CHAPTER - 6

Comparative study between USA and India
Comparative Study between American and Indian Domestic Violence Act

American Position: Definition of Domestic Violence

There are four types of abuse typically associated with these definitions, physical, emotional, economic, and sexual abuse.

1. Physical abuse is the type with which most people are familiar and which the law can address most easily. Physical abuse includes kicking, pinching, punching, slapping, biting and other behaviors by the perpetrator designed to cause the victim physical pain or discomfort.

2. Emotional abuse includes insulting, nagging, humiliating the victim to front of others, and isolation of the victim. Isolation refers to the systematic separation of the victim from friends, family and society. This type of abuse is common and in some cases can be quite extreme. The law is less adopt
at addressing this type of abuse, because it is more difficult to define although vigorous prosecution could yield convictions for assault, false imprisonment and stalking.

3. Sexual assault includes rape, sodomy and object penetration. The law has great difficulty in addressing these issues because of problems with evidentiary proof. The American Criminal Justice System has additional difficulty in addressing forced sexual behaviors between married or cohabiting individuals, particularly in those states in which marital rape and marital sexual assault are not considered criminal.

4. Economic abuse is manifested complete control of the family finances by the abuser. The victim may be given an allowance, but he/she is typically not permitted to keep his/her own paycheck (when permitted to work at all), and in some cases, may not be given enough money to survive. There is little, if anything, that the current laws can
do to protect against this type of abuse, unless theft or conversion can adequately be proven.

Studies and lengthy observations of victims and abuser’s have revealed a pattern which domestic abuse typically follows, commonly referred to as the cycle of violence. The cycle begins with the honeymoon phase. In the first cycle, this phase is the courtship. The abuser brings the victim gifts. Treats the victim with affection and makes promises to the victim about their future. This phase is followed by the "tension building" phase during which the abuser will insult the victim, will make accusations about the victim's fidelity and will begin to systematically erode the victim's sense of self respect and self worth. Isolation, economic abuse, and torturing of children and pets may occur during this phase. This phase culminates in the "explosion". During the explosion phase, the batterer will engage in verbal, physical and/or sexual abuse of the victim.
Once the explosion phase is completed, the relationship will return to the honeymoon phase. This phase will now be marked by the apology, tear, gifts and promises that the batterer will change and that he/she will never again use the victim. In most relationships, it will happen again. Over time, the cycle becomes more violent, the honeymoon phase becomes shorter and eventually nonexistent: the tension phase becomes shorter and more intense; and the explosions become longer and more violent. Visually, the cycle may be more accurately described as a downward spiral.

**Definition of Domestic Violence (Act 2005)**

**Sec. 3:** For the purpose of this Act may act omission or commission or conduct of the respondent shall constitute domestic violence in case it-

(a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing
physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or

(b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or

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

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

**CASE LAW: Case at Work place**

To date, plaintiffs seeking to obtain damages from employers for domestic violence related injuries sustained in the workplace have sought to do so primarily through state worker's compensation laws. Generally, these statutes hold
employers liable for those accidents, which occur. "In the course of the victim's employment" and "arise out of the victim's employment".

The requirement that the accident occur in the "course of employment is met easily whenever the victim is at work or engaged in activities for the employer's benefit. The "arising out of employment" requirement typically requires there is a casual connection between the victim's employment and the accident. Domestic violence related injuries tend to occur, therefore, in the course of employment while the victim is working but do not typically arise out of the employment (the injury is not casually related to employment. Thus these injuries are typically not compensable.

Some jurisdictions have carved out an excepting to this rule for those cases in which the victims employment facilitated or exacerbated the incident. The cases that follow represent a chronological sample of the cases decided to date.
California Compensation and Fire v. Workmen's Compensation Appeals Board was a 1968 case before the Supreme Court of California one of the earliest cases of this type. The victim Lillian Schick was employed by a table pad company to go to customer's home and measure tables to be fitted for pads. Upon learning that she was planning to remarry, her ex-husband rented an apartment using an alias called a department store to order a table paid and requested that someone be sent to measure the table. When Mrs. Schick arrived at the apartment, Mr. Schick short her and then himself.

The Workmen's Compensation Appeals Board awarded compensation to Mrs. Schick's daughter. The employer's insurance company appealed. The California Supreme Court affirmed the board's decision.

The insurance company argued that because of the reasons for the assault were purely personal to Mrs. Schick and not related to her employment her death was not compensable (it did not arise out
of her employment). The court rejected this argument, finding that Mrs. Schick's death was facilitated by her employment. Her employment required that she go to an isolated apartment alone, allowing Mr. Schick the opportunity to kill her without interference.

In Epperson v. Industrial Commission, the victim, Mrs. Emperson stayed in a hotel one night to avoid her abusive husband.

Upon reporting to work the following morning, she informed the security guard that she did not want to see Mr. Epperson if he came to the building. Mr. Epperson arrived at the building as Mrs. Epperson was passing through the lobby. They spoke quietly for several minutes. When she insisted that she must return to work. Mr. Epperson disarmed the guard and shot her with a gun he had been hiding under his shirt.

In Raybol v. Louisiana State University was a 1988 Louisiana Supreme Court case, Ms. Raybol the defendant's motion. The appellate court
affirmed and the Supreme Court reversed. The Supreme Court essentially collapsed the distinction between the arising out of and the course of employment requirements and field that because Raybol was working at the time of the assault, she qualified for worker's compensation benefits. They reversed the finding of summary judgment for the defendant, but did not grant the plaintiff's motion, and remanded the case to the trial court.

Two justices dissented from the majority opinion. The dissenting opinion clarified the distinction between the "course of" and "arising out of "employment requirements and suggested that the impetus of the attack on Ms. Raybol was purely personal and thus not compensable.

In Monahan v. United States Check Book was a 1995 case of first impression in Nebraska. Mr. Robertson and Ms. Radtke both worked at the United States Check Book Company. She worked during the day and he was the night maintenance man. Robertson abused Radtke throughout their marriage.
After being hospital Luized on one occasion, Radtke left Robertson. He threatened to kill her if she did not move back in with him and even arranged for a truck to move her things without her consent. She did not want to move back and indicated to a third party that she was afraid of Robertson. The night before she was scheduled to return to Robertson's home, she went to the United States Check Book Company and shot Mr. Robertson.

The Court of Appeals held that "the general rule is that where an assault is committed by a person intending to injure the employee because of reasons personal to him, and not for reasons directed against him as an employee or because of his employment, the injury does not arise out of the employment". The court made reference to the exception for assaults exacerbated or facilitated by the victim's employment, but rejected Monahan's argument that Robertson's position as the only night employee facilitated the attack. Robertson's estate was denied benefit.
In Ross v. Mark's was a 1995 case decided by a North Carolina Court of Appeals. Ms. Brock and Mr. Godwin had been divorced for several years when they resumed their relationship in 1990. Brock, an assistant manager at a local Hardee's continued to date other men until Godwin asked her to move out of their home.

