CHAPTER-1
INTRODUCTION
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The companionship is the basic requirement of all the human beings, as no man or woman is complete without each other. But gender discrimination is way of life almost all over the world, particularly so in India. A tendency of offending the feelings of women is continuing since immemorable time. Women have been victims of violence and exploitation by the male dominated society all over the world. Women constitute about one half of the global population, but they are placed at various disadvantageous positions due to gender differences and bias. Among all types of violence against women “domestic violence” is the most serious offence because it happens silently within the four walls of the house. Domestic violence against women is an age old phenomenon. Women were always considered weak, vulnerable and in a position to be exploited. Domestic violence has long been accepted as something that often happens to women. Family which was perceived as an arena of love, affection, gentleness and centre of solidarity and warmth has now become centre of exploitation, assault and violence ranging from slapping, hitting, homicidal assault by one member of the family on the other, harassment for dowry or for any other reason. Dowry death, wife battering, female child abuse, and abuse of elderly female in the family are also included in the domestic violence against women.

Among the many manifestations of the violations of the fundamental rights of women, domestic violence is one of the most vicious. It takes place behind the closed doors, the very doors which are meant to protect women from the hazards of the outside world. It is nothing less than a form of custodial violence and must be so recognized. Domestic violence must come out of the closet and be addressed. The issue of domestic violence is essentially the issue of ‘personhood of women’ whether in her matrimonial home or in her parental home. It is not limited to the harassment of young wives for more dowry or their being set a fire by alleged stove bursts. The

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3. Ibid., at p. xv.
4. Ibid.
issue deals with all forms of violence against women in all the roles they play in family i.e. daughter, sister, wife, mother, mother-in-law, daughter-in-law or sister-in-law.⁵

Violence against women means 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 in private life.⁶

1.1 Meaning and Definition of Violence

Violence typically refers to a physical act, aggression frequently refers to any malevolent act that is intended to hurt another person. The hurt may not be only physical but may be emotional injury or material deprivation.⁷ The lexicon meaning of the violence refers to any physical force or any danger or injury to person or property. According to Webster’s New Collegiate Dictionary,⁸ Violence means “exertion of any physical force for instance: (a) violent treatment or procedure (b) profanation, infringement, outrage, assault, (c) strength, energy, activity displayed or exerted, vehement, forcible or destructive action or force, (d) vehemence in feeling, passion, order, fury, fervor,

According to Oxford Learner’s Dictionary⁹ violence means energy, force, power, or strength (mental or physical) exerted in a rough, impetuous, or very vigorous manner. Violence also means outrage, profanation, injury or rape. Infliction of injury on other people is the essence of violence. It may be either physical or mental. On the legal level, it is illegal employment of methods of physical coercion for personal or group ends. The infliction of injury by police is exercise of state’s force, as long as it is legal. But as soon as it crosses the boundary of legality and inflicts injury for lust or for personal gain, it becomes violence and is more dangerous than the violence by ill armed and ill organized collectivity people.¹⁰

⁵ Id., at p. XXIV.
Broadly speaking, ‘violence’ lies in the power dynamics of social situations. What we call ‘violence’ is not simply aggression or injury committed by one individual (man) against another (woman); it is more precisely the abuse of power, i.e. ‘a behavior in which a more powerful person takes advantage of and abuses a less powerful one’. Although the term ‘violence’ is used for more extreme forms of aggressive behaviour that are likely to cause significant injuries to the victim, typically referring to physical aggression, it can also be applied to a psychological stress that causes suffering or trauma. According to scholars like Gelles & Straus, violence includes the acts where there is no actual hitting at all such as verbal abuse or psychological and emotional violence.

According to Encyclopaedia of Crime and Justice, in a broad sense, ‘violence is a general term referring to all types of behaviour either threatened or actual that result in the damages or destruction of property or the injury or death of an individual.’ In a limited sense, violence means ‘all types of illegal behaviour, either threatened or actual that results in damages or destruction of property or in the injury or death of an individual’. In general, the definition covers that–behaviour which is generally considered as violent including crimes such as criminal homicide, forcible rape, child abuse, aggravated assault and most kinds of collective violence.

According to Black’s Law Dictionary, ‘Violence means unjust or unwarranted use of force usually accompanied by fury, vehemence, or outrage, physical force unlawfully exercised with the intent to harm.’

L.B., Curzon’s Dictionary of Law defines violence as ‘any conduct so that it includes violent conduct towards property as well as towards persons, and it is not restricted to conduct causing or intended to cause injury or damage but includes any other violent conduct.’

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12 Ibid.
15 Supra note 2, at p. 43.
Violence can mean, among other things: threats, intimidation, manipulation, isolation, keeping a woman without money, locked in, deprived of food, or using and abusing her children in various ways to frighten her or enforce compliance. It can also include systematic and belittling comments.\(^\text{18}\)

There is no universally accepted definition of violence against women. Some human rights activists prefer a broad based definition that includes “Structural violence,” such as poverty, and unequal access to health and education, other have argued for a limited definition in order not to lose the actual descriptive power of the term.\(^\text{19}\) If we take violence as conduct which incurs the formal pronouncements of the moral condemnation of the community, or the deviation from conduct norms of the normative groups, the scope of cases of ‘violence against women’ becomes too broad. Narrowly, the term ‘violence’ has been applied to physically striking on an individual and causing injury,\(^\text{20}\) to “the act of striking a person with the intent of causing harm or injury but not actually causing it”,\(^\text{21}\) to “act where there is the high potential of causing injury”,\(^\text{22}\) and to “acts which may not involve actual hitting, but may involve verbal abuse or psychological stress and suffering”.

Megargee has defined violence as the “overtly threatened or overtly accomplished application of force which results in the injury or destruction of persons or their reputation”.\(^\text{23}\)

1.1.1 Sociological Definition of Violence

The Encyclopaedia of Social Sciences\(^\text{24}\) defines violence in the social context as “the illegal employment of methods of physical coercion for personal or group ends …. which is distinct from force or power”……a purely physical concept. It goes beyond the dictionary meaning of the term ‘violence’ as merely the exercise of physical force so as to inflict injury or damage to persons or property both spiritual and non spiritual. The “illegality” and “illegitimacy” of social violence will differ on

\(^{18}\) Supra note 2, at p. XXVI.
\(^{19}\) Supra note 11, at p. 47.
\(^{20}\) Supra note 2, at p. 44.
\(^{21}\) Ibid.
\(^{22}\) Straus, et. al. ‘Behind Closed Doors Violence in the American Family’, 1980, quoted in Misra, Preeti, Supra note 2, at p. 44.
\(^{23}\) Edwin, Megargee in Wolfgang’s & Weiner (Eds), ‘Criminal Violence’, 1982, p.85, quoted in Misra, Preeti. Supra note 2, at p. 44.
situational norms and social context. There has been overlapping between “force” and violence” on the one hand and “discrimination” and “oppression” perpetuated on female folks as a group. For all these reasons ‘social violence’ is roughly defined as the illegal use of physical, mental and social concern or use of threats for personal or group ends reflected broadly in our traditional social structure and present day developmental processes.\(^{25}\)

Thus, the social violence means illegal use of force or threats for use of such force by the patriarchal social order and their agents e.g. men against women folks in general for perpetuating the goals of that group i.e. men, for subjugating women physically, socially and psychologically.\(^{26}\)

According to Sociologist Elise Boulding,\(^{27}\) structural violence refers to the structural patterning of the family, cultural norms and values and also political and economic system of a particular society that determine who will injure and who will endure. Some individuals are deprived of society’s benefits and render more vulnerable to sufferings than others. Structural violence establishes physical violence. Women experience both structural and behavioural violence. In all societies, where patriarchal family structure prevails, women are protected by the patriarch from other men, but they become victims of men in their own families.

Thus, sociologists have explained the why aspect of violence and not what the term violence in itself means. No doubt, many manifestations of violence against women e.g. foeticide, female infanticide, bride burning, wife battering, deprivations and discriminations in child rearing practices, have their causes in the social structure and system.\(^{28}\)

### 1.1.2 Socio-Psychological Definition of Violence

The social psychologist Moyer\(^{29}\) defines violence as a form of human aggression that involves inflicting physical damage on persons or property. For psychologists, violence and aggression is twin terms but with certain differences between them. A definition of aggression, acceptable to most social psychologists

\(^{25}\) Supra note 2. at p. 44.
\(^{26}\) Supra note 10. pp. 26-27.
saying “Aggression in any form of behavior directed towards the goal of harming or injuring another living being who is motivated to avoid such treatment”. However, the concept of intentionality is important in separating aggressive behavior from other forms of behavior that might lead to some harm. The definition of aggression does not limit aggression to physical harm. Verbal insult and even the refusal to give a person something that he or she needs can be considered a form of aggression.

Vulnerable psychological character and structures and personality weaknesses in the presence of added environmental stress factors, can give expression to uncontrolled physical and emotional aggression.

‘Violence’ may also have its origin in psychological factors like irrational, pathological behaviour of abuser and the victim, which subsequently affect the interpersonal relationship of both the parties. Violence has also been considered as the condition of learned helplessness. Absence of viable alternative or survival and lack of proper support group also forces a woman to continue to tolerate violent behaviour. Women’s acceptance of beating as a common phenomenon and as a way of interaction with their husband also perpetuates violence. Poverty, alcoholism, unemployment, frustration and poor role modeling also contribute to violent behavior. These factors may put women at greater risk of violence because of the stresses created by financial hardship and relationship crisis.

The major psychological factor behind the violent behaviour of men is the patriarchal attitude of the Indian society which perceives woman as an ‘object’ rather than a subject and give her a low status in the society. Violence arises from patriarchal notions of ownership over women’s bodies, sexuality, labour, mobility and level of autonomy. Deep rooted ideas about male superiority enable men to freely exercise unlimited power over women’s lives and effectively legitimize it too. Violence is thus a tool that men use constantly to control women as a result of highly internalized patriarchal conditioning which accords men the right to beat their wives.

Wife abuse is a personal violence, but it is also structural violence that has its roots in historical attitudes towards women and in the institution of marriage. Violence

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31 Supra note 2, at p. 46.
33 Ibid.
involves the control of women by men, who have defined the parameters of women’s activities and enforce a male standard of accepted “feminine” behaviour. It is the product of patriarchal system- of religious dogma, law, and behavioural science- that makes male supremacy seem sacred, just and natural.34

1.2 Definition of Domestic Violence

Domestic literally means pertaining to the household affairs. According to the Webster’s Dictionary domestic means belonging to the home or house.35 So the term Domestic violence means any act or conduct which has potential to injure or hurt physically, mentally, emotionally, socially and also spiritually within the four walls of house, however such an act or conduct is usually not done by strangers.36

Domestic violence is an extremely complex and vicious form of abuse, committed most often within the four walls of the family, house and/or within a particular deep rooted power dynamic and socio-economic structure which do not allow even the acknowledgement or recognition of this abuse.37

Domestic violence has traditionally and repeatedly been labelled as family violence. It could result in anything from death to minor scars. There could be a situation where this violence results in neither but causes devastating psychological impairment.38 It is violent victimization of women within the boundaries of family usually by man. A woman may be of any age can be subjected to this type of violence irrespective of the fact that she is a girl child, unmarried, married or elderly woman including a widow.

According to Black’s Law Dictionary39, “domestic violence means violence between members of a household, usually spouses, an assault or the violent act committed by one member of a household against another”.

According to Arun Jaitley, Former Minister of Law, Justice and Company Affair, “domestic violence is in the majority of cases, violence against woman by the

36 Supra note 1, at p. 47.
37 Id., at p. 50.
38 Id., at p. 51
members of the house where she resides. It can be the husband, his parents or siblings or any other resident who has the overt or covert latitude for action that can cause physical or mental agony to the women..... it happens behind the closed doors and is most often denied by the very woman who has been the victim of violence.\textsuperscript{40}

The meaning of domestic violence and range of acts which amount to domestic violence will become clear from a look at the general laws, criminal and civil, which address acts which could constitute domestic violence.

