CHAPTER -1

ORIGEN AND DEVELOPMENT OF DOMESTIC VIOLENCE

1.1 Position of Women in Indian Society

“Insult to women is indignity to nature”

(Brahma—vaivarta Prakriti Kanda)

Where the women are held in reverence, there do the Gods reside, is an old Sanskrit adage. A society grows if the women grow, if they partake of the spirit of progress for they are the proverbial domestic legislators, they are the matrix of social life.

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

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from exercising their rights and freedoms on a basis of equality with men.\textsuperscript{7}

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”.\textsuperscript{8}

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.\textsuperscript{9} 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 contains forms of domestic violence against women that are nearly invisible because they are seen as “normal”.\textsuperscript{10}

Wife abuse is a personal violence, but it is also structural violence that has its roots in historical attitudes toward women and in the institution of marriage. It involves the control of women by men who

\textsuperscript{7} Ibid. at p. 5
\textsuperscript{10} Ibid. at p. 29.
have defined the parameters of women’s activities and enforce a male standard of accepted “feminine” behaviour. It is the product of the patriarchal system - of religious dogma, law, and behavioural science - that makes male supremacy seem sacred, just and natural. These institutions have not only endorsed the husband’s authority in the home, but also his use of physical force to punish a disobedient wife.\textsuperscript{11}

1.2 HISTORICAL DEVELOPMENT

In India, till the advent of the turks Indian women enjoyed great freedom and prestige, but due to certain social, economic and political exigencies and the unhappy impact of alien ideologies, inhuman restrictions clamped upon them, they were relegated to a position of servility and insignificance and they were burdened with several taboos and restrictions. Indian society has been a tradition bound society in which the traditionalists would present an idealised picture of women substantiating their claims on the basis of certain references from the vedic and classical literature.\textsuperscript{12}

A proper assessment of Indian women necessarily involves a brief resume of the cultural background of Indian women through the ages. Unlike her western counterpart, the Indian woman is part of a culture which goes back into the past. If she has a particular conviction or acts in a specific manner, it is due to the pattern that has been ingrained in her by the fairly table social structure of a thousand years.

The highest place has been accorded to women in Indian religious and philosophical thought. The primordial one is conceived as a harmony

\textsuperscript{12} Sood, Sushma, Violence Against Women, (1990), p. xi.
of ‘purusha’ (male) and ‘prakrati’ (female). The concept of ‘ardhanarishwara’ describes god—head as half female and half male. The ‘Shakti’ cult is centred around the superiority and destructive strength of the females. Rivers and streams, dawn and twilight, flowers and seasons, knowledge and music are conceived of as feminine.

The position of power, status and disabilities of the daughter, the wife, and the widow went on changing in course of time. Women enjoyed considerable freedom and privileges in the spheres of family, religion and public life, but as centuries rolled on, the situation went on changing adversely. The position which women occupied in Hindu society at the dawn of civilization during the vedic age is much better than what we ordinarily expect it to have been.

1.2.1 WOMEN IN HINDUISM

(A) Women in Vedic Period

The elevation of the feminine principle pervades vedic thought. The social structure in the vedic period admitted the equality of women. Hymn XXI of the Rig Veda extols the virtues of women as even greater than those of men.13

There is not one verse, not even a word indicating a slighting humiliation or an insult for women in the vedas. Instead, women are friends in life’s journey, creator, mentor, guide and partners in all fields. The very word ‘Mahila’ is made up of the root which means the repository of greatness and goodness. There is no such word as Mahila in any language, European or Asian.

Throughout the vedic period, woman was given a status equal to man’s to participate in sacrificial rites, to undergo the investiture ceremony, and to be man’s equal in upholding ‘dharma’. She could fight wars, join in festivals, take part in philosophical discussions like Gargi and Maitreye, or even remain unmarried if she so desired.\textsuperscript{14}

In the vedic period women participated in all the fields like men and took active part in every sphere of human life. During that period, women enjoyed a fair amount of freedom and equality with men. Women studied in Gurukul and enjoyed equality in learning vedas. For a long time, girls in higher societies were allowed to undergo upnayana rite. The great women like Ghosa, Apala, Lopamudra, Visvara, Gargi, Atreyi, Indrani, Yami and others had distinct qualities of art, music, dance and even fighting in the battle. Purdah was not in the vedic period. In the matter of selecting the life partner in marriage, women had equal rights. The example of polygamy was rare and mainly confined to ruling class. Dowry system was prevalent in rich and royal families only in the form of movable gifts. A widow could marry again or could undertake the recourse of liveratge (niyoga). The Indus Valley Civilization recorded the beginning of the cult of worshipping earth or goddess. But there still were certain restrictions on women’s right. In vedic times, there was no discrimination between boy and girl. There were two classes of girls:

(i) The Brahm—vadini students, who donned the sacred thread, constant reminder of the holy vows, tend the fire, and study the vedas, but in distinction from the boy students, do the begging for alms within their own parental homes, and

\textsuperscript{14} Ibid.at p. 1.
the Sadyo Vadhey who are given only symbolically and formally immediately before marriage. Men used to regard women as partners in managing the affairs during the Grihasta, Vanaprastha and Sanyasa Ashram in life and consequently women enjoyed a quality of life comparable to that of the men.\(^\text{15}\)

In order to understand the position of women in Vedic period, let us consider a few aspects of the Indo—Europeans who were the antecedents of the Rigvedic age. Griswold has given us the following picture:

The outlines of the present family system were already in existence, the father being the head, and the son’s wife being adopted into the clan of her husband. It was the joint family system, the primitive names indicating that the family consisted of a man and his wife and children, his brothers and their families, his sons and their families, besides the old people, grand father and grand mother. The authority of the head of the family was unlimited. He had the power of life and death. Sons were greatly desired as warriors, avengers of blood, performers of funeral rites, and as a means for the continuation of the clan. There was, owing to the chronic warfare of the time, usually a dearth of men and superfluity of women. Hence, girl infants, as not needed, were often exposed. Old people, too, were frequently put out of the way, especially in time of need. The joint family coffer was controlled by the head of the family. Primitive Indo—European marriage was by purchase or capture. The lot of wife was not easy. She was more or less a beast of burden. Her mother—in—law ruled her with an iron hand. Separate dining of the two sexes was a primitive custom. There were also traces of “sati”, the custom of a wife voluntarily accompanying her husband in death, also of a

distinct prejudice against the second marriage of widows. The brother was the guardian of the honour of his sister, and after the death of the father, an unmarried sister came under his authority. Indo—European antiquity was dominated by the idea of the necessity of marriage. It was so indispensable that unmarried dead were sometimes even married ritually to the living, so that they might be provided for in the life to come. The future comfort of the dead husband was the primitive idea of “sati”……Griswold further says that during pre—vedic period monogamy was the rule, polygamy the exception. As between different clans, probably exogamy was the custom…. The wife as purchased was the property of her lord and master. Hence, marriage was later called the lordship (patitva) of the husband over the wife. Accordingly, there was a double standard of morality.¹⁶

J.J. Mayer states that “the veda knows nothing of any hetaerism”.¹⁷ They had a well ordered family, although there is “abundant evidence that the standard of ordinary sexual morality was not high”,¹⁸ still the marriage tie was not lightly regarded.¹⁹

Nevertheless despite polygamy, which lowered the status of women on the whole it would seem as though the normal vedic household had one husband and one wife. The Vedic Index says that “a vedic Indian could have more than one wife…. but the evidence points to the wife first wedded alone being a wife in the fullest sense”.²⁰ Wife was on “a level of equality, at the hearth, which was the alter of sacrifice”. It was wife’s duty to prepare the sacred vessels.

¹⁶ Griswold, The Religion of Rig Veda, (1923), pp. 7, 9, 10.
During Rig Veda, married women enjoyed a place of dignity, the new wife’s position within the joint family system was secure. The marriage ceremony presented the high status of the bride. Wife was not an object of subjection in the new home, but was afforded an equal status, indeed one of high importance.

Although women seem to have been on a level of equality at the hearth, boys were preferred over girls, while sons were prayed for, daughters were not. It is stated in Black Yajur Veda (i.i.6.4) that the birth of a daughter may be avoided by not spreading a bunch of sacrificial grass in all directions. There is no intercession made for daughters.

It was important for the father to have a son. If father had a daughter, but no sons, he could appoint the daughter’s son “to perform his funeral rites”. Sonlessness is placed on the same level as lack of property. Heinrich Zimmer says that nowhere in the vedic songs do we find a wish for a daughter.

However, A.A. Macdonell points out that “the Yajur Veda speaks of girls being exposed when born”. Farquhar also reminds us that “since the father was supreme and since every family wanted sons, there was a tendency to set less value on woman. In consequence, many girl babies were exposed or put to death in every race practising ancestor worship”. In the creative period of the Vedas, Farquhar draws the conclusion, “like most primitive peoples, they practised the exposure of girl children and old people”. He says that this custom existed down to 1830, because

21 Griffith, R.V., 1, (1920), 347 n.
24 Ibid., p. 22.
from that date onward, “a steady persistent crusade was carried on against female infanticide by the Government of India.”

There is no trace in the Rig Veda that women were secluded as inferiors. The vedic index says that “the maiden may be assumed to have grown up in her father’s house—sharing in the work of the house”. She is believed to have mingled freely with the growth of the village. The vedic index also states that “women did not go to the Sabha i.e. assembly, for they were of course excluded from political activity”.

Macdonell and Keith summarize the dependent state of women in the Vedic documents:

“women could not take on inheritance, and were not independent persons in the eyes of law, whether married or not. Presumably, before marriage, they lived on their parents or brothers, and after that on their husbands, while in the event of their husbands predeceasing them, their relatives took the property, burdened with the necessity of maintaining the wife. Their earnings would be appropriated by their nearest relative—usually father or brother—in the few cases in which unmarried women could earn any thing, as in the case of courtezans . . . . If the father was dead or feeble, the sister was dependent on her brother and on his wife”. Brotherless maidens seem to have had a hard time of it. They were likely to be ruined physically, although the Rig Veda states that ‘religious terrors would await the man who took advantage of such a woman’.