Encouraged by a room-mate, Godwin developed a plan to "embarrass" Brock. Godwin and the roommate waited for Brock to leave the store with the night deposit. He convinced her to let him into her car. The two began to fight and Godwin shot her twice. The roommate, who was following in another car, shot her one more time and left her body in a secluded area.

Weiss v. Milwaukee was decided in March 1996. It is the most recent in this line of cases. The facts present an archetypal case of the effects of domestic violence on the victim's work environment. After leaving her abusive husband (Mr. Abuhanim) and filing a restraining order against him. Ms. Weiss received so many
threatening phone calls from him that she was fired from her job.

Two months later, she obtained a position with the City of Milwaukee, where she worked as an engineering technician. As a city employee, she was required to live in Milwaukee and thus found an apartment within the city limits. She informed the payroll office of her ex-husband's behavior and requested that her new address remain confidential. They assured her that it would be indicating that the City had a policy prohibiting the disclosure of such employee information to private individuals. Abughanim later called the City and claiming to be a bank officer confirming Weiss address for credit purposes requested her address. They gave it to him and he resumed his campaign of calling Weiss to threaten her life and the lives of their two children.

Weiss instituted an action against the City for negligent infliction of emotional distress. The City moved for summary judgment claiming (1) that Weiss claim was barred by the exclusive remedy
provision of the state's worker's compensation clause and (2) that they were permitted to disclose the information under Wisconsin's open records law.

The trial court found for the City, accepting the open records argument and further finding that damages were too difficult to determine. The appellate court affirmed, finding that Weiss did have an action against the City, but that it was barred by the worker's compensation exclusive remedy provision. The Supreme Court agreed, finding that Weiss injuries were facilitated by her employment and thus adequately addressed by worker's compensation.

American Indian and Alaska Native women are battered, raped and stalked at far greater rates than any other group of women in the United States. The U.S. Department of Justice estimates that 1 of 3 Native women will be raped; that 6 of 10 will be physically assaulted; that approximately 9 in 10 rapes or assaults against American Indians are committed by non-Indian assailants and that
Native women are stalked at a rate at least twice that of any other population.

While many issues need to be addressed to confront this crisis, it is clear the jurisdictional limitations placed on Indian nations are key factors in creating this disproportionate violence. The U.S. Department of Justice has general jurisdiction over felony crimes by or against Indians, including homicide, rape and aggravated assault, but perpetrators of such crimes against Indian women are rarely, if at all, prosecuted given the broad caseload faced by U.S. Attorneys.

If the Federal government declines to prosecute, non-Indian rapists, batterers and stalkers walk free knowing that they can return to commit future crimes in the same or different Indian nation. Indian nations also face the obstacle that Congress has limited the sentencing authority of tribal courts to "in no event impose for conviction of any offense any penalty or punishment greater than imprisonment for one year". As a result, Indian perpetrators not
prosecuted by the federal government may not receive a sentence appropriate to the crimes of rape and battery under current law.

In 1994, recognizing the importance of addressing the safety of women in this country, the United States passed into law the Violence Against Women Act (VAWA). The legislation contained specific sections referencing Indian tribes that, while important, did not adequately address the complicated issues surrounding any strategic resolution of the endemic violence Indian women endure on a daily basis.

The purposes of the Tribal Title are to:

- Decrease the incidents of violent crimes against Indian women.

- Strengthen the capacity of Indian nations to exercise their sovereign authority to respond to violent crimes committed against Indian women.
• Ensure that perpetrators of violent crimes committed against Indian women are held accountable for their criminal behavior.

Provisions in the reauthorization of VAWA would:

• Restore the authority of Indian tribes to appropriately respond to domestic violence and rape by sentencing perpetrators of such crimes beyond one year and $5,000 fine.

• Increase the analysis and research on violence against Indian women.

• Permit Indian law enforcement agencies to enter and obtain criminal information from Federal criminal information databases.

• Establish a national tribal sex offender and tribal protection order registry.

• Increase support for essential tribal services for Indian women.

• Ensure the proper government-to-government relationship between Indian nations and the
Department of Justice by requiring an annual consultation with Indian nations and creating a Tribal Division within the Office on Violence Against Women.

The Violence against Women Act, 2005

The Violence Against Women Act (VAWA) expires in 2005 and the remarkable gains have made in ending domestic violence, sexual assault, dating violence and stalking could come to a halt if Congress does not act now. As we look to the reauthorization of the Violence Against Women Act, Congress has a unique opportunity not only to continue successful and vital programs, but also to expand on 10 years of progress to further the safety and stability of the lives of survivors of domestic violence, dating violence, sexual assault and stalking.

- A broad group of law enforcement, victim service providers, community leaders, and survivors of domestic and sexual violence and
stalking have evaluated VAWA and recommended the changes necessary for VAWA 2005 that would effectively and thoroughly respond to the epidemic of violence against women in our nation.

- VAWA 2005 enhances core programs and policies in the criminal justice and legal systems and reaffirms the commitment to reform systems that affect adult and youth victims of domestic violence, dating violence, sexual assault, and stalking.

- VAWA 2005 also makes bold new strides in ending domestic and sexual violence and stalking by addressing currently unmet needs.

- VAWA 2005 provides practical solutions to improving the response of the criminal justice and legal systems by expanding funding for local groups working with underserved communities, strengthening the criminal justice response to sexual assault, developing standards for protecting the confidentiality of
victims served by VAWA programs, enhancing collaboration between victim service organizations and civil legal assistance providers, and enhancing provisions to fully enforce protective orders across state lines.

- VAWA 2005 includes the reauthorization of critical programs and the development of new services that respond to evolving community needs. Solution-based remedies address the concerns of victims generally, as well as the unique needs of disabled, elderly, Native, legal immigrant, and ethnic minority victims, and victims living in rural communities.

- Domestic violence is one of the primary causes of homelessness. Survivors and advocates consistently rate housing as a top priority, and 92% of homeless women have been physically or sexually assaulted. In order to address the housing problem, VAWA 2005 provides a comprehensive yet pragmatic approach that includes expanding transitional housing options, protecting the safety and
confidentiality of homeless victims receiving services, ensuring that victims can access the criminal justice system without jeopardizing their current or future housing, and creating permanent housing solutions that help develop communities and build collaborations between service providers, government agencies and housing developers.

- While it is imperative to continue VAWA's focus on responding to the violence, reauthorization should also address prevention. By intervening early with children who have witnessed domestic violence, supporting young families at risk for violence, and changing social norms through targeted interventions with children and teens, VAWA 2005 takes the next step toward truly ending the violence.

- Domestic violence, dating violence, sexual assault, and stalking adversely affect our nation's youth and perpetuate a society of violence. VAWA 2005 provides a
comprehensive approaches for assisting children, teens and young adults who have violence in their lives. VAWA 2005 includes initiatives such as bringing communities together and providing cross training and collaboration to address the co-occurrence of domestic violence and child abuse, assisting colleges and universities with creating services and policies to address violence on campus, providing teens and young adults with appropriate services, ensuring access to court systems, and preventing abuse during child visitation.

