

CRUELTY BEHIND CLOSED DOORS:
DOMESTIC VIOLENCE ON WOMEN HEALTH

**A Dissertation to be submitted in partial fulfillment of the
requirement for the award of degree of Master of Laws**

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This is to certify that the dissertation titled, “*Cruelty behind closed doors: Domestic violence on women health*” is the work done by Kuldeep Singh under my guidance and supervision for the partial fulfilment of the requirement for the Degree of Master of Laws in School of Legal Studies Babu Banarasi Das University, Lucknow, Uttar Pradesh.

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“Any accomplishment requires the effort of many and this work is no different.”

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ABBREVIATIONS

Sr.No	Abbreviations	Full Form
1.	AC	Appeal Cases
2.	AIR	All India Reporter
3.	AIDS	Acquired Immunodeficiency Syndrom
4.	ALJ	Allahabad Law Journal
5.	AV	Atherva Ved
6.	CAW	Crime Against Women
7.	CAWC	Crime Against Women Cell
8.	CCA	Contempt of Courts Act, 1971
9.	CCR	Current Criminal Reports
10.	CEDAW	Convention on Elimination of All Forms of Discrimination Against Women.
11.	CPC	Civil Procedure Code, 1908
12.	Cr. LC	Criminal Law Cases
13.	Cr. LJ	Criminal Law Journal
14.	Cr. P.C	Criminal Procedure Code, 1973
15.	CWDS	Centre for Women's Development Studies
16.	DV	Domestic Violence
17.	DMC	Divorce and Matrimonial Cases
18.	DMMA	The Dissolution of Muslim Marriage Act, 1939
19.	DV Act	Domestic Violence Act, 2005.

20.	FIR	First Information Report
21.	HAMA	Hindu Adoption and Maintenance Act, 1956
22.	HC	High Court
23.	HL	House of Lords
24.	HLR	Hindu Law Reporter
25.	HMA	Hindu Marriage Act, 1955
26.	HIV	Human Immunodeficiency virus
27.	IDA	The Indian Divorce Act, 1869
28.	IE Act	Indian Evidence Act, 1872
29.	IJSW	Indian Journal of Social Work
30.	IPC	Indian Penal Code, 1860
31.	IPV	Intimate Partner Violence
32.	JILI	Journal of Indian Law Institute
33.	JT	Judgment Today
34.	LR	Legal Remembrancer, Law Review
35.	MTP	Medical Termination of Pregnancy Act, 1971
36.	MWA	Muslim Women (Protection of Rights on Divorce) Act, 1986
37.	NCRB	National Crime Record Bureau
38.	NCW	National Commission for Women
39.	NGO	Non-Government Organization
40.	PTSD	Post Traumatic Stress disorder
41.	RCR	Recent Criminal Reports
42.	ROC	Restitution of Conjugal Rights
43.	S.C.J.	Supreme Court Journal
44.	SC	Supreme Court

45.	SMA	The Special Marriage Act, 1954
46.	STD	Sexually transmitted diseases
47.	SRA	Specific Relief Act, 1963
48.	UJ	Unreported Judgments
49.	UNO	United Nations Organization
50.	UOI	Union of India
51.	VI	Vedic Index, by A.A. Macdonell and A.B. Keith
52.	Vol.	Volume
53.	WHO	World Health Organization

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CHAPTER 1

1.1 INTRODUCTION

Women have been the victims of violence and exploitation by the male dominated society all over the world. India is no exception to this unfortunate situation. Justice, liberty, equality and dignity are the quadruple elements of free living stipulated in the Indian Constitution.¹ They are the steps to the attainment of the goals of welfare state and all efforts of the Government are directed towards this end in view. But, unfortunately even after so many years of Indian independence, people continue to grope in the dark and all dreams of ensuring liberty, equality and dignity of women continue to be mere farce as they have been systematically denied to women. Family system, vulnerability, inhibitions, subordination, cultural, religious and socio-economic reasons are inter alia giving scope for violence against women. Of all violence of men against women 'domestic violence' is a serious type but caused silently. Domestic violence is a global problem affecting families of all classes and cultures.² The term 'domestic violence' is most commonly employed to describe the incidents of familial or intimate abuse. Historically, the term 'domestic' has reference to an idealized family unit functioning in a protected and secluded manner appropriately shielded from public.³ Traditionally, the family has been considered a sphere of intimacy and devoid of conflicts of interests among the members. This idealized conception, the rhetoric of inviolability of family as an institution has shielded the domestic violence behind the iron curtain.⁴ It happens as an unacknowledged phenomenon behind the closed doors of the family. It is treated as purely a private matter between intimates which is neither a concern of public scrutiny nor of intervention by any outside agency. Indeed it is apparent that, the safest place for men to commit violence is the home. By contrast, the home is the least safe place for

¹ Preamble of the Indian Constitution.

² The violence against women by male intimates has been documented literally throughout the world. World Conference on Family Violence, Draft Declaration, Singapore, Sept 8, 1998; See Ending Violence Against Women, Population Reports (1999), available at <http://www.info/forhealth.org/pr/111/violence.pdf> (last visited Sept. 12, 2004); See Domestic Violence Against Women and Girls, Innocent Digest No.6, 2000. UNICEF; See Family Violence Prevention Fund, Domestic Violence is a serious widespread social problem in America: The Facts, at <http://endabuse.org/resources/facts> (last visited Oct 11, 2004); See Amnesty International, Broken Bodies, Shattered Minds: Torture and Ill-treatment of Women (2001X at <http://web.amnesty.org/library/Index/engact4000/2000/> (last visited Oct 20, 2004); Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences, U. N. ESCOR, 52d sess., U.N. Doc. E/CN.4/1996/53 (1996) (submitted by Ms. Radhika Coomarswamy, in accordance with Commission on Human Rights Resolution 1995/85); United Nations, Women 2000, Fact sheet No.4, Violence Against Women (2000), at <http://www.un.org/womenwatch/daw/followup/session/presskit/fs4.htm>. (last visited Nov 11, 2004)

³ Fineman M.A., Preface, in 'The Public Nature of Private Violence: The Discovery of Domestic Abuse', in Fineman M.A., and Mykitiuk R. (eds.), (New York: Rutledge, 1994), pp.xi-xviii.

⁴ Karlekar, M. "Domestic Violence" *Economic and Political Weekly*, July 4 1998, pp.1741-51

women. It is sad that women have been accustomed for this violence without any protest whatsoever. Family identity and familial values deter women from resistance. Closed doors alienate victim from legal recourse and remedies resulting into a convenient status-quo where victim reconciles and society connives.⁵ Violence against women at home is the worst form of violation of the Constitutional mandate, perpetrated in present day society. The nature of violence varies from physical assault, forced sexual gratification to psychological torture for reasons varying from non-payment of dowry, reinforcement of masculine fervor to mere disobedience of authoritative dictates. Such continual subjugation and harassment of women has proved to be an anathema for the physical and mental wellbeing of women, and society, at large.⁶ Indian national and local daily newspapers often carry reports about young women being burnt alive or dying due to unnatural causes or in unnatural circumstances. Most such deaths are attributed to inadequate dowry given by the parents of young brides to the families of their in-laws. From time to time there are public protests by women activists against dowry deaths that receive media coverage. Such deaths are, however, extreme outcome or culmination of ill-treatment, psychological abuse or physical beating suffered by women before they die. Domestic violence suffered by women on a regular basis in the form of psychological or physical abuse on the other hand goes unreported. Very rarely do women themselves file police cases against the ill-treatment meted out to them. A few women who escape death from violence end up in shelter homes, but the majority continue to live in marital union and endure abusive behavior.⁷ Domestic violence is one of the leading causes of female injuries in almost every country in the world and it accounts in some countries for the largest percentage of hospital visits by women.⁸ It primarily affects women and operates to diminish women's autonomy and sense of self-worth. Domestic violence usually involves the infliction of bodily injury, accompanied by verbal threats 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 relationship. The assailant frequently blames the attacks on the victim and her behavior. He may also use the attacks to control his partner's actions. A battered woman may become isolated with little community or family support and be afraid to leave her home. She may also begin to believe that her inability to avoid abuse in an intimate relationship demonstrates

⁵ R. Revathi, "Domestic violence: Need for Campaign to Break the Silence", (2000)3 CrLLJ., p.118

⁶ Dipa Dube, "Domestic Violence Bill: A Critique", (2003) VoLXXX (2&3) Ind. Bar. Rev, pp 441- 442.

⁷ Leela Visaria, "Violence Against Women, A Field Study", Economic and Political Weekly, May 13, 2000, p.1742 ; Flavia, ' Violence in the Family: Wife Beating', in Ghadially, Rehana (ed.), Women in Indian Society, (New Delhi: Sage Publications, 1998), pp 151-152

⁸ Lori L. Heise, 1994, Violence Against Women: The Hidden Health Burden, Washington DC: World Bank, pp 6, 9, 14, 18

that she is a failure and deserves or is powerless to escape the abuse.⁹ Human Rights Watch's investigations found, unfortunately, that law enforcement officials frequently reinforce the abuser's attempts to demean and control his victim. The police and judicial authorities often dismiss domestic violence as a "private" matter rather than a widespread scourge that demands urgent state action. The forms of violence that women experience in the home including rape, murder, assault and battery, are condemned by the criminal laws of virtually all countries. However, when committed against a woman in an intimate relationship, these attacks are more often tolerated as the norm than prosecuted as crimes, even when law exist on the books that specifically condemn domestic violence. In many places, those who commit domestic violence are prosecuted less vigorously and punished more leniently than perpetrators of similar violent crimes against strangers. At every step of the process to obtain legal protection from domestic assault, women faces barriers that prevent them from prosecuting their abusers and make a mockery of the justice system.¹⁰ The hopelessness harms the woman more than the violence itself, as it erodes her personality and dignity. Though traditionally, domestic violence is viewed as private family matter, the impact of it is so much that it has become a major public health problem as much as tobacco, AIDS, drug abuse, alcoholism etc.¹¹ The effects of violence can be devastating to women's reproductive health as well as to other aspects of her mental well-being. Abused women are twelve times more likely to attempt suicide than non-abused women.¹² It also has devastating repercussions on the family. Mothers are unable to care for their children properly. Often, they transmit to them their own feelings of low self-esteem, helplessness and inadequacy. Children themselves may become victims of the abuse if they try to defend their mother. On the other hand, boys who witness their father abuse their mother are likely to emulate this behavior.¹³ It is not confined to developing countries alone but also occurs in developed countries where women are educated.¹⁴ Some people describe it as an epidemic. Many victims in fact turn to the medical help earlier in the abusive relationship than seeking help from the law enforcement assistance.¹⁵ Domestic violence is a very pervasive serious social malady and a major health problem. It bluntly strips women of their most basic human rights, the right to safety in their homes and community and, carried to the extreme, it may kill. Despite its

⁹ The Human Rights Watch, Global Report on Women's Human Rights, Domestic Violence, available at <http://www.hrw.org>. (last visited March 1,2005)

¹⁰ Ibid

¹¹ For details see Sherri L. Schornstein, Domestic Violence and Health Care, (London:Sage Publications, 1997), p. 2-3.

¹² United Nations, 1989, Violence Against Women in the Family, New York: United Nations, p.21.

¹³ Ibid

¹⁴ United Nations 1991, Women, Challenges to the Year 2000, New York: United Nations, p.67.

¹⁵ Ravathi, *supra* note 5, p.119.

costs in lives, health, emotional well-being and work productivity and its impact on other socio-economic variables, domestic violence tended and still tends to be a 'crime of silence'. This ensures that information about domestic violence is sketchy and, as a consequence, the perpetrators often escape accountability and continue to commit violent acts. Domestic violence thus contravenes the Universal Declaration of Human Rights, Article 3¹⁶ "Everyone has a right to life, liberty and security of person" and the Section 2(d) of the Protection of Human Rights Act 1993¹⁷ "Human rights means, the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in International Covenant and enforceable by the Courts in India". Immune from law, domestic violence perpetuates beyond legal boundaries, constantly challenging the universality of human rights i.e., their applicability in all places and domains. The trespass on civilized life and human dignity manifested in domestic violence, which occurs within the private sphere has therefore eluded the human rights concern. Domestic violence is increasingly foregrounded in international fora (such as the Second World Conference on Human Rights, Vienna 1993, and the Fourth World Conference of Women, Beijing, 1995), as a human rights violation, requiring interventions by state and voluntary agencies. It is only but recently that the situation is improving in most countries, that it has been identified as abuse and its impact is being researched by academic circles and media in the west. Today, many countries have some type of legislation concerning domestic violence. This area has been a priority for women's rights advocates, who have emphasized the state responsibility to address the widespread violence that occurs in the home. Marital rape is now recognized as a crime in as many as 50 countries including Austria, Belarus, Bhutan, Cyprus, Hungary, Mexico, Nepal and the Seychelles. At least 45 nations have specific legislation against domestic violence, 21 more are drafting new laws, and many countries have amended criminal assault laws to include domestic violence.¹⁸ The silent crime - domestic violence is rampant in Indian homes. The violence is so abusive that it forms the largest category of crimes against women, as officially recorded by the National Crime Records Bureau (NCRB) over the years 1996-2000. According to data reported in 2000, at national level, total crime against women were 141373 of which 32.4% was contributed by cruelty cases alone.¹⁹ Figures derived from divorce proceedings indicate that the most common ground

¹⁶ Universal Declaration of Human Rights, G.A. Res 217 A (III) U.N. GAOR, 3d Sess U.N. Doc. A/810, (1948), p.71; available at <http://www1.umn.edu/humanrts/instrree/blvdhr.litm> (last visited sept12,2004)

¹⁷ The Protection of Human Rights Act 1993.

¹⁸ Jacobs, Gloria (ed.), 2003, Not a Minute More, Ending Violence Against Women, New York: UNIFEM, p.39

¹⁹ For details ref. Preeti Misra, "Domestic Violence Against Women in India: An Analysis of Official Statistics" (2003). Vol XVI Central India Law Quarterly, p.218.

for divorce is unreasonable behavior, which obviously includes violence. One third of all petitions for divorce were on the grounds of unreasonable behavior and women were the petitioner in 89 percent of these cases.²⁰ A three year survey on domestic violence conducted by the International Centre for Research on Women spanning seven Indian cities and covering both rural and urban women reveals that a minimum of 45% of women have been subjected to violence. A few other studies conducted in India have also reported a similar magnitude of domestic violence.²¹

Equally surprising is the finding that there is no north south divide, contrary to the common perception, women in the south are as vulnerable to violence as those in the north.²² An empirical survey done indicates that incidents of marital violence cuts across all social barriers of caste, class, religion etc, and women from every section of the society, all income groups, educational levels and socio-economic strata. Contrary to popular belief it is not only among the poor, the incidence of this crime is high even amongst the rich and the well to do educated lot.²³ According to the Additional Commissioner of Police of Crime against Women Cell Delhi, nearly 7000 complaints of domestic violence are reported annually in Delhi, but barely 10% of them are translated in to FIRs.²⁴ All researchers have agreed that even if a composite figure, using a variety of source is produced, it is likely to seriously under estimate the size of the problem. The main reason for that is domestic violence, by its very nature takes place in the privacy of the home and most of it is not reported. Even when reported, they frequently go unrecorded or they are recorded in such a way that they cannot be separately identified.

1.2 THE PROBLEM

In India none of the provisions of penal statutes or the matrimonial statutes define the concept of domestic violence. Few provisions are available under the Indian Penal Code, 1860 (IPC) that can be used to address the issue of domestic violence. The introduction of section 498 A in 1983 was significant in bringing domestic violence out of the closet, but this section with its specificity to dowry demands ignores other factors of violence.

²⁰ Ibid

²¹ Shireen Jejeebhoy, "Wife Beating in Rural India: A Husband's Right? Evidence from Survey Data", Economic and Political Weekly, April, 1997, pp.855-62; Mahajan, A., 'Instigators of Wife Battering' in Sood, Sushma(ed) Violence Against Women (Jaipur: Arihant Publishers, 1990.)

²² Mishra, supra note 19

²³ Shobha Saxena, "Wife Beating-Need for Effective and Realistic Legislation", (2000), Cri. L.J., p.94

²⁴ Ibid, p.95

Other offences of assault, hurt, grievous hurt, dowry death, murder, rape etc. are also used against the perpetrators of violence. It is felt that these criminal offences, however, are not enough to deal with the complexities of domestic violence because the violence inflicted is not by a stranger but by an intimate partner of the victim. More importantly, a criminal remedy will only serve to punish the abuser and is not sufficient to address the needs of the victims of violence. A man can quite simply throw his wife out from the home and wait for her to make her long- winding way through the courts for whatever little relief she can get, or he can instill in her the fear of losing custody of her children. Therefore, one of the most important consequences of domestic violence is the homelessness of the abused women, and the criminal law remedies do not succeed in providing immediate emergency protection that the victims need. A closer perusal of the available civil remedies reveals that the various personal law provisions that are existent deal only with marriage and breakdown of marriage, such as divorce or judicial separation. Other civil remedies include those providing maintenance for the women seeking divorce. However, it is important to note that in many situations women do not opt for a divorce, and often wish to remain in the marital relationship. Therefore, when it comes to issues 'within' marriage such as marital violence, there is a huge gap as these issues are not addressed by the legal system. The devastating effects of domestic violence in India, and the Government's indifference towards the growth of domestic violence compelled the women activists to prepare a model bill on Prevention of Domestic Violence. They submitted the same to the Government of India in 1999. This proposed bill was drafted by Supreme Court Advocate, Indira Jaising and the Lawyers' Collective, along with a wide range of women groups who had been dealing with cases of domestic violence for over two decades. The main purpose of this model bill was to provide civil remedies to the victims of domestic violence. This Bill was an attempt to introduce, into the existing law, the following concepts: • The civil wrong of domestic violence • The right to protection against domestic violence by attaining protection orders, residence orders and monetary relief orders. • The right to be informed of the accessibility of such orders and the service providers; and • The right to reside in a shared household. The Bill was tabled in the Lok Sabha on 8th March 2002. However, this Bill was opined by the women's organizations that the Government's version of the Bill was a far cry from what they had proposed. Looking at the provisions, as incorporated by the Government in the Bill, the women's organizations maintained that the Bill could turn out to be dangerous in its implications for women, who are victims of domestic violence. The Lawyers collective went a step ahead and termed the Bill as 'an exercise in tokenism'. And finally

in August 2005, The Protection of Women from Domestic Violence Bill 2005 was passed by the Parliament, which brings substantial improvement upon the 2002 Bill. The 2005 Bill received the assent of the President on September 13, 2005 and is published in the Gazette of India. This Bill has now officially become The Protection of Women from Domestic Violence Act, 2005. For the first time, the Domestic Violence Act holds the state responsible for the care of victims of domestic violence. This Act has been described as a major milestone in the journey of women's movement and has sparked new interest among the women activists. It is hoped that this Act will set a new precedent for abused women to seek a way out of a harmful and demeaning relationship. Domestic violence presents a situation akin to the "chicken and egg" paradox. The laws are needed to protect victims against crimes rooted in social circumstances and social reforms are necessary for effectiveness of law. The legal institutions and implementation of law have lagged. And, the social circumstances that germinate domestic violence have proved to be too stubborn to change. The situation thus requires reforms both in legal and social spheres. Thus there is a need to survey the existing law and the Protection of Women from Domestic Violence Act, 2005 to make an objective assessment whether the laws and legal systems etc are adequate to protect women from domestic violence.

1.2 OBJECTIVE

In our study we will be examining nature of domestic violence, its types, scope, causes and consequences. Beside this we will also look into the socio-economic costs of domestic violence and socio-culture background of victims.

The main and the foremost objective of this research work is to understand:

- To know the effect of domestic violence on women.
- To find out the causes of violence against women.
- To know the person responsible for violence against women.
- To study the health consequences of domestic violence on women.
- To measure the level of stress among the respondent.
- To study the role of the Indian judiciary in protecting women against offences.
- To study and examine whether women in India have become fearless or not after "Domestic violence Act" came into existence.