Ancient sacred writers of Vedic age knew nothing of child marriages, of unhappy, unfair present day marriages, of widow burning,

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25 Ibid., p. 165.
26 Macdonell and Keith, VI, II, (1912), 485.
27 Ibid., p. 427.
28 Macdonell and Keith, V.1, II, (1912), 486, 496.
or the pathetic heart—rending sorrow of so many present—day Hindu widows. They were unaware of “purdah”, the seclusion of women, with its attendant ravages of disease. On the whole, however, considering the primitive age in which these people lived and the fact that, polygamy, prostitution, and even incest were recognized to have existed, it seems a remarkable fact that a high moral strain in family organization did run through the early Aryan civilization, an influence that gave to woman generally a status of some dignified consideration. R.W. Frazer declares that ‘there is evidence from the Rig Veda that women in vedic times occupied a far higher position than they did in their ancestral homes or even in later days in India’.29

In the latter part of the vedic period, the law-maker Gautama described eight different kinds of marriages, giving latitude in the choice of spouse both to men and women. Inter-caste marriages were permitted. The lower the caste, the more liberal were the rules. A girl who was not given in-marriage at the proper age had the liberty to choose her own life partner.30

Widow re—marriage by the niyoga form was permitted where by a widow could wed her brother—in—law or a man belonging to her husband’s caste. This, however, was more to maintain the family institution, then as a special licence for the sex life for a widow.31

Ordinarily, girls were less welcome than boys but nevertheless girls were educated like boys and had to pass through a period of Brahmacharya. Many of them became distinguished poets, who composed hymns themselves. Some of them were mentioned in Rig

31 Ibid. at p. 2.
Veda, Lopamudra, Visvavara, Sikata Nivavari and Ghosha. Many of them specialized in purvamimansa, which discussed the diverse problems connected with vedic sacrifice. Leelavathi assisted her father Bhaskaracharya who was an eminent mathematician. Khana, a woman, was a great astronomer of her times. The Bhagvata refers to two daughters of Dakshayana as experts in theology and philosophy.\textsuperscript{32}

Decidedly, during vedic times, the women could fight back with violence as in the Mahabharata or with non—violence as Sita does in the Ramayana. But she never reconciled with evil as our women do today in the name of modesty or modernization.\textsuperscript{33}

(B) Position of Women in the Brahmanas

The Brahmanas are the set of literary documents subsequent to the four vedas. These are the earliest Indo—European prose writings now existing. They are extremely valuable, as they are a source of one of the most important periods in the development of India. In them we learn of the social life of the period between the Vedas and the Upanishads. The Brahmanas represent the ideology of a sacredotal caste which played upon the natural religious instincts of the Hindus. The clever Brahmanas managed to control the people. Primarily; the priests realized they must control women. In this respect, they had much to overcome. There was the early worship of goddesses with which to reckon, likewise woman’s sex nature giving her the power of motherhood, had to be reckoned with. Her .freedom was a hindrance to the power and domination of the priests. The Brahmans felt that this must be conquered so with verbal agitation, they succeeded in lowering the position of woman. They considered her

an inferior creature without a mind, with a heartless cruelty they decided that gradually even religious rights must be taken away from woman.

The priests saw to it that their directions for worship contained a tremendous overemphasis on the physical aspect of womanhood. The Brahmanas are filled with passages of explanation regarding sexual matters. Also, the necessity of male offspring for salvation was stressed emphatically. The Brahmanas emphasized the natural desire for a son, now not alone for the idea of ethical and personal immortality, but for the transmigration of souls. A son begotten became involved in the idea of salvation. Such desire was one factor which increasingly helped to bring about unfortunate child marriages, with all the accompanying misery.

*Since now, men desire a son,*
*Both those that have and those that have not knowledge,*
*What doth a man gain by a son?*
*Tell me that, O Narada.*
*A debt be payeth in him*
*And immortality he attaineth,*
*That father so seeth the face*
*Of a son born living.*
*The delights in the earth,*
*The delights in the fire,*
*The delights in the water of living beings*
*Greater than these is that of a father in a son.*
*By means of a son have fathers ever*
*Passed over the deep darkness;*
*The self is born from the self*
*The (son) is (a ship), well—found, to ferry over . .*
*Seek a son, O Brahmans,*
*This is the world’s advice.*
Food is breath, clothing a protection,  
Gold, an ornament, Cattle lead to marriage.  
A wife is a comrade, a daughter, a misery (Kripanam)  
And a son, a light in the highest heaven  
A sonless one can not attain heaven”.

(Aitareya Brahmana 7.13)\textsuperscript{34}

Even during the period of Brahmanas, there were evidences of respect for woman. The views of all men with regard to all women could not be dominated by the priest. Some men insisted upon worshipping the power of motherhood. In the Brahmana literature, the women speculate and argue with men, just as Draupadi does in the Epic. In the Brahmanas, women were not all together excluded from religious sacrifices.\textsuperscript{35} But religious observances were allowed to maidens primarily for the purpose of securing a husband. The Satapatha Brahmana states that a daughter who has been given in marriage by her father must remain faithful to her husband. When Sukanya is reminded of her decrepit, ghostlike husband and she is urged to leave him, she replies:

“To whom my father has given me, him will I not abandon, as long as he lives.

(Satapatha 4.1.5.9)\textsuperscript{36}

Despite a lowered estimate of women in the Brahmanas, reverence for goddesses persisted in sacredotal documents. Despite his praise for goddesses and the implications that both gods and goddess were necessary and important. The following verse in the Satapatha Brahmanas

\textsuperscript{34} With reference from Pinkham, M.W., Women in the Sacred Scriptures of Hinduism, (1941), p. 55.  
\textsuperscript{35} Farquhar, PH., (1912), pp. 167-68.  
\textsuperscript{36} Eggeling, Julius, Sacred Books of East, XXVI, (1900), p. 274.
shows that great care was taken to establish pre—eminence of the male among gods and men:

“To the male (deity) he makes offering first, then to the females . . . . To the male (deity) he makes offering both with the Vashat—call and the Svaha—call to the female (deities) only with the Svaha. He thereby endows the male pre—eminently with power”.

(Satapatha 9.4.1.6)\(^{37}\)

Priests declared that women are inferior to men, they are dependent on men and must be obedient to husband. The Brahmanas repeated the declaration in the Rig—Veda (10.9.5.15).

“Truly there is no friendship with women, and theirs are the hearts of hyenas”

(Satapatha 11.5.9).\(^{38}\)

The most important of the priestly documents re—emphasizes the low estimate of woman.

Women are given to vain things . . . It is t him who dances and sings that they most readily take a fancy (Satapatha 3.2.4.6).\(^{39}\)

Perhaps these Brahmanical writings did not report the full story of the life of those days in so far as the wishes of the majority of people were concerned regarding the “feminine”. It is likely that many women did not realize at the time that some religious leaders were trying to subjugate womanhood. Much of the spiritual freedom which Hindu


\(^{38}\)Eggeling, Julius, Sacred Books of East, XLIV, pp. 71-72.

\(^{39}\)Eggeling, Julius, Sacred Books of East, XXVI, p. 53.
woman had formerly possessed was wrested from them in the Brahmanas.

(C) Women in Upanishads

The Hindus’ love of philosophic speculation is dominant in the third set of sacred scriptures, the Upanishads, where even women display interest in philosophic discussion. Some Hindu women as Uma, Gargi and Maitreyi were notable for their learning as is evidenced by the philosophic disputations reported in the Upanishads. Gargi even out questioned and out—wearied the Chief Philosopher of the Upanishads, Yajnavalkya. Maitreyi was a discoursner on sacred knowledge (Brahmavadini).

In the Upanishads, woman is referred to as having been created by the primeval being. Brihad—Aranyaka says that ‘a man’s wife is his voice’ (His mind truly is his self (Atman) : his voice is his wife).

As in the Brahmanas, so also in the Upanishads, there are instructions regarding sexual matters. There is explicit justification of forcible sex—violation of a woman by a man.

The universal unitary reality, which constitutes the central concept of the Upanishads is identified with various powers, both human and divine. It is identified with “a woman and the maidentoo”.

(D) Women in the Laws of Manu

It is Manu’s code that has had the most negative effects on Indian women for countless succeeding generations. Even today, it is his laws which keep millions helpless in the prison of Hindu orthodoxy. Manu for the first time legally assigned to woman her definite place in the scale of
society. But his laws reflect a conflict even within himself between his valuation of woman as a spiritual entity on the one side and as a unit in society on the other. He averred that a mother is more to be revered than a thousand fathers, yet his laws place woman socially on a level with the lowest of all groups in Aryan society, the Sudra.⁴⁰

Manu enumerates many laws directing a wife’s conduct—he says that a wife must show to her husband such utter devotion that he must be treated like a God, even when he is conspicuously lacking in virtue. No sacrifice, no vow, no fast must be performed by women apart (from their husbands). If a wife obeys her husband, she will for that (reason) be exalted in heaven. In childhood, a female must be subject to her father, in youth to her husband; when her lord is dead, to her sons. A woman must never be independent.

The laws of Manu state that women were created to be mothers and that they may perform religious rites along with their husbands. Yet there are some passages which deny to women the privilege of offering sacrifices.

“Neither a girl, nor a (married) young woman, nor a man of little learning, nor a fool, nor a man in great suffering, nor one uninitiated, should offer an Agnihotra”.⁴¹

With regard to the status of daughters, Manu says the sale of a daughter is forbidden. He also secures property rights of daughters not only from her father’s estate but also from the separate property of her mother.

Concerning betrothal regulations, Manu says that daughter should be given in-marriage by her father at proper time, she should be given to a distinguished, handsome, boy of the same cast, he further says that a girl of marriageable age should rather stop in her father’s house until death than to be given to a man destitute of good qualities.

