INTRODUCTION

Throughout the World's history domestic violence has been a culturally recognized but often denied social evil. Domestic violence is a global phenomenon and India is no exception for this unfortunate situation. Though the Constitution of India assures for all equality, freedom and right to dignity, they have been systematically denied to the weaker sections of the society. Women are the most prominent victims of violence and exploitation by the male dominated society all over the world.

The history of civilization tells us about the injustices, atrocities and exploitation of socially deprived classes. Women being the most neglected social segments have always remain the prime subject of exploitation. Ignorance and illiteracy deprived the women of their fundamental rights and has given them a status of second-class citizens. For century's women, irrespective, of their caste, colour and creed have been discriminated and were given subhuman status. The dominance of the then fugal ideas still remains and adversely affects the status of women.

In earlier societies the perception about 'violence' was not so sharp and acute but in modern days certain insights have developed which focuses our attention to the phenomenon of violence in every walks of life. Previously the war between the two countries happens to be the biggest incidence of violence. In those days justifiable and non-justifiable violence at the battlefield used to be the subject matter of discussion. But when the 'State' was identified as more prominent in the incidents of violence against its own citizens, the subjects of violence has shifted from international to national level. When the State proved itself the most dangerous person for another individual, certainly this fact percolated into the life of individual person. The dominant member occupies the important
position in the family and being head of the family, he victimizes the dependants, subordinate or young members of the family.

Traditionally the ‘family’ is known as the basic and fundamental unit of the society. It is a social institution and meant for socio-psycho-economic and physical protection, love, and care, moral and emotional support and healthy, happy and optimum development of the characters and personality of its members. Thus family has been considered as a sphere of intimacy and devoid of conflicts of interests among the members.

According to the United Nations Declaration of Human Rights (10\textsuperscript{th} December 1948) “The family is the natural and fundamental group /unit of the society and it is entitled to by society and state”.\textsuperscript{1} Though apparently, it seems that these characteristics are present, the ‘home’ is also frequently the site of violent human relationships.

Now a days it seems to be most disillusioning that, it has been found within the family itself some of the things which has so far developed not healthy and conducive for the other subordinate or dependent member of the family. Different kinds of violence and crimes are committed against the innocent and helpless members of the family. In fact the word ‘Family’ has been taken from Roman word ‘famulus’ meaning ‘a servant’.\textsuperscript{2} In Roman law the word denoted the group of producers and slaves and other servants as well as members connected by common descent or marriage. Thus it is apparent that the safest place for men to commit violence is the ‘home’.

\textsuperscript{1} (Article 16(3) and Article 25(2) UDHR)
\textsuperscript{2} Willamette Law Review (1996) vol. 33 pg. 897
Prima-facie all the families seem to be happy going and peaceful but if we look into the matter seriously there seems to be some sort of adjustment between the family members. Particularly by the women to protect the 'prive' (Izzat) of the family. Hence many social scientists opined that the institution of marriage is an ideal and the women organizations unnecessarily create artificial questions.

The violation of all the basic needs of the human beings has already been the theme of violence against women. For the term 'violence' the 'powerful' cross all the boundaries of humanism, though the right to live with dignity was asserted by the Hon'ble Supreme Court in Maneka Gandhi's Case and incidentally there are few International Conventions intended to avoid discrimination against women (CEDAW).

The ways in which the familial ideology shapes and informs the legal regulation of women is most apparent in the laws that directly intervene in the family. The legal regulation of the family has been a highly contested site since the nineteenth century. The efforts of social reformers and feminists activists to prohibit violent and oppressive practices within the family, from 'Sati' to 'child marriage' to 'dowry' as well as their efforts to reform personal laws from widow remarriage to property and succession rights have time and again been resisted as an undue intervention into the 'private' sphere of the family. Despite this resistance and continuing hold of the vision of the family as 'private' and beyond legitimate state intervention, the family is the subject of extensive legal regulation.

Many family laws continue to be characterized by formal inequality for women are not guaranteed the same rights and responsibilities as

3. AIR, 1979, SC p.597
men, but are discriminated against on the basis of sex. At a deeper level, many family laws are informed by assumptions about women’s sexuality and roles in the family as daughters, wives, and mothers. Laws that apply equally to men and women are often interpreted in and through the lens of familial ideology with the effect of rein scribing women’s identities within the family with less than equal rights.