1.3 RESEARCH METHODOLOGY

The methodology adopted for the study is completely doctoral, involving content analysis. The documents analyzed include International Human Rights Documents, International Conventions and Declarations, treatises, statutes and judicial decisions, for which original sources were consulted and for critical appraisal secondary sources such as juristic writings were consulted. Relevant books, articles, empirical studies, reports, etc. have been studied to get the true picture of the problem of domestic violence and to outline the remedial measures for it. The standard forms of quotations and references are used in the work

1.4 HYPOTHESIS

Hypothesis lays on important and dominating role in any social research. Following hypothesis are formulated:

- i. Domestic violence is experienced more by women in rural areas compared to urban areas.
- ii. Domestic violence is more experienced in those families in which the husband is alcoholic.
- iii. Whether the existing legal framework is sufficient to check the domestic violence against women or needs modifications in order to overcome drawbacks and defects.
- iv. Whether the socialization, unemployment, illiteracy, lack of legal awareness etc. are normally associated with the problem of domestic violence.

1.5 LITERATURE REVIEW

1. Bhatti (1989): While taking in to account various form of violence concluded that 88% women in lower class were the victims of physical and verbal violence in contrast to 43% for the middle class with regard to emotional and intellectual violence, he found that representation of the upper and middle classes was more as compared to the lower class.

2. Karlekar, Malavika et al (1995): Conducted a study on violence. The ever-present fact of violence, both overt and covert physical and non-physical has an over helming influence on feminine identity formation. Using the life cycle approach this article argues

that at every stage there is discrimination and violence, particularly against girl children and later women within the dependency illness and fatigue.

3. Das P.K, 2012 “Protection of women from domestic violence”, 4th edition Reprint, universal law publication New Delhi,

The author of this book is to create an awareness about the law on protection of women from domestic violence. This book is for direct and indirect involved and interested in the subject. The researcher has used this book to study the offences against women and role played by the society law for the protection of the women as related to human right.

4. Madhurima (1996): Conducted study “violence against women”. “Dynamics of conjugal relations” in Chandigarh city and take sample case study, it was decided to have a purposive sample of 55 cases for each class as a preliminary step. For the purpose of comparison, a purposive sample of two hundred household situated in different sector were selected giving equal representation to all four classes the purpose of analysis these. An interview schedule and was constructed to collect the core data for the study. The purposed study was under taken with the main objective: (1) To find out the nature, extent and frequency of wife abuse.

(2) To identify the correlate of physical violence used against the wives by their husband.

(3) To explicate the coping mechanism adopted by the victims to deal with abusive relationship.

5. David Levinson (1989): Outlines three other factors that together help predict violence against women: a pattern of using physical violence for conflict resolution, male authority in the home, and a divorce restriction for women. In the current study in Gujarat, only three women reported dowry related violence. This low number may be due to higher prevalence of dowry harassment in urban, higher caste families not represented in a rural sample. The lack of women’s power within the home as well as constraining social and economic factors which provide few options outside of marriage were indeed associated with high level of abuse.

6. Elise Bonding (1988): In her paper on women and violence clearly points out that social violence against women are mainly based on a (a) social or institutional structure of the patriarchal order perpetuating all kinds of discrimination and oppressions against women which result into (b) behavioral violence. In general, she reports that because

women are 'easy' victims, they experience great deal of direct behavioral violence in every society.

7. Singh Sukhdev and Gupta A.K (1996): Has conducted a study on "Domestic violence against women: some observation." In their study an analytical effort is made to discuss some of the issues related to crime violence against women. Effort are made to bring forth the extent of the crimes their factors and consequences. In India beating and mental suppression of women has been prevalent since olden days, but of late the instances of sexual harassment, kidnapping abduction murder and rape are increasing. Such crime and violence are bound to generate negative results in the over well development of the nation. Formation of NGO's and strengthening of women organizations for protecting women rights is of utmost importance.

8. Sen (1998): examined violence in intimate relationships, namely women's experience of male violence at the hands of husband (or male partners) in the city of Calcutta. Information was collected from 52 relationships by interviewing women about their histories including education experience, migration patterns, paid employment and physical and sexual violence. It was found that in general, women suffered extreme physical abuse and for long durations. Employment of women was not found to be unassociated with violence, indicating that irrespective of whether a women is an earning member or not, she faces hostility and violence.

CHAPTER 2

HISTORICAL BACKGROUND OF DOMESTIC VIOLENCE

2.1 INTRODUCTION

It is difficult to understand the source of present-day domestic violence without looking at the history that has shaped current law regarding, and perceptions about, women's rights in society. Domestic violence in our society is one outcome of laws that historically have discriminated against women and of societal views of women as a lesser class. Gender-based violence is the ultimate extension of gender discrimination and the belief that women are innately subordinate to men. It is, after all, the primitive way to 'keep a woman in her place'.

The problem of domestic violence has only come into the limelight in the past few years. Its progression towards public awareness is parallel to the growth of the women's movement and the sustained efforts by the grassroots battered women's movements over the past three decades

2.1.1 VEDIC PERIOD

In Vedic Period there was no instances of Domestic Violence in the family. Vedicera was the golden era, so far as the personal freedom of women and their equality of status in the family and society are concerned. During this period women like men, participated in all the social commitments and took active part in each and every spheres of human life. They enjoyed equality with men in learning the Vedas in Gurukuls. In this period there was no custom of purdah, girls were free to select their grooms. This custom was known as "Swayamvara". In Rig Veda, the wife had been blessed to live as a queen in the house of her husband. In those periods monogamy was practiced by the general people and the custom of polygamy was very rare which was confined in ruling classes only. The system of dowry was also prevalent in royal and rich families through moveable gifts but it was not in the shape of demand. Custom of "Sati" did not exist in the society and widows were allowed to marry again or could undertake "Niyoga" to get a son. But still, in some places widows were looked down as inauspicious and they were not allowed to take part in ceremonies or festivals. In the Mahabharata the wife has been called the root of Dharma,

Prosperity and enjoyment. No man was allowed to perform religious duties without his wife. Therefore, men and women together used to perform religious duties, take part in enjoyment and earning out other festivities. Women could move freely out of their matrimonial houses and enjoy freedom of movement by attending sabhas, assemblies of learned persons, fairs and festivals. During that period, marriage was regarded as indissoluble holy Union and divorce was unknown except a few examples of customary divorce in lower castes. Woman had an absolute ownership over her property which was regarded as her "Stridhan". Thus, a woman was regarded as equal partner, friend and equal sharer in joys and sufferings of her husband's life in Vedic era. She was considered as human being and enjoyed a status and prestige in the society.

2.1.2 POST-VEDIC PERIOD

In the post-Vedic period, between 1500 BC to 500 AD, the status and honourable position of a woman was gradually deteriorated and various restrictions were put on the woman's rights and privileges by "Manu". Woman was regarded as subservient to man and confined to household works and child bearing only. The society became polygamous, polyandry disappeared, except in some rare cases like polyandry, practised by Draupadi in the Mahabharata. According to Manu Smriti-"there is a vital structural difference between a man and woman ; and a woman can not possess an independent status." Further, according to Manu- "A woman is not entitled to independence, her father protects her in her maidenhood, her husband in her youth, and her son in her old age."

Not only that, Manu suggested the ways and means to keep the wives under subjugation and men had adopted those ways to cruelly exploit a woman during this period. Therefore, as per Manu-"Marriage establishes the supremacy of the husband over the life of a woman." Another Smritikar "Yajnavalkya" added that "women should follow the words of their husbands, it is their highest duty".

The Ramayana and Mahabharata are full of incidents of wife's devotion to her husband. In that time widow remarriage was also prohibited by the "Manu Code". It is to be noted that in this period the seeds of domestic violence were sown by Manu Smriti and other Dharmashastras. There was reduction of age of Marriage of girls and their education was neglected and later on girls were totally denied access to education. However, girls in the ruling class did receive some training in military, administration and fine arts. But these

were exceptions. The marriageable age of girls was lowered to nine or ten years. The wife's status in matrimonial home was declining. Child wives with no education became the order of the day and they could not get any respect from their husbands and were treated as chattels.

Manu also stated that- "Even if the husband is immoral, a debauch and lacks good qualities, the wife must still worship him as if he is god to her. A woman need not perform any Yajna or ceremony or undertake fast for her salvation. She will attain better life by service to her husband." Many Smritikars imposed many obligations on a woman and restrained her free life. Caste system was prevalent in the society. People were divided into four bamas i.e.,

- 1) Brahman
- 2) Kshatriya
- 3) Vaishya
- 4) Shudra.

As regards property right, a wife had no separate right in the property because her identity is merged in the personality of her husband. On husband's death she acquired only limited share of the husband's property. The woman could exercise control over herstridhan only. After marriage, she had no right upon her paternal property. Thus in Post Vedic period, women lost their individuality and high status in the society. Her existence and happiness was dependant on that of her husband.

2.1.3 WOMEN IN MEDIEVAL PERIOD

In this period the position of woman was further degraded with the invasion of India by Alexander and the Huns. The education and training of women were totally neglected. For reasons of security of women, their movement outside the house was restricted. They were treated as chattels by their husbands and in-laws. Social evils like Sati Pratha, Child marriage, female infanticide was rampant.

The evil of dowry had become deep rooted in many parts of India. Polygamy and system of Devadasi were widespread. In Medieval period women were oppressed by the feudal social order and patriarchal families. Further Muslim invasion of India brought complete subordination of women.

In Muslim period condition of women became worse as the Muslim conquerors favoured

"Purdah system". Its influence was felt in the society also. Women were compelled to be satisfied with house hold affairs only. The women lost their right to education and they could worship only through priests. They were not given opportunity to participate in the activities of men. There were some educated and talented women in the society but they were exceptions. The common women were kept in the darkness of ignorance. That was a "darkage" for every woman.

Child marriage became a religious obligation and child widows were inevitable. The widowhood was most pathetic and unpleasant. Many inhuman practices including domestic violence prevailed in the society in the name of social custom and religion. Widows were not allowed to get married for a second time; they had a very wretched life. Women had no power to protest against those social evils. They suffered all those cruelties silently. They thought it was their destiny to suffer from all those present customs. They had no right upon the paternal property after marriage. The Indian women were subjected to all sorts of humiliation and were deprived of whatever was due to them.

2.1.4 IN BRITISH PERIOD

In that time, the wife's position in the household was in sorry state. Domestic violence was found in most of the family in the name of different customs. Early marriage, enforced widowhood, female infanticide, Satipratha, Devdasi system, Pardha system, Dowry system, Caste system, Polygamy etc. were prevalent in the society. Inter Caste marriages and widow remarriages were strictly prohibited and Hindu society was divided into four Varnas (1) Brahman, (2) Kaiyastha, (3) Vaishya, (4) Sudra. But during the British regime due to education and western impact on socio-cultural life of India, the society began to change for the better. The attitude, behaviour and life style of the people changed drastically. Some prominent persons of that era like Raja Ram Mohan Roy, Ishwar Chandra Vidyasagar, M.G. Ranade, Mahatma Gandhi, Lokmanya Tilak, Rishi Aurobindo, Dada Bhai Naoroji, Swami Vivekananda etc who had received English education began to think about the injustice on the women. The issues which attracted the attention of the eighteenth-nineteenth century social reformers were Sati Pratha, ill treatment of widows, the ban on widow remarriage, polygamy, child marriage, denial of property right, temple prostitution, custom of purdah and education of women etc.

The reformers thought that women should be educated equally like men and every

opportunity should be given to develop their womanhood. They can take proper share in the various activities which were the monopoly of men. So women were given English education. Christian Missionaries in Bombay started the first school for girls in 1824 and Ishwar Chandra Vidyasagar started at Calcutta another school for girls in 1849. As our society was very conservative, the progress was very slow at the beginning. During this period there was Nationalist or freedom movements which affected the position of 6 women. The nationalist movement not only drew a large number of women to political activity but also generated strength and confidence among women which helped them to organize and fight for their cause. The formation of the All-India women's conference in 1927 was a crucial event in women's march towards equality. Many Laws were enacted which tried to eradicate certain social evils. The cruel practice of "Satidaha" was abolished by an ordinance on December 4, 1829 by Lord William Bentinck, the then Governor General of India and he had the unflinching support of the enlightened Indian like Raja Rammohan Roy, one of the worthiest sons that India has ever produced. Sati Pratha abolition Act 1829 was enacted to curb this brutal practice.

Widow remarriage was also introduced by another great social reformer Pandit Ishwar Chandra Vidyasagar. Hindu Widow Remarriage Act was enacted. Child marriage was stopped by Child Marriage Restraint Act 1929.

Thus in short, during the British rule, an awareness was created for the removal of social malaises while education and political participation increased women's mobility. In that period several legal enactments rectifying women's unequal position were passed.

2.1.5 THE POST INDEPENDENT PERIOD

(a) The most important event after Independence of India has been the drafting of the Constitution of this Country. The Constitution of India embodied the principles of equality liberty and social justice. The framers of the Constitutions were conscious of the discrimination and unequal treatment relating to the fairer sex from time immemorial. Therefore, they included certain general as well as specific provisions in Constitution under Part III as fundamental rights and part IV as directive Principles of State Policy for the uplift of the status of Women and to provide opportunities for the exercise of Women's human rights and claims. The articles under part III of the Constitution of India relating to Fundamental rights which try to uplift the status of women are Article 14-17 and Art.

19-25 etc. and 7 the articles under Part IV relating to Directive Principles of State Policy which are explicitly intended to improve the status of women are Art 39, 39A, 42 etc. Article . 51 A imposes certain fundamental duties on every citizen of India in which Article 51A(e) is related to women.

(b) In order to achieve the fundamental principles of equality of Status and position of Hindu Women in family and social life as envisaged in the Constitution, Pt. Jawaharlal Nehru proposed the "Hindu Code Bill". Thus, four enactment viz the Hindu Marriage Act 1955, The Hindu Succession Act 1956, the Hindu Adoption and Maintenance Act, 1956 and Hindu Minority and Gurdianship Act, 1956 were passed by the parliament and assented by Dr. Rajendra Prasad, the then President of India. These enactments brought changes in the status and position of Hindu Women. As for example- Polygamy, was legally prohibited. The Hindu Marriage Act enforced strict monogamy. Bigamy was made an offence for Hindus and second marriage was void and punishable under this Act. The child marriage was prohibited by this Act. It was prescribed by the Act that at the time of the marriage the bridegroom must complete the age of twenty one years and bride the age of 18 years, otherwise the marriage will be void abinitio.

(c) The Indian-Penal Code 1973 contains numerous provisions to check the crime against women in their matrimonial homes, as for example- punishment for harassment or cruelty by husband and in-laws (Sec. 498A), dowry deaths (Sec. 304B), abetment to commit suicide (Sec. 306), Punishment for Bigamy (Section 494 and 495 IPC etc.

(d) Section 113 A and 113 B were incorporated in the Indian Evidence Act 1872 which provides for the presumption of dowry death when a married woman dies within seven years of her marriage under suspicious circumstances on account of cruelty or harassment by the husband and in-laws in connection with demand for dowry. The onus of proof was also shifted to the accused in such cases to show that the death was due to natural reasons.

(e) Several other laws was introduced for protecting women from violence in their matrimonial homes. As for example-Dowry Prohibition Act 1961, Medical Termination of Pregnancy Act 1971, the Commission of Sati (Prevention) Act 1987, the Pre Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act 1994 etc.

But unfortunately it has been noticed that though constitutionally as well as legally

women in India enjoy a unique status of equality with men but in reality they suffer from many disabilities on the ground of sex.

Today women are receiving education in large number. The purdah system no longer exists among the majority of women. Women are equally working with men in every field. Among the women there are now ministers, Governors, IAS officers, High Court and Supreme Court judges, magistrates, lawyers, doctors, professors, engineers, Scientists, eminent social workers etc. Many women are now holding jobs in Government and non-government offices, schools and colleges and they are also maintaining their families.

But it is sad to remark that the female education has not yet spread among the majority of poor women living in urban and rural areas.

Now it is nearly 60 years since the Independence of our country but women are still treated as commodity and different kinds of domestic violence's i.e. Sati pratha, female-infanticide, female-foeticide, forced abortion, forced prostitution, marital rape, dowry death, bride-burning, bride-beating, cruelty, bigamy, desertion of innocent wife etc. are still very prevalent in our country. These incidents of domestic violence have been regularly reported and highlighted by the press, media, NCW, NGOs etc. Despite of plethora of progressive and protective legislations favoring women, we failed in our aims to uplift the social status of women. Today, girl children are still unwanted in most of the families. They are treated as burden for the family. Today Satipratha is rampant in Rajasthan, Uttar Pradesh etc. Recently on 19th May, 2006, a 38 years old woman Vidyawati committed Sati after her husband Lakhnupal Lodhi, aged 42 was found dead at Rarhi Bujrag village, 35 km from Fatehpur town, Uttar Pradesh. It was alleged that she threw herself on her husband's pyre before a crowd of 200 villagers who did nothing to stop her. The villagers stigmatised Vidyawati as an adulteress in her life and believed that her alleged lover, Rohit, murdered Lakhnupal and she might have played a part in it. The Fatehpur district magistrate Giridhari Lal registered a case against all 200 villagers for abetment to suicide.²⁵

Not only that, 66% of the Muslim women in India are still illiterate due to poverty, purdah system, and other numerous socio-economic problems. In Muslim Law unlike the Hindu Law, a Muslim woman enters into contract of marriage with a male by free consent of

²⁵"Sati or Adulteress or both : Jury is out " The Telegraph 20 May 2006

both the parties to the marriage. But in practice in married life, a Muslim woman has no free status equal to man/husband. Though they are two partners but not equal partners. The husband always plays a dominant role and the wife is subordinate to him. A male Muslim is entitled to have four wives simultaneously at a time and even a fifth known as a wife by Muta Marriage. But a Muslim wife cannot have two or more husbands at a time. The Muslim Law confers on the husband almost absolute power of divorcing his wife by triple talak any time as he desires. Under Muslim Law the testimony of two women witnesses is equal to the testimony of one male Muslim witness. In succession also she is discriminated. Child marriage is rampant among Muslim women. Most of the Muslims in rural areas of our country because of poverty and illiteracy are unable to educate their female children in higher and professional as well as job oriented courses. Therefore, in professionalism and competition for job they remain backward. Domestic violence is very common among Muslim women also but due to early marriage and lack of education they generally remain silent.

Therefore, today with increasing stress and strains in daily life different types of domestic violence against women have been increasing and cut across all the cultural, socio-economic, educational ethnic and religious barriers in India.

Recently almost every six hours somewhere in India, a young married woman is burnt alive, beaten to death or forced to commit suicide. Not only that, a recent study reports that - atleast 45% of Indian women are slapped, kicked or beaten by their husbands and 75% of battered women contemplate suicide. There is an annual increase of 9.2% cases of domestic violence, while a large number of cases go unreported.²⁶

In this context it is mentioned that before the year 2005 there is no specific civil law on domestic violence in India. Women who are victims of domestic violence have been compelled to use matrimonial remedies like judicial separation, divorce etc. to obtain relief.

But since 1990 in India, there was a general consensus that a new civil law dealing with the issue of domestic violence was needed as the existing criminal laws had proven to be inadequate to meet the needs of the victim women of domestic violence.

²⁶ "Trash it out again". The Hindustan Times <http://www.hindustantimes.com/news>

By this time, most women's groups including National Commission for Women, all the other State Commissions for Women, different NGOs working for women in different parts of India etc. were united towards the need for a separate law on domestic violence and it was also agreed by the government of India, that though there are number of legislations dealing with domestic violence cases but it would be preferable to have a single legislation dealing with all aspects of the problem. right from issuing prohibitory and injunction orders to grant maintenance and compensation to the victim.

However, the new legislation would only be in addition to the existing provisions of law, and hence, any remedy not covered by the new law but under other criminal and civil laws would still be available to the victim of domestic violence.

Therefore, at last, in order to provide a remedy in civil law for the protection of women from being victims of domestic-violence and to prevent the occurrence of domestic violence in the society, "The Protection of Women from Domestic Violence Bill, 2005" was drafted by the Government of India and introduced in the parliament. This Bill has been passed by the Lok Sabha on 24th August, 2005 and by the Rajya Sabha on 29 August 2005 and it received the assent of the President of India on 13th September 2005 and came on the Statute Book as "THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005 (43 of 2005)"

CHAPTER 3

DOMESTIC VIOLENCE-AN ANALYSIS

Domestic violence is considered as one of the most pervasive of human rights violations, denying women equality, security, dignity, self-worth, and their right to enjoy fundamental freedoms.

