Gender issues, Volume 3, Chapter IV, Violence against Women: Myth and Reality, Kanishka Publishers, New Delhi, 1998

⁴⁵ . Justice A.K.Sikri, *PWDA Act, 2005: Implementation and Enforcement*, Nyaya Deep, NALSA, Vol. IX, January 2008

⁴⁶ . Law relating to Women and Children, Mamta Rao, Eastern Book Company, Lucknow,, First Edition 2005

⁴⁷ . Black’s Law Dictionary, VIIth Edition, 1999, Page-1564.

⁴⁸ . Section 3

“For the Purpose of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it-

- (a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or
- (b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet unlawful demand for any dowry or other property or valuable security; or
- (c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or
- (d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person.

The wide definition of domestic violence includes not only any conduct amounting to cruelty, but also acts which violates the dignity of women⁴⁹. Domestic violence cuts across all social barriers of caste, class religion and education, yet is not recognized as a crime by society⁵⁰. Domestic violence can be understood to be behavior emotional, psychological, verbal, physical, sexual, and economical, that one person in a domestic relationship uses in order to control or abuse the other. All aggrieved women's are the sufferer of domestic violence for which education, caste, socio-economic strata is not an exception to it. Even some human rights activists have advocated broad-based definition that includes “structural violence” such as poverty, unequal access to health and education.⁵¹

It is to be noted that the seeds of domestic violence in the subordination of females lie in their subjection to male authority and control. This relationship between women and men has been institutionalized in the structure of the patriarchal family and is supported by the economic and the political institutions and by a belief system, including a religious one that makes such

⁴⁹. Agnes Flavia, *Law and Gender Inequality*, Oxford University Press, 1999

⁵⁰. Dr. Nuzhat Parveen Khan, *Domestic Violence: An Issue of Concern for one and all*, Nyaya Deep, NALSA, Vol. IX Issue 4, October 2008

⁵¹. Shreyanash Chouradia, *Domestic Violence: A Sheer Purgatory for Women*, Nyaya Deep, NALSA, Vol. X Issue 1, January 2009

relationship seem natural, morally just and sacred⁵². Even though the violence against women is declared by law as a deviant act society still considers otherwise⁵³. Patriarchal system in India has thus subjected women to inferior position and they are always at the mercy of men. The authority and control of men have thwarted the overall development of women in India.

Even in some cases aggressive sexual encounters are used by men as one of the means of maintaining dominance and control and frequently as a weapon for humiliating women⁵⁴.

It is to be noted that domestic violence is a serious violation of human rights of women. Domestic violence is a serious threat to human rights of women which has been universally recognized⁵⁵. The definition of domestic violence as provided in section 3 of the Protection of Women from Domestic Violence Act, 2005 has been adopted from the United Nations framework for model legislation on domestic violence and covers physical, mental, sexual, verbal, emotional and economic violence. Domestic violence can also be seen as a violation of the fundamental right to live with dignity, and of the right to equality and equal protection of the law guaranteed by the Indian Constitution. Further section 3 of the Act has legally recognized marital rape as a form of domestic violence.

From the above resume following features of domestic violence can be inferred:

- (1) domestic violence is a serious violation of human rights of women within the family;
- (2) domestic violence means and includes physical abuse, mental abuse, emotional abuse, verbal abuse, economic abuse, sexual abuse and also a

⁵². Crime, Atrocities and Violence against Women and related Laws and Justice, Laxmi Devi, Amol Publications Pvt. Ltd., First Edition 1998, Violence against Women

⁵³. Crime against women and Protective Laws, Shobha Saxena, 1995, Deep and Deep Publications, New Delhi

⁵⁴. Madhu Kishwar, "Off the Beaten Track-Rethinking Gender Justice for Indian Women

⁵⁵. The Vienna Accord of 1994 and the Beijing Declaration and the Platform for Action 1995 acknowledged that domestic violence is undoubtedly a human right issue and serious deterrent to development of women. The United Nations Committee on Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) in its General Recommendation No. XII (1989) has recommended that State parties should act to protect women against violence of any kind especially that occurring within the family.

demand for dowry or any valuable security;

(3) domestic violence includes not only an act or commission but also omission or conduct of the respondent;

(4) Domestic violence occurs within the boundaries of family wherein the aggrieved person is in domestic relationship with the respondent or abuser; not only a married women, even a women of any age is a victim of domestic violence. Aggrieved person who is subjected to domestic violence includes a child, unmarried person, parents, married women, widow and even a woman who is living in relationship in the nature of a marriage with the male partner. Even the men may be subjected to domestic violence but the proportion of men subjected to domestic violence is very less as compare to women.

2.6 MAGNITUDE AND FORMS OF DOMESTIC VIOLENCE

Domestic violence is a serious threat to the human rights of women, and woman of any age, caste, religion, creed, class, status and place is victim of it. Much has been written about violence on married women but the fact is that ay women may be subjected to domestic violence. Hence those women who are sisters, widows, mothers, single women or women living with the abuser having relationship in the nature of marriage are also subjected to domestic violence.

Domestic violence usually involves infliction of bodily injury, accompanied by verbal threat and harassment, emotional abuse or the destruction of property as means of coercion, control, revenge or punishment, on a person with whom the abuser is involved in an intimate relationship⁵⁶. Even in extreme cases death of aggrieved women may be caused.

2.6.1 VIOLENCE AGAINST GIRL CHILD

A girl child is that who is below the age of eighteen years⁵⁷. From the date of her birth, a girl is viewed as a burden and liability on family and is

⁵⁶ . Lalit Dhavan and Kusum Chauhan, *Domestic Violence: causes, Consequences, Legislative and Judicial Response*, Indian Bar Review, Vol. XXXIV (1 to 4) 2007

⁵⁷ . According to Section 2 (b) of the Protection of Women from Domestic Violence Act, 2005, "Child" means any person below the age of eighteen years and includes any adopted, step or foster child

likely to be given a meager share of family affection and resources⁵⁸. Not maintaining or neglecting girl child by not providing properly food, clothes, medicine etc, to them amount to violence on such child. It is an admitted fact that girl child in India are not getting equal treatment vis-a-vis male child and are suffering from so many disadvantages. The customs, usages, practices prevailing in India has made girl child more vulnerable. Sexual abuse of girl child is prevalent which has affected growth, development and right to live of such girl victim.

Though there have been gender bias and deep rooted prejudice against the girl child and women down the centuries, what is still more disturbing is that now the discrimination begins in the womb itself⁵⁹. A life time of systematic gender bias for the Indian girl child begins in the mother's womb itself. Sex-linked abortions have become rampant. Through ultrasound scans and amniocentesis, the sex of the foetus can be determined during the pregnancy of the woman and the foetus is aborted if found to be female. Even female infanticide is also rampant in India, in the recent times which are inhuman, barbaric and uncivilized. Female infanticide is even suspected in case of middle and upper class also. Girl child are rejected neglected and discriminated by the patriarchal society of India.

2.6.2 VIOLENCE AGAINST MARRIED WOMEN

Married women in India are a class which is subjected to severe domestic violence if compare to any other class. Unlawful dowry demand, cruelty, second marriage of husband, neglect and desertion are some of the common instances by which married woman is exploited and harassed. Offences under section 498-A⁶⁰ and 306⁶¹ of the Indian Penal Code are on the rise in India.

The immediate cause of violence in case of married women is that of

⁵⁸. Domestic Violence against Women: Legal Control and Judicial Response, Dr. Preeti Misra, Deep and Deep Publications Pvt. Ltd. New Delhi, 2006

⁵⁹. Girl Child and Family Violence, Promilla Kapur, Har-Anand Publications, New Delhi, 1999

⁶⁰. It deals with husband or relative of the husband of a woman subjecting her to cruelty and is a cognizable offence punishable up to three years.

⁶¹. It deals with abetment to suicide and is a cognizable offence punishable up to ten years.

argument over money, jealousy and suspicion on woman's character, instigation by in-laws, housework, alcohol, disputes over children, extra marital affairs on the part of the husband, women's desire to work outside home⁶² etc. The forms of violence encountered by married women include physical, sexual, economic, verbal and emotional abuse. In case where married woman claims that violence has been meted out to her it is to be shown that she is in domestic relationship with the respondents and is living or have at any point of time lived together with the respondent in a share household.

In India the Dowry prohibition Act, 1861, the Commission of Sati prevention Act, 1987, the Medical Termination of Pregnancy Act, 1971, The Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 are some of the legislations enacted by the Parliament of India to curb the evil practices against women. Even personal and penal laws have been amended and some new provisions are now inserted protecting the rights of women . Section 198-A of the Code of Criminal Procedure, 1973 amended in 1983, provides that a cognizance of an offence of cruel treatment as defined in section 498-A of the Indian Penal Code, 1860 must be taken on police report or upon a complaint of an aggrieved person, her relatives or with the permission of Court by any other person related to her . Despite this the plight of Indian women is continued as it is and there is a need to implement these laws effectively in letter and spirit. A time has come for organized efforts to fight back violence.

2.6.3 VIOLENCE AGAINST WIDOW

Widow women are also a vulnerable class who has been subjected to severe violence. Even though the Hindu Widow Remarriage Act permits and recognizes right of widow to remarry her rehabilitation is not taken seriously by the relatives and family members and today also she is ignored and exploited. There is every possibility of violence on widow by in-laws and in that case she must be protected from the relatives of her husband. In some parts of our country widows were adopting for sati as a means to achieve moksha. The problems which the present

⁶² . Flavia, *Violence in the Family: Wife Beating*, Women in Indian Society, Rehna Ghadially, Sage Publications, New Delhi, 1988,

widow woman is facing, is of opposition to remarriage, refusal by in-laws to allow her to live in the house of deceased husband, deprivation of property and evil eye of the society.

The marginalization of widows in India is consistent with the traditional perception of Hindu widows as inauspicious and guilty woman who, ideally, should lead a life of austerity devoted to the memory of her husband. This ideological influence, however, may be less crucial than the simple fact that widows are often seen as an economic burden. The most effective way of ensuring the social protection of Indian widows is perhaps to help them to be recognized as persons who have something important to contribute to the household economy⁶³.

2.6.4 VIOLENCE AGAINST ELDERLY WOMEN

In the context of elder women, the domestic violence encompasses abuse and neglect by children, by siblings and also mental as well as physical assault by their male partners. Domestic violence not cuts across the age differences. The violence against women is not there only in case of younger or married women but in the recent past the problem of elderly women is also discussed as a social security problem. Elder abuse is prevalent in almost all cultures so far as Indian scene is concerned, very little is known as yet of the magnitude of problem.

Wolf and Pillemer⁶⁴ have given a typology of elder abuse that covers wide range of behavior-

- (a) physical abuse which covers infliction of injury or physical harm, includes sexual abuse;
- (b) psychological abuse which covers infliction of mental anguish, verbal and emotional abuse;
- (c) material abuse which covers illegal and improper exploitation of funds or materials, including property. Also called as financial abuse;

⁶³ . Status of Indian Women: Crisis and Conflicts in Gender Issues, Volume 3, Chapter IV, Violence Against Women: Myth and Reality, Kanishka Publishers, New Delhi, 1998

⁶⁴ Wolf, R.S. and Pillamer, K.A. Helping Elderly Victims: The Reality of Elder Abuse, New York, Columbia University Press (1989)

(d) active neglect which covers the refusal or failure to undertake a care giving obligation. Usually this is a conscious or an intentional attempt to harm the other;

(e) passive neglect which covers the refusal or failure to fulfill a care taking obligation. Usually, this is not conscious or intentional.

Elderly women are particularly at risk in Indian society because most of them live in the shadow of the males throughout their lives-father, husband, son or male relatives like nephew, brother, uncle, in most cases they do not earn money and even when they do, their employment is often guided by family consideration, so most of them take casual employment or are under employed and they also shoulder family responsibility⁶⁵. Even in some cases the earning of elderly women is managed by male and women have little control over their own finance. But in most of the cases elderly women are financially dependent on others.

The problem of maintenance of elderly women has been increased in leaps and bounds. Without maintaining them they are neglected. An older woman without any means of finance is often considered as an economic burden. Her role in the family remains restricted to the household's non-economic matters. The proper of residence of elderly women who has been thrown out of the shared household is also prevalent in society. There is no social security given to elderly women. Their situation is more pathetic and they are relegated to subordinate position.

2.7 CAUSES OF DOMESTIC VIOLENCE

Domestic violence cuts across the ages, caste, culture, religion, place and time. Women have always been an object of severe and gross violence at the hands of men. There are different theories as to the causes of domestic violence. Domestic violence is a result of manifold reasons and no one approach appears to cover all cases. Following are some of the important causes of domestic violence.

⁶⁵ . Dr. G.B.Patil, "Rights of Elderly Women: A Social Security Problem", Indian Bar Review, Vol.XXXIII (1 to 4) 2006,

2.7.1 SOCIAL CAUSES

There are varieties of social causes as to domestic violence of which the most important are patriarchal structure of society, inferior status of women due to social conditioning, interference of parents, drunkenness or alcoholism, unwholesome family atmosphere, broken homes etc.

Indian society is male dominated. Man occupies a superior status and the woman is merely his appendage. A woman is never an entity in her own right, she is “first” the daughter, next the wife, and last the mother of a man. Men are consciously taught to be aggressive and tough while women are conditioned to be submissive and docile⁶⁶. Men considering himself as superior being want to control each and every act of women. The mentality of dominance over women came due to patriarchal society.

The common element of domestic violence in the families is gender and power. From the ancient time, there has been a bias system in accordance to gender, the male and female which prevails even today⁶⁷. This difference in gender leads to many problems including domestic violence. Discrimination again a girl starts the moment a child is born and continues to be maintained and reinforced through the process of differential socialization throughout her life. Sex role distinctions are evident in terms of occupation and education. It makes every woman convinced about her subordinate status. Thus Right from the birth a girl is taught to remain submissive and at the mercy of the male. Women is not allowed to participate in the decision making process of family. Even she is not allowed to take decision with reference to her personal life also.

Today even sacramental marriages and close family ties are weakening. There has been a virtual disintegration of joint family which provided an emotional safety net and gave physical support to all its members. Everyone is now assertive and is thinking of independent status. Because of this women are suffering in absence of lack of support, education and resources. They are dependent on male members for their survival and protection.

