CHAPTER - 7

CONCLUSIONS AND SUGGESTIONS

7.1 Conclusion

This chapter is related to conclusion and suggestion. I write for those women who do not speak, for those who do not have a voice because they were so terrified, because we are taught to respect fear more than ourselves. We've been taught that silence would save us, but it won’t.

The above mentioned quote rightly reflects the situation and condition of women in the society. There is considerable number of women in the society who do not or in-fact cannot speak for their rights, cannot complaint about their conditions, and cannot take decisions about their own future. Though everybody knows that without women world would not be same as it appears.

The researcher has tried to attempt to find out and discuss the issues relating to conditions of women. For the same, the researcher has attempted to discuss condition of women in India, other part of world, laws relating to women etc.

1. After going through the thesis and research the researcher can conclude the following that the researcher has observed, “Violence against women is present across the world cutting across boundaries of culture, class, education, income, ethnicity and age. When the violence occurs within home, the abuse is effectively condoned by the tacit silence and the indifference by the instruments of the state and the law-enforcing machinery.
Internationally, one in three women have been beaten, coerced into sex or abused in their lifetime by a member of her own family. Domestic violence is the most prevalent yet relatively hidden and ignored form of violence against women and girls. While reliable statistics are hard to come by, studies estimate that, from country to country, between 20 and 50 per cent of women have experienced physical violence at the hands of an intimate partner or family member. Wife beating is not only rampant, but male justify it with plethora of contexts.

2. In our society, violence is bursting. It is present almost everywhere and nowhere is this eruption more intense than right behind the doors of our homes. Behind closed doors of homes all across our country, women are being tortured, beaten and killed. It is happening in rural areas, towns, cities and in metropolitans as well. It is crossing all social classes, genders, racial lines and age groups. It is becoming a legacy being passed on from one generation to another.

3. The term used to describe this exploding problem of violence within our homes is Domestic Violence. This violence is towards someone who we are in a relationship with, be it a wife, husband, son, daughter, mother, father, grandparent or any other family member. It can be a male’s or a female’s atrocities towards another male or a female. Anyone can be a victim and a victimizer. This violence has a tendency to explode in various forms such as physical, sexual or emotional.

4. Since times immemorial, domestic violence has been an intrinsic part of the society we are living in. The contributing factors could be the desire to gain control over another family member, the desire to exploit someone for personal benefits, the flare to be in a
commanding position all the time showcasing one’s supremacy so on and so forth. On various occasions, psychological problems and social influence also add to the vehemence. The present essay deals with the various forms of domestic violence prevalent in India. Their causes of occurrence in households have been analyzed categorically. The variation in the intensity of the forms with change in the geographical location and culture has also been addressed. The aftereffects of different kinds of domestic violence and the possible remedies have been highlighted. Finally, a conclusion has been drawn after the complete analysis of the topic with the juxtaposition of facts and figures at hand.

5. This form of domestic violence is most common of all. One of the reasons for it being so prevalent is the orthodox and idiotic mindset of the society that women are physically and emotionally weaker than the males. Though women today have proved themselves in almost every field of life affirming that they are no less than men, the reports of violence against them are much larger in number than against men. The possible reasons are many and are diversified over the length and breadth of the country. According to United Nation Population Fund Report, around two-third of married Indian women are victims of domestic violence and as many as 70 per cent of married women in India between the age of 15 and 49 are victims of beating, rape or forced sex. In India, more than 55 percent of the women suffer from domestic violence, especially in the states of Bihar, Uttar Pradesh, Mahdhy Pradesh and other northern states.\(^{267}\)

6. The most common causes for women stalking and battering include dissatisfaction with the dowry and exploiting women for more of it, arguing with the partner, refusing to have sex with him, neglecting children, going out of home without telling the partner, not cooking properly or on time, indulging in extra marital affairs, not looking after in-laws etc. In some cases infertility in females also leads to their assault by the family members. The greed for dowry, desire for a male child and alcoholism of the spouse are major factors of domestic violence against women in rural areas.\textsuperscript{268} There have been gruesome reports of young bride being burnt alive or subjected to continuous harassment for not bringing home the amount of demanded dowry. Women in India also admit to hitting or beating because of their suspicion about the husband’s sexual involvement with other women. The Tandoor Murder Case of Naina Sahni in New Delhi in the year 1995 is one such dreadful incident of a woman being killed and then burnt in a Tandoor by his husband. This incidence was an outcome of suspicion of extra marital affairs of Naina Sahni which led to marital discord and domestic violence against her.

7. In urban areas there are many more factors which lead to differences in the beginning and later take the shape of domestic violence. These include – more income of a working woman than her partner, her absence in the house till late night, abusing and neglecting in-laws, being more forward socially etc. Working women are quite often subjected to assaults and coercion sex by employees of the organization. At times, it could be voluntary for a better pay and designation in the office.

8. Violence against young widows has also been on a rise in India. Most often they are cursed for their husband’s death and are deprived of proper food and clothing. They are not allowed or encouraged for remarriage in most of the homes, especially in rural areas. There have been cases of molestation and rape attempts of women by other family members in nuclear families or someone in the neighbourhood. At times, women are even sexually coerced by their partner themselves against their will. They are brutally beaten and tortured for not conceiving a male child. Incidents like, ripping off a woman’s womb for killing the female foetus when she disagrees for abortion have also come to light especially in rural areas. Female foeticide and female infanticide continue to be a rising concern.

