CHAPTER I

INTRODUCTION

The concept of human rights has drawn the attention of different segments of population all over the world, be it academicians, social action groups, policy makers or others. Its foundation can be located in the cultural and religious traditions, philosophical writings and socio-political and economic exigencies. In India the ancient concept of Dharma and Danda determined the governance of state and its citizens. The Sanatan Dharma emphasised the establishment of a healthy society by including a moral code, righteousness and responsibilities in ancient India. Various texts viz., the Vedas, Upanishads, Mahabharata and Bhagavat Gita provide the basis for the foundation of an administration of justice and social development as well. These texts especially the Vedas provided the principles to be followed by the king in fulfilling his duties and upholding the law. The Arthashastra of Kautilya provides political, social and economic code of conduct that provides principles relating to statecraft, politics, legal systems, civil rules and many other areas. These principles being the basis of law deals with various ill acts such as, illegal arrests, inequality of gender, rape, death with or without torture etc. King Ashoka intensely expressed for security, peace of mind and joyousness for all animate beings and inhuman treatment or torture of prisoners were prohibited in his administration. Thus religious scriptures, movements such as, Bhakti and Sufi, the concept of vasudhaiva kutumbakam and ahimsa etc. are said to have contributed to the development of the principles of humanism, tolerance, freedom, and respect for each other in ancient India.

In the western world the concept of natural law developed by Greek scholars laid the foundation of the concept of natural rights that in turn served the basis for human rights. The contributions of Greek and Roman Philosophies depict the importance of equality before law, freedom of speech, right to vote, right to be

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2 Ibid., 23.
3 Ibid.
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elected to public office, right to trade and the right of access to justice to their citizens. Aristotle talked about justice and virtue; although he never made use of the term human rights but his ideas furnish with a desirable discourse that helps to determine the assertion of an idea of human rights. In England king John’s *Magna Carta* of 1215 A.D. indicates the being of humane treatments towards peoples; the *Magna Carta* or “the Great Charter of Liberty” stated that “no person shall be captured or imprisoned or disseised or outlawed or exiled or in any way destroyed, nor will we go against him or send against him except by the lawful judgement of his peers only under the law of the land. To no one will we sell, to no one will we deny or delay right of justice.” The American Constitution for the first time gave human rights a constitutional status. The American Declaration of Independence (1776) stated that all men are created equal and have certain inalienable rights – life, liberty and pursuit of happiness. The French Declaration of the Rights of Man and of the Citizens (1789) emphasised that “Men are born and remain free and equal in respect of rights”, and it further stated that “the purpose of all political association is the preservation of the natural and inalienable rights of man. These rights are liberty, property, security and resistance to oppression.” Thus, it (human rights) advanced both as moral and legal force.

However, this age old concept of human rights was centered mainly on people in general for long time; it never focused on the marginalised sections of the society including women. Attention was paid to the human rights issues of these sections only after the formation of the United Nations. In fact, the concern of the UN for women’s rights can be understood from the fact that prior to the adoption of the Universal Declaration of Human Rights (UDHR) the Sub Commission on the Status of Women was constituted. The UDHR reinforced and strengthened the

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4 Dr. Sreenivassulu N.S, *Human Rights many sides to a coin* (New Delhi: Regal Publications, 2008), 17.
idea of women’s rights and the need to protect and promote the rights of women throughout the world. Thus a number of women specific instruments have been developed under the direction of the United Nations ensuring protection of women against discrimination and violence such as, Convention on the Political Rights of Women (1952), Convention on the Nationality of Married Women (1957), Declaration on the Elimination of Discrimination against Women (1967) and most importantly Convention on the Elimination of All Forms of Discrimination against Women (1979) and many other. Since then the human rights of women became an area of interest to many.

Human rights of women imply that women have equal opportunity to realise fully their basic rights and to conduce and gain from social, economic, cultural, political and other kinds of developments along with men. There is no room for sex role within this concept. It negates the idea of discrimination on the basis of sex. These rights grant women an environment in which they can live a life with complete human dignity, freedom and individual personality. The term ‘women’s rights’ implies that women, as much as men, are entitled to full protection of their rights and freedom because they are human beings and not simply because they are women. In spite of the progress made in the field of women’s rights the present day condition of women in India is very much traumatising. Often they are put in the realm of violence. In fact, the existence of all these protective measures itself indicate that women are in the state of violence both in public and private sphere.

In the present study we try to focus on the issue of domestic violence against women in the district of Cachar, Assam and analyse the problem from the human rights perspective. We try to show the situation of women in Cachar district through some case studies and empirical data. In order to understand the contemporary status of women in India it is necessary to look into the past. In the following paragraphs we shall discuss about the status of women in Indian society.

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9 Ibid., 175.
Introduction

Status of Women in India: A Brief Historical Perspective

Status of women in Indian society can be broadly classified into three periods—the ancient period, the medieval period and the modern period. Historical literature illustrates that women in early Vedic period enjoyed many liberal attitudes and practices. They took part in religious and social activities and had freedom to select their partner in marriage. Moreover, marriage was not considered as compulsory for all girls and widow marriage was also permitted. Girls were also allowed to Vedic studies. During that time women were believed as the incarnation of Shakti. In Rigveda, the word nari (woman) is used many a time to express bravery, working alongside man, giver of equity and leadership. Nari was worshipped as Usha or Dawn, the bringer of hope. Although the principle of patriarchy emerged in the later Vedic thought but women were not completely subordinated by men. In fact, women were given great importance because of their power of generation and fertility. Thus, it can be said that women in Vedic era enjoyed possibly the most honored position. Buddhism and Jainism also influenced the status of women. No distinction was made between men and women and their capacities for attaining Nirvana. In Jainism women had freedom to join the religious order. During the age of Dharmashastras, although Manu was partial to men but in Manusmriti, a granth, Manu wrote, “Brahma separated his body into two parts; from half he created man and from the other part woman. She is, therefore, born equal.” Further Manu also expressed that “God reside where women are respected and where they are insulted all endeavour is useless.” This statement indicates the worth and dignity of women.

The medieval period witnessed the curtailment of women’s freedom and thereby put women in a disadvantageous position. This period was considered as the Dark Age for the then women as their social life was cursed with many difficulties viz., purdah, polygyny, child marriage etc. However, women in Mughal period

11 Ibid., 11.
12 Ibid., 20.
13 Ibid., 23.
14 Ibid.
especially royal women had an important part in art, propagating literature, politics, and economy etc. They received education, composed poetry and were interested in entertainment of royal courts behind their purdahs also.

During the early period of British rule in India the position of women was no better than their previous conditions although with time and along with the enactment of different legislations and various social reform movements the positions of women were in the state of transition. Women’s education, prevention of child marriages, abolition of sati, removal of polygamy and widow remarriage etc. were the important concern of that time. In order to prevent social evils the Child Marriage Restraint Act, 1929, the Hindu Widows Remarriage Act, 1856, the Hindu Woman’s Right to Property Act, 1937 and the Married Women’s Property Act, 1874 etc. were brought into practice. The practice of sati was abolished legally in 1829 by passing a resolution in which the crime of culpable homicide was made punishable. The period showed emancipation of women from inhuman practices to some extent. Apart from the British period another period of modern age is the period after the independence i.e., from 1947 onwards which brought a number of protective measures for Indian women through the various provisions in the Indian Constitution and in the form of various legislations. The independent India laid a foundation of social order where men and women are treated on equal basis. Article 14\textsuperscript{16}, 15 (1)\textsuperscript{17}, 15 (3)\textsuperscript{18}, 16 (2)\textsuperscript{19}, 21\textsuperscript{20}, 23\textsuperscript{21} etc. of Indian Constitution, the Directive Principles of State Policy (DPSP) prescribing

\textsuperscript{15} Ibid., 29.
\textsuperscript{16} Article 14 of the Indian Constitution provides equality before law and equal protection of law for both men and women.
\textsuperscript{17} Article 15 (1) prohibited discrimination against any citizen on grounds of sex, religion, caste etc.
\textsuperscript{18} Through its article 15 (3), the constitution also laid down that the state can make special provision for women.
\textsuperscript{19} Article 16 (2) held that no citizen shall be discriminated against in respect of any employment in office under the state.
\textsuperscript{20} Article 21 of the Constitution also favours women by stating that no person shall be deprived of his life or liberty without legal authority and without following the procedure laid down in the law.
\textsuperscript{21} Article 23 of the Indian Constitution can be treated as another safeguard for Indian women as it covers the right against exploitation by prohibiting traffic in human beings. It is needless to say that women more fall victim of trafficking than men.
some important principles\(^{22}\) and women specific legal mechanisms are the most crucial ones to ensure protection of women in India. In spite of these constitutional and legal mechanisms there has not been much development in the position of women in India. Generally women have been given the subordinate status in society in comparison to their male counterparts. Often gender based violence has been the approach of society towards women. They are generally assigned a very low social position as individuals. Women’s human rights in contemporary Indian society are violated in many ways and this violence against them is both physical and psychological.

