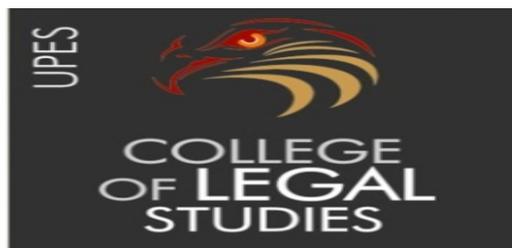


“ DOMESTIC VIOLENCE AGAINST WOMEN AND THE LAWS”

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Submitted under the guidance of: Asst. Prof. Dr. Saroj Bohra

This dissertation is submitted in partial fulfillment of the degree of B.A., LL.B. (Hons.)/B.B.A., LL.B. (Hons)



College of Legal Studies

University of Petroleum and Energy Studies

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CERTIFICATE

This is to certify that the research work entitled “DOMESTIC VIOLENCE AGAINST WOMEN AND THE LAWS” is the work done by Pallavi Tiwary under my guidance and supervision for the partial fulfillment of the requirement of B.A., LL.B. (Hons.) degree at College of Legal Studies, University of Petroleum and Energy Studies, Dehradun.

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Dr. Saroj Bohra

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Date – 6th April, 2015

DECLARATION

I declare that the dissertation entitled “DOMESTIC VIOLENCE AGAINST WOMEN AND THE LAWS” is the outcome of my own work conducted under the supervision of Asst. Professor Dr. Saroj Bohra, at College of Legal Studies, University of Petroleum and Energy Studies, Dehradun.

I declare that the dissertation comprises only of my original work and due acknowledgement has been made in the text to all other material used.

(Signature)

Pallavi Tiwary

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“The best thermometer to the progress of a nation is its treatment of its women”

-Swam?V?vekananda.

CHAPTER 1 -INTRODUCTION

In the ancient India women had a very high place of respect in the society as mentioned in Rigveda and other scriptures. Volumes can be written about the status of women in the society and their heroic deeds starting from the Vedic period to the modern times. But later on, because of many social, political and economic transformations women lost their status. Many evil customs and traditions crept into the society and it enslaved the women and tied them to the boundaries of the house.¹

The sociologists had described the women by many different perceptions. In India, the history speaks that the women were considered to be as a Divine force but the multi-cultural Indian society placed the women at different positions. Thus, it can be said that there is no uniform status of women in the Indian society. However with the coming of civilization it brought in the overall upliftment of women's position.

According to Historian Romila Thapar-

“Within the Indian sub-continent itself there have been countless variations on the status of women which is diversified according to cultural malices, Family structure, class, cast property rights and morals.”²

The Indian philosophy looks at the women from a dual character. On one hand she is considered to be fertile, patient and generous but on the other hand she is considered to be aggressive and represents 'shakti'.

The position of women during this Vedic period was glorious as they had freedom and equality during this period and thus the women were participating in every walk of life. Women used to study in gurukuls and enjoyed liberty in every sphere of life. The great women like Apala, Vasava, Yamini, Gargi and Ghosa took away the limelight and became the front runners of the society. In Upanishads, the wife was regarded to be the true companion of husbands. The wife was known to be the epitome of prosperity, enjoyment and dharma in Mahabharata. The man was not religiously allowed to perform any religious duties without his wife. There was right of selecting their life partners, no purdah system but there was a system of dowry and polygamy which was prevailing in the ruling class. There were no restrictions as to remarry the widows and neither any discrimination between boy and girl. The girls were also allowed to have their thread ceremonies.

As by Manu after the Vedic period the women had suffered from drastic toughness and restrictions. An attempt was made by him to set up a male dominated society by increasing

¹ ArunaGoel, Violence and Protective Measures for Women Development and Empowerment, pp. 3-4 (2004)

² Romilla Thapar, Looking back in history; In Devika Jain, Indian Women, Publication Division, Ministry of Information and Broadcasting, Government of India, New Delhi, 1975, Pg.6

the dominance of man in the society. The birth of a girl was always treated to be an ill faith for the family. Girls were even denied access for their education. They were later on even refused to allow to have thread ceremony. During this era pre-puberty marriage system came up thus the marriageable age of girls were lowered to 9 or 10 years. However, the girls who belonged to the ruling class were allowed to receive education, training in military science, administration and fine arts. Daughters were brought up under the close watch of her father, as a wife of her husband or as a mother of her son whereas on the other hand, Manu also believed that in the home where women are respected in that home all deities are pleased and where they are dishonoured there all religious activities become worthless.

Surprisingly, after the vedic period, the women's right to property was recognized at that time and the concept of Stridhan was prevailing at that time. As Manu defined – Stridhan means “that which was given to her therefore the nuptial fire, in bridal processions, in token of love and which she has received from father, mother, brother and husband.”³

The women's position was further degraded during the medieval period after the invasion of India by Alexander and the Huns. Society observed security fear with invading soldiers roaming countryside, consequently women were placed behind the *pardah*. Women were deprived of education and participation in community affairs were also restricted. During the medieval period the social evils like child marriage, *sati* and female infanticide mushroomed extensively. Further social curse like dowry had become an inevitable practice particularly in Rajasthan. The system of *devdas* and polygamy had also a wide spread widely in countryside. Thus during the medieval period the women were oppressed in every sphere.

But with the advent of the British period, the status of women underwent drastic changes mainly due to the western impact on the Indian socio-cultural pattern. The concept of equality, liberty and individual secularism arose but was limited only to ruling class. Two major movements took place during the British regimes. These are:

Social Reform Movement- This movement emerged during the 19th century and raised the difficulty of equal status of women, social reforms and showed the concern regarding the problems of *sati*, prohibition on marriage, denial of right to property, child marriage and education to women. The reformers had the view that by giving women access to education and by introducing progressive legislation social reforms in respect of women can be achieved. Swami Vivekananda, Dayanand Saraswati and Annie Besant were of the opinion that old Vedic period should be revived which was ideal for women's status. The father of nation strongly criticized the system of child marriage, *sati*, prohibition of widow's remarriage and *devdas* system.

Nationalist Movement- It drew the attention of large number of mass and brought confidence among the women to raise their voice against oppressive system. In 1927, All Women's Conference was formed and it proved to be a crucial movement toward the right to equality of women.

³ A.S. Altekar; The Position of Women in Hindu Civilization, Motilal Banarsidas, Delhi, 1962

Thus, various legislations came up like Widow's Remarriage Act, Child Marriage Act, and Hindu Women's Right to Property Act were enacted which had an intention to eradicate certain social evils. Even various provisions of industrial laws were brought in to restore the status of women which prevailed during the vedic period. The formation of creches, reducing working hours, prohibition in working in night hours and prohibiting to work in mines were introduced under the banner of Nationalist Movement.

During the British Period public awareness was created while women's political and social participation attained force.

The United Nations defined "Violence Against Women" in 1993 in *Declaration on the Elimination of Violence against Women*. It defines it 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, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life."⁴

While acknowledging the need for legislation, Jawaharlal Nehru maintained that "legislation cannot by itself normally solve deep rooted problems. One has to approach them in other ways too, but legislation is necessary and essential so that it may give that push and have that educative factor as well as the legal sanctions behind it."⁵ Prevention of domestic violence is one of the most burning issue all over the world. It is not only confined to any one of the sector being socio-economic, ethnic, religious, racial or age group.

Domestic violence has become a global topic reaching upto national boundaries as well as socio-economic, cultural, racial and class distinctions. This crime against women is even linked to the disadvantageous position of women in the society. The varied forms of domestic violence includes mental, economic, sexual abuse and physical abuse against women.

Domestic violence has become a universal phenomenon. Irrespective of whether a country is poor or rich, spousal violence is omnipresent. Desertion of married women by the Non-Resident Indian (NRI) husband has become an emergent form of violence against women. This problem is now a major social issue. Women are hesitant to speak about the violence or crimes they have been gone through because of various reasons like social stigma attached to the divorced or deserted women or to protect their family life.

Domestic violence⁶ is defined as an act of omission or commission. Thus the section provides protection against any act, conduct, omission, or commission that harms or injures or has the potential to harm or injure, and it will be considered as 'domestic violence'. Again the act of omission or commission may be physical, mental, sexual, emotional or economic⁷. Even a single act of commission or omission may constitute domestic violence. Now women do not

⁴ GURUAPPA NAIDU, VIOLENCE AGAINST WOMEN IN INDIA, P.23 (2011)

⁵ Quoted in Two Hundred and Second Report on Proposal to Amend Section 304-B of Indian Penal Code, p.14,15.

⁶ Protection of Women Against Domestic Violence Act, 2005-Section 3

⁷ Whenever one thinks of violence it is often confined to physical violence which is visible but the Act goes a step further extending its perception on other sort of injuries being suffered by women within home which is mental and hence considered subtle and imperceptible.

have to suffer a prolonged period of abuse before taking recourse to the law. The legislation has widened the scope of domestic violence and can be broadly be related to human rights. v? The expansive interpretation of violence is a critical penetration made by an ACT. In addition to this, the interpretation of the fact that whether the act would come under the ambit of domestic violence or not has to be arrived taking into consideration the overall facts and circumstances of the case.⁸

There can be various theories that may be attached to this heinous behavior which includes both feminist and evolutionary theories.

“Feminist theory identifies patriarchy to be the root cause of domestic violence, whereby males do whatever is needed to exercise control over women and keep them succumbed, using violence is one such possibility. It also holds that domestic violence is an outcome that is derived from the weak autonomy and bargaining power of women. It further holds that women who have more autonomy maybe because they are financially independent would be exposed to less violence than compared with women with less independence.

On the other hand Evolutionary theory says that domestic violence ultimately originates from paternity uncertainty. Because the paternity of children was never certain in our evolutionary past natural selection would have favoured proprietary behavior by males with regard to sexual access to their mates. Domestic violence, in this view, stems from the insecurity and jealousy that males feel when their partners are exposed to the possibility of sexual encounters with other males. Although feminist theory does not actually bring into play the evolutionary arguments but it is nevertheless true that the latter can enhance feminist claims by providing some evolutionary ideas for patriarchy.”⁹

⁸ Explanation II to section 3 of the Act reads “for the purpose of determining whether any Act, omission, commission or conduct of the respondent constitutes domestic violence under this section. The overall fact and circumstances of the case shall be taken into consideration.”

⁹ www.amen.ie/reports/28004.pdf

CHAPTER 2 – NATURE AND FORMS OF DOMESTIC VIOLENCE

"Domestic violence at home is a burden on various areas of the social network and unremarkably it negatively influences the improvement of a country... These evils don't just influence the present era but also is an attack by one individual on another.

Domestic violence at home is a worldwide issue covering across national limits and even affecting financial, social, racial and class background. This issue is generally scattered geographically as well as abroad making it a regular and an acknowledged act. Abusive behavior at home is boundaryless and has genuine effects on women's wellbeing and prosperity. Its presence in the society shows that we are ethically weak. Its effect on people, to wellbeing frameworks and to society is tremendously bad.

*Francis Coralie Mullin v. Administrator, Union Territory of Delhi and others*¹⁰

"Supreme Court, held that either permanently or temporarily if the person damages or injures or interferes with the use of any limb it comes under the genre of the Act. This right which includes physical abuse is defined by the Act, the creation of domestic violence. Acts of physical abuse, or a life limb or health which gives in pain, harm or threat of physical health or impact the development of such nature can be defined as domestic violence. In addition, the Act also defines domestic violence as physical violence within the imagination of the Indian Penal Code and specific acts of physical violence, including acts. Such a broad definition is adopted; the Act protects the rights of women against violence.¹¹

2.1 Concept Of Violence Against Women:

There is no generally acknowledged definition of violence against women. Some human rights activists bends towards an expansive definition that incorporates "structural roughness, for example, neediness, and unequal access to wellbeing and instruction. Others have moved for a more restricted definition so that not to lose the real meaning of the term. Thus there was a need to create particular operational definitions so that examination and observation can get more particular and have more prominence culturally.

The United Nations Declaration on the Elimination of Violence against Women in the year 1993 characterized brutality against women as "any demonstration of sexual orientation or roughness whose outcome can result in physical, sexual or mental damage whether happening in broad daylight or in private life." Domestic violence can be said as one of the reasons because of which women are considered to be in a subordinate position. It increases the boundary of the word violence as it includes both the physical and mental hurt done in private as well as open life towards women. The Declaration characterizes violence against women as inclusive definition and is however not restricted to any specific stage whether it is related to savagery happening in the family or inside the general group, and neither brutality executed or supported by the State.

¹⁰ 1981 AIR 746, 1981 SCR (2) 516.

¹¹ Available on: <http://www.legalservicesindia.com/article/article/domestic-violence-against-women-causes-and-cure-1709-1.html> (last accessed on 01st April, 2015)

Generally, domestic violence at home is concerned or connected with physical hurt. For example, as per the Merriam-Webster dictionary definition, abusive behavior at home includes: "the perpetrating of physical harm by 1 family or other family part on another." Domestic brutality is extensively characterized to incorporate "all of physical, sexual, mental or financial violence" that may be submitted by an individual who is a relative or an individual that has been a close accomplice or companion, regardless of whether they lived respectfully.

In 1993, The United Nations Declaration on the Elimination of Violence against Women recognized abusive behavior at home as "Physical, sexual and mental torture happening in the family, including battering, sexual ill-use of female youngsters in the family, share related roughness, conjugal rape, female genital mutilation and other conventional practices which are destructive to women, non-spousal violence and brutality which is identified with the misuse".

The International Center for Research on Women (ICRW) conducted a 3 year research program with the goal to offer reliable and sound information in order to identify, replicate, expand, and advocate for effective responses to domestic violence. which started in 1997 on domestic violence in India in partnership with researchers from different Indian academic and activist organizations. A National Advisory Council provided guidance for the program. The program consisted of 3 components:

- 1). Assessment of different trends of domestic violence by looking into existing data sets;
- 2). conducting population based surveys so as to estimate prevalence and to know the understanding of determinants and outcomes of domestic violence;
- 3). taking lessons from an analysis of an on-going program and policy interventions.

According to the available statistics from all over the globe, one out of every 3 women has experienced violence in an intimate relationship at some point of her life. This is an average percentage which is based on an available national surveys across industrialized and developing countries (World Health organization 1997). Statistical evidence on the actual prevalence of domestic violence in India is inadequate however. The few studies available also indicate that physical abuse of Indian women is quite high, ranging from 22 % to 60% of women surveyed. Most of the available information consists of qualitative studies which is of very small sample size. The only large-scale indicator of violence against women is the data which is relating to crimes against women and it is published by the National Crimes Record Bureau, Ministry of Home Affairs, and Government of India. The records of the bureau have revealed a shocking 71.5% increase in cases of torture and dowry deaths during the period from 1991 to 1995 and may reflect increased reporting of violence. In 1995 torture of women constituted 29.2% of all reported crimes against women. In another study, 18 to 45 % of married men in 5 districts of Uttar Pradesh, a large state in northern India, accepted that they physically abused their wives. And in a study by Ranjana Kumar (1989) of dowry abuse it was revealed that one out of every 4 dowry victims was driven to suicide.

Globally, it was considered that violence within the home is universal and it is across culture, religion, class, and ethnicity. Despite this widespread prevalence, however, such violence is not customarily accepted and has remained hidden and thus it was a problem which was thought unworthy of legal or political attention. Legal jurisprudence had considered the domain of the house to be within the in charge of and an unquestionable authority of the male head of household. Thus acts of violence against members of the household, whether wife or child, were perceived as disgraceful, and essential for maintaining the rule of authority within the family.

In the last two decades, the Indian women's movement has contributed to the growing public awareness of violence against women. Women activists have moved for significant changes in the criminal code and police procedures in order to address various acts of violence. For example, throughout the 1980s, Indian society also saw numerous protests by women's organizations against dowry deaths, custodial rape, women abduction, sati, and other evils used for sex selection of children, sexual harassment of young girls and women in public places, trafficking, and prostitution.

