CHAPTER - I
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PROTECTION OF WOMEN’S HUMAN RIGHTS WITH SPECIAL REFERENCE TO DOMESTIC VIOLENCE

1.1 INTRODUCTION:

“You can tell the condition of a Nation by looking at the status of her women”

– Jawaharlal Nehru.

In the beginning of this millennium it has become the focal agenda of global debate that what role women are playing and can play in development. It is obvious that in last few decades women have considerably achieved much as far as their socio-economic and political empowerment is concerned. Despite that, it is a known secret that a large section of women in the developing countries like India are far away from the fruits of developmental process although they are striving very hard for the sustainability of the developmental machinery. Even in the developed World, women have been well empowered as far as social and economic rights are concerned, but they are not equally empowered in political sector. But as to domestic scenario even the developed countries women who are financially independent also face many problems in their day today life. The situation is worse in countries like India where women are worshipped and at the same time ill treated and subordinated to the core.

Human development over the years has gone through various changes in various phases and has emphasized the need to empower all people, especially women, by promoting, developing and coordinating programmes within the framework of a Human Development Agenda.
This will enable them to become self-sufficient, based on principles of Social Justice, Equality and Participation in Decision making in domestic as well as in public life thereby, contributing to the process of National Development.

As always in the thought process of Human mind one can approach the issue of gender in development from at least three perspectives – Equality, Empowerment and Development Effectiveness. The first view stresses equality as the basis for social contract: Everybody, male or female, should be treated equal in Economy, in Politics under the Law and in Society. This is a powerful argument drawn from the field of Political Philosophy. The second argument is derived from the notion expanding the choices and control that people have over their lives. From this perspective, stressing gender is emphasizing that Empowering women as well as men, is central to Development. The third approach argues that gender concerns have an impact on Development Effectiveness and may serve to persuade those who are sceptical about the role of gender in development Policy-making. The active participation of Women whether in Education, Income Generation, and Social Protection of Governance attributes has consistently contributed to more effective development in recent days.¹

“Man is a Social Animal” as said by Greek Philosopher Aristotle his behaviour has reflected that of an animal from the primitive ages. Man is a self–seeker and that he wants to be above all. It does not mean that he is not endowed with good virtues. Even after emergence of civilisation man has continued this nature as pseudo. As an outcome of such behavioural pattern the State is left out with no option except to implement a series of Legislations to curb the behaviour which is in conflict with lives of his fellow beings. Man considers women as his own property. She is being regarded as part of man as depicted in sculptures “Arthanariswara”. This means the society does not want or leave the women to exist on her own to live in this Earth. All sorts of in human treatment is

being meted out to her by all the dharma Shasta right from Manu Code. On one hand they regard the women as goddess, but on the other hand only humiliation and ill – treatment has been rewarded to women for all the Physical, Domestic work she contributes to her Family. The Sacrifice done by a woman goes unnoticed, unacknowledged and even the minimal gratitude to understand the act of woman is also totally ignored.  

In Modern days women do enjoy certain status if they are educated and economically independent. But, enjoying full freedom and their participation in the decision making of their life as fully as they wanted it to be has to go a long way. Too many restrictions, customs and practices which always make a woman Handicapped and unable them to act against such practices even if they desire to do it. Even if we say women have rights and in recent periods it is very mediocre and minimal and there is even lot more they need to live a life of their own as they wish. Today the status of Indian Women is precarious. Life after Marriage is the real challenge that every woman should face and that she is in a compulsion to earn good name from her husband, in – laws and her relatives of both their families. This is her first task, to earn good name from her family members she is forced to transform her identity as according to the needs of the new family and the struggle begins here that all her desires comes to a standstill position and that her husband’s wishes is forced and thrashed upon her which automatically becomes her priority. This tradition is trained by her parents and she is under pressure to believe that this is only her ultimate goal and every woman disappears when she starts believing this without her knowledge. The pressure exerted on her due to this new relationship is enomorous and that she has to have extra ordinary talent and tactics to tackle the entire situation that arising out of this new relationship which exerts and drains her energy in total. Most of the women have to undergo this real struggle from the hands of her husband, in –laws and their relatives.

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Women are subjected to real threat to their life through the violence which is meted out by them in their husband’s home. This violence is termed as “Domestic Violence” which they face throughout their life. Scholars are of the opinion that the Domestic Violence is a Social Crime. Relationships between Human beings have created a Civilised Societies. So, for existence in society, the individual needs a group characterized by common residence, economic co-operation and reproduction. This was made easy by family set up. The making up of families is an age old tradition. Families are set up most often through Marriages. Relationship between opposite sex is legally and socially accepted only through marriage. But, this is not the only way practiced in recent days. ³

1.2 HUMAN RIGHTS DEFINITION:

Section 2(d) of the Human Rights Act 1994⁴ defines Human Rights as “Human Rights means the rights relating to life, liberty, equality, and dignity of the individuals guaranteed by the Constitution or embodied in the International Covenants and enforceable by Courts in India”. All created beings are endowed with various levels of faculties which are necessary from their existence. These qualities may be either inherited or developed due to the influence of circumstances which are permanently present in nature all the beings or things either animate or inanimate already possess certain attributes and in due course acquire other attributes from outside influence all these are necessary for the survival. There must be a balance between the existing faculties and forces of nature and if there is an imbalance then the existence is rendered difficult. It has been said by scholars both spiritual and temporal and that there are five distinct qualities in all beings representing the faculty of Sight, or Sense, or Smell or Taste or Touch. All beings do not possess all faculties; some possess one or more than one or all the five. Of all the beings which are living, Human being is the Superior one. Since, he possess the sense of reasoning or discernment and this facilitated by his capacity to understand the real meaning of anything which is felt by him either through all the five senses or some of them or any one of them.

