CHAPTER - 10

FINAL APPRAISAL
AND
RECOMMENDATIONS
Despite the Directive Principles enshrined in the Indian Constitution and increasing number of protective Laws, crimes against women have continued their up word trend, pushing more and more women into the list of victims of rape, cruelty, bride-burning, prostitution, wife-beating etc. and it is more shocking when such crimes are committed by the family members. Women experience deep sense of frustration and disappointment but they have no other option, quite often grief gives way to anger, insecurity and a very uncertain future which tend them to commit suicides too. At times comforting friends and relatives are help or sometimes even the members of NGOs, but how long?

Nature itself has made differences between man and woman. But these differences were exploited by the man and treated themselves physically superior than woman. The status of woman even today is lower than that of man. The condition of Indian woman is very much shocking. Even our Indian laws suffers from the same prejudices and biases. The violence in general, against woman is not a new phenomenon and so the domestic violence.

There are number of preventive laws and still the Government has not been able to control the growing incidents of violence against women. Even the provision of protective laws for women are some times discriminative. The Preamble of the Constitution contains various goals including 'the equality of status and opportunity to all the citizens'. Article 15 (1) prohibits gender discrimination, but in some of the Indian laws the status of woman is considered to be lower than that of man.

Under Section 497 of the Indian Penal Code, Adultery is an offence. Under Section 198 of Criminal Procedure Code only husband of adulterer
Under Section 497 of the Indian Penal Code, Adultery is an offence. Under Section 198 of Criminal Procedure Code only husband of adulterer can take action against the counter part in the offence of adultery i.e. man. A wife of the adulterer has no such right of action. It indirectly implies that woman (wife) as a property of that man (husband). So he is taking action for the damage to his property. This provision was challenged in three cases 1 but Supreme Court held that it is not discriminatory and does not violate either Article 14 or 15 and directed to expand the definition of Adultery.

In the marriage Laws the position of Hindu, Parsi and Christian woman is somewhat better than the Muslim woman. In Hindu, Parsi and Christian laws monogamy is compulsory while in Muslim law a male can marry more than one woman subject to the maximum of four only when he can deal with them justly and equitably. In Shia School a male can contract Muta Mamage with unlimited number of females. This gives much more scope to male to dominate female in the house.

In the matter of divorce, the position of Muslim women is most inferior and unsecured compared to others. The Muslim husband has the unilateral power of pronouncing divorce on his wife without assigning any reason, without any cause, literally at his whim, even in jest, or in a state of intoxication, and without recourse to the court or any other judicial, administrative or familial authority, when no witness is present (though Shia law requires two witnesses), and even in her absence, by just uttering the formula of ‘Talak’ Muslim husband may delegate his right of divorce to any person including his wife also. A Muslim wife can divorce

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3. Revethi Vs Union Of Indian, AIR 1988, SC 835
the husband only when her husband has delegate such right to her or under an agreement. Under an agreement a Muslim wife may divorce the husband either by Khula or Mubarat. There is no other special right to Muslim wife. Conversion of a Muslim husband to some other religion operates as immediate dissolution of the marriage, while the renunciation of Islam by a married Muslim woman or her conversion to any other faith does not operate as dissolution of marriage.

Under Sec. 12 (1) (d) of Hindu Marriage Act, 1955, the husband may ask for the decree of nullity, if the wife is pregnant at the time of the marriage by some person other than the husband, while if the husband has made any woman other than his wife pregnant before marriage, than the wife has no such right available under the Act. Under Section 32 (1) of the Paris Marriage and Divorce Act husband may ask for the decree of dissolution of marriage, if the wife is pregnant at the time of marriage, by some person other than the husband, but if a husband has made any woman other than his wife pregnant before marriage, the wife has no such right.

