CHAPTER 1
INTRODUCTION

In Patriarchal societies, domestic violence is one form of manifestation of male dominance. The gender specific violence is omnipresent. It cuts across all boundaries of caste, creed, class, religion, wealth or nationality. In India, customary practices, religious beliefs, social conditions, patriarchal notions, etc. are making women more vulnerable. So, the family violence against women is on the rise in the country.¹

Women constitute about one half of the global population, but they are placed at various disadvantageous positions due to gender difference and bias. They have been the victims of violence and exploitation by the male dominated society all over the world. Ours is a tradition bound society where women have been socially, economically, physically, psychologically and sexually exploited from time immemorial, sometimes in the name of religion, sometimes on the pretext of writings in the scriptures and sometimes by the social sanction.²

In ancient time, the males were playing an active role while the females play only the passive part. The societies were generally male dominated and the females were considered only a thing of enjoyment for men.³ The entire life of woman was based on protection by male in

the nature of father, husband and son. This philosophy of protection by male gave physical, economic and social protection but on the contrary it resulted into various physical, mental and spiritual torture to women.4

In fact, in the Vedic age, women enjoyed a relatively high position in Indian society. Women power in Hindu Puranas was treated as shakti and it was believed that where women are honored, there the Gods are pleased, where they are not honoured, all works become fruitless.5 They were considered to be equal to men during performance of every religious rites and social functions.6 Generally, the birth of a girl was not welcomed, even then she did not suffer on that account.7 In spite of the attitude of indifference towards the female child and marked partiality for the male child, if female child, once born she was entitled to all the privileges given to a son.8 In the matter of education the daughter was not distinguished from the son.9 During this era boys and girls both were having equal opportunities for the advance education. Girls also used to spend their early life in ‘Gurukul’ after observing Upnayana Samskar. They had followed discipline in Ashram like boys and learnt Vedic hymns. There were certain intellectual women of Vedic era known as female rishis. Ghosha, Kakhivati, Surya Savitri, Sarparajni, Urvashi, Indrani, Shrudha Kamayani, Yami Shachi, Paulomi were some of the female

7 Vijay Sharma, Protection to Women in Matrimonial Home, 13 (1994).
8 Neera Desai, Women in Modern India, 11 (1957).
9 Ibid.
rishis of Vedic era. Dowry system was prevalent in rich and royal families only in the form of movable gifts.

In post Vedic period, the honoured position which the wife enjoyed in the family and society, during the Vedic era gradually started declining. The wife’s status in the matrimonial home was less satisfactory. The Key to deterioration of her status was the introduction of non-Aryan wife into Aryan household. Since, the non-Aryan wife had no knowledge of Sanskrit language and Vedic rituals, she was declared to be unfit for association with her husband in religious ceremonies. Later on, in order to maintain the domestic peace and to assign equal status to every wife, the whole class of women was declared ineligible for Vedic studies and sacrificial duties. The cardinal principles were that the wife should ever remain obedient to her husband, must not do anything that might displease him, should be faithful to his memory after his death, should not think of any other man etc. The role of the women got restricted to the four walls of their home. The rights for girls were completely abandoned. The glorious position of women gradually deteriorated in the course of time and it resulted in denial of educational rights to women, introduction of child marriage and purdah system in society. The property rights of women were withdrawn and widow marriage was completely abolished as religious prohibition. In due course the spirit of dictum to give protection to woman was lost. Women came to be

\[ \text{Supra note 7 at 14.} \]
\[ \text{V.K. Dewan, Law Relating to Offences Against Women, 33 (2000).} \]
\[ \text{Supra note 7 at 20.} \]
\[ \text{Supra note 6 at 27.} \]
\[ \text{Supra note 11 at 33.} \]
\[ \text{Supra note 5 at 29.} \]
considered as unfit for freedom, deserving no independence and to be kept under the authority of the males at all stages of their lives.

As it is evident from Hindu epics the Ramayana and the Mahabharata that where she was worshipped as devi with some astha and shradha as Goddess, there itself the decency of Draupdi was looted in the presence of five husbands and on false charge Sita was assimilated in the earth.\textsuperscript{16}

The invasion of the country by the Muslims brought about further deterioration of the position of woman in the Medieval Indian society. In this period woman was regarded as inferior to man. The practice of polygamy and child-marriage was prevalent in India before 1200 A.D., and sati in the earlier centuries, was synonymous with 'virtuous women'. Due to insecurity and uncertainty which prevailed in Muslim period, the position of wife received further set back. Polygamy and pardah were two important social institutions of the Muslim conquerors of India. With invading armies roaming the country side, women were put behind the veil.\textsuperscript{17} During this period, the husband came to exercise greater control over wife and she on account of her illiteracy and ignorance became easier prey to ill-treatment and tyranny.\textsuperscript{18} It was also noticed that jauhar was occasionally practiced, the widow was treated with contempt, the ideal of female fidelity was upheld and a good wife was expected to offer complete devotion and dedication to her husband.\textsuperscript{19}

\textsuperscript{17} Rama Mehta, \textit{Socio Legal Status of Women in India}, 41 (1986).
\textsuperscript{18} \textit{Supra note 7} at 29.
\textsuperscript{19} Kiran Pawal, \textit{Women in Indian History}, 141 (1996).
During the Mughal rule, the position of woman was slummed.\textsuperscript{20} The Mughal period was marked for general practice of killing baby girls, condemnation of widow, polygamy and system of Devdasis in different parts of India.\textsuperscript{21} Social evils like child-marriage, sati, purdah – flourished during this period.