\textbf{1.2.1 Definition under Criminal Law}

The basis of criminal law is that there are certain standards of behaviour of moral principal which society requires to be observed, and breach of them is an offence not merely against the person who is injured but against society as a whole.\textsuperscript{41} It is imperative to find out as to what was the legal position in domestic violence cases prior to the introduction of this new law, so that it can be examined as to what is new about this additional measure. The criminal law in India is contained primarily in the Indian Penal Code. The Indian Penal Code is supplemented by special laws, which define and punish specific offences.

\textbf{(a) The Indian Penal Code}

There are certain acts which are not approved by most of the people in a civilized society because they have a tendency to reduce the sum total of human happiness to conserve which is the ultimate aim of all laws. Such acts are known as wrongs, for example culpable homicide, hurt, grievous hurt, dowry death, rape etc.

Under the India Penal Code, there are four elements necessary to constitute a crime, which are generally present in every crime. These four elements are:\textsuperscript{42}

(i) A human being under a legal obligation to act in a particular way and a fit subject for the infliction of appropriate punishment;

(ii) An evil intent on the part of such a human being;

(iii) An act committed or omitted in furtherance of such an intent; and

\textsuperscript{40} Jaisingh, Indra. 'Law of Domestic Violence'. 2001, p. ix.
\textsuperscript{41} Mishra, S.N.. 'Indian Penal Code 1860'. 2001, p. 6.
\textsuperscript{42} Ibid.
(iv) An injury to another human being or to society at large by such act.

These all elements of crime are present in the domestic violence to some extent. It may be that evil tendencies of these elements differ in degree in cases of domestic violence. The crime against women identified under Indian Penal Code relates to offences affecting the human body which include not merely culpable homicide including one amounting to murder but also hurt, simple or grievous and involves within its sweep cases of wrongful restraint, wrongful confinement, use of criminal force, assault, kidnapping or trafficking in human beings and sexual offences including rape and unnatural offences.43

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 if it is established that wife had been subjected to cruelty by her husband or any relative of his husband, the death is termed as a ‘dowry death’.44 The husband or relative who subjects the wife to cruelty are presumed to cause the dowry death and will have to prove that the death was not a result of the cruelty.45

Often victims of domestic violence, especially brides harassed for dowry or where there was continuous taunting or teasing of the wife by accused husband or any relative of the husband on one ground or other also amounted to cruelly, which may be physical or mental. Any willful conduct which is of such a nature as is likely to drive the woman to commit suicide is also a form of violence and punishable under the Indian Penal Code.46

Female infanticide or forcing the wife to terminate her pregnancy is worst forms of violence against women, recognized as offence under the Indian Penal code.47 Causing bodily hurt is a common form of domestic violence. Hurt is defined in the Indian Penal Code as causing “Bodily pain, disease, pain or infirmity to any person.”48 A hurt may be ‘grievous’ if it results a serious injury such as a fracture, loss of

43 Ibid.
44 Section 304 B. Indian Penal Code.
45 Section 113B, The Indian Evidence Act 1872.
46 Section 306 Indian Penal Code.
47 Id., Sections 313-316.
48 Id., Section 319.
hearing or sight, damage to any member or joint, etc.\(^49\) It is an offence to cause voluntarily hurt or grievous hurt and is punishable under the Indian Penal Code.\(^50\)

Another common form of domestic violence is in the form of wrongful restraint or wrongful confinement of the spouse within her matrimonial home.\(^51\) Use of force\(^52\) and assault\(^53\) on the spouse, are the other common form of domestic violence which are also punishable under the Criminal Law.

Marital rape is yet another common form of domestic violence. This is a grey area of law and evidence. While many progressive nations have legislated on marital rape, our law has so far only conferred a limited recognition.\(^54\) Non-consensual sexual intercourse by a man with his own wife may be an offence if she is living separately under a decree of separation or custom. It is an offence under the Indian Penal Code.\(^55\)

In addition to this, matrimonial cruelty against women is also a worst form of domestic violence which was introduced as an offence in the Indian Penal Code in 1983.\(^56\) The concept of cruelty is very wide under Section 498A of Indian Penal Code. Cruelty was defined as “any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life or limb or health whether mental or physical of the woman. There must be harassment with a view to force her or her relatives to meet unlawful demand for any property.

A common companion of domestic violence is the misappropriation of spouse’s property so that she is economically crippled into subjugation. The Indian Penal Code addresses this situation too under criminal misappropriation or criminal breach of trust.\(^57\) Ever since the concept of entrustment of dowry in favour of husband or his relatives came to be accepted by the courts in India, the offence under

\(^{49}\) Id., Section 320.
\(^{50}\) Id., Section 322 and Section 323.
\(^{51}\) Id., Sections 339 and 340.
\(^{52}\) Id., Section 349.
\(^{53}\) Id., Section 351.
\(^{54}\) Supra note 2, at p. 53.
\(^{55}\) Section 376-B of Indian Penal Code.
\(^{56}\) Id., Section 498A.
\(^{57}\) Id., Sections 405 and 406.
Section 406 Indian Penal Code has been regularly and flagrantly used by women victim for demanding penal consequences for conduct leading to marital discord.

**1.2.2 Definition under Special Laws**

(a) **The Dowry Prohibition Act, 1961**

Dowry system in India is quite deeply rooted in Indian social system. It has plagued the Indian society for centuries. The dominant ways in which domestic violence is manifested is society specific. Social mores impact the type of violence perpetrated on the spouse. The dowry system is a distinctive feature of the sub-continent. At the time of marriage, the bride’s family is expected to give gifts, in cash or in any other form to the groom. Often the bride’s side commits to deferred presentations. In such situations, the bride is often subjected to domestic violence if the gifts are not made as promised. In recognition of the fact that this dowry is one of the reasons of domestic violence against woman in the matrimonial home, the Dowry Prohibition Act criminalizes the giving and taking of dowry.

(b) **The Commission of Sati Prevention Act, 1987.**

There is another kind of domestic violence which was rampant in our past but ebbed in the last century, i.e. sati. Sati means the burning alive of any widow along with the dead body of her deceased husband or any other relatives or with any article, object or thing associated with the husband or relative. The Commission of Sati Prevention Act, enacted in 1987 after a shocking sati death in Rajasthan, by criminalizing glorification of sati which includes observance, support, justification or propagation of sati.

(c) **The Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994.**

Female foeticide is one of the worst forms of violence against women where a woman is denied her most basic and fundamental right- the right to life enshrined in

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58 ‘Dowry’ as contemplated by the Dowry Prohibition Act, 1961 is a demand for property or valuable security having an inextricable nexus with the marriage. It is a consideration from the bride’s side to the groom’s side for the agreement to wed.

59 Section 3 of the Dowry Prohibition Act, 1961.

60 Section 2(i) (c) of the Commission of Sati (Prevention) Act, 1987.

61 Section 5 of the Commission of Sati (Prevention) Act, 1987 makes it punishable with imprisonment and fine.
Article 21 of Indian Constitution. The son preference in the Indian community negates the fundamental right to equity guaranteed under Articles 14 and 15 of the Constitution of India. Hence, the Government passed the Pre-Natal Diagnostic Techniques (Prohibition of sex Selection) Act, 1994. This Act recognizes that domestic violence is also perpetrated in the form of forced termination of female foetuses. This Act regulates the use of pre-natal diagnosis. Such tests are permitted only for the purpose of detecting certain specified abnormalities and disorders. This Act prohibits sex selection not only after conception but even before conception on any tissue, embryo concepts, fluid or gametes destined from either man or woman or from both of them.

1.2.3 Definition under Civil Law

In addition to criminal law, civil law also addresses the facets of domestic violence without specifically defining domestic violence. Even references in the statutes to aspects of domestic violence are generic and it is only through judicial decisions that such provisions have been given life and meaning. The only specific recognition of domestic violence under civil law is the concept of cruelty under most of the personal laws. The concept of cruelty as domestic violence have evolved and expanded over the years to fit into the needs and attitudes of changing time.

(a) The Hindu Marriage Act, 1955.

Under the Hindu Marriage Act, cruelty is a ground for divorce as well as judicial separation. However, the term ‘cruelty’ has varied from time to time and from society to society with the change in social and economic conditions. It is through decided cases that this term has been understood to means acts of physical as well as mental cruelty.

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62 Supra note 2. at p.55.
63 Ibid.
64 Section 13(i)(ia). The Hindu Marriage Act, 1955.
65 Id., Section 10.
(b) The Dissolution of Muslim Marriage Act, 1939

This Act stipulates cruelty as a ground for divorce. Cruelty is defined to include.  

- Habitually assaulting the wife or making her life miserable by cruelty of conduct even if such conduct does not amount to physical ill-treatment;
- Associating with women of ill repute or leading an infamous life i.e. mental cruelty;
- Attempting to force the wife to lead an immoral life;
- Disposing of the wife’s property or preventing her from exercising her legal rights over it; and
- Obstructing the wife in the observance of her religion.

(c) Other Matrimonial Laws

Cruelty is part and parcel of domestic violence and is a ground for dissolution of marriage under all personal laws in India, it may be the Special Marriage Act, 1954, the Indian Divorce Act, and The Parsi Marriage and Divorce Act.

1.2.4 Definition under the International Law

International Laws have successfully recognized the varied forms and aspects of violence against women, of which domestic violence forms an important part.

As a signatory to Committee on the Elimination of Discrimination Against Women (CEDAW) and the Beijing Platform of Action, India has accepted the following definition of violence against women.

The term “violence against women” means “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”.

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66 Section 2(viii). The Dissolution of Muslim Marriage Act, 1939.
67 Section 27(i) (d). The Special Marriage Act. 1954.
68 Section 10. The Indian Divorce Act. 1869.
69 Section 32(dd). The Parsi Marriage and Divorce Act
The United Nations Framework for a model law on domestic violence defines domestic violence as “All acts of gender-based violence i.e. physical, psychological and sexual abuse by a family member against women in the family, ranging from simple assaults to aggravated physical battery, kidnapping, threats, intimidation, coercion, stalking, humiliation, verbal abuse, forcible or unlawful entry, arson, destruction of property, sexual violence, marital rape, dowry related violence, female genital mutilation, violence related to exploitation through prostitution, violence against household workers and attempts to commit such acts shall be termed as violence.™

It is pertinent to note that the international definitions of violence focus on physical violence, though psychological violence is also mentioned in the definitions. Mental, emotional violence and verbal taunts, economic exploitation of women, which are the forms of exploitation that women commonly face, are not specifically laid down in the international definitions. 71

1.2.5 Definition under the Protection of Women from Domestic Violence Act, 2005

The Protection of Women from Domestic Violence Act, 2005 enumerates as its object the protection of rights of women who are victims of violence of any kind within the family/domestic relationship and to provide for matters connected therewith or incidental thereto. This Act defines the expression “domestic violence” to include actual abuse or threat of abuse i.e. physical, sexual, verbal, emotional or economic violence. Section 3 of the Act defines the domestic violence as any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it-

(a) harm 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

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70 Supra note 40, pp.2-3.
71 Ibid.
(b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or

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

(d) Otherwise injures or causes harm, whether physical or mental, to the aggrieved person.

For the purpose of this Section

(i) "physical abuse" means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;

(ii) "sexual abuse" includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;

(iii) (a) insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and
(b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested.

(iv) “economic abuse” includes-

(a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance;

(b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by aggrieved person ; and
prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

This revolutionary legislation seeks to deter domestic violence in all form against women, including harm or injury i.e. mental or physical including sexual abuse, verbal abuse, emotional abuse, economic abuse for demand of dowry or for any illegal purposes and causes like inability to bear a child or a male child.

The need for present legislation arose as the existing criminal, matrimonial and civil laws does not address the phenomenon of domestic violence in its entirety. The scope of the term “domestic violence” has now been widened by providing this definition. The definition of domestic violence under the Act is one that includes actual abuse or the threat of abuse that is physical, verbal, emotional, or economic. This definition covers the entire gamut of violence within the household including harassment ensuing out of unlawful dowry demands to the woman or to her relative.