In modern day man wants to transform himself from Social Animal to Rational Being. This Rationality logically endorses him with certain Rights, which are called Human Rights. The Rights are necessary instruments by which and through which he can protect the faculties of his five senses including his ‘Right to Existence’ and beyond. A man is born to live and therefore he shall not perish undeservedly. The power of active, social forces may impair his Rights and there by deprive him of his opportunity to use them. Apart from the five senses a man may be subjected to impairment of his rights. As a rational being he has a right to be permitted to move about freely exercise his conscience follow his spiritual pursuits. There are so many other similar rights which can be catalogued as ‘Fundamental Human Rights’. Therefore, the Human Being must be protected from all and every kind of invasion of his rights and simultaneously conducive forces must be developed and encouraged so that he can feel and enjoy the fullness of his life by meaningful existence. In short, any right if it is essential for the existence of his life and exercises his other rights is a Human Right. “A Human Right means the Power to prevent invasion or impediment of Natural Rights and also encouragement and development of these Rights with the ultimate aim of a man’s continual and free existence in this World”. 5 All living beings are endowed with inherent qualities which have to be protected and such protection can be equated with the right necessary there for and those rights are intended to their continued survival. Human being is one of the species of the universal genus and man is a tiny part of the enormous component.

The rights available to human beings as human rights may be disturbed or violated by his own internal conduct and attitude or by external impact and the same affects is balanced existence therefore it is necessary that man shall be assured of the preservation and protection of his rights. It is not intended to deal with the entire gamut of human rights but the rights available to him as a family man or women is treated in this thesis.

The family is a civilized unit of society, where by a man and woman dissolve to live together and for the purpose of procreation of children and satisfying their sexual desire. This is the prime reason for the union which is accomplished by certain socially recognised ceremonies and customs, norms, rules and reputation often times recognised by appropriate legislation. Further it is proposed to narrow down the rights of women either in a family life or in a social life and studies the nature and characterized of her rights. All the above propositions are being dealt with in first three chapters.

In the chapter dealing with the special concepts of human rights it is proposed to highlight the unique nature of women’s rights since, she in involved herself not only as a member of society or community at large and also important member of a family unit. The rights of women are assumed significant role in the modern thought and world as a whole has started contemplating on the means and ways of recognition, preservation and protection of the rights and also provide adequate safeguards against violation of the same. Her role as wife and mother and protector of the domestic needs of all the members of the family is enormous and complicated. Such a situation demands greater care and consideration so that one can discharge her obligation to her family and society without becoming victim of violation of her personal rights.

In a family life a women plays a multi faced role and the duties she is called upon to recharge are enormous compared to the protection that is available to her. She is confined to family life therefore she is under the control of self-imposed or external restraint and limitation. We cannot say a woman when brought into the fold of family life is obviously deprived of lot of her freedom and herself assertion diminishes and she is controlled by other members of family husband playing a domineering role.6

Next, because of societal, religious and biological forces a woman submits to her own self imposed restriction. Her conduct, her behaviour, her appearance and other personal qualities are controlled by her own inhibition which she justifies. In order to earn a good name she is being humble, polite and modest person. Many women feel themselves satisfied if they follow polite attitude in the dealing with others otherwise they have the notion, that their conduct will be interpreted as being unwomanly or opposed to their feminine character. Such self imposed restriction proves in the long run to be the subjugation by man’s will and power. She feels that since her husband or male protector is not only advantage of physical probers but also financial capability to which she has to submit due to lack of forces to equal to them to submit is to survive seems to be self-imposed motto of any women.

A woman when permanently entangled in family life she is subjected to psychological pressures exerted on her while performing her duties in that small circle. She is compelled to interact with the other members of the family and during such interactions she encountered views and options of others. Some dominating and others demanding, she may not be mentally agreeable to such views and imposed ideas and yet she is forced to accommodate and act accordingly. If she differs she undergoes psychological stress meaning thereby she is doing what she does not mentally endorse. Sometimes she may be entertaining her own ... views acquired by her from outside circumstances and when she intense to apply them in her family and when the same all not received with approval her inability to execute her opinion and wishes renders her vulnerable to psychological.7

Stress of despotic since she feels that she is neglected and her views cherished notions and her stand dishonored. Therefore she has to impose on others and submit to notions imposed upon her. This conflicting situation renders her victim of psychological pressures. A woman in a family life

has to play a dual the role of a wife and mother. She has to please her husband and submit to all his inclinations and demands which includes sexual exercise. It happens many times that the husband is who are unmindful of his sentiments of his wife expect passive compliance with his dictates of his desires. It is frequent that she derives pleasure from the company of her husband and when she is declined to accommodate her husband’s sexual demands and ventures she feels helpless and unsupported on other occasions she is in dire need of quenching her sexual appetite her husband may not be willing to satisfy her and such a situation she has to suppress her instincts and suffer its impact. As a mother a woman has to take care of not only the health of her children and also their behaviour. The father is satisfied with providing means for feeding the children but it is the mother who has to carefully plan to feed her children and also take steps to correct their conduct and behaviour. A mother is over all protectors of her children then him who care only for providing the necessities for the children’s existence; mother is more responsible and accountable for the upbringing of the children, where as the father is concern with the outcome of such upbringing. The father is concerned with the product of children’s growth where as mother is concern with process of upbringing. Thus the contribution of mother is enormous and without far more complicated that of father role.\(^8\)