In the matter of maintenance, also the divorced Muslim wife is not required to be maintained beyond the 'Iddat' period. The Criminal Procedure Code which imposes an obligation on a husband to maintain his wife including divorced wife until she maintains herself in a secular law and is applicable to all. There is a controversy as to whether a Muslim husband can be directed to maintain his divorced wife even beyond the 'Iddat' period under the provision of section 125 of Cr. P.C. In the famous

2) 1985 Cri. L.J. 835, AIR 1985, SC 945
easy of *Mohd. Ahmed Khan vs Shan Bano Begum*, the Supreme Court through the Judgment of Chandrachud, the then chief justice held that section 125 of Cr.p.c. is application also to the Muslim and that even a Muslim husband also is liable to maintain his divorced wife beyond the 'iddat'. Period. By this judgment there was controversy, in the Criminal Procedure Code and the personal laws of Muslim. Because of the controversy, the Parliament has passed the Muslim Women (Protection of Right on Divorce) Act, in 1986 to overrule the judgment in *Shah Bano*'s case. The effect of this Act is that a Muslim husband is not liable to maintain his divorced wife beyond the 'iddat' period unless both the spouses to the court at the appropriate time that they would like to be governed by Criminal Procedure Code.

In the matter of succession, a Hindu woman was not a co-parcener in Hindu co-parceny, except in a few states like Andhra-Pradesh, Maharashtra, Karnataka and Tamil Nadu. Consequently, a women was not entitled to claim a share in the co-parcency, but after passing of the Bill in December 2004, the position has been changed. Under Section 23 of Hindu Succession Act, a daughter can not claim partition of a dwelling house until the male heirs have decided to partition it. The female heir has only the right of residence, and this right is available to a daughter if she is unmarried, deserted or has separated from her husband or is a widow. In other words, a married daughter does not have the right of residence during covetures even though she may inherit the property as an heir.

In the law of succession among the Muslims *Shias and Sunnis*, though a female is entitled to inherit the property of the deceased, her share is generally lower than that of a similarly related male; the principle of
equality in the matter of succession has yet to be recognized in the Muslim law of inheritance.

Under the Hindu Minority and Guardianship Act, 1965 the first natural guardian of a Hindu minor boy and unmarried minor girl is the father and after father, the mother is the natural guardian. But the Supreme Court in case of Geeta Hariharan's case\(^3\) has held that father and mother both are natural guardians of a Hindu minor. It is not that first father and then mother.

Under Muslim law, a mother has a right over the custody of children and guardianship up to a certain age of minor, beyond that age she has no right over the custody and guardianship of the minor. The personal laws of Christians and Parsis do not have any provision on minority and guardianship. There is no separate enactment on the subject either. It is presumed that the father acts as a natural guardian of the minor children and their property. After him the mother presumed to act as a natural guardian. Section 60 of the Indian Succession Act, 1925, which is applicable to Christians and Parsis provides for the appointment of testamentary guardian of minor children by the father. It does not say anything about the appointment of testamentary guardian by the mother.

There is no law in India that, after marriage wife has equal share in the property of husband. After divorce generally, wife has to leave though she has given financial support to purchase the house from her salary.

\(^{3}\) Geeta Hariharan Vs Reserve Bank of India and others, AIR 1999, SC 1149
Some laws made for the benefit of women become practically unjust to woman, for e.g. The Medical Termination of Pregnancy Act is used to stop the birth of girls though the exact number of female foetuses aborted do not come forward but the census report of 1995 shows the decline of sex ratio as 927 females to 1000 males. This dwelling sex ratio bears eloquent testimony of violence against women even in mother’s wombs. For this purpose various sex-determination centers are mushroomed as slaughterhouses in the past two decades in big towns, cities and now in tahasils too. Hence, it can be said that, even the mother’s wombs are not safe for female foetuses. Government may have its practical, economical or technical difficulties but in this wake the female foetuses fall easy prey without any fault of their own. One of the reason may be that the punishment prescribed by law is not sufficient and these technical difficulties of law and its shortcomings culminated in favour of in-laws and husbands. Such kind of situations utterly left the helpless women on the whim of husbands and in laws which has become a serious social problem.