During British Rule, the Indians came in vital contact with the British in the latter half of the eighteenth century, the position of the Indian woman had reached the maximum degree of deterioration. Ideologically woman was considered a completely inferior species, inferior to the male, having no significance, no personality, etc. She was further branded as basically lacking an ethical fibre. The patriarchal joint family, the customs of polygamy, the purdah, the property structure, early marriage, self-immolation of widows (sati) or a state of permanent widowhood, all these contributed to the smothering of the free development of woman.\textsuperscript{22}

Thus, not only social institutions and customs thwarted the free growth of her personality, but the prevailing ideology also assigned the Indian woman an inferior status. She was denied independent personality. Her life, as Manu says, was to be associated with and subordinated to either the father, the husband or the son. In fact she had no personality of her own. She had no dreams of her own. She had no separate status as a member of the family or society. Her existence was taken for granted. Her opinion, her desires, her likes or dislikes

\textsuperscript{21} Supra note 11 at 34.
were never to be considered. In short, the prevailing conception of woman, whether Hindu or Muslim, was basically feudal in character.\textsuperscript{23}

As regards her moral nature, woman was considered as a temptress, a being whose sole aim is to divert man from the right path. The daughter is considered by the father as a burden to be disposed off as quickly as possible through her marriage. For her husband she is an object for having male children. She is further regarded unfit for participation in social, political or religious functions of any significance. She is not even worthy of receiving education.\textsuperscript{24} Further in order that she may not rise in revolt against these customs, an institutional framework and an ideology were created, keeping her docile and in permanent subjection. As a result of this, the Indian woman on the eve of the British rule had not only lost her independence but her sense and urge for freedom and consequences of independent personality. As Pandita Ramabai describes her position at that time, “She is forbidden to read the sacred scriptures. She has no right to pronounce a single syllable out of them. To appeal to her uncultivated low kind of desire by giving her ornaments, to adorn her person and by giving her dainty food together with an occasional bow which costs nothing are the highest honours to which a Hindu woman is entitled”\textsuperscript{25}

In order to eliminate all the obstacles in form of the extant institutional complex as well as the prevailing ideology to the achievement of freedom for woman, a fundamental change in the very social structure was necessary. The feudal society based on the self-

\textsuperscript{23} Ibid.
\textsuperscript{24} Ibid.
\textsuperscript{25} Id. at 38.
sufficient village economy, the caste and the joint family and authoritarian ideology was absolutely incapable of providing room for the liberation of woman within its framework. A new society based on new socio-economic relations and a new liberal democratic ideology was necessary for making woman conscious of her subjection, for realization of her real role in the society, for the growth of woman’s freedom movement in all spheres of life as also for a great advance in the direction of her complete freedom.  

The British conquest of India resulted in the emergence of such an environment and ideology. Thus, in the 18th Century, at the dawn of British rule, the position of women in India was in a sorry state. The Vedic liberties enjoyed by women in India were forgotten. Only a narrow and static society prevailed. The British government’s attitude of non-interference with the religious sentiments of the local people stopped all social reforms for a century. However, due to the pioneering work of some leaders, changes were brought about in the social structure of the 19th century.  

In pre-independence society many social reformers of this age, like Raja Ram Mohan Rai, Keshave Chandra Sen, Swami Dayanand and Iswar Chandra Vidyasagar, took up the cause of female education and social freedom for women. Widow remarriage was legalized and sati was abolished.  

During the early part of the twentieth century the women were not enjoying a good status, a status they were supposed to have. They continued to remain under depression and maintain a low status. The

\begin{itemize}
\item \textsuperscript{26} Ibid.
\item \textsuperscript{27} Ibid.
\item \textsuperscript{28} Supra note 6 at 123.
\end{itemize}
reasons may be illiteracy, economic dependence, dominant nature of males, religious attitude and caste restriction. But after the end of the British rule in the year 1947 and particularly after 1950, the year, the Indian Constitution came into force, which based on the ideals of justice, liberty and equality apart from its principles of upholding the dignity of human beings. After independence, the Constitution of India abolished the ancient concept of male dominated society by adopting concept of equality as a fundamental right under Article 14 of the Constitution. But the equality of status guaranteed by the Constitution of India is only a myth to millions of women for whom life is stalked by various kinds of violence within their homes.

Women in the country are facing more grave form of violence at home and rather than outside the home. The four walls of her home have become a grave threat to the safety of women but for culprits it is the safest place to commit violence. It is inflicted not by strangers but by her close family members from whom she naturally expects love, affection, care, warmth and protection.

A significant lacuna has existed in the capacity of any legal system to accommodate for cases of everyday domestic violence in the lives of women – something that has been restricted to the private domain. Interference into 'domestic privacy' has traditionally been seen as a greater evil than actual violence inflicted upon a wife.

Wife beating is, therefore, not an individual, isolated or aberrant act, but a social licence, a duty or sign of masculinity, deeply ingrained in culture, widely practiced and completely or largely

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31 www.indlaw.com accessed on 06.05.2007.
immune from legal sanction.\textsuperscript{32} Where State through its inaction fails to prevent violence within homes and fails to effectively address murders, rapes and assault of women in intimate relations and punish those who are responsible for the same, the message that is sent is that such acts of violence will not be punished and are in a sense justified/acceptable. It is, therefore, argued that the role of State inaction in the perpetuation of the violence combined with the gender-specific nature of domestic violence requires that domestic violence be classified and treated as a human rights concern.\textsuperscript{33} Human rights of women are the inalienable, integral and indivisible part of human rights.\textsuperscript{34} Human rights are all about securing to every individual without discrimination, the basic fundamentals such as dignity, self worth and self respect. These fundamentals are an absolute necessity for all persons, if they are to contribute positively to achieving national goals of security, development and human rights.\textsuperscript{35} Domestic violence against women is the gradual corrosion of these basic fundamentals, which gradually disable the pivotal component of any population from contributing towards achievement of national and international objectives.\textsuperscript{36}

Domestic Violence Act makes good India’s commitments under the international human rights regime. International instruments gave


\textsuperscript{36} Ibid.