- VAWA dramatically improves the response to violence against American Indian and Alaska Native women at all levels. It is estimated that 1 in 3 Native women will be raped and that 6 in 10 will be physically assaulted during their lifetimes. VAWA 2005 seriously addresses violence against Native women by strengthening the capacity of Indian nations to provide tribal-based services to women:
providing solutions to current gaps in their ability to track perpetrators of violence against Indian women, and creating an administrative vehicle for addressing barriers preventing Indian nations from accessing life-saving funds.

Domestic violence, sexual assault, dating violence and stalking are health care problems of epidemic proportions. Domestic violence, sexual assault and stalking contribute to a host of chronic health problems, even after immediate signs of trauma have healed. A critical gap remains in the delivery of health care to domestic violence and sexual assault survivors. In order to improve the health care system's response to violence against women and thus ensure proper treatment and help, VAWA 2005 provides for the training and education of health care providers and funds federal health programs to improve their services to victims.
• Survivors identify economic independence as one of the most important factors in determining whether they will be able to escape a violent relationship or address the aftermath of a sexual assault. But all too often, victims risk losing their jobs when they take needed time off from work to go to court, heal from injuries, or take other steps to increase their safety. Provisions in VAWA 2005 give victims reasonable unpaid leave from work to take steps to address the violence.

• VAWA 1994 and 2000 recognized the special circumstances that can apply to non-citizen survivors of domestic violence and provided avenues for battered spouses and children to leave their abusive families without jeopardizing their immigration status. VAWA 2005 makes technical corrections to existing immigration law, resolving inconsistencies in the eligibility for immigrant victims.
The Violence Against Women Act of 2005 was signed into law in January 2006. The bill authorizes $3.9 billion to support the program, including major enhancements, for the next five years. However, this bill does not actually provide the funding it is just the first step, setting an upper spending limit. For each of the 5 years of the bill, Congress will need to pass legislation appropriating the specific amount of funds that the government will provide for each of the VAWA programs. There is no guarantee that Congress will appropriate the $3.9 billion that was authorized, or even the minimum amount that is needed.

The war in Iraq, budget cuts and other major expenses have resulted in less money for human services programs such as VAWA. President Bush's 2007 budget for VAWA does not include enough money for many of the previously established VAWA programs and services, so that it is unlikely that Congress will include adequate funding for the new programs that VAWA 2005 intended for 2006-2010.
Despite the overwhelming Congressional votes for VAWA, that does not mean that the same Congress will vote for adequate funding to support the programs. Very strong public support of VAWA will be necessary to convince Congress to provide adequate funding through the appropriations bill for the financial year 2007 (which starts on October 1, 2006).

Now is a key time in the appropriations process. If you support programs to help victims of violence and to prevent violence, it is important to email your U.S. Senators and member of Congress asking for full funding of VAWA and protection of the Victims of Crime Act (VOCA).

Created in 1984, VOCA protects the rights of violent crimes victims and provides financial compensation, assistance, and services to those victims as well. VOCA covers victims of violent crimes such as sexual assault, rape, abuse, dating violence, and terrorism. Through the Office for Victims of Crime (OVC) and the Crime Victims Fund, both established by VOCA, federal funding is
allotted to national, state, and local organizations to directly aid violent crimes victims. The Crime Victims Fund collects fines, penalties, bond money, and funds from crime offenders to support these grants, so no taxpayer money is used. However, each year Congress puts a "cap" on the Crime Victims Fund, which means they limit how much of the collected fines and other money will be given to the victims. Congress decides on the amount during the appropriate process, so it is important that you let your representatives know that VOCA needs full funding.

Legislative Background

In June 2005, Congress introduced the Violence Against Women Act (VAWA) of 2005, bipartisan legislation to reauthorize the VAWA legislation originally passed in 1994. Since VAWA first became law in 1994, more than 660 state laws protecting victims of domestic violence and sexual assault have been passed, and VAWA 2005 has an even more comprehensive approach to the problem of violence. The legislation is called a re-
authorization because it provides new authority for an existing law. The House passed VAWA with an overwhelming vote for approval on September 8, followed by unanimous Senate approval on October 4. President Bush signed the bill into law on January 5, 2006, continuing it for five more years. VAWA could provide nearly $3.9 billion dollars of funding over the next five years to combat and prevent violence against women. However, it is up to the Congress to pass the needed funding every year.

Rather than keep the law exactly as it had been. Congress expanded the scope of the bill in several ways. Specifically, VAWA now helps protect child victims of violence, immigrant and minority populations, and men and boys. The law focuses on education and prevention, creating training programs for law enforcement officials, health care providers, housing providers, and men and boys to help stop the generational cycle of abuse and sexual assault. Further, VAWA extends services and legal protection for women in housing and
employment, and revamps the legal system to make it more accessible and beneficial for the victims. Additionally, the law establishes crisis services for victims of rape and sexual assault.

The new law focuses on four areas of crime, domestic violence, dating violence, sexual assault, and stalking. However, these programs will only be reality if Congress provides adequate funding every year.

**Highlights of the recently approved VAWA:**

- Creating four new programs directed specifically at youth and child victims of violence. It also funds grants to combat violent crime on college campuses, and has juvenile justice provisions to better help the many girls in jail who have been victims of domestic violence and sexual abuse.

- Introducing the National Resource Center on Workplace Responses to assist employers and labor organizations in developing and utilizing workplace
responses for victims of domestic violence, sexual assault, and stalking, and dating violence.

• Focusing legal and financial aid on housing issues for victims of violence. This title mandates long term housing grants for victims at risk of homelessness, programs to help victims keep their housing and funds to educate and train public housing providers in the areas of domestic violence and sexual assault. Additionally, the law expands grants for transitional, housing, and protects victims from being unfairly evicted or denied housing because they were or are victims of domestic violence or sexual assault.

• Providing grants to help encourage state and local cooperation of advocates, public health departments, and health care providers to create a more efficient healthcare response to domestic violence and sexual assault. Also, the law forms programs teaching medical and health profession students about identifying and treating victims of violence and allocate funds for a study on effective interventions in healthcare settings.
- Developing prevention programs aimed at children exposed to violence, families at risk of violence and men and boys, to stop the perpetuation of violence against women VAWA calls for a public awareness campaign to educate the American population about the problems with domestic violence, sexual assault, stalking, and dating violence in the United States.

- Increasing protection of immigrant victims of domestic violence, sexual assault and trafficking. The bill allows immigrant victims to file a petition through VAWA, extends access to work authorization and the legal system, helps extend or change the type of visas an immigrant is granted, and makes receiving permanent residency easier. VAWA also improves legal right of child and young adult immigrant victims.

- Directing funds toward Indian tribal governments to prevent violence against women in this group, educate the leaders and population and increase the resources available to Indian victims of domestic violence, sexual assault, stalking, and
dating violence. Additionally, the law calls for research on violence against Indian women, and the establishment of a Deputy Director for Tribal Affairs.

• Dramatically increasing funding for the STOP training program to promote collaboration of law enforcement and legal officials to better serve victims. Examples include victim access to trained legal and advocacy personnel, court training and education programs, double penalties for repeat violence or abuse offenders, and prosecution counselors to help guide the victim through the legal process. The law protects confidentiality of victims, and creates public awareness campaigns for underserved and minority communities.

