Life's greatest moments occur behind closed doors. So, too, do some of modern life's most outrageous exploitations. The family is exalted as the very foundation of human existence, a haven for love, care and loyalty. Family is a concept which is often taken for granted as representing a group of people related by blood and marriage. It is asserted throughout the national and international Human Rights documents as the basic and fundamental unit of the society. Family is the dominant ideology, through which a particular set of household and gender relationships are universalized and naturalized. Fletcher rightly said:

1 International Covenant on Civil and Political Rights, 1966, Art.23 states “The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.
“Family” is a small, relatively permanent group of people, related to each other in the most intimate way, bound together by the most personal aspects of life, who experience among themselves the whole range of human emotions...who experience continual responsibilities and obligations towards each other, who experience the sense of ‘belonging’ to each other in the most intimately felt sense of that word.”

This definition maintains and projects the warmth and heat of the emotions through which the man-woman relationship in the domestic relations is often portrayed. These ‘most intimate’ and ‘most personal’ dynamics of family life are the unstated core of Fletcher’s idea of the ‘family’.

Murdock defines family as follows:

“The family is a social group characterized by common residence, economic co-operation and reproduction. It includes adults of both sexes, at least two of whom maintain a socially approved sexual relationship, and one or more children, own or adopted, of the sexually cohabiting adults.”

He termed four basic functions of a family in all societies i.e., sexual, reproductive, economic and educational.

The concept of family and household needs to be distinguished in this context. Household can be considered as co-resident units in which the distribution and exchange of commodities and services such as wages and domestic work are organized primarily through relations of kinship. Family on the other hand, can be defined as those kinship based relations that are located within co-residential groups and to the particular ideological forms taken by kinship structures. By the ideological discourse in the concept of family, we

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refer to a representative process whereby beliefs, norms and explanations are constructed historically in conjunction with and in relation to material and cultural conditions and power relations, but are presented as natural, inevitable and necessary. Thus the concept of familial ideology forms an important focus in exploring the role of family in the oppression of women.

Through this ideology, women are constructed as wives and mothers, having vested with the duty of child rearing and domestic labour. Men on the other hand are constructed as husbands and fathers, responsible for the financial welfare of the family. The sexual division of labour was closely associated with the emergence of the family wages. In the process it led to women’s economic dependency on their husbands. Therefore the emergence of the private i.e. the domestic sphere and the public sphere was a natural outcome of familial ideology. Women’s role within the domestic realm as wives and mothers was regarded as a natural self-evident product as to their biological role in reproduction. These ideas nurtured and reinforced the public/private distinction, and the construction of family and domestic relations as something private. Family has been understood as beyond the reach of State intervention operated to immunize the oppression of women within this domestic sphere. Thereby, the authority structure came to be considered as patriarchal, succession to be patrilineal and living arrangements to be patrilocal, marked by unequal gender relations of power running along the gender lines in which man’s powerful position and woman’s subordination is accepted as a social norm to be confirmed.

Women’s subordinate position in the home makes their experience different from men. The image of the family as a protective retreat has been created largely through male eyes, disregarding women’s oppression and the extensive discrimination against them which is inherent to the patriarchal structure.

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and the functioning of the family. The significance of family for women is also more vital than that of men, because while a man is allowed an independent existence, woman’s identity and survival is not socially conceivable without family. Human rights violations from foeticide, incest to women, battering and murder are committed within the safe confines of the home, making woman highly vulnerable in families. They remain largely invisible, being considered as family matter. The emphasis is always on preservation of the family at all cost even if it compromises women’s safety and security.

As relationships are universal, so is the form of co-residence, intimacy, sexuality and emotional bonds. But the forms they take can be infinitely variable. So the rights and freedoms guaranteed to women in the family depends on how the familial ideology reacts to it.

2.1 Gender Inequality—Philosophical Underpinnings on Roles, Rights and Domestic Violence

Simone de Beauvoir has said:

“… she is defined and differentiated with reference to man and not he with reference to her; she is the incidental, the inessential as opposed to the essential, he is the Subject, he is the Absolute—she is the other.”

The core running through the work *The Second Sex* (1949), is that of woman being the ‘other’ (sex). Accordingly women are socially constructed rather than biologically determined i.e., the construction of society, of language, thought, and religion and of the family all rests on the assumption that the world is male.

The historical and traditional position of women in domestic relations has its own ramifications when viewed from a broad sociological and

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6 Id., p.4.
philosophical perspective. Law does not exist in a vacuum. It is rather intimately connected with the society. The biological fact of being female and all the associated implications and consequences of it got translated itself early into cultural norms which distinguished between men and women. Men, having superior physical strength took control of the public sphere of life i.e., law and government. Having asserted dominance in the public sphere women became relegated to the private domain of home and family. The refusal of society and law to recognize the realities of patriarchy have far too long rendered women, vulnerable to abuse, manipulation and violence.

Domestic violence inflicted by a family member on a woman whether she be a wife, daughter or elderly woman; represents the perpetuation of formerly socially accepted norm of controlling women and is the manifestation of the abuse of power relations over women. Being perpetuated in the private sphere of family it is a prime manifestation of patriarchal authority. Use of violence against women silences her and it thereby reinforces male authority. Thus it becomes important to have an overall view of the position of women in philosophical angles, both western and Indian, which ultimately reflects as to what extent it influences the very bed rock of existence--the man-woman relationship and the manner in which it shapes women’s lives.