**Nature of Violence Inflicted on Women in India**

Violence against women in India has cut across all class, caste, educational and religious background and age etc. Its nature is more or less homogeneous in all societies. Violation of women’s basic human rights takes place in different forms and the most common forms include rape, sexual humiliation, forced prostitution, forced pregnancy and trafficking and other physical assault etc. Harassments through physical, verbal or non-verbal conduct of a sexual nature against women are the reflection of the violation of their human rights. Moreover, various religious practices, traditional customs and personal laws also contribute towards violence against women. In the following paragraphs we shall highlight some of the most practiced forms of violence against women.

Rape stands as one of the most serious kinds of violence against women. It often is used to humiliate, force compliance, terrorise, for ethnic cleansing and most crucially to punish the counterpart and its whole society for endorsing the enemy. The crime (rape) derogates the personal and social dignity of the victim and her family and most of the time act as a precursor to murder. Rape in conflict zones is

\(^{22}\) Principles like men and women equally have the right to adequate means of livelihood; there is equal pay for equal work for both men and women; the health and strength of women workers can not be abused; securing just and humane conditions of work and for maternity etc.

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very much widespread. In India 1,90,008 rapes have been committed since 2001 to 2010, as per the reports of the National Crime Records Bureau Reports, Ministry of Home Affairs, India.23

Trafficking in women implies that women are treated as commodities having market value. In some cases women are forced into prostitution by false promise of employment mostly in remote places. Women and girls after trafficking are also forced to get married both in and outside the country. As a result those women often become the victim of forced pregnancy. These situations derogate the personal dignity and self-esteem of women.

Pornography represents a form of violence in which women are treated as an instrument of sexual pleasure. It "glamorises the degradation and maltreatment of women and asserts their subordinate function as mere receptacles for male lust".24 Representing women in indecent way affects the dignity of women and outrage their modesty.

Women fall victim of traditional practices too. Most of the physically and psychologically harmful customs are deeply rooted in the tradition and culture of many societies. The physical and psychological consequences of child marriage are severe and can include many health related problems including high risk of life during pregnancy. It creates obstacles in the enjoyment and full development of female children sacrificing education. Many a time women and girls are trapped into fraudulent marriage also.

Another area of great concern regarding girl children is their neglect during early childhood. It is the family of the girl children who often make discrimination towards them on the basis of sex. Girl children are neglected in the family simply because of the reason that they are females who will drain the economic resources of the family in the form of dowry at the time of their marriages. Neglect of the

23 "National Crime Records Bureau", http://ncrb.gov.in/ (accessed on 20 September, 2012). (Data have been culled from different reports available in the official website of National Crime Records Bureau).

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girl child is generally expressed in the lack of proper care such as, basic health, food and education etc. Foetal killing and the problem of female infanticide have been a crucial problem for women in India which accounts for intended killing of baby girls in the womb of mother and after the birth respectively. The cases of foetal killing treat women as mere reproductive machine denying her right to person and dignity. These actions imply the low social values for women and biasness against them.

Eve-teasing, a kind of sexual harassment, is targeted mainly at young girls in public places such as, streets, parks, educational institutions etc. It includes both verbal and non verbal harassments such as, sexually coloured remarks, unwelcome sexual jokes, showing obscene gestures, winking, whistling, pinching, rubbing against women etc. Apart from it adultery or enticement of married women also violates the dignity of women.

Abduction and kidnapping of women most of the times is caused for rape or molestation of women. This is often followed by murder.

Violence against migrant women workers is another area of concern. Women usually move from one geographical area to another often for better opportunities or for earning their livelihood. These women many a time fall victim of abusive sexual behaviour by their employers or others. In such situation these women do not have access to the system of justice. So, they continue to live in the state of both physical and psychological pain.

Apart from the violence committed against women by the family or community there are other kinds of violence that are perpetrated by the state against women. These can be classified as follows:25

- Violence against women in situations of armed conflict;
- Violence against refugee and displaced women; and
- Custodial violence against women.

25 Ibid.
Conflict situation is inevitably related to the violation of human rights. In India, rapid growth of ethnic and insurgency problems, communal violence, fundamentalism target people in general and mostly women become the victim. In situations of armed conflict both physical and psychological violence is perpetrated against women of either side by both the armed forces and armed opposition groups.

Displaced or refugee women become victims of violence twice in the sense that they are not only victims of ethnic cleansing or other conflict situations but they are also vulnerable to violence and exploitation in shelter camps. In refugee camps, they are often raped and abused by military and immigration personnel, bandit groups, male refugees and rival ethnic groups.\(^{26}\) They are also forced into prostitution. Thus, women of these groups face different types of violations of their rights including sexual, social, political and economic.

Beside these, violence is also perpetrated against women by the state agencies which are supposed to protect them. Women under custody are often subjected to torture, degrading treatment and harassment. Male jailors often abuse women especially those who do not have access to courts or their families, sexually and physically. The sexual abuses against women in custody include inappropriate sexual touching, beating, use of sexualised languages, strip searches and even rape.

Thus, the human rights of women have been in the stage of constant violations and these violations are disgracing, prejudiced and exceedingly harmful. Thus starting from pre-birth to elderly stage women’s rights are violated in almost all areas.

**Domestic Violence: A Form of Violence against Women in Private Sphere of Life**

Apart from violence perpetrated by community and state there exists another kind of violence against women in Indian patriarchal social setup that takes place in the

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\(^{26}\) Ibid. (accessed on 24 August, 2012).
most private and intimate environment of life i.e., the family. This is known as
domestic violence against women. Domestic violence against women implies a
kind of violence within the household in which women or girl child or girls finds
physical or psychological maltreatment from their family members including both
male and female. It (domestic violence against women) is not limited to inter-
spousal violence rather has covered violence that is perpetrated by any family
members or relatives against any female members of the house. Women also
perpetrate this type of violence against other women. It can also be conceptualised
as violent victimisation of women within the boundaries of home by men or their
family members (both men and women) with whom the women have been in
domestic relationship.

Domestic violence sets women to gender specific abuses based on unequal power
distribution between men and women in society. It also obscures differences
among women on the basis of race, caste, class, marital status, etc. Although in
domestic violence, both men and women can be abused, but in most cases, the
victims are women. Married women are more in disadvantageous situation in
terms of domestic violence than unmarried girls; but this never poses unmarried
girls in the advantageous situation completely. Domestic violence against women
falls under various categories such as, physical, sexual, verbal and emotional and
economic.

Physical abuse is the intentional use of physical force against the body of another
person with the potential for causing physical injury, harm, disability, or death.
Acts of physical violence by the husband or other abuser against the wife or other
female family member (abused) include pushing, shaking, throwing something at
her, slapping, arm twisting, hair pulling, punching, kicking, dragging, beating,
trying to choke or burn her on purpose, and threatening her or attacking her with
weapon.

Sexual abuse is defined as any unwanted sexual intimacy forced on one individual
by another. It may include oral, anal or vaginal stimulation or penetration, forced
nudity, forced exposure to sexually explicit material or activity or any other
unwanted sexual activity.\textsuperscript{27} Thus, acts of sexual violence by the husband include physically forcing the wife against her will to have sex or perform other sexual acts that she does not want to perform; forcing physically to have sexual intercourse etc.

Emotional and verbal abuses refer to humiliating the victim privately or publicly, deliberately doing something to make the victim feel diminished or embarrassed, isolating the victim from friends and family, name-calling, blaming, and shaming etc. The acts of emotional violence by the husband or his relatives against a wife or any other female member of the house include saying or doing something to humiliate her in front of others, threatening to hurt or harm her or someone close to her, or insulting her or making her feel bad about herself, continuous criticising her, intimidation, and controlling her behavior etc. It may also include derogatory statements or threats of further abuse which can be both verbal and nonverbal.

In economic or financial abuse the abuser has complete control over the women’s or victim’s economic resources. This type of abuse include controlling the finances, withholding money or credit cards, exploiting the victim’s assets for personal gain, preventing the victim from working, putting the victim on a strict allowance, withholding basic necessities viz., food, clothes, medications, shelter etc. Thus, it has become an acceptable practice to abuse women inside home and this has been a crucial problem of the contemporary Indian society.