In order to deal with the menace of domestic violence, this definition is highly necessary and important to have a clear cut idea of what constitutes domestic violence, for it shapes the response. From the definition it could be deduced that domestic violence is that violence, which occurs within the home, or family, which is considered as the basic unit of society. The term embraces all the act that are committed within the family by one of its members, which seriously harm, life, body, psychological integrity or liberty of another member of the family. Now the more likely place for violence to happen is the home. Earlier women faced violence mostly in public sphere but now the situation is that women are not feeling safe and secure even in the family. Episodes of violence are most likely to occur in the home and the relatives such as parent, offspring and spouses are the most frequent target of violence. So, now from the point of domestic violence or violence taking place within the four walls of home, it could be deduced that today family has become a cradle of violence.

Definitions of domestic violence rest upon not only the nature of the relationship between the perpetrator and the victim but also upon norms of acceptable

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72 Section 3. The Protection of Woman from Domestic Violence Act, 2005.
74 Ibid.
behaviour. There is considerable difference of opinion regarding which behaviours or manifestations should be considered violent, as well as the level of intensity and frequency required to label a relationship as violent. Another contentious issue is how to evaluate the intent of the act, why the act was initiated, and whose view should determine this. For instance, Indian field experience indicates that significant numbers of women do not perceive acts as violence if they perceive them to be justified. The social construct surrounding the ideal “good woman” - clearly sets the limits for acceptable norms beyond which verbal and physical assaults translate into a notion of violence. Thus, wife beating is not seen as an excessive reaction if the woman does not perform her “wifely” duties adequately. This is further complicated by a common belief that violent acts are an expression of love and merely a desire to help the subject be a “better” person.75

The core of a definition of domestic violence consists of all the acts that constitute violence. Some definitions are narrower and focus on a specific act of violence and others are broader and incorporate the full range of acts.

Domestic violence can also be seen as a violation of the fundamental right to live with dignity and of the right to equality an equal protection of the law guaranteed under the Indian Constitution.76

It is this aspect of the crime that segregates itself from all other kinds of social violence.77 The type, frequency, intensity and control of violence against women may vary from time to time or place to place but it is present everywhere.

1.3 Instances of Domestic Violence

1.3.1 Violence against Female Foetus and Female Infanticide

The ever present fact of violence, both overt and covert, physical and non-physical form has an overwhelming influence on feminine identity formation. Violence is now a part of women’s life, be it in any form or kind and be she in her parental or matrimonial home. A female life may be snuffed out even before she is born, she may be dumped or abandoned after she is born. The female child is also likely to

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75 Supra note 2, at p. 60.
77 Ibid.
become the target of other form of assault.\textsuperscript{78} Early childhood is an important and delicate period in an individual’s growth and developmental deficiencies during this stage lead to permanent retardation in physical and mental growth.\textsuperscript{79}

Much before the U.N. Convention on the Rights of the Child in 1990, the Indian Constitution provided a framework within which provisions were available for protection, development and welfare of the children. Article 24 prohibits the employment of children in any factory or mine or in any other hazardous occupation. Articles 39 (e) and (f) lays down that the state shall direct its policy in such a manner that the tender age of children is not abused and children are given opportunities and facilities to develop in a healthy manner and childhood is protected against exploitation and against moral and material abandonment.\textsuperscript{80}

Besides these Constitutional provisions there are certain provision in the criminal law which specifically deals with female foetus and infanticide. Section 315 of the Indian Penal Code makes it an offence punishable with imprisonment.\textsuperscript{81} Sections 312 to 318 of Indian Penal Code deals with various provisions relating to violence against female foetus and girl child before birth or after birth.

There is a wide range of laws, including the Juvenile Justice Act, the Child labour (Prohibition and Regulation) Act, the Immoral Traffic (Prevention) Act, the Child Marriage (Restraint) Act, which guarantee, to a substantial extent the rights and entitlements of children. Despite all these provisions, the girl child in India has as yet not been given an equal status in comparison to the male child. The girl child experiences discrimination throughout her life and the existing socio-cultural practices makes it difficult for her to overcome the handicaps posed by her unequal status.\textsuperscript{82}

A life cycle approach reflects the situation of girls from conception and birth to adolescence and women hood. Female oppression continues from womb to tomb. In particular discrimination occurs within the family, where norms regarding women’s secondary status are reinforced in children from birth. Son preference is one

\textsuperscript{79} Supra note 2, at p.76.
\textsuperscript{80} Ibid.
\textsuperscript{81} Section 315, Indian Penal Code.
\textsuperscript{82} Supra note 2, at p.77.
of the key aspects underlining social values that views girls as burden. Women are viewed as dependents within the family and face severe restrictions, it is not the level of income or material well being that makes families to discriminate against girl child, much of it has to do with cultural beliefs, patriarchal social norms, superstitions and mindset that combine to produce discriminatory behaviour patterns. Due to modern science and technology female infanticide has been replaced by female foeticide.  

(a) Female Foeticide

Foeticide is the unlawful expulsion of foetus. The practice of destroying female foetus due to preference for male child is prevalent in India. Female babies are not allowed to take birth by the conservative, illiterate and even some literate sections of our society. This indicates that females before they are born fall prey to violence by parents hoping for sons instead.

Foeticide is also termed as ‘criminal abortion’ or causing miscarriage. When used in legal sense, it includes both abortion and premature labour. Premature labour means expulsion of a child that has attained viability. The term abortion or miscarriage signifies the expulsion of foetus or ovum at an earlier period. Female children are killed even before they acquire the age of viability in mother’s womb. The advances in medical technology have changed the fate of unborn female child and posed threat to its life. Pre-natal techniques are largely misused to determine the sex of foetus. In such a test if a female foetus is found it is terminated by abortion.

Every year, about 15 million girls are born in India and despite being biologically stronger than boys; almost one quarter of this number does not see their 15th birthday due to female infanticide.

In ancient India the birth of a girl child was used to be praised as the arrival of Laxmi, the ‘goddess of Wealth’, in to the family. In Hinduism, killing of foetus is a sin. Muslims also considers it as haram. The Catholic Church always denounces

\[83\] Supra note 32 at 142-143.
[85] Supra note 73, at p. 137.
[86] Ibid.
[87] Ibid.
[88] Ibid.
[89] Ibid.
abortion and defended the right of the unborn to live. Religious belief is that human life comes from God at the time of conception and that man is only the custodian of the life rather than the owner, and abortion represents an act that denies the sanctity of life on the assumption that the woman is the owner of the unborn child.

In spite of having so much religious, social and legal prohibition parents are averse to the birth of a girl child in the family. A lifetime of systematic gender bias for the child begins in the mother’s womb itself. The heavy dwindling sex ratio as shown in the table below bears eloquent testimony of violence against women even in the safety of the mother’s womb.

<table>
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<tr>
<td>Government of India Census 2011</td>
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<table>
<thead>
<tr>
<th>Census Year</th>
<th>Sex Ratio No. of Female/1000 (males in India)</th>
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<td>1901</td>
<td>978</td>
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<td>1911</td>
<td>964</td>
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Under Hinduism, abortion is described as bhunhatiah. References in Atharva Veda show that abortion was known in the Vedic age. Abortion was always considered to be a sin for which, however, expiation ceremonies were prescribed in Riyap, Taittiriyo panished and also in Arunam. Manu in his Dharmasastra said that a killer of a priest or a destroyer of an embryo casts his guilt on the willing eater of his provision. Kautilya’s Arthashastra provides for the highest punishment for causing abortion by physical assault. Islamic law permits preventing pregnancy for valid reasons, however, it does not allow doing violence to the pregnancy once it occurs. All these indicate religious sanctions against this evil. Quoted in Supra note 2, at p.79. See also Shaw, S.P. Encyclopaedia of Laws of Child in India 2000 at 99.

Supra note 2. at p. 79.

The 2011 census report shows that India has a child sex ratio of 940 female against 1000 male-lowest since independence. Deteriorating women’s status with the emergence of female foeticide is not a sociological phenomenon confined to a particular state, but a country wide trend even in diverse cultural context where there has been relatively grater gender equality. Female foeticide is an extreme manifestation of domestic violence against women.

The Pre-Natal Diagnosis Techniques (Regulation of Prevention of Misuse) Act, 1994 prevent misuse of technology to determine sex leading to female foeticide. Elaborate Provisions have been made in this Act, not only to regulate pre-natal diagnostic techniques but also to prohibit the clinics from determining the sex of foetus. The act of disclosing the sex of the foetus by using any pre-natal diagnostic technique is made an offence punishable with imprisonment and fine. However, owing to lack of social sanction, it is very difficult for the police authority to register any case under the Act; therefore, unless the people are sensitized to the need of more females in the country, balance in the 21st century among both the sexes would pose serious problems.

(b) Female Infanticide

The Indian Constitution guarantees right to life and personal liberty. It provides that "No person shall be deprived of his life or person liberty except according to procedure established by law." Literally, it signifies right to be born and remain alive.

How far is this right available to the Indian girl child is a vexed question. In India birth of girl is treated as a calamity. Article 21 encompasses not only the right to her mere survival but also right to childhood and right to a family and a home. The right in fact includes a right to grow-up normally, naturally and freely.

Generally accepted fact is that victimization of women starts from the time of birth. The girl’s first right is the right to remain alive after birth and not to be killed

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92 Supra note 2. at p. 85.
93 The Pre-Natal Diagnosis Techniques (Regulation of Prevention of Misuse) Act, 1994
quickly in her first few hours, or killed slowly by neglect or indifference. A significant number of girls are not alive, often because they have not been allowed to live, either through selective abortion following sex determination in pregnancy, or owing to neglect for just a day or only hours after birth.\(^98\) The truth is that even if a female child escapes from amniocentesis, she is faced with another form of violence i.e. female infanticide. In female foeticide girl child is prevented from taking its birth and in female infanticide a child is killed after it takes birth. In both cases the object is one and the same i.e. take the life of a female child, which is one of the worst form of violence against women, where in women is denied her most basic and fundamental right- the right to life enshrined in Article 21 of Indian Constitution. The son preference in the Indian Community negates the fundamental right to equality guaranteed under Article 14 of Constitution.\(^99\) But female infanticide still continues, which is evident from the falling ratio of girls to boy.

Boys are preferred to girls. In most cases the birth of a girl child does not make happy even the parents of the child, not to speak about other members of the family. On the contrary, the birth of a son is enthusiastically celebrated by all family members.\(^100\) If a woman accidentally gives birth to two or three daughters she is made to hang her head in shame as if giving birth to a girl child is a crime.\(^101\)

There are cases where parents leave the newly born female child at door steps of some orphanage or hospitals or in parks and say goodbye to the child forever. All this show how far girl children are unwanted in the family.

There is perhaps nothing more shameful than the fact that some 40 to 50 million girls and women are missing from the population. In all but a few countries of the world, there are typically 105 women for every 100 men. Even though at birth boys outnumber girls by about the same proportion. Studies have shown that where men and women have access to equal care, nutrition, health and medical attention, women due to their biologically determined stronger constitution, live longer than men, and therefore, outnumber them. In the industrialized countries, for example.

\(^98\) Supra note 2, at p.102.
\(^100\) Supra note 84, at p. 78.
there are, on average, 106 women for every 100 men, in Sub-Saharan Africa there are 102 women for every 100 men and in South-East Asia, 101 women for every 100 men. In India, on the contrary, there are less than 94 women for every 100 men in the population. Only where societies specifically and systematically discriminate against women are fewer of them found to survive. Sex ratios of children 0-6 years capture a portion of this discrimination against female child. In this age group according to latest census report 2011, there are only 914 female child against 1000 male child.

The girl child is the first and foremost need of humanity because her survival is essential for the continuation of the species. To kill her means to kill coming generations. Denial of her right to live means denial of right to life to future generation. To honour her right to live amounts to honouring the right to life of future generations. But unfortunately, even this right is not provided to a female child. Every measure is taken to eliminate the girl child by selective abortions and by female infanticide.