Convention on the Elimination of All Forms of Discrimination Against Women adopted and opened for signature, ratification and accession by General Assembly resolution 34/84 of 18th December, 1979. It entered into force on 3rd September 1981.38 This convention is the first international document to address women’s rights within the political, social, cultural, economic and family life.39 The Convention recommended that State Parties should act to protect women against violence of any kind especially that occurring within the family.40

The resolution of General Assembly adopted in the 35th Session of United Nations (1980) was the first international document which expressly mentions domestic violence and gives international recognition to it guaranteeing rights of women to live in peace.41

The Vienna Accord (1994) and the Beijing Declaration and the Platform for Action (1995) have acknowledged the fact that the

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40 Supra note 1 at 86.
41 Ibid.
domestic violence is a human rights issue and serious deterrent to the development of women.\textsuperscript{42}

The Protection of Women from Domestic Violence Act, 2005 also fulfils the constitutional’s pledge to prohibit discrimination through the enactment of special provisions that protect women.\textsuperscript{43} Our Constitution makers were alive to the social problems associated with the emancipation of woman. They had seen prevailing gender inequality during their time and had visualized that the sex equality was crucial for the development of the country. In order to do away with the inequality and to provide reasonable opportunity and create awareness for the exercise of human rights and claim, it is necessary to promote with special care, educational and economic interests not only of men but women too and to provide necessary protection from social injustice and exploitation. The Constitution of India provides the following:

1. Right to Equality (Articles 14, 15 and 16)
2. Right Against Exploitation (Article 23)
3. Directive Principles of State Policy (Articles 38, 39(a) & (d), 42 and 44).
4. Fundamental Duties (Article 51-A(e)).

Besides the above, the preamble of the Constitution of India, which is the supreme law of the land, seeks to secure to its citizens including women folk, justice-social, economic and political, liberty of thought, expression, belief, faith and worship, equality of status and

\textsuperscript{42} Ibid.
\textsuperscript{43} The Tribune, October 17, 2005 at 12.
opportunity and promote fraternity assuring dignity of the individual.\textsuperscript{44} The difference in treatment between men and women by the State is totally prohibited by the Constitution of India.

For achieving the objectives of preamble, the Constitution of India contains a number of provisions. Indian women were granted important constitutional and legal rights following independence. The Constitution of India adopted a landmark step in this direction by guaranteeing full equality and liberty to women and prohibiting trafficking. There are several schemes for welfare and growth of women. Moreover, the Constitutional Amendment in India in 1993 ushered in a new era of affirmative action by reserving one third of seats in local Government bodies for women. Another Revolutionary Bill, reserving 33 percent of Lok Sabha and State Assemblies seats for women which was pending before Parliament has been cleared by Cabinet on 25\textsuperscript{th} February, 2010.\textsuperscript{45} We know democracy requires maximum representation, but women who constitute half of the total population are not given their due by the politics. The position of women in policies has always been marginal. At the world level only ten percent of parliamentary positions and six percent of cabinet ministerial posts are occupied by women.\textsuperscript{46} But recently in India the cabinet has approved the amendment of Article 243D of the Constitution of India to reserve 50 percent of the total number of seats in panchayats for women.\textsuperscript{47} This move would significantly empower women at the grassroots level. At present, out of total elected representatives of panchayats numbering approximately 28.18 lakh,

\textsuperscript{44} P.M. Bakshi, \textit{The Constitution of India}, 1 (2006).
\textsuperscript{45} \textit{The Tribune}, February 26, 2010.
\textsuperscript{47} \textit{The Tribune}, August 28, 2009 at 1.
36.87 percent are women. With the proposed constitutional amendment, the number of elected women representatives is expected to rise to more than 14 lakh.\footnote{Ibid.} The women face obstacles to their participation in politics. The largest democracy in the world, India elected its first woman president in its 60th year of independence. This clearly reflects the position of women in Indian politics. If women participate in politics they find it difficult to participate in an effective manner. Domestic responsibilities, lack of financial clout, growing criminalization of politics and the threat of character assassination have made it increasingly difficult for women to be part of the political framework. These problems to some extend can be overcome by educating women because education can break the cycle of seclusion and ignorance and helpful in developing their potential. Reservation will be also helpful for representing a big step towards empowering the women to play their rightful part in a democratic setup and in the political process at the decision-making level. These measures will be helpful to combat domestic violence.

The history of the drive for women’s human rights indicates that only when women are literate, when they articulate their view of life in publications and before audience, when they organize and demand equality, when girls are educated and socialized to think of themselves as citizens as well as wives and mothers, then women can be full and equal citizens, enjoy full human rights.\footnote{Marjorie Agosan, \textit{Women, Gender and Human Rights – A Global Perspective}, New Delhi, 58-59 (2000).} Education is most effective tool for empowerment and human rights development. Article 29(2) of Constitution of India provides that no citizen shall be denied admission into any educational institution maintained by the State.
Though the Article 21A, as inserted by the Constitution (Eighty-sixth Amendment) Act, 2002 and consequently, the Right of Children to Free and Compulsory Education Act, 2009 which has been enacted by the Parliament provide for free and compulsory education of all children in the age group of six to fourteen years as a Fundamental Right is a commendable step towards the improvement of woman’s position in the society and the educated woman will be less prone to domestic violence. But negative parental attitudes toward educating daughters are a barrier to the girl’s education since parents see their daughter’s education as a waste of money because she will eventually live with her husband’s family. Lack of conveniently located schools, flexible hours, irrelevant curricular, non-availability of female teachers and the absence of single sex schools play an even greater role in preventing girls from enrolling in schools. Longer distance is often perceived as a threat to a daughter’s security and might make the parents reluctant to send their daughters to school. Education helps a person grow cognitively, intellectually and emotionally and enables a person to take right decisions on the basis of logic and reason.\(^{50}\) In our society, there are various family matters on which decisions are generally taken by men. Women are quite often not even consulted. This is because of the feeling among men that women are incapable of expressing their decision due to illiteracy among them. It would means that if women are educated, they would acquire the capacity to participate in decision making.\(^{51}\) Robert observes that, ‘the balance of power is after all an interpersonal affairs and the wife’s own characteristics can not long be disregarded if we are to understand who makes the decision’. Education is milestone of women

\(^{50}\) [www.punabnewsline.com/content/view](http://www.punabnewsline.com/content/view) accessed on 06.04.2009.

empowerment because it enables them to respond to the challenges, to confront their traditional role and change their life. Education is the first step towards empowerment and the most crucial factor in overall development of the individual as well as nation. Literacy sets one free from ignorance, exploitation and poverty. It liberates the minds, opening up new horizons, new hope/ opportunities and self-confidence further equipping them with the knowledge, skills, self-respect and freedom to participate. Illiteracy on the other hand breeds ignorance which leads to exploitation, poverty, neglect, crimes and number of social evils. Literacy enables women to obtain all opportunities and further prospects of leading a meaningful life and enjoying a good standard of living. Education is an effective instrument for social and economic development and national integration. Education enables women to understand their social and legal rights, become economically independent, acquire a voice in the affairs of the family and the community.

