CHAPTER - 6

LEGISLATIVE PROVISIONS FOR THE PROTECTION OF
WOMEN AGAINST DOMESTIC VIOLENCE

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6:1 Introduction

Women have been invisible in the development and growth of modern international law. Though 'Law' is assumed to be gender neutral. The norms and standards of International Law are generally unconcerned with the 'Women's question'. In recent times this approach has changed especially in the field of international human right law. The problems related to gender inequality and violence against women has gained increasing recognition by the international community.

Prior to 1983, every form of violence committed against women within the family, either in the natal or the spousal home was not considered as an offence. The Criminal Law (Amendment) Act, 1983 introduces several reforms concerning the punishment of rape, the procedure and the rules of evidence. The scope of the offence of rape has been clarified in certain directions. The earlier law did not make specific mention of certain special situations. Since the 'consent factor' is an essential ingredient to decide the offence of rape; the new law makes it clear that the consent may be vitiated.

The new law provides that the trial of rape and other cognate offences must be held behind closed doors. The object is to avoid the serious embarrassment, which might ultimately affect the frankness and fullness with which they may tell their stories in court. It is further provided that where the proceedings are held behind closed doors, it shall not be lawful for any person to print or publish any matter in relation to any such proceeding, except with the permission of the court. Violation of this prohibition is punishable with imprisonment up to two years.
The new law introduces another prohibition against the discloser of identity of the victim of rape and victims of the newly created cognate offences. Violation of the prohibition is punishable with imprisonment up to two years.

In the past, the state and the law intervened with regard to violence in the hole only when the violence crossed the limits of privacy and becomes a public issue. Otherwise, the 'doctrine of privacy' allowed for violence to continue unabated. However, in recent times the approach of law has changed. States are increasingly reaching into the privacy of homes. States are now increasingly held responsible for human rights offences committed within the homes. Thus the states have enacted laws to prevent as well as punish crimes of violence which takes place even in the private domain. The domestic violence is endemic and well established phenomenon. Victims of domestic violence need support and redressal mechanisms and law has been viewed as a major channel for redressal.

The numerous laws in statute books which protect the interest of those who end up being victims of domestic violence, are found scattered under our personal laws which treat domestic violence as a ground for divorce. Thus, by virtue of the empowerment U/Art. 15(3) of the Constitution of India, the Parliament has from time to time made efforts to protect women by making amendments in the existing laws and by enacting new laws to protect women from domestic violence. Recently the Parliament of India has passed 'The Protection Of Women From Domestic Violence Bill, 2002, and more recently the Hon'ble President of India has assented for a new law protecting women from domestic violence.
6:2 Legislative Provisions And Protections.

At present only those protections which are related to the problem of domestic violence directly or indirectly are highlighted. The general laws and special laws for the protection of the women are discussed in Chapter 2 of the instant study.

The legislative protections against domestic violence can be divided in three major categories –

6:2:1 Constitutional Protections

The relevant protections for women enshrined in Part III of the Constitution are as follows -

Articles 14 to 18 of the Constitution of India are the guarantees of equality for every citizen of India. Article 14 gives equal protection of the law and treats every citizen equal before law.

Article – 15 prohibits discrimination on grounds of religion, race, caste, sex or place of birth, recognizing the vulnerable and disadvantaged position of women and children in our society, it follows a policy of 'Protective discrimination'. Clause (3) of Article 15 says, 'nothing in this Article shall prevent the state from making any special provision for women and children.

Article – 21 of the Constitution of India protects human dignity. It imbibes the principle of national justice and fairness and confers on every
person the fundamental right to life and liberty. In the words of J.
Bhagwati in case of Franscis Coralie vs. Union Territory of Delhi. ¹

"We think that the right to life includes the right to live with human
dignity and all that goes with it, namely, the bare necessaries of life such
as adequate nutrition, clothing and shelter over the head and facilities for
reading writing and expressing oneself in diverse forms, freely moving
about and mixing and commingling with fellow human beings". ²

Through various other judgments the courts have held that right to
livelihood is included in the right to life. As regards the expression of
'personal liberty', it includes the right to socialize with family members and
friends. The right acknowledged under Article 21 is subject to the
'Procedure established by law', firstly, there must be a law justifying
interference with the person's life or personal liberty and, secondly, the
law should be a valid law, and thirdly, the procedure laid down should
have been strictly followed. It needs to be added that the 'protection in
Article 21 has to be "fair, just and reasonable, non fanciful, oppressive or
arbitrary and the 'law' in Article 21, is reasonable law, not any enacted
piece". ²

Article 23 protects women from traffic in human beings and the prohibition
applies not only to state but also to private person, bodies or
organizations, and contravention of the prohibition shall be an offence
punishable in accordance with law.

For the purpose of this Article, traffic in human beings includes
traffic in women and children for immoral purposes and it means dealing in

² Maneka Gandhi vs. Union Of India, A.I.R. 1978, SC, P. 597
human beings like goods. Article 24 protects children below the age of fourteen years from employment in any factory or wine or hazardous work. The relevant provisions contained in Part IV of the Constitution are listed below:

These are not enforceable by court, but the principles laid down therein are nevertheless fundamental in the governance of the country and it shall be duty of the state to apply these principles in making laws.

Article 39 (e) and (f) – it directs the State to protects the health and strength of men and women workers and the tender years of age of children from being abused. And that citizens are not forced by economic necessity to enter avocations unsuited to their age and strength; that children should be given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that the childhood and youth are protected against exploitation and against moral and material abandonment.

Article 41 – it directs the State to make effective provision, within the limits of its economic capacity and development, for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness, and disablement and in other cases of undeserved want.

Article 42 – it directs the State to make provisions for securing just and human conditions of work and for maternity relief.

Article 44 – it directs the State to take steps for establishing a uniform code throughout the territory of India, a code incorporating equal rights for women and children.
Article 45 – directs the State to provide free and compulsory education for children until they complete the age of fourteen years.

The relevant duty cast on the citizens under Part IV – A of the Constitution is as follows –

Article 51-A imposes certain fundamental duties upon the citizens.

Clause (e) of this article stresses on the duty of every citizen of India, ‘to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities, to renounce the practices derogatory to the dignity of women’.

6:2:2 Protections Under Criminal Law

Protections available to the women under criminal laws are as under –

1. Female Foeticide - (Causing miscarriage)

Offences relating to the birth, death, exposure etc. of children are made punishable to protect the female fetuses. Female foeticide is a violence against unborn girl child. It is a silent violence even before the birth of a female child and this practice is used to get the rid of female foeticide. The tragedy of a girl child begins in th so called institution of the society, “the family, when the child is in the mother’s womb. The female foeticide is identified as crime against life, relating to birth, death of children. These are sub divided in to the following -

4. sections 312-318 of IPC.
i) Whoever voluntarily causing a woman with child to miscarry, otherwise than in good faith for the purpose of saving the life of the woman,¹⁵ and without her consent,¹⁶ be punished with imprisonment of either description for a term which may extend to three years or with fine or with both, and if the women be quick with child shall be punished with imprisonment of either description for the term which may extend to seven years and shall also be liable to fine.

