PREFACE

Domestic violence is a gender based violation of human rights having multi-dimensional repercussions in the well-being of individuals in family and society. The Indian legislation to protect the women from domestic violence is significant in providing a mechanism for enforcing positive civil rights of protection and injunction orders to the victims of domestic violence along with the existing remedies of criminal sanctions. However the Act was brought in the backdrop of an established tradition of cohesive and stable family setting. This, in turn, results in the emergence of new issues and challenges which necessitates deeper understandings of indigenous socio-cultural institutions in India i.e., marriage and family. This study is an attempt to analyse the Indian law on domestic violence and to assess whether the law addresses and answers the problems of domestic violence effectively in the culture specific setting of India.

The thesis consists of nine chapters. The first chapter is an introduction to the various concepts relating to the study. Objectives of the study, hypothesis, research questions and scope and limitations of the study are dealt with in this chapter. It analyses different theories explaining the causative factors of domestic violence against women. Causes of domestic violence in the Indian context are also examined.

The focus of the second chapter is on the historical and philosophical perceptions on gender inequality in the Western and Indian society. It contains the philosophical overviews of Greek, Natural Law, Common Law, Utilitarianism, Marxism and Feminism. These theories are analysed to identify and understand the role and status conferred on the woman in the society. The dominant Indian thinking originating from Hindu texts, the teachings of Christianity and Qur’an are also analysed in this chapter.

The third chapter discusses the human rights perspectives of domestic violence against women. The human rights jurisprudence comprising of International Conventions, Treaties and case laws are analysed to find out the significant contribution made by the European Court of Human Rights and
Inter-American Commission of Human Rights in bringing out the state’s accountability in cases related to domestic violence.

A comparative study of western jurisdictions i.e., U.S.A and U.K is undertaken in the fourth chapter. It discusses the legislations and multi-agency responses in USA and UK, in addressing the legal strategies resorted to by them in dealing with the issue.

A critical analysis of the pre-2005 scenario relating to the legal protection offered against domestic violence in India is the topic covered under the fifth chapter. The mandates of the Constitution of India, civil and criminal law remedies, statutory offences relating to domestic violence etc., are discussed in this chapter to understand the limitations and inadequacies felt in the system.

The sixth chapter is an appraisal of the Protection of Women from Domestic Violence Act 2005. The scope and the extent of the Act, the concepts envisaged therein, the role of implementation machinery, the reliefs guaranteed, the procedures involved and the consequences of breaching of orders made under the Act are the main focus of the chapter.

The seventh chapter is an evaluation of the judicial interpretations on various provisions of the Act. It comprises of questions relating to the constitutionality of the Act, rights of women in relationships in the nature of marriage, right to matrimonial residence, woman as a respondent, interpretation of procedural requirements etc., which are discussed with a view to tracing the judicial wisdom in realising the objectives of the Act.

Various unresolved issues and challenges that have emerged in the course of implementation of the Act are the topics discussed under the eighth chapter. Conceptual disarrays, procedural dichotomies and deficiencies in the Act are critically analysed in the chapter.

The ninth chapter summarizes the findings and conclusions of the study. Certain proposals are placed at the end of the chapter leading to the need for change in the system.