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CONCLUSION

After making a detailed study of the nature and scope of the laws in India on the topic of domestic violence a summary of the research work, the findings, of the researcher and his suggestion to improve the status of law are presented in this chapter as follows:

I. SUMMARY OF THE RESEARCH WORK

The first question about the subject matter is what constitutes ‘domestic violence’ and the second question is how the law has grown and developed at the national and international levels in the form of general and special law. With regard to the first question the answer needs to be found in a wide range of behaviour in which there is harm caused to the rights and interests of women. In this sense, the evidence of law could be found first in the general law of crimes, and then in the special and local laws. The events at the international level resulted in reconceptualizing the theme with the result that what was a kind of private torture’ i.e., an injury by one person against the other could as well as be treated as entailing State responsibility and thus becoming a subject matter of international law. Thus the concept of Domestic Violence assumed international dimensions, the perspectives of which could be discerned from the treaties, conventions and declarations which had grown on this subject at the international level.

While in India, the law in the topic of domestic violence from the beginning has been in the form of Criminal law, in the Western Countries, particularly the United Kingdom, the law was in the form of Civil law, the most obvious form of which was the Common Law of Torts. This particular branch of law provided remedies to the aggrieved persons in the form of Writs and through these writs the principles developed as regards the remedies which could be availed against injurious conduct of persons in various relationships, particularly the domestic relationship.
The two important aspects of the system of remedial justice at that time were that the remedies for violence against women has to be resorted to under the principles of Civil Law, and then the question which bothered the Courts a lot at that time was whether the law was applicable to Violence in the domestic sphere.

At times the Common law courts took the view that violence by a husband against the wife is not actionable wrong and there was nothing that the Court could do. However the attitude of the Courts changed and it was observed that violence wherever and whenever it occurs is violence, therefore domestic violence was regarded as actionable wrong.

When the two branches of law separated and Criminal Law arose as a full fledged discipline, the concepts of domestic violence became a well recognized offence in the realm of criminal justice.

Yet another development was the legislation on this particular subject allowing thus the special laws to come up on the subject. Now in English law, there is the special law like the family law Act, 1996, The Damages Act , 1971, the Protection against Harassment Act, 1997 the human Rights Act, 1998 etc., which seek to provide a somewhat wider scope to the subject of individual rights and the remedies against the violation of such rights.

Despite the fact that there is a full fledged branch of Criminal law to deal with matters of domestic violence, a development of far reaching significance in recent years in the advent of Civil Law covering the matters of protecting the rights and interests of the women against the assailants against violent behaviour. The underlying object of all these legislative measures has been to protect the status of women in society, more particularly the status of the married woman. New remedies like the occupation orders, residence orders, custody orders, compensatory orders, etc have come up and every step is being taken to provide as effective and as efficient a remedy as possible. The establishment of new institutions like the protection officers, Service Providers, and Counselors etc. are a new-corner to the system of remedial justice. The new remedies and the new institutions are not a substitute for the conventional institutions which were functioning under the
aegis of Criminal law; on the other hand they are supplementary to the institutions of Criminal Justice which seek to provide additional remedies in the sphere of civil law having found the remedies under Criminal Law to be inadequate in various situations.

The procedure of Civil Law remedies running side by side with the Criminal Law is a unique feature of the present day English legal System which has been adopted by several legal systems of the world including India.

In India, the concepts of domestic violence has always been understand in terms of a wide range of behaviour of men towards the rights and interest of women. The provisions of the Indian Penal Code 1860 addressed the problem of violence against women in whatever form the problem existed at the advent of the Code. As new types violence erupted the Code was amended incorporating thereby new types of offences. The code contained at the same time the law on offences relating to married women.

Then came the time when a special legislation was enacted to deal with violence against women in the sphere of domestic atmosphere. This was a very controversial legislation in the sense that the proposed legislation sought to deal with every conceivable abuse of the rights of Women. The Bill Contained Several provisions about women’s rights which were adversely criticized by the persons opposed to such a measure. The comments on the Bill were as follows.