The problem of domestic violence has crossed all the boundaries across the world. So also it is recognized at International level. The Convention for Elimination of Discrimination Against Women protects women from discriminatory practices against them. The main purpose to treat woman first as ‘human being’ and then as ‘woman’. The social progress and economic prosperity depends on the full use of human as well as natural resources. Development of women has come to be recognized as its integral part. These have been measured by three institution i.e. Legislative provision for the protection of women, the society and the family. The efforts are being made time to time by the social activities, social workers and actives groups to improve the status of women by demanding amendments in the existing laws. This has resulted in some legislative changes but has not yet yielded the desired results. The entire movement of giving an equitable status to women still centers around the mere legislative changes regarding marriage. The problem of domestic violence becomes more worse when the women in their own homes are not safe and protected by strict laws. The laws meant for the protection of women are honored more than implementation. It is here it becomes vital to know the real status and legal standing of women in their own homes and also to know the effectiveness of these laws to upgrade the social status of women.
It is here the inquiry becomes vital as to know real status and standing of women in their own homes. The instant study tries to examine whether the women are familiar with their rights and locus standi and to what extent they are in a position to implement the laws? And when the laws meant for the protection of women have any legal machinery to help or upgrade their social status and establish them as separate entity?

In the instant study the researcher tries to set out our understanding about the concept of domestic violence and its manifestations and forms in India. The study also tries to review the existing broad framework of Criminal law and Family Law with a view to check the pillars meant for the regularization of the society.

The instant study focuses on the human right philosophy and the feminist approaches regarding the parameters of gender justice for the prevention of domestic violence. It also tries to discuss human rights philosophy and gender standards from Declaration to present day implications for legal reforms.

Our society is oriented based and hence it becomes necessary here to check all the pillars of the society meant for the social regulation of the society. Law is said to be the important and pivotal instrument for the regularization of the society. Hence the researcher has tried to throw light on the static characteristic of the laws meant for the protection of women and also on the administrative arrangements and procedural factors related thereto. The instant study also examines the different ideologies and barriers, which obstruct the way of justice to women.

The judiciary and police are supposed to be the protectors of the victims of violence as and when such incidences knock their doors. Every person has a belief that if any unwanted situation arises then the police
and the judiciary stand as a protective wall to protect the victims. But the low rate of registration of cases of domestic violence raises the question mark as to why the registration rate is low? Is it because the police do not show any interest in registering the matters of domestic violence, as these are ‘private matters’? Or it may be due to the reason that the victims do not come forward voluntarily to register the violence against them. Many times the judges are not willing to see the occurrences of domestic violence as special violence but they are stick up to the straight jacket formula of criminal justice system and hence the occurrences of domestic violence go unnoticed. Hence the instant study examines whether the police machinery knows about the human rights of women or whether they are trained in such a way to tackle the cases of domestic violence? And what measures the state has taken to make them aware about their duties towards women victims? The instant study tries to examine the role of judiciary as well as police and governmental and non-governmental agencies meant for the protection of human rights of women.

The right solution to bring equity is to create a social, just, equitable and constitutionally healthy climate. The present state of society lacks these qualities, which happens to be the root cause of injustice and discriminatory behavior against women. Hence this study has definite social conceptual relevance.

There is no such world as ‘Mahila’ in any language European or Asian. Even the Gita calling women as the symbol of sweet speech, intellect, memory, patience and forbearance. Mahila means the repository of greatness and goodness.

For the purpose of the instant study the ‘woman’ is as defined under the IPC as -
Woman denotes a female human being of any age. Thus, a newly born female child, in law, is a ‘woman’. For the purpose of this study ‘woman’ has been taken to be right from the conception, rather from the age or time of conceived foetus when it can be determined as a female foetus till her death.

Justification Of The Problem

The instant research is a part of specialization. In any research, for solving the problem through the angle of the subject, it is necessary to give importance to the selection of the subject. The main purpose for the selection of the said subject is to know domestic violence and its effects on the society and also to study the existing criminal law and family law provision in India. It was always in the mind of the researcher to check whether there is necessity of more adequate law to prevent the problem of domestic violence. Hence the instant subject is selected.

Paucity of research on family violence can be attributed to an apathetic attitude of the society, which has relegated inter-family violence to a form of individual pathology and has led the members of the family and others to believe that physical conflict in the family are something different than violence. Hence violence in the family has not emerged as a social problem because social historians have not labeled it as a ‘problem’. Hence the researcher felt it necessary to study the instant subject thoroughly. While selecting the subject the researcher was curious to know about the causes and reasons responsible for domestic violence and also to know the roles played by the protecting machineries, meant for the protection of human rights of the people in general and women in

4. Section 10 of Indian Penal Code
particular. That is why the problem of 'domestic violence' against women in India is selected.

Rationale Of The Problem

The subject matter of violence is a matter of multiple disciplines and hence in every subject, there is a discussion on violence. It was not possible for the researcher to explore all the violence, that is why the researcher has selected the subject of 'Domestic violence in India'. In legal science, the term 'Violence' can be defined by 'violence by' and 'violence against' the person who victimizes is 'victimizer' and the one who suffers is a 'victim'. The instant study explores the links between the victimizers and the victim within the four walls i.e. home or the family.