There is no single factor that account for domestic violence rather it follows from a number of factors such as, cultural, economic, legal and political. These factors include a variety of elements, as mentioned under the following heads:

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Cultural Factors Include:  

- Gender specific socialisation process  
- Appropriate sex roles as defined by culture  
- Expectations of roles within relationships or division of work on the basis of gender  
- Belief in the inherent superiority of males  
- Values that give men proprietary rights over women and girls  
- Idea of the family as the private sphere and under the control of male members  
- Customs practiced during marriage such as, dowry and bride price  
- Accepting violence as a way of resolving conflict  

Economic Factors Include:  

- Economic dependence of women on male member of the family  
- Discriminatory social practices regarding inheritance, property rights, maintenance after divorce or widowhood  
- Limited access to employment both in formal and informal sectors  
- Limited access to education and training for women  
- Limited access to economic resources  

Legal Factors Include:  

- Vague legal definitions of rape and domestic abuse  
- Low levels of legal awareness among women  
- Insensitive treatment of women and girls by police and judiciary  

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29 Ibid.  
30 Ibid.
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Political Factors Include:31

- Idea of family as private domain and beyond the control of the state
- Women's limited participation in organised political system
- Limited organisation of women as political force
- Risk in challenging religious law

Impact of Domestic Violence on Women

Whatever be the causes of domestic violence at large it often leads to the destruction of families in general and the lives of women in particular and ultimately to the all round violation of the human rights of women. Its impact on women is far-reaching and devastating. Different areas of human rights of women that are affected due to domestic violence include the following:

- The human right to life;
- The human right to full respect for human dignity;
- The human right to not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment;
- The human right to the highest attainable standard of physical and mental health;
- The human right to freedom from discrimination and violence in private due to any status like, gender;
- The human right to full equality between women and men;
- The human right to full equality between women and men in power and decision-making;
- The human right to freedom from sexual abuse, physical abuse, and psychological violence;
- The human right to freedom from dowry-related violence;
- The human right to freedom from marital rape;

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31 Ibid.
Domestic violence may leave a variety of physical, psychological or emotional, economic and other impacts on the lives of women in all socio-economic and educational classes. It is a blatant negation of women’s fundamental rights and is an affront to women's inherent human dignity. Consequently, it poses tremendous obstacles in the way of development of women in all respects. However, consequences of domestic violence on women’s health are severe. It includes both non-fatal and fatal outcomes. Non-fatal outcomes have been characterised by both physical and mental effects. Physical impact of domestic violence against women include injury (from lacerations to fractures and internal organs injury), unwanted pregnancy, gynaecological problems, sexually transmitted diseases including HIV/AIDS, miscarriage, pelvic inflammatory disease, chronic pelvic pain, headaches, permanent disabilities, asthma, irritable bowel syndrome, self-injurious behaviours (smoking, unprotected sex), abdominal and gastrointestinal complaints, frequent vaginal and urinary tract infections etc. Mental health outcomes are depression, fear, anxiety, depression, low self-esteem, sexual dysfunction, eating problems, obsessive-compulsive disorder, post traumatic stress disorder etc. Under the fatal outcomes of domestic violence the prominent effects are suicide, homicide, maternal mortality, HIV/AIDS etc.\(^\text{32}\)

Moreover, bride burning or dowry deaths are considered the most miserable consequence of domestic violence.

Women's educational and economic rights have also been affected by domestic violence. Often in families girl child is neglected and is given less opportunities in terms of education in comparison to a male child. Not only this, women's access to service is too affected. They are restricted to go outside of home and do some jobs that can make them self-reliant.

Among different types of violence, domestic violence is now being viewed as a major problem and many public, private and governmental agencies are making huge efforts to control it. In India, it has been recognised as a criminal offence. The most substantial step to protect women from domestic violence is the Protection of Women from Domestic Violence Act, 2005 which came into force on 26th October, 2006. According to this Act, the term domestic violence implies all forms of actual abuse or threat of abuse of physical, sexual, verbal, emotional and economic nature that can harm, cause injury to, endanger the health, safety, life, limb or well-being, either mental or physical of the aggrieved person. It takes place in domestic relationship which under this Act includes live-in relationships and other relationships arising out of membership in a family. The Act grants certain rights to women. These are as follows:

1. **Right to reside in a shared household**: Under this Act a woman has the right to reside in the matrimonial or shared household. A part of the house can be allotted to her for her personal use; a court can pass a residence order to secure her right of residence in the household.

2. **Right to obtain assistance and protection**: A victimised woman of domestic violence will have the right to obtain the services and assistance of police officers, protection officers, service providers, shelter homes and medical

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34 Ibid.
35 Protection officers are officers under the jurisdiction and control of the court and have duties to provide necessary information to the aggrieved person on service providers and to ensure compliance with the orders for monetary relief. They provide assistance to the court in preparing the petition filed in the magistrate's office.
establishments as well as the right to simultaneously file her own complaint under Section 498 A of the Indian Penal Code (IPC) for matrimonial cruelty.

3. **Right to issuance of orders**: Under this Act a woman can get the following orders issued in her favour through the courts once the offence of domestic violence is prima facie established. These orders are:\(^{38}\)

- **Protection orders**: The court can pass a protection order to prevent the accused from aiding or committing an act of domestic violence, entering the workplace, school or other places frequented by the aggrieved person\(^ {39}\), establishing any kind of communication with her, alienating any assets used by both parties, causing violence to her relatives or doing any other act specified in the protection order.

- **Residence orders**: This order ensures that the aggrieved person is not dispossessed, her possessions not disturbed, the shared household is not alienated or disposed off, she is provided an alternative accommodation by the respondent\(^ {40}\) if she so requires, the respondent is removed from the shared household and he and his relatives are barred from entering the area allotted to her. However, an order to remove oneself from the shared household cannot be passed against any woman.

- **Monetary relief**: The respondent can be made accountable for all expenses incurred and losses suffered by the aggrieved person and her child due to the

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36 Service providers refer to organisations and institutions working for women's rights, which are recognised under the Companies Act or the Societies Registration Act. They must be registered with the state government to record the Domestic Incident Report and to help the aggrieved person in medical examination. It is their duty to approach and advise the aggrieved person of her rights under the law and assist her in initiating the required legal proceedings or taking appropriate protective measures to remedy the situation. The law protects them for all actions done in good faith and no legal proceedings can be initiated against them for the proper exercise of their powers under the Act.

37 Shelter home means any shelter home as may be notified by the State Government to be a shelter home for the purposes of this Act.

38 The Gazette of India, Ministry of Law and Justice, "The Protection of Women from Domestic Violence Act 2005".

39 Aggrieved person means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent.

40 Respondent means any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act and includes relatives of the husband or male partner.
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Infliction of domestic violence. Such relief may include loss of earnings, medical expenses, loss or damage to property and payments towards maintenance of the aggrieved person and her children.

- **Custody orders:** This order grants temporary custody of any child or children to the aggrieved person or any person making an application on her behalf. It may make arrangements for visit of such child or children by the respondent or may disallow such visit if it is harmful to the interests of the child or children.

- **Compensation orders:** The respondent may be directed to pay compensation and damages for injuries caused to the aggrieved person as a result of the acts of domestic violence by him/her. Such injuries may also include mental torture and emotional distress caused to her.

- **Interim and Ex parte orders:** Such orders may be passed if it is deemed just and proper upon commission of an act of domestic violence or likelihood of such commission by the respondent. Such orders are passed on the basis of an affidavit of the aggrieved person against the respondent.

The aggrieved person will also be entitled to obtain relief granted by other suits and legal proceedings initiated before a civil court, family court or a criminal court. The most crucial point to protect women under this Act is that it does not permit any female relative of the husband or male partner to file a complaint against the wife or female partner but a victim woman or any other witness of the offence on her behalf can approach a police officer, protection officer, and service provider or can directly file a complaint with a magistrate for obtaining orders or reliefs under the Act.

The Act is beneficial for protecting women from domestic violence and for promoting or enhancing their well-being. It is different from other Acts as it is based on postulates of human rights. It gives women the right to be protected at home in general and also in married life. It also implies protection of parents of girls from giving *dowry* during or after marriage. Apart from this Act, a number of sections in the IPC laid emphasis on safeguarding women from any kind of act of violence within the home. But the most disheartening fact is that in spite of
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having such legislations, women in India undergo the cycle of domestic violence gravely. Over 37 per cent married women in the country are victims of physical or sexual abuse by their husbands.\footnote{Ministry of Health and Family Welfare, Government of India "National Family Health Survey 3, 2005-2006: India, Volume I", http://pdf.usaid.gov/pdf_docs/PNADK385.pdf (accessed on 03 March 2013).} It can be said that the sufferings of women continues to grow despite progress allover.