“Poor wives are made to honour and obey
Must yield into a husband’s lordly sway
Whether you live in peace or horrid strife
You must stay with him aye and that for life
If he proves kind then happy you will be
If other ways - Oh dreadful misery!”

Quoting poetess, Eliza Wilkinson, (18th century feminist author) who has in her poetry brought out the fears and hopes of young women regarding the state of their marriage. She is expected to lead a life where she subjects her guardianship to men all through her life. If she is able to please her husband through her service to him, she can have a peaceful life; otherwise the author says it would be a dreadful misery. From this scenario, the status of women is moving towards the light of change.

The changing time in today’s world have encouraged many women to seek their own identity, the value and the worth of their lives, through the contribution they make to the family and society at large. She now wants to be regarded as an individual with feelings, aspirations, desires, as a ‘human’ person. The women are demanding the male-dominated society, their due respect, dignity and status in all the spheres of her life. Unfortunately, many women today fall victims in the hands of those men who fail to respect and recognize a woman in her own identity for a variety of reasons. The outcome is domestic violence, battering, torturing both mental and physical, which has been quite a common phenomenon today.

A 2013 report of the World Health Organization (WHO) reports that intimate partner violence affects 30% of women worldwide and is the most

prevalent type of violence against women. The WHO estimates that 38% of all women murdered are killed by their intimate partner, although recognizes this is likely an underestimation. It also reports that 42% of women who had been sexually or physically abused by their partner were injured.

It is found that there is a rapid increase in the rates of domestic violence. A total of 2,13,585 incidents of crime against women (both under IPC and SLL) were reported in the country during 2010 as compared to 2,03,804 during 2009 recording an increase of 4.8% during 2010. (Statistics from National Crime Records Bureau's Crime in India 2012 report). The problem of domestic violence is perhaps the most common of Indian women's problems. Domestic violence in the form of physical, psychological, sexual or economic abuse that occurs within the private sphere, generally between individuals who are related through intimacy, blood or law has come to be accepted as common phenomena. Nothing significant has done to mitigate the same and women have been 'suffering in silence' that too, in their own houses, which are supposed to provide them social and emotional security. Domestic violence has been considered as a private affair and hence it is unreported or underreported most of the times. It is only but recently that the situation is improving in most countries and, for a variety of reasons, violence against women is recognized as a serious social issue demanding investigation, including cross cultural research and change. Again it is only recently that it has been identified as abuse and its impact is being researched by academic circles and media. Hence an attempt is made to understand the stress and other implications on women due to the incidence of domestic violence. In order to have a clear picture of the scenario, it is essential to understand the status of women over the years internationally, nationally and in Kerala. This chapter also explains all the major concepts of marriage and family, domestic violence, its definition, forms, causes, consequences, important laws on domestic violence; and also looks into the reasons why women choose to stay in marriage in spite of the violence.

3.1 DEFINITION

Domestic Violence (sometimes referred to as domestic abuse or spousal abuse) occurs when a family member, partner or ex-partner attempts to physically or psychologically dominate another. Domestic violence often refers to violence between spouses, or spousal abuse but can also include cohabitants and non-married intimate partners. Domestic violence occurs in all cultures; people of all races, ethnicities, religions, sexes

and classes. Domestic violence is perpetrated by both men and women, occurring in both same-sex and opposite-sex relationships.

A frequent perception of domestic violence is that it is limited to physical harm perpetuated on spouses within a marital relationship. Across cultures however, there are a variety of living arrangements from joint-families to nuclear families and to single-parent families. Moreover women may be in an established relationship or in the process of separation or divorce. Violence is not restricted from the current husband, but may extend to boyfriends, former husbands, and other family members such as parents, siblings and in-laws. A definition that acknowledges these multiple possibilities would lead to interventions that are inclusive of all the experiences of women.

The term “intimate partner violence” (IPV) is often used synonymously. Family violence is a broader definition, often used to include child abuse, elder abuse, and other violent acts between family members. Wife abuse, wife beating, and battering are terms sometimes used, though with acknowledgment that many are not actually married to the abuser, but rather co-habiting or other arrangements.

Definition of domestic violence rests upon not only on the nature of the relationship between the perpetrator and the victim, but also upon the norms of acceptable behavior. There is considerable difference of opinion regarding which behavior or manifestation should be considered violent as well as the level of intensity and frequency required to label a relationship as violent. Another contentious issue is how to evaluate the intent of the act, why the act was initiated and whose view should determine this. For example, the Indian field experience indicates that significant numbers of women do not perceive acts of violence as violence if they perceive them to be justified (Visaria, 1999).

The social construct surrounding the ideal “good woman” clearly sets the limits for acceptable norms, beyond which verbal and physical assaults translate into a notion of violence. Thus, wife beating is not seen as an excessive reaction, if the woman does not perform her “wifely” duties adequately, such as having meals ready on time or adequately caring for her children. This is further complicated by a common belief, that violent acts are an expression of love and merely a desire to help the subject to be a “better person”.

Paragraph 117 of the Beijing Platform for Action states:

“The fear of violence, including harassment is a permanent constraint on the mobility of

women and limits their access to resources and basic activities. High social, health, and economic costs to the individual and society are associated with violence against women”.

Violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men”.

The terms “violence against women” and “domestic violence” are often being used synonymously. However, there are subtle differences in what they convey, as is evident from the following definitions:

Violence against women: The United Nations Declaration on the Elimination of Violence against Women defines “violence against women” as any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women. The act of violence may occur in family, general community, or even being perpetrated and condoned by state (United Nations General Assembly 1993). According to UNICEF, the term “domestic violence” includes violence against women and girls by an intimate partner, including a cohabiting partner, and by other family members, whether this violence occurs within or beyond the confines of the home.

The British government has adopted one of the more expansive descriptions of domestic violence, one that includes all of the foregoing elements: “Any incident of threatening behavior, violence or abuse (psychological, physical, sexual, financial or emotional) between adults who are or have been intimate partners or family members, regardless of gender or sexuality.” Beyond the basic definition, the government furnishes further description of domestic violence as “a pattern of abusive and controlling behaviour” by which the abuser attempts to gain power over the victim. The government contends that domestic violence crosses age, gender, racial, sexuality, wealth, and geographical lines. (Crime Reduction.gov.uk, *Domestic violence mini-site*, 2005) Interestingly, the definition offered by the government expands the description to include other “family members” in addition to “intimate partners.”

The U.S. Office on Violence against Women defines domestic violence as a “pattern of abusive behavior in any relationship that is used by one partner to gain or maintain power and control over another intimate partner. Domestic violence can take many

forms, including physical abuse, sexual abuse, emotional, economic, or and/or psychological abuse.

In order to improve the quality of data available, the Centres for Disease Control and Prevention undertook a project to standardize the definition of “intimate partner violence” according to which “intimate partner violence” is described as physical, sexual, or psychological harm by a current or former partner or spouse. This type of violence can occur among heterosexual or same- sex couples, and does not require sexual intimacy. “Intimate partners” include current spouses, current non-marital partners, dating partners, divorced or separated spouses, former non-marital partners, former boyfriends/girlfriends (heterosexual or same-sex). (Centre for Disease Control and Prevention 2011).

Along with the above organizations, many eminent scholars have also defined domestic violence. Some of them are listed below:

Gelles (1974) has defined family violence as “day-to-day pattern and recurrent use of physical violence like pushing, slapping, punching, knifing, shooting and throwing of objects by one member of the family on another” (pp. 24-25). Gelles and Straus (1979) added “intention or perceived intention” (pp. 549-581), but family violence for them remained physical in nature.

Pagelow (1981) defined family violence as “Any act of commission or omission by family members and any condition resulting from such acts and inaction, which deprive other family members of equal rights and liberties and or interfere with their optimal development and freedom of choice”.

Kaushik (1988) described family violence as “that which is inflicted on a relative by blood or marriage individually or collectively, is either contained within the walls of the family or extended to collaterals for material or psychological gain or ventilation”.

Domestic violence is defined as ‘physical abuse or threats of physical abuse by an adult in the family or household member against another adult family or household member’. This definition can be expanded to include violence in intimate relationships where the

partners never lived together. It includes physical, emotional and sexual battering as well as destruction of property. Domestic violence can also take the form of ‘controlling behaviour to maintain an imbalance of power between an abuser and a battered woman, including any act that causes the victim to do something she does not want to do, prevents her from doing something she wants to do, or causes her to be afraid’ (Comment 1999)

A further critical element in the definition of violence is whether it is framed as an exclusively interpersonal act or seen more broadly as an expression of power that perpetuates the subordination of women. If it were the former, the definition would only include those acts, which result in physical evidence. If it is the latter, the definition would include all acts of “physical, verbal, visual or sexual abuse” that are experienced by women or girls as threats, invasion or assaults and that have an effect of hurting her or degrading her and taking away her ability to control contact (intimate or otherwise), with another individual (Koss et al. 1994).

Put simply, violence is an act of aggression, usually in interpersonal interaction or relations. It may also be aggression of an individual woman against herself, such as suicide, self-mutilation, negligence of ailments, sex determination tests, food denial and so on. Basically, then, violence brings into question the concept of boundary maintenance [Nedelsky 1991] and a sense of self as well as perception of another’s autonomy and identity. It is a coercive mechanism” to assert one’s will over another, to prove or to feel a sense of power” [ibid: 174]. Given that violence is not limited to one group, “it can be perpetuated by those in power against the powerless or by the powerless in retaliation against coercion by others to deny their powerlessness” [Poonacha 1991]. Going further, Govind Kelkar situates violence against women “in the socio-economic and political context of power relations”. She feels the view that it is “an act of illegal criminal use of force” is inadequate and should include “exploitation, discrimination, upholding of unequal economic and social structures, the creation of an atmosphere of terror, threat or reprisal and forms of religio-cultural and political violence” [Kelkar 1991: 1].

The more comprehensive definitions, although phrased differently, typically possess the following common elements: a pattern of abusive behaviour (as contrasted to a single event); the abusive behaviour involves control, coercion, and/or power; the abusive

behaviour may be physical, sexual, emotional, psychological, and/or financial; and the victim of the abusive behaviour is a cohabitating or non-cohabitating intimate partner or spouse.

The core of a definition of domestic violence consists of all the acts that constitute violence. Some definitions are narrow and focus on a specific act of violence and others are broader and incorporate the full range of acts. A comprehensive definition of domestic violence would indicate that it represents a serious abuse of power within the family. It undermines the basic rights of people, who because of their gender, age, disability or dependence are most vulnerable to abuse. It is further defined as a serious social and criminal problem that can result in the death and disablement of victims. It can involve killing or physical or sexual assault. It also involves other forms of abusive behavior, such as emotional abuse, financial deprivation, exploitation and neglect. Domestic violence often remains a hidden problem, with long lasting effects on its victims.

3.2 FORMS OF DOMESTIC VIOLENCE

Domestic violence has many forms, including physical violence, sexual abuse, emotional abuse, intimidation, economic deprivation or threats of violence. It can include physical attacks, such as hitting, pushing, punching, as well as threatening with a weapon, psychological abuse, or forced sexual activity. Indirect physical violence may include destruction of objects, striking or throwing objects near the victim, or harm to pets. In addition to physical violence, spousal abuse often includes mental or emotional abuse, including verbal threats of physical violence to the victim, the self, or others including children, ranging from explicit, detailed and impending to implicit and vague as to both content and time frame, and verbal violence, including threats, insults, put-downs, and attacks. Nonverbal threats may include gestures, facial expressions, and body postures. Psychological abuse may also involve economic and/or social control, such as controlling victim's money and other economic resources, preventing victim from seeing friends and relatives, actively sabotaging victim's social relationships and isolating victim from social contacts. Spiritual abuse is another form of abuse that may occur. There are a number of dimensions including mode - physical, psychological, sexual and/or social; frequency - on/off, occasional, chronic; and severity – in terms of both psychological or physical harm and the need for treatment – transitory or

permanent injury – mild, moderate, severe up to homicide. The pattern of abusive behaviors rather than isolated incidents of violence are what battered women describe as the most painful and long-lasting torment. When abuse occurs repeatedly in the same relationship, the phenomenon is often referred to as "battering"(WHO).

3.2.1 Physical violence

Physical violence is the intentional use of physical force with the potential for causing injury, harm, disability, or death, for example, hitting, shoving, biting, restraint, kicking, or use of a weapon. The various forms of physical violence include the following:(i) Female foeticide and female infanticide;(ii) Incest rape within marriage, connivance and collusion of family members for sexual abuse of women in the household; (iii) Physical torture like slapping, punching, grabbing, and killing; (iv) Burdening of women with drudgery; (v) Neglect of women's health problems.

3.2.2 Verbal Abuse

Verbal abuse is described as a negative statement told to the victim or about the victim or by withholding any response, thereby defining the target as non-existent. Verbal abuse means name calling, cursing, criticizing, ridiculing and insulting the wife which results in mental pain. Typically in family relationships, verbal abuse increases in intensity and frequency over time. Verbal abuse include blaming, discounting, minimisation, with holding, accusing, threatening, undermining, name calling, ordering, criticizing etc.,.

3.2.3 Emotional abuse

Psychological or emotional abuse can include, humiliating the victim, controlling what the victim can and cannot do, withholding information from the victim, deliberately doing something to make the victim feel diminished or embarrassed, isolating the victim from friends and family, and denying the victim access to money or other basic resources. Psychological violence takes different forms: (i) Curbing the freedom to associate with the natal family, neighbours, and friends; (ii) Curtailment of right to self-

expression; (iii) Promiscuity of the husband; (iv) Accusing the women in the household of unchaste behaviour; (v) Irresponsible behaviour and alcoholism of the husband; (vi) Humiliating and victimizing women; (vii) Fleecing women and their parents of their money and assets by compulsion, coercion, threat and squandering of money for non-household purposes.

3.2.4 Sexual violence

Sexual violence and incest are divided into three categories: (i) use of physical force to compel a person to engage in a sexual act against their will, whether or not the act is completed; (ii) attempted or completed sex act involving a person who is unable to understand the nature or condition of the act, unable to decline participation, or unable to communicate unwillingness to engage in the sexual act, e.g., because of underage immaturity, illness, disability, or the influence of alcohol or other drugs, because of intimidation or pressure, or because of seduction and submission (as in female forms of sexual aggression); and (iii) abusive sexual contact.

3.2.5 Economic abuse

Economic abuse is when the abuser has complete control over the victim's money and other economic resources. Usually, this involves putting the victim on a strict 'allowance', withholding money at will and forcing the victim to beg for the money until the abuser gives them some money. It is common for the victim to receive less money as the abuse continues. This also includes (but is not limited to) preventing the victim from finishing education or obtaining employment

3.3 CAUSES OF DOMESTIC VIOLENCE

One of the reasons for domestic violence being so prevalent is the orthodox and idiotic mindset of the society that women are physically and emotionally weaker than the males. Though women today have proved themselves in almost every field of life affirming that they are no less than men, the reports of violence against them are much larger in number than against men.

The most common causes for women stalking and battering include dissatisfaction with the dowry and exploiting women for more of it, arguing with the partner, refusing to have sex with him, neglecting children, going out of home without telling the partner, not cooking properly or on time, indulging in extra marital affairs, not looking after in-laws etc. In some cases infertility in females also leads to their assault by the family members. The greed for dowry, desire for a male child and alcoholism of the spouse are major factors of domestic violence against women in most cases.

There are determinants of domestic violence at individual level, and factors which modify the prevalence at societal and community levels. According to the World Report on Violence and Health, (WHO) the factors associated with a woman's risk of being abused by her partner can be individual factors (young age, heavy drinking, depression, personality disorders, poor academic achievement, etc.), relationship factors (marital conflict, marital instability, male dominance, economic stress, etc.), community factors (weak community sanctions against domestic violence, poverty, low social capital), and societal factors (gender norms, and social norms supportive of violence).

In urban areas there are many more factors which lead to differences in the beginning and later take the shape of domestic violence. These include – more income of a working woman than her partner, her absence in the house till late night, abusing and neglecting in-laws, being more forward socially etc.

Various socioeconomic conditions, viz., husband's lower education, (Br J Psychiatry 2005), (BJOG 2004) poverty and economic pressure, (Am J Public Health 2006), (BJOG 2004) household overcrowding, Br J Psychiatry 2005) husband's alcohol abuse, (Am J Public Health 2006), (Am J Epidemiol 1999) and women who grew up witnessing violence in their homes, are more likely to report experiencing domestic violence (J Affect Disord 2007),. Although better socioeconomic conditions were found to be protective, studies indicated that a gender gap complicates the picture; women who are better educated, who are at better employment, and earn better than their husbands, are at greater risk of domestic violence (J Affect Disord 2007). A study conducted across seven sites in India, viz., Bhopal, Chennai, Delhi, Lucknow, Nagpur, Thiruvananthapuram, and Vellore found that gender gap in employment status was a significant factor for violence.

As far as relationship factors are concerned, husband having an affair, (Br J Psychiatry 2005) being issueless, (Am J Public Health 2006) and families having multiple children are at greater risk. (Br J Psychiatry 2005), (BJOG 2004) Also, certain issues like 'dowry system', (Indian J Community Med 2010) (Br J Psychiatry 2005) and 'love marriages' (Indian J Community Med 2010) remain as possible causes for violence. Women who participate in social groups or vocational training are reported to be more at risk. (Indian J Community Med 2010) The societal and community factors which influence violence include residing in communities where murder rates are high, and in those where wife beating is socially condoned. (Am J Public Health 2006) Inconsistent associations of violence were found with other factors like age, place of residence (urban/rural), age at marriage, and duration of marriage (Int J Epidemiol 2009), Though studies have identified the association between various factors and violence, the gender norm expected of a woman to be more submissive to the husband and elders, and forbidding her to bring out problems to outside world, may influence her reporting and interpreting the causes of violence.

3.4 EFFECTS OF DOMESTIC VIOLENCE

According to the Contemporary Women's Issues Database (January 1996), "the most common victims (of domestic violence) are women and children". Battered women have tendency to remain quiet, agonized and emotionally disturbed after the occurrence of the torment. A psychological set back and trauma because of domestic violence affects women's productivity in all forms of life. The suicide case of such victimized women is also a deadly consequence and the number of such cases is increasing. The varied consequences of domestic violence are studies under the following heads:

3.4.1 Domestic Violence and Physical Health

Given the extent of physical, mental and sexual violence that women experience from their partners, it is important to investigate its health consequences and the role of health care professionals. Heise et al. (1994), in assessing the health consequences of gender based violence, estimated that in industrialised countries rape and domestic violence take about five healthy years of life away from women aged 15-44. Physical injuries can include bruises, cuts, burns and scalds, concussion, broken bones, penetrative injuries

from knives and other objects, as well as miscarriages, permanent injuries such as damage to joints, partial loss of hearing or vision and physical disfigurement from burns, bites or knife wounds. Women in strained relationships also frequently experience depression and somatic complaints such as migraine and non specific pains in the stomach and joints. Women living in violent relationships have significantly poorer health than women who do not live in such relationships. There are also long-term health problems-especially arthritis, hypertension and heart disease (AMA Council on Scientific Affairs, 1992).

Women who have experienced physical, psychological and sexual violence are at higher risk of unwanted pregnancy, high risk pregnancy, and adverse pregnancy outcomes and of contracting sexually transmitted diseases including HIV/AIDS (Maman S, 2000; Martin et al., 1999a). Physical violence leads to injuries, fatal outcomes (less common) and functional disorders (most common) such as chronic pain syndrome, gastrointestinal disorders etc. Domestic violence leads to stress and stress-related mental illnesses among women such as post-traumatic stress syndrome, depression and low self-esteem. These mental health problems have a higher risk for suicide and suicide attempts (Astbury, 2000, INCLEN 2000).

Violence during pregnancy is an important cause of maternal deaths in India (Ganatra B.R, 1998).Recent evidence from Nicaragua and India suggests that violence may also directly or indirectly affect child mortality (Asling- Monemi et al, 2003; Jejeebhoy, 1998a).