Domestic violence is an age old social evil which remained hidden from the eyes of the society for long. In India, it was recognized as a human rights issue in the 1980s due to the increasing number of dowry deaths. This resulted in the addition of section 498-A for cruelty against women in the Indian Penal Code.¹² With further research it is now being recognized also as a public health issue because of the health issues associated with it, and the other reason being that some of the prevention strategies lie in the hands of practitioners of public health.

Domestic violence occurs in all countries irrespective of social, economic, religious or cultural group. Although women can also be violent in relationships with men, and violence is even sometimes found in same-sex partnerships, but the most number of violence is borne by women at the hands of men. The fact that women are often emotionally involved and economically dependant on those who abuse them, has major issues for both the dynamics of abuse, and the approaches to dealing with it.¹³

Various terms like "violence against women", "domestic violence" and "intimate partner violence" are often used in the same manner. However, there are slight differences in what they convey, as is evident from the following definitions:

¹² The Criminal Law (Second Amendment) Act, 1983. Available from: <http://www.498a.org/contents/amendments/Act%2046%20of%201983.pdf>

¹³ WHO. Geneva: World report on violence and health. Available from: http://www.who.int/entity/violence_injury_prevention/violence/world_report/en/introduction.pdf

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 be being perpetrated and condoned by state.¹⁴

Domestic violence: The term "domestic violence" includes violence against women and girls by an intimate partner which may include a cohabiting partner and also by other family members whether this violence occurs within or beyond the boundary of the home.

As per The Protection of Women from Domestic Violence Act, 2005, omission or commission or conduct of the respondent shall constitute domestic violence in case of the following:

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

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

has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or

otherwise injures or causes harm, whether physical or mental, to the aggrieved person.

Violence against women can be of any of the following types which may be being physical, sexual, psychological, and threat of physical or sexual violence.

Physical violence includes any act of physical aggression such as slapping, hitting, kicking and beating. The common sexual abuses that women are facing are forced intercourse and other forms of sexual coercion.

Psychological abuse includes acts like bullying, constant criticism, embarrassing and various other behaviors such as isolating a person from the society, monitoring their each move, and

¹⁴ United Nations Declaration on the elimination of violence against women. New York: United Nations General Assembly, 1993. Available from: <http://daccess-ddsny.un.org/doc/UNDOC/GEN/N94/095/05/PDF/N9409505.pdf?OpenElement>

prohibiting them from their access to information or assistance. When abuse keeps on occurring constantly in the same relationship the occurrence is often referred as "battering".

Domestic violence occurs in all countries but the level varies. Many countries study on the Women's Health and Domestic Violence against Women by the WHO was a landmark research project. In this project, expert teams which was specially trained collected data from over 24,000 women from 15 sites in 10 countries representing different cultural settings and the main places included Bangladesh, Brazil, Ethiopia, Japan, Namibia, Peru, Samoa, Serbia and Montenegro, Thailand, and the United Republic of Tanzania. According to this study, the proportion of women who had ever experienced physical or sexual violence, or both, by an intimate partner in their lifetime, ranged from 15% to 71%, with most sites falling between 29 and 62%. It was concluded that violence by a male intimate partner was widespread in all countries covered by the study. However, there was a great deal of variation from all over the country.

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

Various socioeconomic conditions are also the reasons which may include husband's lower education, poverty and economic pressure, household overcrowding, husband's alcohol abuse, and women who grew up witnessing violence in their homes, are more likely to complain of experiencing domestic violence. Studies also show that women who are better educated, who are at better employment, and earn better than their husbands are too at greater risk of domestic violence. A study conducted across 7 cities in India, viz., Bhopal, Chennai, Delhi, Lucknow, Nagpur, Thiruvananthapuram, and Vellore found that gender gap in employment status was a significant factor for violence.¹⁵

As far as relationship factors are concerned, husband having an affair, wife unable to bear children, and families having multiple children are too a prey of domestic violence. Also, certain issues like 'dowry system', and 'love marriages' remains possible causes for violence. Women who participate in social groups or vocational training are reported to be more at risk. 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 found. Inconsistent associations of violence were found with other factors too like age, place of residence like urban/rural, age at marriage, and duration of marriage. Though studies have identified the association between various factors and violence, the gender norm expected

¹⁵ International Clinical Epidemiologists' Network. Domestic violence in India. A summary report of a multisite household survey. Available from: <http://www.icrw.org/files/publications/Domestic-Violence-in-India-3-A-Summary-Report-of-a-Multi-Site-Household-Survey.pdf>.

woman to be more submissive to the husband and elders, and forbidding her to bring out problems to outside world, and this may influence her capacity to report and interpret the causes of violence.

There is also a wide range of coercive and abusive behaviours which is used by the batterers against the victims and may sometimes result in physical injuries. On the other side other techniques includes emotionally abusive behaviours which can be considered as psychological damage to the victims. Batterers use different abusive behaviours at different times. A single occurrence of physical violence or the threat of such violence is enough to establish power and control over the partner; which is then reinforced and strengthened by non-physical abusive and coercive behaviours.

2.2 FORMS OF DOMESTIC VIOLENCE

Forms of domestic violence includes

- Ø physical violence
- Ø sexual violence
- Ø economic control
- Ø psychological assault (including threats of violence and physical harm, attacks against property or pets and other acts of intimidation, emotional abuse, isolation, and use of the children as a means of control)
- Ø emotional abuse

Physical violence involves the use of physical force against the other. Examples include hitting, shoving, grabbing, biting, restraining, shaking, choking, burning, forcing drug/alcohol use, and assault with a weapon, etc. It may or may not result in an injury that requires medical attention.

Sexual violence involves the violation of an individual's bodily integrity (sexual assault), including coercing sexual contact, rape, and prostitution, as well as any unwelcome sexual behaviour (sexual harassment), it also includes treating someone in a sexually demeaning manner or any other conduct of a sexual nature, whether physical, verbal, or non-verbal. It also includes behaviour which limits reproductive rights, such as preventing use of contraceptive methods and forcing abortion.

Psychological abuse is characterized as an intimidation, threats of harm, and isolation. Examples includes instilling fear in an intimate partner through threatening behaviour, such as constant supervision, damaging property or abusing pets, or controlling what the victim does and who they talk to. Spiritual abuse may be a type of psychological abuse. It also involves the misuse of spiritual or religious beliefs to manipulate or exert power and control over an intimate partner (i.e., using scripture to justify abuse or rearing the children in a faith or religious practice the partner has not agreed to).

Emotional abuse is something which involves undermining an individual's sense of self-worth. Examples of it includes constant criticism, name-calling, embarrassing, mocking, humiliating, and treating like a servant.

Economic abuse makes or attempts to make the victim financially dependent on the abuser. Examples of economic abuse include preventing or forbidding an intimate partner from working or gaining and education, controlling the financial resources, and withholding access to economic resources.

Not all forms of domestic violence is said to be criminalized and, in fact, drafters of legislation are encouraged to limit their intervention to cases involving physical and sexual violence, the threat of such violence, and extreme acts of coercive control from which the victim cannot easily escape. Some countries include psychological and economic abuse in criminal law, doing so may create a scenario where violent abusers manipulate the system to enforce actions against their partner or to justify physical violence as an appropriate response to their partner's insults.

In many countries marital rape is not considered as sexual assault because a husband is deemed to have a right of sexual access to his wife. In 1992, the CEDAW Committee rejected traditional or customary justifications for domestic violence in General Recommendation No. 19.

“Traditional attitudes stipulates that women are considered to be subordinate to men or has stereotyped roles which is widespread practices involving violence or coercion, such as family violence and abuse, forced marriage, dowry deaths, acid attacks etc. These prejudices and practices may justify gender-based violence as a form of protection or control of women. The after effect of such violence on the physical and mental integrity of women is to deprive them the equal enjoyment, exercise, and knowledge of human rights and fundamental freedoms.”¹⁶

Intimate partner violence: According to the Centers for Disease Control and Prevention defined "intimate partner violence" as physical, sexual, or psychological harm by a current or former partner or spouse. It can occur among heterosexual or same-sex couples, and does not require sexual intimacy. "Intimate partners" include various relations like current spouses, current non-marital partners, dating partners, divorced or separated spouses, former non-marital partners, former boyfriends/girlfriends (heterosexual or same-sex)¹⁷

There are other types of violence like withdrawal and verbal abuse.. Withdrawal as a form of violence indicates that the abuser withdraws from normal interactions with the victim. Such behavior is intended to harm or making the victim feel uneasy. Withdrawal also means stopping normal communication, refusing to eat food served by the victim, going out of house at odd times and drinking. Verbal violence stands for use of abusive language or calling names or giving verbal threats to physical violence. These different forms of violence do not and may not occur in a given order. It also does not mean that one type of violence is less harmful than the other.

2.3 EFFECTS OF DOMESTIC VIOLENCE

¹⁶ http://www.stopvaw.org/forms_of_domestic_violence

¹⁷ <http://www.justice.gc.ca/eng/rp-pr/fl-lf/famil/enhan-renfo/p3.html>

The ill-effects of abuse can be discussed under four broad categories, viz, effects physically related to abuse, gynecological problems due to forced sexual intercourse, the psychological effects, and the effects of violence on pregnant women.

1) Physical effects: Apart from the direct effects of violence like physical trauma, fractures and blunt trauma, studies have also linked violence to multiple somatic syndromes, pelvic pain, increased number of surgeries and irritable bowel syndrome. of considerable interest is the economic loss due to violence. It can result in loss of days of work both to the victim and the perpetrator, thus resulting in loss of wages and direct losses in seeking health care. While characterizing Domestic Violence under the Protection of Women from Domestic Violence Act, 2005, in section 3 of the demonstration Physical Abuse is clarified as any demonstration or behavior which is of such nature as to cause real agony, mischief or risk to life, appendage, or well being or weaken the well being or advancement of the distressed individual and incorporate strike criminal intimidation and criminal power. Physical misuse is the most pervasive and antiquated strategy for subordination of women in a family, it is the most widely recognized control system connected against a lady inside the residential circle. Blackstone has legitimized mellow redress by a man against his wife, since she was viewed as the property of her spouse, he could practice all rights to secure observance or subservience. Blackstone's general guideline that allowed a wife to be chastise by a stick no thicker than a thumb if there should be an occurrence of noncompliance is a picture of social legitimating of wife battering in English society.

2) Psychological hazards: Studies have indicated that women experiencing violence have more chances of suffering from anxiety, depression, post-traumatic stress disorder, suicide, somatic pain syndromes, phobias and panic disorder. Another study indicates that women who are unemployed and experience domestic violence resort to practices like smoking and chewing tobacco. This observation in India is consistent with those in developing countries. Substances present in tobacco, e.g. nicotine, elevate mood and relieve stress.

Causing of abuse to a woman in the residential circle is multidimensional. Under the Protection of Women from Domestic Violence Act, 2005 passive or mental misuse which has been sorted as verbal, is disclosed as to incorporate – affront, mock, mortification, ridiculing and abuse particularly concerning not having a youngster or a male kid and rehashed there as to cause physical torment to any individual in whom the bothered individual is intrigued. Mental ill-uses are one of the real manifestations of misuses confronted by women.

3) Gynecological: Women whose husbands engage in both physical and sexual abuse have higher odds of reporting gynecologic symptoms like blood after intercourse, vaginal discharge, burning muration, pain during intercourse, and symptoms suggestive of sexually transmitted infections like foul smelling discharge, lower abdominal pain, and vaginal itching

or irritation. This may reflect, in part, the important role of sexually transmitted infections, with husband transmitting infection to his wife through coercive sexual relations; forced sex may lead to vaginal trauma, through direct physical force or a lack of lubrication, which increases the risk of transmission of sexually transmitted infection. The finding that the highest risk of gynecologic symptoms was associated with a combination of physical and sexual violence is consistent with this interpretation. Another possible explanation is that perceived gynecologic symptoms may represent an expression of underlying depression or mental distress. According to a study based on the secondary data analysis of National Family Health Survey 2005, a higher prevalence of HIV was found among those women who experienced both physical and sexual abuse.

4) *Sexual Abuse*: International law in the setting of savagery against women has perceived sexual ill-use against women as one of the manifestations of roughness incurred by both open and private segment.

The Protection of Women from Domestic Violence Act, 2005 clarifies sexual misuse incorporates any behavior of a sexual nature that ill-uses mortifies corrupts or generally abuses the respect of women. This type of ill-use is particular to the interpersonal connection between a man and a lady who is in a conjugal relationship. Of the numerous obligations that a wife has towards her spouse, execution of sexual obligations is one of them. A wife is never expected to do something that would disregard her obligations or inability to do sexual obligations or unfaith completion seems to have been broadly acknowledged and reasonable clarification for men's savagery. In present times men use sexual roughness to declare and keep up their unrivaled manliness. This type of misuse is more normal in family units where men are educated and well-off. In a study it was discovered that 79% of men utilized sexual brutality to control their wives' constantly and 57% of them had over 6 years of formal education.

5) *Violence in pregnant women*: According to a population-based study in Uttar Pradesh, both pre natal and neonatal mortality rates were almost two times as high among women who experienced domestic violence than the women who did not. The association between domestic violence and childhood mortality risks weakens as children age, with both post-neonatal and early-childhood mortality rates no longer significantly associated with mother's exposure to violence. Overall, the risk for infant mortality was 36% higher among mothers who experienced domestic violence compared with mothers who did not. One plausible way of how domestic violence might influence childhood mortality is the effect of violence on maternal health care behaviors during and immediately after pregnancy.

6). *Intellectual Abuse*: Of all the abuses in Domestic Violence previously discussed, intellectual abuse has been missing from all the definitions of Domestic Violence. This is perhaps because in India a marital relationship or any other man-woman relationship is about the acceptance of inequality, where men dominate and injure and women get dominated and

endure. The entire socialization process has an inherent isolation for both men and women, which hinders effective communication between the two. Even where domestic harmony exists, there is a sense of isolation in thought where both men and women experience alienation from each other and at a certain level they come out to be strangers. Different educational levels add to the isolation as the mental levels are different and both find difficulties in relating to each other at the intellect level. In most of instances it is seen that Indian marriages are clouded with words such as adjustments and compromises. There is no mention of companionship or friendship as John Stuart Mill would describe it. In this scenario women come to be perceived as intellectually inferior, hysterical and unreliable and so on. This isolates women within a domestic sphere and limits their role to procreation of children, preferable sons and to the nurturing their families. Even educated and economically independent women face this isolation as men in a patriarchal set up have controlled access to all economic activities and to all assets including knowledge which contribute to their profitability. Moreover a woman's work in India is shaped and monitored predominantly by patriarchal authorities at home and outside. The Domestic Violence Act, 2005 has failed to address this form of abuse as it has been clubbed with other abuses such as psychological, emotional and economic there by missing its import.

7) Tolerance of Abuse: Since domestic violence tends to be culturally engrained, or derived from culturally-based gender roles, many women are tolerant of the abuse they face. A study on Latina women found that, for many participants, maintaining an intact family took precedence over their personal problems. Their belief that the welfare of their children was dependent upon keeping their family together often led them to tolerate the abuse. In addition, "the Latina participants discussed the sacredness of marital bonds and the love and loyalty they felt towards their husbands that made them willing to tolerate abuse. Some believed that they did not have the right to complain, protest or seek help because of the self-sacrificing nature of marriage." In Nicaragua, for example, 32% of rural women say it is acceptable for a husband to beat his wife if he even suspects that she has been cheating on him. In Asia, many women believe that they would bring shame upon themselves, their families, and their communities by disclosing their abusive situation to a medical provider. In addition, they were embarrassed by their husband's behavior and believed it reflected poorly on them. A study on domestic violence in India reflected this sentiment and found that "among the women who reported violence, 29% had never received medical care after domestic violence, and 10% had never told a health worker about being abused. Only 5% of the women reported speaking to the health worker about problems of violence at home."