The new law ‘Protection of Women From Domestic Violence Act, 2005, is a welcome step to protect the women from domestic violence. This law is the outcome of efforts of Parliament and the members of women organizations and department of women and children social welfare. More over, the law text the violence against women as synonym to the violence against married women. It could not cover violence against girl child in totality. The people will take years together to understand the law and digest it which may result in increase of crime rate or the possibility of more aggravated forms of violence can not be negated.’

Regarding the status of woman in the society, everyone knows that the life of woman is divided into two distinct phases, one before marriage
and the other after marriage. In between these two phases a woman gets suffocated. It is the presumption that woman gets love, care and affection in her parent’s home and she has to spend her whole life in her husband’s home, but the fact is that both the families do not give much importance to woman. Parents believe that she is another’s property while in-laws do not accept her as she is other’s daughter. Some parents even do not want to spend money on the education of daughters, if they do so it will become a futile investment because, if she earns out of that education it will not be useful for the parents. Thus, the family members always try to perpetuate the patriarchal thinking and customs in the society through women only and in this way women are being used as the victimizers against the women victims inside their own homes. Women do not dare to speak about the violent treatment they get. That is why, since from their childhood, they are structured to become ‘Sati Savitri’, because if anything wrong happens in the family, only the women are blamed.

About the wife-beating all over the world, the most surprising fact is that the battering husbands do not feel any guilt or sorrow over it, on the contrary they think that battering a wife is just some thing normal or even desirable as a right to keep her disciplined, obedient or subservient. Some times the wife-beating is justified by saying that the women themselves invite beating for a husband who beats his wife is the one who loves her most. Such kind of violence is more prevalent among those women who live out their lives at home, rearing children in addiction to cooking and washing and so on and financially dependent on their husbands.

Women face violence because they do not want to leave children with husbands. It happens when the women does not get support from her own parents or brothers. The problem of domestic violence is not limited to any particular socio-economic class for, the middle class dependent
women do not speak aloud about it, and they only tolerate to maintain the status of the family. They tolerate everything until their last breath all in the hope that every thing will be set right. In most of the causes, death is the ultimate end of the tolerance. In such cases, the relatives or the police register the complaints. Thus, the misconception about the provision of law, that, it is only to teach 'lesson' to the erring husbands or in-laws is not true. The incidences of cruelty against women have increased enormously over the past few decades. The insertion of Section 498-A is there to prevent the occurrences of cruelty by husband and in-laws but it has not brought decrease in the number of such incidents. The reasons may vary, in some cases complaints do not get reported and in most of the cases the complaints are registered U/S 498-A by the parents of the woman after the death or anything wrong happened against her. In such cases, the parents depose the interrogating police or court that, their daughter had already alerted them about the treatment meted out in her husband's home. In such circumstances the parents compromise the matter by giving money all in turn anything demanded by the husband and in-laws or they totally neglect and when they neglect, the death of their daughter is certain. The parents register most of the cases of cruelty after the death of their daughters, which means that women cannot call for protection of section 498-A of IPC during her life time or it becomes effective only after the death of woman.

Violence in the family has serious consequences for both women and children. Children often show singles of post-trauma, stress and may have behavioral and emotional disorders. They experience both immediate and prolonged negative outcome. Under these circumstances, it is more likely that children from violent homes may repeat the cycle of such violence after they become adults.
The data regarding the crimes against women presents horrifying judicial scenario that majority of the cases of violence against women end in acquittals. In this regard, the courts have failed in a regrettable way in taking into account those ‘special circumstances that surround violence’. Moreover, the court is not able to look at the totality of the situation. They are only limited to the witness-box depositions and the straight formula of the law-provisions, since all the law enforcement machinery, the police officers, lawyers, judges and legislators are drawn from the masses that have right and conservative attitude about women’s right status. They do not have any interest in dealing with the cases of domestic violence against women for they treat them as ‘private matters’. They consider and treat these offences as any other traditional offences. Many times these crimes are ignored on the ground that these are social problem and need to be handled by the social workers. Hence, the judiciary is required to take into consideration the causes that are responsible for that particular crime. The power of legislation is immense and if properly utilized it can bring about the desired change.