Failing a son of his own, a father may appoint a daughter’s son to perform funeral rites. An appointed daughter is equal to a son, and is entitled to an inheritance. Child marriage is permitted for a girl even as early as the age of eight.

“A man aged thirty years, shall marry a maiden of twelve who pleases him, or a man of twenty-four, a girl eight years of age. If (the performance of) his duties would (otherwise) be impeded, (he must marry) sooner”—9.94. So far as punishment is concerned, there is no distinction on the basis of sex. Corporal punishment is prescribed for offenders, even women, according to the laws of Manu. “On women . . . the king shall inflict punishment with a whip, a cane, a rope, and the like”—(9.230).

More than once in the Laws of Manu, women and low caste Sudras are bracketed together, but he also expressed a notably high appreciation for worthy women. Knowing their disposition, which the Lord of Creatures (Prajapati) laid in them at the creation, to be such (every) man should most strenuously exert himself to guard them—(9.15—16).42

Manu’s social codes and sanctions left their marks permanently on the future status of the Indian women. Manu clamped down women’s freedom in certain spheres in order to safeguard their position and to

preserve the family structure. Manu’s famous dictums “a woman must be her father’s shadow in childhood, her husband’s in her youth, her son’s in old age” is too well known. The tenets of Manu have fostered a deep rooted belief in the intellectual and otherwise inferiority of women. He says that women should never be given independence. He equated women with slave and his laws epitomize complete submission of women to men and there are still the sanctioned codes of conduct ascribed for and by and large accepted by women.

But Manu was not a woman hater, for it was Manu who said in Manu Smriti that—

यत्र नामयास्तु पूजयन्ते रमन्ते तत्र देवता।
यत्रैतास्तु न पूजयन्ते सर्वस्तत्राफळः क्रिया॥

The home where there is respect for women is like the abode of gods but where that is not so, all other forms of worship are fruitless.

सन्तुष्ये भार्यया तत्र भर्त्रः भार्या लभैः च।
यस्मानेव कुलो नित्यं कल्याणं तत्र वै धुरम्॥

Blessed are the houses where women are happy with their men and men are happy with their women and they will surely prosper.

स्त्रियां तु रोचमानायां सर्व तदोचते कुलम्।
तस्यां त्वरोचमानायां सर्वेव न रोचते॥

If the lady of the house is happy, the whole household will be happy, but if she is not nothing else would give delight.

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45 These quotations have been taken from the book of Atray, J.P., Crimes Against Women (1988).
Manu vehemently opposed the purchase of a woman. He never gave legal sanction to such a marriage. He recognized the adoption of girl child as putrika which conferred on her all the rights of a son. Manu brought down the age of marriage for a girl and advocated child marriage, though he warned fathers not to give away their daughters to men devoid of good qualities.

Though polygamy was practiced, he strongly advocated monogamy and attached the greatest importance to sexual restraint and fidelity to one’s spouse. He ‘laid down different rules even for a man contemplating separation. A woman deserted by her husband was given the right to marry after the lapse of a certain number of years. Thus, Manu was the principal law-maker of the conservative Hindu period. His prime objective was to safeguard the interests of the family and society at the expense of individual liberty.46

Thus, the laws of Manu, as do all the earlier documents of Hinduism show various attitudes, both appreciative and depreciative, towards women.

(E) Women in Puranas

In the period of later smritis, women were declared to be of the same status as that of the Sudras, and so came to be gradually excluded from the study of higher theology and philosophy. Since by nature women are more religious than men, a new type of religious literature was evolved to meet their religious needs and aspirations. This was Puranic literature. It enunciated the principles of Hinduism in a homely,
easy and attractive manner, illustrating them with a number of edifying stories.\textsuperscript{47}

The Puranas, eighteen in number are religious stories or “ancient tales”. They belong to popular Hinduism. There is a combination of praise and blame for women. In spite of prohibitions laid upon the feminine, there is outstanding praise of goddesses, who in the Puranas occupy a position of great importance. The idea of goddess being the Shakti, or energy of her husband took definite form in Hinduism. But in some verses, the association of womanhood with deification is scarcely recognized.

(F) \textbf{Women in Mahabharata}

Mahabharata, the great epic depicts the social life of India. Macdonell, the eminent Professor calls the Mahabharata “a moral encyclopaedia in Indian literature”. In this heroic age the poets of Mahabharata portray, on the whole, womanhood which was noble, intelligent and active. In this document, we see woman in the home, at court, on the battlefield, and in intellectual and spiritual capacities. Although in some of the earlier Hindu documents, women are sometimes pictured as helpless females. In the Mahabharata, we find many accomplished women, they are not only beautiful in appearance, but they possess real tact and graciousness of character.

In Mahabharata women are not only pictured as beautiful, mild, tender and long suffering but there are also women of energy, strong will and daring pride. The Mahabharata quite clearly shows that Kshatriya women are not veiled. In the Epic, women may have an important share

in the events of their time. Queen Gandhari appears in the Council chamber. In a passage in the Mahabharata, we note that where there are no male heirs, maidens shall be made rulers.

In Mahabharata, there is the highest praise for women and at the same time the bitterest denunciation. Despite prohibitions which the priest attempted to enforce upon the women of the epic, on the whole, these women stand out significantly. They are resolute and spiritual. They are not isolated but are in close contact with the events of their time. They are capable and serviceable members of society. As a matter of fact, the epic seems to have produced outstanding portraits of women, which have helped to stir Hindu women with hope and faith.48

(G) Women in Ramayana

Just as Mahabharata has been termed “the odyssey of the Hindu”, so the other epic of ancient India, the Ramayana of Valmiki has been characterized as “the Iliad of the East”. The Ramayana is one of the most effective of all Hindu sacred writings. In the laws of Manu and in the Mahabharata, it is taught that a wife should reverence her husband, as if he were a veritable deity. This teaching is reaffirmed in the Ramayana.

The dependence of a woman upon her husband, son and relatives is continued from the antecedent laws of Manu. A wife’s service to her husband is taken as the best method of attaining heaven. The Ramayana reaffirmed the deep—seated Hindu conception that husband is a woman’s greatest deity.

48 Ibid. at pp. 138-66; See also Dutt, MN., A Prose English Translation of the Mahabharata, 18 Vols., 1895-1903.
In estimating the value for womanhood of this epic poem, there is divergence of opinions. The unsupported suspicions concerning the character of womanhood which were expressed by the revered Rama have not helped forward the ethical progress of womanhood in India. Polygamy was in practice and women were humiliated publicly. There were over-emphasis on the physical aspect of womanhood.

The influence exercised by the Ramayana upon the Hindus, reaching down to the lowest strata of society is, . . . immense. The character of Sita has become the grand example to Hindu women as the embodiment of purity, chastity and wifely fidelity. She has furnished Hindu ladies with the highest and noblest conception of their duties in their various and manifold relations in life.

The sacred scriptures of Hinduism show women from infancy onward her varied relationships to mother, father, sister, and brothers, to husband and husband’s family, to her children, to her home and to the community in which she lives as widow, as slave, as teacher of men, as wielder of power, Meyer asserts that as a loving wife and tender mother, woman has nowhere else found greater and more heartfelt appreciation than in old Indian literature.

However, many portions of Hindu sacred scriptures have not contributed to the appreciation of women but rather have caused real degradation. Hindu women were denied freedom of thought. According to certain sacred scriptures, her husband, however evil he might be, nevertheless is to be revered as her God. Desire for sons in order to continue religious observances of ancestors has been responsible again and again for child marriages. Such unions have often caused tragic mortality among young girls. One of the causes of female infanticide
undoubtedly has been the fact that so often daughters have been considered of little value.

Laws of Manu declared that a mother should be revered a thousand times more than a father but a woman has also been mentioned along with the Sudras. The prohibitions against the remarriage of widows by Manu has been responsible for the pathetic condition of many Hindu widows. Even today, their desolation is often pitiable, especially that of the child widows. Education was denied to girls. A Hindu husband used sacred scriptures as sanction to repudiate his wife unjustly. Manu permits a husband to strike his wife with a rope. The sacred scriptures have been responsible for much misery suffered by Hindu women in centuries past, even today, they exert a tremendous influence.

In the sacred scriptures of Hinduism, there are many elements of strength too with regard to womanhood. There is praise and admiration for the feminine. In the early Vedas, we find a deep reverence for the mother, she had the privilege of giving religious instructions to her children. Monogamy was practiced generally and in many cases, a girl was allowed the choice of a husband. Widows could remarry. Wife burning is not found in Vedas. Again and again, the Hindu scriptures repeat that women are to be honoured. Religious deeds are said to be useless if women are not honoured and cherished. Hindu sacred scriptures support the ideal of equal comradeship and mutual benefits for men and women.49

1.2.2 WOMEN IN BUDDHISM

Buddhism rose as a protest against the rigid rules of Brahmanism. In the post-vedic period, the dominance of rituals increasingly grew,

which gave indomitable power to the Brahmanism. Buddhism opened the
doors of religion to all human beings without any distinction Buddhism is
in its essence, a religion of self-culture and self-restraint. If a woman
could achieve these two qualities, she was entitled to achieve Nirvana like
men. Thus, after a long period, since the dissolution of the Vedic society,
the doors of religion were once again opened to woman and her right to
salvation proclaimed.

The advent of Buddhism saw a welcome change in women’s
position in the society. It allowed women the freedom to be educated, to
travel as missionaries or even to remain unmarried.50 The admission of
women to the Buddhist order gave a great impetus to the cause of female
education in aristocratic and well- to-do families, like Brahmavasinis in
Brahmanical circles. Sanghmitra, daughter of emperor Ashoka was the
first missionary undertaking the long and perilous journey by road to a
part of east coast and thence by sea in order to carry the message of
Buddha’s teachings to Ceylon. One of the great twenty-four
Thirthankars, the great teacher of Jams was Malli, a princess of Videha,
later known as Mallinath.