A woman does not confine herself in domestic life always since she has to interact with people who are outside domestic life, her relatives may have certain dealing with her such as, family functions and relationships which may create problems amounting to disputes over marital or property dealings, she has to strike a balance between her family interact and those of her relatives. She may act adversely against the interaction of her relatives and versa verse. Protection of her family interest may end up in a conflict with relative’s dealings with her. The relative’s attitude towards her may affect her as well as her functioning in her own family and such influence may cause imbalance in her duties and discharge of the same and other times she may have to come

across with outsiders other than her relative’s such as neighbour and community members. She may not be in a position to disrepair the views of community members; she has to discharge her duties to the community to which she belongs or to the religious groups of which she is a member. Sometimes she may be forced to encounter community problems as per the wishes of her husband or family elders or grown up children’s. In all these dealings she may not be sufficiently equipped with adequate knowledge and tactfulness. She has to interact with them mostly against her will and this brings about her uncertain grown in her family and bring about further complication more to herself then to her family. The wife therefore must possess sufficient moral and psychological strength to come up with the external influences imposed upon her. It is the duty of the society and the law makers to find out and implement necessary measures to protect a woman from this inevitable situation.

A woman enters a family life mostly as an inexperienced young woman. Because of her age an introduction into her family life is more overwhelmed with passion and great expectation. She expects that she would be treated with dignity, care and affection by her husband and all her needs would be taken care of him as well as other members of the family. At the beginning of her life husband restores more care on her mainly because she is fresh with her age and beauty. Naturally he devotes more attention towards her to the disappointment of elders, her in-laws may not always be considerate towards her they feel that their male member of the family, namely a woman’s husband is devoting more attention towards his wife and moving away from their control. The husband is placed in a dilemma between the rival conflicts between the elders and newly wedded wife. In which case he prefers to please them at the cost of his wife’s sentiments, later on advises his wife to accommodate the conduct of the elder’s. However adverse, it may be if he has real affection towards his wife he shows it without the knowledge of the elders and if he is over powered with the pressures of his elders he openly commands his wife to obey them. This situation becomes worst after the birth of the child and she has to face a triangular opposition from the
problems forced by the elders, her husband and the new born child. Now she is more committed to the family she is entangled with the upbringing of her child which compels her to submit to the commands and dictates of her husband and elders.  

Women possessed certain Rights and these were very limited and were considered as an individual right for which she needs to fight out by invoking the civil remedies and she has to fight it out as an individual. But, when women’s right is no more an individual right and now it is considered as a Human Right where she has more legislative protection and that she can invoke Constitutional remedies under Article 32 and 226 and now the State has a duty to protect women and Children under Article 15(3) and Article 23, 24, 38, 41, 42, 43 and 45. The decisive words are: “and enforceable by Courts in India”. These words limit Human Rights strictly to the Fundamental Rights embodied in Part III of the Constitution which are enforceable by the Courts in India. When a pertinent question arises as to why the Commission was established for the protection of Fundamental rights when they being Constitutional Rights are enforceable before the Courts? It appears that the main purpose of the enactment was to provide better protection of Human Rights. At the time of the Bill there was a growing concern in the Country and Abroad about issues relating to Human Rights having regard to this, the Government was reviewing the existing laws, procedures and system of administration of justice with a view to bringing about greater accountability and transparency in them and devising efficient and effective methods of dealing with problems relating to women and Children.  

The 1993 World Conference on Human Rights affirmed the crucial connection between international peace and security and the rule of law and human rights, placing them all within the larger context of democratization and development.

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9 V.V. Devasia and Leelamma Devasia, **Woman Social Justice and Human Rights** — APH Publication Corporation – p. 162.

10 The Commission has recommended to the Government for the amendment in the preamble by adding ‘including the implementation of International Covenants’ (See Annual Report of the National Human Rights Commission, 1999 – 2000 p. 183).
The United Nations is increasingly combining efforts to prevent or end conflicts with measures aimed at reducing human rights abuses in situations of internal violence. Special emphasis is placed on ensuring the protection of minorities, strengthening democratic institutions, realizing the right to development and securing universal respect for human rights.\footnote{United Nations, "Human Rights Today: A United Nations Priority." The United Nation and the advancement of women 1945-1995}

1.3 BEIJING DECLARATION

The Beijing Declaration in September 1995 the Fourth Women Conference on Women determined to Advance the goals of Equality, Development and Peace for all Women everywhere in the interest of all humanity. Acknowledging the voices of all women everywhere and taking note of the diversity of women and their roles and circumstances, honouring the women who paved the way and inspired by the hope present in the world's youth. Recognize that the status of women has advanced in some important respects in the past decade but that progress has been uneven, inequalities between women and men have persisted and major obstacles remain, with serious consequences for the well-being of all people.

1. Also recognize that this situation is exacerbated by the increasing poverty that is affecting the lives of the majority of the world's people, in particular women and children, with origins in both the national and international domains.

2. Dedicate ourselves unreservedly to addressing these constraints and obstacles and thus enhancing further the advancement and empowerment of women all over the world, and agree that this requires urgent action in the spirit of determination, hope, cooperation and solidarity, now and to carry us forward into the next century.

The equal rights and inherent human dignity of women and men and other purposes and principles enshrined in the Charter of the United Nations, to the Universal Declaration of Human Rights and other international human rights instruments, in particular the Convention on the Elimination of All
Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC) as well as the Declaration on the Elimination of Violence against Women (DEVAW) and the Declaration on the Right to Development (DRD).

The Declaration ensures the full implementation of the human rights of women and of the girl child as an inalienable, integral and indivisible part of all human rights and fundamental freedoms.