The judges, lawyers and the police are the main law enforcing machinery. Each of them is responsible of crimes and judicial delays. The endeavours of the legislators and the law reformers have not succeeded so far because their whole concentration was only symptomatic and superficial. Instead of trying to get at the root of the problem, the legislator’s concentrated on various symptoms, which are only manifestation of the decease and not the decease itself. Most of the protective laws fail because of the defective enforcement. Proper implementation of these laws will go a long way in curbing out crimes against women.
The efforts of the protecting pillars fall short in eliminating the crimes against women committed by their own family members. Thus, the non-legal, extra-judicial inventions are coming forward to remedy the situation. It is a welcome trend that more and more women are now coming forward to speak out aloud against this evil. Some of the women organizations and NGOs are playing vital roles in the task of identifying victims and providing help to the needy. But it is also observed that many organizations work only on paper. The members of such organizations are not sensitized enough to understand the problem of domestic violence. Social workers register their names as members of NGOs only to update their bio-data.

Domestic violence is such an issue that impacted on most women but remained wrapped up in shroud of silence. It is all perspective and cannot be ignored anymore. Society, policy, administration and the family are all guilty in the conspiracy of silence. Now the time has come to cheek the pillars of the society.

Most of the cases of domestic violence end in compromise, because of the pride of the house (as if the women is the sole depository of owner of the house.) and save herself from further invitation of a future problem. The compromise, which leads or takes place between the male and female is kind of concession to male and sacrifice for a female. In real sense it is not in the interest of female, it is rather an imposed obligation on her. The harassed women have to suffer the pressure tactics of their elder and other. However, once she returns home the situation comes back to the square one with the accused whipping up terror more aggressively, forcing the helpless women to end their lives. The greed for acquiring more property and enjoying comfort by taking dowry has come to such a pass that the newly married women are subjected to physical
and psychological torture by the husbands and in-laws for non-fulfillment of demand of dowry by the parents of the women. Whenever a married woman dies in her matrimonial home within seven years of her marriage, it is considered as an offence of 'dowry death' but, if she dies after seven years of her marriage following the dowry demand it is not a 'dowry death'. Does it mean that 'law suggests women to end their lives within seven years of their marriage if they are tortured and harassed for dowry demand or otherwise the offence will be registered as 'suicide' or an 'accident'?

Section 304-B of I.P.C. and Dowry Prohibition Act are there to punish the wrongdoers, but since no record is maintained and no complaint gets registered at the time of meeting of the dowry demand while the girl is alive, it becomes very difficult to prove the dowry death. As a result of these inadequacies and circumstances many victimizers get clean chit on the ground of 'benefit of doubt'.

The feminist jurisprudence has gone long way in foreign countries, but in India, its importance and development has not still attended by our judiciary. The empowerment of women, gender justice, and gender equality will remain empty words so long as women refuse to speak up or take up the important step of recognizing their own role in overcoming the painful consequences of repeated abuse from the brutish husbands or other family members. Though legislature proceeds for welfare, most of the women are still ignorant about their protective shell and their rights they are far away from the concept of 'justice'. They even do not know concept of cruelty, gender justice feministic era or even personal liberty. All the policies regarding women are decided in air-conditioned rooms. Also lack of faith, enough resources to fight the long ending and expensive legal battle proved hurdles in its effective utilization, and the NGOs are
lagging behind in shouldering the whole responsibility to build up public opinion against this evil. They have to play a vital role in the task of identifying the victims of domestic violence and in creating awareness and educating the women on this issue.

According to the survey undertaken by the researcher regarding the problem of domestic violence against women in the Amravati District, following horrifying results came out as-

40% women suffer from domestic violence, 50% women suffer torture from husbands and 30% from his relatives. The reason domestic violence, some times, are very silly, but the gravity of torture, physical as well as mental, if tested, is very high. Only 30% the women oppose for such type of violence. The ratio of the survey shows that 32% women are of the opinion that the wrongdoers should be punished.

About 20% women have opined that the laws should be strict and the implementation is required, while 18% women opined that the government should appoint special officers to inquire about the domestic violence by visiting the families periodically.