Various laws were enacted for the protection and empowerment of women in India. These include:

- ✚ The Dowry Prohibition Act, 1961
- ✚ The Criminal Law (Second Amendment) Act, 1983
- ✚ The Dowry Prohibition (maintenance of list of presents to the bride and bridegroom) Rules, 1985
- ✚ The Indecent Representation of Women (Prohibition) Act, 1986
- ✚ The Commission of Sati (Prevention) Act, 1987

- ✚ The National Commission for Women Act, 1990
- ✚ National Policy for the Empowerment of Women, 2001
- ✚ The Protection of Women from Domestic Violence Act, 2005
- ✚ Prevention of offences (by acts) Act, 2008

Section 498-A of the Indian Penal Code covers dowry-related harassment. As with other provisions of criminal law, a woman can use the threat of going to court to prevent this kind of harassment. The Indian Penal Code also addresses dowry deaths in section 304-B. If a woman dies due to "unnatural causes" within 7 years of marriage and has been harassed for dowry before her death, the Courts will assume that it is a case of dowry death. The husband or in-laws will then have to prove that the harassment was not the cause of her death. A dowry death is punishable by imprisonment of at least 7 years. When filing a FIR (First Hand Report) in a case where a woman is suspected to have been murdered after a history of torture due to dowry demands, the complaint should be filed under section 304-B rather than under section 306, which deals with abetment to suicide. Section 306 is invoked when a woman commits suicide because of dowry-related harassment.

Since India does not have a law on marital rape, even if a woman's husband has sexual intercourse with her without her consent, he cannot be prosecuted for rape. However, excessive and unreasonable demands for sex, or demands for unnatural sex have been considered forms of cruelty and may entitle a woman to get a divorce.

If a woman is judicially separated, her husband cannot have sexual intercourse without her consent. If he does, he can be prosecuted under section 376-A of the IPC.

CHAPTER 3: NATURE, INCIDENCE AND EXTENT OF DOMESTIC VIOLENCE AGAINST WOMEN

3.1 Causes of Domestic Violence:¹⁸

It cannot be said that there is any single factor that can contribute towards domestic violence against women. Increasingly, research has focused on the inter-relatedness of various factors that should improve our understanding of the problem within different cultural context.

The following are the broader areas of manifestation of Domestic Violence:

1) *Natal/Pre marital Home:* It is within a family. The violence can be faced by a girl in the natal home and is manifested as follows:

a) *Female Foeticide:* Foeticide is considered as a violation of the right of life which is a fundamental right as laid down in any legal or religious code of the world. The Buddhists, who fated the ruin of life, laid down that the Bhikkhu who intentionally destroys a human being by way of abortion are no samana and no follower of Sakeyaputta.

The ever increasing instances of female Foeticide especially in the northern part of India has shown the incompetence of the legislative enactments such as the MTP ACT 1971 and Prenatal Diagnostic Techniques (Regulation and Prevention of Misuse) Act 1994. It also brought in the belief that girls are unwanted even in the present times when all are increasingly advocating the concepts of gender equality and women empowerment. Female Foeticide is an instance of violence being committed against nature as it amounts to killing of a potential life.

Sex selective abortions cases have become a noteworthy social phenomenon in several parts of India. It is found in all castes, class and communities. The girl children goes through such evils even before they are born. It was stated by Diaz that in a well-known Abortion Centre in Mumbai, after undertaking the sex determination tests, out of the 15,914 abortions performed during 1984-85 almost 100% of it were those of girl fetuses. Similarly, a survey report of women's centre in Mumbai also found that out of 8,000 fetuses aborted in six city hospitals 7,999 fetuses were of girls which is almost 100%. It was also reported that about 4,000 female babies were aborted in Tamil Nadu (southern India) every year. Sex determination tests are widely found even in the remotest rural areas. But there is no record of the exact numbers of deliveries in rural areas takes place neither birth nor death. Therefore, it is very difficult to judge the magnitude of the problem. However, the fact shows that the right to be born is denied to the female child. All religions have treated abortion as an immoral act and against the divine law but this ban on abortion resulted in illegal abortions and thus risking the life of the woman. There were a series of government circulars which banned the sex determination tests from 1977 onwards but a survey conducted in Mumbai by Sanjeev Kulkarni (1986) revealed the fact that 84% of the gynaecologists admitted to perform the

¹⁸ Available on: <http://www.legalservicesindia.com/article/article/domestic-violence-against-women-causes-and-cure-1709-1.html> last accessed 01st April, 2015

tests for sex determination and out of these 74% gynaecologists had started performing the test since 1982 and only a few cases of genetic defects were detected. The overwhelming majority of 'patients' belonged from middle or upper middle class and were only interested in knowing the sex of the foetus. Interestingly, Bandewar (2003: 2075-2081) found that 64% of the abortion service providers were against sex selective abortions; 10% said they were against it but had to do it and the rest about 24% approved the practice of sex selective abortions. Although there was not much variation among service providers working in public/private health care facilities or rural/urban location but difference was found among men and women service providers. About 28% men approved of sex selective abortion practice whereas it was only 17% in case of women providers. Thus it was higher percentage of women providers (68%) as compared to men (61%) who were against such a practice. Those who disapproved of the practice of sex selective abortions but engaged in it against their principles expressed their compulsions and helplessness for two reasons:

1. Due to pressures arising out of unhealthy competition in the health care service sector it was said that if they did not provide abortion care services, some others would have provided them, and
2. Implications in terms of constant abuse and exploitation that the women have to face back home in case they did not get the abortion done.

Many talked of compulsions that women have at their ends to go for sex selective abortions. These arise either out of social norms fostering son preference or because their lives are put at stake in case they do not produce a son. Some also said that unwanted girls ran the risk of severe ill treatment at their natal homes causing them emotional and mental trauma.

b. Female Infanticide: This appearance of violence is very much similar to the above offence. It is an evil manifestation of an ideology that devalues a girl child. In states like MP and Rajasthan, girl child is drowned in milk at birth because nobody is prepared to bring her up. This heinous act shows how the impending social and financial burden of that girl in later years overpowers the joy of the birth of the child and compels the parents and the family to commit such atrocities on the innocent girl child.

c. Child Abuse/incest: Even though violence is perpetrated against both male and female children it is observed that an estimated 90.1% of victims of child abuse are girl children and more than 90.1% of the perpetrators of child sexual abuse are men. Child abuse is common in homes where there exist instances of domestic violence other members of the family more specifically being women.

d. Child Marriage: This is a manifestation of Domestic Violence that has historical roots but with present and future occurrence. It is a type of violence that uproots the entire existence of woman in her entire existence of a woman in her entire life span, making her permanently weak both in mind and body. A UNICEF report points out that in present times parents consent to child marriage out of economic necessity to protect girls from sexual assault, prevent pregnancy outside marriage to extend a girl child bearing years or to ensure obedience to their husband and house hold.

e. Child Labour: In India, 28% of the total population lives below poverty line. Meaning thereby these many percent of household services are less than Rs.600 per month. This offence has a much larger reach and extends beyond the four walls of a home; the offenders of this offence are people who need not necessarily be members of the family.

f. Immoral Trafficking of children: A UN Trafficking Protocol defines trafficking, "a recruitment, movement or transportation of a person through force, deception or fraud or violence into a state of exploitative work." Domestic Violence in the form of forced prostitution by male partners or parents has been reported worldwide. Young girls are trafficked for sexual slavery and domestic work where they are systematically tortured, beaten and starved if they happen to show resistance.

Conjugal or Marital Home:

Manifestation of domestic violence against women in the marital home is following:-

a) Physical abuse: Domestic abuse, also known as spousal abuse, occurs when one person in an intimate relationship or marriage tries to dominate and control the other person. Domestic abuse that includes physical violence is called domestic violence.

b) Dowry Related Harassment: Dowry related disputes form an integral part of the legitimate causes listed for wife-beating or spousal abuse. It is most discussed and glaring form of violence inflicted upon women. Dowry or Dahej is the payment in cash or/and kind by the bride's family to the bridegroom's family along with the going away of the bride (called Kanyadaan) in Indian marriage. Kanyadanam is an important part of Hindu marital rites. Kanya means daughter, and Dana means gift. Dowry originated in upper caste families as the wedding gift to the bride from her family. The dowry was later given to help with marriage expenses and became a form of insurance in the case that her in-laws mistreated her. Although the dowry was legally prohibited in 1961, it continues to be highly institutionalized. The groom often demands a dowry consisting of a large sum of money, farm animals, furniture, and electronics.

Dowry deaths are the deaths of young women who are murdered or driven to suicide by continuous harassment and torture by husbands and in-laws in an effort to extort increased dowry. Dowry deaths are reported in various South Asian countries such as India, Pakistan, and Bangladesh. Dowry death is considered one of the many categories of violence against women in South Asia. Most dowry deaths occur when the young woman, unable to bear the harassment and torture, commits suicide. Most of these suicides are by hanging or by fire. Sometimes the woman is killed by setting her on fire; this is known as "bride burning".

Marital Rape

Marital rape has not been recognized as an offence as performance of sexual duties has been considered an integral part of the marriage. Men can legitimately use violence in the form of sexual abuse if there is breach of such duty. Therefore even if there is non-consensual, forceful sexual relationship between husband and wife it will not be considered as marital rape.

It was in the year 1991 that marital rape became a criminal offence in the United Kingdom. The govt. of cypress has recognized marital rape as an offence in its Prevention of Violence in the Family and Protection of Victims Act 1993. Clarifying that 'rape is rape' irrespective of whether it is committed within or outside marriage.

In India too marital rape is treated a criminal offence only if wife is living separately under a decree of judicial separation on custom. It is only just recently that under the Protection of Women from Domestic Violence Act, 2005 that marital rape is being treated as a civil offence as an instance of sexual abuse within the marriage or similar relation.

Sat?

Commonly called as Sat? Pratha or Jauhar Vrata, it is an offence against women e.g. indigenous to India, it has ancient roots but still a part of today in some part of India e.g. in Rajasthan. In the year 1987, Roop Kanwar, children 19 years old widow committed Sat? in Rajasthan's Deorala village in August 2001, Kuttu Bai, 65, committed sat? in MP's Panna Distt in March 2004, Rekha Devi, 65, committed Sat? in Basti Distt of Bihar and in April 2006, Sita Devi, 77, committed sat? in Gaya district of Bihar. Even when Lord William Bentinck, in 1829, declared it illegal, it still continued in states such as Rajasthan etc.

Age Related Abuse:

Women experience some form of violence in every phase of their lives. It is often seen that women who experience violence in their marital home may have been targets of violence in their natal home e.g. deprivation of education in natal home may lead to economic abuse in marital home likewise, for the women the abuse suffered in old age might form a continuum with her experience of violence as a child in the natal home and as a wife in the conjugal home

Forced Prostitution:

Forced prostitution or other kinds of commercial exploitation by male partners or parents is another form of violence against women and children reported worldwide. Destitute families, unable to support their children, often hire out or sell their children, who may then be forced into prostitution. Very often the young girl is sent as a domestic worker, in which case she may be physically and sexually exploited by her employers.

Killing in the Name of Honour:

Hundreds, if not thousands, of women are murdered by their families each year in the name of family "honor." It's difficult to get precise numbers on the phenomenon of honor killing; the murders frequently go unreported, the perpetrators unpunished, and the concept of family honor justifies the act in the eyes of some societies. Honour killing is defined as a death that is awarded to a woman of the family for marrying against the parent's wishes, having extramarital and premarital relationships, marrying within the same gotra or outside one's

caste or marrying a cousin from a different caste. Honour killing is different from the dowry deaths that are also a very common practice in India as, in the case of dowry deaths, the perpetrators of that act claim that they have not been given enough material rewards for accepting the woman into the family. In India, for example, more than 5,000 brides die annually because their dowries are considered insufficient, according to the United Nations Children's Fund (UNICEF). Crimes of passion, which are treated extremely leniently in Latin America, are the same thing with a different name, some rights advocates say.

The domestic violence against women has now become a common phenomenon in the whole World. Even though there are very few and limited official data which are available on the various aspects of domestic violence against women in most of the countries but there are a few surveys which are conducted on family violence in different countries. These empirical studies show that violence against women is quite widespread. 2 reports on domestic violence against women based on the data collected by National Crime Survey were published by The United State Bureau of Justice. It was revealed that there were about 3.8 million incidences of violence against women within the family. Gelles and Straus (1987), in a nationwide sample of about 6000 individuals, found that in 16% of the homes, some kind of violence has occurred against the women in the family in the year prior to the survey and more than one in 4 of the couples reported marital violence at some point in their married life.¹⁹ David Levinson in 1989 examined the Human Relations Area files at Yale University. The files contained statistical and descriptive information on a very wide range of societies over time and around the world. It was found by the researcher that wife beating was one of the most common and frequent forms of domestic violence which was used. It was also reported by Seager and Olson that wife beating was a widespread act and they even stated that some cultures defended it as a man's right whereas in an other few cultures the problem was hidden away as a 'Private' matter. In India too a few studies have been conducted by researcher which brought the fact that domestic violence against women is very common in one form or the other and that it very easily incorporates into the boundaries of caste, class, race and religion. A perpetrator or abuser may use one type of violence at one time and another type of it at another moment. A perpetrator can use a combination of different types of violence simultaneously. It can be said that those who are abused in the presence of others are more likely to feel humiliated as they may develop a feeling of having been let down in the eyes of others.

There was a survey held by planning commission in which it was held that a very large percentage of respondents about 61 percent out of all states together have pointed out beating as the perception of domestic violence. Beating appears to be the most common mode of violence used by the perpetrators against the victims in both rural as well as urban area. Analysis of data even states that respondents from upper class, middle class and lower class families expressed nearly the similar views regarding beating as a common form of violence. Respondents carrying this perception were equally spread over rural and urban

¹⁹ http://planningcommission.nic.in/reports/sereport/ser/stdy_demvio.pdf

areas. Scolding was reported more in rural areas as compared to urban areas. It was assembled that respondents from lower class and below poverty line families were found more in number in describing scolding as a form of violence. Another perception of violence that was reported by respondents was repeated insulting in the presence of others. out of the total 1250 respondents nearly 37 percent confirmed that they perceived repeated insulting as domestic violence. There was a difference of only 1 per cent in respondents from rural and urban areas who treated repeated insulting as domestic violence. The women from the upper class and middle class families were more sensitive on the issue as compared to those from lower class and below poverty line families. If Sexual Abuse is considered as domestic violence few respondents from Gujarat (58 per cent) were more frank in their responses as compared to respondents from other states. 38 percent respondents from Madhya Pradesh and 18 per cent from Maharashtra confessed that sexual abuse was a sort of violence. Few like respondents from Andhra Pradesh and Chhattisgarh were hesitant to speak on this issue as only about 3 per cent and 9 per cent of the respondents respectively perceived sexual abuse as a form of domestic violence. Rural area respondents as compared to urban areas, were more hesitant to express their opinion on this aspect of domestic violence. Like wise respondents from families living below poverty line and those from middle class families were not comfortable in giving their views on sexual abuse. Suspecting one's character was considered as the most derogatory form of domestic violence against women and large majority of women perceived this as the most dangerous act of the perpetrators of domestic violence. Rural area and those from middle class families women's were touchy about the quality of character When quarrels between the husband and wife becomes a common routine where there is no major cause for such quarrels they are perceived as violence against women. Repeated quarrels were even perceived as domestic violence by about 39 per cent of the respondents from all the states taken together. Rural areas had an increasing population as compared from urban areas. Mental Harassment was one of the other reason perceived as domestic violence by about 30 per cent of 1250 respondents from all states together. Rude behavior was also taken as domestic violence by about 38 per cent of the respondents from five states together. only 4 per cent respondents from Andhra Pradesh are reported to have treated rude behavior as violence. The perception of respondents from other states was in line with the general perception. In conclusion we can say that with the view of respondents we cannot have uniform perception about the domestic violence.