⁶⁶ . Laxmi Devi, *Crime, Atrocities and Violence against Women and Related Laws and Justice*, Anmol Publications Pvt.Ltd. New Delhi, 1998, page45. See also Maya Majumdar, *Protecting our Women*, Vol.I, Dominant Publisher and Distrubutors, New Delhi, Page-5.

⁶⁷ . Shreyanash Chouradia, “Domestic Violence: A Sheer Purgatory for Women”, *Nyaya Deep*, NALSA, Volume X Issue I, January, 2009,

If the crime is committed by husband and in-laws against the wife and where the complaint is lodged the family is broken⁶⁸. Sometime if the intensity of violence is increased the aggrieved woman is constrained to file criminal complaint before Police. In such case husband and in-laws may be arrested by the police. Once the matter entered in Court there is less possibility of compromise. Even if the husband and in-laws are punished by the Court the problems of aggrieved woman are there as it is. The problem of residence, maintenance, social security cannot be settled in case of aggrieved woman by sending husband and in-laws to jail. Hence in such case also aggrieved woman is the sufferer of violence. In case of broken family the children are the worst sufferer. Undue interference of parents in the life of is also a reason for straining the relationship between the couple as a result of which domestic violence is meted out to the woman.

2.7.2 PERSONAL AND PSYCHOLOGICAL CAUSES

Personal and psychological causes include lack of moral education, marital maladjustment, alcoholism, personal traits of the aggrieved woman and the abuser etc. Lack of proper education is a potent cause of moral depravity. It is through the moulding of propensities and potentialities that the formation of good habits and a sound character can be developed⁶⁹. One of the major predictor of domestic violence is education. The risk of being beaten is substantially reduced if the woman is educated⁷⁰ hence many policy recommendations therefore concentrate on the education of women as a key factor in reducing violence. Improper upbringing of the person lead invitation to constant problems and domestic violence is not an exception to it. Besides this marital maladjustment is a major cause of domestic violence against the woman. The relationship of married woman or wife if not cordial with the mother-in-law often leads to disputes in home. Undue interference in the personal life of each other deteriorates the problem.

The maladjustment may arise both because of the personality characteristic of

⁶⁸ . Maya Majumdar, “*Protecting our Women, victimized Women: Repression and Social Response*”, Vol.I, Dominant Publisher and Distrubutors, New Delhi, Page-13.

⁶⁹ . Shobha Saxena, “Crime against Women and Protective Laws”, Deep and Deep Publications, New Delhi, 1995,

⁷⁰ . Niveditha Menon and Michael P. Johnson, “Patriarchy and Paternalism in Intimate Partner Violence”, Recent Studies on Indian Woman, Rawat Publications, 2007

the husband as well as that of the wife and the environment in which the marriage functions⁷¹. There is considerable variability in women's own attitude toward domestic violence. Some women believe that there are conditions under which a husband is justified in beating his wife. The strain relationship between married woman and her mother-in-law is serious cause of domestic violence. Where the married woman is working and the mother-in-law is not, then the possibility of misunderstanding and suspicion is always there.

Parental abuse, neglect, rejection and failure to meet the demands of family is also one of the cause of psychological violence⁷². Due to the lack of attention of parents on child or daily disputes between parents, a severe negative impact is there on the mind of the child. People with these underlying problems may choose partners with whom they can re-enact the dysfunctional relationship they has with their parents. Due to irresponsible behavior also sometime problems occurred within family as a result of which relationship is strained between the members of family. Peoples with anti-social personality disorder are irresponsible, irritable, and aggressive; they are not sadistic but are reckless and have no remorse; they are unable to maintain friendship or romantic relationship.

In all kind of families whether rich, middle class or poor, now it is an admitted fact that alcohol or drug have created serious problems in domestic relationship. Violence is repeatedly committed under the influence of alcohol or drug. Not only the drug addicted person but even the entire family is deeply affected due to the behavior and attitude of such addicted person. This habit further deteriorates social, economic status of the family. Even there is a possibility of commission of serious crimes against the own family members under the influence of alcohol or drug.

2.7.3 ECONOMIC CAUSES

Women from lower socio-economic status and position experience more

⁷¹. Status of Indian Women: Crisis and Conflict in gender Issues, Vol-2, Edited By Uma Shankar Jha, New Delhi, 1987

⁷². Domestic Violence against Women: Legal Control and Judicial Response, Dr. Preeti Misra, Deep and Deep Publications Pvt. Ltd. New Delhi, 2006

domestic violence within the family than women from higher socio-economic status and position. The women from lower socio-economic status and position also face more physical violence from abuser. Further if the women is working and earning then the intensity of violence is less as compare to housewives. So as a dependant on the earning of male, female experienced more violence in house.

Even in some cases, even though the woman is working her income is totally controlled by the husband or male. Women might be working full time, but not be in control of their own money . If a woman happens to be a working lady, she has to explain and account for any late return from the work place, slightest lapse in the explanation would result into suspicion of adultery, followed by threat of violence⁷³ . Even a working woman is also subjected to violence but as compare to non-working woman the intensity of violence is less. Unemployment and poverty is also one of the important cause of domestic violence. Due to unemployment is very difficult to satisfy the daily needs of the family and sometime habit of alcoholism is developed between male people.

Education is still denied to women. In rural area women are not acquainted with higher education and they are forced to enter into marriage relationship even in minority. Hence after marriage they are constrained to live as a house wife. They are dependent on husband for their survival and husband often deprive them of financial resources. Even basic needs of women are also not fulfilled. As a result of this women in India are in a vicious circle. They are unable to maintain themselves and neglect of husband to maintain them compelled these women's to approach the Court claiming reasonable maintenance for their subsistence and survival.

2.8 IMPACT OF DOMESTIC VIOLENCE

The position of women in India is in fact quite miserable and a great deal

⁷³ . Kuljit Kaur, “*Domestic Violence Act 2005: A Step Towards Upholding the Rights of Women*,” Nyaya Deep, NALSA, Vol. VIII Issue 4, October 2007

needs to be done on their behalf⁷⁴. Women's social and economic position remains, as it always has been heavily dependent on their role within the family⁷⁵. Because of violence on women not only her personal growth is affected but even the growth of family and nation itself is adversely affected.

2.8.1 SOCIAL IMPACT

Domestic violence inhibits women from playing an active role in decision making in the family and directly influences their participation in public life⁷⁶. Because of the dominance of men in family women is not given liberty to participate effectively in family life. She is not allowed to take decision with reference to her personal life also. Despite the fact that she is equally competent with male, she is intentionally prohibited from participating in public life. Even though the Constitution of India speaks about equal justice and several laws are enacted by the Parliament for protection of women, the reality is that women's participation public life is very less and in most of the cases real power is exercised by the male on behalf of woman. Women in India are deprived from exercising active role in private and public life as a result of which their personal growth has been hampered.

Gender bases violence has serious repercussions on children who becomes nervous, irritable and apprehensive and perform poorly on the school. There is every possibility of children being delinquent because of the problem of domestic violence in family. Even there are some instances wherein children have resorted to the habit of drug and alcohol. Hence not only the personal progress and growth of aggrieved woman is hampered but the overall growth of family is prevented due to the menace of domestic violence.

2.8.2 ECONOMICAL IMPACT

Domestic violence against women has a serious impact on the economy within the family. It has been postulated that violence leads to decreased efficiency and productivity. Due to domestic violence not only a private life of a person is suffered but it has a great negative impact on society and

⁷⁴ . Status of Indian Women, Crisis and Conflict in Gender Issues, Vol-2, Feminist Consciousness in India, Chapter- III,

⁷⁵ . Women and the Law, Sandra Fredman, Clarendon Press, Oxford 1997,

⁷⁶ . Justice A.K. Sikri, "PWDV Act, 2005:Implementation and enforcement, Nyaya Deep NALSA, Volume IX Issue I, January 2008, Page-64.

economy also. . Human development, economic growth and productivity is adversely affected due to domestic violence. Development of family system leads to development of nation but domestic violence limits the same. If women are allowed to participate effectively in the private and public life, then it will definitely bring some important social and economic advantages to the Country.

Sometime violence committed by abuser against the aggrieved woman is in the form of, not providing basic necessities to her and even children. Even woman may be prevented from carrying on her employment and if she is a working women, her income may be totally controlled by the abuser. She may be deprived from using money for her own basic needs. If a woman is not allowed to fulfill the basic needs, it leads to vagrancy and destitution. Insecurity, depression, mental trauma, anxiety are the consequences of domestic violence on aggrieved woman.

2.8.3 PSYCHOLOGICAL IMPACT

Where the abuser is committing the act of domestic violence repeatedly, the atmosphere is unsuitable for the aggrieved woman and her children. In such case consequence of violence may be depression, mental trauma, pain and woman and her children may be deprived from leading a normal life. There are far reaching psychological and physical consequences of domestic violence.

In extreme cases even to aggrieved woman may be constrained to commit suicide. Psychological and emotional abuse of the complainant like, insults, ridicule, name calling, insult for not having a male child, false allegation of unchastity, threat to commit suicide by the abuser, makes the aggrieved woman more vulnerable. It adversely affects the state of mind and body of such aggrieved woman.

2.8.4 IMPACT ON RIGHTS OF WOMEN

When human rights are incorporated in the Constitution of a country they are known as fundamental rights, as constitutional law of that country is the fundamental law of the land. Human rights are basic, inherent in nature and are inalienable. All major

International Instruments includes sex as one of the grounds upon which States must not discriminate⁷⁷.

Domestic violence is undoubtedly a human rights issue and serious deterrent to development. Women who face domestic violence are denied their basic fundamental rights guaranteed by various International Instruments and the Constitution. Domestic violence has drastic and devastating effects on its victim⁷⁸. Domestic violence violates right to life and personal liberty of a women which is a fundamental basic right guaranteed and available to her. Due to the neglect by abuser even right to security of aggrieved woman is also adversely affected.

When domestic violence is committed a woman is subjected to physical and mental pain. Right to life also speaks about right not to be subjected to torture. Domestic violence is a denial of right not to be subjected to torture, inhuman or degrading treatment. Even right to health is also infringed as aggrieved woman is subjected to prolonged physical and mental trauma. Domestic violence is denial of the right to optimum standard of physical and mental health⁷⁹. It is due to the culture of silence which exists in the family, an aggrieved woman is not allowed to speak about the violence meted out to her within four walls of the house. Domestic violence in such case violates right to freedom of speech and expression which is very much available to an aggrieved woman. Women because of several restraint impose on her by male dominated society are not allowed to participate freely in private as well as public life. By subjecting and limiting her movement only to the home and by denying access to public and private life easily the right to equality and equal justice has also been denied to women. Due to social constraint their freedom to assemble and form association is also adversely affected.

⁷⁷ . Dr. Krushna Chandra Jena, *“Towards Protection of Women from Domestic Violence and Sexual Harassment*, Indian Bar Review, Vol.XXXIII (1 to 4) 2006

⁷⁸ . Dr. Nuzhat Parveen Khan, *“Domestic Violence: An Issue of Concern for One and all”*, Nyaya Deep, NALSA, Volume 4, Issue 4, October 2008, Page-79.

⁷⁹ . Kamal K. Misra and Janet Huber Lowry, *Recent Studies on Indian Women*, Rawat Publications, Jaipur, 2007,

2.9 CONCLUSION

In India women are not allowed to participate freely and are subjected to unreasonable restrictions. They are denied of economic resources and are not allowed to take education of their choice. She is prevented from meeting a person in the normal course of events. It is because of this women's right to personal development is also affected. Although there were various laws enacted to reduce the suffering of women in India due to improper implementation these laws were proved to be ineffective. Society was also not in favour of such laws as Indian society is based on patriarchal system and it has influenced the culture from time immemorial. After commencement of the Constitution also it is general that women are not allowed to take decision about their life. Thus due to male dominated society in India there were several barriers in development of women as a result of which position of women was vulnerable. There was an urgent need to take appropriate steps for amelioration of women in India and to bring them into the main stream of the society. Even though various attempts were made by Government and social reformers to eradicate atrocities against women in India due to lack of support of male dominated society less has been achieved in this area.

Proper awareness is to be spread in society about the rights of women so that society respects the rights and feelings of women. These measures are necessary to bring women in the mainstream of the society and for the purpose of establishing violence free society in India.

III. CHAPTER
NATIONAL AND INTERNATIONAL
PROVISIONS RELATING TO THE
WOMEN EMPOWERMENT

3.1 INTRODUCTION

Concept of right has been developed parallel to the Natural Law Theory. Rights are essentially a product of democracy where they are not only recognized but provisions are also made to see how they will flourish. Rights are essential if human being wants to pursue as a human being. Salmond defines a legal rights as, “an interest recognized and protected by a rule of legal justice”¹. When a person is having legal right another person is always under a legal duty. Rights and duties are correlative to each other. When another person is under the duty it is expected that he must discharge his duties properly and should not violate the legal right of a person. When there is a breach of duty then the legal conception which has been evolved is that it will result in imposition of liability.

Violation of legal right would be a legal wrong done to a person in whose interest it is, and respect for which is a legal duty. Thus if there is a legal right vested in a person he can seek its protection against a person who is bound by a corresponding duty not to violate that right². With the advancement of human rights jurisprudence in the world and in the wake of welfare State, new rights have been guaranteed to women by United Nation and several countries with a view to establish equal justice in a given legal system. Many countries have taken social and structural steps to alleviate the distress experienced by women in past.

3.2 DEVELOPMENT OF WOMEN’S RIGHTS

Human rights are fundamental to our very existence and they constitute what might be called sacrosanct rights from which no derogation can be permitted in the civilized society. While human rights have evolved in scope historically, their source has always been the universal principles of morality and duties for guiding all human interactions. Emphasis of human rights thus varies under different perceptions of morality. The moral perspective is however neither unique nor static. Alternate more perspectives co-exist and evolve and so do the scope, nature content and reach of human rights. The liberals, for instance emphasizes the private property rights equal treatment before law and political liberty. The social is perspective on the other hand

¹ . Salmond Jurisprudence, (2nd Edition

² . *Mr. 'X' v. Hospital 'Z'*, (1998) 8 SCC 296.

considers economic equality as a foundation for political freedom and legal equality. Notwithstanding the varied perceptions the evolutionary motive force for human rights is the mankind's increasing demand for a decent civilized life in which the dignity of each human being is well respected and protected.

Domestic Violence occurring as physical and psychological abuse defiles the very existence of the abuse person, who most often happens to be a women. Domestic Violence contravenes the Universal Declaration of Human Rights Article 3.

