He gave me flowers

“I got flowers today. It wasn’t my birthday or any other special day.

We had our first argument last night and

He said a lot of cruel things that really hurt me.

I know that he is sorry and didn’t mean to say the things he said because he sent me flowers today.

I got flowers today. It wasn’t our anniversary or any other special day.

Last night he threw me into a wall and then started to choke me.

It seemed like a nightmare but

You wake up from nightmares to find that they aren’t real.

I woke up this morning sore and bruised all over.

I know he must be sorry - because he sent me flowers today.

I got flowers today. And it wasn’t Valentine’s Day or any other special day.

Last night he beat me and threatened to kill me.

Makeup and long sleeves didn’t hide the cuts and bruises this time.

I couldn’t go to work because I didn’t want anyone to know

But I know he is sorry - because he sent me flowers today

I got flowers today and it wasn’t Mother’s Day or any other special day.

Last night he beat me again and it was much worse than all the other times.

If I leave him what will I do? How will I take care of the kids?

What about money?
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I’m afraid of him and too scared to leave him!
But he must be sorry - because he sent me flowers today.
I got flowers today. Today was a very special day.
It was the day of my funeral.
Last night he finally killed me.
I was beaten to death.
If only I would have gathered enough courage and strength
to leave him.
So I got flowers today- for the very last time”.

“Violence at home” - a shocking paradox as “home” is a place where one should be the safest in the midst of one’s family. Unfortunately, however, women and children are subjected to violent behaviour within their homes by those very people with whom they have a close relationship and whom they trust the most.

Every marriage ordinarily involves migration of a female from her parental home to the post-marital home. A girl is born and brought up in her family of orientation but when she gets married she has to leave her parental home (family of orientation) and ‘belong’ to a new family which is going to be ‘her’ family of procreation. When a plant is moved from the place of origin to a newer one, great care is needed to ensure whether the soil, temperature, weather is suitable for the plant as too much variation is not conducive for its growth. Likewise when a newly married woman migrates to a new family, greater care is expected than in the case of the plant. The girl forms her own impressions, attitude, develops her own personality and gets used to a way of life in her parental home. When she arrives in her new home she has to adapt and adjust but this process of adaption cannot be one sided. Give and take, live and let her live, are the ways of life and when the bride is received in the in-laws’

family; she must be welcomed with love and affection, elegance and large-heartedness, warmth and kindness. She has to get used to a new set of relationships, with her husband and all the members of the in-laws family. In her new home, she places faith on her husband who she believes will protect and support her in odd times and stand by her side through thick and thin. The process has to be natural and there has to be exhibition of co-operation and willingness from both sides, failing which the re-rooting will not succeed\(^2\). However, this does not at all times happen and brides are harassed, beaten up and murdered, or are forced to commit suicide by their husbands and in-laws.

Domestic violence is a sort of aggression perpetrated by a loved one or a family member against another. It includes forms of behaviour involving physical, sexual, economic and emotional abuse, by an intimate partner usually for the purpose of building and maintaining power and control over the other\(^3\). It is a universal issue, reaching across state boundaries as well as socio-economic, cultural, racial and class distribution. It is a widespread and deeply rooted evil, which has serious repercussions on a woman’s health and her well being\(^4\). It can be described as power and control misused in a relationship. Even though, it is generally perpetrated by and on both men and women\(^5\), such violence is sometimes found in same sex partnership as well. However, it is equally true that a major share of the devastating burden of partner

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violence is borne by women and inflicted by men given the fact that women are often dependent on those who victimize them\(^6\).

Around the world at least one woman in every three has been crushed, coerced into sex, or otherwise abused in her lifespan. Most often the perpetrator is a member of her own family. One woman in four has been abused during pregnancy. Increasingly, gender-based violence is recognized as a public health concern and a violation of human rights, yet millions of women need medical attention or otherwise endure the impact of gender based violence\(^7\). General Koop declared interpersonal violence a public health emergency, stating that domestic violence causes more injuries to women than automobile accidents, mugging and rapes combined\(^8\).