3.4.2 Domestic Violence and Mental Health

Sexual assault, molestation, rape, sexual harassment, forced sexual abuse by partner etc cause psychological disturbance among women. The trauma of sexual violence sparks off tension and anxiety at a dangerous level. Their mental health problems are manifested in anxiety, fear, avoidance, guilt, loss of efficiency, lack of coordination, depression, sexual dysfunction, substance abuse, reliving the traumatic incidents through memory, suicidal attempts, eating disorders, disturbed sleep patterns, fear of encountering such situations once again etc. (Patel 2004). It is found that “women who undergo extreme sexual violence experience a loss of self and self esteem, following the shock inflicted on them. When there is a continuous period of traumatic stress, it becomes chronic, lessening the individual’s ability to do any kind of constructive work.”

(Nair and Nair, 2002)

3.4.3 Domestic Violence and Education

It is not surprising to argue that if women are routinely being harassed by their husbands, they cannot properly look after themselves and their children, including attending to children's education and care. Domestic violence is a factor in limiting the realization of right to education for young girls and boys. This is absolutely critical as education is also a protective factor for domestic violence. Increased education of men and women leads to less likelihood of perpetrating and experiencing violence. (Panda 2004)

3.4.4 Domestic Violence and Participation

Living in violent relationships affects a women's sense of self-esteem and her ability to participate in the decision-making processes, both within the households and outside in informal (family and neighbour) and formal social networks (community organization, women's self-help groups or affiliation with political parties) (Heise et al., 1999; Sen, 1998). Violence against women also inhibits political participation (Heise et al., 1994). Violence or the threat of violence often hinders women's ability to use contraception, to answer personal interview questions directly or honestly, or to leave the house long enough to participate in community projects (Rao, Geeta and Weiss, 1998).

Women's participation in formal and informal social networks has been identified as critical factor in lessening their vulnerability to violence and in their ability to resolve domestic conflicts (Sen, 1998). Overall, domestic violence impacts self-esteem of women and limits their ability to be conscious agents of change.

3.4.5 Domestic Violence and Employment

Domestic violence increases women's risk of unemployment, affects job performance, and reduces earnings (Morrison et al., 1999; Browne et al., 1999; Lyord and Taluc, 1999). It may also prohibit women to be engaged in gainful outside employment (India SAFE, 1999). There is some evidence that abused women are more likely to seek work because of the need to secure resources and independent networks. While women's limited economic independence may inhibit them to escape from an abusive relationship, it is also true that women's economic activities and independence may be

a threat to increased domestic violence. (Panda, 2004). A working woman may drop out from work place because of the ill-treatment at home or office, she may lose her inefficiency in work. Her health may deteriorate if she is not well physically and mentally. Some women leave their home immediately after first few atrocious attacks and try to become self-dependent. Their survival becomes difficult and painful when they have to work hard for earning two meals a day.

3.4.6 Consequences on Children

Domestic violence seriously threatens the health and emotional well-being of children. (Chalk and King, 1998) Estimates are that more than 3.3 million children see or hear the actual abuse or deal with the aftermath of physical and verbal spousal abuse each year. Exposure to domestic violence can include watching or hearing the violent events, direct involvement (for example, trying to intervene or calling the police), or experiencing the aftermath (for example, seeing bruises or observing maternal depression). Children's responses to their experiences with domestic violence vary. Children may reveal any of a range of adjustment problems and psychopathology, or may emerge from their experiences relatively unscathed. (Holden, Geffner and Jouriles, 1998).

Factors that appear to affect these responses include the child's proximity to the violence (that is what the child actually saw or heard), the child's temperament, the age of the child at the time(s) of exposure, the severity of the violence, and the availability of adults who can emotionally protect or sustain the child. Literature reveals that some of the symptoms these children may display include aggressive behavior, reduced social competencies, depression, fears, anxiety, sleep disturbances, and learning problems. Underlying many of those problems are the children's emotional responses to the violence, such as intense terror, fear of death, and fear of loss of a parent. In addition, children may harbor rage, feelings of guilt, and a sense of responsibility for the violence. Children who witness traumatic events, such as incidents of domestic violence, may feel helpless and see the world as unpredictable, hostile, and threatening. Overall, data indicate that children who live in households affected by domestic violence may suffer extensively and are vulnerable to developing a host of short- and long-term problems. (Jaffe, Wolfe and Wilson, 1990)

Studies of the incidence of physical and sexual violence in the lives of children suggest

that this form of violence can be viewed as a serious public health problem. McKay, M. (1994). The 1989 and 1996 literature reviews indicated that children exposed to domestic violence demonstrated more externalizing and more internalizing behaviours than did children from nonviolent homes. Specifically, the studies that examined differences across groups in these behaviours revealed that children exposed to domestic violence tended to be more aggressive and to exhibit behaviour problems in their schools and communities ranging from temper tantrums to fights. Internalizing behaviour problems included depression, suicidal behaviours, anxiety, fears, phobias, insomnia, tics, bed-wetting, and low self-esteem. The few studies that assessed problems related to cognitive and academic functioning found differences between children from violent, versus nonviolent, homes. Children exposed to domestic violence demonstrated impaired ability to concentrate, difficulty in their schoolwork, and significantly lower scores on measures of verbal, motor, and cognitive skills. (Kolbo, J.R., Blakely, E.H., and Engleman, D. 1996; Margolin, G 1998).

To learn and grow into a healthy adult, children must feel confident in the world and in themselves. Domestic violence can harm a child's confidence and leave them shocked.

3.5 STRESS AND DOMESTIC VIOLENCE

The concept of stress in the modern sense is not easily found in the traditional texts of Indian culture and tradition. However, a number of concepts developed by the ancient Indian scholars relate to the phenomenon of stress. Some of these are, dukha (pain, misery or suffering), klesa (afflictions), ahamkara (self and ego) etc. Present day researchers and practitioners visualize the phenomenon of stress in a new perspective. According to Kets de Vries (1979), each individual need a moderate amount of stress to be alert and capable of functioning effectively in an organization. The concept of stress was first introduced in the life sciences by Hans Selye in 1936. According to him, stress can be defined as that stimulus which imposes detectable strain that cannot be easily accommodated by the body and so presents itself as impaired health or behavior. In psychology, stress is a feeling of strain and pressure. A stressor is any event, experience, or environmental stimulus that causes stress in an individual. These events or experiences are perceived as threats or challenges to the individual and can be either physical or psychological.

Different family forms and structures have been identified as breeding ground of external and internal sources of stressors affecting the emotional structure of the members. The extended or joint family is known to have internal power structure of authoritarian pattern and a type of network of kinship relations responsible for suppressing family members' activities and psychologies and creating tensions, frustrations or mutinies. The nuclear family characterized by comparatively greater chances of isolation, insecurity, resource lessness and lesser shock absorbing in moments of crisis and with higher tone of emotional involvement may bring about several such events which alter the adjustments among members and create stress reactions in them. The role of stressful life events in the etiology of various diseases have been a study topic for many years. It is increasingly recognized that stress is one of the components of any disease, and have established the point beyond doubt that there exists a positive relationship between stressful life events and subsequent illnesses. (Schmallo and Engel, 1967; Holmes and Rahe, 1967)

Researchers have found that stressors can make individuals more prone to both physical and psychological problems, including heart disease and anxiety. Symptoms may include a sense of being overwhelmed, feelings of anxiety, overall irritability, insecurity, nervousness, social withdrawal, loss of appetite, depression, panic attacks, exhaustion, high or low blood pressure, skin eruptions or rashes, insomnia, lack of sexual desire (sexual dysfunction), migraine, gastrointestinal difficulties (constipation or diarrhea), and for women, menstrual symptoms. It may also cause more serious conditions such as heart problems. Also, experimental research which has been performed on animals, also displayed results relating to stress and negative effects on the body. It has been shown that stress contributes to the initiation and development of specific tumors within the body (Cohen et al 2007)

Stress can be external and related to the environment but may also be created by internal perceptions that cause an individual to have anxiety or other negative emotions surrounding a situation, such as pressure, discomfort, etc., which they then deem stressful, for example in Post-Traumatic Stress Disorder (Fiona et al 2001). External factors that by themselves are not threatening or stressful are deemed such for someone experiencing PTSD. Triggers can be stressful, such as when a person reports stress when hearing a song on the radio or seeing a type of object that may remind the person of prior threatening events. Humans experience stress, or perceive things as threatening,

when they do not believe that their resources for coping with obstacles (stimuli, people, situations, etc.) are enough for what the circumstances demand. When we think the demands being placed on us exceed our ability to cope, we then perceive stress.

PTSD is a normal reaction to abnormal events. The diagnosis occurs most commonly as a stressful reaction to a catastrophic event involving actual or threatened death/injury. Symptoms include increased physiological arousal, persistent re-experiencing of the trauma (intrusive thinking), trouble sleeping, irritability, trouble concentrating, being watchful, arousal, feeling jumpy, fear, avoidance, hyper vigilance, irritability, and psychic numbing including dissociation. There is no support for the belief that violence toward women that is perpetrated by their husbands is less traumatizing than violence by others. A high prevalence of psychiatric problems, including PTSD, is found among shelter populations. Not only have they been battered but they are also “homeless.” They may lack other forms of social support, and they disproportionately have low income. Women who receive shelter services are in crisis. The precipitating violent event is rarely the only time these women have sustained violence (Dutton, 1992). PTSD could be expected in response to earlier acts of violence that culminated in the women’s decision to leave home and seek shelter (Vitanza, et al., 1995).

Negative affective states, such as feelings of anxiety and depression, could influence the pathogenesis of physical disease, which in turn, have direct effects on biological process that could result in increased risk of disease in the end. For example, when humans are under chronic stress, permanent changes in their physiological, emotional, and behavioural responses are most likely to occur (Cohen et al 2007). Such changes could lead to disease. Even though psychological stress is often connected with illness or disease, most healthy individuals can still remain disease-free after confronting chronic stressful events. This suggests that there are individual differences in vulnerability to the potential pathogenic effects of stress; individual differences in vulnerability arise due to both genetic and psychological factors.

Chronic stress and a lack of coping resources available or used by an individual can often lead to the development of psychological issues such as depression and anxiety. This is particularly true regarding the cases of domestic violence. These types of stressors tend to have a more negative impact on health because they occur frequently and thus require the body's physiological response to occur daily.

Small amounts of stress may be desired, beneficial, and even healthy. Positive stress helps improve athletic performance. It also plays a factor in motivation, adaptation, and reaction to the environment. Excessive amounts of stress however, may lead to many problems in the body that could be harmful. Three diseases that are influenced by stress are clinical depression, cardiovascular disease, and human immunodeficiency virus (HIV) (Cohen et al 2007).

3.6 SCHOOLS OF THOUGHTS ON DOMESTIC VIOLENCE

Many theories are associated with the cause of domestic violence. Some researchers focus on biological factors such as genetic or brain functioning, while others examine the socialization and cultural factors, stating that it may be learned from the culture or the family. Still others contend that it is the vulnerable structure that both maintains and promotes violence against women.

No one theory can fully explain the causes of domestic violence and also provide a reason for battered women continuing with the relationship, we need to acknowledge and accept that domestic violence has a multiplicity of causal relationships. The general consensus among researchers seems to indicate that no one theory can adequately describe the dimension and the phenomena of this problem.

3.6.1 PSYCHOLOGICAL THEORIES

Early psychological theories focused on the individual characteristics of violent men and battered women. Psychological profiles of men who batter and the women who were battered were developed in the early days of research on domestic violence. Some posit that both the abuser and victim have some pathological traits (Dutton and Gondoff, 1979). The abuser tends to have low self-esteem and a great need for control while some aspect of the personalities and behavior of the battered women provokes their husbands to violence towards them; and to some extent, it is maintained, the women do not remain in the relationship (Birns & Birns, 1994). However, Walker (1984) and others have contended that there is no evidence of a victim-prone personality for the women. She argues that the battered women may suffer from the battered women syndrome, a label that has been used to describe a pattern of negative psychological consequences observed

in many battered women. The major components of battered women Syndrome include symptoms of post-traumatic stress disorder (including disturbing memories, flashback fear, anxiety, sleep disturbance, avoidance and hyper-vigilance) and “learned Helplessness”.

3.6.2 SOCIAL LEARNING THEORY

Social learning theory is also employed to explain both why men batter and why women remain in abusive relationships. Social learning theory is based on behavior of those around them. It proposes that people model their behavior on the behavior of those around them. It proposes that the abuse is a learned behavior due to witnessing or having been a victim of abuse in their family origin. Feminist social learning theorists argue that men learn to be violent while they are still children through the socialization process, and women learn helplessness during the course of their adult abusive relationship. A study by Roy (1977) found that 81 percent of abusive men had a childhood history of violence, either as the victim of child abuse or as a witness to wife abuse. One limitation of social learning theory is that it cannot explain why only some children with early childhood exposure to violence grow up to be violent themselves.

3.6.3. THEORY OF LEARNED HELPLESSNESS

The theory of learned helplessness developed by Seligman (1975), has been helpful in understanding how some women respond to abuse. Learned helplessness theory states that when an organism experiences a situation which cannot be controlled, the motivation to respond to such repeated events will be impaired. After being conditioned, if the organism is able to make appropriate responses which do control the outcome, the organism will continue to have trouble believing that the responses are under its control.

Walker (1984) used the term “learned helplessness” to discuss why women found it hard to leave an abusive relationship. It refers to the battered women’s inability to either end the violence or to remove themselves from the violent relationship. It refers to the battered women’s inability to either end the violence or to remove themselves from the violent relationship. The women see the abusive events as occurring without their control, and thus learn to endure the abuse (La Violette & Barnett, 2000). Walker proposes learned helplessness as the result of the cycle of violence where it “taught”

women to be helpless and passive. However, learned helplessness does not explain why and how many of the battered women do eventually leave.

3.6.4 FEMINIST THEORY ON DOMESTIC VIOLENCE

Feminist theory on violence against women is centered in a historical context of cultural and structural power imbalance between men and women. It is said that power and control are the core issues in domestic violence. Gordon (2000) posited that several individuals and interpersonal mechanisms interacted, to translate societal mechanisms to the individual level, including attitudes justifying male privilege and dominance over women & rigid expectations of gender-specific behavior socialization of males to adopt aggressive and dominant behavior in interpersonal interactions, encouragement of aggressive and control over women by peers and authority figures, lack of sanction for violence against women by societal institutions and the modeling of violence against women either in home (observation of domestic violence in families) or by media (p.765).

The patriarchy structure and ideology permeates all basic social institutions such as politics, religion, education, media and the family (Hyden, 1994; Jainski 2001; Kirkwood 1993). Feminist theory puts this very inequality between men and women at the root of the analysis of domestic violence.

Felix and Paz-Ingente (2003) maintained that both men and women have been conditioned to think and behave within the “patriarchy” context. Throughout history, men are taught to be aggressive, dominating and to exercise authority over women, while women are taught to be submissive, dependent upon men and to sacrifice for the family’s welfare.

3.6.5 THEORY OF THE CYCLE OF VIOLENCE

The “cycle of violence”, first articulated by Lenore Walker (1984), became a popular explanation for domestic violence in the 1980’s. Lenore Walker, a psychologist, discovered what she calls the cycle of violence, based on the principle of intermittent reinforcement, which outlined predictable patterns of abuse in a violent relationship (Walker 1979, 1984). In Walker’s cycle of violence theory, she describes a repeated

sequence of behavior that typified a battering relationship which appears to have three distinct phases: the tension building phase the explosion or acute battering phase followed by a honeymoon respite phase.

Walker asserts that the cycle of violence causes the victim to think less of herself, cause confusion that reduce her chances of planning escape, pre-occupies her mind with self-blame and causes her to be hopeful that they can have a happy and fulfilling relationship together.

Knowledge and understanding of this cycle is important so that we can educate women about this and help them to be aware of the cycle that they go through in an abusive relationship. This cycle of false hope is literally ‘programmed’ into the victims by their abusers. Many women never find ways to prevent them from being drawn into the same destructive pattern. Hopefully, with an understanding of the cycle, they will have the courage to break the cycle and it will help them to see that the honeymoon stage is only an ephemeral hope that they cannot afford to hang on to with their life.

3.6.6 EXCHANGE THEORY

Exchange theory contends that predictable behavior occurs when rewards are increased and punishment are open. Central to exchange theory is the notion that if reciprocal ends, then the interactional nature of the relationship will stop. Gelles and Cornell (1990) note that the application of exchange theory upon family interactional patterns is more complex and they contend that in some situations it is “not doable or possible to break off interactional, even if there is not reciprocity” (p.116). In applying this theory to abuse women, there is cost benefits analysis that guides the abused women’s decision either to continue or stop the relationship. In other words, if the “benefits” of continuing to stay in situation outweigh the “cost” of being abused, then the victim is more likely to stay in the situation.

3.6.7 RESOURCE THEORY

Goode (1971) was the first to apply Blood and Wolfe’s (1960) resource theory of power to explain a husband use of violence against his wife. He situated his resources theory of violence within the context of distribution of resources in comparison to other members in the society are expected to experience higher levels of frustration and stress.

Goode maintained that violence is a resource similar to money or personal attributes that can be used to deter unwanted actions or bring about desired behaviors. Husbands who have few resources may very well feel inadequate or threatened and may use violence to exert their power, establish control and maintain dominance within the home. Violence is viewed as “ultimate” resources in that it is used when other resources are perceived to be insufficient or to have failed to obtain the desired response. Thus, violence seems to be most open and effective means of husband’s social control over wives, when other or more subtle methods of control do not deduce submission.

CHAPTER 4

PROTECTION OF WOMEN AGAINST DOMESTIC VIOLENCE IN

INDIA

Violence is a complex concept; violent behavior can be defined and categorized in a variety of ways. Violence has frequently been used interchangeably with the term “aggression” while violence typically refers to a physical act, aggression frequently refers to any malevolent act that is intended to hurt another person. The hurt may not be only physical but may be emotional injury or material deprivation.²⁷ Further, there are negative connotations of the term “violence”, some investigators have tried to differentiate between hurtful violence and more permissible acts.²⁸

According to few studies domestic violence has been defined as “day today patterned and recurrent use of physical violence like pushing, slapping, punching, knifing, shooting and throwing objects by one member of the family at another”.²⁹ Most of the studies on domestic violence have limited their scope to physical violence involving members of the family.³⁰ These studies have overlooked psychological violence like suppression, harassment, domination, humiliation, insult and public embarrassment, all of which are more fully captured under another definition which defines domestic violence as “any act of commission or omission by family members and any condition resulting from such acts and inaction which deprive other family members of equal rights and liberties or interfere with their optimal development and freedom of choice.”³¹

Shenoy (2007) has rightly pointed out “Violence within families is as old as the institution itself. It seems that it occurs in almost all cultures and countries across all known divisions of wealth, race, religions, castes and social class. There may never have been a time when it did not exist, and it certainly stretches back deep into history. Centuries indeed millennia are filled with millions of assaults, attacks, rapes,

²⁷ Amarjit Mahajan and Madhurima, *Family Violence and Abuse in India*, (New Delhi: Deep and Deep Pub., 1995), pp 16-17.

²⁸ Goode, W, “Force and Violence in the Family”, (1971) 33 *Journal of Marriage and the Family*, pp 614 -36

²⁹ Gelles, R.J., *The Violent Home: A Study of Physical Aggression between Husbands and Wives* (Beverly Hills: Sage., 1971).

³⁰ Gelles, R.J., and Straus, M.A., ‘Determinants of Violence in the Family: Toward a Theoretical Integration’, in Burr, W.R., Hill, R., Nye, F.I., and Reiss, I.L., (eds.) *Contemporary Theories about the Family, Voll.*, (New York: Free Press, 1979), pp 549-89

³¹ Pagelow, M.P., *Family Violence*, (New York: Praeger, 1984)

violations, psychological abuses, maiming's, killings of women in their own homes by men.” There is a growing body of evidence which suggest that domestic violence leads to family bread down negative consequences for female mental health and deaths.³² Ganatra, Coyaji and Rao (1998) conducted a study of 400 villages and seven hospitals in rural India found that 16 per cent of all deaths during pregnancy were the results of partner violence.³³

In response to such findings the protection of women from Domestic Violence Act 2005 was enacted. The new Act aims to offer better protection to women by defining domestic violence exhaustively, expanding the scope of the marital relationship to include second marriages and live-in-relationships. It attempts to create new more vibrant institutional climate by focusing on training programs, refresher courses, special cells in police stations, working towards gender protocols. Important aims of these efforts are to sensitize the personnel of the institutions to the realities of women's lives, their unequal status; lighten the loopholes in law and its practice; simplify the procedures with a view to make these institutions more accessible to women.