Rationale of the Study

It is generally assumed that women in North East India enjoy better position than its counterpart in the rest of the country. It is, therefore, pertinent to explore the condition of women in terms of domestic violence. What is the condition of women in Cachar district of Assam? Does it present different picture? This calls for a holistic examination of the situation in which the women of the district are located. Hence, the present study focuses not only on the nature of domestic violence perpetrated on women and also tries to understand the response of women towards such violence. In addition to this, it also tries to examine the existence of various Acts with special focus on the efficacy of the Protection of Women from Domestic Violence Act, 2005 in protecting the victims from domestic violence.

Objectives of the Study

1. To examine the international and national instruments of women’s rights as human rights.
2. To understand the nature of domestic violence.
3. To understand the response of the victims towards domestic violence.
4. To examine the awareness of victims about the existing legal/redressal mechanisms\footnote{For the purpose of the present study the term legal mechanisms refer to those mechanisms which fall within the gambit of judicial interpretation and redressal mechanism refers to DLCCIW mechanisms for giving assistance to the victims.}.
5. To examine the nature of the help/support received by the victims from different organisations, both governmental and nongovernmental.
6. To understand the response of judiciary and voluntary organisation to cases of domestic violence.

7. To examine whether any change can be observed in the perpetration of domestic violence before and after enactment of the Protection of Women from Domestic Violence Act, 2005.

Survey of Literature

The literature on the human rights of women in general and those relating to domestic violence is exhaustive. However, for the purpose of the present study following books and articles have been surveyed.

Violence against Women (Ahuja, 1998)\(^4\) depicts the nature of violence perpetrated against womenfolk. The study is important as it has focused on the attitude of judiciary towards victims and the self-image and self-esteem of the suffering women.

Women in Indian society have been victims of ill-treatment, humiliation, torture and exploitation for long time at the hands of their male counterparts. In this study six categories of violence have been analysed. Among them sexual violence against women is the most serious one. Women are victims of sexual violence at home, at work place, in markets and other places also. Other type of violence that has been focused in this work is the kidnapping and abduction, dowry deaths and wife-battering etc.

The author has provided a theoretical explanation as to what causes men to be violent, abusive and cruel towards women. Some theories have been considered which are classified on the basis of psycho-pathological, socio-psychological and socio-cultural analysis. According to psycho-pathological theory, the causes of violence against a woman arise from offender’s or victim’s psychological problems. Socio-psychological theory emphasise that frustration leads to aggression. Aggression is directed towards one who is believed to be responsible for frustration. And socio-cultural theory takes violence as an effect of

interactional process between individual and culture. Besides discussing the attitude of the judiciary the study has also highlighted the response of police towards the victims of said violence and also the attitude of public towards police. According to the author, most victims and their family members are humiliated by the policeman in times of lodging FIR or during interrogation. Thus the author has discussed both the nature of violence perpetrated against women and response of police towards the victims of violence.

Indian Women Change and Challenge in the International Decade 1975-85 (Desai and Patel, 1990) focuses on the impact of UN International Decade for Women on Indian women. It attempts to deal with the women’s question in the context of the politico-economic situation in India. The International Women’s Decade began with the period of emergency in India. In the following decade there had been a growing importance in the field of women’s rights movement in India. The author points to the three pronged problems of third world countries i.e. fight against imperialism, internal oppressive regimes and patriarchy. In such situations the Decade played a significant role in highlighting women’s issues in different areas which brought a remarkable change to the social structure.

The study also focuses on the policies and programs which have influenced the status of women positively. The Decade has forced all governmental and non-governmental bodies to be alert on women’s problems. Further, the Decade has led to the emergence of the new type of women’s groups and mass organisation initiating a wave of women’s movement in the country. In fact, the Decade produced a number of publications on women and efforts were made to build feminist perspectives of these. The author also takes into consideration the role of media in projecting the status of women. Further efforts were also made to create an alternative image of women highlighting the suffering of women and providing positive aspects of their life and emphasising the need to remove the obstacles from their lives. Thus, the Decade has not only sensitised people to women’s

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issues but also generated a need to evolve an economic and political perspective to visualise the future trend of women’s movement.

**Women and Human Rights (Rastogi, 2007)** focuses on women’s human rights perspectives. It covers the ways in which the movement for women’s human rights has been taking place at present and also the directions in which it will take place in future. The study also focuses on the changes in the prevailing notions of rights and issues. However, focusing on women’s international human rights law the author held that in spite of the existence of such laws women worldwide are put into the struggle to fully realise women’s rights as human rights. It focuses on the potential for enforcement of state accountability and responsibility primarily under the Convention on the Elimination of All Forms of Discrimination against women. According to the author, among the various issues of violation of women’s rights domestic violence is one that is used as a tool to torture. It contains physical and psychological effects on women. This kind of violence can be dealt with reference to international standards like, the UN Torture Convention. Thus the author’s intention is to contribute to a feminist reconceptualisation of human rights by examining one of the most prevalent forms of gender violence.

**Human Rights of Women (Roy, 2003)** is a work providing an understanding of various dimensions of rights of women viz., the rights of girl child, adolescent girls, reproductive and political rights of women. The author focuses on violence against women as a common phenomenon which takes a variety of forms, from domestic abuse and dowry related violence to rape, sexual assault, prostitution and trafficking and even child marriages. All are violations of the fundamental human rights. But human rights and fundamental freedoms are the birthright of all human beings; and hence their protection.

Sexual exploitation of children and especially girl children is another major problem that exists due to the present socio-economic conditions and is quite

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undesirable because a child does not consent rather they are victimised only. However, in such a situation it becomes the responsibility of the government to protect those children from being exploited sexually. The Convention on the Rights of the Child is an exemplar here.

The study also deals with adolescent girls and their rights. Rights of girls are enshrined in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC) but adolescent girls still have special needs for protection of their rights as they face many difficult circumstances on the way to womanhood. The author also provided an overview of the state of women’s reproductive rights. This is a fundamental aspect of women’s wellbeing. Without access to safe and high quality services, women may face death or injury during child birth, unwanted pregnancy etc. Another important right of women which the author has taken into consideration is the political rights of women. Women have been granted certain political rights in different spheres of politics. Convention on the Political Rights of Women was adopted by the General Assembly in 1952 and is the first instrument of international law to recognise, protect and promote the political rights of women.

Throughout this work it has been emphasised that unless various legal instruments are implemented with full effect there will be lacking in full realisation of women’s rights.

Wife Battering - A Common Form of Violation of Human Rights (Saikia, 2002) provides a glimpse of violence against women within the four walls of home. The author narrated the conditions of victims of domestic violence. Women are tortured both physically and mentally within the home itself and by the people around her who are supposed to be the protector of them. A family which is the most sacred institution sometimes becomes a centre of terror,

discrimination, deprivations for the married women. Many forms of domestic violence such as, wife battering, infanticide, incest, dowry death and even forced prostitution have been faced by many women in society. It is the manifestation of a historically unequal power relationship between men and women.

Against this background the author has focused on Universal Declaration of Human Rights and the Covenant on Civil and Political Rights that ensured everyone's right to life, liberty and security and protected human being from cruel, inhuman torture or any kind of degrading punishment. However, the author substantiated a number of cases to show the extent of domestic violence against women.

A number of measures have been suggested to make home free from violence. Among them the most important are making woman self-reliant, sensitise the male section of society to condemn all acts of violence against women, inclusion of cultural and human values in the educational curricula to promote respect for women and development of various awareness programs relating to gender discrimination. By focusing on the issues of married women only the author has done enough justice to the title.

Women Problems and Their Oppression (A Study in the Mental attitudes of Society) (Singh, 1999)\(^8\) is about the status of women in Indian society from her childhood to widowhood. In discussing the existence of customary practices and traditional issues regarding women, the author has focused on the mental attitudes of the society towards women. Accordingly the emphasis is given on the traditions, life-style, rights, duties and obligations of women which are the direct results of the religion practiced by the family. Be a young girl, young woman, or even an aged woman, can not do anything independently, even in her own house. In childhood a female is subjected to her father, in youth to her husband and when she becomes a widow, to her sons. The author has shown that because of the evil attitude of society women are kept under the control of men at all stages of their

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lives. Focusing on various census reports the author has emphasised that male births and female births are not equal and this can be attributed to the higher female mortality. The author showed that in the aspiration for male child Indian society pursue inhuman acts to the mother of a girl child. This kind of mentality of the society has a definite impact on the education of the females. In many parts of India female education is not desirable. Lack of education among females affects their married life also.

At the stage of widowhood women has to change her lifestyle. Society wants her to follow brahmacharya and also to maintain simple eating habits. Although the Hindu Widows’ Remarriage Act, 1856 was enacted but the picture of the society is not much changed. Not only this, women are legally protected in the field of education, marriage, divorce but in practice the picture is somewhat different. Women are not getting full benefits of various legal standards and this is because of the prevailing mental attitudes of the patriarchal society towards women. The author also stated that many women in India have also worked for national cause. They played an important role in mobilising the masses. But their contributions remain unheard.