2.1.1 The Greek Philosophy

Throughout the centuries, from ancient Greece, to the current time, women have been portrayed as in some sense different from men and generally in an inferior social and legal position to men i.e., women are either invisible, or excluded or relegated to a position of social and political inferiority. Family organization being the core of a given society’s norms and values, often contributes to her subordinated role in a system of rights, duties, privileges of the members and control over resources. Throughout the civilizations, man was allowed an independent existence, but woman’s survival was not socially conceivable without family.
Plato\(^8\) and Aristotle\(^9\) sought to analyse the actual and appropriate role of women in society. In the Republic, Plato sets out his vision of an ideal state. Woman’s position freed from the demands of domesticity, Plato tells through Socrates, is one of equality in which she is fitted to do all the tasks in society.\(^{10}\) According to him, private family presents an obstacle to the best serviced of the state, as it was antithetical to civic harmony, encouraging selfishness and greed. In such an ideal state, women and children are to be owned in common. The appropriate role of women is determined, not by biological characteristics, but by abilities. The best women are to be treated as guardians, the ruling class. With the abolition of private family among guardian class, women and men were to mate in order to produce children of highest quality, whom would be fit to rule. The traditional domestic role was preserved for the women of lower class. She was not in any sense equal to her husband, but a mere subordinate. The husband had all the powers that her father had, plus the right to sexual intercourse on demand. After the death of her husband, she returned to the custody of her father, whose power over her was absolute. Here women were most clearly identified as property: a thing to be kept or given away. Women were not eligible to own property, being regarded by law as lacking legal capacity in the same manner as children.

In the third century BC, Aristotle formulated his central concept of justice: namely that equal case should be treated alike and that unequal cases should be treated differently. The effect of this doctrine was that not only women were treated differently but as second class citizens also. Aristotle disassociated himself from Plato’s concept of abolition of the private family and the communalization of women and children. According to him the private family is the natural and best unit for the preservation of the state. But within

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\(^9\) 384-322 BC, *ibid.*

\(^10\) *Supra* n.7, p. 85.
that family unit, it is the husband who is the master of the household, as he is by nature more fitted to rule than the female. Thus his approach to women was also functional. He declared the Greek city state (Polis) to be natural and Greek family with the subordination of wife, children and slaves as the best form of family structure. Slavery was a natural state for him. It could be either male or female. He prescribes the role and status of a female and a slave. Neither women nor slaves participate in polis\(^\text{11}\) but in the private sphere of life, each has a different role to play.\(^\text{12}\) Thus a female was characterized as having a female body and deliberative capacity without authority. Similarly a female slave has a female body but no deliberative capacity. The slave’s primary function was to serve his or her master while the female’s primary natural function was reproduction and the maintenance of the family. The functions ascribed to females depend on the extent of their rationality, which was conclusive to be inferior with men. To Aristotle, women were imperfect men.\(^\text{13}\)

For both Plato and Aristotle, the issue of gender difference was one of justification i.e., How was the unequal treatment of women to be justified? And to both, the question received the same answer: the inferior treatment of women was to be by women’s inferior nature. According to Confucius, the subordination of woman to man was one of the supreme principles of government.\(^\text{14}\)

\(^{11}\) The public/private distinction derives from ancient Greek thought which drew a distinction between the polis, the public sphere and the ‘oikis’, the private; the public world was meant for male governance, the private is that of the home occupied by women and children.

\(^{12}\) *Supra* n.5, p.88.

\(^{13}\) The result of something wrong with the conception that created them- either their parents were too young or too old or too diverse in age or one of them was not healthy. Nature always aimed at perfection, and Aristotle termed woman as a deformity but one which occurs in the ordinary course of nature. Merry E. Wiesner, *New Approaches to European History: Women and Gender in Early Modern Europe*, Cambridge University Press(2008),p.18.

2.1.2 The Natural Law Thinking

An early and famous formulation of the dictates of natural law was offered by Cicero.\(^{15}\) According to St. Paul, citing Genesis 2, states that ‘while man is the image and glory of God,’ the woman is the glory of man’; ‘… the man was not created for the woman’s sake, but the woman for the sake of the man,’\(^{16}\) The first and the most obvious inequality lies in the gendered identity of god.\(^{17}\) According to St. Thomas Aquinas, while there was no distinction between men and women in the primary sense, women were placed in a secondary sense in a position of inferiority. In his ‘Summa Theologica’, it is quoted: “…for the man is the beginning and end of woman; as God is the beginning and end of every creature.”

Despite Augustine’s declared position that men and women are spiritually equal he perpetuated the alignment of maleness with superiority and femaleness with inferiority. Augustine in his ‘Confessions’, remarks that “women is cast in the role of ‘helpmate’ to the man. Woman is equal to man in so far as she has been made in the God’s image but in respect of her helpmate role she is not in God’s image.”

2.1.3 The Social Contract Thinking

Positivism brought with it the age of modernity. The autonomy and freedom of the person was the central focus of liberal thought. As reason and rationality replaced superstition and irrational belief, the mind took priority over nature. The social contractualists had their own version as to the women’s role.

\(^{15}\) True law is right reason in agreement with nature; it is of universal application, and is everlasting. The appeal to a higher divine law as a control over the naked power has been apparent throughout the history.
\(^{16}\) 1 Cor 11:7-9.
\(^{17}\) According to Elaine Pangels, “… while it is true that Catholics revere Mary as the mother of Jesus , she cannot be identified as divine in her own right, she is ‘ mother of God’ , she is not ‘God the Mother’ on an equal footing with ‘God the Father”. Supra n.3 at p.91.
Thomas Hobbes deviated from the patriarchism\textsuperscript{18} of the seventeenth century. To him, sharing of power was impossible as one cannot serve two masters and supreme power is indivisible. Reading the version of Hobbes reveals that the subordination of women was due to conventions and human conduct.

John Locke assumed that familial authority belonged to the mother as much as to the father. Parents have a joint dominion over their children. According to him the paternal power of the society ought to be called the parental power. Locke was clear as to women’s natural equality on the one hand and on the other hand, the ultimate decision making power over matters of common interest was to be vested with the husband.

Jean Jacques Rousseau’s explanation to the position of women with their differing physical attributes in the light of rationality and equality being universal components was very clear i.e., women’s role was determined by biology. In his ‘Emile’ he has written, “The male is male only at certain moments; the female is female her whole life... everything constantly recalls her sex to her, and to fulfill its functions, an appropriate physical constitution is necessary to her...she needs a soft sedentary life to suckle her babies. How much care and tenderness does she need to hold her family together!... the rigid strictness of the duties owed by the sexes is not and cannot be the same.” The general implication of his work consider woman as the source of evil. Modesty is the only virtue of a woman according to him and man has the absolute rule over his wife attributed by reasons like single authority, women’s incapacity at times and certainty of paternity. He bases his thoughts upon the view that nature intended women for domestic functions only.\textsuperscript{19} He tried to sanctify marriage as a training ground for a good son, husband or father. The family he

\\textsuperscript{18} Patriarchy is a form of social organization in which a male is the head of the family and descent. Kinship and title are traced through the male line; any society governed by such a system. \textit{Harper Collins English Dictionary} (3\textsuperscript{rd} edn.,1991),p.143.