Everyone has a right to life, liberty and security of person and the section 2(d) the protection of Human Rights Act, 1993³. Human Rights means the rights relating to life liberty equality and dignity of the individual guaranteed by the constitution or embodied in the International Covenants and enforceable by the courts in India. Domestic Violence perpetuates beyond legal boundaries constantly challenging the universal of human rights i.e .their applicability in all places and domains.

Human rights are the rights that all people have simply because they are human beings. Contemporary human rights standards were developed in the aftermath of world war U. countries around the world organized an international body to develop universal human rights of all people. This organization , the United Nations , was creates in an effort to ensure that the atrocities of the Nazi regime would never be repeated .It was founded on the principle that each member nation of the United Nation must protect all of its citizens against violence of their fundamental human rights.

Everyone has a right to life, liberty and security of the person and the section 2(d),the protection of Human Rights Act,1993. Human Rights means the right relating to life, liberty, equality and dignity of the individual guaranteed by the constitution or embodied in the international covenants and enforceable by the court in India. Domestic violence perpetuates beyond legal boundaries constantly challenging the universal of human rights i.e. their

³ . Section 2 of Human Rights Act, 1993

applicability in all places and domains.

The United Nations Charter was signed in 1945 . Under the Charter, members of the United Nations have an obligation to promote human rights and fundamental freedoms “Without distinction as to race, sex, language or religion.” The General Assembly of the United Nations adopted the Universal Declaration of Human Rights in 1948 and proclaimed in the “common standard of achievement for all peoples and all nations.” The Universal Declaration state that the “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice, and peace in the world.” The Universal Declaration established core human rights principles, including among others, the rights of life, liberty, security, and equal protection of law.

These rights fall into two broad general categories: civil and political rights and economic, social and cultural rights.⁴

The distinction between civil and political rights and social, economic and cultural rights has resulted in a hierarchy of rights (Mayer, 1999). Historically, the United Nations and international human rights organizations have placed a higher priority on civil and political rights. The example of the tortured political prisoner became the quintessential picture of human rights violations.

In recent years, the traditional distinctions between civil, political, social and economic and cultural rights have begun to break down. Many commentators recognize that the protection of civil and political rights often require that the state take affirmative measures to ensure the enjoyment of those human rights.

Similarly, violence against women, including FGM, domestic violence, forced prostitution and many other forms of violence, violates the right to live free to torture or cruel, inhuman, or degrading treatments. Definition of torture under international law generally include four elements:

⁴ . Agarwal, Kuntal, ‘Survival of females in India’ Paper presented at international conference of women, Development and health, Michigan state university, Michigan, 1988.

- 1] severe physical and/or mental pain and suffering
- 2] intentionally inflicted;
- 3] or specified purposes; and
- 4] with some form of official involvement, whether active or passive.

In case of violence against women, the last element, official involvement, is satisfied through governmental inaction or passive involvement in the violence.

The purpose and methods of domestic violence, for example, and traditional forms of torture are similar in many ways. Perpetrators of domestic violence often use violence and control to dominate the victim in much the same way as the traditional perpetrator of torture, which represent the state. These perpetrator may use torture to elicit information, punish the victims, or diminish their capacity⁵.

The world organization against torture, an international coalition of non-governmental organizations fighting against torture and other inhumane treatment, has also detailed the similarities between public forms of torture and private forms of torture.

The World Organization against torture also equates torture with other forms of violence against women, including among others, rape and sexual assault, dowry violence, and honor crimes. Violence against women also violate the right to liberty and security of person. Gender based violence such as rape or domestic violence, involves some forms of physical violence. As a result, these forms of violence inherently violates the right of bodily integrity and the security of the person. Women's account of rape and sexual violence within war-torn areas provide extreme example of violation of the right to liberty and security of person. For example, Beverly Alien (1996), author of the book *Rape war Far*, describes the war in the former Yugoslavia and the systematic use of rape and "ethnic cleansing". Alien describes three different methods of genocidal rape used by the Serbian military in the conflict: (a) armed forces entered a village, took several women from their houses, raped

⁵ . Ghadially, R, *Women in Indian Society*, 1988

them in public areas, and left the village; (b) armed forces held women in concentration camps, where they chose women at random and raped them as a form of torture often followed by murder, and (c) armed forces arrested women and held them in rape/death camps, where they systematically raped the women for prolonged period of time.

Violence against women, by definition, interferes with the enjoyment of the right to physical and mental health. The international Covenant on economic, social and cultural rights guarantees the right to the " highest standard attainable of physical and mental health." violence against women can have devastating physical effects on women, as well as lasting and debilitating psychological effects.

In many countries, police refuse to respond calls relating to domestic violence to investigate assault claims when they discovered the victim and the perpetrator of assault are related. Even if the police investigate and file a report, prosecutors often do not pursue the case. In some instances, when a woman successfully maneuvers through the criminal justice system to have her case heard before a judge, the judge dismisses the case imposes only a nominal fine. For example, in Albania, a woman who attends to prosecute a domestic assault meets with extreme resistance at each step of the criminal justice system. The police, prosecutors, and judges view their role as facilitating reconciliation, and the pressure women to "pardon" their husbands. Not surprisingly, in a review of The Tirana, Albania, district Court record over a six month period, not a single case of domestic assault was fully prosecuted. In the same six month period, prosecutors estimated that about 300 women presented claims to the prosecutor's office. The prosecutor's office did not pursue any of the cases. 10 women filed claims in the court without the prosecutor's assistance. These claims were dismissed at the first hearing. Because they are often denied access to justice and legal remedies, so far for the Human Rights abuses at the hands of a legal system that purports to offer assistance.

Activists from around the world have worked diligently for over three decades to make the United Nations more responsive to the human rights

abuses women face. These activists have lobbied for the development of new international laws and for changes in procedures for monitoring compliance with human rights treaties to reflect the role that gender place in the realization of human rights. Although slow, these efforts have been successful on several fronts, including

a. The adoption of United Nations treaties and declarations that more clearly define women's human right,

b. The development of procedure to monitor implementation and what's meant of the treaties, and

c. The increased recognition of women's Human Rights issues within main stream gender natural human rights treaties and forums. In additional to improvements within the United Nations, changes in international human rights law and policy have provided new tools for grooving regional and National Network of activists to employee in working to protect women's human rights and a reduced violence against women ⁶.

3.3 VICTIMS OF THE DOMESTIC VIOLENCE:

There are some it common to all about the kind of woman who gets beaten:

1. The first meet is that middle class women do not get beaten. The woman come from all sections of the society, belonging two different religions, educational level and from all socio economic classes.

2. If we here more about wife battering in slums are in crawls, it is because these women have less privacy. The middle and upper class women abetted behind closed doors. Delhi pin total isolation and operation for the because they have to keep up the presence of a successful marriage. Working class women talk, quite openly about the violence that the experience in their homes, and generally it seems to affect them less psychologically. This could also be because working class women accept the violence, do not see it as being something and related to them as individuals. Middle class women

⁶ . Desai, Bharat and veedon, family dynamics and development programmes; Indian course bibliography, IJSW54(1), 1993

being the question and doubt themselves.

3. Another myth is that the victim of violence is a small fragile, belonging to the working class. But in fact, women holding responsible jobs as doctors, journalist, models get beaten by their husband. Many of them are quite capable of managing their lives. So there is no stereotype of a battered women.

4. Another myth is that of provocation. The myth victimizes the women father. The burden of guilt falls on the women and increases her same and degradation. This myth also conveys the message that women who get beaten are masochistic and they want to get beaten.

5. Another myth is that the woman who don't leave their husband do not mind the bettering are that they actually like it. It is often asked: Why women continue to live in a situation where they are eventually murdered are they driving to suicide. Why don't see a way out? The theory of learnt helplessness gives an Insight into the mental state of passive resignation experienced by women. According to this approach, some events occur in the battered women's life during childhood and onwards with sufficient regularity. Because of this they cannot escape abuse and they only have themselves to blame. Some important in women early lives which suggest a susceptibility factor include a high level of violence by members of their families in childhood (e.g. Being hated by the mother, battered by the father, battering the mother, the father mother battering other children) perception of critical or uncontrollable events in childhood, and experiencing such conditions which place them at high risk for depression. The fear of losing the husband's affection and the fear of disruption of their home life status quo also from them to tolerate the husbands battering. The battered wife's are the separate to stay and at the same time terrified to leave for fear of inescapable reprisals.

The importance of the family has ensured that such behavior is condoned in Silence. The sanctity has insured that it has come to be seen at almost acceptable behavior.

The stigma attached to a broken marriage, and the belief that women's true

place was with her husband, inter dinner when parents encouraging their daughters to remain in a violent marriage. While the legal and police system have, after 1975 become more Respective to certain excesses, yet much remains unstated, invisible and repressed. The general preoccupation with "more important" issues has ensured that spousal abuse are largely overlooked.

3.4 PERSPECTIVE OF CONSTITUTIONAL LAW:

The modern welfare state as a regulator, control arbitrator etc, is certainly expected to engage in all activities necessary for the promotion of the social and economic Welfare of the community. The Preamble of the Indian Constitution which heralded socio economic revolution, tries to bring about the real satisfaction of the fundamental needs of the common person.

At the time of the framing of constitution, founding fathers from their experience as well as from history were mainly aware of the fact that the structure of the Constitution would reflect the social reality in the society.⁷ That is why the original draft had only 1 chapter regarding the enforceable right both individual and social of the citizens. On the doubts expressed by some of the members in the constituent assembly about the capacity of the society in implementing these rights of a social nature the chapter was divided into two parts; one is enforceable (part III) and the other is enforceable (part IV). Part IV consist the directive principles of the state policy which are fundamental in the Governance of the country although they are not enforceable. This original scheme is to be understood in the light of sociological jurisprudence.

According to this thought every civilized society at a particular given time has some achieve goals and some achievable goals. Under Indian Constitution, directive Principles of State Policy the journal postulates at the time of the framing of the constitution. Until recently the directives were not considered seriously by the court because of the strict legalistic positive approach adopted by them. The recent teleological approach of the code provide basis for the meaningful understanding of the basic human rights. In the direction

⁷ . Phadims, Urmila and Malani, Indira, 'Women of the world' , Illusion and Reality , 1978,

the scope of right to life and personal liberty under article 21⁸ was widened to the extent that 'life' means life with human dignity. The apex court started seeing the directive principle of State Policy as a basis for meaningful enforcement of fundamental rights. Now that directives of part 4 are not mere directives. They are supplementary and complementary to fundamental rights.

The legislature also wanted to enlarge the fundamental rights in tune with the judicial activism, school early regarding free and compulsory education up to.

15 year age throughout India by bringing 93rd constitutional amendment which new article 21A is added.⁹

Thus even though the challenges were there, it was true that Indian society and constitution were successful in facing the challenges. However, new challenges continued to develop and some of these even pose a problem for the survival of the country and the constitution. These problems are the subject matter of Human Rights jurisprudence. The development of a society can be assessed only on the basis of the effective and harmonious implementation of human rights, the quality of which can be achieved by reason and wisdom by giving equal access to all who considered Human Rights as of right according to the just law.

The married women becoming the tools in the hand of man. The man generally used the woman for the purpose of getting money and pleasure. The women are denied to enjoy the rights when conferred upon by the constitution. The customs, traditions have forced them to remain in the door. They have no economic self reliance. They cannot have this social responsibility. Have to perform their household duties as a mother and wife. Slowly the women leaders and the women struggle have changed the situation to some extent. Reservations, innovations in employment and the reservations in educational institutions make the women to raise their voice for the airfare in the society. The Beijing declaration and other conference meant for women finally open the door for women to enter into the open world. This changing scenario draws the women to fight for their rights. Call

⁸ . Right to Life and Liberty under The Constitution of India Art.21

⁹ . Kaushal , Rachna, 'Women and Human Right in India,' 2000

the civilized society have conferred the Human Rights upon the women by which the problems of the women can be mitigated. Of the major problems that women are facing is the problem of domestic violence through which the human rights for women are denied. Issues are discussed in this chapter.

3.5 INTERNATIONAL PERSPECTIVE

Violence effect the life of millions of women worldwide, socio- economic and educational classes. It cuts across cultural and religious barriers, impeding the rights of women to participate fully in society. This criminality against women take dismaying variety of forms, from domestic abuse and rape to child marriage and female circumcison. Ola violations of the most fundamental human rights.

Since the post world war period , i.e. From the time International organizations like the League of Nations and United Nations came into being there has been a lot of activity in the matter of protecting the rights and interests of women in various matters. Although the league of nations was for quite a very brief period, yet a good number of instruments were executed by it so that the status of women improved in the legal system. Of the airports was with regards to securing equality for women on par with men, particularly in civil matter. Ever since its establishment the United Nations is committed because of securing equality of men and women therefore it has adopted a series of conventions for improving the status of women.¹⁰

The United Nations first address itself to the problem of human rights of women, as part of the scheme it addressed the problem of discrimination against women and then deals with the problems treating them as gender based crimes. The United Nations has through its regulations retreated the matter of domestic violence against women as a matter coming within the broader framework of Human Rights violation and thus treated this particular type of behavior as a crying falling within the purview of international law.¹¹

¹⁰Wolf, R.S. and Pillamer , K. A , Helping Elderly Victims: The Realty of Elder Abuse , NEW York,Columbia University Press (1989).

¹¹Multiple Action Research Group (MARG): Within four walls –A Profile of Domestic Violence, New York,1996

3.6 CONCLUSION

The aim of this chapter is to explain how this subject of domestic violence has become a matter of international concern. The idea is to evaluate the role of the international and regional organizations in the matter of improving the status of women and dealing with the problem of violence against women. Violence against women disturbs the status of women and almost destroys the rights to which the women are entitled in their family life.