Women Marriage, Family, Violence & Divorce (Sharma, 1997)\textsuperscript{49} focuses on some important aspects of women’s life. It includes factors such as, marriage, family, violence against women within family and outside it and divorce. Marriage is one of the most important institutions that often lead women to the realm of violence. Families are faced with many problems because of societal change and the effect of change is dependent on the family’s coping ability. However, this change creates stress on the family members and mostly female members of family are victims of it. The author emphasises that there have been gender based violence. Gender based violence is a serious problem for the women when they have to face rape, domestic violence, mutilation, murder and sexual abuse. For the author, over the last three decades gender based violence has emerged as one of the most public health problems. Thus there is the physical,

\textsuperscript{49} Bela Rani Sharma, Women Marriage, Family, Violence & Divorce (Jaipur: Mangal Deep Publications, 1997).
emotional and sexual violence against women even by intimate partner. Moreover, divorce is another area that the study addresses. Various dimensions of divorce viz., economic consequences, psychological adjustment, children’s adjustment etc. are discussed. Then focus is given the concept of remarriage. Thus the study highlights women’s entire married life starting from marriage to its dissolution with their causes and consequences.

Human Rights and Women of North East India (Dutta, 2002)\(^5\) provides the history of the struggle for human rights in general and of women in particular. It discusses the rights of women in India after the independence and the present condition of the rights of northeastern women. The author focused on three generations of human rights. During 18\(^{th}\) century the first generation of human rights was concerned with the civil rights of the individual, in 19\(^{th}\) century this struggle for human rights was concerned with political and economic demands. And the third generation of human rights emerged in the 20\(^{th}\) century concerned with socio-cultural rights of nations and peoples.

At the international level, the Universal Declaration of Human Rights (UDHR) and Convention for the Elimination of All Forms of Discrimination against Women (CEDAW) has been focused as tools for the protection of women’s rights. The author also examined the status of women’s rights in Indian context keeping in view the rights that are enshrined in the Indian Constitution. Beside these a number of legislations are there to protect women from injustice and any kind of violence related to work. These include Maternity Benefits Act, 1961, Equal Remuneration Act, 1976, Minimum Wages Act, 1948 etc. Beside these, Dowry Prohibition Act, 1961, Hindu Marriage Act, 1956 etc. have been enacted. Despite these it has been found that till date women in India continue to suffer from violence (both mental and physical) and deprivations. This scenario can also be viewed in northeast India which is the platform for conflict between the state and armed opposition groups. Basically being socio-economically backward the region suffered the insurgency problem and to make the region free from

Insurgent problems the state agencies are involved in counter insurgency operations in which women become the most serious victim of violence. In such a situation women of this region have come together to bring peace in the region and most importantly to protect women’s rights from being violated. These violations drew the attention of international human rights organisation such as, the Amnesty International. The author has emphasised that various provisions of the Convention on the Elimination of All forms of Discrimination against Women can be applied to the women of northeast India to protect them from violence.

**Women and Human Rights (Gonsalves, 2001)** provides an understanding and knowledge of the existing human rights standards which apply to women. The study mainly deals with the issues of violence against women and includes information about those areas of law which is most likely to affect their lives. The author gives a glimpse of rights of women under the Indian Constitution. It has been emphasised that the framers of Indian Constitution were inspired by the Universal Declaration of Human Rights and the inspiration is evident in the Preamble of the Constitution which assures dignity of the individual. The Indian Constitution guarantees right to life under Article 21; prohibits discrimination among citizens on the ground of religion, race, caste, sex or place of birth under Article 15 and assures equal opportunity in public employment under Article 16. It also maintains equality and justice. Article 14 provides equality before law. Article 51 A (in Part VA) provides that it is the duty of every citizen to remove practices derogatory to the dignity of women. Article 42 of the Constitution refers to just and humane conditions of work and maternity relief. Apart from these, there are a number of laws to protect the rights of women viz., the Dowry Prohibition Act, 1961, Immoral Traffic Act, 1956, Hindu Marriage Act, 1955, etc.

The author then focused on the married women’s right to property. It has been emphasised that under Section 27 of the Hindu Marriage Act, 1955 the wife is only entitled to receive that property which was presented at or about the time of marriage. But this Section completely ignores the financial and non-financial

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contribution made by the wife towards the making of a home. Article 16 of the Convention on the Elimination of All Forms of Discrimination against Women emphasised to eliminate discrimination against women in all matters relating to marriage. It appears that in view of the international instruments the Government of India has failed to take appropriate steps to prevent discrimination based on sex regarding the implementation of laws governing division of matrimonial property.

Violence against wives is another area addressed by the author. Common forms of violence against women include both physical and mental violence. In such a situation the Indian Constitution made a number of provisions for protecting the rights and dignity of women. In 1983 Section 498A was included in the Indian Penal Code, 1860 to deal with the cruelty of husband and his relatives against women. The author also regarded sexual harassment against women as a serious problem of society.

Beside sexual harassment women also face different kinds of sexual assault, dowry death and custodial violence. Women are subjected to assault, either mental or physical. In physical assault the most serious form is rape. A number of legal instruments have been enforced to deal with the crime of rape like, various provisions of Indian Penal Code. In order to protect women from dowry related death the Dowry Prohibition Act has been enacted. This Act could not abolish such evils from society as evidenced from number of cases of dowry death throughout the country till date. It indicates that some more legal reforms are required. Women also face different kinds of violence when they are in custody. They even face sexual violence in custody. Hence, custodial violence is a serious matter of concern.

The author also addressed the issues of prostitution and held that it exists because man go to the prostitutes and is an example of gender bias in the law that a man is not made a party to the offence of prostitution. However, there is a need to change our attitude towards prostitution. Instead of trying to denounce and ignore it we must learn to recognise it as a natural phenomenon. But Child prostitution is a serious matter of concern. The author also focused on the human rights conditions
of prisoners such as, their living conditions and so on and found that overcrowding and food quality are serious problem.

**Violence in the Family: Wife Beating (Flavia, 1988)** concentrates on violence against women particularly wife beating. Focusing on the concept of dowry death the author held that it is an over simplification of a far more complex social phenomenon of power relationships within the family. Wife beating is the most prevalent form of violence against women. Within the family it is socially acceptable that man is the master and woman is the subordinate partner. The author held that most of the times violence is seen as a natural occurrence and social workers try to save marriage by making women more understanding. But it is important to understand the complexity of this phenomenon of violence against women and particularly wife beating. In order to understand the nature and extent of wife beating in Indian society the author undertook a survey. The findings of the survey suggest that frustration build up in man’s life at two levels- individual and societal contribute towards wife beating. The author also discusses the existing legal provisions that deal with violence against women. Wife beating is not covered under any special law. It is covered under the general law for assault which shows that laws are ineffective to protect women. The author thus concludes that findings of the study are confirmed by the day to day experience of the problem of wife beating.

**Human Rights and Women (Medhi, 1994)** maintains that violence against women is a common phenomenon in all ages irrespective of their advanced or backward socio-economic conditions. And the most crucial method of violating women’s human rights has been outraging their modesty including sexual assault.

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In the disturbed areas of northeast India, there have been rampant violations of women’s rights. While referring to the rights of women in NE India the author has highlighted the role of security agencies in violating the rights of women. It has also discussed the role played by different organisations such as, NPMHR & Naga Mothers’ Association in publicising the violation of rights of women by governmental agencies.

The author also focused on how women are tortured under different circumstances and referred to the study made by Asian Indian Women of America (AIWA). On the basis of the report of Asia Watch and Women’s Rights Project Division, the author showed that there have been frequent cases of state sanctioned violence and sex discrimination against women by the law enforcing authorities.

The study has also focused on the problem of economic exploitation. Economic exploitation of women can be understood from the fact that in spite of the existence of laws such as, Equal Remuneration Act, 1976 there is discrimination between man and women relating to the pay and time of the work. The study refers to many surveys conducted by International Labour Organisation which showed that women had failed to make the expected gains in the work place.

Beside the economic exploitation the author has dealt with social problem also. In India dowry has been identified as one of the worst killers of woman. The author has described the violation of the rights of women as a result of the practice of dowry such as, physical torture and murder of brides. In such conditions the Dowry Prohibition Act was enacted to deal with dowry deaths in India.

