CHAPTER – VII

CONCLUSION AND SUGGESTIONS

"That country and that nation which do not respect women have never become great, nor will ever be in future."—Swami Vivekananda

Domestic Violence against women is the greatest human rights scandal in India. It is an age-old problem in India specially in West Bengal. Historically, the status and position of women since vedic era to modern times, has always been changing. From Indian history, we find domestic violence first in Post vedic period. From that time to the period before Independence of India, domestic violence had been hidden behind the four walls of the home and Sati Pratha, Pardha system, child marriage, dowry death, polygamy, wife beating, female-infanticide, female-foeticide, cruelty by husband and in-laws etc. were rampant in the society.

Majority of women were illiterate and suffered mental and physical torture silently because, in those days after marriage matrimonial home was treated as the only place for married women and “Pati Param Guru” was the well known proverb for women. Women were generally treated as chattels in their matrimonial homes and were also considered as the property of their husbands. Women were regarded as appendage only and subservient to men.

So the position of women were naturally degraded in their families. They were suppressed and oppressed in their matrimonial homes.

1. Legal Status and Remedies for women in India, by Roma Mukherjee, Deep & Deep Publication, New Delhi, page-184.
After Independence, domestic violence was existing in the society. At that time, dowry system was the scar of the society. Young women were subjected to harassment and even put to death because the promised dowry was not paid.

As a solution therefore, in 1961, Dowry Prohibition Act, 1961 was enacted by the government of India. This act was further amended twice, in 1984 and 1986 respectively.

This study reveals that, after plethora of laws were enacted, such as, the Commission of Sati Prevention Act, 1987, Medical Termination of Pregnancy (MTP) Act, 1971, The Pre-natal Diagnostic Techniques (Regulation and prevention of misuse) Act, 1994 etc., domestic violence is still wide spread in the society.

Today, in India, specially in West Bengal, women are increasingly being educated and joining to perform different occupations but domestic violence like wife beating, mental and physical cruelty, forced abortion, bride burning, dowry death etc. are continued still in elite classes also.

The main reasons behind domestic violence are male chauvinism and greed for dowry for which many newly wedded brides are murdered by their husbands and in-laws or committed suicide due to frustration. Today many women prefer judicial separation or Divorce for quicker justice.

But still majority of women are illiterate and are not aware about their basic human rights. Thus, many cases are going unreported, most of them consider wife beating or cruelty by husbands and in-laws etc. are the normal wear and tear of their lives. Many victims of domestic violence are unable to leave this abusive situations due to psychological and socio-economic reasons.
Due to lack of economic support from their natal families, they are often unable to bear the cost of the judicial proceedings. Sometime police refuse to take FIR and also try to patch up the case. It is noted that, pretty often for incomplete F.I.R many accused persons are escaped from punishment. They for the active connivance with the police try to hide the entire evidence and convert the case into an accident case.

Today, by many national and international laws, domestic violence is a gross humanright's violation of women. Therefore, attempts were made by the international community from time to time to curb domestic violence against women.

The International laws which first recognised domestic violence as human rights violation are “Vienna Accord of 1994” and “Beejing Declaration and Platform for Action 1995”. After that the Convention on Elimination of All forms of Discrimination Against Women, Declaration on the Elimination of Violence Against Women also included domestic violence in “violence against women”. In many other conference documents such as Beijing +5, special sessions on women 2000, 2001 world conference in Durban i.e. Durban Declaration and Programme of Action etc. domestic violence were considered as violence against women and were explained as a crime.

Therefore, today domestic violence is a global phenomena and it is affecting families irrespective of race, class, religion and socio-economic status. All the countries of the world in all the regions which have ratified the Convention on Elimination of All Forms of Discrimination Against Women, introduced domestic violence preventive laws to eradicate domestic violence against women. India signed this above mentioned convention in 1983 but maintains reservations to Articles 5 (a), 16 paragraphs 1 and 2 and 29.