• Finally, developing the Sexual Assault Services Program (SASP) to fund direct services for sexual assault victims and broadening the rural program to include sexual assault, child sexual assault, and stalking. VAWA also expands eligibility to rural communities who do not receive funding because they are in an urban state. Additionally, there are
provisions for services and programs for elder and disabled women who are victims of domestic violence and sexual assault, and for upgrading the capabilities of the National Domestic Violence Hotline.

**ACTS**

**U.S. Supreme Court Hears Cases with Important Ramifications for victims of Domestic Violence**

Recently on March 20, 2006, the U.S. Supreme Court heard oral arguments of two cases involving victims of domestic violence the outcomes of which will significantly impact the prosecution of domestic violence and sexual assault perpetrators.

In *Washington v. Davis*, a woman called 911 and hung up before speaking to anyone. When the 911 operator called her back, the woman said that someone was jumping on her and stated that Adrian Davis was attacking her. She also stated that he had beaten her with his fists and that he had left. At trial, the victim did not testify as the
prosecution was unable to locate her, and the court permitted the admission of the 911 call over objections from Davis. The jury found Davis guilty of a felony violation of the victim's protective order against him. Davis appealed the trial court decision and the Court of Appeals upheld the conviction rejecting his argument that the 911 call should not have been admitted. *State v. Davis*, Davis appealed this decision to the Washington State Supreme Court which affirmed the lower courts' decisions that the admission of a 911 call did not violate the defendant's Sixth Amendment right to confrontation under the U.S. Supreme Court's decision in *Crawford v. Washington*.

In *Hammon v. Indiana*, two police officers arrived at the Hammons home in response to a report of a domestic disturbance. When they arrived, they found Mrs. Hammon on the front porch and reported that she looked "somewhat frightened." After surveying the scene, one of the officers went back outside to the porch and asked Mrs. Hammon for the second time what had
happened. In court, this officer testified that Mrs. Hammon told him that she and her husband had been in a physical fight in which he threw her down, pushed her onto the ground and had punched her in the chest. The State charged and convicted Mr. Hammon of domestic battery. Although she was subpoenaed, Mrs. Hammon was not present at trial to testify, and the court agreed to admit the officer's testimony over Mr. Hammon's objection. The Court of Appeals upheld the trial court's admissions of Mrs. Hammon's statements to the officer under the hearsay exception for excited utterances. *Hammon v. Slate*.

Upon petition to transfer, the Supreme Court of Indiana upheld the lower courts' decision regarding admission of Mrs. Hammon's statements to the police officer, holding that her statement was not testimonial and was admissible under the Confrontation Clause even without an opportunity to cross examine her.

On October 31, 2005, the U.S. Supreme Court agreed to hear both *Hammon* and *Davis* in tandem to clarify the appropriate application of its previous
decision in *Crawford v. Washington*. In *Crawford*, the Court ruled that a crime witness "sworn statement at a police station could not be admitted against the defendant when the witness was not present in court and was not cross-examined. The *Crawford* Court interpreted the Confrontation Clause of the Sixth Amendment of the U.S. Constitution to require that testimonial statements may only be admitted against defendants if the declarant is available in court for cross-examination.

During oral arguments in *Davis* and *Hammon* the Justices questioned counsel regarding how far the *Crawford rule* should be extended. While most of the Justices seemed skeptical about using victims un-sworn statements against defendants. Justice Ruth Bader Ginsburg showed particular concern for domestic violence victims who told the police about the abuse but they were reluctant to appear in court. "The practical reality" is that many women in these situations are "scared to death" to testify against the person who abused
them. Justice Ginsburg said. She suggested that statements made to authorities during "emergencies" should be admissible as an exception to otherwise inadmissible testimonial statements made by witnesses who were not present in court.

**Monteroso v, Moran Case**

Holding: Upon Ms. Monterroso's appeal, the California Court of Appeal reversed the mutual restraining order that the Superior Court of Los Angeles County entered against Ms. Monterroso and her husband Mr. Moran, ruling that to enter a mutual restraining order under Family Code section 6305 a trial court must make detailed factual findings that both parties acted primarily as aggressors and neither party acted primarily in self-defense. The case was remanded to rule upon the merits of the restraining order application against Mr. Moran.

The basic facts of the case where Ms. Monterroso and Mr. Moran were married formerly lived together and have minor children together.
They separated in August 2004. At the trial court proceeding, Ms. Monterroso had sought a temporary restraining order against her husband. On her application, she detailed three separate incidents of severe domestic violence which included verbal death threats and emotional/verbal abuse, attempts to choke and smother Ms. Monterroso, hits, slaps, scratches to Ms. Monterroso's body and face, and threats of self-mutilation by Mr. Moran. At the third incident on January 1, 2005, Ms. Monterroso was able to call the police and Mr. Moran was arrested. Ms. Monterroso obtained an emergency protective order that day.

The Court decided that the principles of estoppel did not bar a direct appeal in this case because it found that Ms. Monterroso did not consent to the mutual order. In its reasoning, the Court stated that because Ms. Monterroso was not represented, did not display any legal sophistication, needed an interpreter and was not told about the requirements or ramifications of a mutual restraining order by the lower court, she
could not have consented. Therefore, since she did not agree to the mutual restraining order, the Court stated that she was not stopped from seeking redress on appeal,
## COMPARATIVE CHART:

### THE DOWRY PROHIBITION ACT

**Definitions**
- "dowry" means any property or valuable security given or agreed to be given either directly or indirectly:
  (a) By one party to a marriage to the other party to the marriage; or
  (b) By the parents 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 any time after the marriage in connection with the marriage of the said parties, but does not include dower or *mahr* in the case of persons to whom the Muslim Personal Law (Shariat) applies.

**Procedure**
- Cognizance of Offence
  Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),
  (a) no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence under this Act.
  (b) no court shall take cognizance of an offence under this Act except upon.

### DOMESTIC VIOLENCE ACT

**Definitions**
- In this Act, unless the context otherwise requires—
  (a) "aggrieved person" means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent;
  (b) "child" means any person below the age of eighteen years and includes any adopted, step or foster child;
  (c) "compensation order" means an order granted in terms of Section 22;
  (d) "custody order" means an order granted in terms of Section 21;
  (e) "domestic incident report" means a report made in the prescribed form on receipt of a complaint of domestic violence from an aggrieved person;
  (f) "domestic relationship" means a relationship between two persons who live, or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint

### DOMESTIC VIOLENCE IN USA

**Definitions**
- There are a variety of definitions for the term "domestic violence". For example, the Florida Code States that “Domestic Violence means any assault, battery, sexual assault, sexual battery or any criminal offence resulting in physical injury or death of one family or household member by another who is or was residing in the same dwelling unit. "Domestic Violence Victim Advocates tend to use broader definitions than the legislatures. For example, Virginians Against Domestic Violence defines domestic violence as “a pattern of abusive behaviors used by one individual to control or
(i) its own knowledge or a police report of the facts which constitute such offence, or
(ii) a complaint by the person aggrieved by the offence or a parent or other relative of such person, or by any recognized welfare institution or organization.