Since time immemorial the women are structured itself in the family that they are the second citizens or they are always put to subjugation, exploitation or even they are tortured physically and mentally both by the family members. The instant work is mainly devoted to know the status of women in the eyes of law, society and the families.

While studying on the subject 'The problem of domestic violence in India : A critique of legislative and judicial parameters in the field of Family Law and Criminal Law", it was not possible for the researcher to survey the entire nation or region. Hence to complete the work in time the researcher has selected some talukas and villages of Amravati District of Maharashtra.

Ratio of women in the world is about 50% of the total population. Maharashtra is one of the state in India. There are 31 Districts in Maharashtra. Amravati is one of them in Vidarbha Region. Amravati is
second capital of Vidarbha Region. Amravati is also known for its cultural heritage as well as a mine of white gold i.e. cotton. Previously it was called as a capital of lord Indra and hence Indrapuri. There are 13 Tahsils in Amravati District namely Daryapur, Anjangaon Surji, Achalpur, Chandur Bazar, Morshi, Warud, Tiosa, Bhatkuli, Dhamangaon Railway, Nandgaon Khandeshwar, Chandur Railway, Dharni, and Chikhaldara.

Amravati is selected as a research area that is why the scope of research is limited to Amravati District only.

Objectives Of The Study

The instant study is one of the inquiries to know as to how law can effectively create desired effect regarding legal rights of women and the law which can work as an instrument of social change. Hence the objective of legal research is classified into two major parts.

First the academic purpose of legal research is:

a) To get true and intimate knowledge of human society and legal machineries and their functioning.

b) To understand and evolves the laws that are operating for the protection of women in India.

c) To know the status of women in their own homes.

d) To know the magnitude of the problem of domestic violence in India.

e) To setout the understanding of reasons and causes of domestic violence in India.

f) To highlight on the human rights philosophy and to know the feminist approaches regarding the parameters of gender justice from Declaration to present day.
g) To understand the role of judiciary and the police as protecting machineries and also the roles of governmental and non-governmental agencies as instrumental agencies for maintenance of human rights standard of women in India.

Research Methodology

There are accepted truths and theories in all fields of knowledge. The intellectuals of the society are always inclined to probe for facts of the empirical world and confirm the proved truth of his investigations by accepting or correcting the existing theories. Such probing is called 'research'.

According to the Webster's International Dictionary, Research is careful, critical inquiry or explanation in seeking facts or principles, diligent investigation in order to ascertain something.

According to P. M. Cook, "Research is an honest, exhaustive, intelligent searching for faults and their meaning or implications with reference to a given problem."

After finalization of the subject matter of study the next step is to decide research mythology. Every branch of knowledge attracts research methods for its investigation. Methods of research are many and vary from approach to approach adopted towards the study of phenomena. It has been rigidly contended that, the research is the systematic activity to achieve the truth and it includes the procedure of collecting data, analyzing the data and finding the conclusions of truth.
There are two main types of research to deal with the problem in hand

1) Doctrinal or Traditional or Non-empirical Research Method.

2) Non-Doctrinal or Empirical Legal Research.

Doctrinal Research involves analysis of case Law, arranging, ordering and systematizing legal propositions and study of legal institution through legal reasoning or rational deduction.

The Empirical research is of recent origin. Empiric means 'relying solely on Observation and experiment not theory'. Fieldwork is important part of non-doctrinal method. Due to the global nature of the use of doctrinal method is useless. Library references are not enough as to provide information to the research for the study. Hence the Researcher used Empirical or non-doctrinal method of legal research. The Empirical Research technique is carried out by collecting and gathering data or information by a first hand study into the universe. Researcher solely relies on experience or observation without due regard to theory. The tools selected for the study are of questionnaire schedule.

The empirical research is an inquiry that attempts to discover and verify general rules allowing us to understand why human beings behave the way they do? Here, more importance is given to people, social values and social institutions and not to the legal aspects or doctrines. The proposed work is a combination of socio-legal survey method and analytical method of research. In the first part, the researcher discusses the concept of domestic violence at theoretical level and in the second part, the researcher discusses the concept of violence at practical level to testify the parameters, so for developed, by taking the example of a Amravati District for a period of one full decade (1988-1998) .In this part the study is undertaken with the help of interviews and questionnaire
method. The optimum size of samples is selected with a stratified manner to project the complete picture.