The study shows how the social evils such as, dowry, female foeticide and customs of devdasi have degraded the social position of women and for the victims of such atrocities various legislations viz., the enactment of Dowry Prohibition Act and such other legislations or the constitutional guarantee of human rights have no meaning.
Rights of Women (Acharyya, 1994) presents the legal status of women in Indian society. According to the author, the need for developing the status of women's rights in India was perceived by the Govt. of India after the UN observance of the International Women Year 1975 and the first International Women Conference of Mexico City. A number of legal protections were dedicated to womenfolk in the form of various acts and even a ministry relating to the matters of women. But unfortunately, Indian women, due to lack of education, are still in darkness about their rights and the laws enacted for their protection and safeguards.

To highlight some significant laws relating to women's legal right, the author started from 19th century. During that period in order to counter the existing practice of social evil like 'Sati Daha Pratha' the 'Sati Daha Ain' and later the Commission of Sati (Prevention) Act, 1987 was passed. Child marriage is another social evil which can be countered by following the Child Marriage Restraint Act, 1929. In this way the Indian society continued to protect the rights of women which were later reflected in many parts of Indian Constitution. Fundamental rights enshrined in Part III of the Constitution emphasised on the promotion and protection of rights of women.

With constitutional protection of rights, there have been increasing progresses regarding the recognition of women's rights through many enactments. The Hindu Marriage Act, 1955 had brought a remarkable change in society by recognising the right of divorce of womenfolk for the first time. The most important part of this Act is that it reiterated the provision for widow-remarriage mentioned under the Hindu Widows Re-marriage Act, 1856.

Another remarkable act to promote women's legal right is the Dowry Prohibition Act, 1961. It prohibited giving and taking of dowry. But it is very much unfortunate that till date Indian society practice the dowry system and many

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women lose their lives due to dowry death. To give more protection to women in married life, Section 498 A has been inserted in the Indian Penal Code (IPC). Beside this Maternity Benefit Act, 1961 has also been passed to give sufficient benefits to women in employment during the period of maternity. Immoral Traffic (Prevention) Act, 1956 is provided for offences against women relating to indecent representation of women in advertisement, publication, writings etc.

Another interesting dimension of the study is its focus on the legal status of Muslim women. Under the Muslim Women (Protection of Rights on Divorce) Act, 1986 a Muslim divorcee is entitled to claim maintenance only for Iddat period, i.e., three months after pronouncement of talaque. A divorced Muslim woman can claim Mahar or other properties given to her in time of marriage. Under Muslim law, wives and daughters are also entitled to get share of husbands’ as well as fathers’ property.

It is found that till the early years of 20\textsuperscript{th} century, Hindu females had no place in the law of inheritance, succession and ownership of property. The Hindu Law of Inheritance (Amendment) Act, 1929, for the first time recognised the inheritance right of female members of family. The Hindu Women’s Right to Property Act, 1937 introduced many changes in the law of succession. The Hindu Succession Act, 1956 recognised the right of a Hindu daughter in the property left by her father and full ownership of a Hindu widow in property left by her husband.

**Human Rights and Women: An Introspection (Samantaray, 2005)\textsuperscript{55}** considers human rights as the most significant right of human beings. Each human being is entitled to this right to get freedom to live a dignified and secured life. Human rights are so valuable and its importance can be understood only when these rights are violated. For effective enforcement of human rights all citizens must be treated as equal i.e., all should get equal protection of law without any discrimination of caste and creed and all should get equal opportunity. To protect human rights the Universal Declaration of Human Rights was adopted by United

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Nations in 1948. Beside this, a number of world conferences on women was held in Mexico, Nairobi, and Beijing and in other places. The Vienna Declaration and Programme of Action (1993) emphasised increased integration of women’s rights into the United Nations Human Rights Chapter. Despite these there are many barriers to equality between man and woman. Factors causing these include gender specific violence against women, social and cultural attitudes etc. In many parts of the world, women live in constant fear and in conditions of deprivations. In conflict situation women are attacked and raped also. They are beaten, assaulted, mutilated and murdered. In such situations there have been many social movements for improving the condition of women. The government has also set up several special institutions under different Acts of Parliament. These institutions are the National Human Rights Commission, National Commission for Women and the State Women Commissions in several states.

In the above discussion it is found that the author has come up with the conditions of women’s rights and at the same time the existence of various governmental machineries to protect the rights of women.

Reproductive Rights: It’s Region Specific Relevance An Analysis with respect to India and the State of Assam (Borgohain, 2002)\(^{56}\) concerns with the reproductive rights of women. Focusing on the relationship between reproduction and population growth the author emphasised that the reproductive rights of women has gone beyond the private sphere to the public and national sphere. Keeping in mind the ascending growth population, containment of it became a primary objective in the national planning of India. And this brings out the women population as the main target group because it is biologically determined that women give birth to child. The author has focused on the reports of International Institute of Population Studies, 1994, in which an Indian woman has a 300 times higher risk of dying in pregnancy and child birth than a woman from a developed nation.

However, the link between population growth and development has been brought under the purview of international level and conferences. In the Cairo Conference of 1994, women’s right as individual reproductive right was recognized and issues relating to reproductive health were placed in the context of human rights as it is seen that in regulating fertility it is the woman who is taken as the target group.

At the national level there are certain essential reproductive health services. These include prevention and management of unwanted pregnancy, service to promote safe motherhood, nutritional services for vulnerable groups etc. But the author found that health and reproductive health of women is in very poor condition in the country and like the national level, the family welfare programs of Assam failed to pick up the notion of women’s autonomy and empowerment that gives them (women) the right to dignified existence as well as the right to decide their own reproductive right.

State of Women in India (Tandon, 1998) focuses on the status of Indian women during different periods. During the Brahmanas period, the need of women for religious and social welfare began to take a clear shape. Women had significant role to play in religious ceremonies. Besides the privileges women enjoyed in the matter of religion, the wife was greatly honored in the family and after marriage she was looked upon as guardian of all the members of the new family. The author also focused on the status of women during the British period. At the beginning of British rule the position of Indian women was at its lowest ebb. Child marriage, sati, purdha etc. were in practice. Feminine literacy was considered as source of moral danger. But the British rule tried to check all these evil practices and put to an end to them by broadening the outlook of Indians to a considerable extent. After that the author also focuses on the role of many great Indian women stating them as modern Indian women. Some of them are Indira Gandhi, Sarojini Naidu and others. Modern Indian women secured juridical equality, entered professions and occupied positions of power. This reflects that the modern Indian women enjoyed a very high status.

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Further, status of women in Islam has also been examined with a focus on Section 125 of the Code of Criminal Procedure. In Islam women are not prevented from enjoying the fruits of life. Islam gives full rights of equality to widows and prescribes some obligations some of which are religious while others are social. Widows have the right to remarriage and inheritance. They not only inherit the property of their parents but also the husbands. The author then highlighted education as a fact to promote the status of Indian women. During 1931-32, 1941-42 and 1946-47 there were considerable growth in the overall increase of women’s education in India which helped to restructure the society by removing various social evils.

Rites and ceremonies associated with marriage differ from society to society. In this study the author explained different rituals of Islam which take place before and after the marriage. Not only this, the concept of divorce is also focused. Divorce is often caused by factors like, dowry. The author has discussed both the Hindu and Muslim women’s legal status in case of divorce. Women’s employment is another area which is widened to some extent by the structural adjustment policy. There exist diverse employment opportunities in non-farm sectors. Thus, women have the opportunity to be working women. The study provides a clear indication of the socio-economic, religious and legal status of Indian women.

All the studies focus on the problem of violence against women. Each of these studies has portrayed a clear picture of gender based violence against women. The nature of violence against women is varied. Few studies have related it to the issues of rights of women as human rights. Against the background of these studies the present study tries to study the nature and causes of domestic violence committed against the women of Cachar district from the human rights perspective.

Theoretical Framework

Understanding the causes of domestic violence is an important precondition for the development of more effective responses to such violence. Violence against
women has been the subject of study by women's studies, feminists and gender studies scholars coming from different disciplines viz., psychology, sociology, and social work etc. Some theories related to violence against women are highlighted in the following paragraphs.

The first theory was developed in the United States which held that men who battered women were mentally ill and that women who remained in violent relationships were also mentally ill. But psychological tests of batters and the battered proved the theory wrong as they were found mentally “normal” in spite remaining under violent relationships.\(^{58}\)

**Social Learning theory:** Albert Bandura, among others, is considered the leading proponent of Social Learning theory. The theory believes that violence is learned during the socialisation process within the family. It maintains that if one observes violent behaviour without any negative consequences, e.g., victim submits to the violence then the particular behavior will likely to continue from generation to generation. Thus the theory emphasised on three factors such as, observation, imitating, and reinforcements.\(^{59}\)

**Exchange theory:** Exchange theory developed by sociologist George Homans is based on costs and benefits. As in any exchange relationship, in any intimate relationship each partners continue to provide each other with services or benefits such as, affection, money, love, sex as long as the partner reciprocates with appreciation, praise, love. In order to get what he wants from the other partner over time one partner may use force and in this if he suffers no legal or other negative consequences then the violent partner perceives violence as a beneficial and effective tactic to get whatever he desires from his partner. According to this theory, rewards and punishments by others can shape behaviour. Battered women may attempt to avoid punishment (violence) by complying with the desire of their

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partners. Moreover, kindness shown by the abusive partner also reinforces the behaviour of the abused in the hope of getting reward.  