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thought must have a sentimental foundation which demands chastity which can be ensured by the husband’s rule.\textsuperscript{20}

According to Hegel, “when women held the helm of government, the state is at once in jeopardy, because women regulate their actions not by the demands of universality but by arbitrary inclinations and opinions.” He stressed on the ‘status of manhood’, which was acquired by the stress of thought and technical exertion. And so that male selfhood or manhood need to be delineated from women.

2.1.4 The Enlightenment Thinking

A dichotomic view was taken by the Enlightenment thinkers such as Voltaire and Montesquieu. They held that women were capable of equality with men and should not be regarded as being under the authority of the husband and represented as capable only of maternal functions.

Justification for women’s confinement to domesticity can again be noticed in the writings of Freud. He write: ‘for women the level of what is ethically normal is different from what it is in men. Their super ego is never so inexorable, so impersonal, so independent of its emotional origins as we require it to be in men…They show less sense of justice than men, they are more influenced in their judgments by feelings of affection and of hostility…”\textsuperscript{21}

2.1.5 The Utilitarian Thinking

To Jeremy Bentham, sensibility of women is greater than men, they are inferior in physical strength and are more sympathetic by nature. On the whole, she is fit for a family life and man for the outward life.\textsuperscript{22} He never advocated exclusion of women from public sphere.

\textsuperscript{20} Supra n.7, p.7.
\textsuperscript{21} Maya Majumdar, \textit{Social Status of Women in India}, Dominant Publishers and Distributors, New Delhi (2004), p.43.
John S. Mill in his book, *The Subjection of Women* has considered the relationship between the sexes as one characterized by the ‘legal subordination of one sex to the other’. According to him it was not the result of any conscious thought or experimentation with differing forms of social organization. Based on the physical inferiority women were subjugated by men in the earliest twilight of human society and it later on got concretized into rules of law. He propounded that the emancipation of women to a level of equality with men was not solely for the happiness of women themselves, but was a prerequisite for the improvement of mankind. Liberty, individuality, democracy and justice run like a golden thread cherishing equal rights to women except when some recognised social expediency required otherwise. He considered family as a “school of sympathy in equality, of living together in love, without power on one side and obedience on the other.”

2.1.6 The Marxist Thinking

In the *Origins of the Family, Private Property and the State*, Friedrich Engels argues that the position of women in society has been determined by the changing structures of marriage which itself is determined by economic forces. In the early society, women determined the line of succession. This ‘mother right’ needed to be destroyed if male supremacy was to be secured. With the successful destruction of ‘mother right’, women’s subordinate status in society was ensured. The introduction of machinery which facilitated more efficient agriculture enabled man to enslave other men and to exclude women from their traditional economic role. Thus women were confined to the ‘domestic sphere’-- to the hearth, home and children. The introduction of private property and the destruction of ‘mother right’ represented the greatest historical defeat of the feminine sex. Bacon in his book *Abridgement of the Law* (1736) has

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23 Supra n. 7, p.8.
24 Supra n.9, p.137.
quoted that “…the husband hath by law the power and dominion over the wife, and may beat her, but not in violent or cruel manner.

2.1.7 The Teachings of Christianity

Patriarchy and patriarchal theory originated in ancient Greek thought may be traced in English political theory at least to the seventeenth century which represented its high watermark. Christianity, encompassed with ideas from Judaism was the most important source of ideas about women for early modern Europeans. Jewish tradition and commentaries contained in Hebrew scripture viewed women in a largely negative light. The authors of Hebrew scripture had a clear idea of the ideal woman. She was the mother of many children, up working before sunrise to provide food and clothing for her household, making no objections when her husband brought home concubine or a second wife totally obedient and deferential. Jesus preached that men and women were equally capable of achieving life after death and that women as well as men should not let their domestic responsibilities come before spiritual well being. Church on becoming hierarchical excluded women from church offices and priestly functions.

Legal scholars like Jean Bodin defended for the list of female vices to prove that women were naturally inferior and so should men be allowed to hold public offices. Protestant reformers did not break sharply with medieval scholastic theologians and cited three purposes of marriage i.e., procreation of children, the avoidance of sin and mutual help and companionship. The mutuality in marriage pronounced in the marriage sermons all stressed the importance of husbandly authority and wifely obedience. Men were also given specific advice as to how to enforce their authority and often it included physical coercion, in both Continental and English marriage manuals. Marriage was a woman’s highest calling, even though it brought physical dangers and

25 Supra n.12, p.15
restraints in her freedom. Thus opinions of learned catholic authors about women as well as marriage, tended to reaffirm traditional negative ideas.

2.1.8 The Common Law Thinking

Ideas about women on the backdrop of religion, biology or tradition influenced the legal systems and law codes in early modern Europe. Laws thus reflected male notions. The traditional medieval law codes had set up limitations on women’s legal rights because of feudal obligations. Marriage was also held out as a reason for restricting woman’s legal role. Women were not considered as independent persons as their duty to obey their husbands prevented them from acting so. Women in the nineteenth century were governed by the doctrine of ‘one flesh’. Under the ‘one flesh doctrine’ enshrined in law, wife impliedly consented to sexual intercourse ‘on demand’. Women’s confinement to the ‘private’--to the domestic world, traditionally unregulated by law ensured that women were largely invisible to the law. Thus the invisibility of women marked the absence of women’s rights.