In this context it is stated that, prior to 1983 domestic violence was treated as a
private affair. After 1983 section 498A and section 304B were included in Indian Penal Code for which domestic violence specially dowry death and cruelty were treated as crimes. Gradually many NGOs for women, National Women Commission and different State Women Commissions were fighting against domestic violence. They provide free legal aid, emergency short shelter homes, free medical assistance etc. to the victim women and try to help the victims to get rid of their violent environment. They sometimes provide vocational training if the victim women are not economically independent.

These NGOs and women Commissions are conducting legal literacy camps to aware the women about their basic human rights and legal facilities which are available to them. From the year 2000, the NGOs, National Commission for Women and State Commission for women started demanding for a new separate law for domestic violence offence. They started agitations to bring changes whenever the existing laws are not helpful to the victim women of domestic violence. For their longstanding demand in 2005 Govt of India introduced “Protection of Women from Domestic Violence Act 2005” to prevent Domestic Violence. This Act defines the Domestic violence broadly and also includes women who live together with their men.

In India specially in West Bengal despite of all the protective laws, domestic violence offences are still alarmingly rising. According to 2006 report of National Crime Record Bureau one in two women is tortured by her husband and in-laws. Therefore, Judiciary also came forward to curb domestic violence and pronounced many important verdicts to minimize domestic violence offences.

Today, the Judges are trying to step in the shoes of the victim women and also trying to give a pragmatic judgment relating to domestic violence offences. They generally try the cases by many path-breaking precedent cases, decided by the High
Courts and Supreme Court of India and also making liberal approach in cases of bride burning and dowry deaths. They prefer to stress on circumstantial evidences where direct evidences are missing.

In some cases Judges are now making efforts to patchup the broken marriages and in many divorce cases they directed several couples to arrive at an amicable settlement for the sake of their children. By this way the Judges are successful in bringing the couples together again.

Recently Supreme Court has made an attempt to prevent the dispute in Bigamy polygamy cases, prevent child marriage, and help women to exercise rights under marriage in case of getting maintenance from husbands and for custody of children. To enable widows to claim inheritance right and deter husbands from deserting the wives the Supreme Court directed compulsory registration mandatory in all marriages irrespective of religion.

But still huge number of cases are pending for lack of evidence and in many cases accused persons are getting lesser punishment. Sometimes they escape from punishment for poor investigation procedure and lack of proper direct or circumstantial evidence. For this delay, sometimes witness becomes hostile and victim’s family are loosing their interest or unable to bear this huge expenses of Judicial proceeding. Therefore, In India specially in West Bengal due to this type of slow and cumbersome judicial proceeding, women and their relatives loose their faith upon Judiciary and try to find some speedy solution.

In this context, it would be very unfortunate to mention, that in West Bengal, inadequate infrastructure stands in the way of implementing “The protection of women from Domestic violence Act, 2005” which is inforce since 26 October, 2006.
Not only that, lack of budgetary allotment has stopped battered women from availing of the facility of their legal aids, as well as their shelters and medical reliefs etc.

Besides that the protection officers are still not appointed in any police station in all the districts of West Bengal for helping the distressed women who are the victims of domestic violence.

Ms. Anuradha Kapur of Women NGO Swayam said “Though the Act is effective the government machinery is not ready to enforce its implementation. Hence all the assistance provided to violence victims under this Act will remain theoretical.”

Therefore, despite this new Act, still West Bengal is not the “Oasis of Peace” for women. But let us now wait for the world with a new dawn on the horizon, with liberation and freedom for women, who are now victims of the heinous crime like “Domestic Violence”.
SUGGESTIONS

The study forwards the following pragmatic suggestions for combating the domestic violence offences:

1. Legal Aid Cells:
   There is a need to set up more legal aid cells at every corner of India specially in West Bengal to create legal awareness about the legal rights of women. These legal aid cells must help the distressed women by giving them free legal aid if required.

2. Compulsory Education for Girl Child:
   Education for girl child should be mandatory and legal awareness and legal rights of women should be a mandatory reading in schools and colleges.

3. Public Awareness:
   The public of West Bengal should be aware about the proper meaning of domestic violence against women and the harmful sides of the crime should be explained to them by the media.