In India the women are by and large economically backward and women’s earnings are deemed supplementary to those of breadwinners. More important, much work performed by women is not recognized as an occupational activity. The social and political justice pledged by the Preamble of the Constitution of India to be secured to all citizens, will remain a myth unless first economic justice is guaranteed to all. Therefore the Courts in India have recognized, highlighted and enforced the right to economic empowerment of women as a fundamental right in a large number of cases covering the areas of succession, maintenance and ownership etc. In C. Masilmani K. Vijaya Lakshmi, Women’s Right are Human Rights, All India Reporter, 28 (2009).
Mudaliar v. Idol of Sri Swaminathaswami thirukoil, Justice K. Ramaswamy noted that "as per the United Nations Report, 1980, women constitute one half of the world population, perform nearly two thirds of work hours receive one tenth of the world’s income and own less than one hundredth percent of world’s property." Half of the Indian population is women. Women have always been discriminated against and have suffered and are suffering discrimination in silence. Self-sacrifice and self-denial are their nobility and fortitude and yet they have been subject to all inequalities, indignities, inequality and discrimination. Recognizing right to economic empowerment as a human right, the Parliament passed the Hindu Succession (Amendment) Act, 2005, giving equal rights to daughter on par with son. Unless women’s economic security is strengthened, we will not be able to eliminate poverty and achieve gender equality. It is to be noted that economic empowerment is the crucial requirement to undo domestic violence against women as well as dowry harassment.

In addition to constitutional provisions some other measures have been also taken up for the protection of human rights of women. Setting up of the National Commission for Women and the National Human Rights Commission, the autonomous bodies, to fulfill the objectives of achieving equality of status and opportunity for women, safeguarding their interest and culminating all forms of discrimination

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53 AIR 1996 SC 1697.
54 The Central Law, which was amended and came into effect on September 9th 2005, now enlarged the right of all daughters irrespective of the date of their marriage. Especially this amendment seeks to do away with Section 23 of the Succession Act which denies a woman the right to seek partition of an inherited dwelling unit/house if other male heirs are residing in it and further restricts her right to reside in the inherited residence unless she is a widow or has been separated from or deserted by her husband. As per this amendment she is also treated as a coparcener with right to demand partition. Though right to demand partition is not specifically spell out, the fact she has the same right as the coparcener would mean that she has such right.
against women as laid down by the Constitution of India were the glaring testimonies to that effect.

It may be noted that the fundamental rights and directive principles enshrined in the Constitution of India for making women equal to men have remained pious hopes. Women have suffered discrimination in social, economic and political spheres. Their number in decision-making bodies in the Parliament and State Assemblies is negligible. They get less wages than man for the same work. Instances of torture, harassment, burning and rape have increased. They are not safe within the home or in the streets. That makes them more dependent on their husbands or other male members of the family. They are burnt alive by their husbands and in-laws to satisfy their greed for dowry.55

Dowry death is an extreme form of domestic violence. So far as origin of dowry is concerned, the custom of kanyadan (giving the daughter in marriage) followed by Varadakshina (gift to the bridegroom at the time of marriage) rose the dowry system. It is in the Rig Veda that one comes across the concept of kanyadan.56 In Ancient India daughter’s marriage was considered as ‘Kanya Daan’. There are scriptures depicting the fact of royal bride carrying with her cows, horses, jewels etc. from her parents, but it was voluntary practice and it only showed as to how much the daughter was loved in her parental house.57 Although the dowry was legally prohibited in 1961 by passing the Dowry Prohibition Act, 1961, it continues to be highly institutionalized. The groom often demands a dowry consisting of a

55 Supra note 51 at 14
large sum of money, farm animals, furniture and electronics. Young and innocent married girls are brutally murdered merely for not satisfying the dowry demands. In some cases they are forced to commit suicides. A large number of these deaths are reported as kitchen accidents. Over the past few years, the cases of bride burning have registered a sharp increase throughout India. Dowry deaths have increased nearly 11 times from 427 in 1983 to 4,856 in 1991. Around 990 cases of dowry deaths were reported in 1985. In 1989, there were 4,215 cases of dowry deaths in our country, which number reached 4,836 in 1990. According to a newspaper reports the number of dowry deaths increased to 5,582 in 1993 from 4,962 than the year 1992 which was 5,517 in 1991. The Times of India newspaper reported that the cases of dowry deaths have registered less figures of 4,277 during 1994 than the previous year in the country. National Crime Record Bureau reported that about 6,787 dowry deaths cases are registered in India in the year 2005. On an average 20 dowry deaths cases are reported every day. In 2007, the year for which latest data is available from National Crime Records Bureau (NCRB) revealed an increase of 15 percent of dowry deaths and 14 percent of cruelty by husband and relatives. According to Himachal Pradesh Police – State Criminal Investigation Department Shimla, 5 cases of dowry deaths were reported in 1999. In 2000, there were 3 cases of dowry deaths, which number reached 10 in 2001. Same number of cases of dowry deaths i.e. 6 in years 2002 and 2003 were reported. In 2004, 8 cases of dowry deaths were reported. In Year 2005, the

58 Supra note 1 at 85.
60 The Hindustan Times, October 13, 1994 at 16.
61 The Times of India, May 19, 1995 at 7.
number of dowry deaths decreased to 2. In 2006, there were 3 cases of dowry deaths, which number reached 7 in 2007. In 2008, 3 cases of dowry death were reported.