Pateman had brought out the legal ambiguity of women’s position within the marriage contract by comparing it with the slave contract and the employment contract. According to her, the problem within the marriage contract was that the contracting parties enter into relationship of subordination

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26 It had accorded a secondary legal status based on the inability to perform feudal military service. So any unmarried women was to have a legal guardian to undergo such procedures or a trial by ordeal for her. This gender based guardianship gradually died out in the later Middle Ages as court proceedings replaced physical trials and unmarried women and widows gained the right to hold land on their own and appear in court on their own behalf. But they could not serve as witnesses to a will.

27 Until 1884, a wife refusing her husband’s sexual demands could be imprisoned for such refusal and the husband could apply for an order of restitution of conjugal rights against his wife. Moreover until 1891, to enforce his rights, husband was entitled to imprison his wife in the matrimonial home.

28 The law only became alert to the problem of domestic violence in the 1970s attests to that invisibility. See e.g., Domestic Violence and Matrimonial Proceedings Act, 1975,s.1.; Domestic Proceedings and Magistrate’s Courts Act, 1978,s.16.
because the weaker party purported to contract something which cannot be separated from his /her body.29

Historical justifications as to the acceptance and development of marital rape exemptions are rooted in three important common law fictions: the theory of “women as chattel”, “unities” theory and “implied consent” theory.30 “Women as chattel” theory stated that a woman as a property was first with her father and on marriage she became the property of her husband. The “unities theory” was a derivative of the feudal ‘covertures’ doctrine. Sir William Blackstone articulated in his “Commentaries”: By marriage, the husband and wife are one person in law: that is, the very being or legal existence of the woman is suspended during the marriage, or at least is incorporated and consolidated [into her husband].” Although the “Unities doctrine” posited that the husband and wife became one upon marriage, in reality “the one” [was] the husband31.

The position of wives under English law with regard to marital sexual intercourse i.e. “implied consent theory” was determined by Lord Mathew Hale in The History of the Pleas of the Crown: “The husband cannot be guilty of a rape committed by himself upon his lawful wife, for by their mutual matrimonial consent and contract the wife hath given herself up in this kind unto her husband which she cannot retract.”32 The exemption of marital rape from the purview of the criminal law sustained the dominant familial ideology that the wife was the exclusive property of the husband. The same concept was applied in Popkin v. Popkin (1794) in which Lord Stowell opined that “The husband has a right to the person of his wife but not if her health is

29 Janice Richardson, Selves, Persons and Individuals: Philosophical Perspectives on Women and Legal Obligations, Ashgate Publishing Co.,(2004),p.104. The case of R v R,(1991) All E.R. 481 can be used as an illustration of the way in which marriage has been discussed in terms of contract.
30 Suman Saha, Sleeping with Enemy?-Recognizing Marital Rape,10(2) Women’s Link 3 (2004).
32 M. Hale, Hale’s History of the Pleas of the Crown(1736), vol.1,ch.58,p.629. According to him, a woman surrenders her right to consent to sexual relations at the time of entering into a marriage and the husband is given an unconditional, unqualified right of sexual access to her. Every act of sexual intercourse is deemed to be consensual as such consent is considered to be given at the time of marriage.
endangered. It was a noteworthy use of the term ‘person’ given that women were not viewed as ‘persons’ until the courts declared that they had achieved personhood in the Person’s Case. Blackstone in his Commentaries on the Laws of England (1775) stated that the husband was empowered to correct his wife in the same moderation that a man is allowed to correct his apprentice or children”. Blackstone’s codification “limited” a man’s right to chastise his wife with stick no thicker in circumference than his thumb, and this right came to be known in popular parlance as the “rule of the thumb”.

Early modern jurists were selective in what they took from Roman law in regard to women projecting them as depended or neglected. The concept of ‘patria potestas’ was cited frequently and women lost the right of guardianship over their children if they remarried. Honor was considered as highly gender specific and in case of men class-specific. For women honor was a sexual matter. Because of the ideas of female sinfulness, irrationality and weakness drawn from tradition, religion and science women were never regarded as able to defend their own honor completely without male assistance. Thus the concepts of feudal obligation, wifely obedience, Roman law and the honor resulted in shaping women’s legal rights in early modern Europe.

2.1.9 The Feminist Theories

Feminist analyses exposing domestic and sexual violence as a form of sex discrimination figured centrally in the wave of reform that began in the

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34 Edwards v. Attorney General of Canada, (1930) A.C.124). The meaning of the term ‘person’ has a legal, as well as philosophical history in the U.K. Women were not classified as ‘persons’ until the Persons Case. Women challenged their position as non persons that prevented them from voting, taking part in government or the profession or receiving education. Women were denied rights ,because the courts failed to classify them as ‘persons’ and ,at the same time companies began to be viewed as legal persons. Supra n.28, p.43.
36 The concept, ‘Patria potestas’ refers to absolute rights of the father.
37 For upper class men, it revolved around notions of physical bravery and loyalty, for bourgeoisie it was primarily related to honesty ,good craftsmanship and integrity.
38 Supra n.12, p.40.
1960s. Feminists argue that the biological difference might lead to some difference in their roles, but the former should not become the basis of a sexual hierarchy in which men are dominant. They address the problem of gender discrimination through various angles. The traditionalist view accepts patriarchy as biologically determined and as the biological functions of men and women are different, the social roles and tasks assigned for women are also different. The concept of domestic violence revolved in terms of psychological pathologies and individual personality disorders. This attitude or theory justifies the public-private divide.

Since the origin of patriarchy and establishment of male supremacy can be traced to different factors and forces feminists differ in their approach to understand patriarchy and adopt different strategies to abolish it. One way to understand the various dimensions of feminist theories and their theoretical approaches to understand patriarchy is to locate them within the broader philosophical and political perspectives that have been broadly classified as Liberal, Marxist, Socialist and Radical.

**Liberal Feminism:** Liberal feminists have championed equal legal and political rights for women to enable them to compete with men in the public realm on equal terms. The philosophical basis of liberal feminism lies in the principle of individualism and they campaigned for all individuals to participate in public and political life.

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39 According to the traditional view in feminist thinking sexual or domestic violence is privatized, pathologised and de-politicised.