9. Also as expressed by Rebecca J. Burns in the following lines, “When I am asked why a woman doesn’t leave abuser I say: Women stay because the fear of leaving is greater than the fear of staying. They will leave when the fear of staying is greater than the fear of leaving.” A common Indian house wife has a tendency to bear the harassment she is subjected to by her husband and the family. One reason could be to prevent the children from undergoing the hardships if she separates from the spouse. Also the traditional and orthodox mindset makes them bear the sufferings without any protest.

10. Other forms of physical abuse against women include slapping, punching, grabbing, burdening them with drudgery, public humiliation and the neglect of their health problems. Some of the other forms of psychological torment against them could be curtailment of their rights to self-expression and curbing the freedom to associate with the natal family and friends.
11. There are 4 main reasons for domestic violence to persist in India:

(i) **Male dominated society:** Even though women had risen to top positions, India was & still remains as a male dominated country.

(ii) **Lack of awareness of Laws:** Victims of domestic violence are afraid to protest as there is lack of awareness or rather lack of initiative to make her aware of her rights.

(iii) **Laxity in implementation of the existing Acts:** No or less efforts are made to increase awareness amongst the women by the authorities posted to implement the Act.

(iv) **Bureaucracy & Fear:** If a domestic violence is reported by a third party then he/she is scrutinized as an intruder and problem maker by the community. The bureaucracy associated with reporting of domestic violence, lack of funds for support group adds up to the continued domestic violence in India.

12. In ‘**ORIGEN AND DEVELOPMENT OF DOMESTIC VIOLENCE**’, the researcher has observed, “Domestic violence against women is not confined to any particular political or economic system, but is prevalent in every society in the world and cuts across boundaries of wealth, race and culture. The power structure within society which perpetuate domestic violence against women are deep rooted and intransigent. The experience or threat of domestic violence inhibits women everywhere from fully
exercising and enjoying their human rights. The underlying cause of domestic violence against women lies in discrimination, which denies women equality with men in all areas of life. Domestic violence is both, rooted in discrimination and serves to reinforce discrimination, preventing women from exercising their rights and freedoms on a basis of equality with men.

13. The United Nations Declaration on the Elimination of Violence Against Women states that violence against women is a “manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men”, and that “violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men”.

14. Domestic violence against women is an expression of historically and culturally specific values and standards. Social and political institutions may foster women’s subservience and violence against them. Certain cultural practices and traditions - particularly those related to notions of purity and chastity - may be invoked to explain or excuse such violence. In every part of the world, women’s roles and positions in society are prescribed. One of the key aspects of every culture is the way it defines gender roles. Almost without exception women are assigned roles, which are subservient to those of men. Virtually every culture in the world

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270 Ibid., p. 5
contains forms of domestic violence against women that are nearly invisible because they are seen as “normal”.273

15. On ‘FEMALE FOETICIDE VIS A VIS UNIVERSAL DECLARATION OF HUMAN RIGHTS’, the researcher has discussed various relationship between human rights and female foeticide. In the chapter the researcher has observed, “The figures, compiled by the United Nations Department of Economic and Social Affairs, emerged as India was plunged into introspection over the case of a two year old girl fighting for her life in hospital after being abandoned by her family and trafficked between several adults before being beaten, bitten and branded by a 14 year old girl. The girl, known as Falak, is suffering from severe chest injuries and brain damage and according to her doctors is unlikely to survive the next 48 hours.

16. Girls are widely regarded as a burden to Indian families who fear the high costs of their weddings and resent spending money on their education only for them later to leave the home to marry. Many women abort pregnancies when they believe they will deliver a girl, often under pressure from their husbands or in-laws who favour boys. Campaigners believe there may have been as many as eight million cases of 'female foeticide' in India over the last decade.

17. This discrimination has driven India’s sex ratio progressively lower. Census statistics show it fell from 976 girls per 1000 boys in 1961 to 914 in 2011. But according to campaigners the figures hide the cruelty and neglect suffered by girls kept by their families, in

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273 Ibid., p. 29.
particular from malnutrition and denial of medical treatment. Ranjana Kumari of the Council for Social Research said Indian mothers breast feed girls for a far shorter period than they do their sons and feed them less well because they fear good nourishment will speed the advent of puberty and the need for a costly wedding. While boys are taken immediately to hospital, sick girls are kept waiting because their families do not have the same interest in their survival. "They think they need to feed the boy, but there is less desire for the girl to survive, it is common in rural India. Boys are immediately taken to the doctor, but not the girl. She is the last to get the medicine," she said.

18. Female infanticide was also a factor in the UN figures, she added. "It has been a practice in central India for a long time, where mothers were made to feed the child with salt to kill the girl child."\(^{274}\)

19. Another report in Reuters reveals, “Increasing female feticide in India could spark a demographic crisis where fewer women in society will result in a rise in sexual violence and child abuse as well as wife-sharing, the United Nations warned.

20. Despite laws banning tests to determine the sex of an unborn child, the killing of female fetuses is common in some regions of India where a preference for sons runs deep. As a result, the United Nations says an estimated 2,000 unborn girls are illegally aborted every day in India.

21. This has led to skewed sex ratios in regions like Punjab, Haryana,

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\(^{274}\) By Dean Nelson, New Delhi 01 Feb 2012: The Telegraph
Gujarat and Himachal Pradesh as well as the capital, New Delhi, where a census in 2001 showed there are less than 800 girls for every 1,000 boys. "The 2001 census was a wake-up call for all of us and much public awareness have been created on female feticide since then," Ena Singh, assistant representative for the United Nations Population Fund in India told Reuters. "But initial figures show sex ratios are still declining as female feticide is becoming more widespread across the country and it is likely to be worse in the next census in 2011."