The main Object of the Domestic violence Act 2005 is protection of women from violence inflicted by a man or/and a woman. It is a progressive Act, whose sole intention is to protect the women irrespective of the relationship she shares with the accused. The definition of an aggrieved person under the Act is so wide that it taken within its purview even women who are living with their partners in a live-in relationship.

In this Domestic violence 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 any 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

³²Shenoy, M. 2007. Domestic Violence. Aavishkar Publications, Distributors. Jaipur.

³³ Ganatra, B.; Coyaji, K., and Rao, V. 1998. Too far, too little, too late : a community – based case control study of maternal mortality in rural west Maharashtra. Bulletin of the World Health Organization. 76 (6).

conduct mentioned in clause (a) or clause (b); or (d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person.

Explanation I.—For the purposes of this section

- i. “physical abuse” means any act or conduct which is of such a 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;
- ii. “sexual abuse” includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;
- iii. “verbal and emotional abuse” includes—
 - a. 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 a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, house hold necessities for the aggrieved person and her children, if any, *stridhan*, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared house hold and maintenance;
 - b. disposal of household effects, any alienation of 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; and
 - c. prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

Explanation II. —For the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes “domestic violence” under this section, the overall facts and circumstances of the case shall be taken into consideration.³⁴

Violence against women strongly hinders women’s full participation in society and maintains an oppressive and coercive pattern of control of men over women. Women are not even considered safe at their

³⁴ <http://legislative.gov.in/sites/default/files/A2005-43.pdf>

home as a major form of violence called 'domestic violence' is very much prevalent in Indian society. A place where you call home, your refuge, is actually where you are most vulnerable. The United Nations Declaration on the Elimination of Violence Against Women defined domestic violence as: Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation. Domestic violence is the leading cause of injuries experienced by women. Domestic battery causes more injuries to women than car accidents rape and mugging together (Rodriguez 1992). 22 to 35 % of emergency hospital visits are consequent to domestic violence (Wetzel et al, 1983). The report focuses on the major forms of domestic violence against women prevalent in our society. The major forms of domestic violence against women that have been studied in this report using data for various cases of crimes are:

1. Kidnapping & Abduction

Kidnapping can be said as carrying away of a human being against his/her consent, or the consent of some person legally authorized to accord consent on behalf of such person. Abduction, it may be said, by itself is no offence. However, when it is done with the intent to commit an offence, e.g. to rob or to murder or to confine or to compel marriage, it becomes an offence punishable under section 363.

Under Section 359 to 369 of the code, kidnapping and abduction is punishable with varying degree of severity according to nature and gravity of the offence. The underlying object of enacting these provisions is to secure the personal liberty of citizens, to give legal protection to children of tender age from being abducted or seduced for improper purposes and to preserve the rights of parents and guardians over their wards for custody or upbringing.

A total of 64,519 cases have been reported in 2016 as per NCRB Report, 'Crime Statistics- 2016'. Uttar Pradesh reported highest number of cases (12,994 cases) of Kidnapping & Abduction of Women followed by Maharashtra(6170 cases) followed by Bihar(5496 cases). Delhi reported a highest crime rate of 40.74 (3841 cases per lakh female population) followed by Assam with crime rate of 33.8 (5339 cases per lakh female population). Lakshwadeep reported zero cases of Kidnapping & Abduction having zero crime rate followed by Mizoram (3 cases).

2. Female Trafficking

Whoever, for the purpose of exploitation, recruits, transports, harbours, transfers or receives any Women by— using threats, or using force or any other form of coercion, by abduction, by practicing fraud, by deception, by abuse of power, by inducement, including the giving or receiving of payments or benefits, in order to achieve the consent of any person having control over the person recruited, transported, commits the offence of trafficking. It is a criminal offence under Section 370, IPC.

A total of 1,183 cases have been reported under Female trafficking (as per NCRB Report). Jharkhand reported highest cases (137 cases) of female trafficking with crime rate of 0.9 followed by West Bengal(120 cases). Goa reported highest crime rate of 3.8 followed by Daman & Diu with crime rate of 3.64. A total of 7 States and 4 UTs reported crime rate of 0 with no cases reported for female trafficking for the year 2016.

3. Assault on Women with intent to outrage her modesty

Section 354 of the Indian Penal Code provides that: “Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both”. The various forms of assault on women that have been included under this are Stalking, Voyeurism, Sexual harassment, Assault on Women and Assault/use of criminal force with intent to disrobe identity of women.

A total of 84,746 cases have been reported under assault on women in 2016(as per NCRB report).Maharashtra reported the highest cases (11,396 cases) in 2016 followed by Uttar Pradesh(11,335 cases) followed by Madhya Pradesh(8717 cases). Delhi reported a highest crime rate of 43.6 (4165 cases per lakh female population) followed by Orissa with crime rate of 39.1(8252 cases per lakh female population). Lakshwadeep and D&N Haveli have reported lowest number of cases (1 case) of assault on women with intent to outrage to her modesty in 2016

4. Attempt to commit Rape

Attempt to commit rape is a criminal offence committed under Section 376/511, Indian Penal Code. A total of 5,729 cases have been reported under attempt to commit rape in 2016 (as per NCRB Report). Uttar Pradesh reported highest number of cases (1958 cases) in 2016 followed by West Bengal (1646 cases). West Bengal reported highest crime rate of 3.60 (1646 cases per lakh female population).

5. Acid Attacks and attempts to acid attack

Section 326A of IPC follows that whoever causes permanent or partial damage or deformity to, or burns or maims or disfigures or disables, any part or parts of the body of a person or causes grievous hurt by throwing acid on or by administering acid to that person, or by using any other means with the intention of causing or with the knowledge that he is likely to cause such injury or hurt, shall be punished with imprisonment of either description for a term which shall not be less than ten years but which may extend to imprisonment for life, and with fine. The Section 326 B in the Indian Penal Code lays down the punishment for attempted acid throwing. The minimum punishment is 5 years' imprisonment. It can extend up to 7 years' imprisonment with fine. A separate law to punish offenders in such cases was passed along with amendment of law on sexual offences.

A total of 206 cases have been reported under acid attacks and attempts to acid attack in 2016 (as per NCRB report). West Bengal reported highest cases (54 cases) followed by Uttar Pradesh (51 cases) followed by Delhi (19 cases). Crime rate is observed to be approximately zero all over India.

6. Insult to the modesty of Women

Under Section 509, IPC, Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

A total of 6,365 cases have been reported under insult to modesty of women in 2016 (as per NCRB Report). Andhra Pradesh reported highest cases (1831 cases) Of this crime followed by Telangana (1003

cases) followed by Maharashtra (924 cases). The crime rate was reported highest in Delhi (961) followed by Andhra Pradesh where crime rate was reported to be 716.

7. Indecent Representation of Women Prohibition Act

The Indecent Representation of Women (Prohibition) Act, 1986 is an Act of the Parliament of India which was enacted to prohibit indecent representation of women through advertisement or in publications, writings, paintings, figures or in any other manner. 38 cases of Indescent Representation of Women have been reported in India (as per NCRB Report) in 2016. Uttar Pradesh reported highest cases (18 cases) under this crime. The crime rate reported in 2016 under this act is approximately zero all over India.

8. Abetment of Suicide of Women

Section 309 follows that whoever attempts to commit suicide and does any act towards the commission of such offence, shall be punished with simple imprisonment for a term which may extend to one year or with fine, or with both.

A total of 4,446 cases have been reported under abetment of suicide of women in 2016(as per NCRB Report). Maharashtra reported highest cases (756 cases) of Abetment of suicide of women followed by Madhya Pradesh (565 cases).Telangana reported highest crime rate of 3.050 (560 cases per lakh female population)

9. The Immoral Traffic Prevention Act

The Immoral Traffic (Prevention) Act, 1956 is an Act which provides in pursuance of the International Convention, 1950 for the prevention of immoral traffic. The Act intends to combat trafficking and sexual exploitation for commercial purposes. A total of 2,214 cases have been reported under The Immoral Traffic Prevention Act,1956 in 2016(as per NCRB report).Tamil Nadu reported highest cases(432 cases) under this offence followed by Karnataka(230 cases).

Daman & Diu reported highest crime rate of 3.6 (4 cases per lakh female population).

10. Rape

Rape is the fourth most common crime against women in India. According to the National Crime Records Bureau (NCRB) 2013 annual report, 24,923 rape cases were reported across India in 2012. Out of these, 24,470 were committed by someone known to the victim (98% of the cases). Rape of female is criminal offence under Section 375, 376, 376A, 376B, 376C and 376D of the Indian Penal Code .

Table 1 (The following table gives a comparison of each state / UT in terms of their index number and ranks)

SN	States/UT	index number	rank
1	Andhra pradesh	1088.44	26
2	Arunachal Pradesh	1338.74	16
3	Assam	1093.25	25
4	Bihar	1356.37	13
5	Chattisgarh	1362.39	10
6	Goa	1238.97	20
7	Gujarat	1461.81	5
8	Haryana	1131.99	23
9	Himachal Pradesh	1360.55	12
10	Jammu & Kashmir	1404.48	8
11	Jharkhand	1326.02	17
12	Karnataka	1288.78	18
13	Kerala	1203.36	22
14	Madhya Pradesh	1240.15	19
15	Maharashtra	1346.65	15
16	Manipur	1539.88	2
17	Meghalaya	1473.34	4
18	Mizoram	1502.21	3
19	Nagaland	1561.94	1
20	Orissa	1076.38	27
21	Punjab	1354.88	14
22	Rajasthan	1216.49	21
23	Sikkim	1391.25	9
24	Tamil Nadu	1440.2	7
25	Telangana	1050.38	28
26	Tripura	1362.02	11
27	Uttar Pradesh	994.7	29
28	Uttarakhand	1447.61	6
29	West Bengal	1127.94	24
Union Territories:			
30	Andaman& Nicobar	1390.1	3
31	Chandigarh	1104.42	6
32	D&N Haveli	1461.86	1
33	Daman & Diu	1197.28	5
34	Delhi	500.2	7
35	Lakshwadeep	1411.17	2
36	Puducherry	1269.94	4

A total of 38,947 cases of rape have been reported in India in 2016 as per the report by NCRB. Madhya Pradesh reported highest rape cases (4882 cases) in 2016 followed by Uttar Pradesh (4816 cases) followed by Maharashtra (4189 cases). Sikkim reported highest crime rate (30.66) followed by National Capital, Delhi (22.57). Lakshwadeep & Puducherry reported least number of rape cases in 2016 with low crime rates. The remaining forms of violence that are being prevalent come under the category of domestic violence and have been already explained and summarized.

Table 2

Crime Head-wise Cases Registered under Crime against Women during 2011 - 2015 and Percentage Variation in 2015 over 2014

	Crime head	Years					Percentage variation in 2015 over 2014
		2011	2012	2013	2014	2015	
1	Rape#	24,206	24,923	33,707	36,735	34,651	-5.7
2	Attempt to Commit Rape*	-	-	-	4,232	4,434	4.8
3	Kidnapping & Abduction of Women	35,565	38,262	51,881	57,311	59,277	3.4
4	Dowry Deaths	8,618	8,233	8,083	8,455	7,634	-9.7
5	Assault on Women with Intent to Outrage her/their Modesty	42,968	45,351	70,739	82,235	82,422	0.2
6	Insult to the Modesty of Women	8,570	9,173	12,589	9,735	8,685	-10.8
7	Cruelty by Husband or His Relatives	99,135	1,06,527	1,18,866	1,22,877	1,13,403	-7.7
8	Importation of Girl from Foreign Country	80	59	31	13	6	-53.8
9	Abetment of Suicide of Women	-	-	-	3,734	4,060	8.7
A.	Total IPC Crime against Women	2,19,142	2,32,528	2,95,896	3,25,327	3,14,575	-3.3
10	Commission of Sati Prevention Act	0	0	0	0	0	0
11	Indecent Representation of Women (P) Act	453	141	362	47	40	-14.9
12	The Dowry Prohibition Act	6,619	9,038	10,709	10,050	9,894	-1.5
13	Protection of Women from Domestic Violence Act	-	-	-	426	461	8.2
14	Immoral Traffic (Prevention) Act	2,436	2,563	2,579	2,070#	2,424	17.1
B.	Total SLL Crime against Women	9,508	11,742	13,650	12,593	12,819	1.8
Total(A+B)		2,28,650	2,44,270	3,09,546	3,37,922	3,27,394	-3.1

CHAPTER 5

THE ROLE OF THE NATIONAL COMMISSION FOR WOMEN

5.1 INTRODUCTION

*"Violence against women and girls is the most pervasive violation of human right in the world today. Its forms are both subtle and blatant and its impact on development profound. But it is so deeply embedded in culture around the world that it is almost invisible. Yet this brutality is not inevitable. Once recognized for what it is-a construct of power and a means of maintaining the status quo-it can be dismantled."*³⁵

Violence against women, of which domestic violence is a part, affects women of every class, caste, religion, tribe and age in India. As a unit the family is traditionally associated with warmth security and safety, a shelter, where peace and harmony are predominant. In reality, however, the most common form of violence against women takes place at home, what is known as domestic violence. The home, which should be a shelter and sanctuary, become a trap, a place of torture and fear. The men with whom the women share their lives become the perpetrators of the most horrendous violence-physical, mental and sexual, against them. Despite the spreading emancipation of women, domestic violence continues to be a universal problem that has been a persistent obstacle to the promotion and advancement of women's human rights. Empowerment of women and equality between women and men is a priority global issue. Its aim is to give everyone, regardless of gender, better access to education, employment etc. in order to boost growth in all sectors, and hasten the emergence of a fairer society.

5.2 THE NATIONAL COMMISSION FOR WOMEN (NCW)

The Government of India setup a committee in 1971 known as the "Committee on the Status of Women to evaluate the changes that had taken place in the status of women and to suggest measures so that women may play their vital role in building of the nation. The Committee submitted its report in 1974

³⁵ The intolerable status quo :- violence against women and girls" -Charlotte Bunch- www.hollyhock farms.com.

and recommended for establishment of statutory autonomous commission at center and in the states. It is surprising to note that Government took 16 years to give effect to the recommendation of the committee for setting up a National Commission for women. Successive Committees/Commissions/Plans including the National Perspective Plan for V\Tomen (1988-2000) recommended the constitution of an apex body for women. During 1990, the central government held consultations with NGOs, social workers and experts, regarding the structure, functions, powers etc., of the commission proposed to be set up. In May 1990, the Bill was introduced in the Lok Sabha. In July 1990, the HRD Ministry organized a National Level conference to elicit suggestions regarding the Bill. In August 1990 the government moved several amendments and introduced new provisions to vest the commission with the power of a civil court. The Bill was passed and received assent of the President on 30th August 1990. In January 1992, the National Commission for women (NCW) was set up as a statutory body under the National Commission for women Act, 1990 (Act No. 20 of Govt. of India) to review the constitutional and legal safeguards for women, recommend remedial legislative measures, facilitate redressal of grievances and advise the government on all policy matters affecting women. The First Commission was constituted on 31st January 1992 with Mrs. Jayanti Patnaik as the chairperson. [From 3.2.1992-30.1.1995] The Second Commission was constituted on July 1995 with Dr. (Mrs.) Mohini Giri as the chairperson (21.7.1995-20.7.1998) The Third Commission was constituted on January 1999 with Mrs. Vibha Parthasarathy as the chairperson (18.1.1999-7.1.2002) The Fourth Commission constituted on January 2002 with Dr. Poornima Advani as the chairperson. (25.1.2002-24.1.2005) Recently the Fifth Commission has been constituted on February 2005 and senior Congress leader Ms. Girija Vyas has been appointed as the chairperson of National Commission for Women (NCW).³⁶

5.2.1 FUNCTIONS OF THE NATIONAL COMMISSION FOR WOMEN

According to Section 10 of the National Commission for women Act, 1990- The National Commission for women has been entrusted with a very wide range of function. Some of these functions are investigative, judicial, quasi-judicial and some are administrative. The commission has the power to investigate and examine all matters relating to the safeguards provided for women under the constitution and other laws. The commission has been empowered to look into the complaints and take suo-moto

³⁶ 2. National Commission for Women, website-<http://www.ncw.nic.in>

notice of the matters relating to:-

- i) deprivation of women's rights;
- ii) ii) non-implementation of laws enacted to provide protection to women and also to achieve the objective of equality and development ; and
- iii) iii) non-compliance of policy decisions, guidelines or instructions aimed at mitigating hardships and ensuring welfare and providing relief to women, and take up the issue arising out of such matters with appropriate authorities.

In respect of these matters the commission has been given power of the civil Court trying a suit, particularly in respect of the following matters:-

- a) Summoning and enforcing the attendance of any person from any part of India and examining him on oath;
- b) requiring the discovery and production of any document;
- c) . receiving evidence on affidavits;
- d) requisitioning any public record or copy thereof from any court or office; e) issuing commissions for the examination of witnesses and documents; and f) any other matter which may be prescribed.

The other functions of the commission relate to the following areas: -

- i) Present to the Central Government, annually and at such other times as the commission may deem fit, reports upon the working of those safeguards;
- ii) make in such reports, recommendations for the effective implementation of those safeguards for improving the conditions of women by the Union or any State;
- iii) review, from time to time, the existing provisions of the constitution and other laws affecting women and recommend amendments there to so as to suggest remedial legislative measures to meet any lacunae, inadequacies or short comings in such legislation;
- iv) take up the cases of violation of the provisions of the constitution and of other laws relating to women with the appropriate authorities;
- v) call for special studies or investigations into specific problems or situations arising out of discrimination and atrocities against women and identify the constraints so as to

- recommend strategies for their removal;
- vi) Undertake promotional and educational research so as to suggest ways of ensuring due representation of women in all spheres and identify factors responsible for impeding their advancement, such as, lack of access to housing and basic services, inadequate support services and technologies for reducing drudgery and occupational health hazards;
 - vii) participate and advise on the planning process of socio-economic development of women;
 - viii) evaluate the progress of the development of women under the Union and any State;
 - ix) inspect a jail, remand home, women's institution or other place of custody where women are kept as prisoners or otherwise, and take up the issue with the concerned authorities for remedial actions, if found necessary;
 - x) look after fund litigation involving issues affecting a large body of women;
 - xi) make periodical reports to the government on any matter pertaining to women and in particular various difficulties under which women toil; and
 - xii) look after any other matter which may be referred to it by the central government.

5.2.2 ANNUAL REPORT

The commission is required to prepare, in such form and at such time, for each financial year, as may be prescribed, its annual report, giving a full account of its activities during the previous financial year and forward a copy thereof to the Central Government. The Central Government is required to lay before each House of Parliament, the commission's annual report together with a memorandum of action taken on the recommendations contained therein, insofar as they relate to the Central Government, and the reasons for the non-acceptance, if any, of any of such recommendations and the audit report. As the problem of violence against women is multifaceted including domestic violence, the National Commission for Women (NCW) has adopted a multi-pronged strategy to tackle the problem. The commission has initiated generation of legal awareness among women, thus equipping them with the knowledge of their legal rights and with a capacity to use these rights. It assists women in redressal of their grievances through pre-litigation services. To facilitate speedy delivery of justice to women, Parivarik Mahila Lok Adalats are organized in different parts of the country to review the existing

provisions of the constitution and other laws affecting women and recommending amendments thereto, of any lacunae, inadequacies or short comings in such legislations. It organizes promotional activities to mobilize women and get information about their status and recommend paradigm shift in the empowerment of women.³⁷

The National Commission for Women is divided into Four different departments/ Units for the purpose of its smooth functioning which are stated below :

5.2.3 THE COMPLAINTS AND COUNSELLING CELL:

The complaints and counselling cell of the Commission processes the complaints received oral, written or suomoto under section 10 of the National Commission for Women Act 1990.