CHAPTER 4- REACTIONS TO AND IMPACT OF DOMESTIC LIFE

Violence against women in one form or the other is prevalent to be quite generic, cutting across class boundaries and was also seen to be present in all age groups having different attributes. It can be said that domestic violence is not considered to be serious unless it involves homicide or physical injury to the victim. However, from the view of the victim violence is a violence whether it is verbal, emotional or physical.

Many sociologists and psychologists in U.S.A. conducted various researches to understand the nature and extent of the problem and it took them a very long time in identifying major social factors associated with the problem of domestic violence against women. The reactions of abuse by the victims could be very well differentiated depending upon their level of education, family background, life situation and availability or non-availability of alternatives. Further, the reactions were also dependent on the presence or absence of other family members in the family or outsiders.

Victims reactions to domestic violence ranged from a high incidence of paralyzing terror, terrifying intimidation, shame and degradation, humiliation and isolation.

The immediate reactions to domestic violence were classified as :

resistance

fighting back

hatred against the abuser

feeling of taking revenge and

feeling of helplessness, humiliation and shame.

There was a survey by planning commission on the immediate reaction to domestic violence in which respondents were abused by using different forms of violence on different occasions in which the reactions to different forms of violence cannot and could not be identical. Hence, the reactions to physical, emotional, sexual and economic abuse were separately noted and reported. Some of their reactions were self-directed while others were directed against other persons. It is remarkable to note that nearly 50 per cent of the total 1250 respondents have shown resistance to abuse or fought back to the abuser. and following conclusions were drawn as stated below:

Every act of violence results in an immediate reaction on the part of the victim. The data clearly indicates the reaction of different abusive actions of the perpetrators on the respondents.

The analysis of data shows the following things –

While reporting the immediate reaction of the violent action of the perpetrator about twenty six percent each of the respondents from all the 5 states informed that they resisted and fought back. About fourteen per cent described their immediate reaction as a feeling of hatred against the abuser and equal percentage of people reported feeling of taking revenge as their immediate reaction. "A feeling that no-body from the family cares for me" was the immediate reaction of about fifteen per cent of the respondents; equal percentage felt humiliated due to abuse caused to them. About twenty five per cent of the respondents felt powerless as they could do nothing in the abusive situation as against about 12 % of respondents who developed a feeling of shame. About 2 % of the people could not exactly express the nature of reaction they had immediately after the incident of violence.

(B) The Analysis of data reported from the states disclosed the following facts :-

A very large numbers of population of respondents from M.P. (about 49% out of 250) reported that resistance was their immediate reaction to violence. It was also reported that Resistance was an immediate reaction of about 36% of the respondents from Maharashtra. But reports from few states like Andhra Pradesh, Gujarat and Chhattisgarh disclosed a reduced percentage of respondents i.e. about 20, 17 and 10 respectively expressing resistance as first reaction.

Fighting back was also seen as an immediate reaction to violence by about 48% of the respondents from Gujarat followed by 26% in Maharashtra. Few number of cases giving fighting back as the immediate reaction were registered from Andhra Pradesh (10%) and Gujarat (17%).

The other option included a feeling of hatred as the first reaction to violence and about 21 per cent of the respondents (out of 250) from Madhya Pradesh had a feeling of hatred against the abuser as first reaction to violence but from the other states it included 14 per cent each from Chhattisgarh, Gujarat and Maharashtra and Andhra Pradesh showed the lowest only about 6 per cent of the respondents expressing such a reaction.

A feeling of taking revenge was also seen to be prevalent as the immediate reaction to violence which included about 20 % of the respondents from Madhya Pradesh, 17 % from Gujarat, 16 per cent from Maharashtra, 10 % from Chhattisgarh and 8 % from Andhra Pradesh.

It was reported that the respondents from Maharashtra developed a feeling of loneliness and who felt neglected in the family were about 28 % overall . Simultaneous Feelings were found including that no-body in the family cares for me was also the immediate reaction to abuse and it reported about 26 % of the respondents from Madhya Pradesh and about 14 % from Gujarat. However, only 6 % and 4 % respondents from Chhattisgarh and Andhra Pradesh respectively reported such reaction.

About 1/4th of the overall respondents from Maharashtra felt humiliated immediately after the incident of violence. Such an immediate reaction to abuse was also stated by about 20 %

respondents from Chhattisgarh, 16 per cent from Madhya Pradesh, 10 per cent from Gujarat and 6 per cent from Andhra Pradesh.

A feeling of powerlessness was also one of the immediate reactions that followed the violence in the cases of which large majority that is of 39 % of the respondents from Maharashtra, 35% from Madhya Pradesh and 29% from Chhattisgarh. Similar immediate reaction to violence was reported by 16% of the respondents from Gujarat and 10% from Andhra Pradesh.

one of the reactions to abuse that was reported by the women was the feeling of shame. Such a reaction was reported by 26% of the respondents from Madhya Pradesh, 18 % from Maharashtra, 13 % from Andhra Pradesh, 10 % from Chhattisgarh and 7% from Gujarat.

It was even concluded that it was not possible for a very small number of the respondents from each state to describe in clear terms the exact nature of their immediate reaction to the abuse.

The strategies victims take depends upon one's perception of the abusive situation. The analysis of the reactions of the victims to their violence indicates two types of reactions – first 'self-directed' and the second 'directed to others'. Each victim of abuse is likely to take out her own strategies to deal with abusive situation in the family and its relationship. It is only when the violence becomes repeated and individual strategies fail the victim feels helpless and is forced to seek someone else's help .

The sources can be discriminated into informal and formal sources. The informal sources of help are members of the parental family, in-laws, neighbors, friends etc . Police were also approached than the other formal sources available observed Frize in his research paper in 1980. Pagelow (1981) too drew almost similar conclusions in regard to the use of formal sources.

Bowker (1983), after in-depth interview of the victims derived the conclusion that women use three types of techniques to prevent themselves from the violence. It is as followed:

personal strategies

use of informal assistance sources and

formal help sources.

It is expected that the victims would first use the informal help sources before reaching upto the formal help sources in case she fails to check the violence.

4.1 INTERVENTION BY FAMILY MEMBERS :

The survey further showed that data presented in the above table clearly indicates that in majority of the cases 44% of the family members of the respondents families did not

Intervene when they were being abused, as against about 37% of the cases where there was an intervention of the family members. This is the overall picture from all the states taken together. The data from the many individual states clearly states that the situation is more serious in Chhattisgarh and Maharashtra from where about 53% and 52% of the respondents reported that their family members never intervened when they were put to physical, emotional and verbal violence by other members of the family. More or less similar responses were from Andhra Pradesh (29%), Gujarat (42%) and Madhya Pradesh (44%).

There is a general understanding that an abused woman would first approach the family i.e. parents and guardian for help and it was found that only about one fourth of the 607 respondents have approached the parents to seek their help in tackling abusive situation. It was also seen that about 16% of them have taken the help of relatives. It was astonishing to note that a majority of about 56% of the victims have approached their friends for seeking their guidance to deal with the situation and the main reason for this can be that one can open one's mind and speak more freely and in details with the friends as compared to parents, guardians and relatives. Similar trend was observed in all the states as majority of the respondents from all the states have preferred friends as the informal source of help.

As observed earlier, the victims move to the informal sources when their own strategies to deal with the violent situation fail. The advice is sought with a positive hope that they will be better equipped to face the abusive situation. But in the informal group situation may arise where certain persons would show sympathy to the victims whereas the others may refrain from any intervention or advice. Depending on the nature of the abuses the strategies of the informal group vary from one to other. Further, some members of the informal group may advise the victims to patch up in order to save their marriage and in the interest of their children, on the same situation others may simply give lip-services but would not give any concrete advice. There are others who are likely to advise the victims either to seek help from formal agencies or to break off the abusive relationship.

4.2 TYPES OF ADVICE GIVEN BY INFORMAL GROUP

The data according to the survey shows that in majority of the cases about 48% the members of the informal group advised the victims to patch up with their family members. We can also state that the informal groups valued the continuation of the victims in the family and advised them to reconcile to the situation for saving their marriage and the future of their children. As against this about 11% of the respondents were even advised for breaking off marital relationship and about 21% were advised to report the problem to police authorities. In all about 14% of the respondents were directed to approach the N.G.o.s to seek their help and about 6% were advised to go for legal remedies available under the law. The situations in the states did not show any important variations from the overall situation. The informal sources at the rural level were more in favour of patching up or break off than seeking help from informal sources as compared to their counterparts in the urban areas. Except in the State of Maharashtra where only 32% of the respondents were advised by the informal sources to do patch up, the percentage of respondents who were advised to patch up ranged between 51 to 53% in the states of Andhra Pradesh, Chhattisgarh, Gujarat and Madhya Pradesh. The

percentage of respondents who were advised to seek formal help from NGOs was around 9 to 11% in Chhattisgarh, Gujarat and Madhya Pradesh as against 16% in Andhra Pradesh and about 24% in Maharashtra. It appears that NGOs have gained confidence in Andhra Pradesh and Maharashtra from their work in the field of women's welfare. Advice was also given to report the cases to the competent police authorities i.e. 21% respondents each in Andhra Pradesh and Chhattisgarh, 23% each in Madhya Pradesh and Maharashtra and to around 19% respondent in Gujarat. There were cases where the members of informal group also recommended the break off in marital relations. Such cases accounted for about 11% each in Andhra Pradesh and Chhattisgarh, 14% in Madhya Pradesh, 12% in Gujarat and only 7% in Maharashtra. The cases of advice to go for legal relief were negligible in all the 5 states.

4.3 Assistance & Guidance from Informal Sources

According to the report of planning commission out of the total 1016 victims of violence it was surprising to note that there were only 68 victims which had sought the help from outside formal agencies. out of those 68 victims 55 were the victims of physical violence and the rest were the victims of other forms of violence. All the victims were from the educated class, 24 of them were employed and 13 belonged to the upper class families. It was found that the majority of the respondents took the help of police, family courts and legal advisers. It clearly showed that the N.G.o.'s and the community panchayats, inspite of their best efforts to resolve conflicts at local level failed to attract more victims of violence in their fold.

Informal sources include police, family courts, legal advisers etc and police provides physical protection. Through the survey it was found that police authorities had full realization of their legal responsibilities with regard to the cases of domestic violence reported to them. Social or moral support by Community Panchayats and legal advisers are also a type of assistance that is provided and a few victims are also provided with psychological Counseling along with moral and social supports by NGOs working for the welfare of women at local level. It was even found that violence was totally stopped in the cases of about 34% of the victims and partially stopped in the cases of about 29% of the victims.

The next question that was brought up in the survey was for the victims who could not get relief from abusive conditions in the family even after the intervention of informal and formal groups as to why they were still living with those families?

The data revealed that there were different compulsions which forced them to continue staying in the abusive relationship e.g. for the sake of children, for the sake of family reputation, with the hope that things will improve one day and that they could not think of alternative way of living. The analysis of data even showed that a majority of about 43% of the victims out of 68 reported that it was because of the fact that they had no alternative place to go and hence they were forced to live in that relationship. About 24% of the victims could not leave the family for the sake of their children as against about 16% who were willing to desert the abusive relationship but continued to live in abusive situation due to pressure from their parents. There were others who were compelled to live only to protect the reputation of the parental families and still others who continued living in abusive relationship with the

hope that things would change for better in future. The percentage of such victims was about 7 to 10% respectively.

4.4 IMPACT OF DOMESTIC VIOLENCE

The impact of domestic violence can be both short term and long term, the instant reaction to violence is a temporary phase but it causes a long term effect on the life of the victims too. The life of their children or family is also affected. It was therefore needed to study the long term impact of domestic violence against women. Violence causes various ill effects like stress, anxiety, depression, disturbed sleep, palpitations, physical fatigue, chronic headache, Psychogenic pain etc. to women. A single victim may suffer from more than one ailments at a time. There may also be a shift from one type of ailment to the other. In some cases old ailments disappear thus giving place to a new one which may be more severe. Violence against women affects the physical and mental health of the woman as well as the family. The psychological disorders are more rampant as compared to physical problems. Emotional violence causes more harm to the health of women. It acts like a pest to the body which slowly eats the body. And since the women are living in the abusive family nobody cares for the health problems, no medical advice is sought and nor proper treatment is given. And thus the health problems aggravate resulting in impaired health.

Women personal and social life is also affected due to domestic violence. There are women who face the violent situations boldly and do not allow their personality to be adversely affected and weaken them. But at the same time there are other women who get mentally disturbed and disorganized. They strictly restrict their social contacts and feel ashamed of their abusive situation. There are even the ones who get worried and became victims of chronic health problems.

Cooperation and conflicts are the normal features of family life. However, presence of these features in the intimate relationships creates absurdity. On the one side there is a myth of family non-violence which depicts cultural harmony and same on the other hand, there seems to be some social norms which grants the right to few members to abuse the other family members. Violence perpetrated among the members of the family is much more common. The domestic violence against married women perpetrated by the husbands or other members of the family spoils the cordial and comfortable relationships among the members of the family. Worst affected are the women victims of violence. Some effects are :- Conjugal relations are strained and are always under tension, Quarrels take place on minor issues frequently, Communication gap widens giving rise to misunderstanding and Mutual Trust is lost.

The way the mother is treated it affects the life of the children in one form or the other. The serious impact of verbal and physical violence inflicted on the mother is the loss of respect for parents. Secondly, the children are also likely to be the abusers in their life. It even blocks the development of the children as the abused mother does not look after the children in a proper manner. The children even neglects their studies and are always worried about their future.

Impact of violence can also be on the sex life of the victims. Sex in Indian Society is considered as a matter of private life and as such not to be discussed publicly. It is, therefore, very difficult to ask sex-related questions to the women respondents or carry a survey on this. But it is a fact that violence by the husband in one form or the other affects the conjugal relations. Some times, husband may not be a perpetrator but he is indirectly responsible for instigating violence against the wife and this irritation created out of violence is carried to bed-room and as a result the sex life of a victim is affected.

There are many women who are ignorant about the reliefs available to the victims of domestic violence. Therefore, there is a need to explain to them the nature and sources of relief available under law. "The relief measures are even described as being complicated due to the procedures that were beyond the understanding of ordinary victims.

Some of the measures which is needed in order to improve the situation are:

creating awareness on family and community level

very strict and effective law to punish the abusers and protect the victims

Family orientation for cordial interpersonal relations among the family members

launching a drive against the evil of domestic violence by social activists

Public defamation of abusers, social boycott of perpetrators and spiritual guidance by religious leaders etc. are also required.

The women of younger age who were married at lower age were at a high risk of being physically abused against those who were of higher age group and married at a later age. But as against this the women of higher age group were more likely to be abused emotionally and economically as compared with the women of younger age group. The educational background and occupational status of the women victims disclosed that women who were not educated and those who were highly educated were more prone to domestic violence as compared with those who were educated. Similarly, women who were involved in low paid work of low social status were at higher risk of being abused.

The most common forms of domestic violence that is reported are slaps, beating, pushing, kicking, sexual coercion and assaults. Dowry was not the only a major cause but alcoholism of husband were also reported as a major cause of violence by victims from rural areas and those belonging to lower class families.

Steps should be taken to curb this evil practice and some recommendations for it are:

A mass awareness campaign should be done which should involve all the community, religious leaders, women's organizations, National Service Scheme (N.S.S.), NGOs, and opinion makers at all levels to counter the present trend of violence against women in general and domestic violence in particular.

It should be strictly adhered to that the legal provisions against perpetrators of domestic violence are strictly enforced and no one is left without punishment. The entire laws related to abuse and harassment of women need a comprehensive and thorough review in the light of the present trends and requirements.