22. In most parts of India, sons are viewed as breadwinners who will look after their parents and carry on the family name, but daughters are viewed as financial liabilities for whom they will have to pay substantial dowries to get married off.

22. Activists say female feticide is rising because of the availability of technologies like ultrasonography and amniocentesis to determine the gender of fetuses at the request of the parents. If the fetus is found to be a girl, it is aborted.

23. As a result, the government says around 10 million girls have been killed by their parents either before or immediately after birth over the past 20 years. Experts warn that fewer women will spark a demographic crisis in many parts of country. "There already is this phenomenon all over the country where there is a lot of sexual violence and abuse against women and children across the country," said Ranjana Kumari, director of the Centre for Social Research, a New Delhi based think-tank. "But when there are less women in the population and more men of the same age group, there is certainly going to be much more demand for women for
marriage, for sex and this pressure will certainly increase violence against women."

24. Experts say practices such as polyandry where several men, often brothers, share the same wife are already emerging in areas where there are fewer women. Brides are also now being sold and trafficked by their parents to areas like Haryana and Punjab where bachelors are being forced to look beyond their own culture, caste and social grouping to find a wife.

25. Activists say these women have to adapt to an alien culture with a different language, diet, and social norms and are often treated as second-class citizens by the community who view their value based on their ability to produce male off-spring. "There is this myth that fewer women will give them better status in society but this is a fallacy," said activist Sabu George. "Women in India are already being treated as commodities to be bought and sold and their plight will worsen as sex ratios continue to decline."275

26. “By the late 1990s, female foeticide had been reported in 27 of India’s 32 states, and in some communities in Bihar and Rajasthan, the birth ratio is reported to be as low as 60 females per 100 males, compared to the natural ratios of 97 to 100 males. Parallel studies for Bangladesh and Pakistan suggest similar trends in which existing discriminatory patterns of female infanticide and neglect continue. For example, a very recent study of sex specific mortality data in Bangladesh showed that girls aged 0 to 4 years had a mortality rate that was 40 per cent higher for girls than for boys.

275 NitinBhalla: Rise in India's female feticide may spark crisis : Aug 31, 2007
27. Introduction of new technologies may well continue or exacerbate these trends and contribute to rising sex ratios at birth and increasing numbers of girls “missing”. In East Asia, it was the dramatic increase in the masculinity of sex ratios at birth which first aroused disquiet among demographers, followed by increasing concern at the rising female infant and child mortality rates. Since the mid-1980s, demographic studies in China, the Republic of Korea, Taiwan Province of China and Viet Nam have uniformly showed an increasing rise in the proportion of male births and confirmed that access to sex identification and abortion facilities is widespread and permit new forms of intervention before birth.

28. For China, reported sex ratios at birth rose from close to the norm of 106 male to 100 female births in the 1960s and 1970s to 108.5 in 1981, 110.9 in 1986, 110.0 in 1987, 111.3 in 1989 to 112 in 1990 and to 117/8 in 2000. Similarly sex ratios at birth have risen from 107 to 110 in Taiwan Province of China and from 107 to 114 in the Republic of Korea. For China, the figures for sex ratios at birth are complicated by the fact that not all female births are registered, but calculations which take probable rates of under-registration and the sex ratios of older children into account suggest that girls are not just “missing” from the statistics. Indeed, hypotheses based on under-reporting, abandonment and adoption appear to be much weaker than they were several years ago and attention has shifted to the more serious forms of discrimination such as infanticide, sex-selective abortion or infant and child neglect.

29. Field investigations suggest that the incidence of female infanticide probably rose during the 1980s when it became the subject of much media concern and, although the practice is likely to persist in
poorer remote regions where it is still an accepted means for reducing fertility and achieving desired sex configurations, there is little evidence to suggest widespread female infanticide. Rather, there is a congruence of opinion among China’s demographers that the practice of female infanticide at birth is less responsible for the current rise in sex ratios than sex-selective abortion. In support of their argument, they cite the legal strictures against infanticide, the difficulty in keeping such births and deaths hidden, the considerable psychological costs and above all, they suggest that there are now considerable prenatal options including sex-selective abortion. Ironically, it is the improvements in the standards of prenatal care and in particular the development and spread of new ultrasound technologies that have been responsible for permitting an increase in sex-identification before birth. While government policy has forbidden the use of new technologies for sex identification, their widespread use for this purpose is difficult to police and the lack of local funding for health encourages their misuse because the fees levied finance an otherwise under-funded health service and supplement low medical incomes. What lends weight to the importance of sex-selective abortion as the cause of rising sex ratios at birth in both rural and urban regions, is that even in urban hospitals where surveillance is greater, the sex ratios of aborted foetuses and of births also show high sex ratios, which suggest that numbers of women have availed themselves of prenatal sex identification tests. Similar trends revealing increases in the use of sex selective abortion characterize the demographic literature for the Republic of Korea, Taiwan Province of China and Viet Nam.  

276 Angelique Chan and Brenda S.A. Yeoh : Gender, Family and Fertility in Asia: An Introduction
Female Foeticide Males Females

What is female foeticide? Many people do not know the difference between a foeticide and an abortion. An abortion is the removal of an embryo from the uterus, resulting in -or caused by- its death. The spontaneous expulsion of an embryo before the 20th week of gestational age is commonly known as a miscarriage. Induced abortion is the removal of an embryo by medical, surgical, or other means for therapeutic reasons. Feticide is an act that causes the death of a fetus. In a legal context, "fetal homicide" refers to the deliberate or incidental killing of a fetus due to a criminal act, such as a punch or kick to the abdomen of a pregnant woman. As a medical term, feticide is the destruction of a fetus.