Generally, the complaints received by NCW relate to domestic violence against women are following categories, such as - dowry harassment, dowry torture, desertion, bigamy, rape, refusal to register FIR, cruelty by husband, maintenance, divorce, dowry death, child custody, matrimonial dispute etc.

First of all the complaints received by the commission are registered, categorized and are given a case number. After that, the complaints are allocated to a counsellor. The counsellor recommends action in a particular case which is submitted to the other members of the commission for decision. The counsellor then initiates action as suggested by the members. The complaints of domestic violence are tackled as below :- NCW tackles the problems by ensuring that-

- a) Investigations by the police are expedited and monitored.
- b) Family disputes are resolved or compromised through counselling.
- c) The complaints are investigated through police whenever necessary.
- d) For serious crimes, the commission constitutes an Inquiry Committee which makes spot enquiries, examines various witnesses, collects evidence and submits the report with recommendations. The implementation of the report is monitored by the NCW. Such investigations help in providing immediate relief and Justice to the victims of domestic violence.

The State Commission, the NGOs and other experts are involved in these efforts. The complaints of domestic violence received shows the trend of domestic violence against women and suggests systematic

³⁷ National Commission for Women, website-<http://www.ncw.nic.in>

changes needed for reduction in this crime.

The complaints are analyzed to understand the gaps in routine functioning of the government tackling domestic violence against women and to suggest correctional measures.

The complaints are also used as case studies for sensitization programmes for the police, judiciary, prosecutors, forensic scientists, defence lawyers and other administrative functionaries.

5.2.4 LEGAL CELL:

The primary mandate of the National Commission for women is to review from time to time the existing provisions of the constitution and other laws affecting women and recommend amendments thereto, so as to suggest remedial legislative measures to meet any lacunae, inadequacies or short comings in such legislations. The commission also facilitate redressal of grievances and advise the government on all policy matters affecting women.

- i) *Review of Laws and Legislative Measure affecting women including domestic violence against women by National Commission for women.*

Some are stated below :-

DOWRY PROHIBITION ACT 1961:

Suggested amendments by N CW

- i) For a more effective implementation it is desirable to make the dowry offences, as against the State.
- ii) Modification of Sec 2 defining 'Dowry'.
- iii) Section 3 & 4 of the Act (being aggravated forms of the offence related to dowry) to be removed from the Act and included in IPC.
- iv) Section 7 & 8 of the Act to be omitted.
- v) Substitution of Section 5 providing for a list of presents given to a bride or bridegroom at the time of marriage.
- vi) Section 8A of the Act to be removed and included in the Evidence Act.
- vii) Persons giving dowry are victims and hence it is not fair to punish them.
- viii) Persons participating in dowry negotiations should be made liable along with persons taking

or demanding dowry.

- ix) The offence should be made cognizable for all purposes.
- x) Substitution of Section 7 so as to remove the application of chapter xxxv of the Cr.P.C.
- xi) Modification of Section 8B with respect to Dowry prohibition officers.
- xii) Redrafting of Subsection (2) of Section 9 on the following lines:- "In particular and without prejudice to the generality of the foregoing power, such rules may provide for the better coordination of policy and action with respect to the administration of the Act :

In this connection it can be noted that National Commission for women suggested consequential Amendments in other statutes like Indian Penal Code, Code of Criminal Procedure, Indian Evidence Act.

In case of Indian Penal Code :

- i) Modification of Subsection (2) of section 498A.
- ii) Section 498A to be amended to enhance the punishment from 3 to 7 years.

Code of Criminal Procedure :

- i) Amendment of the First Schedule making necessary entries after Section 498A i.e. inserting Section 498A prescribing-"Taking, demanding or abetting to take dowry" as a "cognizable" and "Non-bailable" offence punishable with imprisonment for not less than 5 years which may extend to 10 years and fine not less than 15,000 rupees or the amount of value of the dowry, whichever is more and empowering the CJM or CMM to take cognizance of the offence.
- ii) Amending section 39 to cast a duty on the public to give information as to a dowry offence, etc.

Indian Evidence Act :

Insertion of Section 113A, Burden of proof lies with the person charged with Section 498A IPC (Dowry offence).

General Suggestion and Remarks by NCW :

- i) Cruelty to women is taking serious dimensions and hence punishment to be enhanced.
- ii) Compulsory registration of marriage and the list of gifts which may be given to the girl be registered.
- iii) Amend the Hindu Marriage Act to make registration of marriage under that Act compulsory.
- iv) Provide tax exemption on gifts to facilitate parents to settle property by way of gifts openly to their girls.
- v) Marriage expenses in no case to exceed 20% of the annual income of the bride's parents or guardians.
- vi) Greater emphasis should be placed on the proper and strict implementation of the provision relating to Dowry Prohibition officers and Advisory Boards by appointing full time officers who shall be accountable to the Advisory Board.

COMMISSION OF SATI (PREVENTION) ACT, 1987 :

Suggested Amendments by NCW-

- i) Substitution of title "An Act to provide for additional, ancillary or incidental matters connected with the prevention of Sati murder."
- ii) Preamble omitted.
- iii) In Sec 1 (1) for "Commission of Sati (Prevention) Act" "Commission of Sati Murder (Prevention) Additional Provisions Act" to be substituted.
- iv) Omit section 2(1) (a).
- v) Substitution of Section 2 (1) (d) to define court to mean "a District and Sessions Court".
- vi) Substitution of 'Sati murder' for "Sati" in Section 2 (1) (3).
- vii) In Section 2 (2) 'as in the code' and "or the code" to be omitted.
- viii) Part II (Section 3-5) to be omitted.
- ix) Part III for "Sati" the words "Sati murder" to be substituted.

- x) In Section 6(1) 'any abetment thereof' to be omitted.
- xi) In Section 6(3) for "any other provision of this Act" the words "or any other law" to be substituted.
- xii) In Section 8(1), for words "any offence under this Act" "Sati murder" to be substituted.
- xiii) Section 8(2) to be substituted to read as-"every collector or District Magistrate acting under sub-section (1) shall report seizure to the court and shall await the orders of such court for the disposal of the same.
- xiv) Part IV (Section 9-14) to be omitted.
- xv) Part v (Section 16 & 17) to be omitted.
- xvi) In Section 18, for "sub-section (1) of Section 4" the words "Sec 303A of the Indian Penal Code" to be substituted.
- xvii) In Section 18 for "Sati", wherever it occurs, "Sati murder" to be substituted.

In this connection it can be noted that National Commission for women suggested consequential amendments in other statutes like Indian Penal Code, Criminal Procedure Code, Indian Evidence Act etc.

Indian Penal Code :

Insertion of Section 303A Sati Murder-

- 1) Whoever burns or buries alive shall be punished to prevent the commission of "Sati murder."
- 2) Add section 303B glorification of Sati murder as an offence.

Criminal Procedure Code :

- 1) Section 39 (1)(v) duty of public to give information relating to Sati murder and its glorification.
- 2) Amendment Section 303A and 303B-cognizable, nonbailable and prescribing the punishment, which may extend to Rs. 3,00,000.

Indian Evidence Act :

Insertion of Section 113 AB, casting duty on the person charged with an offence under Section 303A with onus to prove otherwise .

General Suggestions and Remarks by NCW :-

- 1) Offence as Sati murder.
- 2) To treat the offence of Sati murder in the general penal law.
- 3) To study the special courts and special prosecutors under the Act.
- 4) Noticed delay in constituting special courts, in appointing judges, public prosecutors, delayed longer than ordinary courts.

THE CHILD MARRIAGE RESTRAINT ACT, 1929

Suggested Amendments by NCW :

1. The government should immediately appoint child marriage prevention officers. 306
2. The punishment provided for, under section 23, of the child marriage restraint Act 1929, should be amended so as to make the punishment more stringent.
3. A new provision should be included in the Act to the effect that any marriage performed in contravention to the order made by the child marriage prevention officer, should be void.
4. A new provision should be included in the Act for creating a penal obligation on every person present at a child marriage for objecting to or advising the person concerned against such marriage or reporting to the Child Marriage Prevention Officer, of the solemnization of child marriage.
5. Section 7 of the Act should be replaced by a provision for making all offence under the Act as cognizable without any qualifying clause.

THE MEDICAL TERMINATION OF PREGNANCY ACT, 1971

Suggested Amendments by NCW

- 1) Section 2, clause (a) should be revised to broaden the definition of guardian to include an individual having the care of the person of a) a minor women or b) a women of unsound mind.
 - 2) In section 2, clause (b) of the Act, the definition of "lunatic" should be deleted.
 - 3) Section 3, clause (2) explanation 1, of the Act should be amended to include offences under sections 376A to 376D of IPC as within its scope.
 - 4) Section 3, clause (4) of the Act should be revised so as to make it clear that the consent of the women concerned, must be obtained in every case.
 - 5) Section 5, clause (2) of the Act should be amended so as to indicate clearly which particular offence is constituted if a person who is not a registered medical practitioner performs abortion.
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THE PRE-NATAL DIAGNOSTIC TECHNIQUES (REGULATION AND PREVENTION OF MISUSE) ACT, 1994 :

Suggested Amendments by NCW.

1. All the clinics conducting ultra-sound investigation must be registered.
2. Law should provide imprisonment and fine for doctors conducting sex determination tests in violation of the Act.
3. Advisory and Supervisory Bodies should be set up NCW should be represented in the Central Appropriate Authority and Supervisory Body.
4. Issues relating to Pre-Natal Diagnostic Techniques should be taken up by State Women's Commission and State Human Rights Commissions.
5. The Act should be widely advertised in simple language, to reach people at large.
6. Advertisement of availability of sex determination facilities is banned by law violators should be punished.

(ii) NEVV BILLS/LAWS PROPOSED :

The New bills / laws proposed by the NCW for protecting different Women's rights including the

domestic violence victims' rights, some of them are stated below :

1) Draft Bill "Compulsory Registration of Marriage Act 2005"

- i) The Commission recommended for the enactment of a Uniform law relating to marriages.
- ii) Providing for the compulsory registration of marriage with the aim of preventing child marriages and also polygamy in the society.

2) The Protection of Women from Domestic Violence Rules 2005

- i. Provides wider protection to the women.
- ii. immediate relief to the women.
- iii. Appointment of Domestic Violence Prevention officers.
- iv. Recommendation with redrafted bill to be sent to the Government.

**(iii) PARIVARIK MAHILA LOK ADALAT (PMLA) :-
(AN ALTERNATIVE JUSTICE DELIVERY SYSTEM)**

The National Commission for women has evolved an innovative concept of PMLA for redressal and speedy disposal of cases under Legal Service Authority Act, 1987, which has its roots in the traditional Nyaya Panchayats.

The essential features of PMLA are amicable mutual settlement and flexibility in functioning. The NGOs in association with District Legal Aid and Advisory Board, activists, advocates and others, organize Parivarik Mahila Lok Adalats with the Commission's financial assistance.

So far, 130 PMLAs have been held in which about 7500 cases were taken up. In the year 2002-2003, 3 PMLAs were held. Earlier, in 1984 "The Family Courts Act" was enacted for the establishment of family courts with a view to promote conciliation and secure speedy settlement of disputes related to marriage and family affairs. The objective of setting up of the Family Courts is to persuade and assist the parties in arriving at a settlement in respect of the suit or proceedings. In 1987 another Act namely "Legal Services Authorities Act" was enacted to constitute legal services authorities at National, State and District level. Its mandate is to provide free legal services to the weaker sections of the society and to

organize Lok Adalats.

Accordingly, District Legal Aid & Advisory Board (DLAAB) are constituted which coordinates the free legal services and organize Lok Adalats within the districts. Their objective is to avoid lengthy process of dispute settlement in the Courts, in such matters where formal and elaborate examination of evidence is not necessary. They bring the parties to a compromise or settlement and legal sanctity is given to it. Any compoundable matter or suit or other proceedings pending before any civil, criminal or revenue Court or any tribunal constituted under any law in the area may be transferred to the Lok Adalats for arriving at a compromise or settlement. Every award of the Lok Adalat is deemed to be a decree of a civil Court or order of Court or tribunal and is legally binding on both the parties.

5.3 FORMATION OF THE STATE COMMISSION FOR WOMEN

The National Commission for Women realized that it may not be possible for it alone to look into the problems of women throughout the length and breadth of the Country. It has been advocating the constitution of the State Commissions for Women. So far as the Commission is aware, the State Government of Uttar Pradesh has already set up the Uttar Pradesh State commission for women in 2004.

5.4 CONCLUSION

The National Commission for Women received 23,722 complaints of crimes committed against women in 2020, the highest in the last six years. Nearly one-fourth of the total complaints were of domestic violence, according to NCW data.

Among states, the highest number of complaints were received from Uttar Pradesh at 11,872 followed by Delhi 2,635, Haryana 1,266 and Maharashtra 1,188, it added.

Of the 23,722 complaints, 7,708 complaints were received under the right to live with dignity clause. The right to live with dignity clause takes into account the emotional abuse of women.

According to the NCW data, a total of 5,294 complaints were related to domestic violence.

Increased stress levels, anxiety, financial worry, and lack of other such emotional support from

parents/family's side may have resulted in domestic violence in many instances in 2020.

“More so, home has become the workplace of both the spouses and as well as schools and colleges for their children. In such situations, women are multitasking being professional at the same time supporting their families from the same space. But the biggest challenge for women this year is not only to adapt but to thrive in this unprecedented situation,”

Lastly it is stated that, domestic violence is a crime which is not created in a day nor it will be removed from the society in a year. So, National Commission for women is constantly fighting against domestic violence like cruelty by husband and in-laws, dowry death, Bigamy, bride burning etc., and trying to eradicate this problem from India. In majority of cases of cruelty by husbands and in-laws, NCW is trying to settle the matter through counselling of both the parties by its complaint and counselling cell. Many family dispute cases are successfully solved through the intervention of National Commission for Women. An enquiry committee is constituted to look into serious types of domestic violence cases.

CHAPTER 6

JUDICIAL RESPONSE TO DOMESTIC VIOLENCE

6.1. Legal activity

The proper forum for the redress of grievances for a man or a woman is the judiciary. It has to play an active role to achieve it and be fair, impartial and above the level of ordinary persons and sensitive to people's problems. The Indian judiciary has shown sensitivity to the cause of women in several decisions but in some cases negative observations were made. The Protection of Women from Domestic Violence Act, 2005 is a unique law which goes beyond marital relationships, bringing into its ambit all women in domestic relationships. It provides protection from domestic violence perpetrated by male members in a shared household against their wives and against other female relatives - sisters, daughters or widows. It recognizes for the first time, the existence of economic and sexual violence and establishes concepts such as „right to residence“ and provides for quick relief to victims of domestic violence. Some landmark judgments of the Supreme Court and High Court have helped to shape the law by clarifying concepts and laying to rest features of the law that were viewed as controversial. An appraisal of certain recurrent issues that have arisen under the law has been done through these judgments. These judgments discuss and clarify important issues under the Act. The intention of the Protection of Women from Domestic Violence Act was to provide protection to women from domestic violence, to ensure the „right to residence“ and all other rights under the Act, to all women living in a domestic relationship³⁸ and living at any point of time in a „shared household“. Accordingly, the definition of „domestic relationship“¹ which forms the basis of reliefs provided for, and against whom the reliefs may be claimed under the Act, includes within its scope „relationship in the nature of marriage“. This inclusion of women living in a „relationship in the nature of marriage“ as beneficiaries under the Act has been a topic of considerable debate since the Act came into force. It was criticised on the grounds that it puts „illicit relationships“, „mistresses“, „live-in relationships“ at par with the relationship of marriage which, in turn, will destroy the institution of marriage. The courts have consistently ruled in favour of the inclusion of „relationship

³⁸ 1 Section 2(f):- “domestic relationship” means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage or through a relationship in the nature of marriage, adoption or are family members living together as a joint family”.

in the nature of marriage“ while granting maintenance to women, and have viewed the inclusion of this category as a positive step towards protecting all women, irrespective of their marital status. This issue came up for adjudication for the first time after the enactment of Protection of Women from Domestic Violence Act, in *Aruna Parmod Shah v. Union of India in 2008*.³⁹ The judgement by the High Court of Delhi successfully argued in favour of such inclusion and held that “it is not unconstitutional for Parliament to provide for protection to a woman in a relationship akin to marriage, along with and juxtaposed to the protection given to wives and legitimate children.”⁴⁰ The issue of long standing relationships between two consenting adults and the legal right to maintenance for women in such relationships in the light of the Domestic Violence Act has been put to rest by the Supreme Court in 2011. Though the question of maintenance in both cases came up under Section 125 under the Code of Criminal Procedure, 1972, (Cr PC) and not under the Protection of Women from Domestic Violence Act, 2005 the Supreme Court has, in both judgments, examined in-depth and based its judgment on the provisions of the Protection of Women from Domestic Violence Act, which has for the first time in the history of legislation protecting women in India articulated the right to seek protection, residence and maintenance for women in „relationship in the nature of marriage“. In *Virendra Chanmuniya vs. Chanmuniya Kumar Singh Kushwaha and Anr.*⁴¹, the appellant contended that she was married as per prevalent custom and usage, after the death of her first husband, to his younger brother, the respondent. The parties lived together as husband and wife and discharged all marital obligations towards each other. The respondent, after a few years, started harassing and torturing the appellant and refused to provide her with maintenance. Proceedings under Section 125 of the Cr PC were initiated by the appellant. The present Special Leave Petition was filed by the appellant against the judgment of the High Court upholding the respondent“s contention that he was not the husband of the appellant, and therefore, she was not entitled to maintenance from him, since only legally married women could claim this under the provisions of Section 125 Cr PC. The judgment accordingly restricts itself essentially to validity of a claim for maintenance under Section 125 Cr PC, by a woman in a case where strict proof of marriage is not available and lays down the ratio that where partners have lived together for a long time as husband and wife, a presumption would arise in favour of a valid wedlock. After a detailed examination of the provisions of the Protection of Women from Domestic Violence Act, it was noted that the Act gives “a

³⁹ MANU/DE/0626/2008.

⁴⁰ Id.