© it shall be lawful for a Metropolitan Magistrate or a Judicial Magistrate of the first class to pass any sentence authorized by this Act on any person convicted of any offence under this Act.

Explanation: For the purposes of this sub-section, "recognized welfare institution or organization" means a social welfare institution or organization recognized in this behalf by the Central or State Government.


(3) Notwithstanding anything contained in any law for the time being in force, a statement made by the person aggrieved by the offence shall not subject such person to a prosecution.

**Remedies**

(1) If any person, after the commencement of this Act, gives or family;

(g) "domestic violence" has the same meaning as assigned to it in Section 3;

(h) "dowry" shall have the same meaning as assigned to it in Section 2 of the Dowry Prohibition Act, 1961 (28 of 1961);

(i) "Magistrate" means the Judicial Magistrate of the first class, or as the case may be, the Metropolitan Magistrate, exercising jurisdiction under the Code of Criminal Procedure, 1973 (2 of 1974) in the area where the aggrieved person resides temporarily or otherwise or the respondent resides or the domestic violence is alleged to have taken place;

(j) "medical facility" means such facility as may be notified by the State Government to be a medical facility for the purposes of this Act;

(k) "monetary relief" means the compensation which the Magistrate may order the respondent to pay to the aggrieved person, at any stage during the hearing of an application seeking any relief under this Act, to meet the expenses incurred and the losses suffered by the aggrieved person as a result of the domestic violence;

(l) "notification" means a notification published in the Official Gazette and the expression "notified" shall be construed accordingly;

(m) "prescribed" means prescribed by rules made under this Act;

(n) "Protection Officer" means an officer appointed by the State Government under sub-section (1) of Section 8;

(o) "protection order" means an order made in exert power over another individual in the context of an intimate partner relationship".

There are four types of abuse typically associated with these definitions, physical, emotional, economic, and sexual abuse.

Physical abuse is the type with which most people are familiar and which the law can address most easily. Physical abuse includes kicking, pinching, punching, slapping biting and other behaviors by the perpetrator designed to cause the victim physical pain or discomfort.

Emotional abuse includes insulting, nagging, humiliating the victim in front of others, and isolation of the victim. Isolation refers to the systematic separation of the victim from friends, family and society. This type of abuse is common and in some cases can be quite extreme. The law is less adopt at addressing
takes or abets the giving or taking of dowry, he shall be punishable with imprisonment for a term which shall not be less than (five years, and with fine which shall not be less than fifteen thousand rupees or the amount of the value of such dowry, whichever is more).

PROVIDED that the court may, for adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a term of less than (five years).

(2) Nothing in sub-section (1) shall apply to or in relation to-(a) presents which are given at the time of marriage to the bride (without any demand having been made in that behalf).

PROVIDED that such presents are entered in a list maintained in accordance with the rules made under this Act.

(b) presents which are given at the time of a marriage to the bridegroom (without any demand having been made in that behalf).

PROVIDED that such presents are entered in a list maintained in accordance with the rules made in this Act.

PROVIDED FURTHER that where such presents are made by or on behalf of the bride or any person this type of abuse, because it is more difficult to define although vigorous prosecution could yield convictions for assault, false imprisonment and stalking.

Sexual assault includes rape, sodomy and object penetration. The law has great difficulty in addressing these issues because of problems with evidentiary proof. The American Criminal Justice System has additional difficulty in addressing forced sexual behaviors between married or cohabiting individuals, particularly in those states in which marital rape and marital sexual assault are not considered criminal.

Economic abuse is manifested by complete control of the family finances by the abuser. The victim may be given an allowance, but he/she is typically not permitted to keep his/her own pay cheque (when permitted to work at all), and in some terms of section 18;

(p) "residence order" means an order granted in terms of sub-section (1) of Section 19;

(q) "respondent" means any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act:

Provided that an aggrieved wife or female living in a relationship in the nature of a marriage may also file a complaint against a relative of the husband or the male partner;

(r) "service provider" means an entity registered under sub-section (1) of Section 10;

(s) "shared household" means a household where the person aggrieved lives or at any stage has lived in the domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household;

(t) "shelter home" means any shelter home as may be notified by the State Government to be a shelter home for the purposes of this Act.

**Definition of domestic violence**

For the purposes of this Act, any act, omission...
related to the bride, such presents are of a customary nature and the value thereof is not excessive having regard to the financial status of the person by whom, or on whose behalf, such presents are given.)

| or commission or conduct of the respondent shall constitute domestic violence in case it— (a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or (b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or (c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or (d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person. Explanation I. — For the purposes of this section,— (i) “physical abuse” means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force; (ii) “sexual abuse” includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman; (iii) “verbal and emotional abuse” includes— (a) 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 cases, may not be given enough money to survive. There is little, if anything, that the current laws can do to protect against this type of abuse, unless theft or conversion can adequately be proven.

Studies and lengthy observations of victims and abusers have revealed a pattern which domestic abuse typically follows, commonly referred to as the cycle of violence. The cycle begins with the honeymoon phase. In the first cycle, this phase is the courtship. The abuser brings the victim gifts. Treats the victim with affection and makes promises to the victim about their future. This phase is followed by the “tension building” phase during which the abuser will insult the victim, will make accusations about the victim's fidelity and will begin to systematically erode the victim's sense of self respect and self worth, isolation, economic abuse,
punishment of guilty to a great extent and create terror in minds which are criminally inclined. Yet they can not be called as foolproof. The law may be adequate but its enforcement is below expectations with a marginal impact in society. A custom consistently followed and increasingly glamourised cannot be whisked away by criminal sanctions and legislative contrivances. Law can be ahead of public opinion but, if the gulf is too wide, there is likelihood of its non-observance and violation.

As rightly pointed by the Supreme Court.

"Young women of education, intelligence and character do not set fire to themselves to welcome the embrace of death unless provoked and compelled to that desperate step by the intolerance of their misery".

In 1961 Dowry Prohibition Act was passed. Despite the Act and its subsequent amendments in 1983 and 1986 brides are still harassed, tortured and even burned to extract more dowry. According to the records of Crimes (Women) Cell, from 1983 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 the aggrieved person; and
(c) prohibition or restriction of continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

Explanation II. — For the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes "domestic violence" under this section, the overall facts and circumstances of

and torturing of children and pets may occur during this phase. This phase culminates in the "explosion". During the explosion phase, the batterer will engage in verbal, physical and/or sexual abuse of the victim. Once the explosion phase is completed, the relationship will return to the honeymoon phase. This phase will now be marked by apologies, tears, gifts and promises that the batterer will change and that he/she will never again abuse the victim. In most relationships, it will happen again. Over time, the cycle becomes more violent, the honeymoon phase becomes shorter and eventually nonexistent: the tension phase becomes shorter and more intense; and the explosions become longer and more violent. Visually, the cycle may be more accurately described as a downward spiral.