Several women from Buddhist families used to lead a life of
celibacy and became teachers of Holy Scriptures and philosophy. Among
the authoresses of the Therigatha, who were all believed to have obtained
salvation, 32 were unmarried women and ten married ones. Among the
former Subha, Anupama and Sumedja belonged to well to do families. A
Jam Jataka refers to the story of a Jam father having four highly educated.

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daughters moving from place to place in the country challenging everyone for a debate on philosophical matters.\textsuperscript{51}

As far as lay women were concerned, their condition was also not bad when Buddhism was dominant in India. There are references which show that the birth of a daughter was not regarded a calamity.\textsuperscript{52}

The religious harangues of Sakka and the philosophical discussions of Khema and Dhammadinny reveal what high intellectual capacities women can manifest when given freedom and opportunity for development. The age of marriage is generally believed to be between sixteen and twenty. The relation of the husband and wife is that of mutual respect, though the status of the former is superior. If the unmarried daughter wishes to join Buddhist order, the consent of both parents was required. The right of divorce was given under certain conditions.

The presence or sight of a widow was not considered inauspicious. Though, only one instance of widow remarriage has been recorded, this might be due possibly to the fact that widows used to join the order and so had no need to remarry.\textsuperscript{53}

Though, woman according to Buddhism, can reach the highest state, she is however considered inferior in status to a male Bhikkhu. In spite of this distinction, Buddhism brought great freedom and equality for woman in the sphere of religion, till now a closed circle for the elite. Now, any woman could enter it. Even the prostitutes were admitted in the

\textsuperscript{53} Ibid., at p. 75.
Buddhist order and therefore Amrapali decided to join the order rather than live the life of a courtesan of the whole city.\textsuperscript{54}

Nuns continued to figure in the Buddhist and Jain monastic life down to the 3rd Century AD but do not seem to have distinguished themselves as authors or poets. The institution of nunnery went out of vogue in Buddhism and Jainism from about 4th Century AD.

Though Buddhism accorded high status to women, it also considered woman an evil to be avoided by men. This was probably due to the austere measures of the Buddhist high priests for their menfolk. The jataka tales are full of long passages describing the evil and vile nature of women.\textsuperscript{55}

Summing up, it can be said that in the initial stages, when corruption had not crept in the religious world of Buddhism, it worked as a powerful democratic force against the narrow outlook of the Brahmanic culture pattern that was slowly emerging. The right of admission to the religious order generated self-confidence among women. “With the growing perception that their life was worth as an end in itself, there was liberated a spirit of independence in women and for women”.\textsuperscript{56}

1.2.3 WOMEN IN CHRISTIANITY

The Book of Genesis states that God made man as male and female. So no differentiation in rights or status is required. Yahewh or God said, “it is not good that men should be alone. I will make him a help mate”. So he fashioned woman as the help-mate of Adam, which brings out the fact that woman is companion of man; she comes out of his side;

\textsuperscript{54} Desai, Neera, Woman in Modern India, (1957), p. 18.
\textsuperscript{56} Harner, L.B., Women Under Primitive Buddhism, n.d., p. 95.
and stands always by his side. Her status and role were conferred by Yahewh himself, to be companion and wife to man and mother of all the living thing of the world. Her role increased her status in the society. Polygamy was a legal fact. A man could have any number of wives and a harem. Later, the Talmud fixed the number to four wives for an ordinary man and eighteen for the king. These were abuses, which later were made legal. When coming to the New Testament, the first woman seen is Mary, the Mother of Jesus. The fact that she is accorded the status of the mother of Jesus is important. She was a companion and wife to Joseph and nurtured Christ and stood near his cross taking upon herself the ignominy and pain and accepting the rejection of Christ by the Jews. Mary is the second Eve, according to the Christian theology and is the mother of all the livings who believe in Jesus Christ. The Indian Christian woman brought up under the prevailing religions and socio-cultural patterns have lived in the false security of the male dominated church and church-related institutions.

1.2.4 WOMEN IN SIKHISM

The Sikh doctrine brought revolutionary change in the status of woman and they fully participated in “Sangat” and “Pangat” established by Guru Nanak. The practice of Sati has been condemned. The purdah, veiling of woman’s face, was eradicated. The practice of female infanticide is forbidden. Guru Amardas opened 22 centres called “Manjis” and to manage them, he appointed 35 men and 52 women. Thus women felt much relieved and their status rose highly and they started working with men shoulder to shoulder in the new society. Guru Nanak did not criticize any religion but deviated to the extent that he stressed on the practical side of the life and attacked dogmatism and formalism and casteism. The taboo that for certain period after child birth a house is
polluted, is not accepted. The emphasis has been on self-restraint and continence, so that man should look at woman, however attractive, as primarily either sisters, daughters or mother (except the woman whom he married). Even within this broad perspective, the status of women in the Sikh community is again in a state of transition.

1.2.5 WOMEN IN JAINISM

Atma has no division of male or female. Woman in particular has a unique position as Jana Matha, the woman who give birth to Thirthankara, the Jam deity. She has the highest position as the Mother of Nature. History is full of names of Jam women who did a lot for society and their religion. It is stated in Mahapurana that woman has the same rights as man, to get educated, take up jobs and so on, Vrishabha Deva, the first Thirthankara, is said to have imparted knowledge of language and mathematics to his daughters first and only then to his sons. He taught the Jam alphabets to his daughter Brahmi, thus the famous Brahamilipi is named after her. He taught mathematics to his youngest daughter Sundari. Chandrabala, the first disciple of Mahaveer, helped in propagating Jainism most effectively. Jam nuns worth names are Kamalasree, Brahmilee, Gunamathi, Sudarsana and others, as found in the oldest Kannada work Voddarathane of the century. These nuns were able to influence the social life during the period. Among all the Jam nuns Yakini Mahathara was the greatest intellectual as she defeated a Brahmin Pandit named Haribhadra Sun in theoretical arguments. Jam women were also excelled in the political field and they proved themselves as remarkable warriors. Margarines’s bravery among many others is notable. Though the Jam women have shown greatness in almost all the fields of social life and brought glory to humanity, they were still responsible for
the continuation of Sati practice. This system symbolizing the authority of men has coincided with the sense of sacrifice.57

1.2.6 WOMEN IN MUSLIM PERIOD

The invasion of the country by Muslims in 11th Century brought about further deterioration of the position of woman. Life became insecure. Restrictions on her rights and freedom and her resultant hardships were aggravated. Women were forcibly taken away to be slaves or to marry into Muslim homes. The consequent insecurity and instability further narrowed down woman’s social liberties.

On the one hand, the foreign Muslim conquerors attempted to impose their coercive norms on the conquered Hindu population, on the other hand, the Hindu society itself became more and more rigid curtailing thereby the rights and freedom of the lower castes and women. Due to this two-fold reason, the post—puranic period is one of the darkest periods for women in Indian history. The steady deterioration of her status continued till the century.

Polygamy and the Purdah were two of the most important social institutions of the Muslim conquerors of India. Under the purdah system, not only were women required to live in a secluded apartment in the house, but also they had to dress in an apparel which completely covered their body excepting the eye.58

Before the Muslim conquest, the Buddhism had not followed the custom of Sati. Social sanction for the self-immolation of widows came in with Muslim invasion. Before Muslim rule, the practice of Sati and

anumaranam did occur off and on but not as a regular feature. As a result of repressive social and religious custom, a woman sometimes even preferred Sati to widowhood.\(^{59}\)

Instances of Brahmin women who practiced Sati are also recorded in the 15th century and after the foreign chroniclers’ record, the Hindu widows who did not observe Sati were held in great dishonour. The practice of sati was also extended to the southern parts of India. The spectacle of the living widow consuming her body in fire was so gruesome that Ibn Batuta actually fainted when he witnessed one such instance. The widow in the case was persuaded to believe that her act of self—immolation was even more auspicious than the nuptial ceremony since it guaranteed the continual association with her husband in life after death.\(^{60}\)

Due to lustful proposal of Alauddin Khilzi, Rani Padmavati with about 700 Rajput committed themselves to flames which came to be known as “Jauhar Vrata”. Gradually child marriages were preferred in the society and the death of a widow was welcome news as she would not fall into evil hands. A woman in Hindu society has always been considered an appendage to her husband. She has no life apart from him. Consequently, on her husband’s death there was no reason for her to live on. Also the husband was her sole protector. Once he was gone, who would protect her? During foreign invasions by the Turks, Muslims and others when their menfolk were killed, the widows were very naturally expected to commit sati.

Hence, immolation of widows and killing of girl child infanticide started in a large number. Such wilful violence came to be called a curse of the Hindu society. Child marriage, girl killing, widow burning all came to stay with the dignity of the conventions in Hindu society because the Hindus were destined to remain slaves for about thirteen centuries. Even the Muslim were not spared this fate when they became subjugated by the white rulers of England. They developed purdah, illiteracy, disease, legal discrimination and handicaps but the worst part of their fate is the male dominance in their society and their century old dumbness.\(^\text{61}\)

As a stricter security measure, the prohibition of free movement of woman was advocated and the purdah with its elaborate form was also installed. Women participating in public discussions on vital social and philosophical problems or in popular festivals became only a memory of the past. Along with child marriage, marital infidelity on the part of males became more common. Polygamy was a practice adopted frequently among upper classes and restriction on or conditions laid down as necessary for the second marriage were also dropped.

Even during this darkest period, when the black cloud of social reaction completely submerged the freedom of woman, a silver lining was visible. Some of the Moghul emperors through social reforms tried to relieve the hardships of women.

For instance, as regards sati, Akbar did not permit it in cases where there was the slightest disinclination on the part of the widow or when a young widow’s marriage was not consummated. During this period, two schools of law emerged viz. Mitakshara and Dayabhaga, the exponents of these schools being Vijnaneshwara and Jimutavahana respectively. These

commentators attempted to improve the position of women. They strove to give a definite share of property to women. However, in the total setting of complete subordination, these meagre rights hardly brought any benefits to women.

