Abstract

The thesis herein presented entitled "Domestic Violence and Human Rights: A socio-legal study (with special reference to Indian and USA). It deals with the protection of women right under various international and national laws. The topic assumes importance in the wake of globalization. A new dimension of domestic violence after Convention on the Elimination on Discrimination against women. Violence Against Women’s Act 2005 USA "Domestic Violence Act 2005" has been added importance for the present research. The thesis discusses the impact of various oft-quoted laws specially CEDAW "Beijing Declaration, Domestic Violence Act 2005, VAWA 2005 USA" on women. For India the study is relevant in the background of latest development such as protection of women rights under criminal law, Family law, International law, Constitutional law, Dowry Prohibition act 1961, Domestic Violence Act 2005 CEDAW, Beijing declaration, Platform for action etc. specially domestic violence act.

The status of women through historical period has been discussed. In historical period especially in Vedic period is characterized by the absence of the purdah
system, equal rights in selecting life partners, polygamy being rare, mainly confined to the ruling class. The dowry system was prevalent only in rich and royal families and only in the form of gifts.

Muslim Woman Chand Bibi who lived during the latter half of the sixtieth century was decidedly the greatest women. She was also a great scholar of Arabic and Persian languages who patronized many scholars of repute. Sahibji, wife of Amir Khan, was a woman of remarkable military power. These noble and great Muslim women will continue to inspire humanity. That Muslim women have contributed to the cultural heritage of India is not exaggeration. Faith in the Divine should inspire us all to work in a co-operative spirit for the cause of peace. Emperor Shah Jahan, composed a work called Samudra-Sangama (the Confluence of Oceans). This book is intended to illustrate the agreements in fundamentals between Hinduism and Islam, throughout the history of India; respect for other faiths has been a persistent tendency.

The evil of dowry had become deep rooted, especially in Rajasthan. Polygamy and the system of Devadasi had already spread. The medieval period saw women being
oppressed in the feudal social order and patriarchal families.

Thus, in short, during the British rule, awareness was created while education and organizing political participation increased women's mobility. The laws also were on their side as several legal enactments rectifying women's unequal position were passed.

The first world conference on women was held in Mexico City in 1975, which highlighted the themes of "equality, development". The second world conference on women convened in Copenhagen in 1980, added three sub themes: "education, employment and health". In Nairobi, the third world conference was held to review and appraise the achievements of the United-Nations decade for women; equality, development and peace (1976-1985). The goal was set here for the adoption of "Forward looking strategies for the advancement of women to the year 2000". In its thirty third sessions, which was held at Vienna, the commission stressed that a drastic effort must be made to revive a flagging campaign for women's advancement because there was sufficient evidence to indicate that advances towards
women's economic and political rights were slow or had actually stopped.

In its thirty seventh sessions, the commission urged the fourth world conference on women to consider women's rights and concerns. This conference was held in the capital city of China, Beijing in September 1995. The Beijing Conference, in a series of UN-sponsored global conferences on women laid the foundation in the field of Human Rights of women, who constitute nearly half of the world population.

The platform for action, a 362 paragraph document was the blueprint for women's advancement in countries around the world. It was the main document of the conference. A draft document was approved at the Thirty ninth session of the UN Commission on the status of women for presentation in Beijing.

The Beijing conference further expanded the agenda for women's empowerment. Issues once considered taboo ideas earlier viewed as too sensitive and actions ruled out as unacceptable were confronted head-on. The exercise led to the adoption of a platform for action, unanimously, by about 40 countries. The platform for action provides
normative guidance for governments who bear the primary responsibility for implementing its strategic objectives.

The next important document on gender is the Vienna Declaration adopted by the World Conference on Human Rights in June 1993. The Vienna Declaration enjoins full and equal by women of all human rights. It prescribes this be a format for governments and for the United Nations. In participate Conference on Human Rights has stressed the importance of working towards elimination of violation against woman in public and private life.