**Theory of Learned Helplessness:** This theory was advanced by Lenore Walker, Ball and Wyman. The Learned Helplessness theory offers rationale for women's staying in an abusive relationship. According to Walker, some women stay in abusive relationships due to extreme fear and belief that escape is not possible because the community and their family may ostracise them if they leave; hence there remains no choice but to stay with the abusive partner. With time this develops as cycle of violence leading to the feeling of loss of hope and inability to manage the situation. Thus women learn to behave helplessly even when they are given opportunity to avoid unpleasant or harmful circumstances to which they have been subjected and this causes them to tolerate their husband's battering. 

**Theory of Loss of Control:** This theory is about the situation when anyone, for example, man loses his control out of anger. Certain people are only targeted carefully with batterer's violence at certain times and places. Moreover, abusers like to follow their own internal rules and regulations about their abusive behaviors; choose their own tactics (some destroy property, some rely on threats of abuse, and some threaten children) and often choose to abuse their partners only in private or may take steps to ensure that they do not leave visible evidence of the abuse. For example, the abusers do not target their bosses or police officers even if they are much angry or 'out of control'. Such behaviour reflects that the abusers are actually in control of their abusive behaviors. 

**Feminist theory:** There are different ideas within the feminist theory. Feminist theory provides useful insights into the issue of domestic violence. It considers patriarchy as the root cause of domestic violence whereby males do whatever is

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needed to exercise control over women and keep them subservient. [e.g. Dobash and Dobash (1979), Martin (1976), Yllo and Strauss (1990)].

M. Bograd in “Feminist Perspectives on Wife Abuse” has identified four common strains. These include:

1. That as the dominant class, men have differential access to material and symbolic resources and women are devalued as secondary and inferior;

2. Intimate partner abuse is a predictable and common dimension of normal family life;

3. Women's experiences are often defined as inferior because male domination influences all aspects of life; and

4. The feminist perspective is dedicated to advocacy for women.

Patriarchy theory: The central argument of Patriarchy theory (developed by Dobash and Dobash) is that patriarchal (male dominated) social order leads to the subordination and oppression of women and results in systematic violence against wives. Patriarchy is a social system in which economic and social processes operate directly and indirectly to support a male dominated social order and family structure. In such situations women become dependent on males who occupy all the centre of powers. This results in unequal distribution of power relationship in family. Thus, the Patriarchy theory finds the source of family violence in society as the outcome of male dominance and female subordination.

Social Situation/Stress and Coping theory: According to this theory, abuse and violence occur due to two main factors. The first is structural stress (e.g., low income, illness, unfulfilled expectations etc.) and the lack of coping resources

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(resource like, finance) in a family. In a family violence may occur due to the inadequate financial resources that fail to fulfill the expectations. The second factor is the cultural norms. In many societies violence is rooted in the cultures where violence is practiced through socially accepted values or norms.66

General Systems theory: Another theory developed and applied by Murray Straus (1973) and Jean Giles-Sims (1983) to explain family violence is known as General Systems theory. In this theory violence is seen as a system product and not the result of individual pathology. The levels of violence in families can be maintained, escalated or reduced by family system operations. The processes that characterise the use of violence in family interactions are described by this theory and it also explains the way in which violence is managed and stabilised. Straus (1973) argues that a General Systems theory of family violence must include at least three basic elements. These are as follows.67

1. Alternative courses of action or causal flow,
2. The feedback mechanisms that enable the system to make adjustments, and
3. System goals.

Marital Power theory: It is assumed that power falls into three realms – power bases, power processes and power outcomes. Assets and resources that provide the bases for one partner's domination over another are included in power bases. Interactional techniques such as, negotiation, assertiveness and problem-solving used by individual to gain control are contained in power processes. Power outcome refers to those who actually make the decision. According to Marital Power theory, partner who lacks power (both in case of decision making and in contributing resources in the family) is vulnerable and physical violence is more likely to occur in marriages where there is unequal distribution of power between the partners.68

66 Ibid.
67 Ibid.
68 Erin Lemkey, "Domestic Violence: Theories of Causation".
Cycle theory: The Cycle theory of domestic violence was developed by feminist Lenore Walker, in 1979. The theory provides an understanding of why domestic and family violence against women occur in a cyclical manner. The cycle of violence goes through a number of stages. These are given below.

The build-up phase: This is the phase which may begin with normal relationship between the people but there increases tension between them during arguments about money, work, children and daily activities. Thus, the increasing tensions are marked by verbal, emotional or financial abuse in the relationship. In nonviolent relationships these tensions may be normalised or resolved between the people.

The stand over phase: This phase is marked by extreme violence by the person who uses violence in relationships and that creates an extremely frightening situation for people who are affected by domestic and family violence. Violence becomes so extreme that release of tension is inevitable but the affected persons fear that anything they do will cause the situation to deteriorate further.

Explosion: This stage has been marked by the peak of violence used by the person to control and exercise power over others in the relationship. In this phase, the person who commits domestic and family violence experiences a release of tension. They may be unable to deal with their anger any other way and they may become addictive.

The remorse phase: During this phase, the person who uses domestic and family violence in their relationship retreats for their behaviour and become withdrawn from the relationship. They try to justify their behaviour to themselves and to others; unaware they are actually addicted to the release they have just experienced.

The pursuit phase: At this stage the person who uses domestic and family violence in relationships may go through a dramatic personality change. They

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70 Ibid.
71 Ibid.
72 Ibid.
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promise to the affected person, never to be violent again and try to make up for their past behaviour. They make other factors such as, work stress, drugs or alcohol etc. responsible for their violent behaviour. The violent offender may purchase gifts and give the person affected attention. And the person affected by the violence will feel hurt, but possibly relieved that the violence is over.\textsuperscript{73}

The honeymoon phase: In this stage both people do not want the relationship to end and they are happy to ignore the possibility that the violence could occur again. The affected people and the batterers often minimise the seriousness of the injuries and the intensity of the abusive behaviour. But after some time, this stage will fade and the cycle may begin again. According to Walker, with time the cycle of violence often becomes tighter and tighter. Thus, the theory held that abusive behaviour is continued with intermittent violent.\textsuperscript{74}

\begin{center}
\begin{tikzpicture}
\node (A) at (0,0) {Build-up Phase};
\node (B) at (2,0) {Stand-over Phase};
\node (C) at (0,2) {Honeymoon Phase};
\node (D) at (2,2) {Explosion};
\node (E) at (0,-2) {Pursuit Phase};
\node (F) at (2,-2) {Remorse Phase};
\draw[-latex] (A) to (B);
\draw[-latex] (B) to (C);
\draw[-latex] (C) to (D);
\draw[-latex] (D) to (E);
\draw[-latex] (E) to (F);
\draw[-latex] (F) to (A);
\end{tikzpicture}
\end{center}

Traumatic Bonding theory: This theory tries to explain why women stay in abusive relationship. According to the theory, strong emotional ties linked with intermittent abuse keep women staying in abusive relationships. In addition, positive displays of love and affection to the victim needed due to physical assault

\textsuperscript{73} Ibid.
\textsuperscript{74} Ibid.
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as the perpetrator’s remorse reinforces her (victim) emotional bond to him. And the victim often sees the world from the abuser’s perspective. \(^75\)

**Psychological Entrapment theory:** This theory proposes that the woman is unable to leave a relationship marked by domestic violence as she has already made too much emotional, social, or financial investment to it. Thus the theory examines the causes for the commitment for relationships on part of women. \(^76\)

**Coercion theory:** Use of physical force or its threat against wives in family is crucial to the maintenance of family structure. It is an important means to maintain control in family. According to Walker, the structure of family would destroy if force does not exist. \(^77\)

**Traditional Socialisation theory:** According to this theory, violence against wives is the outcome of socialisation process. Women are dominated by traditional ‘sex role ideology’. They believe that men have the right to beat them if they are fault. Women also believe that they have no right to protest against their violent husbands and the situation is inescapable too. Thus women accept family violence because they have been taught this through the process of socialisation and family often performs this role as an agent. \(^78\)