Explanation – A women causes herself to miscarry, is within the meaning of this section. Section 312 deals with the causing of miscarriage with the consent of the women, while Section 313 deals with causing of miscarriage without such consent.

a) Causing the death of a woman by an act done with intent to cause miscarriage.⁷ For the purpose of prevention of the occurrences of miscarriage, the state has enacted A Medical Termination of Pregnancy Act in 1971.

b) Injuries to unborn children⁸ Injuries to unborn child are mainly the following two- Doing an act without good faith, with intent to prevent a child being born or to cause it to die after birth⁹ Causing the death of a quick unborn child by an act amounting to culpable homicide¹⁰

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5. Section 312 of IPC
6. Section 313 of IPC
7. Section 314 IPC
8. Section 315-316 IPC
9. Section 315 IPC
10. Section 316 IPC
2. Female Infanticide

To protect girl children from Female Infanticide the offences of infanticide are made punishable under IPC. Causing Infanticide is offence against life after birth.

a) Exposure and abandonment of infants

Exposure and abandonment of a child under 12 years by parents or persons having care of a child, with the intention of wholly abandoning it, is an offences. The punishment is imprisonment for seven years or fine or both. ¹¹

b) Concealment of birth

Intentional concealment of (or endeavor to conceal) the birth of a child, by secretly burying or otherwise disposing of the dead body of the child, whether such child dies before or after or during the birth, is an offence and the punishment is – imprisonment for two years fine or both. ¹²

3. Rape

Rape is not strictly the offence committed by the family members but there is a possibility of such occurrences within four walls also. Rape is perhaps the most heinous and most common crime against woman, against her will and without her consent or with consent,

i. Obtained by putting her under fear of death or hurt, or

ii. At the time of giving her consent, she is unable to understand the nature and consequences of that to which she gives consent, by reason of unsoundness of mind or intoxication or

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¹¹ Section 317 IPC

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the administration by the rapist or through another or any
stupefying or unwholesome substances, and

iii. With or without her consent when she is under 16 years of age.
The rape is punishable, with imprisonment for life or 10 years
and fine.

Sexual intercourse by a man with his own wife who is below the age of
15 years is considered as martial rape. The provisions about offence of
rape can be divided into two distinct phases i.e. Before 1983 and after
1983.

4. Kidnapping Or Abduction For Different Purposes

Kidnapping or abducting a woman, to compel her to marry any
person, against her will or to force or seduce her to illicit intercourse or
knowing it to be likely that she will be forced or seduced to illicit
intercourse. This section prescribes punishment for any person who
abuses his authority to criminally intimidate a woman or induces her to go
from any place with intent that she may be forced or seduced to have illicit
intercourse

Section 366 -A and 366-B deal with the procuration of minor girls
for the aforesaid purpose while Sections 373 and 374 IPC deal with

12. Section 318 IPC
13. Section 375 of IPC
14. Section 366 IPC
buying and selling of minor girls for purpose of prostitution. For a prosecution under these Section it is essential to show that the accused intended that the girl shall be employed for immoral purposes. The word 'prostitution' is not confined to natural sexual intercourse, it includes any act of lewdness or surrender of the girl's chastity for money. The dedication of minors to the temples as 'Devdasis' amounts to this crime.

5. Murder

Murder is the most dangerous offence against the life of any person though. It is not directly concerned with the offences against women but it includes the incidences of dowry deaths and Sati, thus, the cases of dowry death can be covered under section 302 along with section 304 B and the cases of Sati can be covered under section 302 and 309 of IPC (attempt to commit suicide.)

The newly added (Added by the Amendment in 1986) of IPC defines 'Dowry Death' as 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 death, and it is shown that soon before her death, she was subjected to cruelty or harassment by her husband or any relative of her husband for or in connection with, any demand for dowry, such death shall be called 'Dowry death' and such husband or relative shall be deemed to have caused her death.

The offence as defined in the newly amended section has three ingredients.

15. Section 300 IPC
16. Section 304-B IPC
First, the death of a woman must have occurred otherwise than under normal circumstances within seven years of her marriages.

Second, it must be shown that just before her death, she was subjected to cruelty or harassed by her husband or a relative of her husband, and

Third, such cruelty or harassment must be for or in connection with any demand for dowry. Under this provision the offence is punishable with a minimum of 7 years of imprisonment and can be extended to life imprisonment.

6. Immoral Traffic In Human Beings

Traffic in human beings means selling and buying of men and women like goods. And includes immoral traffic in women and children for immoral for other purposes. The law prohibits the sale and purchase of minors for immoral purposes. These provisions relate to selling or buying of persons under eighteen years of age for immoral purposes.

Indian Penal Code prohibits selling, letting to higher or otherwise disposing of any person under the age of eighteen years, for the purpose of prostitution, or of illicit intercourse, or any unlawful and immoral purpose, or knowing it to be likely that such person will, at any stage, be used for such purpose. It also prohibits buying, hiring or otherwise obtaining possessions of such person for a like purpose.

17. Raj Bahadur Vs Legal remembrancer, AIR, 1953, Calcutta, 522
18. Section 372 -373 IPC
7. Indecent Representation Of Women

These are the offences against public morals and decency. The sections of IPC do not expressly include obscenity against women but indirectly these sections protect women from being annoyed and hence aims at preventing obscenity. IPC prohibits selling, distributing, importing, printing (for sale or hire) on publicly exhibiting any obscene book, pamphlet, paper, drawing, painting, representation or figure or any obscene abject what so ever or attempting or offering so to do. It also prohibits signing, reciting or uttering in public obscene song bailed or words to the annoyance of others. For the purpose of the world 'obscene ordinarily is immoral and is also connected with something, sexual'.

8. Cruelty and Torture

The Indian Penal Code prohibits a husband or a relative of a husband of a woman subjecting her to cruelty, and punishment of imprisonment for a term which may extend to three years or fine or both. For the purpose of this section 'Cruelty' means any willful conduct which is of such a nature as is likely to drive the women to commit suicide or to cause grave injury or danger to life, limb or health (mental or physical) of the women, or harassment of woman, whether such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

The section 498-A was introduced with intent to combat the ever-

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19. Section 292-294 of IPC
20. Section 498-A IPC
increasing menace of dowry deaths in India. This section has given new dimension to the concept of ‘cruelty’ for the purpose of matrimonial remedies.\textsuperscript{21} To bring the accused within the ambit of the provision of Section 498-A, it must be proved that the deceased was subjected to cruelty within the meaning of this section. The greed for dowry is at the root of the offence covered by this section. Where the husband continuously held out threats of taking away the son and harassing the wife to meet his (dowry) demands, to the extent of compelling the wife’s parents to sell away their property, it was held that such threats and harassments are punishable u/s 498-A.\textsuperscript{22}

In Chitnis vs. Chitnis\textsuperscript{23}, the Supreme Court held that Section 498-A is wide enough to cover cruelty committed through an abuse of the litigate process. In that case, the husband was harassing and humiliating the wife by execution of search warrants and seizure of the wife’s personal property, by instituting vexatious litigation against her.