The Hindus did not assimilate the customs like divorce, widow remarriage and a larger share of property for women, which governed the Muslim society. The Hindu society had become so static and rigidified that their contact with the Muslims, whose social relations were relatively democratic, did not prompt them to adopt the democratic elements of the Muslim society. The Hindu society continued its old pattern of life based on the principles and directions of Manu.

1.2.7 WOMEN IN BRITISH RULE

When the Indians came in vital contact with the British in the latter half of the eighteenth century, the position of the Indian woman had reached the maximum degree of deterioration. Ideologically woman was considered a completely inferior species, inferior to the male, having no significance, no personality; socially she was kept in a state of utter subjection, denied any right, suppressed and oppressed. She was further branded as basically lacking an ethical fibre.

The patriarchal joint family, the customs of polygamy and its concomitant koolinism, the purdah, the property structure, early marriage, self-immolation of widows (sati) or a state of permanent widowhood, all these contributed to the smothering of the free development of woman.

Thus, not only social institutions and customs thwarted the free growth of her personality, but the prevailing ideology also assigned the Indian woman an inferior status. She was denied independent personality.
Her life, as Manu says, was to be associated with and subordinated to either the father, the husband or the son. In fact she had no personality of her own. She had no dreams of her own. She had no separate status as a member of the family or society. Her existence was taken for granted. Her opinion, her desires, her likes or dislikes were never to be considered. In short, the prevailing conception of woman, whether Hindu or Muslim, was basically feudal in character.

This leads us to the third side of the picture, viz. moral. As regards her moral nature, woman was considered as a temptress, a being whose sole aim is to divert man from the right path. The daughter is considered by the father as a burden to be disposed off as quickly as possible through her marriage. For her husband she is an object for having male children.

She is further regarded unfit for participation in social, political or religious functions of any significance. She is not even worthy of receiving education.

We can conclude from this that she was virtually considered as a nonentity a slave. Further in order that she may not rise in revolt against these customs, an institutional framework and an ideology were created, keeping her docile and in permanent subjection. As a result of this, the Indian woman on the eve of the British rule had not only lost her independence but her sense and urge for freedom and consequences of independent personality. As Pandita Ramabai describes her position at that time, “She is forbidden to read the sacred scriptures. She has no right to pronounce a single syllable out of them. To appeal to her uncultivated low kind of desire by giving her ornaments, to adorn her person and by giving her dainty food together with an occasional bow which costs nothing are the highest honours to which a Hindu woman is entitled.”
Naturally, in the midst of such a situation their only vocation was “to minister to men’s physical pleasures and wants; they were considered incapable of developing any of those higher mental qualities which would make them more worthy of consideration and also more capable of playing a useful part in life.”

In order to eliminate all the obstacles in form of the extant institutional complex as well as the prevailing ideology to the achievement of freedom for woman, a fundamental change in the very social structure was necessary. The feudal society based on the self—sufficient village economy, the caste and the joint family and authoritarian ideology was absolutely incapable of providing room for the liberation of woman within its framework. A new society based on new socio—economic relations and a new liberal democratic ideology was necessary for making woman conscious of her subjection, for realization of her real role in the society, for the growth of woman’s freedom movement in all spheres of life as also for a great advance in the direction of her complete freedom.

The British conquest of India resulted in the emergence of such an environment and ideology.62

Thus, in the 18th Century, at the dawn of British rule, the position of women in India was in a sorry state. The vedic liberties enjoyed by women in India were forgotten. Only a narrow and static society prevailed. The British government’s attitude of non—interference with the religious sentiments of the local people stopped all social reforms for a century. However, due to the pioneering work of some leaders, changes were brought about in the social structure of the 19th century.

1.2.8 WOMEN IN POST-INDEPENDENCE INDIA

With independence, women were granted equal status with men. The government made an all out effort to raise the status of women in the various fields through legislation. Compulsory education, the Hindu Marriage Act, 1955, raising of marriageable age, the Adoption Act, 1956, Dowry Prohibition Act, 1961 and legalizing of abortion are all in favour of women. But the law alone is not enough to bring about a radical change. With rapid urbanization and industrialization of the century, exploitation of women in recent years has been a serious menace to our society.

Notwithstanding the multiplication of legislation on various fields, with a view to improve the social, political and economic conditions and status of women; even the ancient forms of victimization, child marriage and premature consummation resulting in early and dangerous pregnancies sati, female infanticide, illegal abortions, dowry deaths, rape, eve-teasing and various other forms of molestation of women still continue. In fact, since the passing of the Dowry Prohibition Act and even after several amendments to the I.P.C., Cr. P.C. and the Evidence Act, dowry deaths are on the increase. The Hindu Marriage Act of 1955 and the Hindu Succession Act, 1956 securing for women the right to divorce and property have not automatically given women rights. Under the Hindu Succession Act, parents make will depriving daughters. Though, bigamy is an offence, the rate of desertion by Hindu husbands and illegal second marriage is higher than “Talaq” rate of the Muslims.

The advancement of reproduction technology has brought in the new phenomenon of female foeticide. One study revealed that nearly 100 percent of the aborted foetuses were females.

Women’s health is given consideration only in terms of maternity, leaving women beyond the reproductive age, young, unmarried girls and widows outside health and nutrition schemes. The government’s family planning programs have a heavy gender bias.64

The condition of elderly women is also not satisfactory especially those of widows. She has to earn as also run the house and raise her children. If she does not earn, her condition is even worse. If the widow has no issues, she has to work hard as a maid servant in her husband’s joint family or relations who might have taken her in and is totally dependent, for all her needs, on others. She has neither economic security nor a say in decisions concerning her and her children. Families still believe that once a daughter is given away in marriage, she can not be given away again to another person. Hence, widow remarriage, though sanctioned by Hindu Widows Remarriage Act of 1856, seldom takes place and is discouraged.65

Thus, we see that the condition of Indian woman is very much shocking. The life of woman in India is still surrounded by violence, neglect and exploitation. What is the price fixed for a woman’s services day and night within the household? Love is the reward, but where is the reward of the husband and the in—laws don’t appreciate the bride’s services? Perhaps nowhere, except the fire on her clothes and her body. This is happening everywhere in our country these days and the number

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65 Ibid. at p. 16.
is increasing alarmingly. Even the educated urban and well informed women are exposed to such events. The Committee on the Status of Women in India rightly concludes that “the entire exercise of our committees has indicated that in certain important areas and for certain sections of the female population there has been repression from the normative attitudes developed during the freedom movement. Large section of women have suffered a decline of economic status. Even after the promulgation of these laws (legal measures), the protection enjoyed by the large masses of women from exploitation and injustice is negligible . . . though women don’t numerically constitute a minority, they are beginning to acquire the features of a minority community by the recognized dimensions of inequality of class, economic situation, status (social position) and political power . . . The chasm between the values of a new social order proclaimed by the constitution and the realities of contemporary Indian society as far as women’s rights are concerned remains as great as at the time of independence.66

1.3 ELEMENTS OF VIOLENCE AGAINST WOMEN

1.3.1 DEFINITION OF VIOLENCE

“Violence against women means any act of gender-based violence that results in, or is likely to result in, physical, sexual, or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life”.


1.3.2 Lexicon Meaning of Violence

The lexicon meaning of the violence refers to any physical force or any damage or injury to person or property. According to Webster’s New Collegiate Dictionary, violence means “exertion of any physical force for instance: (a) violent treatment or procedure, (b) profanation infringement, outrage, assault, (c) strength, energy, activity displayed or exerted, vehement, forcible or destructive action or force, (d) vehemence infeeling, passion, order, furry, fervor.

The Chamber’s twentieth century dictionary describes violence as excessive unrestrained or unjustifiable use of force. Violence also means outrage, profanation injury or rape. Infliction of injury on other people is the essence of violence. It may be either physical or mental. On the legal level, it is illegal employment of methods of physical coercion for personal or group ends. The infliction of injury by police is exercise of state’s force as long as it is legal. But as soon as it crosses the boundary of legality and inflicts injury for lust or for personal gain, it becomes violence and is more dangerous than the violence by ill armed and ill organized collectivity people.

According to Encyclopaedia of Crime and Justice, in a broad sense, “violence is a general term referring to all types of behaviour either threatened or actual, that result in the damage or destruction of property or the injury or death of an individual”. In a limited sense, violence means “all types of illegal behaviour, either threatened or actual that results in damage or destruction of property, or in the injury or death of an individual”. In general, the definition covers that behaviour, generally

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considered as violent including such crimes as criminal homicide, forcible rape, child abuse, aggravated assault and most kinds of collective violence.

According to Black’s Law Dictionary, “violence means unjust or unwarranted use of force usually accompanied by fury, vehemence, or outrage, physical force unlawfully exercised with the intent to harm”.  

L.B. Curzon’s Dictionary of Law defines violence as “any conduct so that it includes violent conduct towards property as well as towards persons, and it is not restricted to conduct causing or intended to cause injury or damage but includes any other violent conduct”. 

If we take ‘violence’ as conduct which incurs the formal pronouncements of the moral condemnation of the community, or the deviation from conduct norms of the normative groups, the scope of cases of ‘violence against women’ becomes too broad. Narrowly, the term ‘violence’ has been applied to “physically striking an individual” and causing injury”, to “the act of striking a person with the intent of causing harm or injury but not actually causing it”, to “acts where there is the high potential of causing injury”, and to “acts which may not involve actual hitting, but may involve verbal abuse or psychological stress and suffering”. Megargee has defined violence as the “overtly

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threatened or overtly accomplished application of force which results in the injury or destruction of persons or their reputation”. 76

1.3.3 DEFINITION OF DOMESTIC VIOLENCE

Domestic violence is an extremely complex and vicious form of abuse, committed most often within the four walls of the family house and/or within a particular deep-rooted power dynamic and socio-economic structure, which do not allow even the acknowledgement or recognition of this abuse. Meaning and detection of domestic violence itself is the most demanding task.