1945	The adoption of the UN Charter- Provision for equal rights of men and women.
1947	Formation of the Commission on the status of Women. Function is to prepare recommendations and reports on promoting women's rights.
1948	Universal Declaration of Human Rights. All human beings are born free and equal in dignity and rights. Everyone is entitled to the rights and freedoms set forth in the. Declarations without discrimination of any Kind, such as sex(art 2)
1952(1954)	Convention on the Political Rights of Women <ul style="list-style-type: none"> • Right to vote without any discrimination. • Right to run for public office equal terms with men. • Rights to hold public office on equal terms with men.
1957(1958)	Convention on the Nationality of Married Women Celebration or dissolution of marriage between a national and an alien, or a change of nationality by the husband during marriage shall not automatically affect the nationality of the wife. Voluntary acquisition of the nationality of another state or the retention of the nationality of the wife.
1962(1976)	Convention on Consent to marriage , Minimum age for marriage and Registration of marriage . Article 3 : Equal rights of women and men to enjoyment of economic, social and culture rights.
1966(1967)	International Covenant on Civil and Political Rights. Article 3: Equal rights of women and men to enjoyment of civil and political rights.

1967	Declaration on the Elimination of Discrimination Against women. Discrimination against women is fundamentally unjust and constitutes an offence against human dignity.
1979(1981)	Convention on the Elimination of All forms of Discrimination against Women. Comprehensive Bill of Rights for Women.
1993	Declaration on Violence Against Women.

**IV. CHAPTER
PROTECTION OF WOMEN'S RIGHTS
WITH REFERENCE TO DOMESTIC
VIOLENCE ACT 2005**

4.1 INTRODUCTION

Right to human dignity has been recognized as a fundamental right implicit in right to life guaranteed under the canopy of Article 21 of the Constitution of India. Right to human dignity contemplates all freedom and advantages that would go to make life agreeable. It has now been accepted that right to life does not mean mere animal existence, but it means right to live with human dignity¹. Although the term “human dignity” is something more than mere animal existence there are several areas in social life where this precious right is denied to majority of citizens. In the area of domestic life there is blatant denial of this right to most vulnerable, exploited, ignored, class of citizens i.e., women.

It is said that family institution is based on an exploitation and slavery of a woman. Despite the role played by women as a mother, sister, wife and daughter in human life, she is always relegated to a subordinate position. In patriarchal system like India the intensity of violence against women is much more. In view of Supreme Court, “Even though women constitute half of the Indian population they have been discriminated against men and have suffered denial and are suffering discrimination in silence. Self sacrifice and self denial are their nobility and fortitude and they have been subjected to all kinds of inequities, indignities and discrimination”². Family matters are seen as a private area not to be intervened because of the “culture of silence” regarding the issue of family violence³. The traditional norms of Indian society condone violence and promote the patriarchal system.

4.2 SIGNIFICANCE AND NEED FOR THE ACT

The population of women in India, according to 2011 census is about 900 million, which is nearly 50 percent of India’s total population. Despite such a huge margin, the status of Indian women in society is not very pleasant. The

¹. Kharak Singh v. State of Uttar Pradesh, (AIR 1963 SC 1295)

². Madhu Krishwar v. State of Bihar, (1996)5 SCC145.

³. Family violence in India: Human Rights, issues, Actions and International Comparisons, Rawat Publications, 2009

question is why? Human beings are born equal but are never treated equality.

Unequal treatment to women or the gender bias is not a new phenomenon. Our mythology, if referred to, shows us the gender bias that was prevalent in India. Goddesses and epic depicted Draped both had to bow down before this biased treatment. Even today women continue to be victims of violence.

Violence means the use of force against somebody. While women create human being. The violence distresses them and violence against women is simply the destruction of creators. Violence against women, in different forms of biological and psychological has remained in practice, since thousands of years in India. The root cause of this phenomenon lies in the complete subordination and dependence of women on men in the male – dominated society. In the patriarchal family system, under the Hindu law, the husband has full right to punish his wife, if she was not behaving according to the social norms.

Today a girl child is not even allowed to be born. Female feticides has become a normal issue. After she is born throughout her childhood she has to adjust to the discrimination being made by her parents between her and her brothers. During adolescence she has to digest whatever is meted out.

After marriage she has to satisfy her family, attend on her household work and her children, should be in time at the work spot and fulfill expectations of the boss.

Crime Against women like, molestation, bride burning, dowry deaths have become so common that a newspaper cannot be completed without such news. The life of some girls is not secure even at home, father –in - law, brother, brother – in – law, uncle and neighbor in many cases make the life of the girl a nightmare. The majority of the male community has become so merciless that an infant also cannot be assured security.

Gender crimes are not recent phenomena. Crimes against women have been committed since antiquity. Violence to wives, the central concern here, is

found in all societies and across all economic and age groups. Any traditional custom that places women in subordinate positions within society or in family has the potential to turn violent. The putative sacredness of traditional marriage, rigid ideas of conjugality, and patriarchal traditions of structure take precedence over concerns for women or children. An alarming finding given by the World Development Report pointed out that globally rape and domestic violence account for about five percent of the total disease burden amongst women in the age group of 15-44.⁴ Over here disease covers physical as well as non-physical ailments. It need hardly be pointed out that these figures possibly represent only a fraction of actual violence – induces physical and somatic disorder, police records in India reveal that a woman is raped every 34 minutes, molested every 26 minutes, kidnapped every 43 minutes, and killed every 93 minutes.⁵

In India the bad customs the orthodox, matrimonial system and the caste system forced the women to bow before their male relatives. The male dominated society has prevented the women from going to reach the stage from going to reach the stage from where they can challenge the domination of men folk. The political reservations or economic safeguards are not enough for women for their all round development. The social menace like dowry makes the women's life cheaper than animals. To fulfill their sexual thirst the men use women as pleasure dolls. To make women submissive the men use all kinds of violence against her husband who had employed violence against her. He was adjudged as an offender and punished under IPC. This judgment and earlier adjudication have forced the parliament to think for an enactment.

4.3 SALIENT FEATURES OF DOMESTIC VIOLENCE ACT, 2005

A new dimension has been given to the concept of domestic violence including spousal violence and or matrimonial cruelty by the protection of women from Domestic Violence Act, 2005 by giving an exhaustive definition of "domestic violence". The definition of domestic violence under the Act addresses violence perpetrated on women not only by their husband

⁴ . World Development Report, 1998

⁵ . India Canada International Conference on violence, vice Chancellor, S.N.D.T University, Suma Chitnis Report , 1993

or parents but even their siblings. In terms of section 3 of the Act domestic violence is defined to include actual abuse or threat of abuse that is physical or mental, sexual, verbal or emotional ,or economic abuse, Harassment by way of unlawful dowry demands to the women or her relatives are also covered under the definition ⁶ . In determining whether any act, omission, commission or conduct of the respondent constitutes “domestic violence”, the overall facts and circumstances of the case shall be a guiding factor. The definition does not take within its purview only “physical abuse”, which means any acts or conduct of such nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force but also “verbal and emotional abuse” as also “economic abuse”. “Economic abuse” includes deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an Order of the court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, straphang, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance. The section also takes care to prevent the respondent from disposing of household effects, alienating assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person. It further prohibits or restricts continued access to resources of facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household. Over and above, the definition of “domestic violence” has taken care to include ‘sexual abuse’ which includes any conduct of a sexual nature that abuses, humiliates, regards or otherwise violates the dignity of women.

Section 3 envisages application of mind on the part Magistrate in determining

⁶ . Section 3 of Domestic Violence Act,2005.

whether any act, omission, commission or conduct of the respondent constitutes, “domestic violence” under the said section and requires the magistrate to take into consideration the overall facts and circumstances of the case. Mere matrimonial unhappiness caused by indifference, neglect, aversion from the society of spouse and cessation of intercourse, may be even in a chronic condition, and was never sufficient in it to establish matrimonial cruelty. Only cases of extreme nature and absolute impossibility of compromise can be considered to establish such cruelty. Willful and unjustifiable conduct of such a character as to cause danger to life, limb or health, bodily or mental, or as to give rise to a reasonable apprehension of such danger may be said to fall within the realm of cruelty. In Hansberry’s Laws of England, it has been stated thus,” If the court find that one spouse has, by reprehensible conduct or departure from the normal standards of conjugal kindness caused injury to health or a reasonable apprehension of it on the part of the other spouse then it is cruelty, if a reasonable person after taking due account of all the circumstances of the case would consider that the conduct complained of is of so grave and weighty in nature that the complainant should not be called upon to endure it...”Any course of conduct, even if it is not consciously aimed at the other spouse, may nevertheless amount to cruelty if it is intentionally pursued with a callous indifference to the feelings of the other spouse and, of course, if it is pursued to the point of endangering health. It may, however, be pointed out that to follow English decisions on all the aspects of cruelty will not be safe, because of the differences in social conditions and moral values, traditions and attitude towards life, economic standards and philosophy of life. Cumulative effects of the circumstances and facts of each case will decide the applicability viewed and assessed in accordance with the traditions, customs and usages of the society.

Indian culture lays greater emphasis on duties and obligations whereas western outlook takes into consideration rights and privileges. In *Umabai v. Chittar*,⁷ pointing out this important factor, it has been rightly observed that, “The

⁷ . AIR 2008 SC 236

courts should be extremely careful while seeking assistance and guidance from English decisions or even Indian decisions on any laws, no in force or previously in force, and should not follow them blindly, particularly when dealing with persons whose manners customs and mode of life may be different in those of the parties concerned in those decisions.”

Indian law does not recognize various types of cruelty⁸, such as ‘Muslim cruelty’, ‘Christian cruelty’, ‘Jewish cruelty’ and so on. The test of cruelty, as observed is based on the universal and humanitarian standards, that is to say, conduct of the husband which would cause such bodily or mental pain as to endanger the wife’s safety or health. The cruelty alleged may largely depend upon the type of life the parties are accustomed to or their economic and social conditions, their culture and human values to which they attach importance. Each case depends on its own facts and must be judged on these facts. The concept of cruelty has varied from time to time, from place to place, from individuals to individual in its application according to social status of the persons involved and their economic conditions and other matters. The question whether the act complained of was a cruel act is to be determined from the whole facts and the matrimonial relations between the parties. In this connection the culture, temperament and status in the society and many other things or the factors which have to be considered. All these factors need to be considered for judging the conduct complained of in relation to the fact as to whether it amounts to matrimonial offence of cruelty.” Similar was the view taken in *Putal Devi v. Gopi Mandal*.⁹ That on the face of it there may be good relations between the spouse, and the husband or the wife may be such as to cause an extreme mental distress and consequent detriment to health.

While judging the question of cruelty one important ingredient comes for consideration, that is, whether it is an outcome of behavioral pattern or there is an intention behind such behavior. As Denning C.J., observed in *Timmins v. Timmins*¹⁰. “It is well settled that intent to injure, if not an element, is

⁸ . Sec.498A under I.P.C.1860.

⁹ . AIR 1963 Pat 93

¹⁰ . 1953 WLRI, 757

at any rate a most important element in cruelty. In the absence of intent to injure, judge may well be satisfied in refusing to find cruelty.” However, depending on facts of case, at times even unintentional acts may amount to cruelty.

Lord Normand’s observation in this respect seems to be very apt, when he says, ‘...actual intention to hurt is a circumstance of peculiar importance because conduct which is intention to hurt may strike with a sharper edge than conduct which is the consequence of more obtuseness or indifference.” In the above case, Lord Merriment was of the view that though actual intention to injure was not an essential factor but actual intention to hurt may have in doubtful cases a decisive importance. Justice Sheer man makes this point more clearly in *Hedden v. Hedden*¹¹. “the question is not whether a spouse intended seeks the pride of winning the case. Here is that the court has carefully to bear in mind that the expression cruelty is employed in the ct in limited sense.” The Court, as observed by the Supreme Court in *Narayan Ganesh Dastame v. Sucheta Narayan Dastame*¹², in matrimonial cases is not concerned with ideals in family life or has to deal not with an ideal husband and an ideal wife but with the particular man and woman before it. The ideal couple or a near ideal one will probably have no occasion to go to a matrimonial court, for, ever if they may not be able to drown their differences their ideal attitude may help them overlook or gloss over mutual faults and failures. Lord Reid has also observed in *Gollins v. Gollins*¹³.

While occasional outbursts of temper use of strong language, incompatibility of temperament or absence of reciprocal love and affection are not acts of such nature so as to constitute cruelty, instances such as refusal to fulfill matrimonial obligation or spouse slapping for disturbing in night or giving threat of suicide may amount to cruelty. The general rule in all question of cruelty is that the whole matrimonial relations must be considered, that rule is of a special value when the cruelty consist not of violent act but injurious reproaches, complaints, accusations or taunts, It may be mental such as

¹¹. 1922 All ER 436

¹². AIR 1943 SC 654

¹³. 1929 All ER 265

indifference and frigidity towards wife, denial of a company to her, harassed and abhorrence for wife, or physical, like acts of violence and abstinence from sexual intercourse without reasonable cause.

It must be proved that one partner in the marriage however mindless of the consequence has behave in a way which the other spouse could not in the circumstances be called upon to endure and that misconduct has caused injury to health. There are two sides to be considered in the case of cruelty. From the wife side, who is the petitioner before the Court, she is to be called on to endure the conduct? From the husband's side, was this conduct excusable? The court has to decided whether the sun total of reprehensible conduct was cruel. That depends on the whether the cumulative conduct was sufficiently serious to say that from a reasonable person's point of view after a consideration of any excuse which the husband/respondent might have in the circumstances, the conduct is such that the petitioner ought not to be called upon to endure.

Cruelty which is a ground for dissolution of marriage under section 13(1) (i) (a) of Hindu Marriage Act 1955¹⁴ may be defined as willful and unjustifiable conduct of such a character as to cause danger to life, limb or health, bodily or mentally or as to give rise to reasonable apprehension of such a danger. In other words, to amount to cruelty, there must be such willful treatment of the party which caused suffering in the body or mind either as an actual fact or by way of apprehension in such a manner as to render the continued living together of the spouses harmful or injurious having regard to circumstances of the case. Cruelty may thus be said to be course of conduct and one which is adversely affecting the other. However, what constitution required metal cruelty for divorce does not depend upon the numerical count of such intensity, gravity and stigmatic impact of it when meted out even once the deleterious effect of it on the mental attitude, would be necessary for maintaining a conducive matrimonial relation between the spouse.

□ Absence of intention should not make any difference in case if by

¹⁴ . divorce under Hindu Marriage Act,1855,

ordinary sense in human affairs, the act complained of, could otherwise be regarded as cruelty.

□ Under section 18 of the Hindu Adoption and Maintenance Act 1956 a wife is entitled to maintenance during the lifetime of her husband and to claim from him separate residency and maintenance if her husband has deserted her without reasonable cause, against her consent or if he is willfully neglecting or, treating her with such cruelty which convinces her that it would be harmful or injurious to stay with him. She may also claim her right under Section 18, if he keeps a concubine elsewhere.