42 Several women’s movement demanded female suffrage during the 1840s and 1850s in United States and United Kingdom. The famous Seneca Falls Convention in 1848 marked the birth of women’s rights movement which among other things called for female suffrage. Women were granted the right to vote in the US Constitution in 1920.
Marxist Feminism: Marxist feminist believed that both subordination of women and division of classes developed historically with the development of private property.43

Socialist Feminism: socialist feminism aims at transforming basic structural arrangements of society so that categories of class, gender, sexuality and race no longer act as barriers to share equal resources44Women’s subordination within capitalism results from their economic exploitation as wage labourers and their patriarchal oppression as mothers, consumers and domestic labourers.

Radical Feminism: Radical feminists aim at the need to redefine individual identity, free language and culture from the clutches of masculinity, re-establish political power, re-evaluate human nature/ behaviour and challenge the traditional values45.

The new feminist traditions such as psychoanalytical feminism, eco feminism, post modern feminism, black feminism, lesbian feminism have emerged since the 1980s. Psychoanalytical feminists analyse the psychological process through which men and women are engendered. They do not hold biological factors as responsible for the construction of sexual difference. Eco-

43 Frederick Engels in The Origin of Family, Private Property and the State (1884) stated that with the emergence of private property, women’s housework sank into insignificance in comparison to man’s productive labour. Thus maternal authority gave place to paternal authority and property was to be inherited from father to son and not from woman to her clan. The bourgeois families which owned private property emerged as patriarchal families where women were subjugated. Such patriarchal families became oppressive as men ensured that their property passed on only to their sons. Therefore bourgeois family and private property as a byproduct of capitalism subordinated and oppressed women.

44 Socialist feminists deny the necessary and logical link between sex and gender differences. They argue that the link between child bearing and child rearing is cultural rather than biological and have challenged that biology is destiny by drawing a sharp distinction between ‘sex and gender’. The relationship between sexes is rooted in the social and economic structure itself. Therefore women can only be emancipated after social revolution brings about structural change.

45 For radical feminists sexual relations are political acts, emblematic of male/female power relationships. The traditional political theory which divide personal and political spheres and believe that family is nonpolitical and personal has been questioned by radical feminists who argue that family is that space where maximum exploitation of women takes place. It is this ‘public-private divide’ which legitimizes exploitation of women. In fact, it is essential that the private sphere must be mapped in terms of the same values of justice, equality and freedom which are necessary in the public sphere.
feminists accept women’s attitudes and values as different from men. They believe that in certain respects women are superior to men and possess the qualities of creativity, sensitivity and caring which men can never develop. Postmodern feminists claim that there is no fixed female identity. The socially constructed identities can be reconstructed or deconstructed.

Lesbian feminism and cultural feminism are two types of feminist separations advocating the creation of women identified world through the attachments women have to each other. They believe that since patriarchy is organized through men’s relations with other men, unity among women is the only effective means for liberating women. The prioritization of safety and accountability over autonomy is consistent with the school of feminist thought that has coloured a great deal of domestic violence theory and policy making. Dominance feminism focuses on women’s subordinated and victimized status and argues that the legal system can best serve those victims of violence by enforcing policies that ensure safety, regardless of what an individual women’s preferences might be.

The feminist analysis examines characteristics of domestic violence, in the light of international legal understanding of what constitutes torture and cruelty, the inhuman and degrading treatment it entails. They affirm that process, purposes, and consequences of torture and that of domestic violence are startlingly similar. That whether torture committed in domestic context or that inflicted officially, does not reduce its intensity of violence, nor does it demand different standards of judgments and actions on part of state. The existing international human rights instruments, has both a separate provision for women’s rights (i.e. Convention on the Elimination of All Forms of

46 Therefore while earlier feminists struggled for a legally equal position for women and demanded democratic rights, which included right to education and employment, right to own property, right to vote, right to birth control, right to divorce, today feminists have gone beyond demanding mere legal reforms to end discrimination between men and women. They have raised issues of violence against women, rape, unequal wages, discriminatory personal laws, the sexual division of labour, distribution of power within the family, use of religion to oppress women.

Discrimination against Women, CEDAW), and other general mechanisms which stressed formal equality of women and men. While this development is important, it is not adequate to address issue of women’s subordination.

Feminist understandings of gender discrimination locate several of its beginnings in socialization processes and family becomes the *locus situs* for the perpetration of the same. Consequently an entire range of social practices that are inimical to women are brought under the rubric of ‘violence’.

All these western perceptions on domesticity of women defended the fact that women had been denied recognition in male jurisprudence. Law being the crystallized common sense of the community adopted such social constructions of gender and translated it into legal norms. Humanity developed gender and sexual identity and dominion arose out of the inability to recognize, appreciate and nurture differences, not simply out of the failure to see all as the same.

### 2.2 Ideological Perceptions on Women in Domestic Relations-
The Indian Scenario

Diversity has been India’s most prominent feature which is a common thread running through the social structure of the country. This diversity factor is prevalent in the form of marked differences in the customs, social traditions and beliefs of people separated by mere political boundaries of states. One such feature which is analogous to our society is the dominance of males in our social system. Since time immemorial, the power of decision making is single handedly bestowed on the physically stronger sex in almost all realms of life whether it is economic, family related, political etc. Such prejudice had weakened the status of women in India who were reduced to mere child bearing tools. India being an abode to many civilizations has been influenced by multifarious religions, their traditions, and socio-cultural settings and in turn had adopted a mixed approach as to the granting of rights to women in domestic relations. The cultural identity of Indian women is being a wife and mother, subordinate to her husband and his family, forbearing to her family,
moral, obedient, chaste, and one who upholds cultural traditions and family unity.

The status of woman is the yardstick for assessing the standard of culture of any age of any nation; the term ‘status’ refers to the position of an individual in a social system. It encompasses within itself the notions, rights and obligations of superiority and inferiority in terms of power, authority and grading. Her rights, privileges and their determination, her access to power and authority, the state of her position when compared to that of man, manifests her status in the society. so when compared to man’s position, Indian woman always occupied a status inferior to man48.