9. Bigamy

The penal code protects women from being exploited by the husbands and provides that, whoever marries during the lifetime of husband or wife is guilty of ‘bigamy’. And if the first marriage is concealed from the person with whom the marriage is contracted, it is punishable with imprisonment for ten years and fine u/s 495 of IPC. Whereas in other cases, imprisonment for 7 years and fine\textsuperscript{24}

\textsuperscript{21} Shobha Rani Vs Reddi, AIR 1986 SC 211 22. Inder Raj vs. Sunita. 1986, Cr. L.J. 1510
\textsuperscript{22} Chitnis vs. Chitnis, 962, Cr. L.J. 111
\textsuperscript{23} Section 494-496 IPC
10. Mock Marriage

Mock marriages are strictly prohibited by the penal law which provides that, cohabitation or sexual intercourse caused by a man deceitfully inducing a woman who marry with him is punishable with imprisonment for ten years and fine.\textsuperscript{25} Dishonestly or fraudulently going through a marriage ceremony knowing that no lawful marriage is thereby created, is punishable with imprisonment for 7 years and fine.\textsuperscript{26}

Criminal Procedure Code further protects women in case of unnatural death of woman within seven years of her marriage, the Criminal Law (Second amendment) Act, 1983 makes it mandatory for the police to send the body for post-mortem. The inquest by a magistrate into cause of death becomes necessary in such cases\textsuperscript{27}, either instead of, or in addition to, the investigation headed by police officers.

The offence of Cruelty by husband or relative is specifically dealt with in section 498-A of IPC. The 'cruelty' includes both mental and physical threat, harassment and torture. The court can take cognizance of the offences u/s 498-A upon police report or upon a Complaint by the aggrieved woman or her relatives\textsuperscript{28} The Cr.P.C. lays down the procedural aspects for dealing with maintenance of wife and minor children\textsuperscript{29}

\textsuperscript{25} Section 493 of IPC
\textsuperscript{26} Section 496 of IPC
\textsuperscript{27} Section 176 of Cr. P. C.
\textsuperscript{28} Section 198-A Cr. P. C.
\textsuperscript{29} Section 125 of Cr. P. C.
6:2:3 Protections Under Special Laws

Various special legislations are enacted to protect the victims of domestic violence. The following laws are directly or indirectly related to the problem of domestic violence.


This Act is meant for the protection of neglected, uncontrollable and delinquent juveniles. The Act considers 'Cruelly' to juveniles as a special offence. Putting children under begging is another form of child labour and also child abuse, which is considered a serious offence under both IPC and Juvenile Justice Act, 1986, (JJA). A 'Juvenile' means a boy or a girl who has not attained the age of the 18 years of age. (age of the child is fixed by the Amended Law in 2002).

Whoever, having the actual charge of or control over, a juvenile, assaults, abandons, exposes or willfully neglects the juvenile or causes or procures him to be assaulted, abandoned, exposed or neglected in a manner likely to cause such juvenile unnecessary mental or physical suffering shall be punishable with imprisonment for a term which may extend to six months or with fine or both. The drawback of this provision lies in section 41(2), which says, 'No court shall take cognizance of an offence punishable under sub-section (1) unless the complaint is filed with the previous sanction of the State Government or an officer authorized by it in this behalf.' 30 Many cases of neglect of children remain invisible or unreported, thus the Act has very limited application.

30. Section 41(1) and (2) of Juvenile Justice Act, 1986
2. Medical Termination Of Pregnancy Act, 1971

For the purpose of prevention the occurrences of miscarriage, the state has enacted special legislation. If the termination of pregnancy is carried out to get rid of female fetuses and if it is hazardous for a woman's health, is punishable under this Act.

3. Pre-natal Diagnostic Techniques Act, 1994

It suggests stringent action by law enforcing bodies and to put check on the occurrences of female foeticide. One who contravenes any of the provisions of the Act or rules is made punishable with imprisonment for for a term which may extend to three years or with fine which may extend to Rs. 10,000, and on any subsequent conviction with imprisonment which may extend to five years and with fine which may extend to Rs. 50,000.31


Realizing the gravity of the situation, the Govt. of India passed the Dowry Prohibition Act, 1961. This Act prohibits the system of 'Dowry' i.e. means a property or valuable security given or agreed to be given either directly or indirectly, by parents of either party to a marriage or by any other party to the marriage and by the parents of either party to a marriage or by any other person to either party to the marriage or to any other person at or before (or any time after the marriage) (in connection

31. Section 23 of Pre-natal Diagnostic Techniques Act, 1994
with the marriage of the said parties but does not include) Dowry Or Mehr in the case of persons to whom the Muslim personal Law (Shariat) applies.

The penalty for demanding dowry is imprisonment for a term which shall not be less than six months but which may extend to two years and with fine up to two years and with fine up to Rs. 10,000. 32

5. The Commission Of Sati (Prohibition) Amendment Act, 1987

To force any women to go on 'Sati' is an offence which comes under the definition of murder and if any woman tries to commit Sati, it is presumed as an attempt to commit suicide and is punishable under the Indian Penal Code. The glorification of Sati is made an offence under this Act. 33


To prevent the practices of selling and buying of minor girls for immoral purposes this act was passed. Traffic in human beings i.e. selling and buying of men and women like goods, for Article 23 of the Constitution of India prohibits such acts, for immoral purposes. And in pursuance of this Article Parliament U/A 35. has passed the legislation, The Suppression of Immoral Traffic Act (SITA) 34 for punishing acts which result in traffic in human beings. The Immoral Traffic (Prevention) Act, 1956 was

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32. The Dowry Prohibition Act, 1961(Amended in 1984)
34. 'Suppression of Immoral Traffic in Women and Girls Act, 1956.'
passed with an objective of prevention of exploitation of persons (female) from sexual abuse. The Act neither prohibits prostitution altogether nor gives legitimacy to promiscuous sexual activity. Keeping a neutral attitude to the profession itself it seeks to identify and deal with the 'crimes' connected with it. The crimes under the Act are mainly several types of conducts related to immoral traffic. These are—

- Living on the earning of prostitution.
- Procuring for the purposes of prostitution.
- Keeping a brothel of abetting such conduct.
- Detaining females in brothels.
- Prostitution and its abetment in public places.
- Soliciting for purposes of prostitution.
- Seducing of females in custody.

By a recent amendment, the concept of child victims has been included in the Act, to include females below the age of sixteen years as distinguished from minors. The amended law imposes a higher penalty for sexual exploitation of children, a mandatory minimum sentence of seven years and a maximum imprisonment up to ten years life. 35

Brothel keeping is checked not only by imprisonment of landlords, tenants and occupiers but also by suspensions or cancellation of license of the premises if it happens to be a hotel, and by closure, eviction and regulation of use of premises for specified periods if they happen to be in the vicinity of public places.

35) Immoral Traffic (Prevention) Act, 1956
In Karnataka, The *Deodasis* (Prohibition of Dedication) Act, 1982 provides the rules to provide for the custody, welfare, protection and rehabilitation of Deodasis. Under the Act, the person or persons found guilty of performing, permitting, taking part of abetting the performance of any ceremony or act of dedicating a girl or a woman as Deodasi (with or without consent) can face up to three years of imprisonment and fine of Rs. 2000; and Where a parent/s or guardian/s or relative/s of such girl/woman is found guilty, the imprisonment can extend up to five years with a minimum of two years and the fine up to Rs. 5000, Rs. 2000/- being a minimum.

The law not only confines its role to preventing ‘involuntary’ prostitution but also seeks to check, control and regulate so-called ‘voluntary’ prostitution. The law makes a distinction between a minor and major prostitutes and considers the former a ‘victim’ and the later ‘a professional’.

The principal offence under the law is buying or offering ‘sex’ and the client is the ‘principal offender’. In this respect, The Juvenile Justice Act, 1986 has elaborate provisions for the care, protection, treatment, education, vocational training, development and rehabilitation of children rescued from those procuring, inducing and taking persons for the sake of prostitution.