The platform for action', a 362 paragraph document was the blueprint for women's advancement in countries around the world. It was the main document of the conference. A draft document was approved at the thirty ninth session of the UN Commission on the status of women for presentation in Beijing.

The Beijing conference further expanded the agenda for women's empowerment. Issues once considered taboo, ideas earlier viewed as too sensitive and actions ruled out as unacceptable were confronted head-on. The exercise led to the adoption of a platform for action, unanimously, by about 40 countries. The platform for action provides
normative guidance for governments who bear the primary responsibility for implementing its strategic objectives.

Violence against women is a global problem. Historically men have dominated women and discriminated against them. Women’s lack of access to legal information, aid or protection, the lack of knowledge of law and inadequate efforts by public authorities to enforce existing laws in some cases increases violence against them.

Although international human rights order has transformed itself conceptually in response to repeated challenges from women’s rights movement, the conclusive test of its effectiveness lies in its enforceability in the municipal arena. The jurisprudence on municipal enforcement of international human rights law has evolved. Rather than making enforcement conditional strictly upon legislative enactment, there is a growing tendency to read international human rights law into the constitutional law.

The constitution of independent India comes to be adopted by the Constituent Assembly on November 26, 1949. Being a contemporaneous document, the basic objectives underlying the Declaration of Human Rights found eloquent expression in it. The fundamental rights in
Part III and the directive principles of state policy in Part IV taken together, by and large, incorporates the Human Rights declared by the General Assembly of the United Nations. The right to equality covered by articles 1, 2, 4, 6 and 7 of the Declaration corresponds to articles 14, 15, 16, 17, 18 and 23 of the Indian constitution. The right to life and liberty mentioned in articles 3, 5, 9 and 10 of the Declaration are covered by articles 21 and 22 of the constitution. The right to privacy mentioned in article 12 of the Declaration and article 17 of the International Covenant on Civil and Political Rights 1966 and implicit in the right to life conferred by article 21 of the constitution as interpreted by the Supreme Court of India.

The preamble to the constitution of India resolved to secure to all its citizens justice- social, economic and political; liberty of thought, expression, belief, faith and worship, equality of status and opportunity; and to promote among them fraternity assuring the dignity of an individual and the unity of the nation. To attain these objectives, the constitution guarantees certain fundamental rights and freedom, such as freedom of speech and expression, protection of life and personal liberty. Indian women are
beneficiaries of these rights in the same manner as men. Articles 14, 15 and 16 ensure equality and prohibit discrimination on the basis, inter alia, of sex. In 15(3), 21, 42 gives protection to women rights.

Article 15, which permits special provision for women and children, has been widely resorted to and the courts have upheld the validity of special measures in legislation or executive orders favoring women. In particular, provisions in the criminal law, in favor of women, or in the procedural law discriminating in favor of women have been upheld.

Article 21 spells that “no person shall be deprived of his life or personal liberty except according to procedure established by law”. This Article if read literally is a colorless, it is established by the State that there is a law which provides a procedure which has been followed by the impugned action. But the expression “procedure established by law” in Article has been judicially construed as procedure which is reasonable, fair and just.

The right to life and right to the personal liberty, in India, have been guaranteed by a constitutional provision, which has received the widest possible interpretation.
Article 21 of the constitution, so various rights have found shelter, growth and nourishment. Citizen would like to be aware of the have evolved from precedents of courts.

Article 21, which lays down that “no person shall be deprived of life or personal liberty, expect according to procedure established by law”. This right is a fundamental right, enforceable against the state, and judicial decisions have imposed, on the State, several positive obligations.

The question arises while going through the constitutional provisions that why a constitutional provision arises on various subjects. Is the ordinary law not enough? To the answer it is true that Indian Penal Code contains adequate provisions to punish a person who takes away or attempts to take the life of another. But the impact of constitutional provision lies in this respect; that inspired by political motives. Hence it can be said that the enumerative rights can derive from Article 21.