A carefully planned mass media strategy is of crucial importance for the women's employment in general and domestic violence against women in particular. Media intervention can play a big role. Issues related to domestic violence against women and alertness of family members on the tragic effects of domestic violence should be packaged in interesting, viewer friendly programmes for integration and absorption in social psyche. It is, therefore, necessary to plan a media strategy for bringing a mass awareness and education on the issue of domestic violence against women. The Government of India should provide adequate resources for implementation of such a comprehensive media strategy for social change.

The Governments should conduct regular training programmes of law enforcement officers, judges, other court personnel and prosecutors to identify and respond more effectively and promptly to the cases of domestic violence against women in particular and crimes against women in general. The Governments should also develop, enlarge and strengthen social support services programmes for the women who are victims of domestic violence.

Units of law enforcement officers should be created specially targeting domestic violence against women and it should include trained people.

It is necessary to give proper training to the medical personnel in dealing with and treating the cases of domestic violence against women and the training should cover the collection and preservation of evidence, analysis, providing expert testimony and treatment as very few victims of domestic violence approach to medical professionals for treatment. Very few, again, disclose that the mental or physical injury is caused due to domestic violence.

The State Governments should carry out the implementation of comprehensive strategies addressing domestic violence against women that are sensitive to the needs and safety of the victims and hold offenders accountable for their crimes.

The Central and State Governments should encourage to develop and encourage projects to implement community driven initiatives to address the needs of victims of domestic violence. A large number of NGOs have emerged in many parts of the country, who are working at grass root level in projecting and addressing women issues. These services should be encouraged, supported and availed of, so that the eradication of the evil of domestic violence against women becomes a truly national and peoples movement.

CHAPTER 5 -DESERTION OF MARRIED WOMEN BY NR'S IN INDIA AND ITS EMERGING TRENDS

The harms of women abandoned by NR's bridegroom are not really latest. Earlier instances included mostly bigamous marriage which was entered into by men under family pressure to marry within community. The husbands use to hide their foreign spouses and later abandoned their Indian wife. However, with growing Indian NR's population the problem has become multi-dimensional. There are cases which are being registered by women on cruelty of false marriage, cheating, lying and dowry extortion, mental harassment, beaten up. Even though the number of NR's marriages is escalating by each passing year the number of matrimonial and related disputes in the NR's marriages is also rising proportionately.

What does NR's Marriages mean??

Even though this is a gender neutral term, typically the 'NR's Marriages', as generally understood, are between an Indian woman from India and an Indian man residing in another country (thus NR's – Non Resident Indian), either as Indian citizen (when he would legally be an 'NR') or as citizen of that other country (when he would legally be a Po – Person of Indian origin).

There can be various Factors responsible for the desertion of Married Women. Some of them are:-

- In the allure of sending daughters abroad, the parents commit to pay huge sum of money as dowry, both before and after marriage, and when they fail to give the desired money their daughters are deserted or divorced by NR's.
- Families sometime totally neglect the common cautions that are observed in traditional matchmaking.
- The women who went to her husband's home in the other country was brutally battered, assaulted, abused both mentally and physically, malnourished, confined and ill-treated by him. She therefore either flees or is forcibly sent back.
- When woman comes to know on reaching the other country of her NR's husband that he was already married to another woman, whom he continued to live with.
- When women after her marriage comes to know that her NR's husband had given her false information of his job, immigration status, earnings, property, marital status and other material particulars, to defraud her into the marriage.

Matrimonial Laws in India

In India diversity is the rule rather than an exception, thus there is multiplicity of matrimonial legislations. The applicability of all these laws varies according to the religion and domicile of the parties. Accordingly the laws of marriages can be broadly classified into two categories:-

- 1). Religion specific, available to person belonging to a specific religious community and
- 2). the other are to secular enactments which enable every Indian to avail of the provisions irrespective of the religion.

In the former category are:

- The Hindu Marriage Act, 1955
- The J&K Hindu Marriage Act, 1980;
- Goa, Daman and Diu Laws
- Quaranic Laws of Muslims
- Parsi Marriage and Divorce Act, 1936
- The Indian Christian Marriage Act, 1872
- The Indian Divorce Act, 1869

And in the latter category are:

Foreign Marriage Act, 1969,

The Special Marriage Act, 1954.

These laws lay down the following:

- the procedure to be followed at the time of the solemnization of a marriage;
- conditions for the validity of a marriage;
- rights and obligations of the husband and wife during the subsistence of marriage;
- matrimonial remedies available in the event of a dispute between them and the specification of the grounds on which they can be availed of;
- rights and obligations of the spouses after the settlement of the disputes;
- other matters such as maintenance, custody of children and distribution of spousal property.

As mentioned above the personal laws of each religious community differ thus making the matrimonial dispute especially in interreligious marriages to deal with. The legal complications get multiplied many times when a marriage takes outside the borders of a country and is known as the “NR Marriages.”

Problems in Existing Family Laws

The family law legislations were enacted by the Indian Parliament in the year 1955 and 1956 and have left Indians at the same place they were. Immense family law problems have arisen in because of NR? marriages and there were no practical solutions found in the legislative enactments as they exist today. We cannot say that the legal system is designed and amended in a very good way so as to include such problems.

Thus there is a need to amend the existing laws accordingly with the time. In the family law area, Implying NR? marriages, abandoned spouses, abducted children, overseas adoption, etc. need a lot of statutory solutions.

Following are some of the common instances of the issues that arise in NR? Marriages because of existing flaws of family laws.

There is an absence of an uniform civil laws and the abundance of personal laws of various religious communities in India make matrimonial disputes extremely difficult to and complicated to deal with.

NR? bridegrooms many a times move out of the marriages without fearing the law

Lack of effective and authentic legal strictness in family laws to deal with

Legal recourse is very much difficult, time consuming, very expensive and complicated. Despite the Family Court Act, 1984, most state governments did not have a setup of family courts.

The other distressing trend appears to be is an easy dissolution of NR? marriages by the foreign courts even if the solemnization has taken place in India as per Indian laws. The NR? husband usually gets divorce from the courts in abroad without even the knowledge and consent of the other by presenting false information and fake documents. In many cases such wives are not entitled to even maintenance allowances from their husband.

The marriages are governed by the Indian legal system but even with the complex private international laws involving the legal system of the other country too, which makes the situation of these deserted women more miserable.

other issues like inter-parental child abduction, inter-country child adoption etc. Miseries of females are further increased when kids are kept by the husbands in some cases.

Some times women are even denied maintenance in India on the pretext that the marriage had already been dissolved by the court in another country.

Thus, there is a need to address the flaws in the laws to resolve the problems of deserted NR? married women.

Role of Judiciary

Indian jurisprudence consists of a dynamic, progressive and open minded judicial system which often comes to the rescue of such problems by interpreting the existing laws and

putting a practical application to the new generation problems of immigrant Indians. The Supreme Court of India has decided a few cases and laid down the following laws in relation to NR? matrimonial disputes.

*Narsimharao And others Vs. Y. Venkatalakshmi*²⁰:—In this case both husband and wife were married in India under the Hindu Marriage Act. After the marriage the husband went back to the USA and obtained a decree of divorce from the State of Missouri. The husband alleged to the court that he was resident of State of Missouri for 90 days preceding the institution of the petition and obtained a divorce decree on the ground that the marriage has been “irretrievably broken down”. The Supreme Court of India held that both on the issues of jurisdiction and on the ground on which the foreign decree was passed were not in accordance with Hindu Marriage Act under which the marriage took place. The Supreme Court, therefore, held that the decree was not enforceable in India. In this case the court laid down a golden rule that has been repeatedly followed and relied upon in subsequent cases: “... *The jurisdiction assumed by the foreign court as well as the ground on which the relief is granted must be in accordance with the matrimonial law under which the parties are married.*”

The only 3 exceptions to the rule were as laid down by the court :

Where the matrimonial action is filed in the forum where the respondent is domiciled or habitually and permanently resides and the relief is granted on a ground available in the matrimonial law under which parties are married;

where the respondent voluntarily and effectually submits to the jurisdiction of the forum as discussed above and contests the claim which is based on the ground available under the matrimonial law under which the parties are married;

Where the respondent consents to the grant of the relief although the jurisdiction of the forum is not in accordance with the provisions of the matrimonial law of the parties.

In *Smt. Neerja Saraph Vs. Shri Jayant*²¹,

the Supreme Court said that even if it is a problem of private international law and is not that easy to resolve but with the change in social structure and rise of marriages with NR?, the Union of India may enact a law like the Foreign Judgments (Reciprocal Enforcement) Act, 1933 enacted by the British Parliament under Section 1 in pursuance of which the Government of United Kingdom issued Reciprocal Enforcement of Judgments (India) order, 1958. The court recommended that reasonability of a legislation safeguarding interest of women may be examined by incorporating provisions like:

- It held that no marriage between a NR? and an Indian woman which has been taken place in India must be annulled by a foreign court.

²⁰ 1991 3 SCC 451, (1991) 2 SCR 821

²¹ JT (1994) (4) SC 488, (1994) 6 SCC 461

- provisions must be made for an adequate alimony to the wife in the property of the husband both in India and abroad.
- the decree granted by Indian courts must be made executable in foreign courts both in principle of comity and by entering into reciprocal agreement like section 44A of the C.P.C. which makes a foreign decree executable as if it would have been a decree passed by that court.
- Right to approach court for injunction or interim order against the husband travelling abroad or taking the children abroad which may also include impounding of passport.

In *Smt. Seema Vs. Aswini Kumar*²²

Supreme Court in its judgment dated 14.02.2006 has issued the directions that the Central and State Governments shall take into consideration the following steps:

- Marriages of all persons who are citizens of India whether they belong to various religions should be compulsorily be registered in their respective states.
- The process for registration should be notified by the respective states in 3 months.
- Thus, it is now upon the states to provide for registration of marriages which needs to be implemented in case of NR? marriages take place in India. Marriage certificates for NR? marriage must also be issued in duplicate copies and must carry social security number of the NR? spouse.

*Rajiv Tayal vs. Union of India and others*²³,

In this it shows that the wife has an available remedy under section 10 of the Passport Act for impounding and/or revocation of the passport of her NR? husband if he fails to respond to the summons by the Indian courts.

Governmental Interventions

Government has created various NR? commissions and has also constituted NR? cells at the states where the problem is serious as well as the central level, to facilitate flow, legal assistance and other necessary actions. The Ministry of Overseas Indian Affairs (MOA), has even tried to focus attention on the issue which deserves serious attention through its guidance booklets. It gives legal rights and obligations that govern such marriages. The National Commission for Women (NCW), the coordinating agency at the National level for dealing with the issues which pertain to NR? marriages has brought out some print material which describe the problem related to NR? marriages and gives precautionary do and don'ts for Indian women who are considering marriage to a NR?. Besides this, Government of India has also launched awareness programmes regarding this problem. State governments too have also brought a wide publicity through various channels to educate the rural women. NGo's

²² 2006 (2) SCC 578, AIR 2006 SC 1158

²³ 2005 (85) DRJ 146, 124 (2005) DLT 502

are also contributing an active role in educating the people regarding the risk that they are taking if they enter into such alliances without proper verification. The Government of India has made it mandatory for the NRIs to fill up marriage registration forms and provide various details like social security number, passport details and labour ID cards details. False declaration in these forms will lead to punishment under IPC.

CHAPTER 6- LEGAL SUPPORT AGAINST DOMESTIC VIOLENCE

Under colonial rule, affairs which were concerning to the marriages and inheritance of individuals were governed by their personal laws, and it was determined by the faith they belonged to. But unlike the Mughal rulers, whose precedent the Britishers claimed to follow, these personal laws were administered by a secular judiciary rather than members of the religious group themselves. And thus, the relevance of Hindu and Islamic law were transformed through the processes of translation, interpretation and adjudication by British judges and came to be described as Anglo-Hindu and Anglo-Mohammadan law. In 1950, the Constitution of India under Article 44 laid down that the state should endeavor to establish a uniform civil code for its citizens. There were two supporters for the UCC, liberal nationalists like Mohan Das who debated that the community based personal laws were a danger to national consolidation and women leaders like Hansa Mehta and Amrit Kaur who saw personal laws as greatly disadvantageous to women. But demands for the UCC were opposed not just by minorities, but also by a significant number of conservative Hindus who viewed this as excessive interference with the state.

The Indian state has enacted many laws in the past in order to address the issue of domestic violence and recently a new comprehensive law is added to the list.

Laws Related to Dowry and Torture/ Cruelty

Before the passing of the PWDVA, women could get criminal sanctions for domestic violence under Section 498A of the Indian Penal Code (Anti-Cruelty Act) or Section 304B (Dowry Death Act). But after independence, the rise in dowry deaths in India had compelled the government to enact the Dowry Prohibition Act in 1961 to book a person for demanding dowry.

There is a myth that wife battering is a 'private matter' and it has silenced many victims for centuries. It appears that the mere passing of any act may fail to guarantee reduction in the number of violence. And thus we can all say existence of any law cannot guarantee registration of sufficient number of cases.

6.1 CONSTITUTIONAL PROVISION:-

In India, the constitution makers while drafting the Constitution were sensitive to the problems faced by women and made specific provisions relating to them. In various articles, not only mandates equality of the sexes but also authorizes benign discrimination in favour of women and children to make up for the backwardness which has been their age-old destiny. But categorical imperatives constitutionally by the Founding Fathers are not self-acting and can acquire socio-legal locomotion only by appropriate state action.

Our Constitution is the basic document of a country having a special legal holiness which sets the framework and the principal functions of the organs of the Government of a State. It also declares the principles governing the operation of these organs. The Constitution aims at creating legal norms, social philosophy and economic values which are to be affected by

striking synthesis, harmony and fundamental adjustment between individual rights and social interest to achieve the desired community goals.

The Constitution of India contains various provisions which provide for equal rights and opportunities for both men and women. The salient features are :-

PREAMBLE

The preamble contains the essence of the Constitution and reflects the ideals and aims of the people. The Preamble starts by saying that we, the people of India, give to ourselves the constitution. The source of the Constitution is thus traced to the people, i.e. men and women of India, irrespective of caste, community, religion or sex. The makers of the Constitution were not satisfied with mere territorial unity and integrity. If the unity is to be lasting, it should be based on social, economic and political justice. Such justice should be equal for all. The Preamble contains the goal of equality of status and opportunities to all citizens. This particular goal has been incorporated to give equal rights to women and men in terms of status as well as opportunity.

POLITICAL RIGHTS

Even though the fact that women participated equally in the freedom struggle and, under the Constitution and law, have equal political rights as men, enabling them to take part effectively in the administration of the country has had little effect as they are negligibly presented in politics. There were only 7 members in the Constituent Assembly and the number later decreased further. Their representation in the Lok Sabha is far below the expected numbers. This has led to the demand for reservation of 33% seats for women in the Lok Sabha and Vidhan sabhas. Political empowerment of women has been brought by the 73rd and 74th Amendments which reserve seats for women in Gram Panchayats and Municipal bodies. Illiteracy, lack of political awareness, physical violence and economic dependence are a few reasons which restrain women from taking part in the political processes of the Country.

ECONOMIC RIGHTS

At hand there have been series of legislation conferring equal rights for women and men. These legislations have been guided by the provisions of the fundamental rights and Directive Principles of State Policy. Here again there is a total lack of awareness regarding economic rights amongst women. Laws to improve their condition in matters relating to wages, maternity, benefits, equal remuneration and property /succession have been enacted to provide the necessary protection in these areas.

SOCIAL JUSTICE

For providing social justice to women, the most important step has been codification of some of the personal laws in our country which pose the biggest challenge in this context. In the area of criminal justice, the gender neutrality of law worked to the disadvantage of a woman

accused because in some of the cases it imposed a heavy burden on the prosecutor for e.g. in cases of rape and dowry.

Certain areas like domestic violence and sexual harassment of women at the workplace were untouched, unthought of. These examples of gender insensitivity were tackled by the judiciary and incorporated into binding declaratory laws to provide social justice in void spheres.