1. The definition of domestic violence in the Bill is “habitual” abuse which makes the life of the aggrieved person “miserable” and has a residuary clause “otherwise injures or harms” the aggrieved person. The definition does not list specific acts of violence and leaves the interpretation of the cause of action to the discretion of the Judge and so it becomes subject to the judicial officer’s perception of violence. The definition is not in keeping with the accepted international definition of violence as seen in the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) and excludes sexual, economic and child abuse. Further, the Bill gives the abuser the benefit of the please of self defence.
2. The Bill ignores the concept of shared household. No existing law gives the woman an absolute right of residence in the home and if this Bill leaves this aspect untouched it fails to address the root cause of the vulnerability of women. Another omission is the failure to provide for restraining or repossession orders. Violation of an order or protection entails a term of imprisonment for one year or a fine of Rs.20,000/- in such a situation the woman would have to go back to the court to enforce this order, whereas a composite order with a suspended warrant would make it more effective for implementation.

3. While important aspects to prevent violence have been overlooked the bill provides for mandatory counseling for the victim and for an “amicable settlement”. No one could object to this but given the track records of the existing mandate of the Family Counseling Centers, Family Courts and Lok Adalats, where reconciliation is treated as synonymous with “preservation of the family unit at all costs” and “adjustments” on the part of the woman even if it means that she has to live with violence, this will work against the woman. Mandatory counseling is necessary for abuser.

4. The Bill makes provision for Protection officers and for help from NGOs, referred to as Service Provides. The Bill gives impunity to Protection Officers for acts done in good faith. This impunity should be extended to the Service Provides also.

5. The Domestic Violence Act is meant to be a short term measure for women in violent and abusive situations. It does not contemplate transfer of rights in property. Long term rights will have to be worked out under the existing laws, This Act is to be in addition to and not in derogation of other family laws.

6. If the protection from Domestic Violence Bill is to make any difference in the lives of women it must take effective steps to prevent violence within the home because domestic violence is a violation of a woman’s human rights. When rights are violated in
the public sphere the state takes active remedial steps but when the violations are within the private sphere the State turns a blind eye.

7. The definition of violence and shared household must be clearly spelled out. The relief granted must prevent further violence.

8. The Courts must be easily accessible with Simple procedures.

Ultimately, the Union parliament passed the Bill and the law on Protection of women from domestic violence became a reality. The Bill was ultimately enacted as the protection of the Women from Domestic Violence Act, 2009. The Act introduced new remedies, new institutions and new procedures for the purpose of protecting the status of women and saving them against violent behaviour of men.

As a result of this particular legislation and a few such measures adopted earlier, a new regime has been established in our country, accommodating within the framework of the legal system the rules of civil and criminal law. The new regime provides for new type of remedies side by side with the penal provisions.

II. FINDINGS OF THE RESEARCHER:

The main theme of this research work has been the progress of law by which violence against women is punished and the status of women in Indian Society is protected. The term “status” generally signifies the personal and proprietary rights of a person as also his or her duties, responsibilities an liabilities in any legal relationship. In the case of women, the term ‘status’ means the persona and proprietary rights, their duties and responsibilities vis-a-vis the society. In the context of the ‘violence against women’ the term violence signifies the injurious behaviour of men against women which affects their rights to life, liberty, safety and property, and in the context of the ‘Domestic Violence’ the term ‘status’ refers to the personal and proprietary rights of women in their family relationship. Thus violence against women refers to behaviour of a wider range in which the conduct of men against women is viewed seriously and punishment is prescribed by the law. Law on the status of persons whether men or women generally is the result of evolution; it is
the result of events spread over a long period of time. Thus understood the relationship between civilization can be judged from the positions it gives to women.

When we look to the history of the status of women in India we find that the Indian Civilization has produced great women from ideal wives to warrior queens. Hindu mythology of the good old days beats witness to the fact that the status of Hindu woman during the Vedic Period was honourable and respectable.

In vedic Period men and women were equal in many aspects. Women participated in the public sacrifices alongside men. The general belief in the ancient age was that woman must be honoured and adorned by their fathers, brothers, husbands, and other relatives who in return can expect good and great fortune for themselves. It was believed that where women are honoured, there gods rejoice; where, however they are not honored; all their sacred rites prove fruitless. Where in a family the female relations live in grief, that family soon perished completely; where however they do not suffer from any grievance that family always prospers.

Thus, for several centuries women in India were treated like goddesses or Devi’s. Even though there was sati, with widows voluntary taking to and immolating themselves on their late husband’s funeral pyre, it was a purely religious customs that had nothing to do with the cruel hegemony of the husbands over their wives; Sati was practiced by certain classes of women, who deemed it a great honour to die on the funeral pyre of their husband.