Domestic violence is the most common and widespread form of violence in women’s and girls’ lives around the globe. Women constitute about half of the total population, but they are placed at various disadvantageous positions due to gender differences and bias. They have been victims of violence and exploitation by the male dominated society all over the world\(^9\). Even though most societies disallow violence against women, but the actual situation is different as violations against women’s human rights are often approved under the clutches of cultural practices and norms, or through the misinterpretation of religious teachings\(^10\). For women, violence is a phenomenon that starts at conception of female child and carries on through their entire life span. The dissimilarity in treatment between men and women by the state is

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totally outlawed by the Constitution of India, but this idea of equality of states is only a myth as life is stalked for them by various kinds of violence within their homes\textsuperscript{11}. In a paternal society woman is treated no better than a slave: they are deprived of the means of production and are restricted to the four walls of the home and treated as a commodity. Their fate is tied with the fate of her husband, in-laws etc. and she is not independent on her own. She faces all sorts of injustice, torture and violence\textsuperscript{12}.

Historically, domestic violence was perpetrated in domestic privacy, which was not spoken about and it remains away from the public domain. Domestic violence remained ‘behind doors’, and had been talked about by the neighbours in gossips and merely whispered. Minimum or negligible support was accessible to those who experienced abuse as the general public separated them and their problems. Perpetrators often perceived the legal system and law enforcement agencies overlook their behaviour as long as it remained a private issue and a third party were not involved. However, four or five decades back the feminist movement demonstrated a positive stance towards domestic violence. Perhaps as a result of these organizations educating and informing the general public about partner abuse, although with a gender bias, a shift occurred from partner abuse being a private issue to one belonging to the public domain\textsuperscript{13}.

\textsuperscript{11} Supra 9.
1.1 CONCEPT OF DOMESTIC VIOLENCE

1.1.1 Definition of Violence

Violence can never be one thing. It is defined in many ways and takes many forms. The term ‘Violence’ may be used for more extreme forms of aggressive behaviour that are likely to cause significant injuries to the victim. In general violence is a coercive mechanism to impose one’s will over another in order to feel or prove a sense of power.

It is important here to clear the concepts of ‘violence’ against women. The term violence has been described by Gells (1979) as, “an act of striking a person with the intent of causing harm or injury but not actually causing it”. Domenac (1981) has described it as, “an act of a person which encroaches upon the freedom of another”\(^{14}\).

According to Encyclopedia of Crime and Justice\(^{15}\), “in a broad sense, ‘violence is a general term referring to all types of behaviour either threatened or actual, that result in the damage or destruction of property or the injury or death of an individual’”.

According to Black’s Dictionary of Law\(^{16}\), “violence means the unjust or unwarranted use of force usually accompanied by fury, vehemence, or outrage, physical force unlawfully exercised with intent to harm”.

1.1.2 Definition of Violence Against Women:

The United Nations General Assembly, that adopted The Declaration on the Elimination of Violence against Women\(^{17}\) in 1993, defined violence against women as “any act of gender-based violence that results in, or is likely to result in, physical,


sexual or psychological harm or suffering to a woman, including threats of such acts, coercion or arbitrary deprivations of liberty, whether occurring in public or private life”. Article 2\(^{18}\) of this declaration states that violence against women should be understood to encompass, but is not limited to, the following:

1. “Physical, sexual, and psychological violence occurring in the family.

2. Physical, sexual, and psychological violence occurring within the general community, including sexual harassment, trafficking in women, and forced prostitution.

3. Physical, sexual, and psychological violence perpetrated or condoned by the state, wherever it occurs”.

The Scottish Government’s\(^{19}\) defined Violence against Women “as actions which harm or cause suffering or indignity to women and children, where those carrying out the actions are mainly men and where women and children are predominantly the victims. The different forms of coercion and constraints- are interlinked. They have their roots in gender inequality and are therefore understood as gender-based violence”.