Any person who contravenes the provisions of the Act shall be punishable on first conviction with imprisonment of either description for a term which may extend to 2 years and with fine which may extend to Rs.
2000. And in the event of second or subsequent conviction with imprisonment for a term of not less than six months but which may extend to five years and also with fine not less than Rs. 10,000 but which may extend to Rs. 1,00,000. The legal position thus effectively affirms and promotes the principles of equity and equality of women and takes care of their special needs.  


Girls being considered a liability, are often married off by their families at an early age. The Child Marriage Restraint Act of 1929, after an amendment in 1978, thus raised minimum age of marriage of girls to 18 years and for boys to 21 years. The Act authorizes police officers to investigate cases of child marriage as if they are cognizable, but does not authorize them to arrest any person without a warrant or an order of Magistrate. The Act clearly makes 'Child Marriage', a criminal offence, which is punishable by law but it does not invalidate the marriage. Besides the Child Marriage Restraint Act, the exception to section 375 in the Indian Penal Code, indirectly tries to put a check on the practice of child marriage in as much as cases of sexual intercourse by a man with his own wife, who is under the age of fifteen years, are dealt with as cases of 'Marital Rape'.  

While on the other hand section 198 of the Criminal Procedure Code provides that a husband can not be prosecuted for committing Rape on his own minor wife, (below fifteen years of age) if more than one year has elapsed from the date of commission of the offence, and if a minor.

36. Section 6 of Indecent Representation Of Women (Prohibition) Act, 1986  
37. Section 6 of The Child Marriage Restraint Act, 1929  
38. Section 198 sub-section (6) Cr.P.C.
woman aged twelve years or below is raped by her own husband, a
minimum sentence of ten years imprisonment has been made obligatory
after the amendment in rape law. (Prior to the amendment the punishment
for such cases was only two years imprisonment or fine or both) 39.

 Protections regarding 'Guardianship and Custody of Children' are

9. The Hindu Minority And Guardianship Act, 1956

It applies to Buddhists, Sikhs and Jains. It applies to minors i.e. any
child legitimate or illegitimate, who has not attained the age of 18 years of
age 40 The natural guardian of a boy or an unmarried girl is the father and
offer him, the mother. In the case of an illegitimate boy or illegitimate
unmarried girl, the natural guardian is the mother, and after her, the father;
and in the case of a married girl, it is her husband.

Regarding the custody of the child, the custody of a child of tender
years should, therefore, remain with the mother unless there are grave
and weighty considerations, which require that the mother should not be
permitted to have the minor with her.

10. Guardianship And The Wards Act, 1890

It says that, where a guardian of the minor is to be appointed or
where the questions of custody of the minor is to be decided, the courts

39. Section 376 (1) IPC
40 Sec. 4(a)]. Section 6 (a), (b) and (c) of The Hindu Minority and Guardianship Act,
1956
take into consideration various factors which may vary in each particular case, the paramount consideration being the welfare of the minor. 41

The general practice is to give the custody of children of tender years to the mother and access to the father, sometimes the court may give the care and control of the child to a third person if it is in the best interest of the child.

Under the Muslim law, the father is the sole guardian of the child. The mother, however, has a prime right to the custody of the child. There is no specific provision in the Shariat for taking account of the child's wishes in these matters, but the court has to bear in mind the welfare of the child and other circumstances in deciding the matter.

All other communities are governed by Guardianship and Wards Act, 1890 which lays down that the natural guardian of the child is the father unless he is found unfit.

11. The Parsise Marriage And Divorce Act, 1936, And The Indian Divorce Act, 1869,

These Acts are applicable to Parsis and Christians, do not provide for considering the wishes of the child in matters related to his/her custody. 42

41. Section 17 of the Guardianship and the Wards Act, 1890 read with section 13 of the Hindu Minority And Guardianship Act.
42. The Parsis Marriage and Divorce Act, 1936, and the Indian Divorce Act, 186939)

A Hindu male or female is bound, during her/his lifetime, to maintain his/her minor (under the age of 18 years) children, legitimate/illegitimate or adopted. Maintenance, u/s 3(b) here includes food, clothing, residence, education and medical attendance and treatment. In case of unmarried daughter, it includes, ‘the reasonable expenses of and incident to her marriage’ . The right of the child to maintenance from parent id granted in all personal laws. Under most personal laws the father and after him, the mother is under obligation to maintain the child unless he has no means or insufficient means.

13. The Family Courts Act, 1984

In cities, where the Family Courts Act, 1984 is implemented, matter relating to maintenance, custody and access come under the jurisdiction of the Family Court.

One common legal provision on the issue of maintenance, which is applicable to all communities is the Criminal Procedure Code. This provision is applicable to both legitimate and illegitimate children.

Besides the personal laws and other statutory provisions, there is a special legislation, which protects the interests of the child. The Juvenile

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43. Section 20 and Section 3(b) of the Hindu Adoptions and Maintenance Act, 1956
45. Section 125 of the Criminal Procedure Code
Justice Act, 1986 (JJA) recognizes certain special offence against juveniles often committed by the parents and those responsible for the child.

**Protections Regarding Grounds for Divorce**

Hindus, Muslims, Christians and Parsis are governed by their respective personal laws which list out the grounds for divorce. These are-

14. The Hindu Marriage Act, 1956

For the Hindus, it provides for the various grounds on which divorce can be passed on grounds of adultery and cruelty respectively. 46 When the wife is physically or mentally abused by a husband who is of incurably unsound mind or suffering from episodic fits of mental disorder, then this provision provides a clear out ground of divorce under section 13 of the Act. Section 13 (2) enumerates the grounds available only to a wife for obtaining a decree of divorce. It provides that a wife can file petition for divorce from her husband if he has 'since the solemnizing of the marriage, been guilty of rape, sodomy or bestiality

15. The Dissolution Of Marriage Act, 1935

Under this Act a Muslim woman can get divorce if her husband treats her cruelly which includes both physical and mental cruelty or if he is leading to infamous life or sells away her property or prevents her from

46. Section 13 of The Hindu Marriage Act, 1956
exerting her legal rights over it. If a woman is tortured or in any way forced to lead an immoral life by her husband, she can seek divorce from him. A Muslim woman can also get her marriage dissolved if her husband falsely charges her of adultery.\footnote{The Dissolution of Marriage Act, 1935}

16. Indian Divorce Act, 1939 (Amendment in 2001.)

Under the Christian Law, while seeking divorce previously a woman had to prove adultery along with cruelty but the amendment in the law has removed this bar. The new law also removed the bar of getting divorce confirmed by the High Court.

**Protection Regarding The Property Rights Of Women.**

17. The Hindu Succession Act, 1956

Under this Act Hindu women have a right in the ancestral property but their share as against a male member of the family is much less. Co-parcenaries consist of all the male members of the family and only co-parcener can ask for partition. In the State of Andhra Pradesh and Maharashtra however, the law has been amended to include women as co-parceners. All male members of the family have equal share in the ancestral property. Daughters have a share only in that part of the ancestral property, which falls to the share of the male head of the family. Similarly, a women has a share only in that of the ancestral property which falls to the share of her husband. However, in the self acquired property of a Hindu male, all the members of the family have equal rights, including
the women i.e. his daughter(s), wife, mother, daughter's daughter, widowed daughter-in-law, it is to be noted that even a married daughter or married female member of the family have share in the father's self acquired property. 48

Under The Muslim Law of Succession, a woman has certain rights in property in inheritance, maintenance and Mehr (a sum of money given to the bride by the bridegroom at the time of marriage). She is entitled to inherit property as Daughter, Widow, Grandmother, Mother, Son's daughter.