In most of India, both north and south, and among both Hindus and Muslims, the family is mainly patriarchal, patrilocal and patrilineal. Women are defined as inferior; husbands are assumed to 'own' women, and to have the right to dominate them, including through the use of force. Domestic violence is thus deeply embedded in patriarchal norms and attitudes about gender relations in India. These attitudes are reinforced by the lack of government attention, either directly through the protection of victims of domestic violence and prosecution of violent husbands, or indirectly, by upholding laws on minimum age at marriage and inheritance. This combination of factors serve to both legitimise and perpetuate violence.

2.2.1 The Hindu Texts on Woman’s Dharma

Hinduism originated in India and is thus the most common and seemingly most representative of Indian culture. The entirety of Hinduism focuses on the balance between the masculine and feminine. India exemplifies the patriarchal system in which women and men are expected to fulfill distinctly different roles from birth. Women are trained, from a young age, to

submit and acquiesce to the desires of their valued male counterparts while men are trained to dominate and guide their female counterparts.\textsuperscript{49}

Patriarchy is all about the power equation between women and men, and when seen through the prism of history, it has been a complex array of strictures and strategies often wearing the legitimacy of religion. It lays down the ground rules for what women should do what is enjoined upon them i.e., what is their dharma?\textsuperscript{50} This idea of dharma, forms the bedrock of women’s various roles--both within the larger construct of society and the smaller, the private domain of family i.e., the relationship to the other-the man in her life.

The reference to Sastras, Brahmanical normative texts accompanied by its various interpretations produced the first in a series of pronouncements about the scriptural understanding of woman in early Indian society. It was taken for granted that woman as such can have no rights and privileges. The code and conduct of a woman and her duties towards the husband were prescribed and reinforced on the basis of woman characters of the epics. And accordingly marriage was held at the highest helm in the society and since the marriage takes place in the presence of fire, the husband was to be the wife’s highest deity. And if husband was gratified with her, all the deities will also be gratified with her\textsuperscript{51}.

In Halhed’s book, the chapter “Of What Concerns Women” began with a prefatory statement on the relations between the sexes. A man, both day and night, must keep his wife in so much subjection that she by no means be mistress of her own actions, if the wife has her own free will notwithstanding she be sprung from a superior caste.\textsuperscript{52} It clearly marked women as a category

\textsuperscript{50} Amita Sahaya, “Religion and the Patriarchal Lens,” 13(3) Women’s Link 28( 2007).
\textsuperscript{51} Referring to verses in the Mahabharata’s Anusasana Parva and Santi Parva. Ibid.
\textsuperscript{52} Halhed, A Code of Gentoo Laws ixv. A Code of Gentoo Laws is an English rendering of Vivadarnavaseta, compiled under the direction of Warren Hastings by a team of Brahmana
of people who had few rights; and was an attempt to homogenize the category of women as who deserved only to be subordinated and controlled. Women’s natural urges or wrongs i.e., lust for sex, jewels, fine furniture, handsome clothes etc., were compared to evil as a fire not satisfied with the burning fuel. It was in this context Manu’s famous injunction was understood. i.e., ‘her father protects her in childhood, her husband protects her in youth, her sons protect her in old age: a woman does not deserve independence.’ The woman was regarded as a species of property which passed on into the husband’s family on her marriage.

Despite the family being patriarchal and patrilineal, women were accorded a significant place within the family and society. Role of wife and mother were of supreme importance. The term referred was Dampathi, meaning ‘married pair’. Her varied roles were indicated by terms such as ‘Jaya, Jani and Patni. ‘Jaya’ has the special sense of a sharer of the husband’s affection, Jani, the mother of children; and patni, the partner in the performances of sacrifices.

Marriage being the ideal upheld in the vedic religion, and home being the centre of religious practice, the woman was indispensable from both the domestic and religious point of view.

The aim of the Hindu marriage was to help full growth and development of the husband and the wife and to promote the preservation and progress of society and its culture by enjoining upon the couple the procreation of children and their proper education.

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33Janaki Nair, *Women and Law in Colonial India: A Social History* (Published in collaboration with National Law School of India University, Bangalore) Kali for women ,New Delhi (1996),p.32.
accompanied by his duly married consort. Landed property could be owned only by one who had the power to defend it against actual or potential enemies. As women were unable for it they could hold no property. Patriarch was its sole owner and guardian. It was well recognized that the wife was the ornament of the house\textsuperscript{56} nay, the wife herself was the home.\textsuperscript{57} The normal relations between the husband and the wife were determined by the principle that there should be an absolute identity in their aesthetic, material and moral interests. It was recognized in the Vedic age and is approved by later Dharmasastra writers like Manu and Apastamba.\textsuperscript{58} The absolute identity of interests of couple was a natural corollary from the recognition of the fact that the husband and the wife are the compliments of each other. Buddhist thinkers had also accepted this view. Husband was to be true to his vow of conjugal fidelity, its violation being the greatest sin he can commit.\textsuperscript{59} The position of woman in the Vedic age was held to be one of honourable subordination. The general freedom and better status which women enjoyed in the Vedic age were largely due to men being engrossed in the work of conquest and consolidation.\textsuperscript{60}

During the age of later Samhitas, Brahmanas and Upanishads, there took place a continual and gradual deterioration in the position of women as a whole. There was a gradual decline in female education, their proprietary rights continued to be unrecognized, the only exception being in favour of marriage gifts of movable property. Divorce was permitted to the wife though the permission was not extensively availed of.

At the outset of Aryan conquest, the neglect of education and lowering of the marriage age produced disastrous consequences upon the position and status of women. Marriage became an irrevocable union, however only so far as the wife was concerned. The husband could discard his wife for the grave

\textsuperscript{56} R.V.1,66.3.
\textsuperscript{57} R.V.III,53.4.
\textsuperscript{58} Supra n. 40, p.95.
\textsuperscript{59} Manu, ix,101.
\textsuperscript{60} Supra n. 13,p.54.
offence of not being sufficiently submissive. The differential treatment was due
to the simple fact that women were no longer able to effectively oppose these
absurd theories and claims as they were uneducated and ignorant about it.  