Although a Uniform Civil Code is still a dream in spite of various directions of the Court, the enactment of certain legislations like the Pre- Natal Diagnostic techniques (prevention of Misuse) Act and the Medical Termination of Pregnancy Act prevent the violation of justice and humanity right from the womb.

In spite of these laws, their non-implementation, gender insensitivity and lack of legal literacy prevent the dream of the Constitution makers from becoming a reality. They prevent the fulfillment of the objective of securing to each individual dignity, irrespective of sex, community or place of birth.

FUNDAMENTAL RIGHTS

Part 3 of the Constitution consisting of Articles 12-35 is the heart of the Constitution. Human Rights which are the entitlement of every man, woman and child because they are human beings have been made enforceable as constitutional or fundamental rights in India. The framers of the Constitution were conscious of the unequal treatment and discrimination meted out to the fairer sex from time immemorial and therefore included certain general as well as specific provisions for the upliftment of the status of women.

ARTICLE 14

“The state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India”.

It guarantees that the State shall not deny equality before the law and equal protection of the laws.

ARTICLE 15

Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth

(1). The state shall not discriminate against any citizen on grounds only of religion, race, cast, sex or place of birth or any of them

(2). Nothing in this article shall prevent the State from making any special provision for women and children.

It prohibits discrimination against any citizen on the ground of sex; and Article 15(3) empowers the state to make positive discrimination in favour of women and child.

Accordingly Article 15 (1) prohibits gender discrimination and Article 15 (3) lifts that rigour and permits the State to positively discriminate in favour of women to make special provisions to ameliorate their social condition and provide political, economic and social justice. The state in the field of Criminal Law, Service Law, labour Law etc has resorted to Article 15(3) and the Courts, too, have upheld the validity of these protective discriminatory provisions on the basis of constitutional mandate.

ARTICLE 16

Equality of opportunity in matters of public employment

There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the state.

No citizens shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the state.

The Constitution, therefore, provides equal opportunities for women implicitly as they are applicable to all persons irrespective of sex. However, the courts realize that these Articles reflect only de jure equality to women. They have not been able to accelerate de facto equality to the extent the constitution intended.

There is still a considerable gap between constitutional rights and their application in the day to day lives of most women. At the same time it is true that women are working in jobs which were hitherto exclusively masculine domains. But there are still instances which exhibit lack of confidence their capability and efficiency. There remains a long and lingering suspicion regarding their capacities to meet the challenges of the job assigned.

In case of *C.B. Muthamma v. Union of India*²⁴, a writ petition was filed by Ms Muthamma, a senior member of the Indian Foreign Service, complaining that she had been denied promotion to Grade 1 illegally and unconstitutionally. She pointed out that several rules of the civil service were discriminatory against women. At the very threshold she was advised by chairman of UPSC against joining the foreign service. At the time of joining she was required to give an undertaking that if she married she would resign from service. Under rule 18 of Indian Foreign Service (recruitment, Cadre, Seniority and Promotion) Rules, 1961, it was provided that no married women shall be entitled as of right to be appointed to the service. Under Rule 8 (2) of Indian Foreign Service (Conduct and Discipline) rules, 1961, a woman member of the service was required to obtain permission of the government in writing before her marriage was solemnized. At any time after the marriage she could be required to resign if the Government was confirmed that her family and domestic commitments were likely to come in the way of the due and efficient discharge of her duties as a member of the service. On numerous occasions the petitioner had to face the consequences of being a woman and thus discrimination, though the Constitution

²⁴ (1979) 4 SCC 260

specifically under Article 15 prohibits discrimination on grounds of religion, race, caste, sex or place of birth and Article 4 provides the principle of equality before law.

ARTICLE 21

Protection of life and personal liberty.

“No person shall be deprived of his life or personal liberty except according to procedure established by law.”

Denial of right of succession to women of scheduled Tribes amounts to deprivation of the right to livelihood under Article 21; *Madhukrishwar V. State of Bihar*.²⁵

In *Vishaka v. State of Rajasthan*²⁶, the Supreme court in the absence of legislation in the field of sexual harassment of working women at the place of work, formulated guidelines for their protection. The Court said:

“Gender equality includes protection from sexual harassment and right to work with dignity which is a universally recognized basic human right. The common minimum requirement of this right has received global acceptance. In the absence of domestic law occupying the field, to formulate effective measures to check the evil of sexual harassment of working women at all workplaces, the contents of international conventions and norms are significant for the purpose of interpretation of the guarantee of gender equality, right to work with human dignity in articles 14, 15, 19 (1)(g) and 21 of the Constitution and the safeguards against sexual harassment implied therein and for the formulation of guidelines to achieve this purpose.”

ARTICLE 23

Prohibition of traffic in human beings and forced labour-

Traffic in human beings and beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

Nothing in this article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service the state shall not make any discrimination on grounds only of religion, race, caste or class or any of them.

Article 23 prohibits trafficking in human beings and forced labour; article 23 of the constitution specifically prohibits traffic in human beings. Trafficking in human beings has been prevalent in India for a long time in the form of prostitution and selling and purchasing of human beings.

In *Gaurav Jain v. Union of India*²⁷, the condition of prostitutes in general and the plight of their children in particular was highlighted. The Court issued directions for a multi-pronged

²⁵ (1996) 5 SCC 125

²⁶ AIR 1997 SC 3011

²⁷ 1997 (8) SCC 114

approach and mixing the children of prostitutes with other children instead of making separate provisions for them. The Supreme Court issued directions for the prevention of induction of women in various forms of prostitution. It said that women should be viewed more as victims of adverse socio-economic circumstances than offenders in our society.

DIRECTIVE PRINCIPLES OF STATE POLICY

However Directive principles of State Policy are not enforceable in any court of law they are essential in the Governance of the country and provide for the welfare of the people, including women. These provisions are contained in part 4 of the Constitution. Fundamental rights furnish to individual rights while the directive principles of State Policy supply to social needs.

ARTICLE 39

Certain principles of policy to be followed by the state.

The State shall, in particular, direct its policy towards securing-

- (a). that the citizen, men and women equally, have the right to an adequate means of livelihood;
- (d). that there is equal pay for equal work for both men and women
- (e). that the health and strength of workers, men and women and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

Article 39(a) directs the State to direct its policy towards securing that citizens, men and women, equally have the right to an adequate means of livelihood. Article 39 (d) directs the State to secure equal pay for equal work for both men and women. The state in furtherance of this directive passed the Equal Remuneration Act, 1976 to give effect to the provisions. Article 39 (e) specifically directs the State not to abuse the health and strength of workers, men and women.

Article 42

Provision for just and humane conditions of work and maternity relief-

The State shall make provision for securing just and humane conditions of work and for maternity relief.

Article 42 of the constitution incorporates a very important provision for the benefit of women. It directs the State to make provisions for securing just and humane conditions of work and for maternity relief. The State has implemented this directive by incorporating health provisions in the Factories act, Maternity benefit Act, and Cigar Workers (Conditions of Employment) Act, etc.

Article 44

Uniform Civil code for the Citizens

The State shall Endeavour to secure for the citizens a uniform civil code throughout the territory of India.

Article 44 directs the State to secure for citizens a Uniform Civil code applicable throughout the territory of India. Its particular goal is towards the achievement of gender justice. Even though the state has not yet made any efforts to introduce a uniform civil code in India, the judiciary has recognized the necessity of uniformity in the application of civil laws relating to marriage, succession, adoption, divorce, maintenance etc. but as it is only a directive it cannot be enforced in a court of law. However, one of the most dynamic members of the assembly, Shri K.M. Munshi, expressed his opinion that: "If the personal law of inheritance, succession etc is considered as a part of religion, the equality of women can never be achieved."

Article 51-A

is related to women. It states that;

"It shall be the duty of every citizen of India to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religion, language, regional or sectional diversities; to renounce practices derogatory to the dignity of women"

Parts 4 –A which consist of only Article 51- A was added to the constitution by the 42nd Amendment, 1976. This Article for the first time specifies a code of eleven fundamental duties for citizens.

6.2 PROVISIONS UNDER INDIAN PENAL CODE,1860

Section 312 to 318 provide for punishment for crimes relating to causing miscarriage, injuries to an unborn child, exposure of infants and the concealment of births. Section 312 makes it punishable for anyone including mother to cause a miscarriage of a child with the consent of the mother and section 313 makes it a punishable offence to cause a miscarriage without her consent. Section 314 provides for a punishment to be meted out to anyone who with or without the consent of the does any such act to cause a miscarriage and if such an act leads to the death of the mother. Section 315 provides for penal consequences for any act done while the mother is still pregnant to prevent a child from being alive or cause it to die after its birth. Section 316 deals with punishments for causing death of an unborn child in the later stages of pregnancy. Section 317 provides punishments for exposure or abandonment of a child while Section 318 penalises anyone who conceals birth of a child by secretly disposing off the dead body of the child.

There is no provision to deal with forced medical tests to determine the sex of the foetus.

The provisions of the IPC with regard to the punishments for miscarriage are adequate in the sense that the new legislation in the garb of the Medical Termination of Pregnancy (MTP) Act, 1972 legalizes abortions to a large extent. Though this Act is grossly misused to promote

selective abortions, it is beyond the scope of this report and this social menace can only be dealt with by amendment to the said Act. However, the punishments under section 314 and 315²⁸ seem inadequate when the gravity and heinousness of the crimes are taken into consideration.

Female foeticide is one of the most nefarious crimes on the earth. Female foeticide is no more an urban phenomenon, as one finds the rural population also greatly involved in such activities; they move all the way to cities to get these tests done. The cultural preferences for sons rather than daughters have led to a skewed sex ratio in India. Census data shows a consistent drop in the sex ratio.

The increasing imbalance between men and women is leading to many crimes such as illegal trafficking of women, sexual assaults, polygamy and dehumanization of society.²⁹

6.3 SEXUAL ABUSE AND TRAFFICKING

Sexual Violence

It is common in today's society and in today's society and is, most often, effected against women. It is known as one of the most heinous crimes, it evokes stringent punishment yet it continues being perpetuated by people.

Society seems to believe that sexual violence is an outward manifestation of the carnal desires of a man. However, given that lust is common to both the sexes, it seems paradoxical that the crimes are perpetuated largely against only one gender. The radical feminist understanding of sexual violence as means of reinforcing existing power structures in society does explain this loophole.

Sexual violence as a prevalent social phenomenon encompasses a broad spectrum of crimes which range from unwanted sexual comments or advances to actual sexual assault. Most of these, however, are not recognized by the current legislation framework of the country.

POSITION OF LAW

Sexual violence as it stands today in IPC consists mainly of rape and sexual assault. Sections 375 and 376 of Indian Penal Code deal with the issue of rape. Section 375 lays down that sexual intercourse with a woman without her will and consent would constitute rape but the forced, non consensual sex with one's wife is outside the purview of criminal liability under rape. The crux of Section 375 lies in the fact that current provisions in relation to rape rely on a woman's consent, or lack thereof, as seen in its last four clauses, to convict a man for rape. Section 376, on the other hand, deals with punishments for rape.

²⁸ Imprisonment of wither description for a term which may extend to 10 years along with a fine

²⁹ "Female Foeticide: Need to Change the Mindset of People", available at:

<http://www.legalserviceindia.com/article/1292-Female-Foeticide.html> (Visited on :23rd March 2011)

Sexual assault is dealt with by sections 354³⁰ and 509³¹ of the IPC. They lay down punishments for assault, use of criminal force, words or gestures intended to outrage the modesty of a woman.

The Criminal Law Amendment 2013 brought changes in the sections dealing with sexual violence.

SECTION	IPC, 1860	CRIMINAL LAW (AMENDMENT) BILL, 2012	Justice Verma recommendations	Criminal Law (Amendment) Ordinance, 2013
354	Assault or criminal force to woman with intent to outrage her modesty Punishment: Imprisonment	Substantive offence not changed Punishment : Imprisonment of	New S.354: Sexual Assault and Punishment for Sexual Assault. It collapsed the distinction between section 354 and 509 and brought it with in one section. This section includes international non-consensual touching of a sexual nature as well as words, acts and gestures which create an unwelcome threat of a sexual nature or result in unwelcome advance. It includes display and dissemination of pornographic material. Punishment: Graded	S. 354: Assault or Criminal force to Woman with intent to outrage her modesty. JVC was not accepted. Retained section 354 as provided in the IPC. Punishment: Imprisonment of either

³⁰ Assault or criminal force to woman with intent to outrage her modesty- whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will there by outrage her modesty, shall be punished with imprisonment of wither description for a term which may extend to two years, or with fine or with both.

³¹ Word, gesture or act intended to insult the modesty of a Woman- 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.

	nt of eather upto 2 years or fine or both	eather for 1 yr to 5 yrs and fine not less than 1000 rupees	punishment-tactile offence are punishable upto 5 yrs R? or fine or both, non tactile offences are punishable upto 1 year imprisonment of eather descr?pt?n or fine or both	for 1 year to 5 years and fine , as in 2012 bill
354 A	-	-	-	<p>New Section 354 A on sexual harassment based on the guidelines given in Vishaka judgement. Provides that unwelcome physical contact, request for sexual favors, sexually colored remarks, forcibly showing pornography and any other unwelcome physical, verbal or nonverbal conduct of sexual nature will be punishable</p> <p>Punishment : It grades the punishment where offences of unwelcome physical contact and demand for sexual favors are punishable with R? upto 5 yrs or fine or both. The other offences such as making sexually coloured remarks, forcibly showing pornography and any other unwelcome physical, verbal or non verbal conduct of sexual nature are punishable with imprisonment of 1 yr</p>

				or fine or both.
354 B			<p>New S. 354A: Assault or use of criminal force to women with intent to disrobe her. Whoever assaults or uses criminal force or abets such act with the intention of disrobing a woman or compelling her to be naked in any public place will be punished.</p> <p>Punishment: Imprisonment of either 3 yrs to 7 yrs and fine</p>	<p>New S. 354 B: Assault or use of criminal force to women with intent to disrobe her.</p> <p>Accepted JVC in full</p>
354 C			<p>Voyeurism- watching a woman engaging in a private act when she does not expect to be observed.</p> <p>Punishment- on first conviction</p>	<p>New S.354 C; accepted JVC in full</p>
354 D			<p>S.354 C: Stalking- Contacting or attempting to contact a person or monitoring the person digitally or spying on the person in a manner, which interferes with the mental peace of the person.</p> <p>Punishment: Imprisonment</p>	<p>S. 354 D: Stalking- Accepted JVC in full</p>

			for 1 yr to 3 yrs and fine	
375	Rape Perpetrator is male and victim is female Limited to penile Vaginal penetration	Sexual Assault Perpetrator and victim are gender Neutral Ss. (a) Penetration for sexual purpose into anus, vagina, urethra, mouth by penis or any object. Ss. (b) Penetration by any part of the accused's body into vagina, anus, urethra, mouth caused by manipulation of body of the complainant. Ss.(c) engages in cunnilingus or fellatio	Rape Perpetrator is male and victim is gender neutral Ss. (a) Penetration by penis or object into anus, urethra, vagina only. Deleted penetration into mouth. Deleted Ss. (c) engages in cunnilingus or fellatio	Sexual assault Perpetrator and victim are gender neutral Ss. (a) penetration into anus, mouth, vagina or urethra by penis. Deleted sexual purpose introduces in 2012 B.V. Ss. (b) Penetration by object into anus, vagina, urethra, mouth. Penetration by any part of the accused's body into vagina, anus, urethra caused by manipulation of body of the complainant Deleted cunnilingus or fellatio. New Ss(d)-applies his mouth to the vagina, urethra, anus, penis of another person or makes the other person do so to him Ss.(e) Touching vagina, anus, breast, penis of the complainant touch the accused's vagina, anus, penis, breast or that any other person.
		Exception for	Exception for medical or hygienic purpose made only for	

	<p>Fourthly talks about rape committed by accused by impersonation of husband</p>	<p>medical or hygienic purpose added for penetration by any part of the body as well as object. No change</p>	<p>penetration by object Fourthly amended. Rape committed by impersonation expanded to include impersonation by accused of anyone to whom the complainant would have consented</p>	<p>Exception for medical or hygienic purpose made for all the above JVC rejected, Retained fourthly as contained in IPC, which states impersonation by accused of husband.</p>
	<p>Sixthly states that the age of consent is 16</p>	<p>Sixthly amended to increase the age of consent to 18</p>	<p>Deleted age of consent from the definition of rape, and introduce a new section on gang rape Introduce new sixthly for cases where the person is unable to communicate consent, expressly or impliedly</p>	<p>Retained as in 2012 bill. Thus, Sixthly amended to increase the age of consent to 18 years JVC accepted. New seventhly for cases where person is unable to communicate consent.</p>
	<p>Marital Rape exemption retained</p>	<p>Marital Rape exemption retained</p>	<p>Marital rape exemption deleted Positive definition for consent to mean unequal voluntary agreement introduced. Explanation 3 and 4; Existing marital relationship or lack of physical</p>	<p>Marital rape exemption is retained Positive definition of consent, of JVC retained.</p>

			resistance will not amount to consent.	New Proviso: Lack of physical resistance will not amount to consent as per JVC , retained
S. 509	S. 509 word, gesture or Act intended to insult the modesty of a woman. Punishment: S? upto 1 yr or fine or both	No change in the substantive section. Punishment: S? upto 3yrs and fine not less than Rs. 1000	Deleted, as offences brought under new section 354	Retained S. 509 as in the 2012 B.II. Punishment :S? upto 3yrs and Fine. Did not quantify the amount of fine to be imposed.