**Indian Succession Act, 1925**

Property rights of Christian are governed by Indian Succession Act, 1925. A widowed Christian woman gets 1/3 share of her husband's property. The remaining of the property is divided equally between all his children, (girls as well as boys). This means that a married daughter will get a share in her father's property. In case of diseased daughter her children will get her share. 49

**6:3 Substantive Aspect**

The problem of domestic violence has not called much attention in the society as it is always considered to be associated with other violent crimes. Though the Penal Law covers some of the acts and punishments are prescribed for those but still such violent activities take place inside.

48. The Hindu Succession Act, 1956
the homes do not come within the ambit of definition of crimes and the law remains silent on this issue. Domestic violence can well be said to be the outcome of the psyche of the family member and unfortunately law had no answer to such psyche of the people. It is always said that law can neither cope up with the ever-changing faces of domestic violence against women and demands of the society nor it is sufficient to protect the weaker sections of the society in general and women in particular. Thus the present legal framework is failing on many fronts. Many efforts are made to envisage the problem of domestic violence as an independent problem for the State is under obligatory duty to protect the rights of the people.

Law can be called as a code of conduct, which talks about behaviouralism. Behaviouralism further includes external behaviour and internal behaviour of a person. Indeed law can check external behaviour of a person but what about the internal behaviour of any person? remains the question mark.

In many situations of domestic violence cases prima face the victimizer does not appear as a criminal and he is leniently let off or discharged from the charges of crimes against him. After his release his attitude totally changes and he tends towards to take revenge and thus he behaves. Emotional blackmail of the women is a common scene and the law has no answer to solve such problems, because in the cases of domestic violence, the mental behaviour and attitude of a person make a huge impact. The domestic violence is required to be seen as a special kind of crime and not only as a crimes defined superficially in the Indian Penal Code, with more stringent measures.
6:3:1 Rights And Protections

Before passing of the Protection of Women from Domestic Violence Act, 2005, there was no independent and comprehensive complaint mechanism to deal with the problem of domestic violence. The problem of domestic violence was seen as any other violent crime defined in the Indian Penal Code. The mechanism which was applicable to the crimes against women identified under the IPC was applicable to the cases of domestic violence substantively.

As per the Criminal Procedure Code, the complaint mechanism is complicated and does not suffice with a new angle of vision which is complainant friendly to tackle with the problem of domestic violence. In the settled criminal justice system, the complaint is to be made by the complainant himself or herself and FIR can be lodged by any person including the State. Now the new 'Law' made the complaint mechanism so flexible that not only the affected woman but also a neighbour, or any member of NGO or any other person are allowed to lodge a complaint. The complaint mechanism is so devised to develop a sense of urgency in the concerned machineries. The complaint of domestic violence may not sound as dreadful as that of a traditional crime like murder, theft, dacoit etc but it essentially requires sensitivity and not mere applicability of the frame of law. Thus, the offence of domestic violence is made cognizable and non-bailable.

In India, the police are the main investigating agency. They are empowered to search seize, recover and record statements. The statement recorded by the police have no evidentiary value unless and until proved by the further. The time consumed in between the statements by police and its proving in court on majority of accessions results in
miscarriage of justice. The public memory is very short. The people get enraged sharply and subside in the same way. The investigation agencies exploit this enrage of the people to meet the ends of justice.

What is essentially required for investigation of the cases of domestic violence that, the investigation required to be done carefully by the magistrates assisted by the police. Here again the question remains as it is that, in the country like India, where woman are considered to be at the secondary position or they are fully under control of the male dominated society, then can we expect the women to come forward to register complaints against their husbands or relatives?

The new law introduced the mechanism, which expedite the matters of domestic violence. It will definitely improve the evidentiary value of the statements made by the complainant and also will check the tendencies of witnesses to turn hostile.

The administration of justice is a complicated process. The prevalent legal system requires every fact be proved before accepting it as a fact of evidence. Many times the rigid principles of law render a strong fact as nugatory and that too only on the ground of non-compliance of necessary legal conditions. Therefore the ad-judicatory body be as such that it would mix the technicality with the social aspects, By mixing technicality with social aspect, and by applying the technical rules, the social repercussions will be borne in mind. The ad-judicatory bodies are required to be sensitive to tackle the cases of domestic violence with proper care

6:3:2 Obligations And Responsibilities Of State

In our democratic country the days of police state has gone. Even the concept of sovereign state is on the verge of diminishing. The new
thought has emerged that the state is not a sovereign state but a trustee for the welfare and benefit of the people. Crisis of inequality made the state responsible, as it is a governing body it has to perform certain duty to protect the interest of the people governed.

The social health of country can be rightly judged by using the parameters of quality of laws and extends to its effective implementation. There can be no such thing as distinct 'wrong', 'right' and 'duty'. The term 'Wrong' and 'Duty' are closely connected with rights and it is desirable to refer them before discussing state's obligation for the preservation of rights of the victims.

The synonym of 'wrong' is injury inflicted by human being. For legal purposes anything is wrong which is forbidden by law. There is wrong done wherever a legal duty is broken. Hence duty, right and wrong are not separate or divisible heads of legal rules or of their subject matter, but different legal aspect of same rules or events. There may be duties and rights without any wrong; this happens wherever legal duties are justly and truly fulfilled. There cannot, of course, be a wrong without a duty already existing, but wrongs also create new duties and liabilities.

A 'duty' is an obligatory act. It is an act opposite of which would be a wrong. The commission of a wrong is the breach of a duty and the performance of a duty is the avoidance of wrong. According to one view, every right has a corresponding duty. Therefore there can be no duty unless there is someone to whom it is due. There can be no right without corresponding right or a duty without a corresponding right just as there cannot be a husband without a wife or a father without a child.
The state possesses rights against the subjects and it also owes duties to the subjects. It is true that in India the state has both rights and duties. Legal duties have been imposed upon the State by the Constitution in the form of fundamental rights. The state can not deny its duty to maintain law and order in the society.

Regarding the ‘wrongs’ committed in the occurrences of domestic violence, these are viewed as ‘private matters’. In the family the woman has to play one or more than one role as wife, as mother, and as daughter and is supposed to be a safe place, for her. The worst form of cruelty are permitted in some sections of the society is indeed a matter of shame that state has to interfere in the domestic life of its citizens to ensure safety and security of the weaker inmates in their own homes. Wherever, such incidents are reported to the police (i.e. State) these become public, though the Criminal Law after amendment protects the interest of the women by prohibiting every such act, which glorifies the day-to-day proceedings of the cases of women. In such cases the police are under obligation to take proper care not to disclose the name of the victim of domestic violence.

Furthermore, the law does not permit victims of domestic violence to proceed directly to the court of law for redress of their grievances, but the victims have to undergo through the procedure, by reporting and narrating the incidence, which may hurt victim’s feelings, to the police and to proceed against the victimizer, produce them into the court and then goes on. In this process it takes too much time to come up the case for final hearing. By that time the case may loose its seriousness. However, it

50. Mahajan V. D., 'Legal And Political Theory', Published by Arhenta Law Publishing House, Pune, 267.
will not be an exaggeration if we say that the enacted pieces of existing protecting laws for women do not carry the sentiments or feelings or even the State does not have to do with the trauma which the victim carries with her to the presiding officers who decide the cases of domestic violence.