To be honest, there is no definition of domestic violence in Indian law. This does not mean that acts of domestic violence are not punishable in India. There is no exact prototype of domestic violence it differs with households, individuals and situations. The impact of domestic violence depends upon its severity. Domestic violence could result in anything from death to minor scars. There could be a situation where this violence results in neither but causes devastating psychological impairment.

“According to Black’s Law Dictionary, “domestic violence means violence between members of a household, usually spouses, an assault or other violent act committed by one member of a household against another”. 77

The meaning of domestic violence and the range of acts which amount to domestic violence will become clear from a look at the general laws, criminal and civil, which address acts which could constitute domestic violence.

1.3.4 Definition under Criminal Law

The Criminal law in India is contained primarily in the Indian Penal Code, 1860. The Indian Penal Code, 1860 is supplemented by special laws, which define and punish specific offences.

1.3.5 The Indian Penal Code

Under the Indian Penal Code, 1860 ‘culpable homicide’ is defined as causing death by doing an act:

- With the intention of causing death.
- With the intention of causing such bodily injury as is likely to cause death.
- With the knowledge that it is likely to cause death.\(^{78}\)

Culpable homicide amounts to murder unless it is committed without premeditation in a sudden fight or in the heat of passion upon a sudden quarrel and without the offenders having taken undue advantage or acted in a cruel or unusual manner.

Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage, and if it is established that the wife had been subjected to cruelty by her husband or his relatives, the death is termed a ‘dowry death’.\(^{79}\) The husband or relative who subjects the wife to cruelty is presumed to have caused the dowry death and will have to prove that the death was not a result of the cruelty.

\(^{78}\) Section 299, of the Indian Penal Code, 1860.

\(^{79}\) Section 304B, of the Indian Penal Code, 1860.
Female infanticide, or forcing the wife to terminate her pregnancy are also forms of domestic violence recognized as offences under the Indian Penal Code, 1860.\textsuperscript{80}

Often victims of domestic violence, especially brides harassed for dowry are driven to commit suicide. Abetment of suicide of a delirious person is an offence punishable with death or life imprisonment.\textsuperscript{81} Abetment of suicide is also an offence punishable with 10 years imprisonment.\textsuperscript{82}

Causing bodily hurt is a common form of domestic violence. The Indian Penal Code, 1860 defines hurt as causing “bodily pain, disease, pain or infirmity to any person”.\textsuperscript{83} A hurt may be ‘grievous’ if it results in serious injury such as a fracture, loss of hearing or sight, damage to any member or joint, etc.\textsuperscript{84}

The Indian Penal Code, 1860 makes it an offence to voluntarily cause hurt\textsuperscript{85} grievous hurt.\textsuperscript{86} Also criminalized is the voluntary causing of grievous hurt by dangerous weapons\textsuperscript{87} and voluntarily causing hurt to extort property.\textsuperscript{88}

Another common form of domestic violence is in the form of the wrongful restraint\textsuperscript{89} or confinement\textsuperscript{90} of the spouse within her

\textsuperscript{80} Sections 313-316, of the Indian Penal Code, 1860.
\textsuperscript{81} Section 305, of the Indian Penal Code, 1860.
\textsuperscript{82} Section 306, of the Indian Penal Code, 1860.
\textsuperscript{83} Section 319, of the Indian Penal Code, 1860.
\textsuperscript{84} Section 320, of the Indian Penal Code, 1860.
\textsuperscript{85} Section 321, of the Indian Penal Code, 1860.
\textsuperscript{86} Section 322 read with section 323, of the Indian Penal Code, 1860.
\textsuperscript{87} Section 326, of the Indian Penal Code, 1860.
\textsuperscript{88} Section 327, of the Indian Penal Code, 1860.
\textsuperscript{89} Section 349, of the Indian Penal Code, 1860.
\textsuperscript{90} Section 340, of the Indian Penal Code, 1860.
matrimonial home. Use of force\textsuperscript{91} and assault\textsuperscript{92} on the spouse, other common forms of domestic violence, are also punishable under the Indian Penal Code, 1860.

Marital rape is yet another common form of domestic violence. This is a grey area of law and evidence. While many progressive nations have legislated on marital rape, our law has so far only conferred a limited recognition. Non-consensual sexual intercourse by a man with his own wife may be an offence if she is living separately under a decree of separation or any custom.\textsuperscript{93} In many a violent marriage, the spouse subjects the wife to acts of sexual humiliation. Interestingly the Indian Penal Code, 1860 even addresses such forms of violence—the provision for ‘unnatural offences’.\textsuperscript{94} However, this provision has rarely been used in the matrimonial context.

A common companion of domestic violence is the misappropriation of the spouse’s property so that she is economically crippled into subjugation. The Indian Penal Code, 1860 addresses this situation too. If the husband or his relative dishonestly misappropriates or converts to his own use any property, which the wife has entrusted him with, he is liable for the offence of criminal breach of trust.\textsuperscript{95}

\textsuperscript{91} Section 349, of the Indian Penal Code, 1860. A person is said to use force to another if he causes, motion, change of motion, or cessation of motion to that other, or if he causes to any substance such motion as brings the substance into contact with any part of the other’s body, or with anything which that other is wearing or carrying or with anything so situated that such contacts affect that other’s sense of feeling.

\textsuperscript{92} Section 351, of the Indian Penal Code, 1860. Whoever makes any gesture, or any preparation intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault.

\textsuperscript{93} Section 376A, of the Indian Penal Code, 1860.

\textsuperscript{94} Section 377, of the Indian Penal Code, 1860.

\textsuperscript{95} Section 405 read with section 406, of the Indian Penal Code, 1860.
In 1983, matrimonial cruelty was introduced as an offence in the Indian Penal Code, 1860. Cruelty was defined as “any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life or limb or health (whether mental or physical) of the woman”. It includes harassment of the woman in connection with demands for property and the like.

1.3.6 The Dowry Prohibition Act, 1961

Domestic violence is society specific. Social mores impact the type of violence perpetrated on the spouse. The ‘dowry’ system is a distinctive feature of the sub—continent. At the time of marriage, the bride’s family is expected to give gifts, in cash or in kind, to the groom. Often the bride’s side commits to deferred presentations. In such situations, the bride is often subjected to domestic violence if the gifts are not made as promised. In recognition of the fact that this dowry is the genesis of domestic violence in the matrimonial home, the Dowry Prohibition Act criminalizes the giving and taking of dowry.

1.3.7 The Commission of Sati Prevention Act, 1987

There is another form of domestic violence which was rampant in our past but ebbed in the last century, i.e. sati, Sati means the burning or burying alive of widow along with the body of her deceased husband or any other relative, or with any article, object or thing associated with the husband or relative. The Commission of Sati Prevention Act, enacted in

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96 Section 498A, of the Indian Penal Code, 1860.
97 ‘Dowry’ as contemplated by the Dowry Prohibition Act is a demand for property or valuable security having an inextricable nexus with the marriage. In other words, it is a consideration from the bride’s side to the groom’s side for the agreement to wed.
98 Section 3, Dowry Prohibition Act, 1961.
1987 after a shocking sati death in Rajasthan, criminalises observance, support, justifications or propagation of sati.

1.3.8 The Pre—conception and Pre—natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994

This act recognizes that domestic violence is also perpetrated in the form of forced termination of female foetuses, the Preconception and Pre—natal Diagnostic Techniques Act regulates the use of pre-natal diagnosis. Such tests are permitted only for the purpose of detecting certain specified abnormalities and disorders. Present Act prohibits sex selection not only after conception but even before conception on any tissue, embryo, concepts, fluid or gametes destined from either man or woman or from both of them.

1.3.9 Definition Under Civil Law

Civil law too follows criminal law, inasmuch as it addresses facets of domestic violence without specifically defining domestic violence. Even references in the statutes to aspects of domestic violence are generic and it is only through judicial decisions that such provisions have been given life and meaning.

1.3.10 The Dissolution of Muslim Marriages Act, 1939

The Dissolution of Muslim Marriages Act, 1939 stipulates cruelty as a ground for divorce. Cruelty is defined to include.

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100 Section 4, The Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994.
101 Section 2(viii), of the Dissolution of Muslim Marriage Act, 1939.
• Habitually assaulting the wife or making her life miserable by cruelty of conduct even if such conduct does not amount to physical ill—treatment.
• Associating with women of ill—repute or leading an infamous life.
• Attempting to force the wife to lead an immoral life.
• Disposing of the wife’s property or preventing her from exercising her legal rights over it.
• Obstructing the wife in the observance of her religion.

1.3.11 The Hindu Marriage Act, 1955

Under the HMA, cruelty is a ground for divorce as well as judicial separation. However, the term ‘cruelty’ is not defined in the Hindu Marriage Act, 1955. It is through decided cases that the term has been understood to mean acts of physical as well as mental cruelty.

1.3.12 THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005

The Protection of Women from Domestic Violence Act, 2005 defines the expression “domestic violence” to include actual abuse or threat of abuse—physical, sexual, verbal, emotional or economic violence. Section 3 of the Act says that any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it—

(a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved or tends to do

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102 Section 13(1)(ia), of the Hindu Marriage Act, 1955.
103 Section 10, of the Hindu Marriage Act, 1955.
so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or

(b) harasses, harms, injures or endangers the aggrieved person with a view to coerce him or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or

(c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or

(d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person.

For the purpose of section 3:

(i) “physical abuse” means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;

(ii) “sexual abuse” includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;

(iii) “verbal and emotional abuse” includes—

(a) insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and

(b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested.
(iv) “economic abuse” includes—

a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance;

(b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and

(c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

The landmark legislation seeks to deter domestic violence in all forms against women, including harassment due to dowry and causes like inability to bear a child or a male child.
The need for the present legislation arose as the civil law does not address the phenomenon of domestic violence in its entirety.