**The Balance of Power theory:** This theory is used by Straus, Gelles and Steinmetz. The Balance of Power theory is based on marital relationship and marital interaction. The wife who has inferior status and is not a part of decision making in the family is more prone to family violence than those who are associated with egalitarian decision making. \(^79\)

**Psycho-analytical theory:** This theory focuses upon stress, anxiety, anger and guilt instilled during child rearing. They frequently depict the abused women as masochistic or exhibiting ‘learned helplessness’. Men, who batter, from this perspective, are fearful and hateful towards women because of the child rearing

\(^75\) Erin Lemkey, “Domestic Violence: Theories of Causation”.
\(^76\) Continuing Psychology Education “Domestic Violence”.
\(^77\) Ahuja, Violence, 48.
\(^78\) Maya Mazumdar, Protecting Our Women, Victimised Women: Repression and Social Response (New Delhi: Dominant Publishers and Distributors, 2001), 112.
\(^79\) Ibid., 113-114.
they have received. Men develop hypermasculinity to overcompensate for their emotional insecurities.\textsuperscript{80}

**The Status Inferiority theory:** This theory holds that in any relationship if the wife exceeds her husband by holding prestigious position, income, intelligence, knowledge etc. then the husband hits her to prove his superiority. Husbands are unable to accept their inferior status which makes them violent. This is the outburst of their frustration. However, in Inferiority theory, this situation (violent behaviour of husbands due to inferiority complex) does not determine the entire relationship. Traditional socialisation process makes women to accept her husband’s dominance irrespective of his income and level of education.\textsuperscript{81}

**Theories on Dowry Death issue:**\textsuperscript{82}

Psychological Disorders: The Intra-Individual Level of Analysis

This theory maintains that those who (husbands and in-laws) cause a woman’s death on the issue of dowry are psychologically deranged or ill.

Social Learning and Stress or Family Determinism

According to this theory the mothers-in-law who were themselves humiliated and tortured either by their parents or by their mothers-in-law develop a personality disorder which disposes them to a life pattern of violence and aggression.

All these theories have evolved over time which has their own significance in understanding violence against women. Each of these theories has highlighted different factors which may trigger violence against women. However, in real life situations the intensity of the factors as causing violence may vary depending on the familial, social, cultural and economic background.

\textsuperscript{82} Ahuja, *Violence*, 140-141.
Conceptual Framework

Human rights:

Human rights connote those basic rights of people in society which can be claimed and gained by virtue of human being only. Being necessary conditions for the full development of humanity human rights are indicators for measuring individual’s standing in society. Human rights ensures people a dignified life with personality; the social, economic, political, civil, cultural and other rights of his or her are neither violated nor discriminated on the ground of caste, class, sex, religion, age or any other factors. The concept has achieved both moral and legal recognition.\(^3\)

Domestic violence:

Following the definition provided by the Protection of Women from Domestic Violence Act, 2005 domestic violence for the purpose of present study is understood as any act, omission or commission or conduct of the respondent in case it -

(a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or

(b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or

(c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or

(d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person.

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According to this Act, "aggrieved person" means any woman who is, or has been, in a domestic relationship with the any adult male person who is, or has been, in a domestic relationship with the aggrieved person. The aggrieved person may seek any relief under this Act if she has been subjected to any act of domestic violence. The Act further states that an aggrieved wife or female living in a relationship in the nature of a marriage may also file a complaint against a relative of the husband or the male partner.

Hypothesis

1. There is positive relationship between education, socialisation and domestic violence against women.

2. There is positive relationship between economic dependence of women and domestic violence against them.

Significance of the Study

A study of the condition of women in Indian society shows that there has been constant violation of women’s rights. Among the various issues of violence against women, domestic violence is one serious category that indicates the grave violation of women’s basic human rights. Despite the existence of legal and constitutional protections for women, the problem of domestic violence against women in Indian society is on continuous rise. Domestic violence has adverse effect on our society and children. The rise in cases of domestic violence has become a matter of great social concern. This kind of violence is closely related to the issue of human rights of women as well. Hence, the present study is significant as it tries to find out not only the nature and causes of domestic violence against women in Cachar district but also attempts to suggest some remedial measures.

\footnote{Ibid.}
Scope of the Study

The issue of domestic violence is itself very wide in scope. It not only includes the issues of violence against married women but also includes all the issues of violence, be it mental or physical, against females within the household. Keeping in mind the objectives, the study examines the nature of domestic violence against married women and the different mechanisms designed to protect women. It also studies the attitude of the judiciary and voluntary organisation to cases of domestic violence. The study area is Cachar district of Assam. It focuses on the period starting from 2001 to 2010.

Methodology

The information for the study have been collected both from primary and secondary sources. Secondary data have been collected by consulting books, articles, journals, news papers from Central Library of Assam University (A Central University); Northeast Hill University (A Central University); Indian Council for Social Science Research, New Delhi; National Human Rights Commission, New Delhi; National Commission for Women (NCW), New Delhi; Indian Council for Historical Research Centre and North East Network, Guwahati, Assam. Extensive use of internet materials including e-journal available at Central Library of Assam University has also been made.

In order to collect primary data, cases have been collected from the Chief Judicial Magistrate Court, Cachar; the Court of the District and Sessions Judge, Cachar; Family Court, Cachar; and the District Level Committee for Crime Involving Women (DLCCIW), Cachar. For an in depth study of the nature of domestic violence against women of Cachar district, cases for a period of 10 years (since 2001 to 2010) have been studied. However, it covers the period from 2001 to 2005 for cases filed and disposed in the Court of Chief Judicial Magistrate, Cachar and District and Sessions Judge Court, Cachar; from 2006 to 2010 for the cases dealt and disposed by the Family Court and since 2001 to 2010 for cases available at the District Level Committee for Crime Involving Women (DLCCIW). The reason behind such division is that in Cachar district the Family
Court was established in the year 2006. Under such circumstances cases in Family Court are available since 2006 to till date. But as the study period is up to 2010 so the given cases are restricted to the year 2010. It was decided to take only cases of 5 years (since 2001 to 2005) from the Chief Judicial Magistrate Court and District and Sessions Judge Court as it was found that after the establishment of the Family Court in the district (in the year 2006) the cases relating to family dispute are generally referred to the Family court. In case of DLCCIW cases have been collected for the whole period i.e., 2001 to 2010 as it is an important voluntary social organisation of the district that is rendering counseling and legal aid to its petitioners. Thus, a total number of 83 cases have been provided to the researcher by the above mentioned institutions; these have been studied to find out the nature and causes of domestic violence against women; and also the nature of verdict. Apart from it, a total number of 100 respondents, victims of domestic violence, have been selected for interview. Case filing registers of Family Court, Cachar, has been taken as the basis for selection of respondents. 5 per cent of the women who have cases in the Family Court, Cachar have been selected as respondents on the basis of simple random sampling using Lottery method for the purpose of administering schedule. Thus, out of a total of 1995 registered cases (since 2006 to 2010) a total number of 100 respondents were identified and selected for interview in order to understand different dimensions of the problem such as, the nature and causes of domestic violence against women; the support mechanisms that the victims approach and awareness of the victims about various legal/redressal mechanisms. For this purpose, both questionnaire and schedule comprising closed and open ended questions have been used as tools. Further, observation as a technique of data collection has also been followed. Analysis of data has been done on the basis of tabulation of the answer, field observation and records.

Limitation of the Study

In order to understand the nature of domestic violence one important source of primary data has been the records kept in Chief Judicial Magistrate Court, Cachar; the Court of the District and Sessions Judge, Cachar; Family Court, Cachar and
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the District Level Committee for Crime Involving Women (DLCCIW), Cachar. However, it is to be mentioned that these data are not maintained in proper order and also these are not made available to researchers very easily mainly due to their lack of time to locate old records. Hence, the present researcher was constrained to collect not more than 83 cases out of the existing records. Notwithstanding this, an analysis of the cases presented in the study clearly enables us to understand the nature of domestic violence against women in the district of Cachar.

Chapterisation

Chapter I : Introduction

Chapter II : Women’s Rights as Human Rights: International and National Instruments

Chapter III : Socio-Economic Profile of the Study Area and Respondents

Chapter IV : Women and Domestic Violence in Cachar District: A Study of Cases

Chapter V : Analysis of Data and Interpretation

Chapter VI : Conclusion (Major Findings and Recommendations)

The foregoing discussion provides an understanding of the concept of domestic violence and its impact on women in India. Domestic violence against women negates the human rights of women. Family, is an important institution of society where women play a major role but unfortunately it is here that women are most vulnerable to violence.

The struggle for the recognition of rights of women has been a long one waged both at the levels of international and national forums. In the next chapter (Chapter II) we shall focus on the development of women’s rights since post war period in international arena and the legal status of women in India.