Chapter 9

CONCLUSIONS AND SUGGESTIONS

The extent to which domestic violence threat inhibits women from playing a decisive role in her own life and how it eventually impact adversely on her human rights are a matters of deep concern in a democratic society. Recognizing the importance of social costs of gendered directed violence, the international human rights instruments had taken up the cause as reflected through different Conventions and Treaties. The major challenge lies in the assimilation of those principles into the national/domestic context.

Historically, the violence against women or practices of gender inequality was in existence both in the western and Indian cultural background. The western philosophical thinking starting from the Greek philosophy to the feminist thinking reflected the development from the disadvantaged position to a highly empowered rights holder. The Indian philosophical underpinnings traced its origin from the western counterparts and woman’s role within the family was highly curtailed. The cause identified as to the perpetuation of gender inequality across the countries is one and the same i.e., the patriarchal hegemony within the household. The culture and gender constructs of female sexuality is predominant in the thoughts that emerged from the west and taking cues from the west, the east imitated the same practice. The behavioural problems of the individuals, behavioural changes ensued as a result of continuous consumption of prescribed medications, drug addiction, neuro-biological sub traits of human beings, mutual incompatibility occurring within man woman relationships driven by economic self-sufficiency etc. has not been effectively considered or addressed as sources of perpetuation of domestic
violence. Analysing domestic violence solely as a form of patriarchy leads to half-baked solutions as it is apparent in the Act. The problem lies within the concern that the stability of family as a cohesive unit is not addressed in any of the thinking’s. As Lord Moulton rightly puts it, law is the crystallized common sense of the society, these gender discriminative practices led to the awakening of ideas related to feminism in the west.

The International Human Rights Instruments exhorted the ideas of equality, liberty and fraternity among human beings. Right to marriage and form family was emphasized throughout the Conventions and Treaties. A great impetus was unleashed by CEDAW, but yet it remained silent as to the issue of domestic violence. General Recommendation No.19 of the CEDAW speaks explicitly about the issue of discrimination and violence and was taken note of by the world. However, the international human rights jurisprudence lays down no foundational philosophy as to the maintenance of family stability and the need to address the rights of women within a familial framework.

The efforts of feminist movement in U.S.A and U.K enabled a quick reformation in their policies and strategies to concentrate attention to the issue of domestic violence. There exists a mixed application of civil and criminal remedies to the issue. They emphasized the mandatory arrest policies and no-drop prosecution policies in the criminal side and simultaneously they have civil remedies to deal with the issue. Community co-ordination in dealing with the issue in both the jurisdictions and the concept of specialized domestic violence courts are the predominant features that are highlighted in the western culture. The main aim envisaged is the survivor’s safety and at the same time accountability of perpetrators of violence.

The pre-2005 legal scenario in India was inadequate to deal with the issue. Emphasis on culture specific dowry deaths and matrimonial cruelty, non-coverage of relations other than matrimonial relations within the household by laws, ineffectiveness of civil injunction orders etc., were marred the situation.
The UN Model Code emphasizing on enacting legislations in the domestic setup to deal more comprehensively on the issue was taken up by the feminist movements in India.

The year 2005 witnessed the emergence of a new legislation that boldly stepped into the private familial domain. The Act widened the horizons of concept domestic violence to encompass all forms of abuse that remained dormant throughout the history like, physical, emotional, verbal, and economic abuse, shared household concept, relationships in the nature of marriage etc.

The remedies were also made exhaustive by the Act.

The judicial decisions that came up mainly related to the issues like challenging the constitutionality of the new Act, interpretation of relationship in the nature of marriage, shared household concept, right to residence in the matrimonial home etc. All the cases that came up were decided by the courts based on their specific facts and circumstance in each case. The decisions rendered in Batra case and Veluswamy case are the major decisions that invoked criticism against the culture specific aspects of the Indian setting. Courts have not delved deep into the conceptual disarray emerged out of the Act in the course of its implementation. The decisions, thus lacked the conceptual clarity of real life experiences of Indian woman. This in turn resulted in dilution of legal protection.

Hence the new issues that emerged in the familial domain raised big challenges to the existing foundation of the family cohesiveness in India. The concepts like sexual abuse, relationships in the nature of marriage, right to residence in matrimonial home for a woman are contentious issues to be decided with clarity in the specific Indian cultural scenario. It clashes with the established cultural ethos and ideology of India. There is a wide gap between the black letters of law and the existing real life experiences of an average Indian woman. To detail out the total effect of transition of impact of law in ordering peace within families is that from a policy of non-intervention into
familial issues as private/personal (victim’s requests were not remedied), the law has made over to the policy of intervention in such a manner that it virtually requires ending the relationships. The specific nature of domestic violence calls for special treatment and approach. The need of the survivor is not to end the relationship but to end the violence within the relationship. Any domestic relationship must bring out growth and harmony at the individual, family, and society levels, and the growth should involve physical or material, mental or intellectual and spiritual. No attempt to harness the law's power to affect relationships in constructive ways has been made out by the legislation in India.