The beginning of foeticide in India. What are the reasons behind female foeticide in India? What has female foeticide led to? What has the government done? What actions did the United Nations take? Has there been any changes occurring? What organizations exist that support gender equality? In India, foeticide began in the early 90’s, when ultrasound techniques were recognized. Before the process, families would continue to produce children until a male child was born to be able to support the family in the future. Female foeticide has led to an increase in human trafficking. In 2011, approx. 15,000 Indian women were bought and sold as brides within regions were foeticide has led to a lack of women.

According to Vijay Rai, Project Coordinator at Plan International (India), the alarming rate of female foeticide has led to a dangerously declining sex ratio, “with negative results that are already making themselves apparent in India. These include an increase in sexual and social crimes against women, such as rape,
abduction, bride selling, etc., which in turn will lead to an in
crease in prostitution and sexual exploitation and cases of Sexually Transmitted Diseases (STDs) and HIV/AIDS, with a resulting increase in physiological and psychological disorders, particularly among women, as well as unwanted pregnancies and forced abortions.”

32. Initially, foeticide was supported by the Government. The practice enabled the control of population growth in India, however, after the Preconception and Prenatal Diagnostic Techniques Act was passed in 1994, and sex-selective abortion became illegal. In 2003, the act was modified putting medical professionals legally liable of the practice. The Preconception and Prenatal Diagnostic Techniques Act hasn’t been carried out properly over the years and is currently enforced poorly by authorities. The government says around 10 million girls have been killed by their parents either before or immediately after birth over the past 20 years. Experts warn that fewer women will spark a demographic crisis in many parts of the country. The UN says an estimated 2,000 unborn girls are illegally aborted every day in India. The UN Declaration of Rights of Children from 1959, which indicated that “the child, by reason of his physical and natural immaturity, needs special safeguards and care, including appropriate protection, before as well as after birth” was concerted into the UN Convention on Rights of the Child in 1989. India became signatory to the Convention in 1992. Sadly, there have been numerous incidents of the foetus being found lying in farms, floating in rivers, wrapped up in jute bags etc. Despite government measures and laws against it, foeticide has not seen a decrease in its rate; on the contrary, it is
increasing rapidly. In south Indian states, children are either fed the milk of poisonous plants or covered with a wet towel so that they die later of complications from cold. In Bihar, holding the baby from the waist and shaking it back and forth snaps the spinal cord and babies are also fed with salt to increase their blood pressure; death follows in a few minutes. Furthermore, a change in the method of killing infants has been observed following the exhumation of bodies to get forensic evidence when it was suspected that an infant had been a victim of infanticide. People began to adopt methods such as starving the baby to death, which, unlike poisoning, leaves no forensic evidence as to the cause of death. In order to end gender selective abortions, a campaign in India called BetiBachao (Save Girls) was established. The BetiBachao campaign is supported by human rights groups, non-government organizations, and state and local government in India.”

33. In the next chapter, the researcher has discussed various penal laws relating to female foeticide and their constitutional validity. The researcher has discussed, “Although sex determination and sex selection (female foeticide) is a topic beginning to gain more public awareness, the laws surrounding sex selective abortions remain unclear due to political and judicial jargon. The Pre-Conception and Prenatal Diagnostic Techniques Act was passed in 1994 banning prenatal sex determination as a means to prevent sex selective abortions. According to the act, a prenatal diagnostic procedure includes any medical procedure such as ultrasonography, foetoscopy, or sampling of amniotic fluid, chorionic villi, blood, any tissue or fluid, which is sent to a genetic laboratory or clinic for
pre-natal analysis or diagnostic tests for sex selection. Pre-natal analysis could include any tests conducted on pregnant women to detect genetic disorders, metabolic disorders, chromosomal abnormalities, congenital anomalies, haemoglobinopathies, and sex-linked diseases.

34. While the effectiveness of The Preconception and Prenatal Diagnostic Techniques Act. can be questioned, the act has clear objectives that aim to prevent any sort of prenatal sex selection. There are three main objectives to The Preconception and Prenatal Diagnostic Techniques Act. The first is to prohibit sex selection before or after conception. The second objective is to regulate pre-natal diagnostic practices so they are only used to detect genetic, metabolic, or chromosomal abnormalities, and the third objective is to prevent the misuse of these techniques for sex determination, which could lead to sex determination and sex selection (female foeticide). “The Act is talking about two issues: the conception side and the technical procedures,” said Soumya Bhaumik, lawyer at the Centre for Social Research. “The Act is meant to prevent the abortion of female foetuses.”

35. The Preconception and Prenatal Diagnostic Techniques Act defines sex selection as any procedure, technique, or test that is conducted for the purpose for ensuring or increasing the probability that an embryo will be of a particular sex. This law applies to any centre that provides genetic counseling to patients. This includes any institute, hospital, nursing home, or clinic, which is used for pre-natal diagnostic techniques. Even a vehicle that has any equipment that could be used for determining the sex of a foetus comes under this law. All genetic centres are required to display prominently a
notice in English and in the local language or languages that conduct of sex-determination tests/disclosure of sex of the foetus is prohibited.