**Procedure**
A broad group of law
the case shall be taken into consideration.

**Procedure**

**Information to Protection Officer and exclusion of liability of informant**

(1) Any person who has reason to believe that an act of domestic violence has been, or is being, or is likely to be committed, may give information about it to the concerned Protection Officer.

(2) No liability, civil or criminal, shall be incurred by any person for giving in good faith of information for the purpose of sub-section (1).

**Duties of police officers, service providers and Magistrate**

A police officer, Protection Officer, service provider or Magistrate who has received a complaint of domestic violence or is otherwise present at the place of an incident of domestic violence or when the incident of domestic violence is reported to him, shall inform the aggrieved person—

(a) of her right to make an application for obtaining a relief by way of a protection order, an order for monetary relief, a custody order, a residence order, a compensation order or more than one such order under this Act;

(b) of the availability of services of service providers;

(c) of the availability of services of the Protection Officers;

(d) of her right to free legal services under the Legal Services Authorities Act, 1987 (39 of enforcement, victim service providers, community leaders, and survivors of domestic and sexual violence and stalking have evaluated VAWA and recommended the changes necessary for VAWA 2005 that would effectively and thoroughly respond to the epidemic of violence against women in our nation.

- VAWA 2005 enhances core programs and policies in the criminal justice and legal systems and reaffirms the commitment to reform systems that affect adult and youth victims of domestic violence, dating violence, sexual assault, and stalking.

- VAWA 2005 also makes bold new strides in ending domestic and sexual violence and stalking by addressing currently unmet needs.

- VAWA 2005 provides practical solutions to improving the response of the criminal justice and legal systems by expanding
(e) of her right of file a complaint under section 498A of the Indian Penal Code (45 of 1860) wherever relevant:

Provided that nothing in this Act shall be construed in any manner as to relieve a police officer from his duty to proceed in accordance with law upon receipt of information as to the commission of a cognizable offence.

**Duties of shelter homes**

If an aggrieved person or on her behalf a Protection Officer or a service provider requests the person in charge of a shelter home to provide shelter to her, such person in charge of the shelter home shall provide shelter to the aggrieved person in the shelter home.

**Duties of medical facilities**

If an aggrieved person or, on her behalf a Protection Officer or a service provider requests the person in charge of a medical facility to provide any medical aid to her, such person in charge of the medical facility shall provide medical aid to the aggrieved person in the medical facility.

**Appointment of Protection Officers**

(1) The State Government shall, by notification, appoint such number of Protection Officers in each district as it may consider necessary and shall also notify the area or areas within which a Protection Officer shall exercise the powers and perform the duties conferred on him by or under this

(2) The Protection Officers shall as far as possible be women and shall possess such funding for local groups working with underserved communities, strengthening the criminal justice response to sexual assault, developing standards for protecting the confidentiality of victims served by VAWA programs, enhancing collaboration between victim service organizations and civil legal assistance providers, and enhancing provisions to fully enforce protective orders across state lines. • VAWA 2005 includes the reauthorization of critical programs and the development of new services that respond to evolving community needs. Solution-based remedies address the concerns of victims generally, as well as the unique needs of disabled, elderly, Native, legal immigrant, and ethnic minority victims, and victims living in rural communities. • Domestic violence is one of the primary causes of
qualifications and experience as may be prescribed.
(3) The terms and conditions of service of the Protection Officer and the other officers subordinate to him shall be such as may be prescribed.

Remedies

Right to reside in a shared household
(1) Notwithstanding anything contained in any other law for the time being in force, every woman in a domestic relationship shall have the right to reside in the shared household, whether or not she has any right, title or beneficial interest in the same.
(2) The aggrieved person shall not be evicted or excluded from the shared household or any part of it by the respondent save in accordance with the procedure established by law.

Protection orders
The Magistrate may, after giving the aggrieved person and the respondent an opportunity of being heard and on being prima facie satisfied that domestic violence has taken place or is likely to take place, pass a protection order in favour of the aggrieved person and prohibit the respondent from—
(a) committing any act of domestic violence;
(b) aiding or abetting in the commission of acts of domestic violence;
(c) entering the place of employment of the aggrieved person or, if the person aggrieved is a child, its school or any other place frequented by the aggrieved person;
(d) attempting to communicate in any form, homelessness. Survivors and advocates consistently rate housing as a top priority, and 92% of homeless women have been physically or sexually assaulted. In order to address the housing problem, VAWA 2005 provides a comprehensive yet pragmatic approach that includes expanding transitional housing options, protecting the safety and confidentiality of homeless victims receiving services, ensuring that victims can access the criminal justice system without jeopardizing their current or future housing, and creating permanent housing solutions that help develop communities and build collaborations between service providers, government agencies and housing developers. Domestic violence, dating violence, sexual assault, and stalking adversely affect our nation's youth and perpetuate a society of
whenever, with the aggrieved person, including personal, oral or written or electronic or telephonic contact;
(e) alienating any assets, operating bank lockers or bank accounts used or held or enjoyed by both the parties, jointly by the aggrieved person and the respondent or singly by the respondent, including her stridhan or any other property held either jointly by the parties or separately by them without the leave of the Magistrate;
(f) causing violence to the dependants, other relatives or any person who give the aggrieved person assistance from domestic violence;
(g) committing any other act as specified in the protection order.

Residence orders
(1) While disposing of an application under subsection (1) of Section 12, the Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order—
(a) restraining the respondent from dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared household, whether or not the respondent has a legal or equitable interest in the shared household;
(b) directing the respondent to remove himself from the shared household;
(c) restraining the respondent or any of his relative from entering any portion of the shared household in which the aggrieved person resides;
(d) restraining the respondent from alienating or disposing off the shared household or

**violence. VAWA 2005**

provides a comprehensive approach for assisting children, teens and young adults who have violence in their lives. VAWA 2005 includes initiatives such as bringing communities together and providing cross training and collaboration to address the co-occurrence of domestic violence and child abuse, assisting colleges and universities with creating services and policies to address violence on campus, providing teens and young adults with appropriate services, ensuring access to court systems, and preventing abuse during child visitation.

Increasing protection of immigrant victims of domestic violence, sexual assault and trafficking. The bill allows immigrant victims to file a petition through VAWA, extends access to work
(e) restraining the respondent from renouncing his rights in the shared household except with the leave of the Magistrate; or
(f) directing the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so require.
Provided that no order under clause (b) shall be passed against any person who is a woman.
(2) The Magistrate may impose any additional conditions or pass any other direction which he may deem reasonably necessary to protect or to provide for the safety of the aggrieved person or any child of such aggrieved person.
(3) The Magistrate may require from the respondent to execute a bond, with or without sureties, for preventing the commission of domestic violence.
(4) An order under sub-section (3) shall be deemed to be an order under Chapter VIII of the Code of Criminal Procedure, 1973 (2 of 1974) and shall be dealt with accordingly.
(5) While passing an order under sub-section (1), sub-section (2) or sub-section (3), the court may also pass an order directing the officer in charge of the nearest police station to give protection to the aggrieved person or to assist her or the person making an application on her behalf in the implementation of the order.
(6) While making an order under sub-section (1), the Magistrate may impose on the respondent obligations relating to authorization and the legal system, helps extend or change the type of visa an immigrant is granted, and makes receiving permanent residency easier. VAWA also improves legal rights of child and young adult immigrant victims. 2

Remedies
Rather than keep the law exactly as it had been, Congress expanded the scope of the bill in several ways. Specifically VAWA now helps protect child victims of violence, immigrant and minority populations, and men and boys. The law focuses on education and prevention, creating training programs for law enforcement officials, health care providers, housing providers, and men and boys to help stop the generational cycle of abuse.
Our submission is that though the Domestic Act 2005 made lots of provisions to define and execute the law for the protection against domestic violence but VAWA 2005 have certain provisions, which help remains women to fight against Domestic Violence. hey are:

Firstly, VAWA could provide nearly $3.9 billion dollars of funding over the next five years to combat and prevent violence against women.