The Council of Europe\(^{20}\) states that ‘Violence against Women' is understood as a violation of human rights and a form of discrimination against women and shall mean all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life”.

\(^{18}\) Ibid.


1.1.3 Definition of Domestic Violence

Domestic violence has many names, including “intimate partner violence”, additional terms that are or have been used include “spouse abuse”, “domestic abuse”, “domestic assault”, “battering”, “partner abuse”, “marital strife”, “marital dispute”, “life beating”, “marital discord”, “women abuse”, “dysfunctional relationship”, “intimate fighting”, “mate beating”, “wife battering” and so on. Domestic violence means “an action or physical force which is being used within the area or territory of house to intend to hurt or cause damage to any particular subject in the domestic household”. The U.S office on Violence against Women defines domestic violence as a “pattern of abusive behaviour in any relationship that is used by one partner to gain or maintain power & control over another intimate partner”. The Convention on preventing and combating violence against women and domestic violence states that: "domestic violence shall mean all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim”.

According to Black’s Dictionary of Law, “Domestic violence means violence among members of a household, usually spouses, an assault or other violent act committed by one member of a household against another”.

The Protection of Women from Domestic Violence (PWDV) Act, 2005 defines “domestic violence” as any act, omission or commission or conduct of the perpetrator of violence who:

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24 Supra 16
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”.

1.2 FORMS OF DOMESTIC VIOLENCE

Domestic violence can occur in many forms. Forms of domestic violence can include physical abuse, sexual abuse, verbal and emotional abuse and economic abuse.

1.2.1 Physical Abuse

Physical abuse can be defined as beating someone by slapping, kicking, hitting or punching, throwing things, burning an individual, pushing, choking, locking someone out of their home spanking, whipping, biting, which may result in bruises, fractures, and swellings.

Physical abuse in a relationship has been defined as experiencing any act of physical aggression, including minor acts such as slaps and severe acts such as assaults with a deadly weapon. Threats of physical abuse may be measured in studies of physical abuse, although some have argued that threats of violence are distinct from actual acts in important ways and should be considered a distinct type of
abuse. In Domestic Violence Act, 2005 “Physical abuse” means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force.

1.2.2 Sexual Abuse:

Sexual abuse is forcing an individual to have sex, to participate in sexual acts that they find uncomfortable or violent, to have sex with other people, or watch others having sex, and/or criticizing the individual’s performance, participating in any sexual activity that makes an individual feel violated or belittled, or does not take into consideration her needs for reproductive and disease protection. In Domestic Violence Act, 2005 sexual abuse includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of a woman. Abraham (1999) proposes a more complete definition of sexual abuse that it includes sexual assault, sex without consent, rape, sexual control of reproductive rights, and all forms of sexual exploitation carried out by the abuser with the intention to cause sexual, emotional, and physical degradation to another person.

1.2.3 Verbal and Emotional Abuse

Emotional/Verbal/Psychological abuse is the use of language, threats, name-calling and abuse to disgrace the victim. Such abuse may destroy self-respect, undermine confidence and challenge impressions of reality. Threats to children’s well being as well as harm to belongings are also used by abusers to inflict psychological

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27 Supra 25.
29 Supra, 25.
and emotional abuse\textsuperscript{31}. In Domestic Violence Act, 2005\textsuperscript{32} verbal and emotional abuse includes- “(a) insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and (b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested. Additionally, abusers who use emotional or psychological abuse often throw in threats of physical violence”.

1.2.4 Economic Abuse

Economic abuse means controlling and withholding of rights to use to family property, including money and the purchase and possession of goods and property. In Domestic Violence Act, 2005\textsuperscript{33} economic abuse includes-

a) “deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance;

b) Disposal of household effects, any alienation of assets, whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and


\textsuperscript{32} Supra 25.