6.4 CRUELTY

Position of Law

There was always a fight to have a provision that dealt with marital cruelty and it has been from a very long time. Remedies for a person suffering from cruelty basically lied in divorce and judicial separation. Upto 1983 there was no specific provision in the IPC to cover crimes under the head of domestic violence. However, with the introduction³² of Section 498A in the IPC victims of cruelty got a recourse in the criminal justice system. Cruelty, as under section 498A, includes two kinds of actions

Any willful conduct of nature which is likely to drive a woman to commit suicide or cause grave mental or physical injury or danger to life, limb or health; and

Harassment for meeting unlawful demand for property or valuable security or on account of failure to meet such demand.

While its origins stem from the growing menace of dowry related violence in India, the provision has been kept generic to ensure that domestic harassment on grounds other than dowry is also addressed.

What are the Personal Laws applicable in our country?³³

Laws which governs Hindus are :-

- The Hindu Marriage Act, 1955
- The Hindu Adoptions and Maintenance Act, 1956

³² The Criminal Law (Second Amendment) Act, 1983, Act No. 46 of 1983.

³³ <http://ncw.nic.in/frmlawsrelatedtowomen.aspx>

- The Hindu Minority and Guardianship Act, 1956

- The Hindu Succession Act, 1956

Laws which governs Muslims are:-

- The Kazis Act, 1880
- The Muslim Personal Law (Shariat) Application Act, 1937
- The Dissolution of Muslim Marriages Act, 1939
- The Muslim Women (Protection of Rights on Divorce) Act, 1986
- The Muslim Women (Protection of Rights on Divorce) Rules, 1986

Christians :-

- The Indian Christian Marriage Act, 1872
- The Divorce Act, 1869 (Prior to the amendment in 2001, this Act was called the Indian Divorce Act, 1869)
- The Indian Succession Act, 1939

Parsis :-

- The Parsis Marriage and Divorce Act, 1936
- The Indian Succession Act, 1939

Secular/Universal Laws governing all citizens irrespective of the religion they follow

- Special Marriage Act, 1954
- Guardians and Ward act, 1860
- The Protection of Women against Domestic Violence Act, 2005
- Section 125, Code of Criminal Procedure, 1973

6.5 DOWRY DEATH

LAW

If a Married woman dies within 7 years of marriage due to reasons like burns, injuries or in circumstances other than normal then Section 304 –B³⁴ of IPC steps in. The law says that

³⁴ Dowry death.—

(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for

If soon before the death of the woman, the woman was subjected to harassment for dowry by her husband or his relatives such death shall be presumed to be dowry death and such person shall be deemed to have caused her death. For this act mandatory minimum imprisonment is of 7 years but it may extend to life.

Other sections of IPC which can be used in cases of wife murder are like section 302- punishment for murder and section 306- abetment to suicide.

6.6 Domestic Violence Act 2005

Before the advent of the Act, the term 'domestic violence' was used in a very narrow sense and referred only to cruelty and harassment of wife and wife's murder under section 498A and 304B of the IPC. There were lot of continuous struggle by the women's groups that has changed the situation and ultimately the Indian law makers have realized that domestic violence mean not only violence related to dowry but includes several other forms of crimes.

This Act is said to be a comprehensive law and it addresses all the issues which are related to women in the domestic sphere. Bombay High Court delivered an interesting judgement on 18th July 2009 according to which provisions of the new Act would apply retrospectively. Hence, it allowed women to reach for the protection under the new Act even if they had faced violence much before October 2006 when act came into the force .

The act has classified 'domestic violence' into following four categories, namely

- a) physical,
- b) sexual,
- c) verbal & emotional, and
- d) economic violence

The act has also laid down strict rules to prosecute a man for any type of violence that is committed against a women at her home. The general rule for the new law is framed in order to protect women from domestic violence committed by adult male 'respondents', an aggrieved wife may also file a complaint against relatives' including the female relatives of her husband. The victim also has also been provided with the right to simultaneously file her complaint under section 498A of the IPC. If there is any 'breach of protection order' under section 18 of the Act the man can be jailed for 1 year, or fined up to 20,000 INR. Under section 31 and 32 of the Act such offence is considered to be cognizable and non-bailable.

dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death. Explanation.—For the purpose of this sub-section, "dowry" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

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

Objections Raised Against the Act

The act is said to be highly inclined in favour of women and this has raised threat about misusing of this Act to harass the male relatives. There is an apprehension that there is a rise in the rate of divorce after the coming of the Act.

Pandurang Kattand Anil Goebekk of the Save Indian Family said that :

“In fact, our fear is that the institute of marriage may end, as it would be viewed with suspicion if the interests of very members are not protected. Preventive measures can be taken by husbands to protect their interests in the face of abuse of the new Act. Perhaps it would be advisable for the men and their family members to read the Act properly, understand it fully before venturing into any relationship leading to marriage.”

Organizations like Save Indian Family also said that they are approached for help by a large number of male members who complained of harassment and violence by women. It is rightly said the act is misused.

This Act also brings in its purview the female live-in partner and thus it gives indirect legitimacy to the practice of live in relationship. In the manner to support the practice of living together one can hold and reflect ‘women’s liberation’ in the Indian context and say that it promotes a culture of free sex and may make the status of women more vulnerable in the society that is not known for quick justice.

The other most striking objection against this law is that it targets the male offenders.

The Act was even said to be ambiguous in nature as the law increases the chance of

Misuse. Some of the offences mentioned in the act cannot be proved. The act has also been considered for lack of clarity for eg the word insults are mentioned in the new act under ‘emotional violence’ but there is no standard definition of these terms.

The new Act goes beyond the section 498 A of IPC and extends its protection to even female live-in partners. The law even empowers the court to stop any act of domestic violence on the woman or her children. It also states for giving possession of stridhan that is the property of the wife given by her parent, jewellery, clothes etc to the woman and stops all transactions of any of the joint bank accounts or lockers. Further moving it provides for the right of woman

to live in her matrimonial or shared household peacefully, her right to property in which she is residing and stops any disposing off the house without the permission of the court. In other words, an aggrieved wife cannot be hassled for filing a case against her husband or other members of the house.

It also makes provisions for positive entitlements through an interim monetary relief order which is related to following as stated below:

- Ø maintenance for the victim or her children,
- Ø compensation for physical injury including medical expenses
- Ø compensation for mental torture/emotional distress,
- Ø compensation for loss of earning,
- Ø compensation for loss due to destruction, damage, removal of any property from her possession or control.

Thus, the Act for the first time went beyond the framework of 'punishment' to the offenders and tries rather to protect women from violence at home.

The creation of an official cadre called Protection Officers (POs) and recognition of NGOs as Service Providers (SPs) are two other salient features of the new law. The POs and the SPs provides for free legal, medical, shelter and other assistance to the aggrieved woman. The POs can also be penalized for failing to discharge his/her duty with the permission of the state government.

Besides, the law also takes into consideration various issues like speedy justice and easy accessibility to justice. Firstly, the cases under this Act will be adjudicated under the magistrate's court, which is located at the sub-district level. Secondly there is also an emphasis on the speedy disposal of the cases relate to it. The first court hearing has to be fixed within the 3 days of the date of receipt of the application and within 6 days of first hearing it is to be disposed of. In addition, the act also states provision that the sole testimony of the aggrieved person may be sufficient for the court to reach to a conclusion.

The Domestic Violence Act 2005 is a legislation which is meant to provide an effective protection to the right of women guaranteed under the constitution who are victims of violence of any kind occurring within the family. The very categorization of the Act indicates that it is not limited to violence perpetuated against women by her husband or in-laws. It also includes under its protective umbrella every women living in a domestic relationship as a member of family with the person indulging in violence. Thus the law protects women who are victims of violence occurring within family or in domestic connection. Moreover the Act has also been designed to create certain civil rights, some declaratory (e.g., right to protection against Domestic Violence) and some substantive (e.g., right to maintenance, right to compensation, right to shared household). But the law essentially falls under the criminal jurisprudence not merely because it is enforced by magistrate under CPC 1973 but also mainly because the consequences of breach of certain orders passed by criminal court for

affording to the aggrieved women the due protection of law has been made a new penal offence.

Legal Necessity

The shortcomings of the Domestic Violence Act cannot undermine its necessity in the Indian context. Domestic violence constitutes major type of crimes committed against women in the country. Registered crimes against women in the country in 2008 were cases of dowry death (8172), dowry prohibition (5555) and torture/cruelty by husband and other relatives (81344) collectively constitute 48.54%. Thus it can be said that the women in India irrespective of socio cultural differences are exploited, harassed and tortured in their domestic sphere. Surprisingly, patriarchal ethos also prove that violence is 'normal' within family.

Often the abusive men is considered as 'alcoholic', 'mentally ill', or 'very angry in nature', who would normally not commit any violence! These myths are considered misleading and research has proved that domestic violence cannot be controlled unless the scenario of male domination is challenged seriously. Hence the 'female bias' of the act or it has the potential of being misused should not be exaggerated, even though it is necessary to be careful.

The passing of the new act revealed dependency on the administrative and legal machinery to prevent gender crimes within the prevailing patriarchal social structure. Hence, there remains a serious concern about the likelihood of the new law to make qualitative changes in the life of women within family.

Brief Analysis of Legal Position in Domestic Violence Cases before the Introduction of the New Law: The main penal law in India is provided in Indian Penal Code 1860 (IPC), initially introduced by the British rulers but adopted for continuation upon independence. Chapter 16 of IPC relates to offences affecting the human body which include not merely culpable homicide (including or amounting to murder) but also hurts and involves within it cases of wrongful restraint, wrongful confinement, use of criminal force assault, kidnapping or abduction, trafficking in human beings and sexual offences including rape. The offences of dowry death was even added to it in 1986, along with the offences of cruelty by the husband or relatives of the husband in the wake of anger felt by the civil society due to increased incidents of cases where women had been subjected to harassment, soon after marriage mainly with a view to force them or their relatives to meet unlawful demands for dowry or on account of failure to do so.

Chapter 20 of IPC provides for offences relating to marriage that includes not merely bigamy and adultery but also cohabitation caused by a man dishonestly inducing a belief in women of lawful marriage offence of criminal intimidation or intentional insult are penal clauses that can also be invoked, by wife against husband or vice versa. Offering insult to the modesty or intrusion upon the privacy of women by words, gestures etc are also an offence, which provision makes no exception in favour of husband. All these offences generally do not provide for an exception in favour of husbands or male relatives, so long as the victim woman is able to pin down the offender with deceitful or fraudulent intention. Ever since the

concept of allocation of dowry in favour of the husband or his near relative at the time of marriage came to be accepted by the courts in India, the offence under Sec. 406 IPC has been regularly and unashamedly used by women victims for challenging penal consequences for conduct leading to marital discord.

Protection of women under Domestic Violence Act

Domestic Violence Act defines, “domestic violence³⁵” to include “any act omission or commission or conduct” of the man in question in relation to the aggrieved woman in case it attracts any of the four clauses:

- 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.
- 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.
- c) Has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause a, b or
- d) Otherwise injures or causes harm, whether physical or mental, to the scope and width of the new offence relating to Domestic Violence.

Protection Orders in Favour of Women -is it a Camouflage?

After coming in force of the Domestic Violence Act the general perception among the public seemed to be that domestic violence is an offence but contrary to this, it can be said that domestic violence is not an offence under Domestic Violence Act. What is made as criminal is the conduct of the male offender with the women in the domestic environment which amounts to breach of protection order obtained by the women from the Magistrate. In order to understand the true meaning, it is very significant to know how and what kind of protection order can be obtained by the woman whose breach amount to offence under Domestic Violence Act. As per Sec. 18 of Domestic Violence Act magistrate has power to issue protection order upon prima facie satisfaction that domestic violence has taken place or is likely to take place i.e., woman can approach magistrate not only when she is actually subjected to violence but even if she is apprehending such violence. Now, this protection order is actually a restricted relief calling upon respondents to refrain from certain acts against the complainant. The jurisdiction vested in magistrate to pass these prohibitory orders goes against the legal principles that are applicable to law of injunction e.g., injunction cannot be granted when equally effective relief can be obtained by other usual mode of proceeding. Since all the acts which have been treated as unlawful under Domestic Violence Act, have been the part and parcel of criminal law of the country and therefore every person is expected, even without a restraining order (in the form of protection order) to refrain from

³⁵ Protection of Women Against Domestic Violence Act, 2005-Section 3

causing any harm or injury to mental or physical health of the women. The question that mainly arises: Is that husbands against whom no protection order has been passed are free to cause harm to his wife? the answer is obviously “no”, but then it is beyond conception that how the issuance of protection order would add to her protection against the repetition of violence in the future. Hence, it is submitted that the remedy in the name of protection order is a camouflage.

Moreover, the order may be passed by the magistrate to protect the aggrieved women from possible domestic violence which includes an injunction asking the respondent from being in the vicinity of any place that may be visited by aggrieved persons or from operating a bank account enjoyed by parties, even if it were held singly by the respondent. The law makers in the need to provide legal protection to the women seem to have gone overboard. The place frequented by the aggrieved person would undoubtedly include house where both parties may have had been living together before their relations turned sour. By asking the male respondent to stay away would in fact be throwing out the male respondent from his own house; similarly, by asking the male respondent to refrain from operating bank account held singly by him only because he had shared his credit assets with the aggrieved woman at some stage, the magistrate would in fact be depriving the former from his daily substance, in the name of affording protection to the woman.

Furthermore, Sec. 23 of Domestic Violence Act gives power to the magistrate to pass an interim order in the course of any proceedings before him that would include under Sec. 18. Under some provision, upon prima facie satisfaction (on the basis of affidavit) inter alia, that application discloses that there is likelihood of domestic violence being committed, he may grant ex parte protection order. There is nothing in this entire statute to point out as to how long such an ex parte order would remain in force. In this view, dicta of Sec. 25 that a protection order under Sec. 18 shall be in force till the “aggrieved person applies for discharge” would operate with equal force even for an interim order. The general rule under CPC is that in case ex parte injunction has been granted, the application for injunction has to be finally decided within 30 days cannot apply to these proceedings under Domestic Violence Act, as Sec. 28 renders it passive to CrPC. In the face of provision contained in Sec. 28 this shall be the position even if relief under Sec. 18 is claimed by virtue of Sec. 26 before civil court.