When the general class was surveyed, it puts that about 40% people opine that ‘to have son’ is the most important ingredient in the domestic violence, 44% of them said that the existing legal system is not adequate to protect women from domestic violence, about 40% people said that women are not safe in their own homes, 38% people said that the problem of domestic violence can not be solved through NGOs, 36% people said that the complaint mechanism should be made complainant friendly and 36% people opined that there is need to make more strict laws to protect women from domestic violence.
From the instant observation, it can be concluded that the domestic is a very serious offence. Wherever there is domestic, violence there cannot be heavenly atmosphere. It denies women right to life, dignified life and thus the legislators are required to play pivotal role in empowering the women by making reservations in various decision – making structures. The Bill For Reservation of 33% seats for women folk in Parliament and State Legislative Assemblies has not yet been passed for lack of unanimity between various political parties of the countries. This reservation is the prime need of an hour.

There are so many women who could not get protection and thus they have to end themselves from domestic violence. It is a worldwide problem and in Asian Countries the problem is more prevalent in India and the Muslim Countries. Indian society is not ready to accept ‘wife beating’ as a problem. It is unaware about the mental torture of women. In this respect in 1996, the NGOs ‘Sakshi’ had interviewed 109 judicial officers, out of these 74 % of the judges were of the opinion that to save women should be the priority for all women and therefore they should not raise voice for such silly maters, whereas 48 % judges said that, it is not any kind of offence, it happens and 34 % judges had supported the system of dowry. Here the question arises if the judges, the justice giving authorities are of such opinions then to whom such women ask for justice.⁴

In this regard, the United Nations Organization has come forward to let the world know about the secondary status of women all over the world, through the program of ‘Millenium Development Goals’. This program is designed to bring-

⁴ The report of the Centre for Social Research, New Delhi, in 2000.
a) gender equality,
b) to decrease the rate of MMR (Maternal Mortality Rate),
c) to decrease the rate of CMR (Child Mortality Rate), and
d) to check the malnutrition among the children. These changes are supposed to be undertaken up to the year 2015 for Asia and Pacific regions. This responsibility is shoudered on the Ex-minister of Indonesia, Erena Vitaylor, according to whom the women can solve their own problems. She is self-reliant and strong but what is needed is to channel her energy in the direction of development but for these reasons she should be saved from inequality and all forms of violence. By now, it is a well-established fact that violence against women is seriously handicapped by the women’s poor self-image, her absence of confidence and lack of a sense of self-worth. She has to be instilled with self-confidence. There is no reason for the women of India to continue in the roles of ‘Inferior, oppressed and exploited beings, completely dominated and overawed by men’. Domestic violence is not a women’s issue alone, but it is a social issue having wide-ranging implications.

Thus, women should not be regarded as producers but also as rightful claimants of social security, recognition of the dignity of women and proper understanding of its dimensions will go a long way in removing this evil practice. The domestic violence depends on the person to be victimized, always the strong person victimizes the weaker person. This means the person victimized is always a weaker one. For example, the master at the superior position victimizes his servant, he never dominates his superior or boss. Moreover, the other members of the society justify

the philosophy of victimization of the inferior or weaker section by the dominant member. In this contest, the Sanskrit Shloka seems to be true which says-

II 'अवं मैव, गर्जं मैव, व्यापं मैव च मैवच' II
II अन्या पूतम् बलिम् महाते देवो दुह्वल धातका:II

This means that not a horse, not an elephant and certainly a tiger never be killed but only the goats are victimized and justified by others or even condoned by the other members of the society.

In our country this situation should be taken into account. A sane and objective attitude and a thorough analysis of the problem have to be done. Not only education, but also a profound sense of independence should be projected before the women so that they may feel powerful. A time has come for organized effort to fight back domestic violence in totality. The only chance of ending all violence lies in the fact that woman should know about their power and they should not hesitate to use it when the time arises.
RECOMMENDATIONS

Gender specific violence is increasing and Government must affirm the dignity of women as a priority action. Government should therefore intensify efforts to establish or strengthen forms of assistance to victims of such violence by providing them shelter, support, legal and other services. Government should undertake to increase public awareness of violence against women as a social problem, establish policies and legislative measures to ascertain its causes and prevent and eliminate such violence, in particular by suppressing degrading images and representations of women in society.