Though the Act has clearly sent out the message that domestic violence against women within familial space is a socially unacceptable behavior, the Act fails in its attempt by bringing in the ‘one size fits all approach’ of the law in India and by bringing in the canned solutions of remedies provided under the Act. The outcome is disintegration of familial ties and relationships. The Act adopts a total alien ideology of rights based culture and language within the familial set up contrary to the Indian ideology of relational worldview. Thus the Act fails in understanding that family is the foundation of a successful society and that the promotion of healthy and stable family relationships renders fatherhood, motherhood and childhood stronger and stable. Maintaining familial stability is crucial to the welfare of children and acts as the cornerstone of a healthy civilization. This situation warrants the need for evolving a sui generis model adaptable to Indian situations.

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1 The relational world view finds its roots in tribal cultures. It denotes a collectivity of factors to be studied and balanced to reach a solution. A Healthy balancing of context, mind, body and spirit leads to health. Here it is working with traditional models of helping and healing. In contrast to this view the linear worldview finds its roots in Western European and American thought. It tries to find out the cause effect relationship between events. Interventions are targeted at the cause and it is a narrower view. It treats the individual. See http://www.nicwa.org/relationalworldview. Last visited on 12th February 2013.
9.1 Findings of the Study

The findings of thesis that answer the hypothesis formulated in the first chapter are as follows:

1. Domestic Violence adversely affects human rights of women and as a result their dignity and participation in developmental process are also badly affected.

2. The Act is conceptually flawed in Indian patriarchal cultural context.

3. The Act disintegrates the cohesiveness of family system as the wife is pitted against husband in a matrimonial set up.

4. The implementation of the Act finds no answer to the current understandings of domestic violence holistically due to insensitivity of the state driven legal machinery in handling delicate issues of man-woman relationship.

5. The Act is a mere western duplication incapable of understanding the Indian cultural ethos and the characteristics of family cohesiveness due to deficiency in drafting and importation of western ideologies.

9.2 Suggestions

The laws has inherent limitations to tackle familial matters in a man-woman relationship within a familial set up in India. Law alone cannot change human nature. It is the cultural thinking awakening from education that are necessary for societal transformation. The normative and symbolic power of the law should not be wielded to gain acceptance for new lifestyles or to disintegrate family ties, but to reinforce the time-honoured values and customs of civilization related to family life. Respecting others, protection of vulnerable, acknowledging the integrity and dignity of others, following the lines of experiences of the aged, etc. within the family form the basic norms on which the higher versions of the same gets reflected in the macro level
application in a society. All these foster the development of capacities such as perspective taking, negotiation, reflective and flexible thinking. This in turn promotes a culture of peace in the society.

Need of the hour is a holistic approach /treatment to the problem of domestic violence against women. The problem encompasses within itself personal/individual dimensions, psychological dimensions, clinical dimensions, human rights dimensions, social and cultural dimensions leading to a developmental dimension for the country. Man, woman and child within a familial relationships is to be viewed in a triangular perspective; each contributing and taking from each other, that makes life meaningful.

The approach envisaged under the Act is to vest the entire burden of the problem on men and his relatives. An anti-discriminating and protectively discriminating legislation favourable to women cannot be conceived in a vacuum in the Indian familial cultural setting. The remedies offered is more dangerous than the disease itself in the Indian cultural scenario. A need based approach (need of the woman to end violence without ending relationships;) rather than rights based approach (right of a woman as an individual) is suitable in this context. Woman in the Indian context is to be viewed along with the familial framework. The role she plays the status she occupies and the need of a human being for belongingness are all pertinent when viewed through the lens of socio cultural ideologies .Finding a solution within the familial structure rather than disintegrating the familial relations can take forward the cause of ending domestic violence against women. In short there should be an attempt to merge and apply the relational world view into the domestic violence prevention process in the Indian cultural setting².

Healthy interdependence is the core of the extended family life in India. The context within which the families in India is filled with strength-producing/ harmonizing resources. Community provides additional balancing.

² Ibid.
Support from the elder generations adds to the balancing concept. The family structure and roles, the kinship systems etc., reflects as to how one relates to others, sustain each other and how one act in a system. There is a natural tendency within the system to seek harmony. Services need not be targeted to a specific set of symptoms but rather targeted towards restoration of balance. This type of restoration of balance within a unique system is not envisaged in the legislation. Aggravation of individualistic tendencies within families leads to counter-productive results.

Tocqueville believed that family stability and loyalty were among the permanent needs of mankind that make social responsibility possible. According to him family stability produces social responsibility and order whereas family instability fosters social misbehavior\(^3\). This ideology reflects a commitment of State to promote virtue over vice i.e., to promote good quality of life in conformity with Aristotelian thoughts. Abraham Maslow’s hierarchy of needs\(^4\) justifies the need for satisfaction of physiological needs, safety and need for belongingness(deficiency needs) to be satisfied in the first instance before aspiring for self-esteem and self-actualization(upper needs) of an individual driven by rights based approaches\(^5\).