\textsuperscript{33} Supra 25.
Prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household”.

1.3 CAUSES/DETERMINANTS OF DOMESTIC VIOLENCE

1.3.1 Male Dominated Society

Indian society is a male dominated society. Man occupies a higher place as compared to a woman. As a male dominated society, India reflects a dominance of men over women in all spheres of life. A woman is never an entity in her own right, she is “first the daughter, next the wife, and last the mother of a man” and in her life cycle a woman depends on them. As well, women are dominated and oppressed in every sector by the male members. Discrimination against girls starts the moment a child is born and continues through the process of differential socialization throughout her life. Sex role distinctions are evident in terms of occupation and education. It makes every woman convinced about her subordinate status. Due to such reliance, the male members believe that they always direct women.

1.3.2 Illiteracy

This is not directly a cause of domestic violence, but it is a contributing factor by means of a lack of knowledge, economic reliance of illiterate women on their male partners.

1.3.3 Poverty

Low income is one of the reasons for which domestic violence is more widespread among families with low income than rich one, but it cannot be considered that in rich families, domestic violence does not occur. Severe poverty and
its associated stresses increase the risk for domestic violence—the lower the household income, the higher the reported domestic violence rates\textsuperscript{34}.

1.3.4 Economic Inequality

Economic inequality among men and women is a contributory factor towards domestic violence. In our society, the majority of women being economically inactive are dependent upon their husbands for financial support. The economic dependence placed them at the whim of their husbands who might or might not look after their economic need in case of marital conflicts.

1.3.5 Religion

Religion is seen as a major agent in oppression of women as well as the source of inequality. Nearly all the religions in the world advocate the principle of division of labour between the sexes. Religion, as experts see it, has restricted rather than expanded the rights of women\textsuperscript{35}. Religion is seen as the major agent in the religious teachings and can oftentimes discourage a woman from seeking safety and shelter because it would be wrong or “sinful” to break up a marriage. Women are being considered inferior to men not only in the modern contemporary world but from the ancient world. Sometimes, religious teachings or scriptures are misinterpreted, distorted, and misused by batterers or religious leaders to suggest that domestic violence is acceptable or even God’s will. Verse from Rig-Veda, one of the most important scripture of Hindus says that: “With women there can be no lasting friendship; hearts of hyenas are heart of women.” Also prescribed by Manu that:


\textsuperscript{35} Sood, P. et. al. (2005) Domestic violence-A Socio-Legal Problem. Civil and Military Law Journal. 41 (Jan-March April, June No.1+2)
“A wife, who has committed faults, may be beaten with rope or a split bamboo.”

It has also been stated in the Puranas that:

“A king should never trust the ladies....”

Thus, according to above statement it can be said that it is from ancient time that women may be subjected to the offence of domestic violence.

1.3.6 Extra Marital Affairs

Extramarital affair is thus described as the emotional adultery that culminates in physical sex or a long term love affairs. It is an unlawful relationship, engaged in by a spouse outside his/her marriage. It affects every member of the family either the one cheated or who cheats and also the children. Man’s extravagant spending for his outside lover may prevent him from taking care of his family. A man involving in extra marital affairs will not have much time for his partner and children, and husband abuses his wife and a child physically, psychologically, financially neglects his family for having relationships with other women.

1.3.7 Drug abuse & Alcoholism

Alcohol abuse and drinking have been consistently associated with incidents of partner violence. Individuals learn violence by observing others who drink and become violent. This violence behaviour is excused, justified because the individual was drunk and therefore not accountable for his actions. A widespread myth about domestic violence is that alcohol and drugs are the foremost causes of domestic violence. In reality, some perpetrator depends on alcohol and drugs as an excuse for becoming violent. Alcohol allows the perpetrator to justify his violent behaviour as being a result of alcohol and drugs. While a perpetrator’s use of alcohol and drugs

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may have an effect on the severity of the abuse or the easiness with which the perpetrator can justify his actions, an abuser does not become violent “because” drinking causes him to lose control of his temper. Domestic violence is used to exercise power and control over another; it does not represent a loss of control. Graham, (1980) states that larger or any quantity of alcohol consumption, can boost the sense of personal power and domination over others. According to the OPE, intake of alcohol, betting and cock fighting increases bad temper, making it easier for them to lose their patience within the family38.