⁴¹ (2011)1SCC 141

very wide interpretation to the term 'domestic relationship' as to take it outside the confines of a marital relationship, and even includes live-in relationships in the nature of marriage within the definition of 'domestic relationship' under Section 2(f) of the Act". The wide coverage under the definition of „domestic relationship“ has been one of the most significant provisions under the Act. The effect of such inclusion ensures that “women in live-in relationships are also entitled to all the reliefs given in the said Act”. The judgment concludes that “if monetary relief and compensation can be awarded in cases of live-in relationships under the Act of 2005, they should also be allowed in proceedings under Section 125 of Cr PC” and upheld the claim of maintenance sought on the ground that parties though not married, have lived together for a long period. This judgment is noteworthy from the point of view of the Protection of Women from Domestic Violence Act as it draws directly on the relevant provisions from the Act to expand the category of relationships which can legitimately benefit from the maintenance provisions under Section 125 Cr PC, by interpreting the basic social intent⁴² and purpose behind both enactments. The inclusion of, relationship in the nature of marriage”, within the definition of „domestic relationship“ under the Domestic Violence Act, has generated some debate and criticism. The Supreme Court recognizes that the Protection of Women from Domestic Violence Act is a forward -looking” Act as it has successfully incorporated the constant change in social attitudes and values. By concluding that the provisions under Section 125 Cr PC must be considered in light of the Act of 2005, it has added strength to the underlying intent with which the Act was enacted – namely to protect and provide for women, irrespective of their marital status - and to ensure that men are not allowed to benefit from simple legalirregularities and, most importantly, from relationships entered into with the intent of living together as man and wife, without contracting marriage. The judgment further states that the inclusion of „relationships in the nature of marriage“ is in consonance with the principles of social justice and upholds the dignity of the individual enshrined in the preamble to our Constitution. In Velusamy vs. D. Patchaiammal, the appellant claimed that the respondent was not his wife. The appellant has provided proof that his wife was Lakshmi whom he married in 1980 and stated that they have a grown-up son from this wedlock. The respondent Patchaiammal, had filed for maintenance under Section 125 of the Cr PC in 2001, claiming that she was married to the respondent in 1986 and they lived together in her father’s house for 2 – 3 years, after which the appellant left the respondent and started residing in his native village and visited her occasionally. The Family Court of Coimbatore and the High Court of Madras held that

⁴² Vimal (K) vs. Veeraswamy (K) (1991) 2 SCC 375

the appellant was married to the respondent and not to Lakshmi. The Supreme Court points out that the lower courts have made a declaration about Lakshmi's marriage to the appellant, without issuing her a notice and giving her an opportunity to be heard. Since any findings on her marital status would affect her rights, no valid declaration could be given by the court without issuing her a notice. Therefore, it set aside the findings of the courts below with respect to the invalidity of Lakshmi's marriage to the appellant. The matter was remanded back to the Family Court in order to ascertain these facts after issuing a notice to Lakshmi. The question of validity of the respondent's marriage to the appellant could only be decided after the above findings. In light of the fact that the Supreme Court has decided to set aside the finding that Lakshmi was not married to the appellant on grounds that she was not heard, the judgment observes that it cannot therefore be stated at this point that the respondent was married to the appellant. The respondent could claim maintenance as a wife only if it was established that Lakshmi was not married to the appellant. The questions as to whether the respondent would be entitled to a claim for maintenance under Section 125, or if it is shown that the respondent was not married to the appellant, but has lived with him in „a relationship in the nature of marriage“, in light of the provisions of the Protection of Women from Domestic Violence Act, was examined. Upon examination of the definition of „aggrieved person“⁴³ and „domestic relationship“⁴⁴ taken together, the judgment notes that the expression “in the nature of marriage” included in the definition of “domestic relationship” has not been defined in the Act and expressed the need to interpret the expression in light of the fact that a number of cases under this category can be expected to come up before courts, hence an authoritative decision is required to elucidate what is and what is not “a relationship in the nature of marriage”. The judgment points out that in clearly establishing two distinct categories, namely relationship of “marriage” and “relationship in the nature of marriage”, Parliament has, without any doubt, intended that the enactment protect and benefit women in both these relationships. The two cases mentioned above involved circumstances where the legality of marriage claimed by the women approaching the Court is unclear. While courts have been progressive in repeatedly stating that strict proof of marriage is not required when deciding a case of maintenance under 125 Cr PC on the reasoning that the purpose of the provision is to prevent destitution, the question of what comprises a “relationship in the nature of marriage” has remained largely unanswered. In *Indra*

⁴³ Section 2(a) – “aggrieved person” means any woman who is, or who has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent.

⁴⁴ Section 2(f) – “domestic relationship” means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family

Sarma vs. V.K.V. Sarma, the question before the Supreme Court was whether a live-in relationship would amount to a relationship in the nature of marriage falling within the definition of domestic relationship under Section 2(f) of the Protection of Women from Domestic Violence Act, 2005 and the disruption of such a relationship by failure to maintain a woman involved in such a relationship amounts to domestic violence within the meaning of Section 3 of the Domestic Violence Act.⁴⁵ The Parliament has taken note of the emerging trend of „live-in“ relationships in the country, but has used the expression “nature of marriage” and not the expression “live-in relationship”. It is, therefore, important that the expression is interpreted, keeping in mind the language used by Parliament. In the opinion of the Court, “relationship in the nature of marriage” is akin to a common law marriage and states that not all “live-in relationships” will amount to “a relationship in the nature of marriage” in the way it is intended under the Act. The judgment noted, by way of illustration, that merely spending weekends together, a one night stand, a case where the man has a „keep“ who he maintains financially but uses merely for sexual purposes and or as a servant, would not qualify for protection under the Act within the category of “relationship in the nature of marriage”. In *Gokal Chand vs. Parbin Kumari*⁴⁶, the Supreme Court held that the continuous cohabitation of man and woman as husband and wife may raise the presumption of marriage, but the presumption which may be drawn from long cohabitation is a rebuttable one and if there are circumstances which weaken and destroy that presumption, the Court cannot ignore them. Polygamy, that is a relationship or practice of having more than one wife or husband at the same time, or a relationship by way of a bigamous marriage that is marrying someone while already married to another or maintaining an adulterous relationship that is having voluntary sexual intercourse between a married person who is not one’s husband or wife, cannot be said to be a relationship in the nature of marriage.⁴⁷

Parliament has to ponder over these issues, bring in proper legislation or make a proper amendment of the Act, so that women and the children born out of such kinds of relationships be protected though those types of relationship might not be a relationship in the nature of a marriage. A mistress, who is in distress, a survivor of a live-in relationship which is of serious concern, especially when such person is poor and illiterate, in the event of which vulnerability is more pronounced, which is a social reality. Children born out of such relationship also suffer most which calls for bringing in remedial measures by the Parliament,

⁴⁵ *Indra Sarma vs. V.K.V. Sarma*. Retrieved from <http://indiankanoon.org/doc/192421140/> on 26-04-16

⁴⁶ AIR 1952 SC 231

⁴⁷ *Gokal Chand vs. Parbin Kumari* AIR 1952 SC 231

through proper legislation.⁴⁸

Another controversy that has constantly shrouded the Protection of Women from Domestic Violence Act, 2005 is on the question whether a female can be a respondent under the Act. Section 2(q) of the Protection of Women from Domestic Violence Act, 2005 defines, respondent as “any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act. Proviso to this definition says that an aggrieved wife or a female living in a relationship in the nature of a marriage may also file a complaint against a relative of the husband or the male partner.” Since the definition specifies that an adult male member can be a „respondent“ and the proviso does not specifically state that the relative of the husband or partner includes a women relative, there have been a large number of cases where it has been contended that women cannot be made respondents under the Act and whether any relief under the Act can be passed against women. This question has more or less been settled in the affirmative. Judgments of High Courts have, in light of the proviso to the definition, has held that the proviso does not specifically exclude women from its preview and a wide interpretation of the proviso read with the statement of objects and reasons implies that women relatives can be respondents under the Act.⁴⁹

The argument in favor of the exclusion of women as respondent points out that since the Act provides in its Preamble that the law was enacted to redress women against domestic violence; the Act cannot be used against women. This argument was invalidated on the ground that women, as members of a family, are often responsible for perpetrating domestic violence against other female members of the family and excluding them from the definition of a respondent would defeat the basic purpose of the Act.⁵⁰

Despite judgments by several High Courts in favour of inclusion of female relatives of the husband or male partner within the scope of complaints under the Act, sporadic cases where courts have held to the contrary continue to surface. One such judgment was the High Court of Karnataka judgement in the case of *Smt. Leelavathi S. vs. Shri Murgesh & Ors*⁵¹ where a reference was made to the Division Bench of the

⁴⁸ supra note 154

⁴⁹ Jayadipsinh Prabhatsinh Jhala and Ors vs. State of Gujarat and Ors (2010) 51 GLR 635.

⁵⁰ Varsha Kapoor vs. Union of India & Ors. Writ Petition (Cril.) No. 638 of 2010

⁵¹ ILR 2010 KAR 4673

High Court of Karnataka to decide as to whether the „Respondent“ as referred to under Section 2(q) of the Protection of Women from Domestic Violence Act, 2005 would include a female relative. The Division Bench held that the definition clause contained under Section 2(q) cannot be constructed to extend its meaning to include female relatives within its preview. It was observed that the Court must avoid reading into the provisions anything that is not expressly provided for and anything that is likely to create confusion and chaos. In arriving at the above contention, the bench examined in detail the proviso to the definition in light of statutory norms of construction laid down by the Supreme Court in a number of cases. Stating that provisions in a statute must always be given their plain and literal meaning, unless such meaning leads to absurd or irreconcilable results which are against the intention of the legislature, the Bench concluded that by the proviso to the section, it cannot be construed that Parliament intended to expand the meaning and scope of the term „respondent“ so as to encompass even female relatives of the husband or male partner of the aggrieved person. If that was the intention of the Parliament then the provision would have been clear and specific and worded in a different way. Observing that the definition of the term respondent does not incorporate an inclusive clause, the judgment states that since all reliefs under the Act are only against the respondent, even where the respondent abets or commits acts of domestic violence through female relatives, a protection order can be passed in favor of the aggrieved person, it is, therefore, not necessary to proceed under the impression that unless proviso to Section 2(q) is given an expanded meaning to extend the reach of the main definition clause defining the term „respondent“, the intention and purpose of the Act will not be served. The reference is thus answered making it clear that the definition of the term „respondent“ does not include a female relative of the husband or male partner of the aggrieved person. On January 31, 2011, the Supreme Court gave its decision in *Sandhya Manoj Wankhade v. Manoj Bhimrao Wankhade and Ors*⁵² finally laid to rest the issue with respect to women respondents holding that reliefs can be passed against women. The decision of the Apex Court arose out of an appeal against the judgement passed by the Nagpur Bench of the Bombay High Court directing the appellant to vacate her matrimonial home and confirming the order of the Sessions Judge deleting the names of the women respondents from the proceedings. The brief facts of the case are that the appellant after her marriage lived with her husband, mother-in-law and sister-in law. Following several episodes of physical beating within a year of marriage, the appellant filed a case under Section 498-A IPC and a complaint under Section 23 of Protection of Women from Domestic

⁵² SC/0081/2011

Violence Act. An order was passed by the Judicial Magistrate First Class for interim maintenance against the husband and restraining the respondents, namely, the husband, mother-in-law and sister-in-law from dispossessing the appellant from her matrimonial home. In the meantime, the mother-in-law filed an application in the Court of the Judicial Magistrate, praying for modification of the order and directing the appellant to leave the mother-in-law's house. The Magistrate dismissed the application stating that it was not maintainable. Following this dismissal, the mother-in-law and the sister-in-law filed an application under Section 29 of the Protection of Women from Domestic Violence Act, questioning the orders passed by the Magistrate's Court, on the grounds that since they were women they could not be made respondents in the proceedings filed by the appellant under Act. The second contention raised by them under this application was that the matrimonial home of the appellant belonged exclusively to the mother-in-law and could not therefore qualify as "shared household" under the Act. The Sessions Judge allowed the appeal and set aside the order of the Magistrate's Court, and modified the order to the extent of setting aside the injunction restraining the respondents, namely, the mother-in-law and the sister-in-law from dispossessing or evicting the appellant from her matrimonial home. They directed the first "respondent", that is, her husband, to provide separate accommodation for the residence of the appellant or to pay Rs. 1,000 per month in lieu of providing accommodation. The question with respect to whether a female member of the husband's family can be made party to the proceedings under the Act was not decided, and though the Sessions Judge did not absolve the women „respondents“ in his order, he observed that female members cannot be made party in the proceedings under the Act as "females" are not included in the definition of „respondent“ in Section 2(q) of the Act. In a writ petition filed by the appellant, the High Court directed the appellant to vacate her matrimonial house which was in the name of the mother-in-law and confirmed the order related to deletion of the names of the, other members", that is, the women respondents. In an appeal by the aggrieved person, the Supreme Court said that it is unable to sustain the decisions of either the Sessions Judge or the High Court and notes that although Section 2(q) defines the, respondent" to mean any adult male person, who is or has been in a domestic relationship with the aggrieved person, the proviso widens the scope of the definition by including a relative of the husband or male partner within the scope of a complaint which may be filed by an aggrieved wife or a female living in a „relationship in the nature of marriage“. It observed that the word „female“ has not been used in the proviso to Section 2(q) and if the legislature intended to exclude females from the ambit of the complaint, instead of providing in the proviso that a complaint can be filed against a „relative“ of the husband or male partner, females would have been specifically excluded. No restrictive meaning can

therefore be given to the expression, relative” since it has not been specifically defined to make it specific to males only. Setting aside the judgments of the Sessions Judge and the Nagpur bench of the Bombay High Court, the Supreme Court held that both the Sessions Judge and the High Court were wrong in holding that the legislature did not intend to include female relatives of the husband or the male partner within the preview of a complaint under the Act. It directed that the trial Court must proceed against the two women respondents, viz. the mother-in-law and the sister-in-law on the complaint filed by the appellant. The issue of whether women can be respondents under the Act has finally been settled and a clear case for their inclusion has been established by the Apex Court in the above judgment. This judgment finally clarified the ambiguity in definition and the proviso to Section 2(q) claimed under numerous cases, settling finally the issue of the intention of the legislature to include women as respondents under the provisions of the Protection of Women from Domestic Violence Act by incorporating the proviso to this section.

On a careful perusal of Section 31 of the Act, it is found that the act of domestic violence does not attract penal consequences as per the Act. Only when a protection order is passed and the respondent in the main petition violates the protection order passed by the court, then such act of breach of protection order is construed as an offence. The penal consequence emanates from the date of protection order passed by the court. But, it does not date back to the act of domestic violence committed by the husband and his relatives. The proceedings under the Protection of Women from Domestic Violence Act, 2005 are a summary one in nature. It does not require lengthy trial engaging both the parties for quite a long time.⁵³

In the Objects and Reasons of the Protection of Women from Domestic Violence Act, 2005, the term, civil law” twice used therein is not an empty formality and that would convey that the proceedings at the first instance should be civil in nature. The legislators were conscious of the fact that all of a sudden if criminal law is enforced on the husband and his relatives, certainly that might go against the victim and have adverse effect in the matrimonial relationship between the husband and wife. The object of the Act is that the victim should be enabled by law to live in the matrimonial family atmosphere in her husband/in-law’s house. It is not the intention of the said enactment to enable the lady to get snapped once and for all her relationship with her husband or the husband’s family and for that, civil law and civil

⁵³ Dennison Paulraj vs. Mrs. Mayawinola Madras High Court on 2 April,2008. Retrieved from <http://indiankanoon.org/doc/1391979/>

remedies are most efficacious and appropriate. The initiation of action is given the nature of civil proceedings which the authorities including the Magistrate responsible to enforce the said Act should not lose sight of.⁵⁴

6.2. Inadequacy of legal provisions

The law has remained an ineffective instrument of social change for equality of women. Even when domestic violence laws exist, this does not always mean they are implemented, or implemented in ways that actually help women. In many cases, victims of domestic violence are economically dependent on their intimate partner and so conviction and imprisonment of the perpetrator, for example, leave the women bereft of her only source of economic support. Domestic violence laws need to be implemented in tandem with measures for the economic empowerment of women and appropriate social support mechanisms for victims who take the difficult step of seeking legal recourse.⁵⁵

There are certain provisions under the Indian Penal Code, 1860 which deal with violence at home. If a woman who has been subjected to domestic violence in her matrimonial home commits suicide, the person who had harassed the woman and subjected her to cruelty is liable for abetment to commit suicide. The victim's inability to get access to law makes legal remedies ineffective and the inability of the law to reach the victim is even more tragic.⁵⁶

In many cases, even when women do seek help from state institutions such as the police, health and social services and the justice system, the response can be inadequate. The nature of police intervention in domestic violence should be made crucial for more effective implementation of the various provisions relating to women, civil or criminal. Not all countries have laws on violence against women and when they do, they are often more concerned with responding to the violence that has already occurred than with preventing it in the first place.

⁵⁴ Vijaya Baskar vs. Suganya Devi on 28th October 2010. Retrieved from <http://indiankanoon.org/doc/61175>

⁵⁵ United Nations Women 2011/2012.

⁵⁶ R.D. Dubey. (2010). "Role of Police and Protection of Women against Domestic Violence". Indian Journal of Law and Justice. Vol.1 No.1 Inaugural Issue, Department of Law, University of North Bengal, Darjeeling, West Bengal. p.64

While laws have proved inadequate to deal with this blatant form of violence, newer forms of violence against women are coming to light. When women are trapped in a violent marriage and in a vicious cycle of violence, it may lead only to escalation of this phenomenon of which our legislators and the judiciary need to take note. The operation of law can only make sense in terms of its larger social context and implications. Laws should change and grow with the times. Legislations are not enough. No awareness campaign can even be complete unless there is real focus on the powers of women and the need for women empowerment.

Until there is empowerment of women to balance the power between men and women, legal awareness and knowledge is disseminated, their economic rights are given and status within the family are raised, the laws will remain in effect only on papers. It would be all the agencies starting from society, the enforcement agencies and for the courts to try and bring about the situation for betterment and solution of the problems relating to the enforcement of the legal rights for the women.

The issues which were raised addressed only the superficial symptoms and not the basic questions of power imbalance between men and women, the women's economic rights within the family and their status quo within the society. Legislations should not only elevate the status of the woman in her matrimonial home but also end domestic violence. It should effectively arrest the basic trend of violence against women which is the result of women's powerlessness in a male-dominated society. The enactments should plug procedural loopholes and evolving guidelines for strict implementation. Though there is a time limit for deciding cases, majority of the cases go on for long periods. The question confronting us today is whether social change and gender justice can be brought about merely by enacting stricter acts. There should be impact of public pressure on the judiciary. Perhaps public pressure is a better safeguard to ensure justice than ineffective enactments.

6.3. Ignorance of existing laws and sources of legal aid

A vast majority of women are ignorant of the protective laws or even their existence. Because of illiteracy and poor outreach of legal services, women are more often than not ignorant about their rights. In fact there is overwhelming evidence to indicate a wide gap between the constitutional mandate and disturbing trends in social reality. The governmental apparatus and society have not come to terms with the

implications of this problem.

The need of the hour is to make the women aware of their rights, the constitutional safeguards and the legal provisions available in case of violation of the same. Consciousness of the enactments on law on domestic violence against women at the grassroots level is one tool to bring about change in the way society deals with the problem of domestic violence. But the main issue is that society still considers domestic violence a private matter. In fact, domestic violence is not even a problem; it is only a petty family quarrel that should be settled within the four walls of the house. Patriarchy as well as notions of shame and so-called honor associated with women's sexuality combines to make the pursuit of justice even more difficult in incidents of violence against women.⁵⁷

Lower educational and literacy levels among women generally, and particularly women from lower caste can translate into a high level of dependency on husbands, a greater reluctance to seek help when violence against women occurs, and a decreased awareness of rights and laws.⁵⁸ Thus economic empowerment, together with higher education and change in societal behaviours and legal reforms may protect women from domestic violence.⁵⁹

The battered women often are unaware of their legal rights. Ignorance of the law is pervasive among the general population and especially women. The court system does not reach a majority of the women who experience domestic violence. Victims of domestic violence suffer in silence because of sheer ignorance of law.

Majority of women bear all the atrocities without raising their voice. Social workers along with others like lawyers, police, women organizations etc. must prepare women to break the silence and fight against the atrocities which include domestic violence.⁶⁰ They should counsel the women who are victims of domestic violence and their husbands and in-laws to reduce them.

⁵⁷ supra note 146

⁵⁸ Kaur, R., & Garg, S. (2008). Addressing domestic violence against women: An unfinished agenda. *Indian Journal of Community Medicine*

⁵⁹ K. Dalal. (2010). "Does economic empowerment protect women from intimate partner violence". *Journal of Injury and Violence Research*, 3(1). pp. 35-44.

⁶⁰ K. Surekha Rao & K. Suneetha. (2005). "A study on domestic violence and role of social workers". In K. Uma Devi. (Ed.). *Violence against Women – Human Rights Perspective*. New Delhi: Serials Publications

The solution to domestic violence does not lie in awarding stringent penalties to the accused but in creating alternatives for women whereby they are strengthened. The law enforcing agencies should work more effectively on the issue of domestic violence and create awareness among the public regarding legal provisions for the victims of domestic violence. The supportive agencies must work more on domestic violence at preventive level rather than curative level.

CHAPTER 7

SUGGESTION AND CONCLUSION

DV and mental health of women is proportional to each other in this study we found various factors present in our society to aggravate or subside the mental stress induced by DV. It is evident that physical health can be cured and gain health by therapeutic intervention but DV has exhibited its presence as psychological and psychosomatic disorders. Several studies published papers that DV primarily effect body and mind but lastly psychosomatic effect on women's health is alarming. Louise M Haward et al (2010)⁶¹ published report on DV and its outcome is increasing evidence of chronic, severe and often long-term evidence of ill mental health in DV care services should respond by increasing efforts to identify, prevent or reduce violence against women. Kimuna SR et al (2013) published a report in journal of interprets violence based on report of Indian National health survey III (NFSH III) 2005-2006 conducted on 69484 marred women aged between 15 to 49 from all region of India. The result shows that 31% respondents experienced physical violence in past 12 months before the survey, the corresponding figure for sexual violence was 8.3%.