Review Of The Literature

There is nothing new in the phenomenon of violence, as this has existed in almost all varieties throughout the history for variety of reasons. The quality of life depends on social welfare and extends to which the crimes on the socially underprivileged and neglected segments are minimized. The history of civilization tells us about the injustices, atrocities and exploitations of social deprived classes. Women being the most neglected social segment has always remain the prime subject of exploitation. There has been an alarming increase in the incidents of violence within the family. Violence is a type of degradation which needs to be understood if strategies for its prevention and control are to be developed. A good number of studies have been conducted to explore various facets related with legal status of women and violence against them.

Going through the available literature we see various instances of violence against women. Even in the old epics of Ramayana and Mahabharata; Seeta and Draupadi were put to violence by their own relatives; in their own homes Seeta had to prove her chastity by undergoing 'Agnipariksha' Not only this she was deserted by Rama for the reason that she was in the custody of Ravana. This aspect was glorified in another way but no one, thought about the darker side of it. No one thought about the feelings of Seeta.

According to the old epic Mahabharata, Draupadi was asked to marry with five 'Pandavas' by her mother-in-law 'Kunti' That incidence is
In India a great mystic poet 'Tulsidas' wrote, coloured in another way. But was Drapadi willing to marry with all Pandavas? is the question.

"Dhol, Gawar, Shudra, Pashu, Nari, Ye Sab Tadan ke Adhikari"
(A rustic, uncultured, schedule caste, animal and women, they all deserve to be beaten regularly) The sacred book of Islam, 'Quran' says 'Men are superior to women on account of qualities in which God has given them pre-eminence'.

Apparently meaningless songs of 'Bhondla' songs played by girls and women during the festival of Kojagiri Purnima in Maharashtra also communicate the threat of violence by in-laws and an apathy of the parents in the following words

"Assa Maher Surekha Bai, Khelayla Milate
Assa Sasar Dwad Bai, Konduni Marite."

Most of the criminologists and social scientists equated family violence with that of violence against married women in particular. By now a good number of studies have been conducted trying to explore various facets related with legal status of women and violence against them.

One Tarabai Shinde of District Buldana of Maharashtra in 1882 in her 37 pages book attacked on the discriminatory practices among women and men. 5

5. Shinde Tarabai, "Bai" Buldana, Maharashtra 1882
Similarly one Mukta Matang, a 13 years old girl wrote a letter to Ishwar (God) saying that, 'O God, why you made me a girl? Are these words not sufficient to speak of the violence against women?'

Likewise, Strauss in 1977 has highlighted the culture of violence through folk verse as 'A woman, a horse, and a hickory tree' the more you beat them, the better they be.' Rathus and Nevid in 1980 have brought out this attitude through statements like—'wives and rugs should be beaten regularly; women should be struck regularly like gongs.'

This attitude has its echo's across cultures. Dworkin in 1980 tried to identify the conditions that are responsible to inspire men to cause violence against women and how the family circumstances are responsible for such violence.


A few researchers like Hooja (1969), Khanna and Vergese (1978), Rao and Rao (1986), Ahuja in 1982, Devi (1983) and Mathew (1987) have attempted to address social attitude towards dowry in India. Similar efforts have been made by Lata P.M., M.S. Pawar and Dr. Sushma Sood in 1990. The image of Hindi films also helps to know the socio-Legal and economic status of women (Ela Pathak) all these studies center around marriage related violence.
A few attempts are made to highlight the issue of female foeticide, for there is no concrete proof to prove the rate of female feticides. The doctors in such matters maintain no records in the hospitals by the doctors in such matters. Recently the survey conducted by the National bureau shows the imbalance between the ratio of males and females in our country. In 1991 the sex ratio was 1000 males: 946 females, in 2001 it was 917 and now it has decreased to 912. Female feticides is said to be the only cause for such imbalance and Maharashtra state is at number one place in such cases.

Hypothesis

The researcher, on the basis of above articulation of problem formulated the following hypothesis.

1. The contemporary understanding of violence has broadened by interdisciplinary sciences.
2. The existing framework of law does not address this assertion neither it provides the redress mechanism to protect the women from domestic violence against them.
3. Domestic violence is a world wide social problem, irrespective of socio-economic and political conditions.
4. The most prominent victim of violence in the family is a woman.
5. The offences of domestic violence go unnoticed as these are viewed as 'private' matters.
6. Women do not come forward voluntarily to register the cases of domestic violence.
7. There are number of barriers on women.
8. There are numerous reasons for domestic violence, varies with place, situation, status etc.

9. Civil society and Conscious class can do better implementation of laws to protect women from domestic violence.

10. Social institutions and NGO can play effective and manifold role to prevent domestic violence.

11. The Human Rights standard is not implemented with proper care and intention and there is no machinery to implement it.