36. An important aspect of the law is that it permits the use of prenatal diagnostic techniques if tests are being conducted to diagnose medical conditions such as genetic diseases, chromosomal abnormalities, or any other disease that can be diagnosed through conducting prenatal tests. This law only prohibits the use of prenatal tests for sex selection purposes. While prenatal tests are permitted for detecting specific disorders, there are certain conditions that women must have in order to qualify for prenatal diagnostic practices. Prenatal techniques can be used on pregnant women if they are above 35 years, have undergone two or more spontaneous abortions or foetal loss, have been exposed to potentially teratogenic agents such as drugs, radiation, infection or chemicals, or if the pregnant women or their spouses have a family history of mental retardation or physical deformities such as spasticity or any other genetic disease.

37. Any medical personnel conducting a prenatal test must brief the woman on any potential risks or side effects of the test and must gain written consent from the woman before conducting the tests. In addition, anyone conducting the prenatal diagnostic must declare on each report that he/she has neither detected nor disclosed the sex of foetus to any body, and any pregnant woman undergoing ultrasonography/image scanning must declare that she does not want to know the sex of her foetus.

38. The Act also places prohibitions on people, including relatives and
the husband of the pregnant woman. These prohibitions extend to family members or the husband of the pregnant woman encouraging or seeking the use of prenatal techniques for the purpose of sex selection. In addition, no person including the specialist or family member will communicate to the pregnant woman, her relatives, or any other person the sex of the foetus by words, signs or in any other manner.

39. Any person who acts contrary to this law and seeks the aid of prenatal tests to be conducted on a pregnant woman for the purpose of sex selection will be liable to be punished to up to three years imprisonment and pay a fine up to Rs.50,000. However, in case of a doctor violating this act, his/her name will be reported to the State Medical Council, who will take appropriate actions, including suspension of the doctor’s practicing license.277

40. In 2000, the Constitutional Chamber of Costa Rica’s Supreme Court of Justice held that human life begins at fertilization, and that zygotes, embryos, and fetuses are thus entitled to all human rights, including a right to life.278 As a result, in vitro fertilization was banned in Costa Rica, even though abortion remained legal when a pregnancy posed a risk to the woman’s life or health.279 In 2012, the Inter-American Court of Human Rights struck down Costa Rica’s prohibition of IVF as a means to protect the right to life prior to birth, finding that where there are prenatal protections, they must be “gradual and incremental, according to [life’s] development.”

277 By Lea Goelnitz, Intern – Centre for Social Research: June 21, 2012
278 SalaConstitucional de la Corte Suprema de Justicia [Constitutional Chamber of the Supreme Court of Justice], Expediente [Record] No. 95-001734-0007-CO, Voto [Vote] No. 2306-00, Mar. 15, 2000 (Costa Rica).
279 Código Penal [CP] (Penal Code) No. 4573, art. 121, May 4, 1970 (Costa Rica)
Further Indian Penal Code and other various laws have been discussed. The researcher has further discussed Constitutional Law and relevant provisions.

On ‘VARIOUS DIMENSION OF FEMALE FOETCIDE AND REGIONAL DIFFERENCE IN VARIOUS PARTS OF INDIA’ the researcher has discussed “The age old phenomenon of wife-beating has unique manifestation in India. In most Indian homes, wife-beating is in fact one of the most accepted crimes committed against women. This problem is not confined to one particular strata of society alone. It exists everywhere though in different forms. In India, the wife-beating seems to get camouflaged under the term dowry-deaths. The deaths which occurs within the home is the ultimate manifestation of the violence suffered by most Indian women in varying degrees.”

If statistics are to be believed, almost every six hours, somewhere in India, a young married women is burnt alive, beaten to death or forced to commit suicide. Atleast 20% married women aged between 15 to 49 years experience marital violence at some point in their lives, many on an almost continual basis. In one study of battered women it was found that the percentage distribution of causes of violence against married women were dowry demands, extra marital affairs and bigamy, alcohol and gambling were the highest. The analysis revealed that for more than 50 percent of the cases, regular beating was a fact of life. Besides manual beating, 10 percent of the women were assaulted with instruments. Another


study of dowry victims shows that one in every four was murdered or driven to commit suicide and more that half (61.3 percent) were through out of their husbands house after a long drawn out period of harassment and torture. According to another study the victims were mostly young (18-30 years), less educated than their spouses, dependent on husbands on in-laws for their living and mostly died from burn injuries. It has also been argued that it is not only a woman's dependence with makes her vulnerable; a wife in a high status job may also be subjected to violence.  

44. A detailed discussion on wife abuse, has rebutted convincingly, that the popular myths which surround the phenomenon of wife beating in India such as middle class women do not get beaten, the victim of violence is a small, fragile helpless women belonging to the working class, the wife beater is a man who is frustrated in his job, an alcoholic, or a paranoid person, aggressive in his relationships. Nor was it true that the so-called loving husbands did not beat their wives or that women provokes men to beat them. Yet, many of these myths seem to pervade the analysis of wife-beating and feminine expectations in Indian society.  

44. For instance, based on an analysis of cases which had come to the Delhi-based women's organisation, Saheli, it as evident that wife-beating was common among, all social classes as it "is a reflection of the power relationship between a husband and wife", which mirrors a woman's secondary social status. However, the pattern of violence differs from one class to another, with the whole

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neighbourhood being witness when a slum-dweller beats his wife to the extremely private nature of a middle class professionals physical oppression of his spouse.