Section 17 of the Act lay down that irrespective of any contrary provision in any other law, every woman in a domestic relationship shall have the right to reside in the shared household and the aggrieved person shall not be evicted or excluded from the shared household by the respondent except in accordance with the procedure established by law. Clause (s) of Section 2 define “shared households” as, “a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted by either of singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved persons has any right, title or interest in the shared household.”

Section 19(1) of the Act lays down that while disposing of an application under sub-section 12, the Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order restraining the respondent from disposing or any other manner disturbing the possession of the aggrieved person from the shared households, whether or not the respondent has a legal or equitable interest in the shared households. Section 19(1) further empowers the Magistrate to direct the respondent to remove himself from the shared household [Clause(b)] and to restrain the respondent or any of his relatives from entering any portion of the shared households in which the aggrieved person reside [Clause (c)]. Magistrate may also restrain the respondent from alienating or disposing of the shared household or

encumbering the same [Clause (d)] and from renouncing his rights in such shared households except with the level of the Magistrate [clause (e)] or in the alternative the respondent may be directed to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if the circumstance so require. Sub-section (2) of section 19 also empowers the Magistrate to impose additional conditions and pass any other directions in order to protect or for the safety of the aggrieved person or her child. Sub-section (3) of said section further provides for education of a bond by the respondent for prevention of the domestic violence. Any such order under sub-section (3) shall be deemed to be an order under chapter VIII¹⁵ of the Code of Criminal Procedure 1973 and shall be dealt with accordingly.

As to right to wife to claim accommodation in the matrimonial home as of right or to ask for share in the matrimonial house the realm of law is too clear. Section 27 of the Hindu Marriage Act 1955, vests the jurisdiction in the Court to effect division of properties that may have been presented to the spouses at or about the time of their marriage. This property may belong jointly to both husband and wife and such a division must be part of the decree in the proceedings. However, application of this section is limited only to jointly owned properties of the spouse presented at or about the time of marriage. The Court has no power under said section to deal with the property exclusively belonging to either the husband or the wife and for such grievances, the remedy lies before the civil court by way of a separate suit. As observed by the Supreme Court in *B.R. Mehta v. Atma Devi*¹⁶, whereas in England the rights of the spouses to the matrimonial home are governed by the Matrimonial Homes Act 1967, no such right exists in India. Deals with the rights of occupation in matrimonial homes and Para 1047 deals with and provides that where one spouse is entitled to occupy a dwelling house by virtue of any estate or interested or contract by virtue of any enactment giving him or her the right to remain in occupation, and the other spouse is not so entitled, then the spouse not so entitled, then he spouse not so entitled

¹⁵ . Chapter-8, Security for Keeping The Peace and For Good Behaviour, Cr.p.c.1873.

¹⁶ . AIR 1998 SC 452

has certain rights that is to say if in occupation, a right not to be evicted with the leave of the Court given by an order, if not in occupation, a right with the level of the court so given to enter into and occupy the dwelling house.¹⁷

4.4 CONCLUSION

The PWDVA is basically a human rights law. By this right based law the rights guaranteed by various International Instruments have been bestowed on Indian women. The object behind this Act is eradication of violence occurring on women within the family. By this law new remedies have been provided to women which can be secured from the Court of Magistrate. Supreme Court and various High Courts in India have also given purposive interpretation to the provisions of the Act.

Despite this there are several impediments in the effective implementation of this Act. In view of this there is an urgent need to find out the existing problems and to suggest a solution for effective implementation of the PWDVA in State of Maharashtra. Hence in next chapter attempt has been made to find out the existing statutory and factual problems which are there in the working of the Act.

¹⁷ . Halsbury's Laws of England, Fourth Edition, 1967, Vol.22

V. CHAPTER
JUDICIAL APPROACH TOWARDS
THE DOMESTIC VIOLENCE

5.1 INTRODUCTION

The section focuses on various judgment of the supreme and High Courts in India, and tries to analyze the manner in which the courts have dealt with the case of domestic violence. In this section, there are both the negative judgments, in which the patriarchal and class caste bias of the court becomes apparent, and the positive judgments, in which the courts have shown their concern against discrimination and for the rights of women.

Since the judgment concern women and girls located in different parts of the country, the study, in many ways, reflects the kinds of cases that have arisen in different parts of India and has an all India Character. Quite a few of the cases studies are also landmark cases, which have been taken up and pursued by women's organization and groups indifferent parts of the country.

5.2 JUDICIAL APPROACH TO DOMESTIC VIOLENCE

Criminal justice is a mirror image of the state of affairs in a society and the status of its governance. It is one of the primary function of any civilized government. At the same time, in democratic societies governed by rule of law and guaranteed human rights. It is not easy to organize crime control and administer criminal justice according to the expectations of the people. The problem are many and varied. They becomes more complicated with technology developments, unstable governments and economic globalization.

In the criminal justice system, courts occupy a position of primary importance. Their predominant position gives them the authority to even reprimand other components of the system i.e., police prosecution and prisons, for failure in discharging their functions in matters of law enforcement. Courts are so powerful that they can direct the government to do certain things, which they deem fit in the public interest. The court system is central to administration of justice and to a large extent, determines its fairness, efficiency and character.¹⁸

Although, the constitution of India and several other legislative enactments are

¹⁸ Madhava Menon, N.R. (ed.) Criminal Justice India Report Series, Vol. 3, U.P.2001

in Existence for the protection of women's rights the credit for highlighting and enforcing Justice goes to the supreme Court and various High Courts.

With the rise of crimes against women being on the increase, it should have followed that judges trying the case would display not only a greater sense of responsibility but also be more sensitive while dealing with case of violence against women. But this has not unfortunately even in the Supreme Court. The following cases give a totally different picture from what A.S. Anand, J (as he then was) expected from the judge when he said: "Of late crime against women is on the increase. It is an irony that while we are Celebrating women's rights in all spheres, we show little or no concern for her honor the courts therefore shoulder a great responsibility they must deal with such cases with utmost sensitivity."¹⁹

But in the words of Deshpande, C.J., "the patronizing attitude towards woman and the inborn partiality of men's thinking towards themselves have so far prevented a truly impartial approach to the study and appraisal of crimes against women. Judicial decision are weighted against women and give the benefit of doubt to men due to this built-in prejudice in favour of men which operates against women."²⁰

5.3 JUDICIAL APPROACH TO DOWRY VIOLENCE:

Judicial officials hold that in dealing with cases of violence against women, they use Discretion in the light of particular circumstances, particular social conditions, and Particular individual needs. But is the use of discretion by magistrates always just, un-Arbitrary, rational and reasonable? In their judgments based on detachment, penetrating Thought, and wisdom? In judgments, do judges always succeed in divesting themselves of all fear, anger, hatred, love, and compassion? Do they pay diligent attention to hearing

what the victim (particularly of violence against women) has to say are what the victim's lawyer argues? Theoretically, the claim of judges having patience in hearing and reasoning may be true but in practice, it may be difficult to stick to such

¹⁹ . Annual Survey of Indian Law, vol. XXXVI, 2000.

²⁰ . (2001)5 SCC 577

thinking. Judges cannot be free from human frailties. They are human and subject to prejudices, hostilities,

pressures and other human problem that might color their opinion. As such, sentencing differentials do exist. In this regard, the observation of the Orissa High Court are very instructive, the High Court observed that “ Courts are called upon to adjudicate the complex question whether ‘in-laws’ have become ‘outlaws’ and have directly or indirectly contributed to snuff out the life of a Woman. Dowry deaths are result of their disgraceful acts. But the courts have to be careful in sifting the evidence to see whether the accusations are true or are aimed at false implication. In the present day complex world, It is extremely difficult to gauge the machinations of a mischievous mind. The Courts have to tread on very slippery grounds while dealing with such cases, because, sometimes, emotions overrun realities”,²¹ in dowry death cases, one accused gets seven years imprisonment, another gets life imprisonment and yet another is discharged. One magistrate gives ten years imprisonment to the husband, the mother-in-law and the

Sister-in-law of the victim and also imposes a fine of Rs. 10,000 on each, while in another Case; the accused is given only three years’ imprisonment. It is not being maintained that all these differentials are arbitrary and wrong. They have to be there. What is being Suggested is that in a good number of case, the accused manages to escape punishment by getting the evidence manipulate through the law-enforcement officials, Consequently, the criminal procedure and penal sanction are not correctly used and ‘judges’ discretion is not unbiased in selecting the type and severity of sentence. Above all the low rate of conviction by the courts reported in the press creates doubts for the victim and the family members whether they will at all get justice. The facts that hardly 15 to 20% of persons arrested for crime against women are convicted makes victims lose faith in the judiciary.

Many a time the magistrates decide the case as they perceive them, i.e., subjectivity does exist in decisions-making, Sometimes judges are influenced by political factors too. Even if they are no direct pressures, the magistrates may not wish to offend those who may control their future when they come up for promotion, transfer, reappointment, etc. study of many cases shows that people engaged in legal

²¹ Baby v. state, (1984), Cr. L.J.1684

profession are more punishment oriented. They are more 'legalistic' in their interpretations and less flexible in interpreting the law.

The Supreme Court, however, for some reason, preferred to reply on the testimony Of the photographer who visited the site after police and found the stove on the kitchen floor. The High Court also felt that since no suicide note had been left, this supported the accident theory, through there was a delay of about an hour and a half in taking the burnt girl to the hospital, the court held that this again did not prove anything with certainty. They also felt, that just because the deceased was not taken to the better Civil Hospital did not prove anything, as the nursing home was closer to deceased's matrimonial home. The Supreme Court chose not to reply upon the testimony that deceased's cries had been suppressed by turning on the TV loudly, as this fact had not been put to the father-in-law when his statement was recorded. This case shows how the courts can by strictly adhering to technicalities, let a guilty person go scot-free. In the case of *Soni v. State of Gujarat*,²² highlighting the importance of Dowry Prohibition Act, 1961, Section 304B²³ and Section 498A²⁴, Indian Penal Code, The Supreme Court observed that: "Section 304B and the cognate provision are meant for eradication Of the social evil of dowry which has been the bane of Indian society and continues unabated in spite of emancipation of women and the women liberation movement. This all pervading malady in our society has only a few lucky exceptions in spite of equal treatment and opportunity to boys and girls for education and career. Society continues to perpetuate the difference between them for the purpose of marriage and it is this distinction which makes the dowry system thrives. Even through for eradication of this social evil, effective steps can be taken by the society itself and the social sanction of the community can be more deterrent, yet legal sanction I the form of its prohibition and punishment are some steps in the direction."

In *State of Karnataka n. M.V. Manjunathe Gowda*,²⁵ commenting upon the object of Dowry Prohibition Act and role of the Judiciary, the Supreme Court observed that; "The Practice of giving and demanding dowry is a social evil having deleterious effect on the Entire civilized Society and has to be Condemned by the strong hands

²² AIR 1991 SC 2173

²³ . Dowry Prohibition Act, 1961

²⁴ . Indian Penal Code.1860

²⁵ (2003) 2 SCC 188

of the Judiciary.

Despite various amendment providing deterrent punishment with a view to curb the increasing means of dowry deaths; the evil practice of dowry remains unabated. The court cannot be oblivious to the intendment of the legislature and the purpose for which the enactment of the law and amendment has been affected. Every court must be sensitized to the enactment of the laws and the purpose for which it is made by the legislature. It must be given a meaningful interpretation so as to advance the cause of interest of the society as a whole. No leniency is warranted to the perpetrator of a crime against the society. Keeping these overall accounts and circumstance in the background, a deterrent punishment is called for.”

Recently in a far reaching judgment, the High Court’s Lucknow Bench suggested the parliament to make provision for death sentence in dowry death case under section 304B of the Indian Penal Code, 1860. The above observation was made by a division Bench while conforming the sentence of life imprisonment given by a Haryana Sessions court to Moti Lal for causing dowry death of his wife by setting her on fire within three years of the marriage.

The Bench remarks that “to curb the recurrence of such offence, which militates against all canons of civility, a deterrent sentence is the need of the hour.” The Bench added that “in one perception, the offence of dowry death in certain cases, if not more, is as heinous and brutal as that of murder. We feel that the provision of death penalty would act as a deterrent and curb the commission of such offence.”²⁶

Barring few revolutionary judgments, the entire criminal justice administration has proved to be a major stumbling block in providing to dowry victim.²⁷ Cases like that of *Sudha Goel*²⁸ highlight the facts that the gender bias against women in sections of judiciary is protested against this Judgment, and pointed out that judges had not appreciated the evidence properly, they were held guilty of contempt.

In *Samunder Singh v. State of Rajasthan*²⁹. issue which will have to be seriously

²⁶ The Hindustan Times, Lucknow, August 14, 2003, p.3

²⁷ Chandrama Singh v. State of Bihar, 2005(2) Crimes 281 ; Gurumel Singh V. State of Chhattisgarh. 2005(3) Crimes 576; Surindr Kaur v. State of Haryana, 2004 Sec. (Cri) 926; Kunhiabdulla v. State of Kerala, 2004 SCC (Cri) 907.

²⁸ State v. Laxman Kumar, AIR 1986 SC 250.

²⁹ . 1987 AIR 737, 1987 SCR (1) 979

addressed at a national level. When *women's group State of Rajasthan*,³⁰ the court opined that anticipatory bail ought Not to be granted in bride-burning cases and acknowledge the validity of the widespread Belief that dowry deaths are even now treated with some casualness at all the levels. Dissatisfaction is, however, possible with certain judicial assumption generally Operating at the trial level which provided an unjustified advantage to the defence Some of the assumption are:

1. Contrary to medical opinion, the assumption that a person with 100% burns is no Fit to make a dying declaration.
2. In case of harassment of a woman, someone on behalf of the victim ought to have Reported the matter to the police of court and since no such report was lodged, There was no harassment as alleged by the prosecution.
3. Neighbor's testimony favoring the victim's husband or in-laws is more reliable then the one against them.
4. The disputes between husband and wife do not ordinarily attain the pitch that the Husband may be induced to kill the wife.

But, at the same time, a world of caution has been issued by Orissa High Court in *Baby v. State(S.P. Mallik vs State Of Orissa And Anr)*³¹ that-

“The provisions relating to dowry death are laudable, being aimed at protecting women whom Manu raised to a status of worship and ordained that they be honoured and adorned with apparel and jewels by their male relatives if they desired abundant and continued prosperity. But the courts shall be failing to do their duties if they act with over-jealousness to punish an accused merely on unfounded allegation”.