The general adoption of the Purdah system by the ruling and aristocratic
families of Hindu community was subsequent to the advent of the Muslim rule. It
was seen as a mark of high status and prestige. Naturally husbands began to claim
and exercise a greater control over them which proved detrimental to their
participation in the social and public life activities. This created a favourable
atmosphere for the spread of the theory that woman should lead a life of seclusion.

Despite the prevalence of monogamy in the Hindu society polygamy
was rampantly common in the Vedic literature. The main reason for the
perpetration of the same was the great anxiety that was felt for the preservation
and continuance of the family.

For offering the prescribed oblations to ancestors so as to secure their
continuance in heaven, a son was absolutely necessary, and so society permitted
the husband to take a second wife, if the first was barren. A son’s birth supposedly
elevates the family status, ensures happiness in the afterlife and continuity of name
in the present; conserves family wealth, with the opportunity of adding to it as well
as by accepting dowry. While in the case of girls, all the opposites of this idyllic
scenario weigh heavily on the minds of family elders.

The authors of legal texts reflect a profound sense of ambivalence in
their attitude to women. On the one hand, she is elevated to the status of a
goddess, but on the other, she is seen as a temptress and seducer, Christianity
also upheld similar views on women. Women’s love and devotion to her
husband are exalted but at the same time she is seen as incapable of these
virtues. As mother she is most revered, but as sexual partner she is seen as an

61 Id., p.59.
62 Supra n. 52 ,p. 29.
63 Manu 2.213-214.
obstacle to man’s spiritual quest.\textsuperscript{64} The ideal conduct of a housewife i.e. \textit{pativrata}, devotion to the husband, came to be seen as the only ‘Stridharma’ or duty of the wife. Her individuality was merged and she had no separate existence apart from him. Accordingly she was to be open hearted to her husband, respectful to his brothers and sisters, devoted to his mother, affectional towards his relations, considerate towards the servants, smiling even to her co-wives, courteous towards her husband’s friends and hateful to his enemies. A wife who discharged all these duties was held to be a true \textit{pativrata}. The sanctity of gods, sages and holy places were all centered in her. The ideal love and harmony between the husband and wife is described by Bhavabhuti.\textsuperscript{65} To maintain and support his wife was the most sacred duty of the husband, which must be discharged at all cost; otherwise would have no right at all to be called a husband.\textsuperscript{66}

An ideal notion of womanhood and preservation of a patriarchal household was prescribed for. According to Manu, the wife’s marital tie and duty do not come to an end even if the husband were to sell or abandon her.\textsuperscript{67} This ideal later transformed itself into the practice of ‘Sati’.\textsuperscript{68} The reason attributed to such inhuman practice was that total fidelity to their husband was expected of women and this could be established by becoming ‘Sati’. Women’s salvation was weighed in terms of being reunited with their husband and hence was re-birth oriented. Men’s salvation was in terms of release from the cycle of births and deaths.\textsuperscript{69}

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\textsuperscript{65} Uttararamacharit,Act,vi,39:Their love is uniform both in prosperity and adversity, and adjusts itself to surrounding circumstances; it affords the best solace to each others’ hearts; old age does not diminish its flavour; when the veil of reserve drops down in course of time, it develops into an ever-abiding affection.

\textsuperscript{66} Manu, ix, 101.

\textsuperscript{67} Manu, ix, 46.

\textsuperscript{68} Sati-A virtuous woman practice of immolation on the funeral pyre of one’s husband.

\textsuperscript{69} Supra n. -49,pp.74,75.
\end{flushright}
The custom of *niyoga*, had religious sanctity. In case of death of husband or incapacity to procreate children, the husband’s brother or any of his relations would take her as wife, or raise children on her. Often it occurred when a person died without leaving any male issue behind. As it was a great spiritual calamity to die without a son, it was held to be the sacred duty of the brother to see that a son was raised on his sister-in-law to perpetuate his brother’s memory and to ensure him a seat in heaven. Moreover a son by *niyoga* was always preferred to a son by adoption in early Hindu societies. Women under the pressure of in-laws often had to surrender to their wishes of progeny and her reproductive rights and freedom in decision making was totally denied to her.

According to the Hindu law no portion of the parental property was allowed to be shared by female children and therefore a part of compensation--gifts and presents--were given to daughters at the time of their marriage. These gifts over a period of time became institutionalized as ‘dowry’. This practice gradually became imbedded and the bridegroom and his family started insisting for dowry as matter of right. The institution of dowry has negatively impacted the status of women leading to rampant rise in female infanticide, female foeticide and abuse of girl child cutting across various social groups. Dowry even today remains one of the most important reasons why the birth of a girl child is lamented.

2.2.2 The Christian Teachings and its Reflections

Christianity, brought within it to India the negative ideological perceptions as to women’s role in the family. Inspired by the teachings and interpretations as to the religious texts women in India was relegated to the realm of occupying secondary status. The inextricable bond between religion and family, with women at its helm, was most visible in the interpretations

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from the west. A cursory reading of some of the passages in the Bible, clearly reveals the fact: “…God by creating Adam first\textsuperscript{71} and also by creating woman for man,\textsuperscript{72} has set the gender based role and responsibility of males in the most basic unit of society (the family) to be that of leader, provider and self-sacrificial protector,\textsuperscript{73} and likewise has set the gender based role and responsibility of females to be that of help and nurture\textsuperscript{74} and life–giving\textsuperscript{75} under male leadership and protection…”\textsuperscript{76}