Right to Reside

There are number of cases where after the breaking up of marital bond, women have been thrown out of the matrimonial homes. In such situations the victims in particular from orthodox background find it totally unacceptable to go back to their parental family for shelter, help or support. The provisions of maintenance allowance under Sec. 125³⁶ of CrPC

³⁶ 125. Order for maintenance of wives, children and parents

.- (1) If any person having sufficient means neglects or refuses to maintain-

(a) his wife, unable to maintain herself, or

was essentially created as a measure of protection to such weak group in as much as there is possibility to abuse and is a cause of concern of orderly society. The courts have shown development by binding the husband (or male relative) with responsibility to provide some residential accommodation even in the matrimonial home to save the helpless women from a worse condition. The statutory right to live in a shared household in favour of aggrieved wife

(b) his legitimate or illegitimate minor child, whether married or not, unable to maintain himself, or

(c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is by reason of any physical or mental abnormality or injury unable to maintain himself, or

(d) his father or mother, unable to maintain himself or herself,

a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate not exceeding five hundred rupees in the whole, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct:

Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means.

Explanation. - For the purposes of this Chapter, -

(a) "minor" means a person who, under the provisions of the Indian Majority Act, 1875(9 of 1875) is deemed not to have attained his majority;

(b) "wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.

(2) Such allowance shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance.

(3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole or any part of each month's allowance remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made:

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due:

Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is a just ground for so doing.

Explanation. - If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him.

(4) No wife shall be entitled to receive an allowance from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

(5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order.

or dependent women relate under Domestic Violence Act is undoubtedly a positive step. But the framers of the law, in their anxiety to cast the net wide, seem to have lost touch with reality and gone overboard. The relevant provisions that need to be examined in this context are Sec. 17 & 19 of Domestic Violence Act.

Shared Household, Section 17 of the Domestic Violence Act talks of the right to reside in a shared household. It creates a statutory right in favour of “every woman in a domestic relationship” this expression gives the wide meaning assigned to the word “domestic relationship” and includes not only the wife or women related by blood but also a female friend who has lived, even for a small period under the same roof with a male without entering into a marriage. The right declares that every such woman whether or not she has any right, title of beneficial interest of her own in the premises in question, shall be entitled to reside in the shared home. This right is considered to be an absolute right and subject to denial only in the event of eviction or being excluded in accordance with procedure established. It also gives statutory recognition and thereby encouragement to extramarital relationships or relation between persons of opposite sex outside of, or without marriage. In simple words women involved in live-in-relationships or adulterous connections are also covered as beneficiaries to the Act. As per this Sec. 17 the beneficiary can be evicted by procedure established by the law. But then Domestic Violence Act nowhere makes a clear mention or makes it clear as to by what procedure an affected respondent would be able to secure an order of eviction or exclusion against such women. Furthermore, the word ‘shared household’ may also include property of joint family of which the male respondent is merely one of the several other members. By putting a restraint against alienation, disposal or articulation of rights in such a shared household, the law seeks to virtually shake the right of even such persons who may not have any role to play in the dispute due to which the controversy has arisen. There is no time limit prescribed either for which the said “right to reside” would operate in favour of the women.

Residence Orders Sec. 19

Sec. 19 of the Domestic Violence Act permits an order to be passed in the event of domestic violence to facilitate enjoyment of right to reside in the shared household against the conditions of quarrel between the parties. The jurisdiction to restrain respondents from disturbing their right to reside even after breaking of relations between the parties can be understood, at least to the extent of married wives declining to go back to their parental home.

But, there are some restraint orders under Sec. 19 which seem to be wholly unjustified and unfair. Few of them are stated as below:

Direction to male respondents to remove himself from the shared household.

Restraining the respondent from alienating or disposing off the shared household.

Restraining the respondent from renouncing his rights in shared household except with the leave of the magistrate.

These provisions seem to be unjust and unfair to the male respondents, a person in whom right, title or interest in the property vests is not only restrained to exercise his rights but is also restricted the hope of reconciliation between the parties. With no guidelines provided, such an order, if permitted to be passed by the magistrate would work, in the long run, against the interest of the woman herself. The husband having been thrown out by the law, it is not conceivable as to how the system expects the parties to even approach the subject of coming together through conciliation.

Right to Monetary Reliefs

Sec. 20(1) gives power to the magistrate to grant monetary reliefs in the favour of the aggrieved woman. The purpose of this clause is to help out the woman to meet the expenses incurred and losses suffered “as a result of Domestic Violence

Sec 125 of CrPC deals with the jurisdiction of the magistrate to grant maintenance allowance. Thus there was absolutely no reason as to why it should be mentioned amongst the monetary reliefs meant to help meeting the expenses consequent to domestic violence. This would create not only utter confusion but also multiplicity of proceedings and consequences which would be grossly unfair for both the parties.

Today’s scenario is that every set of parties is locked in litigation over the issue of maintenance simultaneously in the civil as well as criminal courts. There is a need to simplify the procedure to avoid multiplicity of proceedings, particularly in family disputes has been long felt. Some hope was found in this regard when the Family Courts Act was enacted. But the said law has not been brought in force in all parts of the country.

This creation of another statutory provision permitting maintenance, allowance to be claimed would undoubtedly be construed by ill-advised parties as yet another forum where opposite party could be dragged for a similar relief. This will add to the multiple proceedings in which the parties may already be spending their time, energy and resources. Moreover the possibility of abuse under Section 20(1) is larger when seen against the prospect of a female friend having lived with the male respondent under the same roof in what is called as live-in relationship (i.e. without marriage) even for a month or so claiming maintenance allowance under the said provision, with no restrictions attached and possibly for the rest of her life.

Live-in Relationship

Live-in-relationship is an arrangement where a man and a woman live together without getting married. This is nowadays considered as an alternative to marriage especially in the metropolitan cities. Currently the law is not clear about the status of such relationships though a few rights have been granted to prevent gross misuse of the relationship by the partners. The position of live-in Relationships is ambiguous in the Indian context but the recent landmark judgments given by the Hon’ble Supreme Court provides some backing when we browse through the topic of live-in and analyze the radius of the topic in Indian legal ambit. The couples tied in this knot of live-in relationships are not governed by specific

laws and therefore it finds traces of assistance in other civil laws. The status is dwinding as the law is neither clear nor is adamant on a particular stand.

The Privy Council in *A Dinohamy v. W L Blahamy*³⁷ laid down the principle that, “Where a man and a woman are proved to have lived together as a man and wife, the law will presume, unless the contrary be clearly proved, that they were living together in consequence of a valid marriage and not in a state of concubinage”. The Supreme Court even granted legality and validity to a marriage in which the couple cohabited together for a period of 50 years. The Supreme Court held that in such a case marriage is presumed due to a long cohabitation.

Furthermore the Hon’ble Allahabad High Court said that a live-in relationship is not illegal. J. Katju and J. Mishra stated that, “in our opinion, a man and a woman, even without getting married, can live together if they wish to. This may be regarded as immoral by society, but is not illegal. There is a difference between law and morality.” The Hon’ble Supreme Court accepted the principle that a long term of cohabitation in a live-in relationship makes it equivalent to a valid marital relationship. The Supreme Court held that live-in relationships cannot be considered as an offence as there is no law declaring the same.

In the case of *S. Khushboo v. Kannammal*³⁸, the Supreme Court gave its landmark judgment holding that there was no law which prohibits live-in relationship or pre-marital sex. The Supreme Court even stated that live-in relationship is permissible only in unmarried major persons of heterogeneous sex.

In one of the other cases the Supreme Court stated that if a man and a woman are living under the same roof and cohabiting for a number of years, there will be a presumption under section 114 of the Evidence Act that they live as husband and wife and the children born to them will not be considered as illegitimate.

Hence the High Courts and the Hon’ble Supreme Court in a number of decisions delivered until recently have showed the positive signs of recognizing the legitimacy of the live-in relationships and have also shown the positive inclination for a legislation to be enacted with an objective of protecting the rights of couples in a live-in relationship.

The decisions by the Indian courts is perceptible as in some cases the courts have even opined that in the live-in relationship there should be no bondage between the couples because the sole criteria for entering into such agreements is based on the fact that there is no obligation which is to be followed by the couples whereas in some instances the courts have even shown opposite views holding that if a relationship cum cohabitation continues for a sufficiently and reasonably long time, the couple should be considered to be a married couple infusing all the rights and liabilities as guaranteed under a marital relationship.

It also brought a strange thinking that if the concept of live-in is brought within the ambit of section 125 of the Cr.PC, where the husbands are bound to pay maintenance and succession as the ground of getting into live-in relationship is to escape all liabilities arising out of

³⁷ indiankanoon.org/search/?formInput=dinohamy

³⁸ indiankanoon.org/doc/1327342

marital relations. If the rights of a wife and a live-in partner be made equivalent it would promote bigamy and a conflict would arise between the interests of the wife and the live-in partner. Along with a lack of legal sanction the social existence of such relationships are only confined to the metros. But when we look at the masses that define India, there exists no correlation between live-in relationships and its acceptance by the Indian society. It even receives no legal assistance and at the same time the society also evicts these types of relationships.

The status of the female partner remains vulnerable in a live-in relationship due to the fact that she is exploited emotionally and physically during the relationship. The Domestic Violence Act provides protection to the woman if it is in the nature of marriage.

The Supreme Court in the case of *D. Velusamy vs. D. Patchamma*³⁹ held that, a 'relationship in the nature of marriage' under the 2005 Act must fulfill some basic criteria. Spending weekends together or a one night stand would not make it a 'domestic relationship'. It also declared that if a man has a 'keep' whom he maintains financially and uses merely for sexual purpose and/or as a servant it would not, in our opinion, be a relationship in the nature of marriage'.

The apex court in *D. Velusamy*⁴⁰ also held that, not all live-in relationships would amount to a relationship in the nature of marriage to get the benefit of the Act of 2005.

To get such benefit the following conditions must be satisfied, and this has to be proved by evidence.

- (a) The couple must hold themselves out to society as being similar to spouses.
- (b) They must be of legal age to marry.
- (c) They must be otherwise qualified to enter into a legal marriage, including being unmarried.
- (d) They must have voluntarily cohabited and held themselves out to the world as being spouses for a significant period of time.

In India we cannot afford to grant such alimony otherwise it will degrade the family system in general and civil culture in particular. The same would also give rise to many issues such as maintenance, custody, right of inheritance, legitimacy, succession etc. Hence the maintenance should not be granted to female or male involved in live-in relationship. One should not take undue advantage of his/her own wrong. The problem is not only limited to the legality of the relationships but are also coming up with the rights of the live-in partners and the status of children born out of such relations. Legalizing live-in relationship means that a totally new set of laws are needed to be framed for governing the relations including protection in case of desertion, cheating in such relationships, maintenance, inheritance etc.

³⁹ www.womenslinkworldwide.org/wlw/sitio/caso-interna.php?idcaso..

⁴⁰ www.supremecourtcases.com/index2.php?option=com...do..

Litigation would drastically increase in this case. In the society that we live in it treats issues of the welfare of women too casually, some stringent measures are necessary in order to check the dishonest and uncontrolled males. But this needs to be brought about not by only adding to the statute book with ill-adviced measures but also through proper enforcement of the existing legal framework. In an attempt to strike a balance between the mutual rights and obligations of men and women the framers of the law seems to have gone overboard to load the dice totally against the former. The Domestic Violence Act has created a framework which is leading towards anarchy and representing a paradigm shift of tectonic plates supporting civil society. The consequences can be disastrous for the "wife" as the "other woman" now has equal claims over man in matters of maintenance and shelter, two issues that count the most. The law projected as welfare measure for women might bounce back destroying the life of the women who reposed trust in the sanctity of marriage as institution.

CHAPTER 7- CONCLUSION

Domestic violence can be said to be an universal phenomenon irrespective of whether a country is rich or poor, spousal violence is invasive. Both feminist and evolutionary theories are in the agreement saying that a pivotal aspect of gender relations is the need for men to control the sexuality of women. Feminist theory identifies patriarchy being the biggest cause of domestic violence, whereby males do whatever is needed to exercise control over women and keep them submissive using violence. Domestic violence even stems from the insecurity and jealousy that males feel when their partners are exposed to the possibility of sexual encounters with some other males.

The enactment of the 2005 Domestic Violence [Prevention] Act (DVA) in the Indian Parliament raised a number of relevant issues for feminists thus seeking to understand law as a site of struggle. There is a need to understand that the “wrong” of domestic violence needs very different remedies for women of Northern and Southern nations. The differences between the conditions of women in different societies are to be recognized but always with an aim that such recognition leads to a just and fair outcome. Feminist generally demands for a law on domestic violence and it was reiterated by the National Commission for Women and later was adopted by the government.

Domestic violence is said to be arising due to a specific socio-economic context for most Indian women. The lack of real economic independence of most Indian women makes women as dependents. The religious personal laws too deny women formal legal equality in personal relations. In this context it is not surprising that domestic violence is a real problem. The efforts of women’s groups to name this problem and to seek legal redress for it are a big concern but has also brought front certain problematic ideas about the law.

Some ways to improve the condition of this heinous crime is:

Introducing a Comprehensive Law against Domestic Violence: There should be a comprehensive law incorporating a broader definition of domestic violence. The definition encompasses all acts of physical, psychological, emotional, sexual, and financial abuse that hurts or degrades the woman or take away her ability to control contact with another individual. The legislation should address women of all ages irrespective of marital status.

Improve Women’s Economic Capabilities: Improve women’s access to and control on income and assets, recognize the shared right in the family and matrimonial property and incorporates the principle of division of community property into divorce laws. Productive assets and property are crucial to strengthening the economic and social status of a women providing income opportunities and improved respect for women outside marriage and family.

Strengthen and Expand Training and Sensitization Programs:

Programs should be designed to train, sensitize, and interlink to identify and treat abused women and it should be made a priority, with one of the aim being increased accountability across institutions. Such programs should be organized for medical personnel, legal and enforcement officers, the judiciary, counseling and other support service providers. Programs

are designed to sensitize health practitioners to the identification and appropriate treatment of abused women are of immediate necessity, given the crucial role this group plays and the current absence of such programs.

Use Media to Build Public Awareness: Mobilizations should be made for "Zero Tolerance of Violence" and it requires an active role from NGOs and advocates to work effectively with all forms of media. This also requires excellent skills and capacity among NGOs to enter into new forms of dialogue with journalists and media personnel to increase awareness of human rights and their significance for addressing domestic violence.

Address Domestic Violence through Education: Prevention of domestic violence also depends upon changing the norms of society and making people understand that violence is not a way of conflict resolution and traditional attitudes about gender. To achieve this the concept of gender and human rights must be introduced in the curriculum of schools, universities, professional colleges, and other training settings. Along with this, there must be acknowledgment and assurance to the principle of free compulsory primary and secondary education for girls.

Implement Programs for Batterer: Programs are designed for the batterer and it must be introduced in both the state and voluntary sector. It should be noted that counseling programs should be implemented that would raise the gender sensitivity of men, explore norms of violent behavior, and provide therapeutic counseling as needed. In order to promote a holistic approach to prevention as well as an intervention, the deficiency in programs designed for men needs to be addressed.

Provide Comprehensive Medical and Psychological Services: Programs must combine the provision of comprehensive medical and psychological care and support services for survivors of abuse. Immediate medical care must be provided to some extent by different organizations but little attention has been paid to the mental health services, therapeutic counseling, support groups, and family therapy. These are considered to be critical in rebuilding and sustaining the well-being of the woman and her family.

Integrate Child Support Services with Protection Services for Women: All programs urgently need to address the needs of children affected by violence. Shelter homes must be made more available to women with children in both principle and practice. Although some shelters have a provision for allowing children but it is not encouraged.

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