There should be an obligation on the part of the prosecution to prove the guilt of the accused beyond all reasonable doubt. The criminal jurisprudence system of the country Has been to that effect and there is neither any departure nor any escape there from; *Arvin Singh v. State of Bihar*.³² In the case of *Shobha Rani*³³ the ground of divorce was cruelty caused by incessant demand of dowry. She produced a letter

³⁰ (1987) I SCC 466; 1987 SCC (Cri) 189 ; Air 1987 SC 737.

³¹ . 1982 CriLJ 19

³² AIR 2001 SC 2124

³³ *Shobha Rani v. Madhukar Reddy*, AIR 1988 SC 121

of her husband which disclosed as follows;

“Now regarding dowry, I still feel that there is nothing wrong in my parents asking for a few thousand of rupees. It is quite a common thing for which, my parent are being blamed of harassment.”

The trial court agreed with the husband of Shobha Rani and came to the conclusion that There was nothing wrong on the part of the husband to ask his wife to give money when He was in need of it. The A.P. High Court also agreed with the trial court by holding that There was nothing wrong and unusual in asking a rich wife to spare some money.

Fortunate for being rich, the wife could approach the apex Court, which Differed from The courts below and reversed the finding of both the High Court and the trial judge. The sociological understanding of dowry abused abuses the Apex Court is reflected in the following words: “the Indian woman is brought up and trained in a traditional atmosphere and told that it is better to die in the husband’s home than return to her parents’ home and bring disgrace to them. She finds it very difficult to violate this cardinal principal and prefers to die at her husband’s place. This is the social reality of a women’s life. The legal agents in the power need to understand this and be sensitive to it.”

The difficulties associated with evidence in case of dowry murders particularly dying Declaration were considered by the Delhi High Court.³⁴ In this case of dowry murder, There were six dying declarations, which could be divided into two sets. One set exonerated the accused, and the other completely implicated him. The Trail Court after examining the facts of the case rejected the declarations which exonerated the accused husband.

One of the dying declaration had been recorded by a local magistrate, in which , the Deceased wife had State that her husband had sprinkled kerosene oil on her and burnt her. This statement had been recorded in Hindi, after the Doctor in the hospital had declared that the wife was fit to make the statement. The deceased had also earlier told her sister and her brother-in-law that it was husband who had burnt her. Both these persons, however, rescinded their earlier statements made to the

³⁴ Rajpal v. State 1989(1) HI.R.

Magistrate under S. 161 of Code of criminal Procedure. The Trial Court had found out that deceased's sister was in fact married to the brother of the accused, and that in all probability the brother persuaded his wife to rescind from her statement to save the life of the accused. The brothers of accused had turned hostile for the same reason.

The High Court also accepted the Trial court's reasoning and held "that the accused had Not even tried to put out the fire," The High Court also held that dying declaration Implicating the husband and made to the Magistrate was correct. This case shows how The courts can be extremely sensitive to the social reality which moulds even the burn victim's behavior and their thinking. Instead of relying on the technicalities of a law which was constructed without any understanding of how an Indian woman would behave the courts grounded its judgement by taken into account the "natural" fear and dependency that a married girl shows through her hesitation to initially tell the truth.

In the *Shudha Goel*³⁵, young girl who was almost 9 months pregnant was burnt alive by her mother-in-law and husband. The Supreme Court reversed the order of the Delhi High Court and convicted both the accused with imprisonment for life. The girl Sudha had been tortured and harassed with demands for dowry before burning. Neighbours, on hearing sudha's screams, barged into her home and after trying to put out the flames arranged for a taxi to take her to the hospital, Sudha told the neighbours that her mother-in-law had set her on fire. She repeated this statement to another person (who later became a prosecution witness) in the taxi sudha's in-laws and husband stood watching while sudha was being burnt. The defence relied upon a dying declaration, which was alleged to have been taken down by the investigating officer in the case. Disbelieving the police officer's testimony the Supreme Court said that the High Court was wrong in relying upon the written dying declaration as this had not even been taken down by the Magistrate. It is relevant to mention that Sudha had also written some letters to her sister-in-laws, which did not refer to any harassment or torture. The Supreme Court had relied upon the oral testimony of the neighbours and

³⁵ . State v. Laxman Kumar, AIR 1986 SC 250.

relation of Sudha, as it felt they had no reason to lie.

Another key issue which often arises in cases of abetment to suicide by harassment for dowry is how proximate should the abetment be.

Since the suicide is often the consequence of “cruelty” and harassment spread over a long Period of time the courts should ordinarily consider the cumulative effect of all the Incidents. While some courts have appreciated this others have not.

5.4 CASES OF CRULTY IN MATRIMONIAL LAW:

Isolated acts of violence does not amount to cruelty-Ordinarily, a single act of violence does not normally amount to cruelty but, “it is possible in the particular circumstances even for a single act of grossly violent character to constitute cruelty” and “it is not necessary for proving the cruelty that there must be many incidents of beatings”.³⁶ In *Chintagunti Jaganadhan v. Savitharamma*³⁷ the husband had once beaten the wife and it was alleged that, by beating itself was not sufficient to constitute cruelty. It was held that to establish legal cruelty, it is no necessary to prove that the husband had beaten her more than once. It depends on the facts and circumstances of each case. It was observed that beating usually is a result of previous long course of ill-treatment. Cruelty was held to be established in the case.

The courts will be disinclined to dismiss lightly the isolated act of assault and violence as not amounting to cruelty.³⁸ In *Asha v. Baldev raj*³⁹ the husband was overbearing hrass and abusive and also resorted to violence on occasions.

It was held that the conduct amounted to cruelty. In *A.P. Marry v. K.G. Raghwan*,⁴⁰ in This case, the main allegation of the wife regarding cruelty was that the husband in the Presence of other had beaten the wife with an iron rod causing four injuries on her Person, one of which was grievous in

³⁶ . Sulekha v. Kamlesh Kanta, Air 1980 Cal.370 at 373, Lallo v. Smt. Bachi,AIR 1986

³⁷ . AIR1972 A.P.377

³⁸ . Gurucharan v. Marayam Kaur, AIR 1960 Punj, 422 at 425.

³⁹ . Air 1985 Del. 76

⁴⁰ . Air 1979 M.P. 40

nature, resulting in fracture on her right leg, for which she was required to be confined in the hospital for about 8 months.

The trial court dismissed the petition on the ground that this single act of assault did not amount to cruelty because the words used in clause (d)⁴¹ are “treated with cruelty”. He observed that “treated” implies continued course of conduct spread over a period and therefore, a single act of beating does not come within its purview.

The High Court referred to the observation of the Supreme Court in *Dastane v. Dastane*,⁴² that a single act of violence may come within the meaning of the word ‘as treated with in cruelty’ provided the violence is of a grievous and inexcusable nature.

5.5 ACT OF PHYSICAL VIOLENCE:

The Indian courts have over the years held act of physical violence as constituting cruelty, it is settled rule of law that ‘expression cruelty covers physical violent acts of the spouses’.⁴³ Various Indian high Courts and Supreme Court of India, have in deciding which acts of physical violence amount to which acts laid down as follows:

5.5.1 SLAPPING, BEATING AND DRAGGING:

All these incidents of physical violence may amount to cruelty. In recent case, *Lallo v. Smt. Bachi*⁴⁴, the wife was physically beaten up and was dragged. The beating up of the spouse was considered as a serious matter by the court. While granting divorce to the wife, the court observed that the beating by the husband to his wife in this age cannot be undermined and ignored. A wife is not a chattel to be beaten at the whim and caprice of the husband.⁴⁵

When beating is coupled with improper behavior of the husband, the conduct

⁴¹ . Section 27 of the special Marriage Act, 1954

⁴² . AIR 1975, SC 1534

⁴³ Lalita Devi v. Radha Mohan, AIR 1976 Raj, 1 at 2

⁴⁴ . Civil Misc.Appeal No.127 of 1981

⁴⁵ . AIR 1986 RAJ 49

easily comes within the ambit of cruelty. In *Kaushalya devi v. Masat Ram*,⁴⁶ the husband used to give beating to the wife and did not even permit her to talk to any neighbor, male or female and threatened that she would be put to death in case she talked to anybody. Cruelty was held to be established.

In *Baburao v. Sushita Bai*,⁴⁷ there was positive evidence to show that the wife used to be habitually beaten by the husband and the latter even neglected to provide her with food. It was held that the attitude of the husband amounted to legal cruelty. In *Tulsa v. Pannalal Nath Kali*,⁴⁸ the husband admitted that he used to beat her occasionally on the grounds:

- (a) Her getting up at 7.00 a.m. instead of 6.00 a.m., and
- (b) Wearing clothes other than those he wanted her to wear.

It was held that as a devoted wife, it was no doubt her duty to get early and to respect the wishes of her husband as to the particular clothes to be put on. But if she did not, the husband has no right to beat her. *Shiv Dayal Shrivastava vs Union Of India* spoke as follows.⁴⁹

“The husband cannot be heard to retort that the wife should also bear his irritating idiosyncrasies when he beats her. Everyone has certain whims in his way of life but no husband has the right irrespective of the community to which he belongs to do physical violence to his wife. And if he does, she has every right to resent.”

5.5.2 FALSE COMPLAINTS TO POLICE OR PERSONS IN AUTHORITY AGAINST OTHER SPOUSE:

Making fake and baseless complaints to the police or persons in authority against the other spouse has been held to cause mental cruelty in various cases.

⁴⁶ . Air 1981 HP 63

⁴⁷ . AIR 1964 MP73

⁴⁸ . AIR 1963 MP5.

⁴⁹ . 1984 AIR 465, 1984 SCR (2) 853

Jorden Diengdoh v. S.S. Chopra,⁵⁰ Delhi High Court held that conduct of the husband in writing threatening letters to wife, making false complaints of theft against her to police and also writing letters to her superior officers containing fake and baseless allegations, amounted to cruelty in a matrimonial proceeding for divorce.

5.5.3 DRUNKENNESS OF THE HUSBAND:

Drunkenness per se is not cruelty. But persistent drunkenness after wearing that such a Course of conduct is inflicting pain on the other spouse, certainly if it is known to be Injuring the other spouse's health, may well amount of cruelty.⁵¹

In *Smt. Rita v. Brij Kishore*⁵² it was held that in the context of Hindu culture, there may be certain circumstance in which drunkenness may amount to cruelty. Justice M.L. Jain rightly observed that the habit of excessive drinking is a vice and cannot be considered reasonable wear and tear of married life. If a spouse indulges in excessive drinking and continues to do so in spite of remonstrance by the other, it may amount to cruelty, since it may cause great anguish and distress to the other spouse, who may find living together nor merely miserable but unbearable.

The High Court held that more consumption of alcohol by a husband may not be reasonable excuse for the wife to withdraw from the society of her husband but a violent temper accompanying it might justify such refusal.

It is a mental cruelty to insist that she must follow the path which the husband was treating in personal habits. The obstinate insistence by the husband that wife must eat and drink wine and threat to another marriage cumulatively constitute cruelty-both physical and mental and provides a sufficient ground for refusing restitution of conjugal rights.⁵³

⁵⁰ . AIR 1985 NOC 45 (Delhi),

⁵¹ . Baker v. Baker (1953) 3 All ER 193; Hall v. Hall (1962) 3 All ER 518 (HL.); Satendra Pal v. Smt. Swaran Lata, AIR 1981 Delhi 221

⁵² . AIR 1984 Delhi 291

⁵³ . AIR 1975 Raj 88,

5.5.4 SEX AND CRUELTY

Sex is an important aspect of matrimonial relationship. Either on account of orthodoxy or ignorance, often enough people hesitate to give expression to the agony which stems from this cause. In *Sheldon*,⁵⁴ the husband has normal sexual life with his wife for 8 years but then abstained for the next 6 years without giving any reason or explanation for this abnormal conduct and despite the warning from his wife and the doctor that it was adversely affecting her health, the husband abstained from sex, the court held that it amounted to cruelty.

5.6 WILL FULL DENIAL OF SEX AMOUNTS TO CRUELTY

Jyotish Guha v. Smt. Meera Guha,⁵⁵ Calcutta High Court held that will full denial of sexual intercourse or persistent refusal of sexual intercourse without any reasonable cause by one spouse to the other amounts to an act of cruelty. In this case, court found that the wife as persistently refused sexual intercourse without any reasonable cause ever since the solemnization of marriage and practically throughout the period of marital life, causing depression and frustration in her mind.

5.7 WILL FULL REFUSAL OF SEXUAL INTERCOURSE AND IMPOTENCY

If refusal to have intercourse amounts to cruelty so does the impotency. In *Rita v. Balkrishnan Nijhawan*,⁵⁶ Delhi High Court observed-“the law is well settled that if either of the parties to a marriage being of healthy physical capacity refuses to have sexual intercourse, the same would amount to cruelty entitling the other to a decree. It would make no difference in law whether denial of intercourse is then result of sexual weakness or of responding disabling him from having sexual union with the appellant or it is because of any will full refusal by respondent.

⁵⁴ . (1966) 2 AII E.R.257, C.A.

⁵⁵ . AIR 1980 Raj. 180.

⁵⁶ . AIR 1970 Cal,266.

5.8 PERSISTENT REFUSAL TO HAVE MARITAL INTERCOURSE:

In *Srikant v. Amirutha*,⁵⁷ It was held that presents refusal to have marital intercourse Amounts to cruelty. In *Shakuntala v. Om Prakash*,⁵⁸ Leila Seth, J. observed-‘a normal and healthy sexual relationship is one of the basic ingredients of a happy and harmonious marriage. If this is not possible due to ill-health on the part of one of the spouses, it may or may not amount to cruelty depending upon the circumstances of the case. But will full denial of sexual relationship by a spouse when the other spouse is anxious for it, would amount to mental cruelty, especially when the parties are young and newly married.’ This is consistent view taken by the courts in *Anil Bhardwaj V. Nirmalesh*.⁵⁹

5.9 PERVERT PRACTICES

Sexual act in excess or malpractice where the husband commits sodomy either to his own wife or on some other person, he may be guilty of committing an act of cruelty. Under the provision of the Hindu Marriage Act, it has been Treated as serious one and it is special ground of divorce available to wife.⁶⁰ In *Statham v. Statham*,⁶¹ it was held that any attempts on the part of the husband to commit sodomy or bestiality may be sufficient to find a decree for divorce on the ground of cruelty.