In our criminal law, there are few provisions available, which can be used to address the issue of domestic violence. The introduction of section 498-A in the IPC in 1983 was significant in bringing domestic violence out of the closet, but this section with its specificity to dowry
ignores the other factors of violence. Other offences of assault, hurt, grievous-hurt, dowry death, murder, rape, etc. are also often used against the perpetrators of violence. These criminal offences, however are not enough to deal with the complexities of domestic violence because the violence inflicted is not by a stranger but by an intimate partner of family member of the victim, more importantly, a criminal remedy will only serve to punish the abuser and is not sufficient to address to the needs of the victim of violence who has to stay within that family.

As such under the civil law there is no remedy for domestic violence. A closer look at the available remedies reveals that the various personal laws provide remedies only on divorce or separation. The only other civil remedy concerns providing maintenance to the woman seeking divorce. All these are representative of an irretrievable breakdown of family ties. In cases of domestic violence the women might not opt for divorce and may wish to continue with their marital relationship, in such circumstances the civil law is silent.

Domestic violence act provides that any conduct of a relative of the victim which subjects her to habitual assault
or makes her life miserable, or injures or harms her or forces her to lead an "immoral life" would constitute domestic violence. Thus domestic violence includes physical, mental, economic and sexual violence. Sexual/economic in the sense that the bill covers both these aspects and provides protection to a woman whose husband or his relatives may be forcing her into prostitution.

Both remedies then must be available to the woman who may choose to lodge a criminal complaint or file and application for a protection order under the bill or she may decide to do both depending on her needs and the gravity of the situation. Such protection for victims of domestic violence, which is easy to obtain is of great importance. Thus the main features of the bill are.

1. It defines domestic violence.

2. Shared household- this term is used instead of the traditional concept of "the matrimonial home" because the bill covers a group of persons beyond marital relationships. This also addresses the problem of violence even in cases where a marriage has not been registered where there is absence of
proof of valid marriage or where the woman is under the belief that valid marriage exists.

3. Various orders can be passed like the protection order, residence order, order pertaining to monetary relief and temporary custody of children. Violation of a protection order is an offence, which is cognizable and non-bailable.

4. Immediate relief—protection orders may be granted within 72 hours by protection officers and may operate for a period of two years upon confirmation.

5. Rights awareness—mandatory obligation under law to make information of legal rights available to women.

6. Mandatory counseling—for the accused and complainant, either singly or jointly according to the magistrate’s decision.

7. Appointment of protection officers.

Then role of police have been discussed on the basis of field study. The researcher mentioned the cases; data of N.C.R.B have been discussed. How for these cases are tackled by the executive and judiciary has been discussed through case law.
During the recent past, Indian Courts have been overwhelmingly burdened with innumerable cases relating to conjugal violence including the extreme cases of dowry deaths or bride burnings. Therefore, keeping in view the alarming increase in the hands of her husband or the in-laws, in her matrimonial home, the Indian Courts have played positive roles in tackling the incidences of violence in the marital homes. The courts have adopted very stringent posture towards such cases, by pronouncing tough and firm Judgments against the perpetrators of such heinous crimes.

VAWA 2005 USA has been discussed then comparison with Domestic Violence Act 2005 of India with Dowry Prohibition Act 1961 has been discussed.

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 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.

So if we compare these two acts our submission are as follows:

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 has certain provisions, which help women to fight against victims.

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 or 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.

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 provision of the act. Government must 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.
Objective of problem

The present work is undertaken to go into the depth of a problem of domestic violence. The present work concentrates on the status of women from historical period and problem of domestic violence, causes and remedies of domestic problem.