Though many dowry-homicide go unreported, the number of those that are reported is enough to unnerve our society. Such incidents have their origin in social, economic and psychological factors, to deep-rooted to be tackled by amending the law. The genesis of such deaths lies in the tension created by persistent demands, accompanied by torture for dowry. The greed for money, the aggressiveness increased by resistance to the demands and the ease with which the weaker sex can be exploited, all combine to encourage family members to take the bride’s life. In 1971, the Government of India appointed a Committee on the Status of Women to examine and assess, among other things, the impact of the constitutional, legal and administrative provisions on the Status of Women over the past two decades. Its report presented on the eve of International Women’s year, noted, in no uncertain terms, that:

“The majority of women are still far from enjoying the rights and opportunities guaranteed to them by the Constitution of India. Society has to yet succeed in framing the required norms or institutions to enable women to fulfill the multiple roles that they are expected to play in India today. On the other hand, the increasing incidents of practices like dowry indicate a further lowering of the status of women. They also indicate a process of regression from some of the norms developed during the freedom movement. The concern for women and their problems, which received an impetus during the freedom movement has suffered as decline in the last two decades.

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The social laws that sought to mitigate the problems of women in their family life have remained unknown to a large mass of women in this country, who are as ignorant of their legal rights today as they were before independence.” Dowry harassment is yet again a significant cause for domestic violence. Eventually, when husband is unable to fulfill family needs, it is the wife who is beaten for either not bringing enough dowry or not able to contribute financially in some cases.

Wife beating, marital rape have become very common in the marital life of women. In a survey conducted by India Today, 64 80 percent of the men expressed that they have unconditional right against their wives to have sex. They assumably presume that through marriage a woman forgoes forever her right to refuse sexual intercourse with her husband. This attitude reflects the patriarchal mindset of the men. It makes married women mere commodity and lowers their status to subhuman. It is the deprivation of sexual self determination of married women. Similarly, a study reveals that about 75% of married women are subjected to physical assault by their husbands. Another threat to safety of married women is possibility of transmission of AIDS from their husbands. The National Aids Control Organisation revealed that 39% of HIV cases occur amongst women and they were infected by their partners. These facts and figures reflect the unsafe condition of women at their marital home.65

Not only the conjugal home but also the natal home is not safe place for woman. Women are facing denials, discriminations and violence even in their parental home. They are in the form of female foeticide, infanticide, child labour, child abuse, child marriage,

64 India Today, September 20, 2004 at 33.
65 Supra note 1 at 85.
deprivation of basic amenities like access to proper food, education, medical care etc., which go against basic human rights.\textsuperscript{66} In our son preferential society parents are feeling that even conceiving a female foetus is a sin and going for deliberate termination. Every year millions of girls are disposed off at foetus stage in the form of biomedical waste. So denial starts even before their birth. It is obvious that there is no safe and secure place for woman including in her mother’s womb.\textsuperscript{67} In 1975, amniocentesis arrived in India for finding out genetic abnormalities but soon it was abused for sex determination of foetus. Apart from disproportionate ratio of men and women in population, the social consequences of female foeticide are very heavy. The Pre-Conception and Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 has been passed to eradicate the evil of female foeticide.\textsuperscript{68} The implementation of this Act was slow. It was later amended and replaced in 2002 by the Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act. This Act seeks to ban pre-conception sex selection techniques and use of prenatal diagnostic techniques for sex selective abortions. In spite of this amendment, nothing has changed. Girl children continue to get aborted. Female foeticide is an extreme manifestation of violence against women. President Pratibha Devi Singh Patil described the declining girl child ratio in the country as a matter of shame and said, ‘girls should not be treated as a curse but as a boon’. Launching a ‘Save the Girl Child’ campaign of the Union Health and Family Welfare Ministry on the occasion of Gandhi Jayanti, Ms. Patil said, ‘it

\textsuperscript{66} Supra note 29.
was a matter of shame that the disturbed sex ratio was not only seen in
the progressive State of the country, but also among the progressive
society’. She further said, ‘it was a matter of concern that the
phenomenon was seen among those educated and having a status in
society. The misuse of technology to determine the sex of foetus and
easy access to it had contributed to the rapid decline in the child sex-
ratio. This could adversely impact the delicate balance of nature and
destroy the moral and social fabric’. United Nations Population Fund
has warned that sex ratio imbalances only lead to far-reaching,
imbalances in society at large. French demographer Christophe
Guilmoto, author of the India and Regional Reports warned that future
deficits of adult women would affect ‘the stability of the entire
marriage system’. Many men, particularly the poorest will be unable
to marry, creating a pool of potential social unrest and conditions
likely to increase sexual violence against women. There is a serious
decline in the number of women in India. The Census Report 2001
revealed that the sex ratio of the population of one to six years had
deprecated during the last one decade from 945 to 927 per thousand
which, in turn, has highlighted the widespread practice of female
foeticide despite legislation banning it. India is one of the world’s
lowest ratios for women to men. One of the reasons for this decline is

69 The Tribune, October 3, 2007 at 14.
70 Study Covering Four Asian Countries, i.e. India, China, Nepal and Vietnam
71 The Child Sex Ratio (0-6 year) has continuously declined over the decades as
can be seen in the table below:

<table>
<thead>
<tr>
<th>Census Year</th>
<th>Child Sex-Ratio</th>
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<tbody>
<tr>
<td>1961</td>
<td>976</td>
</tr>
<tr>
<td>1971</td>
<td>964</td>
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<tr>
<td>1981</td>
<td>962</td>
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<td>1991</td>
<td>945</td>
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<td>2001</td>
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the misuse of medical technology towards ensuring the pre-birth elimination of females. In 2008, sensational news was published in newspaper that foetal parts, including bones, have been recovered from a well in an unauthorized nursing home of A.K. Singh in Gurgaon district of Haryana indicating large-scale foeticide being done here.\textsuperscript{72} It reveals that doctors commit violation of health care ethics leading to the rampant growth of scan centres.