Sometimes, in such cases the State stands an obstacle in the process of justice to the victim. So to prevent the State from being an obstacle the fundamental rights are in negative language. For the negative work only security guards are required because sometimes the state acts as an enemy. Thus, to eradicate the occurrences of domestic violence, to make the law more skin-deep, to minimize the delays in investigations and trial, the accountability of judicial authorities, investigating agencies, lawyers, public prosecutors, necessity of modern scientific contribution in investigation and detection of crime are of utmost importance. Training to the police, judges, prosecution and auxiliaries etc. in criminal justice system from the gross-root to the top brass and speedy and swift trial are more important for making a society more livable.

Right of being heard of the victim, before awarding punishment to the accused, investigation and trial within a prescribed time are some of the important factors to be considered by the State. Only punishing an offender is not sufficient and appropriate answer for eradication of domestic violence.

6.4 Administrative Arrangements And Norms For The Implementation Of Law

Since the subject of the research deals with the problem of domestic violence in India, the researcher has to concentrate on the
provisions of Family Law and Criminal Law and also on the administrative arrangements for their implementation. Various agencies have to work, for the laws to be implemented properly. The police, the judges, and other governmental agencies act as agencies of criminal justice administration.

The role of police at the bottom and the role of court as agencies of justice and criminal law administration are more vital and significant than that of other agencies. The role of police as an agency of criminal justice administration needs to be emphasized. It is well known that the prevention of crime essentially needs the services of certain law-enforcement agencies to detect and investigate crimes and apprehend criminals for prosecution in law courts. Usually the transgression of laws are brought to the attention of the police, therefore they prepare the grounds for further investigations. The courts record the evidence and decide whether the charge against the accused is proved or not. In case the guilt is proved, the accused is convicted by the court and sent to prison or some correctional institution to undergo a term of sentence. Thus, a number of functional agencies, notably the police, the courts and the prisons or aftercare institutions are involved in the administration of criminal justice.

While collecting data for the instant subject the researcher found that all criminal trials do not necessarily involve the services of all these agencies. In several cases the police discharges the court drops the offender after preliminary investigation while in some cases the prosecution against the accused at same stage or he is finally acquitted of the charges. Again even after conviction many offenders are released on probation and are not required to lead a prison life and those who are sent to prisons may also be granted parole. Thus, it is commonly seen that from the point of view of sentence, the role of police comes first in the
administration of criminal justice while those of courts and prisons follows subsequently.

Women Police

The recruitment of women police in the police establishment is another step towards maintenance of law and order in India. These women police cells are established mainly to deal with the offences relating to juveniles and women. The services of women police are frequently utilized for helping the Pardanashin ladies. More recently the dowry deaths and bride-burning incidents in India have necessitated women police to gear up its investigative machinery to suppress these crimes. The women police mostly deals with the cases of domestic violence viz-wife-beating, eve-teasing, and dowry-harassment etc. several states in India have set women companions in their police force to cope up with the crime problems relating to women and children.

Judicial System of India

A variety of courts function under the judicial system of our country. The courts are to interpret the laws in accordance with the settled principles of laws and the dictates of their own conscience. The task of administering criminal justice is performed by the criminal law courts comprising the magistracy and the court of sessions. The High Court and the Supreme Court have only appellate jurisdiction in criminal cases. The modern judicial system operating in India for the administration of criminal justice comprise the following categories of courts -
The Supreme Court of India

It is the highest court in the country's judicial system. So for criminal cases are concerned the Supreme Court has only appellate powers, that too in rare cases. The Supreme Court also has writ jurisdiction for the enforcement of the fundamental rights.

The Indian Judiciary is no doubt a male dominated judiciary. Very few female judges have worked as the Supreme Court Judges and hence the problems of women are decided by the viewpoint of the male judges. Sometimes the Supreme Court becomes womanless i.e. having no woman judge. In this regard it is worthy to mention here that United States (US) and United Kingdom (U.K.) have no different story.

The High Courts

There is a High Court for each state or one or more states. Each High Court has original as well as appellate jurisdiction. The High Court has the power to issue certain writs to any person, authority or even the government within its territorial jurisdiction for the enforcement of any of the rights conferred by Part III of the Constitution of India.

The Court of Session

There are court of sessions in each District presided over by session judge and one or more additional session judges. The Session Judge or Additional Session Judge is empowered to pass any sentence of law but any sentence of death awarded by him must be confirmed by the High Court to which he is subordinate. The sessions court exercise both original and appellate jurisdiction.
The Courts Of Judicial Magistrates

There are number of Courts of Judicial Magistrates functioning throughout the District. In every District, not being a metropolitan area, there is a Chief Judicial Magistrate, appointed by the High Court under which number of Judicial Magistrates function for the administration of criminal justice in the division.

In each Metropolitan city there is a Chief Metropolitan Magistrate or Additional Chief Metropolitan Magistrates appointed by the High Court. The powers of functions of this Metropolitan Magistrate are analogous to those of Chief Judicial Magistrate of the Districts.

Besides the criminal Courts mentioned above, the President of India and the Governors of the State have also been conferred certain judicial powers of sentencing the convicted persons. They have power to grant pardon, reprove, respite or remission of punishment or to suspend, remit or commute the sentence in certain cases.

In addition to the judicial magistrates executive magistrates are also appointed by the State Government in each district. One of the executive magistrates is appointed as the District Magistrate and all the executive magistrates except additional executive magistrates are subordinate to him. These magistrates belong to the executive branch of the Government and therefore their appointments are not controlled by the High Court. The function assigned to these magistrates includes trial of offences involving preventive actions, disputes concerning immovable property and offences relating to public nuisance and breach of peace.
The Nyaya Panchayats

Through the age-old concept of Panchparmeshwar which was prevalent in ancient India collapsed completely during the British rule but the Institution of Panchayat as an organ of local self-government still survived. After the Indian Independence, the framers of the Constitution of India incorporated a provision relating to Panchayati Raj in Article 40 of Part IV of the Constitution. In pursuance of this directive, many states in India enacted laws investing limited judicial powers to Nyaya Panchayats to decide petty civil and criminal cases. But it was held that though the involvement of Panchas in the criminal justice administration may appear to be sound principle as a matter of policy but it does not seem expedient to entrust judicial functions to the laymen who are completely ignorant about the technicalities and intricacies of law and its procedure, because the Panchas seem to be carried by the local politics and communal feelings that may happen to entertain against persons.

Lok Adalats

Any discussion on the administration of criminal justice in India shall be incomplete without a reference to the institution of Lok Adalat. The credit of originating this system for speedy justice to common man goes to Mr. Justice P.N. Bhagwati, the former Chief Justice of the Supreme Court of India, who started Lok Adalats in the state of Gujarat during early seventies. All other states including Maharashtra have introduced Lok Adalats for urban and rural areas. These Adalats decide criminal, civil and revenue cases pending before the law courts by mutual consent of the parties; without going into the procedural details. On the Criminal side, the offences compoundable under section 320 (1) and (2) of the Criminal
Procedure Code, 1973 are disposed of by the Lok Adalat through a compromise between the parties.