Build on consensus and progress made at previous United Nations conferences and summits - on women in Nairobi in 1985, on children in New York in 1990, on environment and development in Rio de Janeiro in 1992, on human rights in Vienna in 1993, on population and development in Cairo in 1994 and on social development in Copenhagen in 1995 with the objective of achieving equality, development and peace. Achieve the full and effective implementation of the Nairobi Forward-looking Strategies for the Advancement of Women.

The empowerment and advancement of women, including the right to freedom of thought, conscience, religion and belief, thus contributing to the moral, ethical, spiritual and intellectual needs of women and men, individually or in community with others and thereby guaranteeing them the possibility of realizing their full potential in society and shaping their lives in accordance with their own aspirations.12

Women's empowerment and their full participation on the basis of equality in all spheres of society, including participation in the decision-making process and access to power, are fundamental for the achievement of equality, development and peace.

Women's rights are human rights. Equal rights, opportunities and access to resources, equal sharing of responsibilities for the family by men and women, and a harmonious partnership between them are critical to their well-being and that of their families as well as to the consolidation of democracy.

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Eradication of poverty based on sustained economic growth, social development, environmental protection and social justice requires the involvement of women in economic and social development, equal opportunities and the full and equal participation of women and men as agents and beneficiaries of people-centred sustainable development.

The explicit recognition and reaffirmation of the right of all women to control all aspects of their health, in particular their own fertility, is basic to their empowerment.

Local, national, regional and global peace is attainable and is inextricably linked with the advancement of women, who are a fundamental force for leadership, conflict resolution and the promotion of lasting peace at all levels. It is essential to design, implement and monitor, with the full participation of women, effective, efficient and mutually reinforcing gender-sensitive policies and programmes, including development policies and programmes, at all levels that will foster the empowerment and advancement of women.

The participation and contribution of all actors of civil society, particularly women's groups and networks and other non-governmental organizations and community-based organizations, with full respect for their autonomy, in cooperation with Governments, are important to the effective implementation and follow-up of the Platform for Action.

The implementation of the Platform for Action requires commitment from Governments and the international community. By making national and international commitments for action, including those made at the Conference, Governments and the international community recognize the need to take priority action for the empowerment and advancement of women. Intensify efforts and actions to achieve the goals of the Nairobi Forward-looking Strategies for the Advancement of Women by the end of this century. Ensure the full enjoyment by women and the girl child of all human rights and fundamental freedoms and take effective action against violations of these rights and freedoms.

Take all necessary measures to eliminate all forms of discrimination against women and the girl child and remove all obstacles to gender equality and the advancement and empowerment of
women. Encourage men to participate fully in all actions towards equality. Promote women's economic independence, including employment and eradicate the persistent and increasing burden of poverty on women by addressing the structural causes of poverty through changes uneconomic, ensuring equal access for all women, including those in rural areas, as vital development agents, to productive resources, opportunities and public services.\(^\text{13}\)

Promote people-centred sustainable development, including sustained economic growth, through the provision of basic education, life-long education, literacy and training, and primary health care for girls and women. Take positive steps to ensure peace for the advancement of women and recognizing the leading role that women have played in the peace movement, work actively towards general and complete disarmament under strict and effective international control, and support negotiations on the conclusion, without delay, of a universal and multilaterally and effectively verifiable comprehensive nuclear-test-ban treaty which contributes to nuclear disarmament and the prevention of the proliferation of nuclear weapons in all its aspects.

- Prevent and eliminate all forms of violence against women and girls.
- Ensure equal access to and equal treatment of women and men in education and health care and enhance women's sexual and reproductive health as well as education.
- Promote and protect all human rights of women and girls.
- Intensify efforts to ensure equal enjoyment of all human rights and fundamental freedoms for all women and girls who face multiple barriers to their empowerment and advancement because of such factors as their race, age, language, ethnicity, culture, religion, or disability, or because they are indigenous people.
- Ensure respect for international law, including humanitarian law, in order to protect women and girls in particular.

- Develop the fullest potential of girls and women of all ages, ensure their full and equal participation in building a better world for all and enhance their role in the development process.

Ensure women's equal access to economic resources, including land, credit, science and technology, vocational training, information, communication and markets, as a means to further the advancement and empowerment of women and girls, including through the enhancement of their capacities to enjoy the benefits of equal access to these resources, interalia, by means of international cooperation.

Ensure the success of the Platform for Action, which will require a strong commitment on the part of Governments, international organizations and institutions at all levels. We are deeply convinced that economic development, social development and environmental protection are interdependent and mutually reinforcing components of sustainable development, which is the framework for our efforts to achieve a higher quality of life for all people. Equitable social development that recognizes empowering the poor, particularly women living in poverty, to utilize environmental resources sustainably is a necessary foundation for sustainable development. We also recognize that broad-based and sustained economic growth in the context of sustainable development is necessary to sustain social development and social justice. The success of the Platform for Action will also require adequate mobilization of resources at the national and international levels as well as new and additional resources to the developing countries from all available funding mechanisms, including multilateral, bilateral and private sources for the advancement of women; financial resources to strengthen the capacity of national, sub regional, regional and international institutions; a commitment to equal rights, equal responsibilities and equal opportunities and to the equal participation of women and men in all national, regional and international bodies and policy-making processes; and the establishment or strengthening of mechanisms at all levels for accountability to the world's women. Ensure also the success of the Platform for Action in countries with economies in transition, which will require continued
international cooperation and assistance. The Nations hereby adopt and commit themselves as Governments to implement the following Platform for Action, ensuring that a gender perspective reflected in all our policies and programmes. We urge the United Nations system, regional and international financial institutions, other relevant regional and international institutions and all women and men, as well as non-governmental organizations, with full respect for their autonomy, and all sectors of civil society, in cooperation with Governments, to fully commit themselves and contribute to the implementation of this Platform for Action.