The United Nations has also expressed concern over elimination of girls by abortion in India.\textsuperscript{73} A grave situation has emerged in States like Punjab, Haryana, Delhi, Himachal Pradesh and Gujarat, where the ratio has drastically declined to even fewer than 800 girls for every 1000 boys.\textsuperscript{74}

In India we come across almost everyday reports in newspapers and television regarding violence on women within the family and in the society at large. Despite the presence of a large number of legislations regarding protection of women, violence against women has increased substantially. Large number of cases involving domestic violence i.e. violence within the family are coming to light almost everyday due to the vast expansion of electronic media.\textsuperscript{75} Domestic violence is the most serious violation of all basic rights that a woman suffers in her own home at the hands of members within her own family. A number of recent studies such as the National Family Health Survey and National Crimes Records Bureau have identified the home as the rite of violence against women and girl children. According to

\textsuperscript{72} The Hindustan Times, June 15, 2007 at 1.
\textsuperscript{73} The Tribune, October 29, 2003 at 6.
National Family Health Survey (NFHS – 3), violence against women is a serious problem in India with 35 percent having experienced physical or sexual violence. One-third of women with age group of 15-49 have experienced physical violence and one in 10 has faced sexual violence.\textsuperscript{76}

Married women were more likely to experience physical or sexual violence from husbands. The Hindu newspaper reported that nearly two in five or 37 percent married women have experienced some form of physical or sexual violence by their husbands. The prevalence of spousal physical violence is higher among women in the poorest households (49 percent) than among women in the wealthier households (18 percent).\textsuperscript{77}

Spousal violence varies greatly from State to State. The prevalence of physical violence ranges from 6 percent in Himachal Pradesh, 13 percent in Jammu and Kashmir and Meghalaya, 46 percent in Madhya Pradesh and Rajasthan and 59 percent in Bihar. Other States with 40 percent or higher prevalence of physical or sexual violence are in Tripura, Manipur, Uttar Pradesh, Tamil Nadu, West Bengal and Assam.\textsuperscript{78}

National Commission for Women chairperson Girija Vyas who launched the global campaign against domestic violence, ‘Stop Violence in the Home’ (SVITH) said: “a definite and strong law should be made and executed without fear of the oppressor. The civil

\textsuperscript{76} National Family Health Survey (NFHS-3).
\textsuperscript{77} The Hindu, October 24, 2007 at 14.
\textsuperscript{78} Ibid.
society and the media should also take steps to spread the awareness among women to fight domestic violence.”  

She further said, this campaign would include creating awareness, supporting and protecting victims of domestic violence. 

According to Heise, Domestic violence is any act of physical, sexual, or psychological abuse, or the threat of such abuse, inflicted against a woman by a person intimately connected to her through marriage, family relation, or acquaintanceship is universal and has its root in the socio-cultural set up of the society. The perpetrators of domestic violence have often been found to be the males who are generally the sexual partners of their wives. Internationally, one in three women has been beaten, coerced into sex or abused in her lifetime by a member of her own family. Looking at the domestic front, staring from Vedic age to twenty first century, women in India perhaps have never experienced equal rights and freedom compared to their male counterparts. The concept of 'Ardhangini' [half of the body] seems to be restricted only in literatures and have never implemented in practical life. In addition to this, extracts from Ramcharitamanas of Tulsidas like ‘Dhol, Gauwnaar, Shudra, Pashu aur Nari; Sakal Tadan ka Adhikari’ [drums, uncivilized illiterates, lower castes, animals and women are all fit to be beaten] besides other indicators like Pardaha system [hiding the face in veils], Sati system [self immersion of the lady in husband’s pyre] that are subject to women only; is a reflection of the history of women’s subordinate
status. In short, it is always the women who have to be in the tight rope, subject to inequality and looked down as an inferior sex. Staring from childhood to the end of her life she has to be under the control of father or husband or the son. The subordinate status of women combined with socio cultural norms that are inclined towards patriarchy and masculinity can be considered as an important factor determining the domestic violence.  

In view of the prevalence as well as the pervasiveness of domestic violence, many researchers in the past have attempted to assess the situation besides exploring its possible cause and subsequent consequences for society in general and women in particular. Murthy is of the view that number of family members, type of marriage and husband’s education besides menstrual problems have significant influence on domestic violence. Leonard is of view that lifestyle of men such as smoking, alcoholism and drugs promote men to commit domestic violence. Duvvury and Nayak are of the view that that masculinity and domestic violence are closely interlinked. According to Barnett and Hamberger persons with lower socialization and responsibility are found to be the enhancers of the problem. According to Straus sons of violent parents and according

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87 M.A. Straus, R.J. Gelles and S. Steinmetz, Behind Close Doors: Violence in the American Family, (1980).
to Fagot men raised in patriarchal family structure that encourages traditional gender role and are more likely to abuse their intimate partners. According to Sahu gendered socialization process is what mainly responsible for domestic violence. Another study among Uttar Pradesh men by Gerstein is of the view that low educational level and poverty are important reasons for domestic violence. According to Mishra marriage at a younger age makes women vulnerable to domestic violence. Besides this, the role of inter spousal relationship, sex of the children, ownership of property, dowry, working status, autonomy, religion and caste of the person can't be ignored.

Many studies are of the view that violence by intimate partner most likely undermines the sexual and reproductive health of the women. This extensive violence has significant harmful effects like unwanted pregnancy according to Khan, gynecological disorders according to Golding and physical injuries to private parts besides large-scale mental health impacts according to Starck. According to Travers violence by husband against wife should not be seen as a

89 B. Sahu, Contextualizing Domestic Violence from Women’s Perspective: A Study in a Slum Community in Orissa, (2003).
92 Supra note 88.
break down in the social order rather than an affirmation to patriarchal social order. Similarly, Jejeebhoy\textsuperscript{97} is of the view that not only wife beating is deeply entrenched, but also people justify it. Thus, domestic violence is simply not a personal abnormality but rather it roots in the cultural norms of the family and the society. Again, looking from another angle, it is found that many of the victims of domestic violence have either refused to name the perpetrator of the assault or attributed the injuries to other reasons (Daga, 1999).\textsuperscript{98}

In order to develop effective intervention programme and policy, it is vital to know the attitude and perception of the women towards the issue in-depth. Most of the studies conducted in the past are small in nature and reflect the regional picture that might not be a true picture of the whole country. In view of the above discussion, it seems essential to understand the women’s viewpoint besides the assessment of the problem and its correlates at national level. Further, in the present world, where gender equality and justice have become the buzz words, examining the domestic violence in the largest democracy of the world appears worthy for the betterment of half of its citizens.