Secondly, focusing legal and financial aid on housing issues for victims of violence. Additionally, the law expands grants for transitional, housing, and protects victims from being unfairly evicted or denied housing because they were / are victims of domestic violence or sexual assault.

Thirdly, providing grants to help encourage state and local cooperation of advocates, public health departments and health care providers to create a more efficient healthcare response to domestic violence and sexual assault.

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So we should make such provisions in future and that is possible only by creating legal awareness and cooperation among the three organs of the state. NGO's should also come forward to help women who are victims and are not aware of provisions of the act. It is submitted that the Government should provide financial aid for the rehabilitation of the victims because of the aim of the act is to provide assistance to those women who are victims and are not financially capable to fight for their rights.
Reference:


3. Decided by the Arizona Court of Appeals, 1976

4. Decided by Supreme Court in 1988

5. Decided by North Carolyn Court of Appeals


7. The King Amendment, part of this title was excluded from VAWA because of heavy opposition. The amendment would have banned US citizen or permanent who were convicted of domestic violence or abuse from sponsoring family immigrant for permanent residency.
8. 154 Wash. 2d 291 (2005)


11. 829 N.E. 2d 444, 446 (Ind. 2005).

12. 829 N.R2d at 447

13. 809 N.E. 2d 945, 949

CONCLUSION:

After reviewing the material it can be concluded that status of woman had gone through ups and down in the Indian history. At some time in Vedic and Post-Vedic period, woman enjoyed almost equalities with the man in all sphere of life like social, political, and economic cultural and even religious. During Medieval period and Islamic period shows that a deterioration in the position of woman and the time when British came to India, many barbaric practices developed and woman were confined to subordinate status. Woman known as abla, a weak, helpless person. A wife was treated as a property of her husband. Thus, gradually the women were pushed to the subordinate position.

The 19th and 20th century shows efforts and attempts of the social reformers for the betterment of woman. In this present social system woman are facing various miseries, exploitation and oppression. Women are exploited in their family and in married life by their husbands and relatives.
The existence of this social malaise has been acknowledged in the Vienna Accord of 1994 and the Beijing Platform, 1995. The intervention of the state to protect women against violence of any kind, especially that which occurs within the family, has been strongly recommended by the UN Committee on Convention on Elimination of All Forms of Discrimination Against Women (CEDAW)." In the word of Justice Anand "We are still unable to boast of a society where there is total gender equality or gender equity". Movement from the First U.N. World Conference on Women held in Mexico in 1975 to the Fourth World conference on Women held at Beijing in 1985, has been a journey in search of equality, development and grant so encouraging but the tide must continue.

In our country, the Constitution makers, while drafting the Constitution, were sensitive to the problems fated by women and made specific provisions relating to them. The suprema lex, in its various articles, not only mandates equality of the sexes but also authorises benign discrimination in
favour of women and children to make up for the backwardness, which has been their age-old destiny.

In tune with various provision of the Constitution, the State has enacted many women specific legislations to protect women social evils like child marriages, dowry, rape, practice of Sati, etc. the problem, however, is not only the non-implementation of such laws but also making women folk, particularly the illiterate ones aware of the existence of such legislation and rights that flow from such legislations.

Apart from the amendments, the NCW has proposed the initiation of new bills/laws for the better protection of the rights of women. In the field of criminal law, a new Bill, the Criminal Laws (Amendment) Bill, has been recommended, seeking significant strengthening for penalties under the Indian Penal Code in cases of outraging modesty of minors and in cases of child rape and incest provisions of safeguards to be built into the Cr PC and the Indian Evidence Act in the context of rape
cases was also proposed. It also recommended provisions for examination of rape victims by women officers, investigation by women police officers, trials by women magistrates, provisions for presumptions regarding the commission of the final sexual act."

For prevention of barbarous and beastly cruelty, NCW proposed a Bill to provide for death penalty in cases of commission of barbarous and beastly acts. Trial of such case was proposed to be by special Courts to be set up in consultation with the Chief Justice of India or Chief Justices of High Courts.

A large chunk of crimes against women like wife beating, cruelty by husbands or the in laws adultery, bigamy, etc. are committed due to adjustment problem between the husband and the wife. These problems should be sorted out in the initial stages,

Although, the laws, both substantive and procedural, appears great or facilitates the
1991, 43 cases of bride burning, instituted by the Cell, were tried by the courts; there were just 3 convictions, rest of the cases ended up in acquittals in the Sessions Court itself.

No doubt India has women-specified legislations both constitutional and legal. Particularly section 304B and 498B of IPC, and provisions of Cr. P.C. and Indian Evidence Act along with Articles 14, 21 and 39 (a) to protect the women from different violence. The Domestic Violence Act of 2005 specifically its Preamble states that this Act, is to provide for more effective protection of the rights of women guaranteed under the Constitution of India, who are victims of violence of any kind occurring within the family.

The Act seeks to address emergency situations and stop violence. It is designed to help the woman during the most intense phase of abuse. It will not only provide a support mechanism but will also be a tool for women to negotiate for their rights from a position of equality.
On the objectives of the legislation, Human Resource Development Minister Murli Manohar Joshi said that.

"Domestic violence is undoubtedly a human rights issue and serious deterrent to development. The phenomenon is widely prevalent but has remained largely invisible in public domain. While cruel behavior against a woman by her husband or his relatives is recognized as an offence under Section 498-A of the India Penal Code, 1860, the civil laws does not address this phenomenon in its entirely.

In cases of cruelty and wife beating the role of the police is very crucial but there is a complete lack of interest in the police force to follow up these cases seriously. Often valuable information is lost at the initial stages and conviction becomes very difficult. The beatings are in the husband's house and mostly occur in the night. It is very difficult for the wife to report the matter immediately. Unless there are sensitive and specially trained officials to deal with the investigation, it will be impossible to
prove the offence beyond reasonable doubt as is necessary in criminal jurisprudence. Very often writ petitions have to be filed to direct the police to investigate the matter or demonstrations are held to force the police to register a case.

Efforts should be made to decentralize justice and take it to the doorsteps of the litigants. The concept of mobile courts should be reintroduced to achieved this aim. Mobile courts will help in getting justice faster. It will also help in tackling the issue at the grassroot level before they become complicated and loaded with falsehood.

The number of judges should be increased and more courts and tribunals should be established to cater for the increase in the number of cases that are filed every year.