45. Another area about which universally little is known and hardly discussed, is that of marital rape: in India, despite some thinking along these lines by feminists and legal experts, there has as yet been no amendment in law to include rape within marriage. The Only two exceptions being, firstly, if the wife is below 15 years of age and secondly, if the wife is living separately under a decree of separation. Though figures on marital rape as well as other sexually demeaning and violent acts are difficult to obtain, however discussions with counsellors working with abuse women indicated that a very large percent of their clients were tortured with forced sexual intercourse. Feminine socialisation which stresses docility, compliance and shame predisposes a wife to accept a range of physical behaviour from her spouse. It would not be too extreme to hypothesis that male physical violence in marriage is related to sexual activity : detailed interviews and discussions at the women's shelter of battered women quite often led to admission of sexual excess; when a woman resisted, she was beaten, or if she did not satisfy her husband's demands (which could quite often be perverse in nature) the outcome was physical abuse.\textsuperscript{284}

46. It is indeed ironical that for long, the family, viewed as an individuals ballast against the world becomes the arena for legitimate physical and mental oppression of women; which the legal and police systems have, after 1975 become more receptive to certain excesses, yet much remains unstated, invisible and

repressed. Domestic Violence against women is a difficult and intractable health and social problem in India. The overwhelming conclusion is that wife-beating is not only deeply entrenched, but also that attitudes uniformly justify wife-beating, and few women would opt out of an abusive marriage.”

47. The researcher has discussed various judgments relating to domestic violence. The researcher has observed, “In Sabana (Smt.) @ Chand Bai and Anr. Vs.Mohd.Talib Ali and Anr. Justice Sangeet Raj Lodha observed , “The legal question that falls for our determination in this reference made by the learned Single Judge of this Court reads as follows: Whether the Protection of Women from Domestic Violence Act, 2005 can be applied retrospectively specially where the aggrieved party (wife) was divorced by the respondent (husband) prior to the Act coming into force on October 26, 2006 or not? The aggrieved person, who had been in domestic relationship with the respondent at any point of time even prior to coming into force of the Act and was subjected to domestic violence, is entitled to invoke the remedial measures provided for under the Act.”

48. The enactment in question was passed by the Parliament with recourse to Article 253 of the Constitution. This provision confers on the Parliament the power to make laws in pursuance of

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285 Ibid., p. 1748.
286 2013(4)WLN306
287 Ibid
international treaties, conventions, etc. The Domestic Violence Act was passed in furtherance of the recommendations of the United Nations Committee on the CEDAW. The Act encompasses all the provisions of the Specific Recommendations which form a part of General Recommendation no.19, 1992.

49. The Statement of Objects and Reasons declares that the Act was being passed keeping in view the fundamental rights guaranteed under Articles 14, 15 and 21. Article 21 confers the right to life and liberty in negative terms, stating that it may not be taken away except by procedure established by law, which is required, as a result of judicial decisions, to be fair, just and reasonable. The right to life has been held to include the following rights (which are reflected in the Act), among others:

(i) The right to be free of violence: In Francis Coralie Mullin v. Union Territory Delhi, Administrator, the Supreme Court stated, any act which damages or injures or interferes with the use of any limb or faculty of a person, either permanently or even temporarily, would be within the inhibition of Article 21. This right is incorporated in the Act through the definition of physical abuse, which constitutes domestic violence (and is hence punishable under the Act). Physical abuse is said to consist of acts or conduct of such nature that they cause bodily pain, harm, or danger to life, limb or health, or impair the health or development of the aggrieved person. Apart from this, the Act also includes similar acts of physical violence and certain acts of physical violence as envisaged in the Indian Penal Code within the definition of domestic violence. By adoption
of such an expansive definition, the Act protects the right of women against violence.

(ii) The right to dignity: In Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan, the Supreme Court emphasised the fact that the right to life included in its ambit the right to live with human dignity, basing its opinion on a host of cases that had been decided in favour of this proposition. The right to dignity would include the right against being subjected to humiliating sexual acts. It would also include the right against being insulted. These two facets of the right to life find mention under the definitions of sexual abuse and emotional abuse, respectively. A praiseworthy aspect of the legislation is the very conception of emotional abuse as a form of domestic violence. The recognition of sexual abuse of the wife by the husband as a form of violation to the person is creditable, especially as such sexual abuse is not recognised by the IPC as an offence. These acts would fall within the confines of domestic violence as envisaged by the Act, though the definition would not be limited to it.

(iii) The right to shelter: In Chameli Singh v. State of U.P., it was held that the right to life would include the right to shelter, distinguishing the matter at hand from Gauri Shankar v. Union of India where the question had related to eviction of a tenant under a statute. Ss. 6 and 17 of the Domestic Violence Act reinforce this right. Under S.6, it is a duty of the Protection Officer to provide the aggrieved party accommodation where the party has no place of
accommodation, on request by such party or otherwise. Under S.17, the party’s right to continue staying in the shared household is protected. These provisions thereby enable women to use the various protections given to them without any fear of being left homeless.

50. Article 14 contains the equal protection clause. It affirms equality before the law and the equal protection of the laws. Article 14 prohibits class legislation, but permits classification for legislative purposes. A law does not become unconstitutional simply because it applies to one set of persons and not another. Where a law effects a classification and is challenged as being violative of this Article, the law may be declared valid if it satisfies the following two conditions:

(i) The classification must be based on some intelligible differentia,

(ii) There must be a rational nexus between this differentia and the object sought to be achieved by the law.

51. As a result of the ruling in cases such as Royappa v. State of Tamil Nadu, any law that is arbitrary is considered violative of Article 14 as well. This provision is significant in putting a stop to arbitrariness in the exercise of State power and also in ensuring that no citizen is subjected to any discrimination. At the same time, it preserves the State’s power to legislate for a specific category of people.