The term domestic signifies an idealized family unit functioning in a protected and secluded manner appropriately shielded from public.\textsuperscript{99} All societies specially the Indian have idealized the concept of family, making it a some what sacred institution devoid of all conflict and projecting it as a safe heaven from the turbulences of the


\textsuperscript{99} *Economic and Political Weekly*, July 4, 1998 at 1741.
external world. But the gradual recognition of domestic violence as a crime has resulted in breaking the myth of the perfect family and exposing it as a potential arena for infliction of serious human rights violation.\textsuperscript{100}

The Protection of Women from Domestic Violence Act, 2005 passed by Parliament represents a watershed for women’s rights. It is the result of long standing demands of civil society women’s organizations in particular – to assure victims of domestic violence freedom from fear of eviction or physical harm in their family home and to have access to family resources for adequate maintenance.\textsuperscript{101}

Prior to the enactment of the Protection of Women from Domestic Violence Act, 2005, there was neither a clear legal definition of domestic violence nor any law that specifically addressed it. Married woman also could get only two kinds of remedies, one is getting a decree of divorce under personal laws and second by resorting to Section 498-A, Indian Penal Code. In both the cases, she does not get much relief herself except that in the former case she can get rid of her unwanted husband and in the latter case she can get her husband or any relative of the husband, who is guilty of cruelty, punished.\textsuperscript{102}

Remedies available to women under the existing civil, personal and criminal laws proved to be inadequate. Moreover, these laws did not provide protection to women like mothers, daughters, sisters and live-in partners. A law to put an end to atrocities on women without disturbing their marital status was the need of the hour. The main objective of The Protection of Women from Domestic Violence Act,

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2005 is to make the relationship within a marriage more equal. The police, judiciary, the protection officer, service provider, government department and victims of domestic violence are identified as main stakeholders under the Act. Violence at home is no more invisible now and every effort is made to bring it in focus through its provisions.103

Main features of the Act, 2005 are as follows:

1. The term domestic violence includes elaborately all forms of actual abuse or threat of abuse of physical, sexual, verbal, emotional and economic nature that can harm, cause injury, endanger the health, safety, life, limb or well-being, either mental or physical of the aggrieved person. The definition is wide enough to cover child sexual abuse, harassment caused to woman or her relatives by unlawful dowry demands and marital rape.104

2. The Act covers those women who are or have been in a relationship with the abuser where both parties have lived together in a shared household and are related by consanguinity, marriage, or through a relationship in the nature of marriage or adoption. In addition, the relationship with the family members, living together as a joint family are also included. Even those women who are sisters, widows, mothers, single women, or living with abuse are entitled to legal protection. Women in fraudulent or bigamous marriages or in marriages deemed invalid in law are also protected.

103 The Tribune, December 20, 2009 at 13.
3. The respondent under the definition given in the Act is “any male, adult person who is, or has been, in a domestic relationship with the aggrieved person” but so that his mother, sister and other relatives do not go Scot free, the case can also be filed against relatives of the husband or male partner.105

4. The information regarding an act or acts of domestic violence does not necessarily have to be lodged by the aggrieved party but by any person who has reason to believe that such an act has been or is being committed. Which means that neighbours, social workers, relatives etc. can all take initiative on behalf of the victim.106

5. This fear of being driven out of the house effectively silenced many women and made them silent sufferers. The court, by this new Act, can now order that she not only reside in the same house but that a part of the house can even be allotted to her for her personal use even if she has no legal claim or share in the property.107

6. Section 18 of the Act allows the Magistrate to protect the woman from acts of violence or even “acts that are likely to take place” in the future and can prohibit the respondent from dispossessing the aggrieved person or in any other manner disturbing her possession, entering the aggrieved person’s

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105 Chapter I, Section 2(a), The Protection of Women from Domestic Violence Act, 2005.
106 Chapter III, Section 4, Ibid.
107 Chapter IV, Section 17, Ibid.
place of work or, if the aggrieved person is a child, the school.  

7. The respondent can also be restrained from attempting to communicate in any form, whatsoever, with the aggrieved person, including personal, oral, written, electronic or telephonic contact”. The respondent can even be prohibited from entering the room/area/house that is allotted to her by the court.

8. The Act allows magistrates to impose monetary relief and monthly payments of maintenance. The respondent can also be made to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of domestic violence and can also cover loss of earnings, medical expenses, loss or damage to property and can also cover the maintenance of the victim and her children.

9. The Act allows the magistrate to make the respondent to pay compensation and damages for injuries including mental torture and emotional distress caused by acts of domestic violence.

10. Section 31 gives a penalty up to one year imprisonment and/or a fine up to Rs. 20,000/- for an offence. The offence is also considered cognisable and non-bailable.

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108 Chapter IV, Section 18, Ibid.
109 Chapter IV, Section 19, Ibid.
110 Chapter IV, Section 20, Ibid.
111 Chapter IV, Section 22, Ibid.
11. Section 32 (2) goes even further and says that “under the sole testimony of the aggrieved person, the Court may conclude that an offence has been committed by the accused”.

12. The Act also ensures speedy justice as the Court has to start proceedings and have the first hearing within 3 days of the complaint being filed in court and every case must be disposed of within a period of sixty days of the first hearing.\(^{112}\)

13. The Act inter alia provides for appointment of protection officers and registration of non-governmental organizations as service providers for providing assistance to the aggrieved person with respect to her medical examination, obtaining legal aid, safe shelter etc.