Hypothesis

The hypothesis of the present field study is

1. Whether present laws are satisfactory or need to be revised?

2. Whether judicial decision or direction can be the substitute of problem?

3. Whether legislative reform be effective if the will to implement the law is lacking?

4. Whether women are legally aware to protect the rights?

The judicial decisions or directions of can not be the substitute of the problem. But, there should be strict enforcement of law and legal awareness must be created among people.
The data collected has been analyzed with the help of computer. In the end the aforesaid hypothesis has been tested and findings are recorded.

Research Methodology

The present study is confined to explore the scope of the judiciary processes in the prevention of crime. The role of police is critically evaluated.

The present work is based on both doctrinal and non-doctrinal method, which is descriptive, analytical and case study. Along with a doctrinaire method non-doctrinaire method has also been used for the field survey to corroborate the findings of the present research work.

Empirical research deals with case laws, field study close ended questionnaires have been distributed to the various sections of the people and their opinion relating to domestic violence have been evaluated. The city of Meerut, Bulandshahr, Baghpat, Noida, which are closely situated near Aligarh has been selected for the field’s study of the problem. Date of crime against women has been also mentioned. Data of National Crime Record Bureau has been given, which is important for the purpose of
comparative study. Various books on Domestic Violence, Journals on Domestic Violence statutes, website to have the latest materials and data on domestic violence were consulted.

Review of Literature

shows the range of the subject and works of scholar as well as the judgment of the court reveal the various dimensions of the problem.

**Chapter-I** It is customary which deals with the general introduction, justification of undertaking of the present research and also covered the plan of study chapterisation, hypothesis, object of study and research methodology to be adopted.

**Chapter-II** It contains the historical background. It starts with the status of women, their position during Vedic period, Post-Vedic period, the position of women in Hindu, Muslim and Christian communities. How they had enjoyed their various rights and how they were treated by men and what were their status in their respective Laws and has pointed out the difference between the religious norms and social values in contemporary society.

**Chapter-III** in this chapter the right of women under various laws have been discussed starting from UN Charters, various Convention Vienna Accord 1994 Beijing Declarations and the platform for Act, on 1995. The United committee on convention on elimination of All Forms of
Discrimination against in its general recommendation has been discussed in details.

In constitutional law, preamble of the constitution, the relevant provisions of the constitution of India has been discussed especially Preamble Art. 14, 15, 16, 21 and 39 are envisaged to the life of the poor thoroughly discussed through case law. Various provisions of Criminal law like 498-A, 304-B has been discussed. Then relating to the women in personal law have been discussed then Dowry Prohibition and related cases were discussed and then provisions of the Domestic Violence Act has been discussed.

**Chapter-IV** deals with the role of police, how far they are able to tackle the problem; what are the obstacles, which prevent them to perform their duties and what are the negative points, which they ought to improve to prevent such a heinous crime of domestic violence.

**Chapter-V** deals with the role of judiciary in violating rights of women with the help of latest cases, Laws relating to the protection of women rights.
Chapter-VI deals with the domestic violence Act 2005, American Domestic Violence Act 2005 (VAWA 2005) and Dowry Prohibition Act 1961 in details and comparative study with the US law.

Chapter-VII deals with conclusions and suggestions i.e. various recommendations to combat the social evil of domestic violence.

Conclusion

The 19th and 20th century shows efforts and attempts of the social reformer 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 of 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. Until recently, the question of gender equality or gender equity was merely a topic of theoretical discussion. Things are changing but rather slowly. 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.

But the question is whether the women have been able to reap the benefits provided for them under the Constitution of India? The answer unfortunately is not encouraging. There is still a long way to go to achieve the goals enshrined in the Constitution".

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.

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 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.

Thus the Domestic Violence Act, 2005 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.

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 achieve 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.

After going through the act of US and India it is cleared that the social economic condition both of the countries are different so violence against women varies from circumstances of each countries. In USA female 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 within 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 due all these reasons Indian women suffer violence silently within home, Whereas American Women are financially independent they have various facilities and they are quite aware of their rights.