52. Article 15 disallows discrimination on the grounds of religion, caste, sex, race, etc., but permits the State to make special
provisions for certain classes of persons, including women and children. The Domestic Violence Act promotes the rights of women guaranteed under Articles 14 and 15. Domestic violence is one among several factors that hinder women in their progress, and this Act seeks to protect them from this evil. It indeed effects a classification between women and men, protecting only women from domestic violence, but this classification is founded on an intelligible differential, namely, gender, and also has a rational nexus with the object of the Act. Further, the Act is far from arbitrary, in that it is a well-thought and necessary attempt to curtail domestic violence and eventually vanquish it. It is to be remembered that it is generally women who are the victims of domestic violence, and not men. At this stage, it is also essential to keep in mind Article 15(3) which empowers the State to make legislations like this for the benefit of women, thus creating an exception in their favour against the operation of Article 15(1).

53. On **GLOBAL TRENDS RELATING TO DOMESTIC VIOLENCE** the researcher has observed the condition of women in China, Hong Kong and other nations. Thus it may be observed that the all efforts to make the study exhaustive have been made. After studying the condition of women with special reference to domestic violence and female foeticide, it may be concluded that women were always treated as second class citizens, in-fact they got their citizenship rights after a long time than men got theirs.

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HariniSudersan&NirupamaRamakrishnan: Domestic violence A Constitutional Perspective
The problem, as we know is not new and various efforts have been made to settle the issue but the success rate was very low.

7.2 SUGGESTIONS:

1. As it may be known that these are types of Violence against Women:
   - **Criminal Violence** - Rape, abduction, murder, etc.
   - **Domestic Violence** – dowry deaths, wife battering, sexual abuse, maltreatment of widows, etc.
   - **Social Violence** - forcing a mother for female foeticide, eve teasing, refusing to give a share to women in property, forcing a widow to commit ‘Sati’, harassing daughter-in-law for more dower, etc.

2. It has been observed that “Fifty years have passed since the commencement of the Constitution, when the concept of formal equality became part of this supreme law, yet, in all walks of life we find women far behind her gender counterpart i.e. man. Sons and daughters in the same family get education, status and opportunities to develop their potential quite differently. Similarly, a husband and wife living in the same house have different rights and duties.

3. A desperate picture emerges if one sets to analyse and compare the status of rights of men and women in agricultural land in the largest province in this country, i.e. Uttar Pradesh. Agriculture, being the dominant sector of our economy, such an analysis gives an insight into the participation of women in holding land in the
province and consequently throws light on the status of property rights of women in general in this country.

4. The U.P. Zamindari Abolition and Land Reforms Act, 1950, was passed with the express motive of abolishing the ‘Zamindari System’ in the province and according to its provisions the entire land in the province, barring certain exceptions, has come to be vested in the State since then. Further, three types of tenure holdings have been created by the Act, but the inheritance of the tenure holding has been restricted to men. The discrimination is based purely on gender and nothing else. Section 171 of the Act clearly lays down that in case a male tenure holder dies then his son or his male descendants will come to inherit his rights in the holding of land. His own daughter and son’s daughter and the descendants of daughters have been excluded for this purpose.

5. While restricting the right of inheritance to the male only, the legislature has not only deprived a daughter or any other female descendant from inheritance but also the widowed wife. The law has thus expressly and deliberately maintained male hegemony in production relations and has incorporated a clear bias in favour of male descendants as opposed to the females. The existence of daughters and widows has been totally ignored and they have been excluded for all purposes in the matter of inheritance.

6. Not only gender but other pretexts have also been carved out to ensure the exclusion of women from the arena of property rights. The marital status of women has been prescribed as a further disqualification. A married daughter has been completely excluded. If no male descendant is there, the rights of the deceased would come to be inherited even by his brothers or other male relatives but not by his own daughter. In categorical terms, the Act has
preferred the brother of a deceased to a married daughter of the deceased for inheritance in tenure holding. Thus, even in a nuclear family where there is no male survivor, the married daughter cannot inherit the rights, rather her uncle has been found by our legislature in its wisdom, to be a suitable heir to inherit the tenure holding. Thus gender and marriage based discrimination by the legislature has to a great extent ensured that the rights in land holding of the family will continue to be possessed by the males to the exclusion of females.

7. It is pertinent to consider here that no stretch of the imagination can provide justification for such biased, inequitable and arbitrary discrimination and that too in the light of the so much talked of fundamental right to equality as provided in the Constitution itself. But still the supporters of such legislation in relation to agricultural land mainly rely on two arguments in their favour, first that the privileged position of men in contrast to women and consequent exclusion of women will protect the land from fragmentation and, secondly, that it will keep the landholding intact by saving it from ‘outside’ interference. Here we see the feudal prejudice that the independent family units developed through males are ‘inside’ the family and those through females are ‘outside’ the family.

8. The first argument against fragmentation is not justified, for all the sons have been treated as legal heirs for the purpose of inheritance. The contention against fragmentation of land would have had force had there been a law of primogeniture i.e. inheritance by the eldest son alone. It is true that the other male descendants have not been subjected to this type of inequality, bias and arbitrariness. Further the argument against fragmentation is devoid of any merit because the scheme of the Act does not restrict the maximum number of
sons which in its turn decides the number of shares, thus, the division of land even among six or seven sons is not fragmentation but if it comes to division of land among two or three sons and daughters there is a hue and cry regarding fragmentation of land. It is clear from the present state of affairs that the legislature has discriminated against women without any reservations and has thus consciously perpetuated patriarchy in rural production relations.