14. The Act enunciates the certain duties of Central and State Government to make wide publicity & training programs for the police officers.

15. The Act also provides for the assistance of welfare experts if found necessary by the Magistrate.\(^{113}\)

16. The Act also provides for the penalty for not discharging duty of Protection Officer.\(^{114}\)

**Forms of Domestic Violence**

The various forms of domestic violence are physical violence and psychological violence.

\(^{112}\) Chapter IV, Section 12, *Ibid.*  
\(^{114}\) Chapter IV, Section 33, *Ibid.*
Physical violence includes the following forms:

(i) Female foeticide and female infanticide;
(ii) Incest rape within marriage, connivance and collusion of family members for sexual abuse of women in the household;
(iii) Physical torture like slapping, punching, grabbing and killing;
(iv) Burdening of women with drudgery;
(v) Neglect of women’s health problem.

Psychological violence takes different forms:

(i) Curbing the freedom to associate with the natal family, neighbours and friends;
(ii) Curtailment of right to self-expression;
(iii) Promiscuity of the husband;
(iv) Irresponsible behaviour and alcoholism of the husband;
(v) Humiliating and victimizing women;
(vi) Fleecing women and their parents of their money and assets by compulsion coercion and threat and squandering of money for non-household purposes.

Often after the relationship has ended violence may continue, this can be a very dangerous time for the victim because the perpetrator may perceive a loss of control over the victim and may become more unpredictable. During and after separation is often a time when violence will escalate leaving the victim more unsafe than previously.
Magnitude of Problem

One of the most shocking facts emerging out of a 1997 World Health Organisation study was that globally one out of every three women experiences domestic violence at some point in her life. India is no exception. The records of the National Crimes Record Bureau show that between 1991 and 1995, there was a 71.5 per cent increase in cases of torture and dowry deaths in the country. In 2005, India's National Crime Records Bureau on Crime Against Women revealed that 155,553 crimes had been committed against women in that calendar year. Of these, 68,810 cases were in the nature of domestic violence. The Bureau also released the statistics that every 9 minutes, it registered a case of cruelty against a woman by her husband or her husband's family. One dowry-death case was reported every 77 minutes. In 2007, the year for which latest data is available from National Crime Records Bureau (NCRB) revealed an increase of 15 percent of dowry deaths and 14 percent of cruelty by husband and relatives. According to National Family Health Survey-3, violence against women is a serious problem in India. Overall, one-third of women age 15-49 have experienced physical violence and about 1 in 10 has experienced sexual violence. In total, 35 percent have experienced physical or sexual violence. Married women are more likely to experience physical or sexual violence by husbands than by anyone else.

According to Staying Alive First Monitoring and Evaluation Report of Lawyers Collective Women’s Rights Initiative Supported by UNIFEM South Asia on the Protection of Women from Domestic Violence Act, 2005, (2007) a total of 7,913 applications were filed

Objectives of the Study

The main objective of the study is to measure the incidence and prevalence of domestic violence among wives/women. Other research objectives are to:

1. To assess the type of domestic violence.

2. Identify causative factors that may put women at risk of partner violence.

3. Analyze women’s experience with civil protective orders, contacting the police regarding domestic violence situations and dealing with the Courts, protection officer, service provider, medical institutions, etc.

4. Identify actual and perceived barriers to reporting abuse.

5. To study of women’s view about wife beating as justified, with specific reason.

6. To suggest/recommend measures to help females affected by domestic violence and if possible to suggest measures to reduce the prevalence of domestic violence and torture.

Research Methodology

In executing the present research work, the data has been collected from both primary as well as secondary sources. Primary data was collected on random sampling with the help of questionnaires. A well structured questionnaires were prepared to collect information to assess the type of domestic violence, causes of
domestic violence etc. and to collect information about the role of law enforcing agency and investigating agency in the State of Himachal Pradesh especially in two districts viz. Kangra and Hamirpur in the implementation of legal provisions regarding domestic violence.

The secondary sources included the published material in the form of books, articles, research papers, research journals, magazines, reports, encyclopedia, internet websites and relevant clippings of newspapers, which were concerned with subject matter. The present research proposal was analyzed in historical and descriptive perspectives. Data gathered through primary and secondary sources, after careful examination, scrutiny and analysis was systematized tabulated and interpreted with descriptive, critical and empirical way.

**Hypothesis**

The study will be based on the following broad hypothesis:

Women constitute about one half of the global population, but they are placed at various disadvantageous positions due to gender difference and bias. They have been the victims of violence and exploited economically, physically, psychologically and sexually by male dominated society. In our society, the beating is experienced by women daily or frequently or occasionally and the relationship between husband and wife gets affected due to domestic violence. Most of the women are unaware regarding legal protection available under various laws including the Protection of Women from Domestic Violence Act, 2005. So there is a need for an effective role of enforcement agencies in protecting women from domestic violence. The solution to the domestic violence shall be suggested through change of law and social practices.
Plan of Study

The present work is divided into nine chapters which are as under:

**Chapter 1** deals with historical background of status of women during the Ancient, the Muslim and the British period and this chapter also deals with the objectives of the study, research methodology and research Hypothesis.

**Chapter 2** discusses the international endeavours and international legal framework for the protection of women from domestic violence and also discusses achievements of the United Nations in the field of women’s rights since 1945.

**Chapter 3** discusses the protective provisions for women under the Constitution of India and Commissions.

**Chapter 4** deals with the offences which may fall within domestic violence under criminal laws.

**Chapter 5** relates to other legislations viz. the Dowry Prohibition Act, 1961, the Medical Termination of Pregnancy Act, 1971, the Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 and the Commission of Sati (Prevention) Act, 1987 for the protection of women against domestic violence.

**Chapter 6** deals with critical analysis of the Protection of Women from Domestic Violence Act, 2005.

**Chapter 7** deals with judicial response to domestic violence.

**Chapter 8** is devoted to an empirical analysis of domestic violence in the districts Kangra and Hamirpur in the form of response collection.
Chapter 9 deals with conclusion and suggestions for the prevention of domestic violence.