The gender bias becomes manifest even when the child is in the mother’s womb and attains the form of foeticide and infanticide if the girl child is born. The patriarchal community considers the female child as liability to family and society.

Female infanticide, instead of being considered only a legal crime, should also be looked at from social angle so that a viable solution can be found for solving this problem.

Female infanticide has not been unknown in human history. Nowhere in the Vedic songs do we find a wish for a daughter. Upon conception, mantras from the Atharva Veda are chanted so that if the foetus is female, it will transform into a male. If prayer and ritual do not produce the desired result, families that crave boys overwhelmingly abort the foetus, if it is determined to be a girl. There is a reference in Agni Puran – “May I be blessed with …… sons and grandsons in large numbers.”

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103 Supra note 2, at p. 87.
104 Ibid.
105 Ibid.
The Yajur Veda speaks of girls being exposed when born. Since the father was supreme and every family wanted sons, there was a tendency to set less value on woman. In consequence, many girl babies were exposed or even put to death in every race practicing ancestor worship.

Before the advent of Mohammad, the Arabs were reported to have buried female children alive.

In British India, this social evil was prevalent among certain communities of North Western Provinces till 1870, because from that date onward, a steady persistent crusade was carried on against female infanticide by the government.

The most inhuman, uncivilized, barbaric and tragic event is that it is still taking place silently in India especially in the states of Tamil Nadu, Bihar, Gujrat, and Rajasthan. The northern states of Haryana, Punjab and Uttar Pradesh all called “Bermuda Triangle” where girls go missing.

A number of studies have confirmed female infanticide in Tamil Nadu, Madhya Pradesh, Bihar, Gujrat and Rajasthan. Methods like choking to death by stuffing chappatis, mixing of rice husk in milk, wrapping the new born in layers of a heavy blanket and putting her away in a box to die of suffocation or giving of some pesticides, sleeping pills or poisonous herbs or opium have been very common. Sometime, girls are given salt which increases their blood pressure and subsequently leads to fast but painful death. Some use more effective and natural method of general neglect. The baby girl is wrapped in a wet blanket and kept in open where she contacts pneumonia, medicines prescribed are not given leading to murder that seems natural death. Today, more and more of girl babies are dying of neglect, being deliberately starved or poisoned, left behind in a bus or train or simply dumped in a trash can.

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107 Ibid.
108 Ibid.
109 Ibid.
110 Ibid.
111 Ibid., at p. 5.
Female infanticide knew no castes, community or socio-economic barriers. It is prevalent among all communities.

In India girl child is treated as a liability, a curse. Because of our socio-economic conditions, she always suffers, sometimes even when she is in her mother’s womb. Due to gender bias she is treated as an inferior being. Economic constraints always create a hurdle for the girl child as well as for her parents. They have to pay the “groom price” for her daughter. So in India, majority of the people do not like to have a girl child. Alarming percentage of our society goes to abort the female foetus or sometimes to kill their baby girl within a short period of her birth. In the 65th year of independence still the right to life of the girl child is not protected. How can we claim to be independent, civilized and honouring the right to life of a girl child guaranteed under Article 21 of the Constitution.

The girl child of today is the woman of tomorrow. Unless the entire society begins to fight their murders, female infanticide and foeticide will be part of our Indian culture.

1.3.2 Sexual Abuse of Female Child

Incest is one of the most ghastly crime but remain most secret and it subsists commonly than imagined. Incest is defined as sexual intercourse between close relatives within prohibited degrees of relationship. In broader sense, it also includes real or artificial relationships which though not of blood, or culturally sanctioned such as God parents, step parents or Rakhi sister. There is utter silence around the sexual violation of the girl child in the family by her own relatives. This type of violence against female child becomes rampant in Indian society. It is a crime that threatens the fabric of family life. It is highly sensitive subject. It was always kept in the dark among middle and upper class people until recently when the increase in the number of cases and awareness of women to say “no” to all forms of abuse served as an eye opener to the horror that destroy numerous families across the nation. The cases of sexual abuse of child by family members are not confined to novels and story romances.
books. It does not take place only in the slums or institutions. It is not the pressure of criminals or mentally deranged persons, it can and does occur overtly and covertly in educated, well to do, socially mature families also.\textsuperscript{117}

The actual incidence of sexual abuse of girl children is not known in India. The statistics of its prevalence is hard to find. Many of these do go unreported because most of the victims and their family members do not talk openly about their trauma and also because they have no faith in law.\textsuperscript{118} This was corroborated by the findings of a study conducted by British Broadcasting Corporation (BBC) in which one out of every ten women reported some kind of sexual abuse during childhood by known persons, ranging from father, uncles, brothers, cousin.\textsuperscript{119} As reported in India, today for every reported case at least 100 would go unreported, more so if the assailant is father, brother, brother-in-law, cousin, servant or class relative.\textsuperscript{120} Father-daughter incest is also some time reported. Once initiated the incestuous activity continues for a fairly long period of time, the liaison may be initiated usually at the age of ten and the victim may at times be caught in a web of fear from the father and therefore continue the relationship without disclosure.\textsuperscript{121} Countless are the instances wherein elderly relatives make sexual advances on unsuspecting children, especially girls. These advances may take the form of caressing, kissing or exhibitionism thinly disguised as play or platonic affection.\textsuperscript{122}

Child abuse within the family is on the rise not only in the West but in India as well. For those who argue that Indian is free from such “Western Degenerations”, a report brought out by seven women’s organizations is an eye-opener on the extent of child abuse within the Indian family, cutting across caste and class. “Seventy percent (70%) of child sexual abuses were by relatives and persons to whom the child know”, the report “Women Speak” said, uncles and cousins top the list of abusers.\textsuperscript{123}

\textsuperscript{118} Supra note 2, at p. 103.
\textsuperscript{120} Rath, Sudhakar. ‘Dynamics of Child Abuse’. (n.d.) at 467. Quoted in Supra note 119 at p. 11
\textsuperscript{121} Supra note 2, at p. 105.
Incest has been forbidden by almost every religion. The Bible prohibits sexual relations with close kin, including children, step children, aunts, nieces, sisters-in-law, and daughter-in-law. The Kuran prohibits incest with mother, daughter, sister-in-law, nieces, foster mothers, foster sisters, mother-in-law, step daughter, daughter-in-law and female wards. The Christian Church prohibits marriages within the seventh degree of consanguinity. Hindu also prohibits marriage within prohibited degrees of relationship. Incest is also prohibited in pre-Vedic times in Mahabharata, in Ramayana and in laws of Manu.

It is unfortunate and a matter of serious concern that the graph of such heinous instances is rising increasingly duly after day. In most of the cases, the molested girl child feels that it was sheer bad luck which brought her such distress. She cannot open her mouth due to fear and helplessness and thus suffers repeated assaults for days, months and years. If the family elders came to know about such cases, the unfortunate girl is hurriedly married off so that family honour is saved. She suffers from seriously low self-esteem, and loses faith in humanity altogether.

Survivors of incest have to face a lot of trauma. The trauma often restricts the girls and the family to make the incident public causing psychological deprivation. The victim who requires care and support is kept isolated in the family.

It is a matter of deep concern that despite all the efforts of legal and other functionaries connected with it and prohibitions enshrined in all religious sect, the sex crimes against girls are increasing. The figure is appalling when the fact is taken into account that most of these sex offences go unreported for fear of harassment, shame and social disapproval. Even where culprit is nabbed, the charges of sexual assault and molestation are dropped because vaginal penetration is not complete. Sometime, prosecution may be there but for less graver charges like obscene gesture toward a girl child and so on. Is this justice? Who will provide justice to the victims of incest for the mental agony, endless shame and pain the girl child has gone through?

124 Supra note 2, at p. 106.
125 Section 5 (iv) and 3(8) of the Hindu Marriage Act, 1955.
128 Supra note 2.
1.3.3 Violence against Married Women

Marriage continues to be universally regarded as essential for a girl, irrespective of class, caste, religion and ethnicity. Control of her sexuality and its safe transference into the hands of the husband is of primary importance. It is very paradox of our contemporary times that on the one hand, marriage is a very cherished and fond dream of young women, yet the most cruel and heinous crimes, occur within the four wall of the matrimonial home. After marriage, the greatest risk of violence for women continues in their own matrimonial home.

Constitution of India has declared equality of sex as a guiding principle but in reality the family emerges as a unit where subordination of women to men and junior to senior pervades. Family, with its underlying basis of hierarchical structure i.e. gender, age, and economic status and sexual division of labour, is a unit where violence is used as a tool to maintain the structure of family and to ensure the continuation of the assigned role. Even though, wife beating is a universal phenomenon, in Indian families domestic violence is not only inflicted by husbands alone but the entire husband’s family participates in it, especially the ‘mother-in-law’ emerges as dominating figure, who inflicts violence or harasses the daughter-in-law.

Violence against married women has been seen in form of rape, wife battering, cruelty, murder, dowry related death, or harassment.

To provide women the status she deserves, the status of dignity and equality of respect and recognition since independence, many efforts had been made in India by providing different legislations to stop such type of crimes.

(a) Dowry

In India, most of the marital violence is clubbed under the overall heads of dowry, dowry deaths and dowry violence. This categorization glosses over the other causes of violence which pervade the familial context. But still, dowry is one of the major factors responsible for violence against married women. Dowry is defined

132 Supra note 99. at p. 205.
133 Supra note 106. at p. 7.
as any property or valuable security given or agreed to be given, directly or indirectly (a) by one party to a marriage to the other party to the marriage; or (b) by the parent of either party to a marriage or by any other person, to either party to the marriage or to any other person, at or before or at any time, after the marriage "in connection with the marriage of such parties.

Dowry finds its origin in Rig Vedic custom of Kanyadan followed by varadakshina. The ancient marriage rites in the Vedic period are associated with Kanyadan. According to Dharmashastra the meritorious act of Kanyadan is not complete till the bridegroom was given a dakshina. So when a bride is given over to the bridegroom, he has to be given something in cash or kind which constitutes varadakshina. Thus Kanyadan become associated with varadakshina i.e. the cash or gifts in kind by parents or guardian of the bride to the bridegroom. The Varadakshina was offered out of affection and did not constitute any kind of compulsion or consideration for the marriage. It was a voluntary practice without any coercive overtones. In the course of time the voluntary element in varadakshina has disappeared and the coercive element has crept in. It has taken deep root not only in the marriage ceremony but also post-marital relationship. What was originally intended to be a token dakshina for the bridegroom has now gone out of proportions and has assumed the nomenclature 'dowry' for the obtaining of which compulsion, coercion, and occasionally force began to be exercised and ultimately most marriages became a bargain.

In course of time dowry became a wide spread evil, and it has now assumed menacing proportions. Surprisingly, it has spread to all communities, some of which were traditionally non-dowry taking communities. Cases have came to public notice where brides, on account of their failure to bring the promised or expected dowry have been beaten up, kept without food for days together, locked up in dingy room, tortured physically and mentally, strangulated or burnt alive or led to commit suicide. To detect and curb the growing menace of social evil of dowry Parliament in 1961 passed the Dowry Prohibition Act which applies to all communities.

134 Section 2, Dowry Prohibition Act, 1961.
136 Ibid.
137 Diwan, Paras. 'Modern Hindu Law', 2000, p. 69.
While the introduction of the new dowry laws resulted in several cases being filed and heard in court, the phenomenon of dowry continued to grow. The Dowry Prohibition Act 1961, has banned the practice of dowry but in reality all that has done is to recognize that the problem exists.\footnote{138}

(b) Dowry Deaths

Where the death of a woman is caused by burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage, and if it is established that wife had been subjected to cruelty for dowry by her husband or his relatives soon before her death, the death is termed as a dowry death.\footnote{139}

Dowry is the main tool of exploitation against the married women. The in-laws of the bride, in an attempt to obtain dowry in form of cash as well as in any kind, create an atmosphere of harassment and cruelty and it continues till the death of the bride takes place.\footnote{140} The greedy disgruntled husband and in-laws may conspire and kill the bride with a view to remarry and receive more handsome dowry.\footnote{141}

The practice of dowry had become an important problem resulting in cruelty to married women. The evil of dowry have become so pernicious that a larger number of women are being murdered, burnt or assaulted every year on the altar of dowry.\footnote{142}

Most of the dowry related homicides occur in the privacy of the husband’s house and with the collusion of the family members; therefore, courts admit their inability to convict anyone for lack of proof.