4. Role of Bridegroom's family:
   The bridegroom's family should be sympathetic, liberal and kind hearted towards the family of the bride. They should accept the newly wedded bride wholeheartedly. The in-laws specially the mother-in-law should treat the newly wedded bride as their daughter and help her to adjust in the new environment.
5. **Shelter Home**:

The State of West Bengal should increase the number of shelter homes for the victim women of domestic violence.

6. **Role of the parents**:

Sometimes male children who in their childhood have experienced domestic violence are usually found to become perpetrators of domestic violence in their later lives. So, if they are properly guided by their parents from childhood to respect every woman, then they should love their wives and treat them as their friends, partners and betterhalves.

7. **Dowry Prohibition Act must be amended**:

i) The Provisions of Dowry Prohibition Act, should be properly implemented to check the evil practice of dowry, which custom is widespread in India specially in West Bengal.

ii) “Givers” and “Takers” of dowry should be clearly and separately defined in the Dowry Prohibition Act.

iii) In the time of Registration of marriage, list of gifts which had been taken should be mentioned and it should be made compulsory.

iv) The definition of “Dowry” under Dowry prohibition Act need to be amended to include wedding presents, traditional gifts etc. which have been given in the name of custom or practice and in the name of voluntary presents.
v) Whenever the in-laws of the victim are demanding more dowry after marriage, and torturing the bride mentally and physically, then they often seek the help of the politicians. The politicians who interfere with the law should also the treated as abettors and punished under this Act.

8. Amendment in the Indian Penal Code, 1860

i) In all unnatural deaths such as cold blooded murder, dowry death, bride burning etc. forensic experts should accompany the investigators to the spot within 24 hours to get an early clue whether it is a case of suicide, homicide or accident.

ii) In all cases of bride burning, the post-mortem should be carried out in a proper way as to find out the cause of the death.

iii) The dying declaration of the victims should be recorded in the presence of lady doctors and lady police officers who can be expected to inspire confidence in the dying women. Further, it should be taken in presence of the near relatives of the victims.

iv) The scope of Sec 498A I.P.C should be widened to include harassment of unmarried daughters too in their parental home.

At present the Penal Code covers only married women who face harassment in their marital homes. It should include divorced and widowed women too who may be harassed in their natal or marital homes.
v) The Explanation (b) of sec 498A I.P.C is unduly restrictive as women are harassed not just to meet unlawful demands for property but often merely to assert authority. Such harassment takes different forms, such as denial of food, access to children, access to the matrimonial home or threats to force a woman out from her matrimonial homes.

The subsection should be amended to make any harassment of a woman as an act of cruelty, whether such harassment is with a view to coerce any person related to her or to meet an unlawful demand for property.

vi) The Sec 375 I.P.C should be amended to include marital rape as one kind of domestic violence.

9. Hindu Marriage Act 1955:

i) In section 24 of the Hindu Marriage Act, 1955, an exparte order of maintenance should be given as soon as either spouse files a petition for divorce together with a petition for maintenance because delay in listing of cases could cause a lot of inconvenience to the person who had asked for it, finding it difficult to survive without money.

10. Under Section 18(2) of the Hindu Adoptions and Maintenance Act, 1956:

A Hindu wife may without having recourse to any matrimonial suit, live apart from her husband and claim maintenance provided she has justifiable grounds to live separately. A wife is entitled to maintenance under the Act so far she is Hindu and chaste. The study reveals that some courts in India have concluded that a wife has the right to reside or occupy the matrimonial home and it was justified on the
ground of husband’s maintenance obligation under the Hindu Adoption and Maintenance Act, 1956.

Following amendments are suggested in the Hindu Adoption and Maintenance Act, 1956:

i) Though the interim maintenance is now awarded by the judiciary under Section 18(2) of the Act, there is no express provision for it. Hence, an express provision for interim maintenance should be included under section 18(2) of the Act.

ii) An explanation may be added to section 18 of the Act stating that in the event of separation or divorce, even in cases where the wife or children have no “right to house” in which they are living, they should be allowed to occupy the house treating it within the definition of maintenance under the Act.

iii) Under section 19 of the Hindu Adoption and Maintenance Act, 1956, widowed daughter-in-law’s right of maintenance from her father-in-law is very limited. She can claim maintenance from her father-in-law only where the conditions laid down by section 19 are satisfied and thus, father-in-law has no personal obligation to maintain a widowed daughter-in-law. Following amendments are suggested in the Hindu Adoption and Maintenance Act, 1956.