Even in the early part of the Medieval period there was equality between men and women. For Example, the Jain nuns enjoyed the same amount of freedom as their male counterpart. There were female trustees, priestesses, philanthropists, musicians and scholars.

Sometime later however , women were almost like domesticated pets caged in the house. Marriage was compulsory for all the girls except for those who opted for ascetism. What could be concluded from the conditions existing then is that there was no such thing violence practiced at the family level between members of the family; never was any kind of force used against women;
there was composure throughout and there was respect shown to women in all matters. The satan of violence appeared in later days and affected almost every walk of life, private and public.

That status of women became a matter of serious concern to the law makers. In view of the problem which has been arising from time to time affecting the high status of women the Legislature started enacting laws to deal with all such offensive activities which were found to be detrimental to the peace and progress of women in society. The problems affecting the women have been such that there are laws enacted to deal with the penal wrongs. The supreme purpose of all legislation is to protect the status of women and improve their status. The law on status of women in India is the result mostly of the constitutional developments after independence of the Country.

On attaining independence from the foreign yoke the people of India adopted a Constitution which was designed to establish an independent, Sovereign, Socialist and Secular Republic in the Country.

The aim of the constitution has been to secure justice; Social, economic and political. There are Fundamental rights guaranteed by the Constitution to the citizens and other individuals. Legislations has been enacted to bring the status of women in conformity with the vision and mission of the Constitution.

While at home the force of the Constitutional principles prompted the legislature to appraise the law on violence against women, there were several movements abroad operating at the International Level, for raising the status of women. The movements in the form of Human Rights, The Gender Justice, Women’s Empowerment, the right against discrimination all resulted in giving a new twist to the concept of violence against women and made it a responsibility to the State to protect women from all such unhealthy trends. The world witnessed the new trend of treating ‘private torture’ as the responsibility of the State. It was in this background that the concept of violence against women came in for a new treatment. One particular message of the new movements was to enact legislation modifying the rules and regulations that were there in the
conventional laws; the urge was also felt of making civil law a supplementary tool to run side by side with the rules of Criminal laws.

Earlier also in the sphere of special law of crimes legislation has been enacted to cover offences against women, for example, the Dowry Prohibition Act, 1961, The commission of Sati Prevention Act, 1987, The Pre Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act 1994, etc., and the Protection of Women from Domestic Violence Act, 2005. A Characteristic feature of these Legislative measures is that it is both a substantive as well as a procedural law. The offences covered by the special laws in respect of women included the Immoral Traffic Prevention Act, 1956, the Dowry Prohibition Act, 1961, The Medical Termination of Pregnancy Act, 1971, the Indecent Representation of Women (Prohibition) Act, 1986, the Sati Prevention Act, 1987 the Pre-conception and Pre-natal Diagnostic Technique Act, 1994, etc.

The most important of all the legislative enactments in this kind of legislation is the legislation called the Protection of Women from Domestic Violence Act, 2005.


Domestic Violence was Recognized by the legislature as a specific criminal offence when a new section, namely, Section 498-A was introduced into the Indian Penal Code. This Section deals with cruelty by a husband or his family towards a married woman. Subsequently, the Court recognized four types of cruelty, i.e.,

- Conduct that is likely to drive a woman to suicide.
- Conduct which is likely to cause grave injury to the life, limb or health of the woman,
- Harassment with the purpose of forcing the woman or her relatives to give some property, or
• Harassment because the woman or her relatives is unable to yield to demands for money or does not give some property.

The punishment is imprisonment for up to three years and a fine. The complaint against cruelty need not be lodged by the person herself. Any relative may also make the complaint on her behalf.

The parliament went a step further and enacted a new law called the Protection of Women from Domestic Violence Act, 2005. By this legislation, Domestic Violence is a pattern of behavior in any relationship that is used to gain or maintain power and control over a female partner. Abuse can be physical, Sexual, emotional, economic or psychological actions or threats of actions that frighten, intimidate, terrorize, manipulate, hurt, humiliate, blame, injure or wound the female partner.

In addition to stepping up measures for better policing the authorities felt it necessary to have a civil law which could address domestic violence. The new enactment called the Protection of Women from Domestic Violence Act, 2005 contains remedies such as ex part injunctions without the need for filling for divorce or maintenance, protection orders, non-molestation orders and non-contact orders, which would help the woman while criminal action is being taken against the abuser to prevent him from making contact with her and inflicting more violence.