1.3.8 Incapable of having Children

Children are very important in every society, since they secure the maintenance of the family lineage. A couple’s family will encourage and push them to have children, putting pressure on the relation. Irrespective of the fact whether the physical deficiency to produce a baby may be with the husband, it is the wife who bears the brunt of the curse of being infertile in the society. The woman is often blamed if they are unsuccessful in delivering babies, especially the baby boy and it might be accepted that the husband looks for a second wife so that he can carry on his genes.

1.4 Women Movement

1.4.1 International Women’s Movement

In the late 1960s and early 70s feminists across the western world raised public consciousness of violence against women more generally, and domestic violence specifically. The movement considered domestic violence as a result of women’s repression within a patriarchal society. Through the feminist movements in Western countries, domestic violence became addressed in various ways by both

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governments and self help movements\textsuperscript{39}. The “battered women syndrome” became a central element of the women’s movement in United States in the 70s\textsuperscript{40}. The early feminist responses to domestic violence in both the USA and Britain were focused on self help interventions involving cooperative action and establishing shelters and secure places for women and these services were independent of government. From that time in both countries, campaigners from the feminist movement have increased their influence and control into other areas such as extension of specialist services, involvement in the policy process and domestic violence legislation\textsuperscript{41}. By the late 1970s, emergency shelters, twenty-four-hour hotlines, and a network of volunteer host homes were developed to assist abused women all over the United States, Canada, and Great Britain. The first shelter, Chiswick Women’s Aid, was opened in London in 1972 by Erin Pizzey. Pizzey's efforts to provide emergency shelter for abused women and their children motivated others all over the western world to do the same. By 1977, eighty-nine shelters for battered women had been opened throughout the United States, and during that year, the shelters’ twenty-four hour hotlines received over 110,000 calls from battered women\textsuperscript{42}.

The women’s movement has amazing success. The creation of the Convention on the Elimination of All Forms of Discrimination against Women (“CEDAW”) in 1979\textsuperscript{43}, the CEDAW adoption of General Recommendation 19 addressing violence against women, and the consequent Optional Protocol created the structure of women’s rights and the foundation for the development thereof in international law.


\textsuperscript{41} Supra 39.


\textsuperscript{43} United Nations. (1979), Convention on the Elimination of All Forms of Discrimination against Women.
The incorporation of the human rights of women in the Vienna Declaration and Programme of Action led, inter-alia, to the emergence of female genital cutting/mutilation as an international human rights violation. In 1989 the U.N. issued the report on Violence against Women in the Family. In 1994 the U.N. Declaration on the Elimination of Violence against Women defined “violence against women”. This helped to focus international attention on domestic violence. The Beijing Declaration and Platform for Action and in 1993, the Commission on Human Rights appointed the first Special Rapporteur on Violence against Women to investigate the extent of violence against women throughout the world. The feminist movement increased their influence all over the western world for the implementation of various legislation and safety programmes for the safety of women.

1.4.2 Women’s Movement: The Case of India

The issue of violence against women was highlighted in public for the first time in India in the mid 1970s, through the movement against rape, dowry and related violence. The countrywide movement starts on issues such as dowry, torture of women by their husband and relatives and rape which lead to the formation of the Forum Against Rape and later the Forum Against Oppression of Women (FAOW), following the Supreme Court judgment in the Mathura case in the late 1970s which brought isolated protests across the country together with one voice on the issue of violence against women. The main focus of this campaign against rape was to create awareness and to lobby for a change in the existing laws.