Family Courts

The establishment of family courts is another significant landmark in legislation relating to the family in general and women in particular. These courts are established with a view to promote conciliation, secure speedy settlement of disputes relating to marriage and family affairs. The emphasis is more on promoting conciliation. According to the Act, every endeavour is to be made to appoint such persons as the judges of the family courts who are committed to protect and preserve the institution of marriage and to promote the welfare or the children and who are expertised for promotion of settlement of disputes by conciliation. The Act also provides for preference being given to women in the matter of appointment of judges.\(^{51}\)

The role of court as an agency of justice and criminal law administration is more vital and significant than that of the police or the prison. The prime function of the court is to impart fair and impartial justice. The judges have to discharge this arduous task with utmost care and caution so that public confidence in judicial process is not shattered. The presiding judge must be aware that this verdict in the case is going to make a lasting impression upon the accused about justice or injustice depending on his rightful or wrongful acquittal or conviction. Most countries today have a regular hierarchy of courts for dispensation of criminal justice. A brief account of the criminal law courts operating in

\(^{51}\) The Family Courts Act, 1984.
U.K., U.S.A. and India for imparting justice in criminal cases will serve a useful purpose in appreciating the role of courts as one of the important agency of justice.

6.5 Ideological Barriers

The Constitution of India declared the equality of sex as a guiding principle and thereby acknowledged that a family should basically be an equalitarian unit founded on equal rights and willing choice by both the individuals who form a family. In practice, however, the subordination of women to men and junior to senior pervades family life in all classes and castes in India. At the root of such oppressions against women is the reality that women are taken as ‘objects’ of both discriminations and violence by men.

Women are the most vulnerable segment of the society. As per an estimate, India is having the largest number of illiterate women in the world. Females are not at par with their male counterparts and remained deprived and under privileged. Women at large experience multiple barriers in going access to employment, housing, food, education and social security and justice is not an exception. The urban women is somehow able to manage their pace with the mainstream due to availability of better facilities to them, but the rural women are more at disadvantage socially and the reasons for their backwardness are more than one.

These disadvantaged women suffer from a high degree of variety through their castes, social status, economic condition, and geographical location and above all their conservative mindset. The psychological as well as cultural barriers stunt the overall development of women. The
ideological barriers like, the women should not return to her parental house after marriage ends her relations with parents.

The parents also seem to be least concerned with their daughter’s sufferings in her matrimonial home. For this purpose National Doordarshan displays one caption,

"Betki Ko Wida Karo, Alwida Nahin"

In spite of all these efforts, the position of women has not changed. The social and ideological practices, which are often located within the family and the social structures, construct male and female subjects with differential powers to act fully independent beings in relation to others. There is an extreme manifestation of unequal social relations between men and women within the family and the organization of economy, the state legitimizes the inequality and fails to transform the existing social relations based on dependence, oppression and exploitation. In the organisation of marriage and family, the sexual division of labour create gender-specific personalities—men tend to value their role as the principal one in the national economy and ‘bread winners’ and supporters of the family while women are excessively under valued for their dependence, ignorance of outside world and preoccupation with children and household chores. The women in India are not taught, since birth, to take their own decisions. On the other hand, the social set up always tries to keep women dependent. The women irrespective of their socio-economic status do not talk loudly against the violence, they have to face in the family; and out of fear and shame they do not try to get justice.

Since birth they are taught about their limitations and boundaries. They are taught that good women do not go to court of law for justice.
Courts are only meant for criminals to deal with. The two contradictory statements that law is foolish and useless on one hand and law never goes wrong on the other hand, always confuses the women. This is one of the reasons, which makes the women uncertain about the role of law in the society. Another contributing factor to this statement which is being observed all over the world, that for the common man to get justice is very difficult thing whereas the elite class people are buying the justice by corrupt practices or by any other trick. Women cannot lie fluently; therefore, they cannot stand firmly with the procedural law, the examination and cross-examinations of witnesses in the court. She cannot trust the law due to the atmosphere in the court, corruption and over professionalism of the lawyers.

In cases of property rights of women usually the women have to waive their property rights in favour of their brothers otherwise they would be denounced 'Selfish'. Due to the fear of de reputation in the society the women do not dare to demand their rights. The women who dare to move to the court are not seen with respect. That is why they never think of to knock the doors of the court of law for getting justice. Moreover, they cannot get economic support from the family members to go to the court. It is also a common scenario in the society that offenders are setting free in serious offences on the ground of benefit of doubt. The women fell themselves most unsecured due to the hopeless and undoing attitude of the police, government pleaders, doctors and judges.

6.6 Indian Parliament’s Efforts For Special Legislation On Domestic Violence.

Domestic violence is undoubtedly a human right issue and serious deterrent to development. The Vienna accord of 1994 and the Beijing
platform of Action, 1995, both have acknowledged this. The United Nations Committee on CEDAW (Convention On Elimination Of All Forms Of Discrimination Against Women) in its general recommendation No. XII, 1989, has recommended that state parties should act to protect women against violence of any kind especially the occurring within the family.

6:6:1 Background of The Special Legislation

The phenomenon of domestic violence was first recognised as a criminal offence in 1983 with the introduction of Section 498-A in the Indian Penal Code. But the section had a limited brief; it deals only with cruelly by a husband and his family towards a married woman. The need for the legislation arose, as the civil law did not address this phenomenon in its entirety. Battered women had no legal protection before passing of the new legislation and the police did not brother to register a case under the IPC. The ‘Law’ so far was only interested in putting people behind ‘bars’, but lot of times women do not want to leave home or put their partners behind bars. They just want the violence to stop. Besides many battered women are not financially independent and do not have the option of living separately. 52

With a view to provide a remedy under the civil law, to preserve the family and at the same time to provide protection to victims of domestic violence, legislation was proposed. Thus, for the first time ‘The Protection of Women from Domestic Violence Bill’ was introduced in the Lok Sabha by the ministry of Human Resources Department, in 2001, to be enacted,

(i.e. in the fifty second year of the Republic of India.) 53

On March 8, 2002, i.e. International Women Day, a Government Bill on domestic violence against women was introduced in Lok Sabha, there after the Lok Sabha referred the Bill to the Parliamentary Standing Committee on 1st may, 2002, for examination and report. The Bill was based on the draft prepared by National Commission for Women and by Women Organisations.

While debating on the Bill, the member of women organization had stated that though this topic is related to torture and exploitation of women, but this is not a man-women issue. Both man and woman are too equal wheels of the society. If any one of the two remains weak, the framework of the family will become weak. So, this is in concern of the whole society.

This issue was discussed several times in the House as well as on International and National platforms in which it was highlighted that the cultural heritage has been accorded equal status to both man and woman, therefore, several embellishments had been bestowed upon women. The problem of exploitation and harassment of women is not limited to India only, it is world wide problem.

The concern was expressed over the issue of incidences of female foeticide in our society because women also feel that if they will not give birth to a male child, they will remain neglected in the society. In those circumstances, certain practical and concrete steps were, there fore,

required to be taken by the Government as a priority. Thus, in 2002, under the Chairmanship of Mr. Arjun Singh, the department-related Parliamentary Standing Committee on Human Resource Development, presented its Hundred and Twenty Fourth Report of the Committee on the Protection from Domestic Violence Bill in 2002 to Rajya Sabha and laid on the table of Lok Sabha on 12th December 2002.