Though many dowry-homicides go unreported, the number of those that are reported is enough to unnerve our society. Such incidents have their origins in social, economic, and psychological factors, too deep rooted to be tackled by the law. The genesis, of such death lies in the tension created by persistent demands, accompanied by torture, for dowry. The greed for money, the aggressiveness increased by resistance to the demands, and the ease with which the weaker sex can be exploited,

\footnote{138 Supra note 2, at p. 124.} \footnote{139 Section 304-B of Indian Penal Code.} \footnote{140 Umar, Mohd., ‘Dowry- A Security for Standard Living?’ Law Review, Vol. 14(2), June 1990, p.194.} \footnote{141 Ibid.} \footnote{142 Supra note 10, at p. 83.}
all combine to encourage family members to take the bride’s life or make her life so miserable so that she commit suicide.\textsuperscript{143}

The dowry death provision applies only to married women. However, in a judgement\textsuperscript{144} the Apex court held that even in cases of lack of valid marriage, the ‘husband’ would not be allowed to take shelter behind a smoke screen that there was no valid marriage and hence the question of dowry would not arise. Persons who contract marriages ostensibly and cohabit with women in the purported exercise of their role and status as ‘husband’ would come under the purview of Sections 498A and 304B of Indian Penal Code.

In many unnatural deaths, cases have been registered as suicide due to stomach pain, evil spirits or as kitchen accidents and stove burst because in this way, the strong arm of law cannot be invoked. While the death of women by burning is one of the most common modes of doing away with women in the city, hanging and poison are other ways. Women are either throttled or beaten to death and then hanged to make it appear as a suicide.\textsuperscript{145}

In dowry related deaths more women die by burning than from any other cause in our country is an undisputed fact. It is the safest mode to do away with a woman because with her, all traces of evidence of physical violence are also erased. It is also the safest mode to ensure one’s acquittal as the question whether the burns were self-inflicted or inflicted by others can never be answered with complete certainty.\textsuperscript{146}

There are series of cases in which young married women have been beaten, tortured and burnt to death for few thousand rupees.

Various independent studies have also been made in order to judge the extent of dowry related violence in India.

Dowry and dowry related murders and suicide are such evils which are putting the society to a great shame. What does ‘right to life’ mean to all the young women trapped in marriage that are so demanding that non-compliance means sure death?\textsuperscript{147}

\textsuperscript{144} Aggarwal Reema v. Anupam AIR 2004 SC 141.
\textsuperscript{145} Supra note 2, at p. 138.
\textsuperscript{146} Ibid.
\textsuperscript{147} Ibid.
1.4 Cruelty against Spouse

Cruelty is a part and parcel of domestic violence and is a ground for dissolution of marriage under all the personal laws in India. The concept of cruelty have evolved and expanded over the years to fit into the needs and attitudes of changing times.

1.4.1 The Concept of Cruelty under Criminal Law

Cases of cruelty against spouse are increasing in number as well as in magnitude and are causing serious concern for everybody. In order to combat the increasing incidents of cruelty it is made a substantive offence punishable under Section 498A of the Indian Penal Code. Cruelty is also an essential ingredient of the offence of dowry death punishable under Section 304B of the Indian Penal Code and of the presumptive Sections 113A and 113B of the Evidence Act. Cruelty for the purpose of all these sections means—“any willful conduct which is of such a nature as is likely to drive the women to commit suicide or to cause grave injury or danger to life, limb or health whether mental or physical of the woman or harassment with a view to coercing her or any person related to her to meet any unlawful demand, for any property or valuable security or is on account of failure by her or any person related to her to meet such demand”.

The expression cruelty takes within its sweep both mental and physical agony and torture. The concept of cruelty varies from place to place and individual to individual and according to the social and economic status of the person involved. The question whether the act complained of is an act of cruelty has to be determined from the whole fact and relationship between the parties. The cultural and temperamental state of life among them is factors from where the cruelty has to be inferred and will depend on the facts of each state.\(^{148}\)

The term cruelty in criminal law is well defined with precision and certainly leaving no scope to enlarge its concept by any other method.

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\(^{148}\) Sarojakshai Shankarn Nayar v. State of Maharashtra, 1995 Cri I. J. 340 (Bom.).
1.4.2 Cruelty in Matrimonial Laws

There is no precise definition of cruelty in matrimonial laws, nor is it possible to do so. Acts or conduct constituting cruelty can be so numerous and varied that it would be impossible to fit them into any water-tight compartments. The legal concept of cruelty has varied from time to time and from society to society with the change in social and economic conditions.\footnote{Supra note 137, at p. 127.}

In early English law Intention was considered to be an essential element of cruelty. In the modern law, it is no longer so. The modern law takes the view that the objective is to accord protection to the innocent party.\footnote{Ibid.} Recent interpretation of cruelty in England and in the United States virtually amounts to acceptance of breakdown theory. Thus, nagging, and scolding and even incompatibility of temperament have been held to be included in cruelty.\footnote{Ibid.} Under most systems of the personal laws\footnote{Section 10 and 13 of the Hindu Marriage Act, 1955; Section 27 of Special Marriage Act, 1954; Section 10 of Indian Divorce Act, 1861; Section 32 and 34 of the Parsi Marriage and Divorce (Amendment) Act, 1988; Section 2 of The Dissolution of Muslim Marry Act, 1939.} in India, the cruelty to wife is a ground for judicial separation or divorce.

The legal conception of cruelty and the kind of degree of cruelty necessary to amount a matrimonial offence has not been defined under the matrimonial laws. The accepted legal meaning in England as also in India of this expression, which is rather difficult to define, had been “conduct of such character as to have caused danger to life, limb or health bodily or mental or as to give rise to a reasonable apprehension of such danger.”\footnote{Russell v Russell (1897) AC 595. quoted in Supra note 137 at 127.}

The most important essential requisites for matrimonial relief on the ground of cruelty is the nature of conduct of the defaulting spouse and its effect on the complaining spouse. Thus, it is not possible to give any precise definition of the cruelty as the conduct of the human being is not generally similar and as such, there is no limit to the kind of conduct which may constitute cruelty. New type of cruelty may crop up in any case, depending upon human behaviour capacity or incompatibility to tolerate the conduct companied of. It is rightly observed by Lord

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\footnote{Supra note 137, at p. 127.}
\footnote{Ibid.}
\footnote{Ibid.}
\footnote{Section 10 and 13 of the Hindu Marriage Act, 1955; Section 27 of Special Marriage Act, 1954; Section 10 of Indian Divorce Act, 1861; Section 32 and 34 of the Parsi Marriage and Divorce (Amendment) Act, 1988; Section 2 of The Dissolution of Muslim Marry Act, 1939.}
\footnote{Russell v Russell (1897) AC 595. quoted in Supra note 137 at 127.}
Denning that “the categories of cruelty are not closed”\textsuperscript{154} such is the wonderful realm of cruelty.

Thus, cruelty as understood in matrimonial law and cruelty as defined under criminal law differs from each other in many respects. However, they do sometimes coincide and overlap each other. Further it is not uncommon that a conduct which is held to be cruelty in matrimonial law sometime has also been held to be cruelty in the criminal law.

### 1.5 Classification of Cruelty

Under the statutory provision cruelty includes both physical and mental cruelty.

(a) **Physical Cruelty**

Act of physical violence by one spouse to another resulting injury to body, limb or health or causing reasonable apprehension of the same have been traditionally considered as cruelty. What acts of physical violence will amount to cruelty, what act of physical violence will amount to cruelty will differ from case to case depending upon the susceptibility and sensibility of the party concerned.

(b) **Mental Cruelty**

Various acts of non-physical violence such as harassment, insulting behavior, cessation of marital intercourse and refused to provide treatment, food, clothing or accommodation by the husband or his relative also form a part of the phenomenon of violence against women. The husband on the other hand usually cites a number of justifications for their behavior.\textsuperscript{155} The cruelty is not necessarily restricted to physical violence but may extend to behaviour which may cause mental pain in to mind as well.\textsuperscript{156} Cruelty, however, has to be distinguished from the ordinary wear and tear of the family life.

It was formerly thought that actual physical harm or reasonable apprehension of it was the prime ingredient of matrimonial offence. But that doctrine is now repudiated and the modern view has been that mental cruelty can cause even more

\textsuperscript{154} Sheldon v. Sheldon (1966) 2 All E.R. 257. quoted in Supra note 137at 128.

\textsuperscript{155} Supra note 2. at p. 145.

\textsuperscript{156} Braja Kishore v. Krishna AIR 1989 Cal 327.
grievous injury and create in the mind of the injure spouse reasonable apprehension that it will be harmful or unsafe to live with the other party. The principal that cruelty may be inferred from the whole facts and matrimonial relations of the parties and interaction in their daily life disclosed by the evidence is of greater cogency in case falling under the head of mental cruelty. Thus mental cruelty has to be established from the facts.\textsuperscript{157}

Apex court has defined the mental cruelty very broadly as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other.\textsuperscript{158} In other words, mental cruelty must be of such a nature that the parties cannot reasonably be expected to live together.

Mental cruelty is a state of mind and feeling with one of the spouses due to the behavior or behavioural pattern by the other.

1.6 Wife Battering

Wife battering is a most common form of domestic violence, irrespective of class, religion and community. It poses a threat to quality of women’s lives in nearly every culture and society.\textsuperscript{159} It has been shrouded in secrecy, guilt and shame on the part of the victims. Only in the last decade wife battering has been recognized as a social problem of major proportion.\textsuperscript{160} The dowry death, suicides that occurs within the home is the ultimate manifestation of the violence suffered by most women in varying degrees. Most of them are harassed for a long time before they are murdered or driven to suicide.\textsuperscript{161}

The term battering refers to physical beating of a person with the intention of causing harm or injury and actually causing it. Wife battering may be defined as willfully striking a woman by her husband with or without injury. It includes physical battering, sexual abuse and psychological battering.\textsuperscript{162} The abuser’s physical attacks

\textsuperscript{157} Mullis Hind Law, 17\textsuperscript{th} Ed. Vol. II 1999 at 91.
\textsuperscript{158} Bhagat v. v. Bhagat D., AIR 1994 SC 710.
\textsuperscript{160} Singh, Mohinder, ‘Women and Child’ 2007, at 52.
\textsuperscript{161} Supra note 73, at p. 147.
or aggressive behaviour can range from bruising to murder. Wife battering begins with what is excused as trivial contacts, which escalate into more frequent and serious attacks. Physical attack by abuser is often accompanied by or culminates in, sexual violence wherein the woman is forced to have sexual intercourse with the abuser or take part in unwarranted sexual activity. The abuser's psychological or mental violence can include constant verbal abuse, harassment, excessive possessiveness, isolating the woman from friends and family, deprivation of physical and economic resources, and destruction of personal property.

Hundreds of women are battered or even tortured and killed in their homes but they go on living in traumatic situations because for them battering and ill treatment by a husband is regarded almost like a concomitant of marriage, sometime as routine and inevitable as doing the housework, bearing children etc.

For a woman, being battered by her husband who is supposed to love and protect her becomes a shattering experience. Women suffer battering in silence because they consider marriage as sacrosanct and a sacrament. They are completely dependent on their husbands for economic, emotional and social support and for them there is no other place to go. They do not approve divorce owing to its social consequences and finally they accept their husband's promise to reform.