Philandering on the part of husband with other women may constitute cruelty where the Wife’s health is thereby adversely affected. *Lewis v. Lewis*.⁶²

5.9.1 FALSE CHARGES OF INSANITY TO CRUELTY BY HUSBAND

Apprehensive of the new law which punishes a husband or his relative of cruelty to a woman and or subjecting her to undue harassment, some husbands have evolved

⁵⁷ . AIR 1986 P.&H.308

⁵⁸ . AIR 1980 Kant, 8

⁵⁹ . AIR 1981, Del.53

⁶⁰ . 1956 AII E.R.195

⁶¹ . Hindu Marriage act, 1955, Sec. 13(2)

⁶² . I.R 1929 PI 131 (C.A.)

new methods by which they can achieve the same result-getting rid of their wives and yet not fall foul of the criminal law. Two such cases have been reported from two High courts in 1987. In these cases, the modus operandi of the husband was to declare that the wife is insane and therefore his marriage should be annulled.

Sunil Kumar v. Jyoti alias Meena,⁶³ in this case the husband filed a petition for the annulment of marriage on the ground that fraud was practiced on him as his wife was suffering from a mental disorder which made her unfit for marriage.

But the wife accused the husband of cruelty desertion and claimed that the maltreatment was due to her having brought insufficient dowry. She submitted that in an had a distinguished academic career and before her marriage she was a teacher in an english Medium School. The trial court dismissed the petition on the ground that he had failed to prove that his wife was suffering from any mental disorder.

5.9.2 BREACH OF FAITH IN EACH OTHER

The faith between the spouses is a foundation stone for a happy marital life. If this faith is lost in any way, that everything is lost in the matrimonial life. The married life becomes a burden. They hate each other and do not want to see each other. This situation always creates the family disturbance, quarrel and mental tension and ultimately causes bride burning or bride death. *Anant Chintamal Lagu v. state*,⁶⁴ it was held that “whenever there is breach of faith that One tries to cheat the other, while the woman is normally the victim, then crime takes Place.”

5.9.3 REFUSAL TO HAVE CHILDREN

Will full refusal to have sexual intercourse to frustrate the others spouse's desire to have Child amounts to cruelty in *Jyotish v. Meera*.⁶⁵ Among Hindus (and for that matter every Normal person wishes to have one or two children) the birth of a son is considered to be Necessary for the salvation of the soul and if one of the parties refused to have marital Intercourse or insists to have it, only with the contraceptives, it would amount to cruelty.

⁶³ 9(1958) I All, E.R. 859, C.A

⁶⁴ . AIR 1960 SC 490

⁶⁵ . AIR 1970 Cal.266

5.9.4 VERBAL ABUSES AND INSULT USING ABUSIVE LANGUAGE

In *Gangadharan v. Madhukar*,⁶⁶ it was well established that verbal abuses and insults and use of filthy and abusive language amount to cruelty.

5.9.5 STERILIZATION WITHOUT THE CONSENT OF THE OTHER PERSON

It was observed in *Bravery v. Bravery*⁶⁷ that for a husband to submit himself to a sterilization process without good medical reason would, unless the wife consented, to be a grave offence to her and could without difficulty amount to mental cruelty if her health thereby injured or there was reasonable apprehension of such injury, the hurt would be progressive if the wife, not being a consenting party, desired to have children.

5.9.6 WRONGFUL CONFINEMENT AND DENIAL OF FOOD

In *Kashinath Sahu v. Smt. Devi*,⁶⁸ the wife was subjected to harassment and physical torture and was not allowed proper food and clothing. She was forced to sleep in a room in the background of the house. Even the servants misbehaved with her and insulted her. The court held that “any conduct of the husband who causes disgrace to the wife or subjects her to a course of annoyance and indignity amounts to legal cruelty.”

5.10 CRUELTY IN CRIMINAL LAW

Section 498A⁶⁹ is one of the most significant amendments in the Indian Penal Code, which helps women harassed and tortured by husband and/or in-laws to get relief. The object of the amendment was to punish the husband or her relatives who torture the wife to meet any unlawful demands or drive her to commit suicide.

⁶⁶ . AIR 1988 Ker. 244

⁶⁷ . (1954)3 AII< E.R. 59 CA

⁶⁸ . AIR 1962 Ori, 50

⁶⁹ Indian Penal Code, 1860

Commenting upon the object of Section 498A Indian Penal code Orisa High Court observed- “section 498A of Penal code was introduced to combat the menace of dowry deaths. It reflects the anxiety of the law-makers to extant protection to women considered to be the weaker spouses, Drudgery in marital life, indelible cracks in marital relationship sometimes lead women to end their lives. Life is veritable hell for them, leaving them with no alternative than to take this extreme step. Short of physical cruelty, mental cruelty was perpetuated; being conscious that the letter type of cruelty was not punishable. The section was introduces to fill up the Lacuna in Law”.⁷⁰ Recently validity of S. 498A has been upheld in the case of *Sushil Kumar Sharma v. Union of India*.⁷¹

The introduction of section 498A of the Indian Penal Code has opened a floodgate of complaints by women alleging various kind of cruelty and harassment from their husband and in-laws. The available case law, however, shows that the courts have mostly taken a very strict view and section 498A has been defined very narrowly to include cruelty and harassment of a very grave nature. Not only that, some High court judgements have interpreted 498A to many only that kind of cruelty which in fact led a woman to commit suicide. The purpose of the section to punish cruelty. Which would include not only harassment for dowry, but would include any will full conduct, which would be likely to cause grave injury or danger to life, limb or health both mental and physical, has not been realized.

In *State of Karnataka v. K.S. Manjunathachari*⁷² the cruelty was of the husband and it Was because oh his allegation that she was not a virgin when she was married.

The poignant situation was that after the marriage had been consummated the husband blood had come from her private parts. No amount of denial by the young wife had any effect and she finally agreed to sign a letter dictated by the husband that her husband was “everything to me in any conjugal life and if I disobey this, I am prepared to accept any Punishment. . . .”⁷³ Despite this his suspicion continued.

It is hoped that Parliament will pay heed to the suggestion of the court that section

⁷⁰ *Baby v. State*, (1984) Cr, I,J 1684

⁷¹ (2005) 6 SCC281; see also *The Hindustan times*, July 22, 2005, p. 12

⁷² 1999, Cr.I.J.3949.

⁷³ *Id.* at 3950

304B Should be amended to enlarge the scope of cruelty and not restrict it only to cruelty Referable to dowry harassment.

5.11 JUDICIAL RESPONSE OF SUPREME COURT

In the following cases Supreme Court has affirmed the absolute property rights to windows: In *Beni Bai*,⁷⁴ under a will executed by the husband in 1935 his son n was to be the owner of the disputed house after the death of the testator's wife. The widow was given a life interest in the house in lieu of her maintenance. After the death of her husband, the testator, in 1943 the widow entered into possession of the house for lifetime. In 1962 the widow executed a gift deed in favour of her daughter. The son filed a suit for declaration that the gift deed was illegal and void. The trial court dismissed his suit holding that the case came under section 14(1) and the widow had absolute ownership rights. The High Court in second appeal affirmed the order. Thus, the case came up to the apex court. The court held that the widow was conferred the limited right in lieu of her maintenance in recognition of her pre-existing right. However, when HAS came into existence she was in possession of the property and this limited right got transformed into absolute right in view of the provision contained in Section 14(1). The widow being the absolute owner was thus held competent to execute the gift deed in favour of the daughter.

Similarly, where a widow surrendered her share in the husband estate in favour of her only son and there was ample proof of the same like mutation of the said properties in revenue records in the name of the son after due enquiry during lifetime of the mother, mortgaging of the properties to meet marriage expenses of his sister without any objection by the mother, exclusive possession and management by the son with mother's consent, etc. it was held that the widow had voluntarily surrendered her interest.⁷⁵

5.12 CONCLUSION

There were many types of violence specially Domestic Violence in every type of society. Many of them are not even recorded due to lack of knowledge of rights, violence behind closed doors, willing to maintain their status in society etc. But

⁷⁴ Naresh Kumari v. Sakshi Lal AIR 1999 SC 928 (from HP)

⁷⁵ D.V. Jaganathan v. P.R. Srinivasan, 1999 AIHC 4444 (Mad)

cases which were recorded by police and proceeded by the Court, awarded justice. The Honorable Court showing judicial activism passed several guidelines and make judgements which became a fine line for society. The judicial system had done great work in providing security, protection and justice to women's from Domestic Violence.

VI. CHAPTER

PROBLEMS IN

IMPLEMENTATION OF THE

ACT AND MISUSE OF RIGHTS

6.1 INTRODUCTION

It is said that by enacting the Protection of Women from Domestic Violence Act, 2005 the Parliament of India has made an attempt towards achieving uniform civil code in India. This law is a secular law applicable to all women in India who are aggrieved and are victim of domestic violence¹. In *Manish Tandon v. State*², the Court observed that, the Act seeks to cover those women who are or have been in a relationship with the abuser, where both parties have lived together in a share household. Even those women who are sisters, widows, mothers, single woman, or are living with the abuser are entitled to get legal protection under the Act. This law provides a remedy under civil law protecting women from domestic violence

For the first time some new rights are recognized, protected and enforced by this law³ which cannot be taken away save in accordance with the procedure established by law⁴. Judiciary in India has given purposive interpretation to these new rights in catena of cases⁵. The rights guaranteed under this law were not possible under criminal law or they were not available under the existing family law. In *Varsha Kapoor v. Union of India*⁶, the Court observed that, since invoking criminal machinery under section 498-A, IPC has serious ramifications, need was felt to have civil law on domestic violence. Right to residence was also not possible under criminal law and there was no such provision under the existing family Laws.

6.2 SCHEME OF IMPLEMENTATION MACHINERY

The Protection of Women from Domestic Violence Act, 2005 is a beneficial legislation enacted with a view to ameliorate the position of

¹ . Section 2 (a) of the Act states that an aggrieved person means any woman who is, or has been, in a domestic relationship with the respondent and who allege to have been subjected to any act of domestic violence by the respondent. The words, “any woman” as mentioned in section 2 (a) means any woman in India irrespective of her caste or religion.

² . (2010) DMC 242

³ . Section 19 of the Act has guaranteed right to residence to an aggrieved person in the share household of the respondent.

⁴ . Section 17 of the Act.

⁵ . In *Vimlaben Ajitbhai Patel v. Vatslabeen Ashokbhai Patel*, 2008 ALL SCR 1707, the Court held that, the Protection of Women from Domestic Violence Act, 2005 provides for a higher right in favour of a wife. She not only acquires a right to be maintained but also there under acquires a right of residence. The right of residence is a higher right.

⁶ . II (2010) DMC 10

women and to prevent the occurrence of domestic violence in the society. For the purpose of effective implementation of the provisions of the Act, a scheme of implementation has been provided by the Act in the form of Protection Officer, Service Provider, Judicial Magistrate First Class and Police officers. It is expected that by proper co-ordination⁷ all the machineries created by the Act should work together and assist the victim of domestic violence.

As discussed earlier with a view to implement the provisions of the Act efficaciously this law provides for appointment of Protection Officers⁸ and registration of non-governmental organizations as Service Providers⁹. Their duty is to provide assistance to an aggrieved person from the alleged domestic violence committed by the respondent. The Protection Officer may assist the Magistrate in discharge of his functions under the Act, make a Domestic Incident Report, help an aggrieved women to file application to the Magistrate, to ensure legal aid to the aggrieved person, maintain the list of service providers, make available a safe shelter home if the aggrieved person so requires, get the aggrieved person medically examined if she has sustained bodily injuries, ensures that the monetary relief under Section 20 of the Act is complied with and executed in accordance with the provisions of the Code of Criminal Procedure, to prepare a "Safety plan" in form V, to scrutinize the applications for appointment as Counselors, to liaise between aggrieved person, police officer, and service providers.

The Protection Officer is the central machinery mainly responsible for the implementation of the Act. The Act has imposed some additional duties on Protection Officer in respect of the procedure when application is filed by aggrieved person claiming reliefs under the relevant provisions of the Act. The duty to serve the notice on respondent has been imposed on the Protection Officer. If directed by the Magistrate he shall conduct home visit of the share household, make an inquiry and file a report on the

⁷ . Section 11 of the Act.

⁸ . Section 8 of the Act empowers the State government to appoint Protection Officers to exercise the powers conferred and duties imposed under the Act. The Protection Officer as far as possible be women.

⁹ . Section 10

emoluments, assets, bank accounts or any other account as may be directed by the Court, restore the possession of the personal effects including gifts and jewellery of the aggrieved person and the share household to the aggrieved person, assist the aggrieved person to regain custody of children and secure rights to visit them under his supervision as may be directed by the Court, assist the court in enforcement of the orders and take the assistance of the police, if, required, in confiscating any weapon involved in the alleged domestic violence. He has also to take action in emergency to protect the aggrieved person if he receives information that an act of domestic violence is being or is likely to be committed.

If the Protection Officer fails or refuses to discharge his duties as directed by the Magistrate in the protection order he can be punished with imprisonment which may extend to one year or fine which may extend to twenty thousand rupees or both. But no prosecution or other legal proceeding shall lie against the Protection Officer except on a complaint filed with the previous sanction of the State Government or an officer authorized by the State Government for the purpose. Further no suit, prosecution or other legal proceeding can be filed against the Protection Officer for any damage caused or likely to be caused provided the said act is done by him in good faith.

Protection Officer and Service Provider are appointed to provide assistance to an aggrieved woman it is the Magistrate who is vested with powers to grant reliefs to aggrieved person in terms of Protection order, residence order, monetary reliefs, custody order and compensation order. For claiming reliefs from the Magistrate an aggrieved person has to approach Magistrate under section 12 of the Act by filing an application to that effect. Chapter IV of the Act has provided procedure for obtaining orders of reliefs. Any person who has reason to believe that domestic violence has been or is being committed, can inform the Protection Officer. After receiving information the Protection Officer shall make a Domestic Incident Report in pursuance to Form I and shall forward copy of it to the Magistrate, local police station, service provider and aggrieved woman respectively. An aggrieved woman may present an application to the Magistrate seeking one or more reliefs under the Act. An application is to be filed in a prescribed

form as mentioned in Form II. But as this law is a social legislation in *Milan Kumar Singh v. State of U.P.*¹⁰ the Allahabad High Court held that, application filed under Section 12 cannot be rejected merely on the ground that it is not filed in a prescribed form as mentioned in Form II. The purpose of the Act is not to create hurdles before the aggrieved person in filing the application. In *Mohammad M. Ahmed v. State of A.P.*¹¹, the Court held that, even a father of an aggrieved person can also file application under Section 12 and claim medical expenses incurred by him for delivery and other health problems suffered by his daughter from husband.