In the subject dealing with religion and womanhood it is proposed to deal with role of various religions in the lives of woman. Almost all religions including Judaism, Christianity, Islam and Hinduism and off shores of the same do not give much or due credit to the freedom of woman. In ancient times when human beings lived in tribal units and communities all of them lived together without much distinction methods of subjugation or sub-ordination. The union between man and woman were on the level of limited contact for the purpose of procreation of children and satisfaction of the sexual impulses as time passed on, they came in conflict with rival tribes in which men played predominant role from the protection of the tribe subordinately the role of woman to a lesser level of taking care of the internal necessity of the tribe or community. Then the institution of marriage was established were by woman was confined to domestic area. Men were in charge of the internal and external security of the community. Besides man became more conscious that his family partner subject to his directions and commands for the division of the community conduct. There by woman had to submit to the will of man and she was confined to family units. Thereafter due to evolution of thoughts, mysteries of nature, man’s religious mind evolved theories governing the creation of mankind of its existence and probably the ultimate destination. The concept of god and religious ideals evolved subsequently to strike a balance between man and woman’s religious views were introduced were by it was asserted that it was god’s will, woman shall be subservient to man and her role in the present life was to obey her husband and take care of
his offspring’s. Religious tenets justified such disparity which was ultimately accepted by woman as divinely ordained and spiritually sanctioned.\textsuperscript{14} The concept was fortified by various religious dogmas and doctrines, rules and reputations, restraints and restrictions. So much a woman accepted the same without questioning the competency of the same. Almost all religious the concept of subordination of woman to man has been recognised but certain religious made certain improvements to the status of woman but the same did not equal nor supersede the supremacy of man over woman. The above proposition is being dealt with in the discussion relating to the doctrines of various religions conferring the lives and status of woman and the recognition or negation of their human rights.

In the chapter dealing with special protection for woman in the constitution it is proposed to explain that woman are treated on par with men in walks of life and spheres of national activities. They have fundamental rights as men do have and they can participate in public life by playing equal role in the legislative, executive and judicial spheres of national life except certain spheres in defense forces and civil forces their inclusion are restricted on grounds of endeavouring or other feminine handicapped otherwise as administrates they are accommodative even in the tasks requiring more masculine skill and valour. Women are slowly inducted apart from this discrimination against woman on any ground is forbidden by constitution. In other words, what is applicable to men is also applicable to women under the constitution.

The Indian Penal Code contains many provisions with the view to protect women from acts of violence against their body, mind, status and other things which are necessary for their dignified existence. The sexual assault and outraging the modesty and acts of interference with their marital life and similar situation are protected by a negative method of punishing those who infringe them. Situation might arise, women themselves may be guilty of committing offences in the event they

\textsuperscript{14} Preeti Misra, \textit{Domestic Violence against Women – Legal Control and Judicial Response} — Deep and Deep Publication Pvt.Ltd. – Pg. 5.
are punished like any other offender for generally visited by lighter treatment in punitive action and such as rehabilitation granting parole and similar welfare measures with a view to resume their normal lives in the society without feeling guilty about their past misdeeds.

Apart from the Indian penal code the legislative have enacted special laws with reference to peculiar characterization of the crimes committed against them.\(^\text{15}\)

A woman’s plight begins from her childhood and was through her adolescent stage up to her marital life when woman comes into the fold of marital life her plights are unpredictable and atrocious if she is not blessed with cordial atmosphere. Because of the restriction placed on her by the family and society she is almost vulnerable to many attacks on her status of dignity and sometimes her life as well.

The special enactments strive to safeguard them against the violence to which they are subjected are exposed. However, it can punish only after she is confronted to injustice and in which case the offender is punished but not prevented from so doing.\(^\text{16}\)

International community as a whole has taken note of the plights of women in various parts of the world and various systems of religion and politics. The common factor is a woman suffers where ever she is, because of her inherent weakness and inability to assert her rights and resist violation of the same. The UN Organisations, UNESCO and other international institutions have created numerous agencies through which they study the problems of women and render assistance. Accordingly agreements are made between nations to treat women and children not as warring forces but it is a pity that certain extreme groups which claim to fight for their territorial religious freedom are using women and children as soldiers and other fighters. The extremists who resort to military and violent methods to achieve their goals recruit women as full-fledged fighter and send them to areas of military conflict and compel them to become member of suicide squads which


clearly proves that the right and plight of woman are totally ignored. There is no enactment prohibiting employment and deployment of women for military conflicts without assuring the safety and dignity of women. It is proposed to advocate the various methods that should be followed by international organisation to preserve women’s rights.

The numerous enactments which have come into existence in addition to the Constitution of India and IPC strive to protect women’s rights from all angles. They have sorted out the various problems confronting these rights and worked out the modalities for implementation. Therefore we cannot agree with the existing notion that these laws are superfluous or redundant. Since they are sufficient enough to deal with the problems and they have to be preserved. But the problem lies not in the enacted legal provision but in their implementation of execution. We shall remind ourselves at this juncture, great opinion expressed by B.R.Ambedkar about the constitution namely “However good a constitution may be but where the people are called upon to work it happen to be a bad lot it is bound to be a bad constitution and versa verse”.

The loyal calling upon members who are called to execute the women legislation and they are naturally prejudice against women’s rights and even the women authorities who are called upon to enforce the laws assume masculine attitude against affected women and fail to intensify themselves with the sentiments of womanhood. In either case the authority and power restrain them from sincerely executing the laws.