The State response to the problem of domestic violence is inadequate and thus it is essential to make changes in these systems to make them more beneficial to women. In view of the problem of domestic violence, the researcher maintains that it is essential to argue for the following changes in the law setup, as it currently exists. The recommendations are as follows –

As to the laws regarding women –

1. A person, if he is in the service, convicted of any offence against woman should be immediately dismissed from service.

2. In case of offences of incest and phidophilia capital punishment be given and the victim be given support.

3. By the protecting law the time limit is set up for the disposal of cases related to women and if a case is not decided within time limit prescribed, the judges should be held responsible and answerable for the cause of delay.
4. The statement of the children in the home should be taken into consideration and such statement should be made before the judicial magistrate.

5. The complaint procedure should be made more complainant friendly so that every victim should be benefited. By appointing more judges to deal with the problems of women and by making complaints friendly the efficacy of the courts can be raised.

6. The domestic violence cases should be put in the chapter cases under section 107 to 110 of Indian Penal Code, so that neighbour can register cases for peace and tranquility.

7. To give support to all women, the law should be designed so as to make women entitled to half the share in her husband’s property. Regarding women’s share in father’s property, her share should be delivered to her within three months from the death of the father and delay should be penalized.

8. Demand of dowry should be made ground for obtaining divorce.

9. For effective enforcement of the Dowry Prohibition Act, Dowry Prohibition officers are required to be appointed in every district by the state government, and an advisory board consisting of not more than five members of which at least three should be women, should also be set-up by the state government to oversee the functions of these dowry prohibition officers.

10. In the cases of rapes by family members, bails should be totally banned.

11. The judges should see only the problem without going to the technicalities of the laws. As to expedite the cases of women suggestions to the police –

12. The police are required to take help from the women cell and other voluntary organizations for inquiry into the matter of domestic violence.
13. There should be systematic programs for gender sensitization for law enforcement officials at all levels and at regular intervals.

14. Legal awareness camps should be held for the police, NGOs as well as the public.

15. Attempts should be made to prevent delay in investigations of crimes related to human body like rapes, dowry deaths etc.

16. Special Courts should be established to deal with the cases of crimes against women.

17. Family Courts should follow simple procedure to suit the best interests of the broken homes.

18. The practice of fixing the dates of trial by the court clerk should be deprecated as many of these indulge in nepotism and corruption.

19. Responsibility and accountability of service of summons should be fixed on the concerned agencies to serve the summons before the date fixed by the court. The non-receipt of the summons needs to be addressed seriously and should not be excused.

20. Prosecutors should be made gender sensitive by undergoing regular refresher training courses.

21. For the effective service of summons to the transferred, the District Medical Officer should be made duty bound to update the list of transferred medical officers and furnish information to the court time to time.

22. A National Communication and Media Policy is essential particularly against visualization of rape, advertisements for Amniocentesis for prohibiting of women exploitation as projected in films and visual media.

23. The licensees of the doctors performing the female foeticide should be cancelled forever and such news should be
highlighted or projected through media so as to teach lesson to other doctors.

24. Women must be provided all round inputs to strengthen women's economic roles by computing economic value to all women's work within & outside the household.

25. The NGOs should be given power to file a suit or complaint for victimized women, in case, if she is illiterate or unable to approach the police or court.

26. Women should be encouraged for taking education and the government should make the policies of 'free' education irrespective of their age, status in the society.

27. To change the attitude of the society moral duties and value education programmes should be arranged. The problem of domestic violence can be curbed only if there is change in the attitude of the society.

28. To stop the practices of female foeticides, it is required to widen the scope of the term 'Person' defined in Article 21 of the Constitution and it should include 5 months foetus inside the womb of the women and also requires including the occurrences of female foeticide as that of the offence of murder.