9. The other argument raised in favour of inheritance for male descendants is that after marriage a daughter goes to live with her husband at a different place hence is unable to take care of the land. In order to keep the land intact and save it from the ‘outside’ interference of other persons, it ought to be kept out of the reach of female members in the family. This argument is totally baseless and without any material basis as a male working at a different place does not lose his right to inheritance, even if the land is practically inaccessible to him. The male residing even in a distant or remote region does not lose his right to inheritance in another village. In this era of fast communication and women coming forward to take up all types of responsibilities, the prejudice based upon an assumption that a woman cannot take care of her land is nothing but a false pretext to exclude her from holding the rights. The fallacy of the above argument and the deep-rooted gender bias in the minds of those who run the State is patently clear from the fact that even in the case of acquisition of land by the government, where no question of fragmentation or interference with land arises, and the matter is only to get the net monetary proceeds (acquisition compensation), the daughter is still not entitled to receive the same and only sons are entitled to it.

10. In contrast to Uttar Pradesh, in those regions in India where there
have been strong mass movements in rural areas, some small but beneficial and comparatively progressive piece of legislation, like the Hindu Succession (Andhra Pradesh Amendment) Act 1986, could be brought on the statute book. This Act of 1986 has brought about a progressive amendment in the law by conferring a status of coparcener on the daughters by suitably amending the original Act. The preamble of this amending Act, recognising the necessity of such amendment, says that the amendment is necessary because the ‘exclusion of the daughters has led to the creation of the socially pernicious dowry system with its attendant social ills.’ In Andhra Pradesh thus the law of succession has been suitably amended so that it should be in conformity with the fundamental right guaranteed in the Constitution of India.

11. The corresponding law in Uttar Pradesh is not only ultra vires of the Constitution, being violative of the fundamental rights to equality, it is also far behind the public opinion and contrary to the declared aim of bourgeois democracy to establish an egalitarian society, even if on paper. There patently seems to be a conscious attempt on the part of the State to perpetuate the patriarchal production relations and thus maintain the status quo in this biggest province, in the country.”

12. The Hindu Succession Act enacted in 1956 was the first law to provide a comprehensive and uniform system of inheritance among Hindus and to address gender inequalities in the area of inheritance – it was therefore a process of codification as well as a reform at the same time. Prior to this; the Hindu Women’s Rights to Property Act, 1937 was in operation and though this enactment was itself radical as it conferred rights of succession to the Hindu widow for

289 AparnaBhardwaj: http://www.revolutionarydemocracy.org/rdv6n1/gender.htm
the first time, it also gave rise to lacunae which were later filled by the Hindu Succession Act. Hindu Succession Act was the first post-independence enactment of property rights among Hindus – it applies to both the Mitakshara and the Dayabhaga systems, as also to persons in certain parts of South India previously governed by certain matriarchal systems of Hindu Law such as the Marumakkatayam, Aliyasantana and Nambudri systems. “

13. Since it has been seen that there are more than one factor responsible for the condition of women, if we attempt to prioritize the problems and then try to sort them out, conditions of women may be improved considerably.

14. **Financial stability**: As it has been observed that women who have no property on their name whatsoever are most pathetic in condition, women with house on their name have been better in comparison and women who have house as well as agricultural land are best compared to both mentioned earlier.

- Hence a suggestion may be made that irrespective of religion and customs; there should be equal right to inherit property.
- There must serious efforts be made to ensure better opportunities for employment for women.
- Specific efforts should be made to provide financial assistance to women to start business.

15. **Social**: “Every man I meet wants to protect me. I can't figure out what from.” 291 This quotation rightly reflects that

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290 Shruti Pandey: http://www.muslimpersonallaw.co.za/inheritancedocs/Property%20Rights%20of%20Indian%20Women.pdf
291 Mae West
women are considered as object in the society and not the subject. Efforts must be made to change the bias of men and the women towards women. Attitude of society, particularly in India is not very kind towards women. It has been seen that women are not considered as suitable to all kind of jobs. This notion must vehemently be denied.

16. **Religious status:** The provisions to allow women to take part in religious and spiritual ceremonies such as mutavalli, shebait etc. may supplement the earlier suggestion.

17. **Legal Status:** There are certain areas within the legal domain where women are not given enough protection.

- **Section 375 of Indian Penal Code:** It has been seen that marital rape is not considered as rape at all except few conditions such as tender age of wife. There is no rational behind the law and it should be amended as soon as possible.
- Irretrievable breakdown of marriage should be added as a ground for divorce.

18. **Political Decision Making:** Women should be provided with an opportunity to take decisions with respect to individual, family, society and for the nation also.

- It shows the pathetic condition of political India that only in 2 states women are CM.
- 66 MPs are women in 16th Loksabha, which is less than even 15% of total membership.
- There are thirteen states where not even a single woman has been elected for loksabha.
- In Rajasthan 25 MLAs are women out of 200 seats.
• It is suggested that women should be more in number so that decisions making must be neutral.
• It is really shocking that men enact even laws for women.

19. **Other societal requirements:**

• Literacy rate among women should be improved.
• Laws like prenatal should be implemented effectively.
• Awareness against tolerance of domestic violence should be made.
• Female Foeticide, since it is an offence, should be strictly prohibited. It has seen that prosecution is very less in this area.
• Then only we can say that the society is equal. A nation becomes complete when the whole nation collectively takes decision for its own fait; writes own destiny and architects won future.
• We must not forget women are equally talented and devoted as men, if not more.

A saying “For most of history, Anonymous was a woman.”\textsuperscript{292} Appears to be correct and time to recognize the same.

\textsuperscript{292} Virginia Woolf