The special enactments have to be further amendment to compel the authorities concern to entertain sincere attitude towards the spirit of law and endower justice to women. The authorities male or female consider themselves to be a distant force removed by the power vested with them and many cases atrocities and crimes against women are not even entertained, even if entertained, no action is taken such as registration of the cases, successful prosecution of the offenders and
making known to the society the actions taken by them for the implementation and execution of the special laws. Therefore the society atleast has a right to be informed of the legal process undertaken by the authorities empowered to deal with cases and under these laws.17

1.4 WOMEN AND POWER:

Underdevelopment as well as gender inequality is the story of power and powerlessness. The goal is to equalise power between women and men at home, at work, under the Law, in public office, in public policy and in every other area of life that matters. There should be an investment in Educating a Girl child, Enhancement of Reproductive Rights of Women, Improving access of Women to Micro-Finance (Self help Groups with skill based and technical based knowledge and work culture) and giving Women Land Rights. These would redound to benefit not only the Girl Child or Woman herself, but her Community and in turn Society as well. As women lead, they are changing the leadership; as they organise they are changing the organisation. Women have fresh imaginative skills of dialogue and are setting more open, flexible and compassionate style of leadership. In positions of power, women want to make the World “less brutish, less dangerous, less ungenerous and less unreasonable”. This truth has been understood and acknowledged by many from time to time. But that understanding is not from the point of view of women. So only the need is still unexploded to its fullness. This approach is also to make her financially stable and can live a decent and confidently face life even during days of crisis.

1.5 WOMEN’S EMPOWERMENT AND GENDER EQUALITY:

Trying to understand gender equality and women’s empowerment they are key aims underlying all enterprise development. The empowerment of women is an essential precondition for the elimination of World poverty and upholding of Human rights. Women’s empowerment is

therefore understood as marginal increase in income but this alone is not sufficient enough to achieve the expected goal it requires a transformation of power relations. This means that enterprise development must take into account not only income levels but also power relations within Households, Markets, Communities both at National and International Economies. This in modern day has brought many women outside their shell and to face the outside world with more confidence and challenge everything with their knowledge and skill which are utilised to have a better life which they deserve. But this also makes way to a question that this independence given to a women being misunderstood and women are not compassionate to her partners. But most of the time this doubt is baseless and remains unproved.

1.6 WOMEN’S EMPOWERMENT IN INDIA:

Gender disparities in India are well known. Not only are fewer women literate than men and they are fewer participation in the work force. There are also numerically fewer women than men, indicating how deeply ingrained women’s disadvantage is. Empowerment usually recognised as something that is hard to measure. In India evaluation empowerment measures along four dimensions: Capabilities, Choices, Assets and Rights.¹⁸

- Capabilities – Effective and Efficient capabilities – How Women’s Health and Education enable them in Decision Making. (Both in Domestic and in outside world).
- Choices – The Kind of Opportunities available to Women through the Institutions of Society, at State, Market, Community and Family level.
- Rights – What Rights are available to Women? How much are they aware of it? and How can they actually use them effectively?

¹⁸ Swami Mahabananda and Sri R.C. Majumdar, Great Women of India — p. 34.
1.7 GENDER:

Gender refers to the Social construction of relations between men and women. Our concern is to ensure that difference is not used to discriminate against any group or individual. The state and Society need to eradicate all forms of Subordination, Oppression and Discrimination based on Gender. 19

1.7.1 GENDER EQUALITY:

It is a Constitutional value that refers to a substantive and non – discriminatory relationship between women and men in society. Gender equity refers to Equal Distribution of Opportunities, of Access to Resources and of Decision-Making power between women and Men in Society. 20

1.7.2 CAUSES OF GENDER INEQUALITY:

➢ The Sex ratio of men is more than women in many parts in India.
➢ More female babies are killed or made to die than male babies.
➢ Education is less in Women population when compared to Men of same age group.
➢ Women are under-represented in paid Employment.
➢ Governance and Decision –Making positions are also comparatively less for Women.
➢ Globally Women face violence inside and outside the family throughout their lives. In India number of crimes against women has almost doubled when compared to recent past. 21

1.7.3 POVERTY AND GENDER INEQUALITY:

“Poverty has various manifestations, including lack of food, and productive resource sufficient to ensure a sustainable livelihood; hunger and malnutrition; ill-health; limited or lack of access to education and other basic services; increasing morbidity and mortality from illness;

homelessness and inadequate housing; unsafe environments; and social discrimination and exclusion”. It is also characterised by lack of participation in decision making in Civil, Social and Political life. It occurs in all countries as mass poverty in many Developing Countries and as pockets of poverty in Developed Countries.\(^{22}\) This was for promoting and protecting Women’s Human Rights Worldwide.

1.8 IMPACT OF ECONOMIC STATUS OF WOMEN ON DOMESTIC VIOLENCE:

Economic deprivation is the root cause of all forms of inequality and consequent oppression. The gulf between the haves and the have-nots in the economic sphere is very hard to bridge. The economic equality can be achieved only by decreasing the gap between these two extremes. It is not the question of bringing down rich people to a lower level, but on the contrary it shall be the task of society to uplift poor people to a higher level. It is an age old story of womanhood that they were not allowed to possess wealth nor they were allowed to maintain economic independence – as the old saying goes “a woman has to be dependent on men at all stages of her life” when this was narrated not only to give her personal security but also economic dependence for her personal needs she had to dependent upon man from shelter to old age infirmity. This kind of dependence coupled with her physical weakness having the sanction of religion and custom. She has been subjected to irredeemable hardships and sufferings, she was always considered to be a privileged slave in her family. She cannot exercise or enforce her fundamental rights as a woman. Though the constitution of India has guaranteed certain rights to her yet in practice she is subjecting to hardships.\(^{23}\)

In the sphere of domestic violence she becomes a toyed for male chauvinism and domination. She is considered nothing more than a pleasure object to be tasted and thrown away.