Prior to this, the Bill was introduced in Lok Sabha on 8th March, 2002 and thereafter Lok Sabha referred the Bill to the Parliamentary standing Committee on 1st May, 2002 for examination and report. 54

The Committee Considered the Bill in eight sittings held on 16th May, 25th June, 28th, 29th August, 9th September, 28th October, 13th November and 3th December, 2002. Thereafter, the Committee in its meeting held on 16th May, 2002 decided to invite the memoranda from the interested individuals / organizations or institutions on the subject matter of the Bill. Accordingly the advertisement was issued in almost all the leading dailies of the country and wide publicity was given through Doordarshan and All India Radio. 55

In response to the advertisement, the committee received Twenty - Seven memoranda from various individuals, women, organizations, institutions, NGOs etc. The Secretary, Department of Women and Child

54. Published in Gazette of Indian extra ordinary Part II, Section 2, dated 8th March, 2002.
Development deposited before the Committee and put forward the Department’s view for bringing the Bill. Thus, after the long debate on the subject matter the Committee in its sitting on 13th November 2002, took up ‘Clause – by Clause’ consideration of the Bill. Some amendments were suggested by the committee to change the definition of the ‘relative’ so as to include the persons related by blood, marriage or adoption; and he/she should be living with the respondent. This definition excluded women whose marriages are legally invalid, women in bigamous relations and other consanguineous relations. Women organizations raised voice about the reason for not including such women, the Department of Women and Child Development justified that, only those marriages are recognized in law covered under the Bill. The women who have been living in relationship akin to marriage without legal marriages are not included simply because the prevailing cultural ethos of the nation do not encourage such relationships. In this regard the Committee suggested suitable amendments to include those women also who have been living in relationship akin to marriages and also in marriages considered invalid by law.

The Bill provided the ‘right to self defense’ to the respondent if the pursuit of his conduct was reasonable, for his own protection or for the protection of his or another’s property. As per this clause, no action of the respondent could amount to domestic violence if it is done to protect himself or to protect his property or someone else’s property. In this regard almost all the organizations, associations, which appeared before the committee, were of unanimous view that this provision is extremely dangerous and retrogressive as it provides an escape route for the man who commits acts of domestic violence. On this issue, the department applied that the right to self-defense is recognized in Criminal and Civil Law and has accordingly been provided in the Bill.
The Committee did not agree with the Department's views. It was of the opinion that there are sufficient provisions in the existing Criminal and Civil Laws to take care of the right to defense. In view of the above, the Committee concurred with the views of the organizations and associations which appeared before the Committee and strongly recommended that right of self defense to the respondent should be deleted from the Bill. The Bill provided that the person who is a victim of domestic violence or any other person on her behalf on the Protection Officer, may present an application to the Magistrate for seeking relief.

Regarding the in-camera proceedings numbers of organizations appeared before the Committee and viewed that 'in camera' trials of rape cases with only their lawyers to support; there in camera proceedings instead of protecting the privacy of the parties, would be utilized to unduly favour the respondent. The Committee, therefore, recommended that the word 'shall' which leave the magistrate no other choice but to hold the trail in camera, be substituted by the word 'may' so as to provide room for judicial expediency.

Regarding to protect the women who are victims of domestic violence the Committee further recommended some amendments which enable the Magistrate to pass Protection Order when he is satisfied that the aggrieved person is being subjected to domestic violence. The Committee felt that there should be specific mention about the 'right of residence' of the aggrieved person in matrimonial home in the protection order passed by the Magistrate and in appropriate cause where the Magistrate is satisfied that the aggrieved person is being subjected to domestic violence, it should be made obligatory on his part to pass protection order.

The recently enacted 'Protection of Women From Domestic Violence Act, 2005', provides more effective protections to women guaranteed under the Constitution. As per the Act, an act or omission or commission or conduct of adult male person shall constitute domestic violence. The main highlights of the Act are-

i) A police officer, protection officer, service provider or magistrate, who receives or magistrate, who receives a message of domestic violence shall inform the aggrieved person of her right to make an application for obtaining a relief by way of a protection order.

ii) The Act provides the rights for free legal services under the Legal Services Authorities Act, 1987, and right to file a complaint under Section 498-A of the Indian Penal Code, wherever relevant.

iii) The aggrieved person may be provided shelter in the shelter home and also medical facilities, if needed.

iv) Any women subjected to mental or physical injuries, physical abuse, criminal intimidation or force, sexual abuse (any conduct of sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman), will be construed as domestic violence.

v) Verbal and emotional abuse (insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or male child and repeated theaters to cause physical pain to any person is interested) will be construed as domestic violence.

vi) The Act also defines the 'economic abuse' under which any women being deprived of any economic or financial resources to which
aggrieved person is entitled under any law or custom including property, disposal of household effects, any alienation of assets whether movable or immovable, valuable, shares, securities, bonds and the like or the other property in which the aggrieved person has an interest or is entitled to use by virtue of domestic relationship will be seen as a violation of the Act.

vii) Any adult male who harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security or otherwise injures or causes harm whether physical or mental, to the aggrieved person will be booked for violation of domestic violence. The State Governments, shall by notification appoint such number of Protection Officers, possibly women, in each district as it may be considered necessary and shall notify the area or the areas within which a protection officer shall exercise the powers under this Act. 55

viii) The Act not only provides for protections from eviction of a woman from matrimonial home but also for restoration, if evicted 56

ix) In all cases, where woman is rendered shelter-less, the Act offers adequate and immediate relief by providing her accommodation in the Relief Homes specially recognized for such purposes 57

x) The Act also provides for the women suffering from domestic violence legal assistance, interim maintenance, and costs. All these are in addition to what the courts otherwise provide u/s 125 of Criminal Procedure Code and any other enactments such as providing her maintenance and shelter under Hindu Marriage Act and the Hindu Adoption and Maintenance Act.

55. The 'Hitavada' News Paper, Nagpur, 2nd Front Page, Saturday, September 17, 2005.
56. Section 17 (2) of the Act, 2005
57. Section 2 (t) of the Act
xi) Another important feature of the Act is that, it contains a declaration to the effect that the woman is entitled as of right for residence in the matrimonial home.

xii) The Act applies to any woman in the family, irrespective of her religion, suffering domestic violence, mother, wife, daughter, sister, or daughter-in-law irrespective whether she is living in her own house or the house of parents or parents-in-law.

xiii) In the Act, the relief is designed to be a spontaneous and quick response to woman’s complaint about domestic violence. There are vital procedural provisions in the Act, which do not find a place elsewhere in any other enactment. These are-

**Firstly,** the notice ordered by the Magistrate shall be served on the respondent within two days of its issue. 58

**Secondly,** the court can conclude that an offence has been committed by the accused on the basis of sole testimony of the aggrieved woman 59

These provision are made with the urgency with which the proceedings under the Act are expected to conclude in an expeditious manner.

**Thirdly,** the Act mandated the Magistrate trying the offences under this Act to take up the trial of the case within three days of the date of receipt of summons by the respondents and that he shall endeavour to complete the trial within sixty days from the date of first hearing. 60

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58. Section 13 of the Act
59. Section 32 (2) o the Act
60. Section 12 (5) of the Act.
6.7 Appraisal

By enactment of the Protection of Women from Domestic Violence Act, 2005, the position of women in their own homes got secured. The 'Act definitely provided a protective shield for the entire woman folk. But the question still remains as to how many women know about the 'Law' in India. So automatically the duty to protect the women from domestic violence line on the judges. In the administrative arrangement though there are variety of courts to deal with the questions of women, the women suffers. The judiciary in India is male dominated. Very few women are judges or decision makers. The Supreme Court is man dominated or even sometimes it is 'womanless'. In this regard no different story is there in United States and United Kingdom.

Thus, the appointment of women judges is the remedy to deal with the woman questions. Likewise the women police-cells are required to be sensitized to know the very nature of the offences against women and they are required to be more powerful to deal with such matters.