Maladjustment due to various reasons, between husband and the wife is one of the causes of wife battering. Wife battering is the most prevalent form of violence against women. It is common among working wives as most mothers-in-law who are non-working and under complete dominance of their husbands feel jealous of and frustrated at the sudden independence and freedom of their daughter in law. This is countered by poisoning the ears of their sons and antagonizing them against their wives.

A woman who is battered is often given to understand that it is her fault. Her fault could include a variety of thing ranging from her personal liking to delay in

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163 Supra note 70, pp. 146.
164 Supra note 2, at p. 148.
166 Supra note 73, at p.147.
167 Id., at p. 148.
cooking or improper cooking. Sometimes a wife is battered in her attempt to mend the ways of her husband.

Wife beating or in more extreme cases, wife battering – is the most common form of abuse worldwide irrespective of class, religion, community and in the India, caste back grounds\textsuperscript{168}

The importance of the family has ensured that such behaviour is condoned in silence. The sanctity of marriage has ensured that it has come to be seen as almost “acceptable behaviour”.\textsuperscript{169}

The stigma attached to a broken marriage, and the belief that a woman’s true place was with her husband resulted in even parents encouraging their daughters to remain in a violent marriage.\textsuperscript{170}

No one even wants to talk about wife battering. For individuals admitting to it would seem like admitting a failure of their most intimate relationship. For the society it would mean facing the unpleasant fact that what is considered to be the most precious institution is also one of the most dangerous.\textsuperscript{171} Far from being a heaven of safety and security, family has become the cradle of violence and the husband directs most of the violence against one of the most equal partner i.e. the wife.

The chance of wife reporting this crime or expecting justice will remain very bleak, till the judicial process is simplified and the law enforcement authorities keep social realities in mind. Women also have to cooperate; they should not take the cruelties laying down. All protective legislation will remain impressive only in the law books, if the attitude of the society, the women and the outlook of the court does not change.

\subsection*{1.7 Violence against Elderly}

Human life is divided into different phases of life such as infancy, babyhood, childhood, adolescence, adulthood and old age, of which old age is considered to be

\begin{footnotesize}
\begin{itemize}
\item Supra note 2, at p. 108.
\item Ibid.
\item Ibid.
\item Ibid.
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most important period of life in term of attitudes and value’s which reflects the wisdom of time. In traditional Indian societies elderly people were receiving a great deal of respect and social security due to peculiar norms and cultural values existing in the society, which owes to joint family system.\textsuperscript{172}

But due to disintegration of joint family system and formation of nuclear families, there started neglect of traditional norms of behaviour required from children towards their elders, which ultimately result in the maltreatment and abuse of elderly in the family by the other family members.\textsuperscript{173}

This elder abuse is forcing the elders to live on their own despite frailty and age related disabilities, which result in lack of adequate social security and further making them vulnerable to crime, violence, abuse, neglect and exploitation.\textsuperscript{174}

Elder abuse remains largely hidden like other form of domestic violence, because it occurs within the four walls of home. Elder person who are victim of abuse are reluctant to share their experience with those outside the family, as they are sure that long term outcomes of this would not be in their best interest. Cultural norms, physically and financially dependency on the abuser also inhabit them from exposing their vulnerability to outsiders.\textsuperscript{175}

In the context of elderly abuse, domestic violence encompasses abuse and neglect by their own children or by other family member living with them in domestic relationship and it also includes mental as well physical assault by their spouse. Used in this wider sense, domestic violence is recognized as a phenomenon cutting across class, caste, sex and age differences.\textsuperscript{176}

Elder abuse can be defined as conduct that results in the physical, psychological or mental neglect, harm or injury to an elder.\textsuperscript{177} This multifaceted definition classifies elder abuse into five categories\textsuperscript{178} they are:

\begin{itemize}
  \item Supra note 73, at p. 150.
  \item Majumdar, Maya, ‘Social Status of Women in India’, 2004, p. 80.
  \item Empowering the old, The Tribune June 15, 2011.
  \item Supra note 2, at p. 186.
  \item Id at p. 185.
  \item Ibid.
\end{itemize}
• Physical abuse- it includes the infliction of physical pain or injury, physical coercion, sexual molestation or physical restraint;
• Psychological abuse- it includes the infliction of mental anguish, verbal and emotional abuse;
• Material abuse- it includes the illegal or improper exploitation and/or use of funds or resources, it is also called financial abuse;
• Active neglect- it includes the refusal or failure to undertake a care taking obligation. Usually this is a conscious or an intentionally attempt to harm the elder; and
• Passive neglect- it includes the refusal or failure to fulfill a caretaking obligation.

India has still to acknowledge elder abuse as a serious issue that needs prompt intervention from individuals, society and Government. In India, the subject was taboo till recently, possibly in view of the strong tradition of reverence for the elderly. It may be difficult to understand how elder abuse could co-exist with cultural values, which emphasize respect of elders. Joint families have lived together for generations and society has been in a denial mode in so far as ill-treatment of the elderly is concerned. Coming to terms with such abuse within, respectable “Families” has been far from easy.

But there is growing evidence of families neglecting the elder. Media coverage, research and NGO’s besides crime records and increasing number of old age homes indicates how families are increasingly discriminating against the elderly, neglecting them and often abusing them. There is little doubt that quality of life of the elderly has suffered in many part of the country. With the increase in the number and proportion of the elderly, adult children today are increasingly faced with a number of elderly dependents for whom they are expected to provide long term care. But by entering into a model family system where fewer children would be available for sharing responsibility and care of elders, the likelihood of neglect or abuse of elderly also increases.

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179 Supra note 174.
180 Supra note 73, at p. 150.
181 Ibid.
182 Supra note 174.
183 Supra note 73, at p. 150.
Isolation, abandonment and social exclusion are some forms of the abuse of the elderly one comes across. Denial of legal, medical and human rights and depriving the elderly of financial supports and also not provided with the dignity to which they are entitled are some other forms of neglect which have surfaced. Robbing the elderly of respect and dignity is also not so uncommon.  

The elderly are losing control over property forcing them to undergo financial deprivation. Immovable property belonging to the elderly is increasingly being grabbed making the elderly homeless. There are instances where some are being left out of family functions and community activities. Many of the old are being abandoned by grown up children and forced to live in institutions. Some live in ashram or old age homes while some are being forced out to the streets.  

Verbal humiliation is on the rise with insulting, rude, insensitive and disrespectful language being used increasingly towards the old. Add to this the emotional and psychological trauma or receiving threats, facing growing fear and insecurity and the stress to which the elderly are being exposed can be appreciated with rapid increase in the population of older persons in the country, the magnitude of the problem can no longer be ignored.  

Old age is a reality feared by those who have not yet reached it, and is often unappreciated by the old due to the increasing incidents of the elderly abuse, whatever may be its cause.  

1.8 Widowhood  

Women are considered as most vulnerable section of the population by the male dominated society and among the women; widows are the most vulnerable due to sudden change in their socio economic status with the death of their husband. The death of the husband necessitates the establishment of new relationship within the family and outside the family i.e. Society. Widowhood is transition from one marital status to another after the death of the husband. Entering into widowhood is
more hazardous, painful and humiliating to women in comparison to a widower because of the discrimination and ritual sanctions against widow by the society.\textsuperscript{189}

Widowhood is a very stressful situation, which brings several socio-economic, cultural and emotional deprivations to the women. Widows are neglected even in the category of women.\textsuperscript{190} Unlike spinster who never had an opportunity to enjoy the protection and security of living with a man, widows suffer agonies that are indeed pathetic. Having had a shattered life with their husbands, the grief and personal tragedy and the social stigma that they suffer as a consequence of widowhood is enormous.\textsuperscript{191}

Many social stigmas are attached with the widowhood. Widows cannot participate in social and religious activities. They have to isolate themselves from the mainstream.\textsuperscript{192} A widow must live a highly restricted life as prescribed by the family customs and social norms. She is not supposed to wear colorful clothes or other ornaments.\textsuperscript{193} She must dress up ordinary or wear a certain kind of dress and in some cases their head are shaved as a mark of the widowhood.\textsuperscript{194} She should eat very simple food and has to avoid all types of pleasure and comforts of life.\textsuperscript{195}

In the traditional male dominated society, a widow could not lead an independent life. Others always looked her down upon with a certain amount of suspicion. Widowhood is considered a punishment for the sins committed by her in previous life or in present birth. It is considered as a misfortune and burden to be born until her very death. In traditional societies especially in rural area widowhood is considered as a curse.\textsuperscript{196}

After the death of husband she immediately becomes dependent upon the children, in laws, parent or relatives. Widowhood brings about traumatic changes in her status, for it is not only account for the loss of spouse but is accompanied by a loss of pride, prestige, social status, independence and social privileges. Widowhood is a period of crisis in the life of women, in which they are forced to lead a life of

\textsuperscript{190} Supra note 188. at p. 101.
\textsuperscript{192} Supra note 188. at p. 101.
\textsuperscript{193} Ibid.
\textsuperscript{195} Supra note 188. at p. 101.
\textsuperscript{196} Ibid.
deprivation, discrimination and misery. Widows have to face different forms of discrimination in the domestic relationship. Ill-treatment, partial treatment and difference of opinion with married sons and their spouse seem to be the major problem being confronting by these women. Most widow’s complained of daughter-in-law for not making necessary adjustment and thereby creating misunderstanding in the family, which become the cause of discrimination against widow. Often daughter in law do not want them to stay in the home. This constant friction in the family and unhappy home environment caused them to feel as unwanted in their own home.

The condition of widows varies from region to region, religion to religion and caste to caste. In the widow too there are sub-categories like working or non-working widows, older or younger widows, widows in urban area or widows in rural area etc. Widow in poor households have different problems compared to widows in rich household, widows with property have different lifestyles compared to widow with no property. Condition of non-working widow is very vulnerable in comparison to a working or economically sound widow. Financial problems and indifferent treatment by their children towards non-working widow is the motivating factor, behind some wanting to be economically independent even in their old age.

The severity of discrimination and misery is greater among young widows who have had a short span of married life and thus have the burden of looking after very young children. This result in immense emotional and psychological stress, affecting their general status in the family and society and in turn intensifying their social problems. The unfortunate woman who becomes a widow at a young age is dubbed as a monster who has taken the life of her husband. Her ill-omened presence and evil eye are avoided on auspicious occasions. Dispite the Hindu Remarriage Act, 1856 the remarriage of Hindu widow continue to be a taboo. Hindu widow suffer because of their enforced widowhood. Gandhi was strongly against enforced widowhood as he considered it to be unlawful. He argued that if a widow cannot remarry than a widower should also not remarry.

197 Ibid.
198 Supra note 191. at p.95.
199 Id., at 100.
200 Supra note 191. at p. 68.
201 Supra note 194. at p. 72.
Widows are the worst sufferers when they have to depend totally on either in laws or their parents. Almost every widow faces attempts to deprive her of her property. She is thrown in a well or burnt or murdered and people are told that she committed suicide out of grief.

Several thousand widows disowned their parents, in-laws, brothers, sisters and even their own children, driven out of their houses. Finding no other way they are living in desperate existence in Vrindawan, Varanasi, Haridwar, Rishikesh, Puri Gaya and other places of pilgrimage. Recent studies have shown that they are most disadvantaged, both socially and economically. They face verbal abuse, humiliating remarks, denial of access to their husband’s share of property, if continued to remain at home, then they have to face increased domestic work load. All such consequences result in loss of self respect and tendency to suffer neurosis.