Victims of domestic violence face the challenges that keep them struck in the safety needs of the stages of human development. The need of the hour is to work with her to develop her capacity to decide her own future. Victims of domestic violence are considered to be ‘experts in their own lives’ and are supported to make informed choices about how they would prefer to be. This part of making informed choices over one’s own survival is considered to be a


\(^4\) In social psychology, the need to belong is an intrinsic motivation to affiliate with others and be socially accepted.

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part of feminist counselling in the western practices. The human urge for belongingness and cultural compulsions of group living rather than individualistic style of living is to emphasised in the Indian context. The need for preservation of indigenous culture and family is reflected in the views of Malinowski when he says that family is the universal human institution to be preserved. Malinowski’s views on collectivity of familial relationships, the need for a shared physical space and the love that comes out of such relations cannot be deprived by the eventuality of domestic violence within the family. Adhering to tribal philosophy of collectivity, family partnerships/mentoring programmes are the suggestions proposed in this context.

A comprehensive institutional and environmental change is required to empower individuals to be adaptable to such way of thinking. Schools can be strategic entry points for the purpose. Creating sensitivity to roles of family members and the need to sustain family stability can be included in the course curriculum. Collaborative effort from Law faculty in each universities with Women Study Centres and Ministry of HRD, Ministry of Women and Children, Government of India can evolve a curriculum grounded on gender sensitivity to these issues. It is significant to ensure that those mandated to implement legislation regarding violence against women, including police, prosecutors and judges, should have an in-depth understanding of such legislation and are able to implement it in an appropriate and gender-sensitive manner. When public officials involved in the implementation of the law are not comprehensively trained regarding its content, there is a risk that the law will not be implemented effectively or uniformly. There have been many and varied efforts to train public officials, and/or to include capacity-building on violence against women in the official curricula for these professions. Such trainings and capacity-building efforts have been found to be most effective, and

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implemented rigorously, when they are mandated in law and developed in close collaboration with non-governmental organizations.

A need for para legal training course for law students and lawyers including clinical education to sensitize on the traumatic stages of victims of domestic violence is the need of the hour. Understanding and addressing the subjectivities of the victim in her own space, giving her time to assess the meaning of experience of violence and leading her to self-guided resolutions can uphold and justify the theory of women’s best interests which is very much akin to the child’s theory of best interest. Clinical supervisions, working with psychologists, need for psychological counseling etc. helps her to decide between multitudes of conflicting loyalties in her own life. To reach out to the victim is the crux of the programme envisaged here. This programme is much adaptable to the Indian context where women victims are interested in stopping violence without severing relationships.

Social corporate responsibility tuned in the lines of western jurisdictions can be promoted to prevent violence within homes. The affirmative pro-active role of the State in the lines of Durbalasya Baloh Rajah is worth mentioning in this context. Governmental efforts to change societal norms refer to the top-down approach (as in the case of enactment of legislation creating a deterrent or restitutive effect) whereas targeting individual families represents the

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7 S.42 of the Philippine Anti-Violence against Women and their Children Act, 2004 requires all agencies responding to violence against women and their children to undergo education and training on (a) the nature and causes of violence against women and their children; (b) legal rights and remedies of complainants/survivors; (c) services available; (d) legal duties of police officers to make arrests and offer protection and assistance; and (e) techniques for handling incidents of violence against women and their children.

8 The main emphasis of affective lawyering by Professor Linda G. Mills is significant in this context. The work of the team is mainly oriented towards the cause of domestic violence against women. They are involved in a process of empowerment of women in such crisis situation by empowering them which reflects a need based strategy their strategy is to cure the whole system than concentrate on the abuser alone. The family of both the abused and abuser is targeted in the process. For details, see Linda G. Mills, “On the Other Side of Silence: Affective Lawyering For Intimate Abuse” in Michael D. Freeman (Ed.), Family, State and Law - Part VII Disputing Violence, Vol II, Ashgate/Dartmouth (1999), pp. 539-619.
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bottom-up approach. These two interventions have the potential to reduce conflict, increase co-operation, negotiation and tolerance.

Thus the need of the hour is co-operation instead of competition, respect instead of degrading, equality instead of dominance, dialogue instead of monologue, communication instead of control, love instead of fear, hate and contempt. These traits can lead to preservation of human rights with humanitarian face within the families. Eleanor Roosevelt has aptly observed⁹:

“Where, after all, do universal human rights begin? In small places, close to home—so close and so small that they cannot be seen on any maps of the world. Yet they are the world of the individual person; the neighbourhood he lives in; the school or college he attends; the factory, farm or office where he works. Such are the places where every man, woman, and child seeks equal justice, equal opportunities, equal dignity without discrimination. Unless these rights have meaning there, they have little meaning anywhere. Without concerned citizen action to uphold them close to home, we shall look in vain for progress in the larger world”.

The crux of the quote by Eleanor Roosevelt is the necessity for local origins of lofty global ideals i.e., the attitudinal change cannot come abruptly. The human rights culture is to begin from the home itself.

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⁹ “In Our Hands,” a 1958 speech delivered on the tenth anniversary of the Universal Declaration of Human Rights, as cited in OHCHR (2003), p.4