A study of systematic review and meta-analysis published by Catharine Paddock reported that victims of DV suffered various mental health disorder like depressive disorder were 2.5 times more likely to have been victims of DV (with a prevalence estimated at 45.8%) and anxiety disorders were 3.5 times with a prevalence estimated 27.6 %.⁶²

PTSD having experienced 7 times more (prevalence estimated 61%) then women with no mental health problems. A health study published by Giulia Ferrari et al (2014) stated that depression and anxiety thresholds process 76% of DV and abuse surfing victims.⁶³

Sharma et al (2019) published a report of Delhi community-based study that a quarter of women (25.3%)

⁶¹ Louise M Haward et al (2010) Domestic violence and mental health, *Int Rev Psychiatry* 22:5, 525-534

⁶² Catharin paddock, medical health disorder liked to domestic violence, www.medicalnewstoday.com/article/254475#4

⁶³ Giulia Ferrari et al (2014), www.tanfonline.com/loi/zgha20

reported unhealthy mental status (>8 score) in 4 weeks of victims of DV.⁶⁴ Proportionately high percentage of survivors of DV were found amongst those who had suffered hurt / injuries, pain / swelling / bruises, and among those who had consumed poison. Less percentage of women respondents with burns and orthopedic problems reported DV as its cause. Possibly because it is easier 'cover up' burns or an orthopedic problem 'as an accident' than to give a credible cover up story for grievous hurt or injury like stab wounds, or for poisoning, or other signs of obvious physical assault, as just an accident.⁶⁵ Hence it is evident that majority of cases of DV still taboo and social stigma in society. The mental status of victims of DV is so devastating that she needs moral, social and judicial protection to curb down significant cases of mental illness.

Various studies conducted in women who experience intimate partner violence (IPV) are at greater risk for developing mental illness than women who are not abused (Carlson, McNutt, Choi, & Rose, 2002; Jones et al., 2001; National Institute of Mental Health, 2000; Roberts, Lawrence, Williams, & Raphael, 1998; Woods, 2005). Although the psychological consequences of abuse can be broad, the most common disorders are depression and/or posttraumatic stress disorder (PTSD) (Marais, de illiers, Moller, & Stein, 1999; Woods, 2005). Depression is noted in 35% to 70% of IPV victims (Gerlock, 1999; Marais et al., 1999; McCauley et al., 1995; Peterson, Gazmararian, & Clark, 2001; Roberts et al., 1998; Stein & Kennedy, 2001) compared to 12% of women in the general population (National Institute of Mental Health, 2000). Fifty-five to ninety-two percent of IPV survivors experience mild to severe PTSD (Astin, Lawrence, & Foy, 1993; Eisenstat & Bancroft, 1999; Gallop & Everett, 2001; Gorde, Helfrich, & Finlayson, 2004; Humphreys, Lee, Neylan, & Marmar, 2001; Saunders & Kindy, 1993), compared to 10.4% of women in the general population (National Center for Post-Traumatic Stress Disorder, n.d.). The severity of PTSD symptoms has been linked to both the severity and frequency of the abuse (Mayer & Coulter, 2002) and to the presence of depressive symptoms (Stein & Kennedy, 2001) and other conditions (Gerlock, 1999; McCauley et al., 1995; National Institute of Mental Health, 2001). The prevalence of anxiety disorders ranges from 19% to 54.4% (Gerlock, 1999; McCauley et al., 1995), with another 27% to 36% experiencing phobias (Roberts et al., 1998) in contrast to the general population rates of 10.3% for phobias and 14% for any anxiety disorder (Anxiety Disorders Association of America,

⁶⁴ Sharma et al mental health effect of Domestic violence against women in Delhi: A community-based study, JFamily Med Prim care 2019 jul; 8(7); 2522-2527

⁶⁵ <http://hdl.handle.net/10603/58570>

2002). The prevalence of any mental health disorder is estimated at 58.9% (Tolman & Rosen, 2001), more than twice the general population (22.1%; National Institute of Mental Health, 2001).

Despite the association between IPV and mental illness, there are few comparison studies of abused and non-abused women. None of those studies has been conducted with women in the general population. Instead, they use literature reviews with references to nonmatched samples (Jones et al., 2001; Mayer & Coulter, 2002; Russell & Uhlemann, 1994) or are limited to specific primary-based care samples where only one or two factors are considered, such as depression and anxiety (Carlson et al., 2002). The abundance of research describes the mental health characteristics of abused women without the inclusion of population-based comparison or control groups (Constantino, Sekula, Lebish, & Buehner, 2002; Humphreys et al., 2001; Krishnan, Hilbert, & Pase, 2001; Sackett & Saunders, 2001; Stein & Kennedy, 2001; Sutherland, Bybee, & Sullivan, 1998). In addition, study populations are often limited to inpatient psychiatric, primary care, or emergency room patients (Dienemann et al., 2000; Krishnan et al., 2001; Poirier, 2000; Roberts et al., 1998; Scholle, Rost, & Golding, 1998). In these studies, the variable of interest is the presence of abuse among women presenting with mental illness; other variables are not controlled for in establishing the relationship between IPV and mental illness. Furthermore, studies that sample populations of abused women are limited by a focus on abused women residing in shelters (Humphreys et al., 2001; Mohr, 2001; Murphy, 1999), without comparison to the general population.

Helfrich A Christine et al reported a study of women of DV violence shelter that Psychological symptoms were more prevalent among the study participants than the general U.S. population. Most notable was the greater occurrence of sadness or anxiety (77.0%) and major depression during the past 12 months (51.4%) among these women compared to the national averages of 6.1% and 2.4%, respectively. More women (35.1%) reported having phobias and strong fears compared to 4.3% for the general U.S. population. During the past 12 months, 23% of women reported experiencing bipolar disorder and manic depression compared to 0.7% nationally. Also, 14% of women had antisocial, obsessive-compulsive personality, or another severe personality disorder versus 0.6% of all U.S. women. Women in this sample reported experiencing anxiety disorder (32.4%) and PTSD (16.2%). Other mental health disorders that some of the women experienced were schizophrenia (3%) and paranoid or delusional disorder (8%); rates for the general U.S. population were 0.1% and 0.3%, respectively. Although only 4.6% of American women identified themselves as disabled, 35.1% of the study sample identified themselves as disabled.

It was also noted that women were not asked, in this question, to identify the nature of their disability.⁶⁶ This study revealed significantly that women victims of DV is severally suffering from mental health symptoms among the society, olds homes, parents house and abused sheltered women than women in not only in India but across the world population. Service providers must have an informed understanding of medical conditions as well as their symptoms and functional implications. By addressing psychological symptoms as a medical condition rather than as a manifestation of personal weakness, staff can effectively recommend appropriate treatment for women that will increase their functioning and the judicial intervention should not end by summarizing the cases, the pending cases is another catalyst in addition to metal health of women's.

7.1 Conclusion

According to the World Health Organization (WHO) report, among women aged 15-44 years, gender violence accounts for more deaths and disability than cancer, malaria, traffic injuries and war put together (WHO 2005). International summits namely the United Nations conferences on Population and Development in Cairo in 1994, the Declaration on the Elimination of violence Against women, Platform of Action for United Nations in Vienna in 1993 and the Beijing World conference on women in Beijing in 1995 recognize violence against women as a violation of basic human rights, impediment to women's autonomy and adverse repercussion on reproductive health.

Worldwide, women experience many forms of violence to gender extent than men. Women are unequivocally the primary victims of family violence, and the tradition of household privacy has kept this violence against women hidden from scrutiny. Violence of any kind has a serious impact on the economy of a country: because women bear the brunt of DV, they bear the health and psychological burdens as well. Victims of DV are abused inside what should be the most secure environment- their own home. Violence against women is often referred to as gender-based violence. Gender is the term used to denote the social characteristics assigned to men and women, which interact with other factors such as age, religion, nationality, ethnicity, and social background. Gender based violence is therefore violence

⁶⁶ Helfrich A Christine et al, Mental Health Disorders and Functioning of Women in Domestic Violence Shelters Journal of Interpersonal Violence Volume 23 Number 4 April 2008 437-453

targeted to women or girls on the basis of their subordinate status in society (Heise et al) Women are vulnerable to different types of violence at different moments in their lives. The life-cycle perspective provides a framework within which to account for the pervasiveness of gender-based violence in the lives of women and girls. This approach presents the wide spectrum of abuses that women and girls experience throughout their lives, delineating the specific form and scope of violence suffered by girls and women at each stage of the life cycle. Viewed from a life-cycle perspective, there are six basic phases in the lives of women and girls when they are likely to experience gender specific forms of abuse and assault. These are: per birth, infancy, girlhood, adolescence, reproductive age and old age.

The period 1945 to 1962 started with the UN Charter calling for gender equality in Article 3 and 8 which resolved to “achieve international cooperation ...in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion”(Art 1,UN Charter). A landmark proclamation was the Universal Declaration of Human Rights (UDHR) which stated that all human beings are born free and equal in dignity and rights. Women’s organizations were successful in their attempts at establishing the UN Commission on the Status of Women (CSW) and other formal mechanisms for achieving gender equality and advancement of women. Subsequently, the women’s movement of the 1960’s and 1970’s with international support led the United Nations to declare the years 1975 to 1985 as the UN Decade for Women (Thomas & Beasley, 1993). In the year 1979, the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) was adopted by the General Assembly, For the first time, the convention targeted culture and tradition as influential forces shaping gender roles and family relations. With this unfolded a series of conferences beginning with the conference at Mexico City in the year 1975. In the year 1985, in the conference held at Nairobi, which saw the birth of ‘global feminism’ a consensus was reached that ‘violence against women exists in various forms in everyday life in all societies. Women are beaten, mutilated, burned, sexually abused and raped. Such violence is a major obstacle to the achievement of peace and other objectives of the Decade and should be given special attention. National machinery should be established in order to deal with the question of violence against women within the family and society’. Following this in the year 1989, the UN Commission on the Status of Women in Vienna compiled a mass of DV statistics and analyses by women’s rights activists and published the report ‘Violence against Women in the Family’ which came to the conclusion that “women have been revealed as seriously deprived of basic human rights. Not only are women denied equality with the balance of the world’s population, men, but also

they are often denied liberty and dignity, and in many situations suffer direct violation of their physical and mental autonomy” (Connors, 1989). The Fourth World Conference held at Beijing in 1995 and its Platform for Action asserted women’s rights as human rights and proclaimed that in many cases violence against women occur within the family where the violence is often tolerated. Further, the Platform for Action held that the neglect, physical and sexual abuse and rape of girl children and women by family members and other members of the household, as well as incidents of spousal and non spousal abuse, often go unreported and thus difficult to detect. The Beijing Conference of 1995 brought about a revolutionary change by its recognition of the need to focus on the concept of gender rather than the concept of ‘woman’, calling for a restructuring of the entire society and relations between men and women to ensure gender equality (UN Fourth World Conference on Women Platform for Action, 1995). These gender issues were also integrated in the UN Millennium Development Goals (MDG) which aimed at promoting gender equality and empowering women.⁶⁷

A very important question in the wake of DV remedies is that what exactly we are looking for in the process of minimizing their occurrences. Is it so that we want to gather more information about such cases for just expressing our concern over this issue with more accuracy, having facts and figures at hand? Or instead of just raising our voices, we want to clean up the mess with sheer force and determination?

According to a latest report prepared by India’s National Crime Records Bureau (NCRB) study has concluded that DV against women is the fastest growing crime in India. A crime has been recorded against women in every three minutes in India. Every 60 minutes, two women are raped in this country. Every six hours, a young married woman is found beaten to death, burnt or driven to suicide.⁶⁸ The response to the phenomenon of DV is a typical combination of effort between law enforcement agencies, social service agencies, the courts and corrections/probation agencies. The role of all these has progressed over last few decades, and brought their activities in public view. DV is now being viewed as a public health problem of epidemic proportion all over the world and many public, private and governmental agencies are seen making huge efforts to control it in India. There are several organizations all over the world, government and non- government actively working to fight the problems generated by DV to the human community. In 1983, DV was recognized as a specific criminal offence by the introduction of

⁶⁷ www.un.org

⁶⁸ Domestic Violence Statistics. Retrieved from <http://www.domesticviolence.in/category/domestic-violence-statistics> (2009).

section 498-A into the Indian Penal Code. This section deals with cruelty by a husband or his family members towards a married woman. The Government of India passed a Domestic Violence Bill, 2001, “To protect the rights of women who are victims of violence of any kind occurring within the family and to provide for matters connected therewith or incidental thereto” An act called Protection of Women from Domestic Violence Act, 2005 [DVA, 2005] also has been passed. This Act ensures the reporting of cases of DV against women to a ‘Protection Officer’ who then prepares a Domestic Incident Report to the Magistrate “and forward copies thereof to the officer in charge of the police station within the local limits of the jurisdiction.

Police plays a major role in tackling the DV cases. They need to be sensitized to treat DV cases as seriously as any other crime. Special training to handle DV cases should be imparted to police force. They should be provided with information regarding support network of judiciary, government agencies/departments. Gender training should be made mandatory in the trainings of the police officers. There should be a separate wing of police dealing with women’s issues, attached to all police stations and should be excluded from any other duty. Authorities should take steps to recognize DV as a public health issue. A crisis support cell needs to be established in all major Government and Private Hospitals with a trained medical social worker for provide appropriate services. Training programmes must be organized for health professionals in order to develop their skills to provide basic support for abused people. Documentation on the prevalence and the health consequences of DV should be undertaken by the concerned government departments, health care institutions, NGOs and counselling centers. A nodal agency should also be set up for the annual consolidation of the documented work and publish the same for wider publicity among the masses for increasing awareness. The varying causes which can spark the violence within the four walls of homes need to be analyzed carefully and a wise study of the factors causing the violence may prevent a family to suffer from the menace of DV. The DV may have a far wider and deeper impact in real life than what has been covered in this essay. What is required is to see closely the association of the factors provoking a particular form of DV. If these factors can be controlled then more than one form of violence can be prevented from harming an individual or our society and India would be a much better place to live in. Only the legislation and law enforcement agencies cannot prevent the incident of crime against married women. Social awakening is necessary and change in the attitude of masses, so that they can give due respect and equal status to a married women not only in their family but also in others family. The awakening can be brought by education, campaign or door to door

survey conducted by the Government agencies or NGO 's. Various NGOs can hold a responsible position here by assigning them with the task of highlighting socio-economic causes leading to such crimes and by disseminating information about their catastrophic effect on the womanhood and the society at large. Mass media can also play an active role here as in the present days it has reached every corner of the nation. Intervention and action at multiple levels efforts done so far on gender issue defy basic and simple solutions.

Elimination of all kinds of violence against women requires channelizing simultaneously the attention and efforts of all the concerned people and work together. This sensitive issue needs intervention and action at multiple levels state, society and individuals in public and private capacities. At government level amongst immediate steps, the most important task of government is to arrest continuously deteriorating law and order situation. There should be vigilant policing round the clock both in cities and suburban areas and more women police officers in all police stations. ·Speedy and time-bound justice is needed urgently. Delayed justice emboldens the spirits of criminal-minded elements in society, who take advantage of loopholes in law, and which enables them to escape. Many culprits go off scot-free even after committing a heinous crime. ·Reforming the structure and systems of governmental institutions engaged in the law-making and enforcement tasks are highly desirable, but it may take a longer time.

Role of Non-Governmental Institutions/Organizations ·Non-governmental organizations and institutions should conduct series of seminars, workshops meetings at different places on various aspects of violence/oppression against women. They should discuss in depth the gravity, enormity and dangers of continuously deteriorating law and order position, deteriorating human values, self- centered attitude of individuals and alarming rise in bestial acts against women, which makes it very unsafe for women to move freely outside their homes and try to and out remedy for it. Media should bring women issues to public domain in a Media ·Media should bring women issues to public domain in a forceful manner. They can play an important role in spreading awareness. They can provide a platform to speakers and panelists from different leads, eminent personalities responsible for decision-making to share their views and conduct an in-depth study on various gender issues, and view it holistically touching various aspects of the problem. Views of some of the victims of atrocities should also be taken to understand their unpleasant experiences and the manner in which they came over the agonies they suffered because of inhuman acts. At family's level ·Family is the art and foremost institution, where children learn arts lesson of humanity and social relationships. Family is the best place to inculcate positive values like honesty,

simplicity, modesty, sense of responsibility and respect for elders amongst children and youth of both the sexes. Childhood is the most formative, educative and impressionable time in a human's life and most appropriate time for inculcation of such values, as it remains permanently and firmly embedded in their delicate psyche throughout their life. Training for gender sensitization should be imparted within the family. Right from the beginning, all the children should be treated equally, without any gender-bias. On women's part Instead of silently bearing all the atrocities perpetrated against them, women should raise their voice against injustice; create awareness amongst women about their rights and channelize their efforts by writing articles, organizing seminars, workshops etc. Irrespective of their social status in society, they should join hands, and work in a spirit of unity. They should raise their voice boldly against social evils like dowry, bride-burning, female infanticide, etc. Women should exercise utmost vigilance both at the mental and physical level to ensure their safety and security, so that no one could exploit them when placed under adverse circumstances in life. They must always be prepared for self-defiance by getting training in Karate, martial Art etc.

7.2 Suggestions:

- i. There should be public enlightenment through the mass media on the negative effects of DV against women, especially wife battering;
- ii. Religious leaders too should vigorously teach against marital violence in their places of worship;
- iii. Youths should be encouraged and taught to detest and not imitate brutish treatment of wives around them;
- iv. Medical professionals, after physical or mental treatment should refer the victims to the counsellors, psychiatrists and psychotherapists. The medical examination of victims of DV has also been suggested on the basis of the best practices by global experts in the fields of gynaecology and psychology; such as-
 - a. By increasing detection rate in GPs
 - b. Promote General Physicians to detect case of DV victims
- v. Punishment given to grievously offending husbands should be publicized, so that it can serve as deterrent to others;
- vi. The equality of women, being integral to the Constitution, its denial is a sacrilege and a

constitutional violation. Sustained constitutional violations mean that governance is not in accordance with the Constitution. A fortiori, all limbs of the State - the executive, the legislature as well as the judiciary - must respect women's rights and must treat them in a non-discriminatory manner;

- vii. As a primary recommendation, all marriages in India (irrespective of the personal laws under which such marriages are solemnized) should mandatorily be registered in the presence of a magistrate, which magistrate will ensure that the marriage has been solemnized without any demand for dowry having been made and that the marriage has taken place with the full and free consent of both partners;
- viii. Available personnel of the judiciary and the infrastructure, with a few systemic changes can, at least, reduce half the burden of arrears in courts contributing to delays in enforcing the law of the land. Different High Courts have the pivotal role in the administration of justice of Article 235 of the Constitution. They have to lead by practice in addition to precept;
- ix. Law enforcement agencies must be insulated from any political or other extraneous influence, which impedes their performance. Law enforcement agencies must be insulated from any political or other extraneous influence, which impedes their performance. Law enforcement agencies must not become tools at the hands of political masters.

Protection of Women from Domestic Violence Act, 2005 ensures the reporting of cases of DV against women to a 'Protection Officer' who then prepares a Domestic Incident Report and send it to the Magistrate and also forward copies thereof to the police officer in charge of the police station within the local limits of the jurisdiction. But in major police stations in India we can see that there was no such 'Protection Officer' who was supposed to registrar a case as per Protection of Women from Domestic Violence Act, 2005. So, for better implementation of the provisions of the said Act, there should be one provision for mandatory appointment of one such officer and the smooth functioning of the same in accordance with the Protection of Women from Domestic Violence Act, 2005.

At present there is no single law in the Indian Constitution which can strictly deal with all the different forms of 'DV' as discussed in this work. There is an urgent need for such a single law in the country. I also think that there should be one article in our Constitution which protects the violence meted out to a

married women in matrimonial home.

There must be one provision either amending the existing provision or inserting new provision in every Family Laws in our country which gives certain safeguards to the married women from DV.

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