Section 19 of the Act may be amended in such a manner to make the father-in-law personally liable to maintain his widowed daughter-in-law.
11. Setting up more Family courts:

Generally in our country specially in West Bengal the majority of women in domestic violence cases are seeking divorce or settlement. Therefore, to provide speedy and easily available justice in domestic violence cases more Family Courts should be created by West Bengal Government.

12. The Role of the Court:

In domestic violence cases Indian Judiciary is playing an important role. So, the courts are expected to deal with such cases in a pragmatic manner so as to give justice to the victims.

13. Training for Judicial Personnel:

Sentencing disparities can be reduced by training the Judicial personnel in penology and sentencing procedures by keeping them informed of the latest trends in Penological thought and practice.

The Supreme Court emphasized the importance of training of judicial personnel in Santa Singh Vs State of Punjab. Sentencing Council or boards can be set up with experts trained in disciplines like social work, psychiatry and allied disciplines and the job of sentencing may be entrusted to them.

14. Setting up Diagnostic Clinics:

In our country specially in West Bengal, after pronouncing the final judgment, the cases of domestic violence should be handed over to a board of scientists known

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2. 1976 (4) SCC 190.
as “diagnostic clinic”, which would be staffed by a group of persons skilled in the fields of human behaviour like psychiatrists, social workers and psychologists. These clinics through tests and investigations would distinguish those who suffer from emotional disorders from those who are retarded mentally or who, under any circumstance have accidentally committed the crime. Not only, that pre-sentencing investigation may be insisted upon, which would help in reducing disparities in sentencing.

15. **Setting up and Strengthening Monitoring Bodies in every District**:

Like Maharashtra and Gujarat the body called as “Mahila Suraksha Samithi” consisting of police officers, legal aid workers, representatives of women organizations and counselling experts should be setup in all districts of the state of W.B for minimizing crimes in the society.

16. **Support to Voluntary Organizations**:

It is an established fact that in different parts of India, voluntary organizations are always campaigning against Domestic Violence. Therefore, greater support should be provided to the voluntary sectors by the Central and the State Governments.

17. **Pre-marital Counselling**:

In India Specially in W.B, National Commission for Women, different NGOs, West Bengal Commission for Women have setup family counselling centres through State Social Welfare Advisory Boards.
In all these centers, counsellors are trained in social work, sociology, psychology and they are handling different cases of domestic violence and family disputes. Today dowry is the main reason for domestic violence therefore, in different counselling centers, counsellors should be directed to offer pre-marital counselling among youths and elders on the evils of the dowry, because pre-marital counselling is a preventive measure, family counselling is a remedial measure.

18. **Women’s cells in Police Department / All Women Police Stations in Urban Areas:**

In several metropolitan areas and cities in India specially in West Bengal women grievance cells are setup as a special mechanism to cope with domestic violence against women.

In some areas these cells originated as anti dowry cells and their activities remain confined mainly to restore “Stridhan” and to provide counselling in different kind of domestic violence cases.

Therefore, there is an urgent need to setup such women grievance cells and all Women Police Stations in different districts of West Bengal and other states of India with adequate powers, funds and staff support to combat domestic violence offences.

19. **Confiscation of Husband’s property in cases of dowry death:**

While the harassment and cruelty against young brides within the matrimonial homes are extremely dangerous offence, therefore the effective remedy for these
types of crime is to make a legal provision to confiscate the property of the culprits in every case of domestic violence specially in dowry death and bride burning cases.

20. **Role of the people:**

In India due to patriarchal attitude of the society girl children are still unwanted in the family. So to reduce the rate of female-foeticide and female-infanticide, people should treat men and women equally important for a healthier society as it is envisaged under our Indian Constitution.