Definition of domestic violence can be broad or focused, amorphous or targeted. The reason that the definition of violence is important is because it shapes the response. For example, a community response, whether it be legal reform or the provision of support services, is shaped by a particular understanding of what constitutes domestic violence and whether it is to be conceptualized as an intra—family conflict, or a criminal violation of rights. The definition implied by the law is especially critical as it defines standards and thus impacts broader social perceptions of the problem. Elements of the definition that need to be considered then are the boundaries of the relationship between the perpetrator and the abused, the norms of acceptable behaviour, and the specific acts that constitute violence.

A frequent perception of domestic violence against women is that it is limited to physical harm perpetrated on adult women within a marital relationship. While this understanding may capture a large universe of the experience of women, it is predicated on the assumption that women primarily live in nuclear families. Across cultures, there are a variety of living arrangements ranging from joint families to nuclear families to single parent families. Moreover, women may be in an established relationship or in the process of separation or divorce. Violence is often not restricted to the current husband but may extend to boy-friends, former husbands, and other family members such as parents, siblings, and in—laws. A definition that acknowledges these multiple
possibilities would lead to interventions that are more inclusive of the experiences of all women.  

Definitions of domestic violence rest upon not only the nature of the relationship between the perpetrator and the victim but also upon norms of acceptable behaviour. There is considerable difference of opinion regarding which behaviours or manifestations should be considered violent, as well as the level of intensity and frequency required to label a relationship as violent. Another contentious issue is how to evaluate the intent of the act, why the act was initiated, and whose view should determine this. For instance, Indian field experience indicates that significant numbers of women do not perceive acts as violence if they perceive them to be justified. The social construct surrounding the ideal “good woman”—clearly sets the limits for acceptable norms beyond which verbal and physical assaults translate into a notion of violence. Thus, wife beating is not seen as an excessive reaction if the woman gives cause for jealousy or does not perform her “wifely” duties adequately, such as having meals ready on time or adequately caring for children. This is further complicated by a common belief that violent acts are an expression of love and merely a desire to help the subject be a “better” person.

The core of a definition of domestic violence consists of all the acts that constitute violence. Some definitions are narrow and focus on a specific act of violence and others are broader and incorporate the full range of acts. In India, public discourse and the media equate domestic violence with dowry violence. This incomplete representation undermines awareness of the widespread, daily psychological, physical, and sexual

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104 Leela et. al., Domestic Violence in India, A Summary Report of Three Studies, IJCRW, Washington, D.C., September 1999, USAID, India.
abuse women confront that is often unrelated to dowry. A result, newspapers may fail to report the less sensational stories that do not involve bride—burning and unnatural death. Indian legislation on marital violence perpetuates this narrow definition. For example, both Section 498A of the Indian Penal Code and the Dowry Prohibition Act emphasize violence within the context of dowry harassment. However, informal discussions with women by researchers and activists have underlined the need for greater study of other factors and characteristics associated with abuse.

A further critical element in the definition of violence is whether it is framed as an exclusively interpersonal act or seen more broadly as an expression of power that perpetuates the subordination of women. If it is the former, the definition would only include those acts which might be seen as crimes and thus focus only on acts which result in physical evidence. If it is the latter, the definition of violence would include all acts of “physical, verbal, visual or sexual abuse that are experienced by women or girls as threats, invasion or’ assaults and that have the effect of hurting her or degrading her and/or taking away her ability to control contact (intimate or otherwise) with another individual”. 105 Such a definition more fully captures all the different processes by which women undergo subordination within intimate relations and fits more directly into a human right perspective.

In this work, the operational definition of domestic violence not only includes physical but also mental, emotional and financial abuse of a woman.

Domestic violence can also be seen as a violation of the fundamental right to live with dignity, and of the right to equality and equal protection of the law guaranteed under the Indian Constitution.\textsuperscript{106}

According to Arun Jaitly, Minister of Law, Justice and Company Affairs, “Domestic Violence is in the majority of cases, violence against a woman by the members of the house where she resides.

It can be the husband, his parents, or siblings or any other resident who has the overt or covert latitude for actions that can cause physical or mental agony to the woman. But, the most important aspect of this kind of violence is the fact that “it happens behind the closed doors” and is most often denied by the very woman who has been the victim of violence. It is this aspect of the crime that segregates itself from all other kinds of social violence”.

In 1996, the United Nations Special Rapporteur on violence against women, Radhika Coomarswamy, submitted a report focusing on domestic violence to the Commission on Human Rights. In that report, she defined domestic violence as ‘violence that occurs within the private sphere, generally between individuals who are related through intimacy, blood or law and is perpetrated by both private and state actors. She goes on the state; domestic violence is often albeit, problematically, labeled ‘family violence’ so that the actual structure of the family whether defined as a nuclear, joint or single sex becomes an important subject of investigation . . . . At its most complex, domestic violence exists as a powerful tool of oppression . . . and is used to control women in the one space traditionally dominated by women, the home’.

\textsuperscript{106} Jaising, Indira, Law of Domestic Violence, 2000, pp. V, VI, IX.
1.4 CHARACTERISTICS OF DOMESTIC VIOLENCE

Domestic violence is violent victimization of women, within the boundaries of family, usually by men (or his family).\textsuperscript{107} A woman may of any age,\textsuperscript{108} she may be a girl child, unmarried, married or elderly woman including a widow or such women with whom men have marriage like relationship. Violence can be both physical and psychological. It indicates threats or aggressive behaviour towards her not only to her physical being, but towards her self-respect and self-confidence.

Domestic violence against women may be psychological, physical or sexual. Psychological violence is carried out with psychological weapons (threats, insults, humiliating treatment, denial of human existence) rather than physical attack. Physical violence ‘includes all types of aggressive physical behaviour towards the woman’s body (victim). Sexual violence could include both passive (denial) or active violence. It will also include cases of perversity.

Victimiser of domestic violence may be husband or his family members. Domestic violence could occasionally be seen in other relations also (i.e. by parents, brothers or others in parents family).

1.4.1 Domestic Violence in Ancient Indian Society

Violence against women is not a myth, but a reality. It exists and exists everywhere. The problem of violence against women is as old as the world in cosmologies, mythologies or legends. The type, frequency,

\textsuperscript{107} Sood, Sushma, Violence Against Women, 1990, p. 268.
\textsuperscript{108} Section 10, Indian Penal Code (1860), The Word ‘woman’ denotes a female human being of any age.
intensity and control of violence against women may vary from time-to-time or place-to-place but it is there everywhere.  

Family as an institution in ancient India laid down the principles which regulated the relationship between husband and wife and parents and children. A man as a husband had certain responsibilities toward his wife. A husband was to act as a provider and was called upon to cohabit with his wife. Failure to perform such roles and responsibilities would attract punishment. The husband was also required to provide identity, leadership and physical protection to his wife. Along with these duties, a husband had certain rights and privileges. The husband had complete control over the mind and body of his wife, without his consent, a wife had no right to perform even a religious act. Husband had the right to use physical corrective methods over his erring wife which was the same as those possessed by a teacher over a pupil or a father over a son, namely, he could administer beating with a rope or a thin piece of bamboo on the back but never on the hand.

Kautilya also endorsed husband’s right to beat his wife of refractive nature. He allows the husband to beat his wife, either with a bamboo bark or with a rope or with a palm of hand on her hips.

A wife on the other hand had only duties. The foremost duty of a wife was to honour and serve her husband. She must always stay with him even in adverse situations. Yaj (1.77) enjoins upon a woman: ‘this is the highest duty of woman that they should obey their husband’s wards’.

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109 Srivastava, Dr. Lakshmi, Problem of violence against women—a multidisciplinary conceptual analysis. This paper was read in National Seminar on Women and Violence: Various Manifestations at A.N.S. Institute of Social Studies, Patna on 17th January, 1988.

110 Kautilya BIT, Ch. I, 48

111 Vishnu Dh. S.71.81 — 82, Manu VIII, 299—300, Narada 13.14

112 B.III, Ch. 3, 5.155
The Ramayana remarks: ‘the husband is the God and master of the wife’. The wife was completely secluded from outside contacts. It was only with the permission of her husband, that she was permitted to move out from her husband’s house. Failure to observe these restrictions attracted censor, social degradation, humiliation and punishment. The husband-wife relationship was not based on love, affection, mutual give and take and on equalitarianism. The relationship was marked by authoritarianism and submissiveness. Wife was not only secluded from outside contacts but was looked at with suspicion. Kautilya, while advising the King for his safety contended that the King should make necessary arrangements for his personal safety firstly from his wife only then he would be able to maintain the security of his kingdom. Kautilya further demanded from the king: “when in the interior of the harem, the king shall meet his queen only when her personal purity was vouch saved by an old and reliable maid servant. Such dictates establish the fact that wife was not relied upon. When the relationship between husband and wife is marked by suspicion, the question of developing close, personal and intimate relationship does not arise.

The Ramayana and Mahabharata clearly depicts the prevalence of family conflict and violence. There are numerous historical evidences of intra—family exploitation, conflicts and violence. Lord Rama abdicated the throne and went in exile in order to fulfil his father’s word of honour given to his step mother. Parasurama murdered his mother at the

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113 Ayodhya Kand, 24.26—27
114 B.III, Ch. IV, S.158
115 B.I, Ch. 17, S.33
116 B.I, Ch. 20, S.41
command of his father. Draupadi was publicly tortured by Kauravas and Ahalya was turned into stone by her husband.

Kautilya while advocating seclusion of women and vigilance in the harem described a number of instances where the queens in collaboration with their paramours and kinsmen had killed the kings. Kautilya in another context ordains: “any woman who murders her husband, preceptor, off—springs, sets fire to another’s property, poisons a man or cuts off any of the bodily joints of another shall be torn by bulls” (IV.11.5230). Kautilya even allows divorce. He contents: “mutual enmity and danger to life from the spouse may be valid reason for divorce” (III.3.S.155). These references from Kautilya stands as a testimony to the prevalence of conjugal fight and violence.