It is to be noted that Magistrate may pass interim orders as he deems just and proper. He may also pass ex parte orders on the basis of affidavits given by the aggrieved woman. In *Vishal Patil v. Vishakha Patil*¹² the Bombay High Court held that, there is no requirement of filing separate application for interim relief under Section 23 of the Act. However before granting an interim relief, an opportunity of being heard has to be afforded to the respondent. Same view was reiterated by the Court in *Abhjit Auti v. State of Maharashtra*¹³, by saying that before granting ex-parte or interim relief in terms of Section 18 to 22 of the Act, reasonable opportunity of being heard is to be given to the respondent.

This Act is basically of a civil nature and an order passed by the Court is in form of an injunction order. The Act is retrospective in nature and it cannot be said to be ex post facto criminal law. But the proceedings under the Act relating to application and orders for relief and offence of breach of protection order or interim protection order by the respondent is to be governed by the Code of Criminal Procedure, 1973. In *Kishor Kale v. Shalini kale*¹⁴, the Court held that merely because the Act is providing protection to women against victimization does not necessarily mean that woman is always a victim or sufferer of domestic violence. The Court has to be vigilant to find out which

¹⁰. 2007 CRL.L.J. 4742.

¹¹. 2007 CRL.L.J. 3361.

¹². 2009 CRL.L.J 107.

¹³. 2009 ALL MR (Cri.) 1005.

¹⁴. 2010 (2) B Cr C 320. See also Madhusudan Bhardwaj v. Mamta Bhardwaj, 2009 (3) B Cr C 764.

part of the family is a victim of domestic violence. The Court can also exercise inherent powers for providing justice to an aggrieved woman¹⁵.

Despite this there exists certain factual, statutory, administrative, social problems because of which it is very difficult to implement the provisions of this Act in effective manner. There are no full time State protection officers in Maharashtra State. Government has failed to give proper training to the protection officers. Women are not aware of the provisions of the Act. In view of this is very necessary to find out the existing statutory and factual problems and to suggest some best practices to implement the provisions of the Act effectively.

6.3 MISUSE OF RIGHTS

It is an accepted fact in the present world that domestic violence in any household, relationship, living-in partners, and marriage should be construed as violation of human rights. As a result, over the last few years, there is a consensus among various nations including members of the United Nations that violence perpetrated against women has risen beyond expectations and that there is an alarming increase in the violence committed against women. As such, most of the countries have enacted various laws to prevent such violence being unleashed against women in particular. In India, one such piece of legislation came to be enacted with effect from 26/10/2006 under the heading "The Protection of Women from Domestic Violence Act 2005". No doubt, there are various offences covered under the provisions of IPC; to name one of them is the most common 498-A of the IPC, which provides for punishment of the accused who has practised sustained violence against women, whether the same has resulted in death of the victim or not. Notwithstanding such laws, the act referred to above came into existence with an intention to protect women victims at large from persons who have subjected them to violence which is termed as domestic violence as the same does not encompass violence in general terms.

In this act, domestic violence includes actual abuse or threat that is physical, sexual, verbal, emotional or economic. In other words violence need not be purely physical alone as trying to deprive the woman of a decent life by not

¹⁵ . Section 28 (2) provides that, "Nothing shall prevent the Court from laying down its own procedure for the disposal of an application under Section 12 or under sub-section (2) of Section 23".

providing a decent maintenance also amounts to domestic violence. In fact, Articles 14, 15 and 21 of the constitution guarantees rights of equality, etc. This act draws strength from provisions of the said articles so as to provide equality to women too. In the present act, any woman aggrieved in her domestic relationship can complain to the concerned judicial magistrate whether or not she is living with her spouse, that the said person is treating her with such cruelty which according to section 3 of the act defines the term domestic violence. Domestic violence in general includes harms or injuries, which may injure health, safety, life of the aggrieved person with an intention to force her to meet any unlawful demand by the accused including dowry, etc. However, domestic violence is not limited to mere abuse by a man, physical or mental, even failing to look after any woman in a relationship with him by not providing clothe, food or shelter deliberately will also be termed as domestic violence under the act. Under this act, the magistrate orders protection of such women by ordering for maintenance, etc. The magistrate is also empowered to pass 'protection orders' in favour of the complainant so as to protect him/her from being further abused by the accused. Non-governmental organizations help in aiding the aggrieved with medical help, legal aid, safe shelter, etc. Whatever are the honest intentions of the legislature, it is seen that the provisions of the act is misused and abused by the so-called victims. In other words, the provisions of the act does not afford the accused to explain his stand for the simple reason that even if the woman is living separately from him, she can still accuse her husband or anyone claiming under him of continuing to threaten her and so on. Since the provisions of the act have a presumptive value, most of the time, the accused is left defenseless.

6.4 CONCLUSION

Thus the accused is tormented by the society even if the accusation is proven wrong. Poor and uneducated women may have borne the torture of the husband's family, but today many well-educated women are using this act for unlawful purposes. They falsely accuse their husbands and in-laws so as to gain substantial wealth by means of compensations. With such wrong intentions, these selfish women are ready to jump at

the smallest opportunity and file a case. Such misapplication and misuse of the law is one of the main causes for the destruction of many families. The act may need revision in order to prevent such misuse and misapplication of the act. The true intention of this act was to protect domestic violence victims from further pain and to thus relieve them from their misery and not to cater to the selfish needs of people who would not mind accusing their own family of committing atrocities for the sake of gaining financial benefits. Thus, only genuine victims of domestic violence must be identified and given assistance; and such greedy complainants must be stopped from ruining families.

VII. CHAPTER

CONCLUSION AND SUGGESTION

7.1 CONCLUSION

After making a detailed study of the nature and scope of the laws in India on the topic of domestic violence a summary of the research work, the finding, of the researcher and his suggestion to improve the status of law are presented in this chapter as follows:

1. The definition of domestic violence in the Bill is “habitual” abuse which makes the life of the aggrieved person miserable” and has a residuary clause “otherwise injures or harms” the aggrieved person. The definition does not list specific acts the judge and so it becomes subject to the judicial officer’s perception of violence. The definition is not in keeping with the accepted international definition of violence as seen in the Convention on Elimination of all Forms of discrimination Against Women (CEDAW) and excludes sexual, economics and child abuse. Further, the Bill gives the abuser the benefit of the pleas of self defiance.

2. The Bill ignores the concept of shared households. No existing law gives the woman an absolute right of residence in the home and if this Bill leaves this aspect untouched it fails to address the root cause of the vulnerability of women. another omission is the failure to provide for restraining or repossession orders, Violation of an order or protection entails a term of imprisonment for one year or a fine of Rs.20,000/- in such a situation the woman would have to go back to the court to enforce this order, whereas a composite order with a suspended warrant would make it more effective for implementation.

3. While important aspects to prevent violence have been overlooked the bill provides for mandatory counseling for the victim and for an “amicable settlement”. No one could object to this but given the track records of the existing mandate of the Family Counseling Centers. Family courts and Lok adalats, where reconciliation is treated as synonymous with “preservation of the family unit at all costs” and “adjustments” on the part of the woman even if it means that she has to live with violence, this will work against the woman. Mandatory counseling is necessary for abuser.

4. The Bill makes provision for Protection officers and for help from NGOs, referred to as Service Providers. The Bill gives impunity to Protection officers for acts done in good faith. This impunity should be extended to the service providers also.

5. The Domestic Violence Act is meant to be a short term measure for women in violent and abusive situations. It does not contemplate transfer of rights in property. Long term rights will have to be worked out under the existing laws, this act is to be in addition to and not in derogation of other family laws.

6. If the protection from Domestic Violence Bill is to make any difference in the lives of women it must take effective steps to prevent violence within the home because domestic violence is a violation of a woman's human rights. When rights are violated in the public sphere the state takes active remedial steps but when the violations are within the private sphere the State turns a blind eye.

7. The definition of violence and shared household must be clearly spelled out. The relief granted must prevent further violence.

8. The Courts must be easily accessible with simple procedures. Ultimately, the Union Parliament passed the Bill and the law on Protection of Women from Domestic Violence became a reality.

The Bill was ultimately enacted as the Protection of Women from Domestic Violence Act, 2009. The Act introduced new remedies, new institutions and new procedure for the purpose of protecting the status of women and saving them against violent behavior of men.

As a result of this particular legislation and a few such measures adopted earlier, a new regime has been established in our country, accommodating within the framework of the legal system the rules of civil and criminal law. The new regime provides for new types of remedies side by side with the penal provision.

7.2 SUGGESTIONS

Domestic Violence can be happen to anyone of any race, sexual orientation, religion or gender. It can be happen among couples who are married, living together or who are dating. Domestic Violence affects people of all socio-economy background and education levels. Domestic Violence needs a coordinated and systemic response from the criminal justice system. While the legislation in the from of the new provision in the Indian Penal Code like Sec 498A and the new legislation called the protection of Women from Domestic Violence Act, 2005 have the most significant criminal law reforms protecting woman's rights. But these reforms are not enough. Ultimately we need to remember that criminal law is indeed a domestic violence against women is an offence, the police may still not comply with the law and not implement it effectively. Therefore, in order to move towards an effective working of the women's protection law and other criminal law remedies, it is crucial that we put in place a new model of policing Most importantly, we need to work on standard and regular policing, which will ensure that domestic violence is taken seriously

□ Simply passing an Act and jotting it down on legal paper does not ensure that its main purpose will we served. In order to tackle this problem, the Ministry of Women and Child Development and all other departments have to work in close cooperation with each other so that the menace of domestic violence is dealt effectively.

□ Another very important feature of the new Act is women's right to secure housing. The protection of women from Domestic Violence Act, 2005 provides a rights to reside in the matrimonial and shared household, whether or not she has any legal title in the household. This is a very good development to secure peace to married women.

□ It is necessary to adopt the police of getting the woman's husband to execute a "bond to keep peace", or a "bond of good behavior" through the Executive Magistrate who order the husband to put a stop to domestic

violence. The husband can also be asked to deposit securities (i.e. money or property) that will be forfeited if he continues to act violently.

- When the victim is approached to the police on any violation of protection orders, police must take immediate action.
- The coordination between police and protection officer must be maintained in implementing of the orders.
- The response of police officers towards cases of domestic violence were evaluated based on whether they would arrest the abuser spouse, order that would arrest the abuser spouse, order that suppose out of the house, or attempt reconciliation. The experiment revealed that the arrest made by the police, were clearly, favored arrest law enforcer, because they acted as deterrents. Numbers of police officers are being told to stay away form problem of Domestic Violence.

This is how we need to look towards a co-ordinate legal approach to protect women facing domestic violence, only such a coordinated and holistic approach would help persons facing domestic violence to get true relief from the legal system.

Awareness programs/ Training program son domestic violence shall be conducted for all magistrates, lawyers and police personnel,

- Implementation of the act must be strictly followed.
- The courts are taking very casual view if the case on Domestic Violence.
- Even serving of notices to the respondent is taking a lot of time. There are cases where the notice to the remained undelivered for six months. There are also many cases pending. There are also many case pending even after issuing protection orders i.e. more than one two years.
- There should be special courts and separate protection officers to expedite the procedure. There are few number of complaints are missing the Act. In such cases they should be strictly penalized. More awareness program and counseling's reduces the misuse of law.

□ More powers must be given to protection officers like arrest of the person etc. in case of violation of protection orders i.e. entering in to the premises, or harassing he has to be penalized. On violation of the protection orders when the victim is approaching the police for protection, many of the police are not co-operating. There should be co-operating and co-operating between the police and protection officers in implementing the PWDV Act, 2005.

□ More protection must be given to the woman after issuing protection orders. In case of violence of protection orders.

□ The central government had introduced Gram Nyayalayas and not a single Gram Nayayalayas has been started since, it can work like subordinate courts in the country concentrating on case in village. Through Gram Nyayalayas justice can be reached to the doorstep of the poor and deprived. The concept of Gram Nyayalayas is to dispose the pending cases and will help reducing the number of pending cases in various courts in the country.

□ Domestic violence needs attention of the society first. It is the right of women to live her life with dignity and her right not to suffer an abusive relationship simply because it is forced on her she accepts it due to economic in security. Social attitude towards domestic violence has to change first laws are nothing but codified social behavior patterns. A large number laws exist which can be used as deterrent for domestic violence. It is enforcement of these laws and the need for social education which is required. There is a need to increase awareness on the impact of domestic violence.

Domestic violence is common in all categories of people irrespective of education, rich, poor, urban, caste, un-employee or employee. The family is an institute has always been major case of incidents of domestic violence linked to there are cultural and religious ideologies that have sanctioned the beating and chasing of wives. Apart from the domestic violence is not simply a legal problem, which can be eradicated by appropriate legal measures alone. It is very social and psychological problem can be tackled adequately by bringing about fundamental changes in the social system in the attitude of people towards women and children. Legal remedies are good and helpful in so far as they act as deterrents and attempt to court the tendencies to violence, but they

do not strike out its cause, they are no doubt bold attempt to get rid of domestic violence from system, yet by themselves they can do little to tackle the issues involved.

The unit of family is already under threat in our country. The new Act called the protection of women from Domestic violence has given enough number of weapons in the hands of women for their protection. Before bringing any law, we need to educate people about its usage. George Washington was presented an axe by his father on his birthday in his childhood. Since he did not have the knowledge of using it, he destroyed the whole garden. The misuse of this Act will take women away from their family and the society. There are forces in the country that are jealous of our strong family system. Now they have started entrapping women. In the situation that has arisen we are compelled to say whether the Act would be used to protect the family.

Finally, it may be stated that it is need to have a consolidated legislation instead of staggered enactments on the Rights and Remedies of the women. In these enactments the legislation should be consolidated so that its enforcement becomes easy and there is no difficulty in achieving the purpose of the legislation.

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