2.2.3 The Teachings of Qur’an

Muslim believers cannot conceive nor accept a system of rights which excludes religion. Religion for them suffuses every facet of life.\textsuperscript{77} The Islamic tradition can be inferred from sources like the Qur’an,\textsuperscript{78} the Sunnah,\textsuperscript{79} the Hadith,\textsuperscript{80} the Fiqh\textsuperscript{81} and the Sharia or code of law which regulates the diverse aspects of a Muslim life. The Qur’an points out that, in essence the life of each individual is comparable to that of an entire community and needs to be treated with utmost care.\textsuperscript{82} Human beings are deemed worth of esteem because of all creations they alone chose to accept the ‘trust’ of freedom of the will.\textsuperscript{83}

\begin{footnotesize}
\begin{enumerate}
\item[71] Gen.2:18; Cor.11:8.
\item[72] Gen.2:18, 20, 22; 1 Cor.11:9.
\item[73] Eph.5:25; 1 Peter 3:7.
\item[74] Gen.2:18.
\item[75] Gen.3:20
\item[76] 1 Peter 3:7. supra n. 49, p.29.
\item[78] The Book of Revelations which Muslims believe to be God’s words transmitted through the agency of Angel Gabriel to the Prophet Mohammed. It is regarded as the Magna Carta of Human Rights as it concerns itself to free human beings from the bondage of traditionalism, authoritarianism; political, economic or other; tribalism, racism, sexism, slavery or anything that prohibits or inhibits human beings from actualizing the Qur’anic vision of human destiny embodied in the classic proclamation; “Towards Allah is thy limit.”
\item[79] The practical traditions of the Prophet Mohammed.
\item[80] The oral Revelations attributed to the Prophet Mohammed.
\item[81] Jurisprudence (schools of law).
\item[82] Surah 5: Mai’dah:32.
\item[83] Surah 17: Al-Isra’: 70.
\end{enumerate}
\end{footnotesize}
The idea of ideal society or community (ummah) envisaged by the Qur’an comes from the root (‘umm’) or mother. The symbols of a mother and motherly love and compassion are also linked with two attributes of God named ‘Rahim’ and ‘Rahman’ both of which devolved from the root ‘rahm’, meaning womb. The Qur’an recognizes the need for privacy as a human right and lays down rules for protecting an individual’s life in the home from undue intrusion from within or without. The fruits of labour belong to the one who has worked for them, regardless of whether it is a man or a woman.

Underlying much of the Qur’an’s legislations on women related issues is the recognition that women have been disadvantaged persons in history to whom justice needs to be done by the Muslim ‘ummah’. For Muslims, family is the central institution; it is at the centre both of theology and sociology. The family is considered as a divinely inspired institution that came into existence with the creation of man. The proper behaviour of all the family members is constantly emphasized in the Qur’an and Hadith. Ideal behaviour encourages dignity and modesty in the family. The father, the mother, the children and the elders have a positive and defined role to play. The Prophet was both the ideal son and later the ideal husband and father. The women of his household-like Khadija and Fatimah-provides the ideal Muslim women.

Marriage is considered a sacred contract. This was a sharp contrast to the principles of Christianity and Hinduism where marriage was traditionally viewed as an indissoluble sacrament. The Qur’an is very clear that the basis of a marital relationship is love and affection between the spouses, not power or capital. Marital rape is unacceptable in such a relationship. The household affairs should be conducted based on consultative process between the spouses, and not autocratically. Superiority is determined by righteousness of character.

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84 Supra n. 52. p.659.
85 Surah 4:An-Nisa.
87 Qur’an 2:233.
and not by gender, race, colour, lineage, wealth etc. Equal human dignity by birth was proclaimed as a Divine Decree. Gender equity is a basic theme of the scripture. Thus, patriarchy is not inherent in the Qur’an but rather has been read into it throughout the centuries of patriarchal dominance of Muslim societies.

The continuing popularity of Ahadith amongst Muslims articulated the deeply embedded belief that women are derivative and secondary in the context of human creation. The motherly role of women is essential for the continuation of human existence and this function becomes the primary only with regard to women since they are the only ones capable of doing so. The Muslim societies regarded son as a gift and a daughter as a trial, from god. In a married life women cannot claim equality with their husband. The husband in fact came to be regarded as his wife’s gateway to heaven or hell and the decider of her final destiny. Muslim societies have made divorce extremely difficult for women, both legally and through social penalties. Practices like seclusion (Purdah), child marriage, poverty, and illiteracy contributed to the vulnerability of Muslim women. Polygamy which was intended by the Qur’an to be for the protection of orphans and widows, got transformed into a sword of Damocles which kept women under constant threat. To give wealth to a woman in preference to a man was highly looked down upon and hence disapproved by the society. One of the distinctive characteristics of Muslim sexuality is its territoriality, which reflects a specific division of labour, and a specific conception of society and of power. The territoriality of Muslim sexuality sets ranks, tasks and authority patterns. Thus women came to be taken care of materially by the man who possessed her in return for her total obedience and her sexual and reproductive services. This Muslim practice of

89 Qur’an 17:70, 95:4.
treating a woman in home appears to be both a profound irony and a great tragedy, as when Qur’an regarded the home as a microcosm of the “ummah” and emphasized the importance of making it the ‘abode of peace’ through just living.

**Conclusion**

Female subordination runs so deep that it is still viewed as inevitable or natural, rather than seen as politically constructed reality maintained by patriarchal interests, ideology and institutions. Recognition of the complex ways in which culture, religion and systems of oppression interact, creating qualitatively different abuse experiences creates overwhelming impact on feminine identity formation. A woman’s sense of self is greatly dependent on how the society or fellow beings behave to her and how she is treated by them. The fundamental difference in identity formation between the sexes has deep roots in the socialization processes. The self-identity roles and obligations are worked out fairly early in a woman’s life and leave no stage without change and questioning. Thus feminine identity and a woman’s position within the family continue to be open for assessment and modifications, depending on her situation in the life cycle. The natural outcome is the suppression of individual self-expression. This understanding is the springboard from which more effective assessment and intervention strategies with vulnerable abused women of diverse backgrounds can emerge.

Culture is a macro concept, which subsumes religion as an aspect of culture. Culture and with it, religion are the sources of gender construct. The two specific types of cultures that is to be taken note of in the Indian context is one, the social culture that relates to people’s form of organization i.e., How people interact and organize themselves in groups especially the domestic gatherings and the second one the ideological culture that relates to what
people think, value and believe, something which they hold as ideals\textsuperscript{92}. The idea of religion and all that entails is perhaps more central to human kind, its quest and reinforcement of identity, than other forces. It is the point of reference that dictates and influences our socio cultural norms and the subtexts of our existence, in a variety of ways more insidious and encompassing than even the identification through nation or nationhood.