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after sensual gratification by men. Her feelings and longings, deprivations and earnings are not
given due considerations by men. Such indirect hated towards women develop into violence against
her domestic sphere and whatever happens to her she has to bare it and cannot separate herself from
the bondage because she cannot survive physically outside the family fold. Therefore means and
methods shall be devised to make women folk economically independent and self-sufficient.

Now there are laws which entitle women to claim possession of property. They have scope
for employment and earnings. They are encouraged to become entrepreneurs even high profile
traders. Out of these professions, woman earns wealth and feels they are financially independent.
They have a sense of satisfaction and a feeling of fulfillment but the same becomes a disadvantage
to them in the form of change of their mentality. They develop superiority complex and try to assert
too much which is beyond the endurance level of male members. Just like absolutely economic
dependence, occasion, sufferings of woman so also economic affluence causes the same effect. An
affluent women’s conduct if it exceeds the expectation of male members, cause suffering to women
in domestic areas.

Male members think often correctly that an affluent woman’s conduct is influenced by the
wealth she independently possesses. This again compares male members to devise means to deprive
female members of their control over their own properties. This may lead to domestic violence in
the form of harassment of woman, who is compelled to part with their property or wealth or
monthly income in favour of her male protectors.²⁴

It is necessary that women shall have economic independence but they should realise that
their wealth shall not be a hindrance to the united caring and loving life in the domestic area. They
would do well if they maintain an attitude of detachment of their own wealth and entertain a
generous view that her property is that of the family in which she lives woman must have noble

²⁴ KumKum Narain and Meera Mirudubhasini, Empowering Women through Economic Measures — Deep and
idea the wealth shall be utilised for the benefit of those entire family. Woman should shed away the
sense of exclusiveness and maintain cordial relationship with every member of the family to that,
she may not be viewed with jealously or envy. In this manner it will be seen that the necessity of
economic independence of women shall be necessary and woman must also conduct in such a way
the economic process shall be for the benefit of their family. Such domestic condition would greatly
reduce the incidence of domestic violence.

1.9 IMPORRTANCE OF THE STUDY:

Women are prone to be defenseless victims of every kind of violence within the four walls
of the family home. The perpetrators of violent acts are usually men and equally women who are
contemporaneous members of Family. Everybody passes with shocking accident ranging from
Rape to Bride – Burning. Victims are the innocent and helpless women. The constitutional
guarantee of equality before law, liberation movements and emergence of many social welfare
organisations could do very little in this direction of betterment of women.

Violence continues and flourishes in various forms, eve teasing, honorary killing, rape,
cruelty, dowry death and bride burning. This violence has raised a serious threat to law and order.
Domestic violence disturbs the peace in the family. Until these are eradicated the women are not
going to live in peace. Considering this aspect and realizing the importance, this study is conducted.

Though violence against women is not a new phenomenon, yet in the last 30 years, the
problems of crimes against women have been receiving extensive public attention. Since, 1975
several women’s autonomous groups have come forward to bring awakening and awareness about
violence women. Women’s roles, rights, duties, linkages etc. in the family, her decision making
capacity and her autonomy on a negative manner, the social status is also indicated by the various
kinds of violence both inside and outside against women in the society.
Legislation on domestic violence against women should be viewed in this context. The National Human Rights Commission has suggested that the draft bill needs to be widened to include all kinds of domestic violence whether against children, against the daughter – in – law, against the elderly, against other dependents, and not just violence by husband against the wife. The Commission has also suggested improvements in the enforcement machinery – the role of Protection Officers, involvements of non – governmental or civil society groups and the role of the Court. The Protection of the Women from the Domestic Violence Act 2005 was brought to tackle the problem of Domestic Violence in India providing both Civil and Criminal Remedies to the victims of Domestic Violence. The Study is useful to understand the role of the legislation in curbing Domestic Violence in India.\textsuperscript{25}

1.10 OBJECTIVES OF THE STUDY:

The present study is aimed to study the Protection of Women’s Human Rights with Special Reference to Domestic Violence. So the main objectives of this study are the following:

1. To assess the extent of Domestic Violence against women prevailing in various forms in the family.
2. To assess the impact of various offences on women’s status.
3. To study the problems of Gender Justice.
4. To study the reasons of violence against women.
5. To examine how the rights of women are being violated.
6. To discuss the Rights provided to women and their actual enjoyment by the State holders at micro level.
7. To study the reasons for bringing a Special Legislation on Domestic Violence.
8. To study the legal frame work on Domestic Violence and problems involved in the enforcement of law against Domestic Violence.

9. To examine whether the Service Providers and Protection Officers under the Act and Government efforts to eradicate violence against women are sufficient.

10. To suggest steps to be taken to implement the law to eradicate Domestic Violence in general and contact the Domestic Violence by the victim with the active help of civil society in particular.

An attempt is also made in the Study

1. To assess the functions of redressal agencies under Protection of Women from Domestic Violence Act 2005.

2. To discuss remedial measures necessary to eradicate Domestic Violence.

3. To discuss the role of leading women organizations and other NGO’s role Service Providers as well as Protection Officers under Protection of Women from Domestic Violence Act 2005.