1.9 REVIEW OF LITERATURE

The study of referred literature provides scientific and logical support to the study being undertaken. Review of allied literature as well as previous research work is of paramount importance in research endeavour. The referred literature provides ideal guidance to plan the study being undertaken by the researcher. It also establishes the rationale for the work. Review of literature promotes a greater understanding of the research problems and helps one to locate the research problem as well as guide and support the research work. It will also help the researcher to conceptualise the research problem clearly and precisely and make it more relevant and pertinent to the field of research work. Another reason for giving detailed account was that these studies were perceived to be having some relevance so far as designing of the present research work is concerned. The researcher has made an attempt to review the available literature of various eminent personalities, scholars, authors, on the research problem. Some of the literature reviewed is as under:

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203 Supra note 2, at p. 204.
204 Economic and Political Weekly, April 1, 2000 at 1151, quoted in Supra note 2 at 204.
**Book Review:**

_Thomas, P. (1964)_ has conducted study on the topic ‘Indian Women through the Ages’. In this book the author has provided a detailed account of the gradual subjection of women in India, which started from very early times and continued right down to the eighteenth century, and their emancipation, which began in the nineteenth century and found its fulfillment in the economic, social, and political equality established in law and guaranteed by the Constitution of the Republic of India. This whole work is divided into two parts. The first part deals with the age of subjection in which the author has discussed the position of women in the pre Vedic and post Vedic period. This part also point out the position of women in the Ramayan, Mahabharta and in Buddhism and ancient Jain texts including in the text of Puranic and Dharma Sastra. The position of women in Muslim period has also been dealt with in this part. Part two of the book deals with the age of emancipation wherein the author has discussed about the British period in which various legislative initiative were taken to improve the plight of women such as, abolition of Sati, permission to widow remarriage, stress on female education etc. In this part author has also discussed the position of women in post independence period in which various pro women provisions and legislation have been enacted by the government of India such as provisions in the Constitution, Hindu Marriage Act, 1955, Hindu Succession Act, 1956, Dowry prohibition Act, 1961 etc. The author has not pointed out whether the existing laws will be able to emancipate the women from the clutches of subjugation in the hands of man which they have been facing since very early times.

_Alietkar, A.S. (1978)_ has conducted the study on the topic entitled ‘The Position of Women in Hindu Civilization from Pre Historic times to the present day’. In this book the author has made an attempt to describe the position of Hindu women in Hindu civilization from pre historic times to the present day, and to indicate the general lines on which women have been confronted with various problems. This book deals with various issues such as, the problems relating to the childhood and education of women, numerous complex problems connected with marriage and

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married life; the position of widows in the society, the place of women in public life and religion and proprietary rights of women. The author has also discussed the general attitude of society toward women, both in normal and abnormal times and situations. The author has not discussed the concept of violence against women in family relationship. The present day position of women has also not been dealt with in this work.

_Ahuja, Ram, (1987)^208_ has conducted empirical study on the topic ‘Crime against Women’. In his book the author has examined diverse types of crime against women in Indian social setting and situations. The author suggest that in spite of the legislative measures adopted in favour of women in India after independence and in spite of the spread of education and women’s gradual economic independence, countless women continue to victim of violence inside or outside the home. The main issues in his study include violence against women, rape, Abduction and Kidnapping, dowry death, wife battering, murder and theoretical explanation of violence against women. Through empirical study the author has made an attempt to develop one theoretical model to explain all types of crime against women. The author has touched only the general problem of violence against women but has not touched the issue of domestic violence. The author has also not pointed out what changes in laws should be made to provide better protection to the women.

_Mitter, Dwarka Nath, (1989)^209_ has conducted study on the topic entitled ‘The Position of Women in Hindu Law’. In his research work the author has made an attempt to show not only what the position of women in Hindu Law is, but also how it came to be what it is. The author has pointed out that the position of an individual in any legal system is determined with reference to his estate and status therein. In this work the author has discussed various issues like, the status of women generally, status of wife and the law of marriage; status of widows in which institution of Sati has also been discussed. The author has also discussed the proprietary position of women in Hindu Law.

The author has not pointed out how the position of women in Hindu Law can be improved. Furthermore the author has not pointed out the issue of discrimination against women in laws as these existed upon the work was done.

_Shastri, Madhu, (1990)_\(^{210}\) has conducted the study on the topic ‘Status of Hindu Women: A Study of Legislative Trends and judicial Behaviour’. In his book the author has made an attempt to examine how far the present laws have been able to put Hindu women at par with men. This book not only examines the status of Hindu women in Vedic or post Vedic period but also examines the laws relating to various aspects of the position of Hindu women under Constitutional provisions, criminal laws, family laws, property rights, social welfare legislation. This book also deals with various trends setting judicial pronunciation, which have gone a long way to help in implementing these laws effectively and efficaciously. The author has not covered the whole status of women in pre and post Vedic period. Furthermore the author has not touched the issue of violence against women in family relationship and even not pointed out the main deficiencies in the existing laws when the book was brought into publication.

_Sood, Sushma (Ed.) (1990)_\(^{211}\) has edited the book titled ‘Violence Against Women.’ This book is a collection of articles which focus on various atrocities against women like wife battering, female infanticide, violence against women in family relationship, sati, violence against elderly women etc. The authors have made attempts to examine the environmental and personality factors in divorce, wife battering and bride burning. They have thrown light on the important issues related to women and violence. The authors have neither pointed out main deficiencies in the existing laws nor have they suggested changes in the existing laws for better protection of women from various atrocities.

_Mukherjee, Roma (1998)_\(^{212}\) has made a study on the topic ‘Women, Law and Free Legal Aid in India’. The author has gone in detail with regard to various aspects of the sufferings of the women and their statutory protection. She has critically examined and analyzed various decisions of the Higher Judiciary in India. The author

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has mainly discussed the legal aid aspect to the women especially in matrimonial matters. She has also discussed the Dowry Prohibition Laws and their protection to the women. The author has not touched the concept of violence against women in domestic relationship.

*Umar, Mohd. (1998)* has conducted empirical study on the topic ‘Bride Burning in India: A Socio-Legal Study’. In his work the author has pointed out the menace of bride burning or suicide committed against young women due to lack of dowry or any other reason. According to the author violence against women exists everywhere and India is no exception. This work provides an insight into various theoretical bases of the problem of wife battering, bride burning and other dowry related violence in socio-psychological perspectives. The author has also pointed out various factors that are supposed to be responsible for dowry related crimes, including different patterns of aggression against the brides. The author has also made an attempt to examine and evaluate the Indian legal system in the context of the problem of dowry, cruelty, bride burning and suicide. This study also focuses attention to the role of enforcement agencies including the role of judiciary in respect of the problem of bride burning (dowry death) and suicide. This study revealed the several shortcomings in the existing legal system and pointed out that existing laws are not being properly implemented. How existing legal system could be made more effective is not pointed out.

*Majumdar, Maya (2001)* has conducted the study on the topic entitled ‘Protecting our Women’. The present work is divided into three volumes i.e. Victimized Women: Repression and Social Response; Safeguarding Rights: the Legal Response; and Imperatives of Empowerment: the Political Response. In this book the author has presented an overall view on issues and problems related to women’s development. In the first volume the author has pointed out various issues like crime against women; marital violence, wife beating syndrome; women against women; dowry, Eve teasing and rape; Women as a victims of violence. In second volume the

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author has discussed various Constitutional provisions for women including other
various pro-women legislation. In third volume the author has discussed about the
political participation of woman including women’s political freedom.

The author has not pointed out the main deficiencies of the Legal System as
existed when the book was brought in to publication.

_Diwan, Paras, (2002)_ has conducted study on the topic ‘Law Relating to
Dowry, Dowry Deaths, Bride Burning, Rape and Related Offences’. In this book the
author has made an endeavoured to show that much legislation providing protection to
women, e.g., with regard to dowry, cruelty and rape law has been made stringent but a
lot is lacking in part of investigative and enforcement machinery. In his work the
author has covered the wide canvas of insatiable demand of dowry, leading to various
dowry offences; to dowry deaths, murders and induced suicides; including eve
teasing, molestation and rape of women of all ages; cruelty on married women and
indecent and vulgar representation of women in advertisement. The author has
touched the existing laws and pointed out that they are not being properly
implemented. How existing laws could be made more effective is not pointed out.

_Tewari, Om Prakash (2002)_ has conducted study on the topic ‘Women’s
Rights in India.’ In this book the author has examined the women’s status and rights
under the International Law, the Constitution of India and certain Indian Statutes.
The author has discussed the status of Hindu wives, Muslim wives, Christian wives
and Parsi wives according to the laws applicable to them. Rights of a wife have been
dealt with as to equal treatment with males in the family, their right to property, their
right to maintenance, conjugal rights, judicial separation, divorce or nullity of
marriage and to remarry after divorce. Right of women relating to custody of their
children, to their guardianship and to adoption has also been dealt with in this book.
Relevant provisions of the Code of Criminal Procedure, Indian Penal Code, The
Immoral Traffic (Prevention) Act, 1956, Commission of Sati Act, 1987 etc have also
been discussed by the author. The author has not touched the concept of violence

215 Diwan, Paras. ‘Law Relating to Dowry, Dowry Deaths, Bride burning, Rape and Related Offences’.
216 Tewari, Om Prakash. ‘Women’s Rights in India’ Sri Sai Law Publications, Faridabad (Haryana)
(2002).
against women in family relationship. The author has discussed about the status of women in family but has not pointed out how that status can be improved and women can be provided with equal status at par with man in family.

*Choudhry, R.N. (Ed.) (2003)* has edited the book entitled ‘Crime against Women’. In this book the author has discussed various important judgments of the higher judiciary on crimes against women. In these judgments the judiciary, has exhibited pro-women concern regarding various issues such as cruelty against women in matrimonial relationship, dowry related crime, divorce cases, abetment of suicide by married women etc. The author has also pointed out about the violence against women and the evil of dowry system including position of women in India. In this book the author has touched various judgments of Supreme Court and High Courts on crime against women but has not pointed out how these judgments are helpful in providing violence free society and family to the women.

*Juyal Pooja, Faculty of Isabella The Burn college, Lucknow, (Ed.) (2005)* has edited the book entitled ‘Women’s Studies in India: Some Contemporary Contours’. This book is a part of the women’s Studies in Asia Series: India. This book is collection of Articles containing Issues such as Women, Politics and the State in India; Reading Gender into the Indian State, Domestic Violence Against Women: A Focus on Wife Beating in India, Women and Reproductive health and towards understanding Women and Work in India. In this edition the issues of oppression and exploitation of women in India are shown interwoven into a complex scenario where class and caste hierarchies operate in a social backdrop characterized by multi culturism and diversity, and within the political frame of a parliamentary democracy. It is also discussed that understanding these issues and addressing them within the framework of equality and social justice is challenge before women’s studies in both its academic and activist endeavour. The author has not pointed out the main deficiencies of the legal system as existed when the book was brought into publication.

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218 Juyal, Pooja, ‘Women’s Studies in India: Some Contemporary Contours’, Published by Ewha Woman’s University Press Seoul, South Korea (2005).
Chawala Monica (2006) has conducted study on the topic ‘Gender Justice: Women and Law in India. In his book the author has point out the status of women in India. This book includes various provisions contained in Constitution of India, Personal laws, Labour laws and in other Pro-Women laws. The author has discussed the various issues like maintenance, guardianship, adoption and succession. The author has neither discussed the problem of Domestic Violence against Women nor pointed out what changes in laws should be made to improve the status of women in India when the book was brought into publication.

Goel Aruna et. al (Ed.) (2006) has edited the book titled ‘Violence Against Women: Issues and Perspective’. This book is a collection of articles which focus on various atrocities against women like wife battering, family violence, female infanticide, gender-related violence, sexual harassment of working women and digital invasion in the lives of women etc. The book seeks to analyze the various forms of violence against women; to look into the socio cultural and structural causes of such violence. In this book it is pointed out that the discrimination and violence that women are subjected to has its genesis in socio cultural values that spring from the patriarchal ethos. It has also pointed out the impact of the violence on women’s as well as societal health and the legal interventions which have been made and which can be made. The authors have touched only the general problem of violence against women but have not touched the issue of domestic violence. They have not pointed out what changes in laws should be made to provide better protection to the women.