This research was commenced with the hypothesis that while provisions have been enacted by the State for the protection of women ever since the criminal law in the form of Indian Penal Code was enacted for the people and the efforts have been continued in the form of a series of laws; The legal regime in India is not adequate and effective in either eradicating or controlling the menace of domestic violence. There is an imminent necessity of an exclusive and special law to deal with domestic violence in India. There is a need for a approach to domestic violence, which will include the enactment of civil law on domestic violence. There is at present however a special law to deal with offences of domestic violence, the study confirms the hypothesis that these legislative measures are evidence of the seriousness on the part of the State to improve the status of women and protect their rights and interests. But the legislative measures have not however served the desired purpose with the result that violence against women continues unabated; what has been
noticed is that there has been no proper enforcement of laws and women continue to be victims of the atrocities of men. There is need therefore to make a thorough change in the mechanism envisaged under the Act.

III. SUGGESTIONS AND RECOMMENDATIONS

Domestic Violence can be happen to anyone of any race, age, sexual orientation, religion or gender... It can be happen among couples who are married, living together or who are dating. Domestic Violence affects people of all socio-economic backgrounds and education levels. Domestic Violence needs a coordinated and systemic response from the criminal justice system. While the legislation in the form of new provisions in the Indian Penal Code like Sec 498A and the new legislation called the Protection of Women from Domestic Violence Act, 2005 have the most significant criminal law reforms protecting women’s rights. But these reforms are not enough. Ultimately we need to remember that criminal law is indeed a domestic violence against women is an offence, the police may still not comply with the law and not implement it effectively. Therefore, in order to move towards an effective working of the women’s protection laws and other criminal law remedies, it is crucial that we put in place a new model of policing Most importantly, we need to work on standard and regular policing, which will ensure that domestic violence is taken seriously.

Simply passing an Act and jotting it down on legal paper does not ensure that its main purpose will be served. In order to tackle this problem, the Ministry of Women and Child Development and all other departments have to work in close cooperation with each other so that the menace of domestic violence is dealt with effectively.

Another very important feature of the new Act is women’s right to secure housing, The Protection of Women from Domestic Violence Act, 2005 provides a right to reside in the matrimonial and shared household, whether or not she has any legal title in the household. This is a very good development to secure peace to married women.
It is necessary to adopt the policy of getting the woman’s husband to execute a “bond to keep peace”, or a “bond of good behavior” through the Executive Magistrate who order the husband to put a stop to domestic violence. The husband can also be asked to deposit securities (i.e. money or property) that will be forfeited if he continues to act violently. When the victim is approached to the police on any violation of protection orders, police must take immediate action. The coordination between police and protection officers must be maintained in implementing of the orders.

The response of police officers towards cases of domestic violence were evaluated based on whether they would arrest the abuser spouse, order that would arrest the abuser spouse, order that suppose out of the house, or attempt reconciliation. The experiment revealed that the arrest made by the police, were clearly, favoured arrest law enforcer, because they acted as deterrents. Numbers of police officers are being told to stay away from problem of Domestic Violence.

This is how we need to look towards a co-ordinated legal approach to protect women facing domestic violence. Only such a coordinated and holistic approach would help persons facing domestic violence to get true relief from the legal system.

Awareness programs / Training programs on domestic violence shall be conducted for all Magistrates, lawyers and police personnel.

Implementation of the Act must be strictly followed.

The courts are taking very casual view if the cases on Domestic Violence.

Even serving of notices to the respondent is taking a lot of time. There are cases where the notices remained undelivered for six months. There are many cases pending. There are also many cases pending even after issuing protection orders i.e more then one two years.

There should be special courts and separate protection officers to expedite the procedure.

There are few number of complaints ate missing the Act. In such cases they should be strictly penalized. More awareness program and counseling’s reduces the misuse of law.
More powers must be given to protection officers like arrest of the person etc.,. In case of violation of protection orders i.e. entering in to the premises, or harassing he has to be penalized. On violation of the protection orders when the victim is approaching the police for protection, many of the police are not co-operating. There should be co-operation and co-ordination between the police and protection officers in implementing the PWDV Act, 2005. More protection must be given to the woman after issuing protection orders. In case of violation of protection order.