1.10.1 HYPOTHESIS:

Keeping the above objectives in mind, the following hypothesis is formulated and Sub-Issues have been formulated wherever necessary:

- The problem of Domestic Violence against women is present in all the sections of the society irrespective of class, caste region or religion. Causes may be varied from one case to another, but the result is the same.

- The Protection of Women from Domestic Violence Act 2005 is a progressive legislation and redressal mechanism under the Act needs revamping.

1.10.2 LIMITATION OF THE STUDY:

The Main burden of the present study is to make an intensive probing into Domestic Violence against Women with special reference to Human Rights and to flash further light on this
issue for giving adequate protection to the women by implementing the legislation and making awareness to the women. This Study involves partly Doctrinaire in Approach and Partly Empirical.

1.10.3 METHODOLOGY:

The present study is mainly Doctrinal Study. However Partly Empirical when it comes to Domestic Violence Act and its effectiveness on the Society. Socio – Legal study of the problem with special reference to the Human Rights is also carried out. The Sexual offences against women in domestic scenario are critically analysed and then the problems involved in Domestic Violence are understood through the Social legal study. Historical, Comparative Data are added as and when required. Socio – Legal study is an Inter - disciplinary study and a significant method in Legal theory. Law and Society are interlinked and Law cannot be separated from Social Progress.

Socio – Legal research deals with the legal research in the field of social sciences. Most of the present legal problems can be materialized with close study of social conditions of the society, because most of them are connected with Local Custom, Personal Laws and Conventions adopted in Municipal Law.

The Researcher has collected Data from the available resources. The researcher has contacted the enlightened women and members of women commissions to take their views on sexual harassment made against women. The researcher has attended several Conferences, Symposia and Workshops to collect the data to fulfill the task. Hence the present Socio – Legal study partly doctrinaire depends upon the Statutory Legislation, Judicial Decisions, Archives, Statistics collected from Government Organisation and NGO’s and Literature which is needed to complete the study. Empirical Study was carried out by distributing Questionnaire and reply was collected from various groups of people like Protection Officer, Lawyers, Professionals, Professors, Businessman, Entrepreneurs, College Students, Home Makers, School Students, Unmarried, Working Women, etc. to test the awareness and effectiveness of the Domestic Violence Act 2005.
1.10.4 SOURCES:

For realizing the objectives of the study, materials from both Primary and Secondary Sources have been utilised.

Doctrinal Research – Perusal of Basic Legislations in India. (Primary Sources)

- Constitution of India, many Statutes like the Domestic Violence Act, Human Rights Study and Criminal Law.


- Review of Written Literature.

- Socio - Legal Research.

- Statistical Data collected from Government Women Organisation and NGO’s.

- Structured Questionnaire pattern was distributed and reply was collected from various groups to verify the existing and prevailing situation in Society at large regarding Domestic Violence Act 2005.

- Review of Existing Practice:
  
  - Material Provided by - The Ministry for Woman and Child Development.
  
  - American British Drama Film based on 1961 Novel written by Richard Yates and it was selected for Finalist National Book Award 1962.  
  - A True Story of Kiranjit Ahluwalia written by Carl Austin, Rahila Gupta.
  
  - NGO’s and Organisations devoted to the cause of curbing Domestic Violence.

1.10.5 PLAN OF STUDY:

Present study has been divided into Seven Chapters.

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26 Inspired works from various Film Directors - Perusal from Tamil Movie – “KALKI” directed by K. Balachandar in 1996. English Movie – “Revolutionary Road” directed by Sam Mendes in 2008.

1. First Chapter is an Introductory Part. This Chapter deals with the Background of the Study that discusses in detail the Role of Women towards development in Society, Evolution of Law, Status of Women.

2. Second Chapter entitled “Women’s Right as Human Rights” is designed to explain the present day approach of Law. The saga of the women right from their birth to death and how it is restricted by several ways and means. These restrictions are borne by Women silently due to lack of awareness on the Human Rights. This chapter tries to focus on the right conferred upon Women. This Chapter includes the issues like Domestic Violence as a Human Rights issue, Human Rights to Education for empowerment of Women, Domestic Violence and present day approach of Law Judicial and Social Reforms, the various Theories of Domestic Violence is also meticulously dealt with in the study.

3. Third Chapter deals with the Origin, Development and Meaning of Domestic Violence in the Historical Perspective. The subjects discussed in this Chapter deals with Discrimination against Women in General, the concepts leading to Domestic Violence Nature of Domestic Violence in which the forms and the Theories of Domestic Violence are discussed in detail. The new outlook and Interpretation of Domestic Violence in present Family System of modern day is discussed and Domestic Violence in Virtual World is also focused in this chapter.

4. The Fourth Chapter is entitled as Protection of Women’s Right with Reference to Domestic Violence Act. This Chapter mainly focuses on the reasons for the enactment of Domestic Violence. This Act 2005 is meant to protect Women from Domestic Violence. This Chapter includes reasons for passing Domestic Violence Act 2005. Salient features of the Act, Civil Part of the Statute, Penal Part of the Statute, Role played by the Enforcement Authorities and awareness among Women.
5. The Fifth Chapter focuses on Judicial Decision on Domestic Violence. It is a key chapter which discusses the responsibility of judiciary to protect the Women from Domestic Violence and this chapter contains the issues like case analysis of cruelty and Judicial response to Domestic Violence against Women and Fundamental Rights dealt in Supreme Court and various High Courts in India.

6. The Sixth Chapter focuses on Testing the Effectiveness of Domestic Violence Act 2005. This is done by Structured Questionnaire being distributed and reply collected to verify the existing and prevailing situation in Society.

7. The Seventh Chapter is the Concluding Chapter and the Thesis also contains useful bibliography and necessary materials.