Misra, Preeti (2007) has conducted a study on the topic ‘Domestic Violence against Women', Legal Control and Judicial Response. The main objective of her was to highlight the problem of violence against women. The author has made an extensive effort to explain and highlight the most vicious form of violence meted out to the women in their own home, ranging from slapping, hitting, homicidal assaults, harassment for dowry, female child abuse and abuse of elderly female in domestic relationship. The issue of domestic violence against women in India as highlighted by

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the author is an issue which has not been addressed properly in law so far. The author has made an attempt to recognize the existence of domestic violence against women among the many manifestations of the violation of the fundamental rights of women. Her work include position of women in Indian society, concept of violence against women; magnitude and forms of domestic violence; causes of domestic violence, theoretical explanation of violence against woman and judicial response to the violence against women. Author’s work mainly concerned only with the legal examination of the problem of violence against women in general. The author has not pointed out the main deficiency of the legal system as existed when the book was brought into publication. It was bound to prove highly useful for all those interested to engage in a dialogue on the question of violence against women in family relationship.

**Jaising, Indira and Sakhrani, Monica. (Ed.) (2008)** have edited the book entitled ‘Law of Domestic Violence’. This book contains civil as well as criminal laws for the protection of women from violence in domestic relationship. In this book the authors have made an attempt to outlines the rights of a woman under the new domestic violence law, the rights which are derived from her status as a wife, a daughter and a widow, her post divorce rights, provisions relating to divorce and judicial separation under various personal laws. They have not only examined the remedies available to women under the Protection of women from Domestic Violence Act but also under civil law, criminal law and in tort. This book also introduces the options available before the litigation begins or where the women do not immediately want to take recourse to the court of law. This book would be useful not only for legal practitioners, activists and members of the judiciary but more importantly for the women who are victim of domestic violence. The authors have discussed mainly the concept of domestic violence. They have not touched the position and status of women in Constitutional law or other pro-women legislations. The authors have not pointed out the deficiencies in the existing laws to protect the women and even not suggest changes in the existing laws to provide better protection to the women.

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Mccue, Margi Laird (2008)\textsuperscript{223} has conducted the study on the topic ‘Domestic Violence: A reference Handbook’. The author has examines the causes and historical roots of domestic violence, providing the facts and analyses to foster a better understanding. The work of the author analyzes the complex dynamics of domestic violence from three perspectives-legal, social, and psychological. The author has discussed the concept of domestic violence in global perspective. The author has not touched the laws enacted specifically to prevent domestic violence against women.

Myneni, S.R. (2008)\textsuperscript{224} in his book title ‘Women & Law’ has dealt with the status of women in India and its historical background. In this book the author has pointed out various issues such as Human Rights and Women, Protection against discrimination to women, provisions under the Constitution of India. Enactments relating to women as per the directive principles of state policy, Maternity Laws, equal pay for equal work, Personal Laws of Women, Law relating to adoption by a women and other social legislation relating to women’s issues etc., have also been discussed in the book. Law relating to the protection of women from domestic violence and offences against women under the Indian Penal Code have also been discussed. The author has also discussed the role of Non-Governmental Organization in the emancipation of women in India. The author has not pointed out that the existing laws are sufficient to provide the protection against violence to the women. It is also not pointed out whether the protection of women from domestic violence Act, 2005 is sufficient to provide due protection against domestic violence to the women.

Sexana, Shoba. (2008)\textsuperscript{225} has in his study titled ‘Crime Against Women and Protective Laws’ has presented a critical analysis of the relevant sections of the Indian Penal Code, Criminal Procedure Code, Evidence Act and other special and general laws dealing with crimes against women. The author has also discussed the legal developments that have taken place in recent times and also pointed out the important cases decided by the courts. The author has tried to establish on the basis of empirical survey and statistics the ineffectiveness of the existing laws and the general

degeneration of criminal justice system, judicial delay and corrupt law and order machinery which have reduced protective provisions to a force. This book includes various topics like dowry deaths and bride burning, wife beating, eve teasing and sexual harassment, prostitution, offences relating to/against marriage etc. The author has discussed the only general problem of violence against women but has not discussed the issue of domestic violence against women when the book was reprinted.

**Tripathi, S.C., and Arora, Vibha (2010)** have conducted the study on the topic ‘Law Relating to Women and Children’. In this book the authors have discussed various pro-women Legislation such as, the protection of women from Domestic Violence Act, 2005, the Pre-conception and Pre-natal Diagnostic Techniques Act, 1994, the Medical Termination of Pregnancy Act, 1971, the National Commission for Women Act, 1990, the Indecent Representation of Women (Prohibition) Act, 1986, the Dowry Prohibition Act, 1961 and the Immoral Traffic (Prevention) Act, 1956. They have also discussed pro-women provisions under various laws such as Constitutional law, criminal law, personal laws, industrial laws, and international law. The authors have not touched the concept of violence against women in domestic relationship specifically. They have neither suggested the changes that can be brought into existing laws to protect the women from violence inside or outside the home nor they have discussed about the deficiencies in the existing laws to protect the women from violence.

**Das, P.K., (2011)** in his study titled ‘Protection of Women from Domestic Violence’ reviewed the working of the Protection of women Against Domestic Violence Act, 2005, as well as other allied domestic laws to protect the women from violence all around. The book contains information regarding legislation on Domestic Violence against Women, Allied Acts and Rules, international conventions, Supreme Court and High Court on domestic violence, informative charts and Tables, specimen forms for petitions and getting information. This book can create only awareness about the laws on protection of women from domestic violence and can be used as a friendly guide by anybody who is directly and indirectly involved and interested in

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the subject of violence against women. The author has not pointed out whether the Domestic Violence act, 2005, is sufficient to provide due protection to the women.

1.10 Rationale for Selection of the theme

In India, where Almighty is worshipped in Feminine form as ‘Shakti’ by many, but crimes against women is becoming common and is on the increase. Women who constitute about half of our population are still tolerating different kinds of violence in their own homes, so there is need of a fair deal from society and active participation of the criminal justice system to save them from this kind of domestic violence. Prevention of domestic violence against women call for a general awareness in the society to give the women their due.

Domestic violence against women is a topic of growing importance and significant efforts have been made towards the protection of women from domestic violence in India. The study on the topic domestic violence against women is important because it examines women friendly legislations to India and to what extent these legislations have provided protection to the women from domestic violence. Basically it is an important subject in the present scenario in which most of the women are still facing various types of violence including domestic violence, instead of having so many pro women legislation.

1.11 Objectives of the study

The study was undertaken to achieve the following objectives:

To understand thoroughly the concept of domestic violence against women in India.

To critically examine the relevant legal provisions as contained in various legislations for the women in India.

To examine the causes of domestic violence against women in India.

To evaluates the role of Indian judicial system in providing protection and justice to the victims of domestic violence in the light of judicial opinions expressed by judiciary in numerous judgements.
To ascertain the impediments in the existing laws to protect the women from domestic violence and also to suggest ways and means to ensure violence free environment inside or outside the home.

To survey the perceptions and attitudes of the women about the cases of domestic violence and about their awareness about the pro-women provisions as continued in various legislations in India including domestic violence Act, 2005.

1.12 Hypothesis

This study shall proceed on the following hypothesis:

Whether the various pro-women provisions as contained in various general and specific legislations for the women in India are sufficient to provide women the protection from domestic violence.

Whether the Indian judiciary is recognizing the problem of domestic violence against women and is giving effect to the various pro-women provisions as contained in various legislations in India in letter and spirit while dealing with the cases of domestic violence against women.

Whether the existing legal framework is sufficient to check the domestic violence against women or needs modifications in order to overcome drawbacks and defects.

Whether the socialization, unemployment, illiteracy, lack of legal awareness etc are normally associated with the problem of domestic violence.

Whether the victims of domestic violence experience considerable problems in addressing their grievances to the concerned authority and in obtaining reliefs under the present legal system.

Whether the loss of faith and complexity in the existing criminal justice system is a factor discouraging the victims of domestic violence to come forward.

1.13 Universe of the Study

Domestic violence against the women is the most heinous crime against the women which could result in anything from death to minor scar. There is need to look at domestic violence as a violation of fundamental right to live with dignity and
of right to equality and equal protection of law guaranteed under the Constitution of India. There are many causes like illiteracy, legal system, unemployment, religion, socialization, economic inequality which needs to be reconsidered with relation to domestic violence. There is need to take into consideration all earlier laws and the existing Domestic Violence Act, 2005 and their effectiveness also needs consideration.

The study undertaken will focus on the cases of domestic violence and about the awareness about the existing legal safeguards as provided in various legislations in India for the protection of women from domestic violence. For the purpose of present study three Gram Panchayats from there development blocks of District Bilaspur in the State of Himachal Pradesh have been chosen randomly as the Universe of the study for collecting data through observation, interview, questionnaire and survey method. The reason to confine this study to three Gram Panchayats from three blocks in District Bilaspur is that, all the variable like religion, caste, annual income of the family, type of family etc exist in this area.

1.14 Methodology

The study made use of both the doctrinal and non doctrinal tools for the socio-legal study of domestic violence against women with special reference to a particular area. The research methods employed in this study are descriptive and analytical. Bearing the limitation of time and resources in mind the researcher has limited the scope of present empirical study to three Gram Panchayats, from three development blocks in district Bilaspur, Himachal Pradesh, for reasons discussed under the sub-title “Universe of the Study” above.

The main objectives of the present investigation were to study the jurisprudential development in the concept of domestic violence against women and types of domestic violence they faced and awareness about the pro-women provisions as contained in various legislations in India including Domestic Violence Act, 2005. For study the jurisprudential development documentary analysis method of research was adopted. The existing available literature along with case law on the topic was studied and analysed. For collection of data pertaining to type of domestic violence women faced and awareness about the pro-women provisions as contained in various legislations in India including Domestic Violence Act, 2005. the survey method of
research was employed. In this pursuit, a sample survey had been carried out to collect the required data by using some structured methods of data collection.

Multi-stage sampling procedure was used for the selection of sample. The state of Himachal Pradesh was chosen as the universe of the study. There are twelve districts in this state in which District Bilaspur was selected randomly for the data collection. There are three development blocks in district Bilaspur. From these three development blocks, three Gram Panchayats i.e. one Gram Panchayats from each block, were selected randomly for the collection of data. Five hundred women, who willingly cooperated, were chosen randomly for data collection. The respondents were met personally and interview schedule was given to them. The questionnaire developed for the literate respondents was used as the interview schedule for the illiterate respondents as well as for those respondents who could not respond to it in black and white. The items were read by the investigator or translated to them and the responses were recorded by the investigator. These three Panchayats were chosen as they represented cross section of respondents consisting of different communities, caste, educational qualification, occupation, and marital duration.

1.15 Frame work of the Study

The present study is divided into seven chapters.

Chapter one is devoted to the general introduction of the subject. It explains the scope of the study and provides the conceptual basis by discussing the problem. In addition it describes the objectives of the study, methodology, universe and other aspects of study in general.

Chapter two focuses on the historical background of the concept of domestic violence against women. This chapter is very important and in it the position of women in various periods of the history has been discussed.

Chapter three provides theoretical explanation for causation of domestic violence. It also explains various causes of domestic violence against women. A number of theories such as patriarchal, family system, socio-psychological, socio-cultural etc have been discussed in this chapter.
Chapter four of the study explains pro-women legal provisions as contained in various legislations for women in India to check the domestic violence against women.

Chapter five of the study narrates judicial views on the issues of domestic violence against women. This chapter focuses on various judgements of the Supreme Court and High Courts in India and analyzed the manner in which the higher courts have dealt with the cases of domestic violence.

Chapter six is based on empirical study. It makes data analysis and interpretation with regard to domestic violence. An endeavour has been made in this chapter to investigate how and to what extent women are facing various types of domestic violence, to what extent they know about the pro-women provisions and legislation provided by statutes specifically with regard to protection of women from domestic violence and their use in case they become victims of domestic violence.

Chapter seven concludes the study with a summary of the discussion and tries to make some concrete suggestions. It summarizes the strength and weaknesses of the laws and makes some suggestions and recommendation for the better protection of the women from domestic violence. Further some additional information on the topic has been included in the annexure at the end of this study.