The Union Government had introduced Gram Nyayalayas and not a single Gram Nyayalayas has been started since, It can work like subordinate courts in the country concentrating on cases in villages. Through Gram Nyayalayas justice can be reached to the doorsteps of the poor and deprived. The concept of Gram Nyayalayas is to dispose the pending cases and will help reducing the number of pending cases in various courts in the country.

Domestic violence needs attention of the society first. It is the right of women to live her life with dignity and her right not to suffer an abusive relationship simply because it is forced on her and she accepts it due to economic insecurity. Social attitude towards domestic violence has to change first laws are nothing but codified social behavior patterns. A large number of laws exist which can be used as deterrent for domestic violence. It is enforcement of these laws and the need for social education which is required. There is a need to increase awareness on the impact of domestic violence.

Domestic violence is common in all categories of people irrespective of education, rich, poor, urban, rural, caste, un-employee or employee.

The family is an institute has always been major case of incidents of Domestic violence linked to there are cultural and religious ideologies that have sanctioned the beating and chasing of wives. Apart from that domestic violence is not simply a legal problem, which can be eradicated by appropriate legal measures alone. It is very social and psychological problem and can be tackled
adequately by bringing about fundamental changes in the social system in the attitude of people towards women and children. Legal remedies are good and helpful in so far as they act as deterrents and attempt to court the tendencies to violence, but they do not strike out its cause, they are no doubt bold attempt to get rid of domestic violence from system, yet by themselves they can do little to tackle the issues involved.

The society is being threatened by many extraneous factors. Foremost is the media, which is the very powerful medium that influences our thinking, feelings, values and the way of living. The media instead of highlighting the rights and obligations if men and women presents the concepts and values of style of life in a very distorted manner, thereby maligning the thinking of views and corrupting their minds. It is the great impact on the susceptible minds of young people and they unwittingly accept what is shown on the media.

The unity of family is already under threat in our country. The new Act called the protection of women from Domestic Violence has given enough number of weapons in the hands of women for their protection. Before bringing any law, we need to educate people about its usage. George Washington was presented an axe by his father on his birthday in his childhood. Since he did not have the knowledge of using it, he destroyed the whole garden. The misuse of this Act will take women away from their family and the society. There are forces in the country who are jealous of our strong family system. Now they have started entrapping women. In the situation that has arisen we are compelled to say whether the Act would be used to protect the family.

Disparate treatment of women has manifested itself in almost every society in the world. Almost all communities from almost all regions have transgressed and continue to transgress the rights of women qua women. One can only conclude that no matter how progressive a society, country, or region may deem itself to be, women, at the very least, continue to receive lesser benefits, status, and respect in the public sphere. The harm committed against women is not peculiar to a particular Place. It is an active practice throughout the world. Against this backdrop of universal social imparity, the inadequacy of current domestic legal structures in addressing private
torture comes a little more clearly into focus. Indeed, in many jurisdictions private torture or domestic violence is not, in and of itself, a crime. In many jurisdictions domestic violence may be prohibited in terms of legislation; however a criminal offence only arises where a victim has obtained a protection order, which is breached by the aggressor. In such instances, the aggressor will be guilty for contempt of court but not for the batter of his intimate partner.

About the regulations formulated by the International organizations it may be stated that prohibition against torture in international law arguably is rooted in the power imbalance between the state and individuals. The vertical structure of the powerful state arching over and controlling an impotent citizen triggers the need for greater regulation of state conduct. This is one of the explanations for the requirement that the burden of proof for criminal cases is the more stringent one of ‘beyond a reasonable doubt’. The message of International law with regards to torture and domestic violence as aspects of human rights violation it may be stated that a foundational principle of human rights law is that violent and extreme harm should never be justified. If the harm caused by private torture is such that it constitutes an invasion into the humanness inherent in the definition of torture in international law, it may be possible to argue that dire instances of ‘domestic violence’ meet the requirements of the revered status of international human rights violations. Moreover, the right to be free from such violence is not simply part of the broad plethora of rights which has developed within the international human rights world. Given its extreme violation and its prolific execution, private torture is akin to the newly developing realm of rights which stands alone in human rights discourse by virtue of the fact that its violation is too terrible to comprehend and its violators too inhumane to escape punishment.

Finally, it may be stated that there is need to have a consolidated legislation instead of staggered enactments on the Rights and Remedies of the Women. In these enactments the legislation should be consolidated so that its enforcement becomes easy and there is no difficulty in achieving the purpose of the legislation.