Manu says that “a wife who violates the duty that she owes to her lord shall be devoured by dogs in a place frequented by many. By violating her duty towards her husband, a wife is disgraced in this world; and after death, she enters the womb of a jackal and is tormented by diseases as a punishment for her sin”.

The laws of Manu further declare that a wife may be superseded for various reasons— “A barren wife may be superseded in the eighth years, she whose children (all) die in the tenth; she who bears only daughters, in the eleventh, but she who is quarrelsome without delay”.

“But a sick wife who is kind (to her husband) and virtuous in her conduct, may be superseded (only) with her own consent and must never be disgraced”. 9.81—82.

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118 Most of the references of ancient literature have been derived from the four volumes of P.V. Kane, History of Dharmasastra, 1940.
“She who drinks spirituous liquor, is of bad conduct, rebellious, diseased, mischievous, or wasteful, may at any time be superseded (by another wife)”. 9.80.

Manu states that for one year, husband shall bear with a wife who hates him, but after a year, he shall deprive her of her property.

In Thirteen Principles of Upnishads, there is explicit justification of forcible sex violation of a woman by a man—

“If she should not grant him his desire, he should bribe her. If she still does not grant him his desire, he should hit her with a stick or with his hand, and overcome her, saying: “with power, with glory I take away your glory. Thus, she becomes inglorious”.

(Brihad Aranyaka, 6.4.7)\(^\text{119}\)

In Puranic verses too we find the mention of violence against women— “A man should chastise his wife and slaves with a string of thread or a rope made of the blades of vera grass”.

(Agni 227.46—50)\(^\text{120}\)

Above quotations of Manu are taken from Pinkham, MW., WSSH, 1941.

“while his tender wife was exhausted withfatigue . . . Vishwamitra all of a sudden struck her with a chastising rod”.

(Markandeya, 7.59)\(^\text{121}\)

\(^{119}\) Hume, RE., The Thirteen Principal Upnishads, 1921, 2nd Ed., p. 169.

An actual historical case is recorded in which a certain Brahmana in the city of Prathishthana demeaned his wife. In this record also, is to be noted the utter fidelity of the wife in spite of her harsh treatment—“Kansika—in consequence of his pristine sins, was assailed by leprosy. His wife served her diseased husband as if he were a deity, by shampooing his feet and limbs, bathing him, clothing him, feeding him . . . by serving him in solitude, and treating him with sweet words. Although, always served by her with humanity, that highly irascible and cruel (Brahmana) used to rebuke her angrily. Still the humble wife considered him as a deity, and regarded that horrible one as the best of men.”

(Markandeya, 16.14_18)\(^{122}\)

In Mahabharata, there is an instance of the violent treatment of a woman—“while she was piteously praying . . . he dragged her forcibly by her black hair”.

(Sabha Parva, 2.6.7.32)\(^{123}\)

All the above references from ancient literature show that women were subjected to all kinds of humiliations and indignities.

1.4.2 Domestic Violence in Present Indian Society

In India, we have unique situation of co-existence of all forms of violence specially of elimination of women, e.g. selective female foeticide, female infanticide, bride burning and sati. The incidence of violence of all forms within family has also gone up. Even today, various

\(^{122}\) Ibid. at p. 79.
forms of violence against women are prevalent in our society, though many cases remain unreported due to cultural norms, apathy or ignorance. They may manifest themselves directly in wife battering, abduction, eve-teasing, verbal abuses or verbal rebukes. Women on many occasions are victimized by all sorts of discriminations, deprivations and obstructions in goal achieving and responses. These incidents may occur in the family, offices, agricultural fields, industries or even public places. It sounds surprising that on animal level predatory aggression (killing and eating) occurs between the species and not within the species, but a human being, the highest on the evolutionary level, kills another human being of his own species.\textsuperscript{124}

Inflicting and experiencing violence in many subtle forms causing and suffering mental pain in day-to-day life, has become ways of our world in inter—personal relationships. The cruelty, the hate that exists in ourselves is expressed in the exploitation of the weak by the powerful and the cunning.\textsuperscript{125}

The worst part of the problem is that women today, are not feeling safe and secured even in the family. The concept of home, sweet home is no more, so far many women, who suffer violence against themselves by the members of the family.

Home is no safe place when it comes to aggressive behaviour. Fitz and Gerstenzang\textsuperscript{126} observe that episodes of verbal or physical aggression are most likely to occur in the home and the relatives (such as parents offspring and spouses) were the most frequent targets of aggression.

\textsuperscript{124} Srivastava, Dr. Lakshmi, Problem of Violence Against Women—A Multidisciplinary Conceptual Analysis, This paper was read in National Seminar on “Women and Violence: Various Manifestations”, at A.N.S. Institute of Social Studies, Patna on 17th January, 1988.

\textsuperscript{125} Krishnamurthi, J., Commentaries on Living, 3rd Series, Edited by D. Rajagopal, 1977, p. 166.

Steinmetz and Straus\textsuperscript{127} described the family as “cradle of violence”. Straus\textsuperscript{128} drawing from incidences of violence between spouses called “the marriage license as a hitting license”.

In the last four decades, there has been an alarming increase in the incidence of violence within and outside the family. Today, we hear more about wife beating, dowry deaths, sexual crimes and even reversion to medieval practices like “sati”. Over the years, the nature of domestic violence has changed, now it has assumed following characteristics:

1. Differences between the husband and wife and increasing divorce is becoming common.

2. Men are marrying more than once, partly because they can get a new girl and partly because of the dowry.

3. Human feelings are gradually evaporating. A man resorts even to murder the wife if he does not get the expected dowry or if he is attracted to another girl.

4. The growing dowry system is gradually making the baby girl unwanted. People are restoring to foeticide and sometimes, baby girls are even killed after birth. Besides this—

5. Women are ignored in house work and outside home. They are suffering innumerable tortures from their in—laws and husbands. They are frequently beaten up and denied food and shelter.


\textsuperscript{128} Straus, MA., The Marriage License as a Hitting License: social instigation of physical aggression in the family. Paper presented at the Meeting of the American Psychological Association, Chicago, September, 1975.
All these cases reveal the true nature of the system of marriage and family in our society. The stereotypes rules of men and women are rigidly defined. While the material gains brought by the men are for every one to see the inputs provided by the women being distant are often invisible. The amount of time, energy and labour spent by women in performing her duties go unnoticed. Often, she has to pay in terms of sacrificing her likings, interests and skills while the society offers man many opportunities to go out of house and share with others his joys and sorrows, such opportunities are very less for a woman. This mental violence, agony of losing life’s most precious treasures and the lack of opportunities to share it with somebody also stems out of our societal structure. In such violence, there are no visible body marks. But the wounds inflicted on the mind are difficult to heal.

The woman right from the moment of stepping into the husband’s home tries to forget her own identity and adjust everything according to the needs of the new place and the people living in it. In spite of it, she is under a constant watch and is often criticized for anything, e.g. for not bringing enough money from her parents, for not being trained properly, etc. She tends to overlook these facts, because she has been ‘trained’ to do so. The society, the religion, her parents and in—laws, everyone expects her to become her husband’s shadow. The worst thing is that all these come as a rude shock to her after marriage, because the institution of marriage in our society is highly glamorized. Hence for a woman, ‘the union of souls’ turning into a nightmare is a truly horrifying and shattering experience. The mental violence may be committed in such a subtle manner that others will never come to know of it.129

Domestic violence can take a number of forms, including:

• physical behaviour (slapping, punching, pulling hair or shoving);
• forced or coerced sexual acts or behaviour (unwanted fondling or intercourse, or sexual jokes and insults);
• threats (threatening to hit, harm or use a weapon);
• psychological abuse (attack on self—esteem, attempts to control or limit another person’s behaviour, repeated insults or interrogation);
• stalking (following a person, appearing at a person’s home or workplace, making repeated phone calls or leaving written messages); or
• cyberstalking (repeated online action or e-mail that causes substantial emotional distress); and
• sacrifice of liking, interest and skills.\textsuperscript{130}

Domestic Violence knows no age, socio-economic, religious, racial, gender or educational barriers. It is a myth that only the poor or uneducated are victims of domestic abuse. Most studies indicate that there is also a high incidence of spousal abuse in the more affluent neighbourhoods. Although a poor victim has the terrible problem of not having resources available, the more affluent spouse may also be in an equally desperate trap due to social stigmas, greater economic pressures and the increased societal position and power that the partner may have at his or her disposal.

It is devastating for children to witness verbal or physical abuse, or to see the aftermath: an injured parent, a destroyed home. Fear, anger, feelings of isolation, low self—esteem and loss of trust are all common in children who witness abuse. Learning disabilities and behavioural problems which may be present are likely to intensify as they get older. In

\textsuperscript{130} Nob. Com, What is Domestic Violence?
households where women are abused by their partners, there is often a high incidence of child abuse by the abusive parent. It is also becoming increasingly apparent that children in violent homes are frequently victims of incest and, unfortunately, the legacy of abuse doesn’t stop when the children leave home. Children develop behaviour based on what they have experienced growing up. Children from violent homes are at high risk for becoming adult victims or abusers themselves.

Family and friends are indirect victims of abuse. The isolation and terror that victim lives with deprives those closest to him or her from meaningful and fulfilling relationships. Often the abuser will harm others close to the victim in an effort to hurt or control the victim. An abuser may harm children, other family members, friends, pets, personal belongings and the family home.

Isolation keeps a victim trapped. Frequently, a batterer isolates the victim from the family socially, emotionally and geographically. The victim is frequently forbidden to see trusted friends and family, and is denied the opportunity to go to school or work outside the home. There is little or no access to or control over finances, in the midst of this terrible isolation, the abuser employs “brainwashing” tactics, and with no input to the contrary from anyone outside the relationship, there will be no way for the victim to test reality.  

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131 Domestic Violence and the Courtroom, Understanding the Problem . knowing the Victim, findlaw.com