Judges should try to give pragmatic judgments within the framework of law. Such judicial activism is the essence of judicial development. Law should change with society. Judges can play a crucial role to make law pulsate with life and to respond
positively to the challenges of change. In contemporary society such activism is essential and indispensable.

A suitable infrastructure has to be created to cope up with the increased demand of quick remedial action for the crimes committed on women. The long delays in processing cases and obtaining convictions have resulted in loss of faith in the enforcement agencies.

The existing courts are not enough to cope up with the heavy backlog and the new cases that are being filed every day. Since the disposal rate is slow, cases pending are bound to multiply. There is an imperative requirement to increase the number of courts substantially.

After going through the laws of US and India it is clear that the socio-economic condition in both of the countries are different so the violence against women do vary from circumstances of each countries. In USA laws are much more effective then in India. Indian women are much more
dependent on their husband, they are not financially independent. If some of them are literate they are not bold enough to come out of the four walls and fight for their rights and approach to the court for the protection for their right. There are also legal complications and they shall not get justice within time and after taking legal action they can not lead a normal life in the society, all these reasons Indian women suffer violence silently within home, Whereas American Women are being financially independent have various facilities and they are quite aware of their rights.

In order to deal with the problem more effectively the following measures are suggested:

**Suggestions:**

1. Government should provide the law enforcement agencies with adequate resource and instruction to investigate and prosecute domestic violence victims.
2. Government should provide a civil remedy for domestic violence survivors in the form of a legally enforceable protection order.

3. There should be an establishment of special courts to deal cases of crime against women.

4. There must be time limit for the disposal of cases against women. Protracted criminal trials are an impediment in securing justice.

5. A new evidence code put together by the United Nations, which says that prior sexual conduct of the victim shall not be admitted as evidence, should be strictly followed in India also.

6. According to law, to give dowry as well as to demand dowry is an offence. So there should be more stringent punishment for the dowry givers? Such unreasonable distinction should be done away with.

7. In the light of increasing menace of dowry, crime (women) cell should function in every police station and powers to give DGP (women
officer) to take *suo motu* cases for investigation. There is need and scope for active and direct involvement of women police in investigation specially trained to deal with the offence relating to the women.

8. The police should avoid asking conciliation between assailants and victims and prevent delay in investigations of crime dowry, death, rape etc.

9. Capital punishment should be awarded to person committing the offence of dowry-death, rape; Martial rape should also be recognized.

10. Demand of dowry should be ground for obtaining divorce. A person convicted of an offence under Dowry Prohibition Act, 1961 should face dismissal of service. To curb the practice of dowry deaths, there is an urgent need to reinforce the punitive and preventive measures.
11. Compensatory board should be established on the line suggested by the Supreme Court for the victims of rape cases.

12. National commission for women be given more powers than just be a recommendatory body. Its branches should be established at every district so that violation of human right of women can be reported.

13. NGOs should be involved in all decisions taken those affecting women.

14. As is evidence there has been Plethora of legislations to protect her human rights and dignity. What is needed is that instead of amendments. The existing laws should be enforced in coordination with sociologist, philosophers, administrators, jurists and police that domestic violence against women can be controlled.

15. Training courses at all levels should include a capsule on issue related to women e.g. the impact of dowry, corruption and
broken homes of family life, consequences of bigamy and adultery on martial bliss etc. The course should be designed to include significant area of relevance to women including legislation relating to crimes against women and its applications. Modern training methodology such as case study method, special audio visual effect etc. must be introduced.

16. There are many cases where poor or helpless women are forced to stay at home which is responsible for atrocities on them as they have no other option and other places to go for shelter. The procedural laws are quite weak and obsolete and further indiscriminately giving anticipatory bails and adjournment of cases to the offenders, taking ten to fifteen years to decide even simple cases. So they need to be updated.

17. Settlement of martial dispute by mutual give and take and counseling services would be beneficial. Once the parties take the issue to
the court, the attitudes of both parties become hard and it is very difficult to arrive at a mutually accepted solution.

18. Books dealing comprehensively with relevant law related to crime against women should be published in various regional languages. They should deal with the important laws related to women and should deal with important laws related to women should also contain the procedure to be followed when a particular crime is committed. The police stations and libraries of the courts, social welfare organizations and general interest libraries should have sufficient number of the copies of books containing protective law to spread legal literacy among the masses.

19. The media should give publicity to the laws that are enacted to protect women. The efforts should be directed at the grass root level and entrusted to people who inspire confidence and are held in respected by the
people. These messengers of progress should have full faith in the messages that they are spreading.

20. Education is necessary to eradicate this evil. If we wish to eradicate this evil from root we must teach our girl because it has been rightly said “If you teach a boy, you teach a person but if you teach a girl you will teach a family”.

21. Economic dependence is quite necessary. It helps in two ways firstly independent girl can fulfill the need of family and if still violence occurs she can take a bold decision to separate herself from the atmosphere where atrocities have committed.

22. Eradication of social evils like Dowry, child marriages should be done. In fact various laws had been passed on prohibition of dowry but still violations of these laws are increasing. Women have a right in succession law but how many women fight for their
property rights, she has a Stridhan (property in which she has an exclusive right under Hindu succession law) but how many women are aware of this right? Answer lies in the fact either women are not aware about this right or they are not bold enough to come out of home and fight for their rights. So mere protecting women through laws are not enough. What is necessary is to fight for the sake of her right provided by the international conventions, Constitutional law or personal laws of our country. She must be bold enough to reject the proposal who asks for dowry. But in India it is quite impossible, the question arises why? The answer lies in fact if she takes such decision it becomes a risk for her and nobody would like to marry a girl who knows law and raises voice against them especially in village and under developed areas. So what is needed is wider social movement where right should not be given on papers but in reality.
23. Incidence of crime against women are increasing but women are tolerating because she is not aware of her rights secondly she is not literate thirdly she is not bold enough to come out of four walls, But what to say about women who are aware, educated and bold to approach to the police station for availing the protection of her rights provided by various laws but she faces lots of obstacles like delay in disposal of cases, non registration of FIR etc. Most of the cases get acquitted because of lack of proper proof or other party is financially strong. In such circumstances what she will do? Society will condemn her, family will condemn here and from where she will fulfill her basic requirement of life. So cooperation of other agency is essential to curb these crimes. So the laws cannot be the solution of problem unless and until there is strict enforcement of law.

24. Approach of male should be changed. They should treat the women as their partner
friend and above all human being. I have interviewed several women and most of them are suffering because their husband are controlled by mother or other female member of the family, their mother in law harassing their daughter in law just because she was harassed by her in-laws. She forgets now there is vast change of social values and educational values husband usually do not raise his voice because either he is after money or he is not bold enough to criticize his respected and loving members of the family. In the words of Justice Anand “Fight for justice is a fight against traditions that have chained them- a fight against attitude that are ingrained in the society – it is a fight against proverbial lakshman rekha which is different for man and different for women. Men must rise to the occasion. They must recognize and accept the fact that women are equal partners in life. They are individuals who have their own identity”.