During this period a number of women’s organizations came into existence that took up issues such as rape, bride burning, dowry deaths and sati and focused on

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violence against women. Organisation like Saheli, which was formed in 1981, were formed by women who had been involved with the Left parties and socialist formations and who had experienced marginalisation within those groups which also lacked focus on women’s issues\textsuperscript{46}. Saheli and FAOW are examples of organizations that remained devoted to working without a hierarchical structure through collective action and consciousness rising. The first protest on dowry death and harassment took place in Hyderabad, led by the Progressive Women’s Organization in 1975. In the late 1970s, Delhi became the centre of the women’s movement against dowry and the violence inflicted on women in the matrimonial home. Groups which took up the movement included ‘Mahila Dakshita Samiti’ and ‘Stree Sangharsh’. Later, a joint front called the ‘Dahej Virodhi Chetna Mandal’ was formed under whose umbrella a large number of organizations worked. The mass protest was organised by Stree Sangharsh in response to the case of Tarvinder Kaur. The demonstration went to the region in which Tarvinder Kaur had lived and died, and the movement received wide press coverage. Following more deaths, movements were held in other parts of the country. These organizations said that due to the inferior status of women in our society custom of dowry exists. They conducted corner meeting, door to door campaign and mass mobilization for the general public on dowry and their opinion. Protests were done by these organizations outside the homes of families in which daughters-in-law had died\textsuperscript{47}.

As the movements against these deaths rises, led to legal changes, particularly the enactment of Sections 498A and 304B of the Indian Penal Code in the year 1983 and 1986. Before 1983, there were no explicit provisions pertaining to violence within the home, although husbands could be convicted under the general provisions of

\textsuperscript{46} Ibid.

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murder, abetment to suicide, causing hurt and wrongful confinement. But these general provisions are adequate in cases where a woman is assaulted by a stranger, not in cases where the offence is committed within the privacy of the home by the man on whom she is emotionally and economically dependent\textsuperscript{48}.

Despite the Dowry Prohibition Act, 1961 and Section 498-A these laws could not effectively handle the dowry offences, and the constant increase in the dowry deaths with shocking revelations attracted the attention of the concerned persons. On the recommendation of the Law Commission of India the Parliament in 1986 introduced a new law by the Dowry Prohibition (Amendment) Act, 1986 relating to the offence of dowry death by introducing a new Section 304-B in the IPC. Such dowry death was made punishable with sentence for a period which shall not be less than seven years but which may extend to sentence for life\textsuperscript{49}.

Among several campaigns with regard to women’s rights one was a campaign, in 1985, in support of Muslim woman named Shah Bano, who had formally requested the court for maintenance from her husband under Section 125 of the Criminal Procedure Act and the Supreme Court granted her demand. But the conservative Muslims, however, protested against interference with their personal law. In the year 1986, the government introduced the Muslim Women’s (Protection of Rights in Divorce) Bill denying Muslim women right under Section 125. Women’s organizations protested against this outside Parliament\textsuperscript{50}.

\textsuperscript{49} Ibid.
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Through the enactment of these laws it became easier for a woman to seek legal redress for potential harassment by her husband’s family, and shifted the burden of proof to the accused.

Another important area of campaign in the 1980s was sex-selective foeticide and infanticide. The campaign highlighted violence against women and society’s negative attitude towards the girl child. The main challenge was to protect women’s right to abortion while at the same time argued against sex-selective abortion. The committee for enquiry was set up by the government of Maharashtra in 1987 and the use of Pre Natal Diagnostic Techniques Act came into being in 1988 in the state. Following the Maharashtra Act, joint action groups coordinated a countrywide campaign, And the Pre-conception and Pre-natal Diagnostic Techniques Act was passed in 1994. In the 1990s, the women’s movement took up the issue of sexual harassment. The Vishakha judgment, passed in 1997 by the Supreme Court of India, laid down guidelines to be followed in cases of sexual harassment at the workplace, until a law was put in place. The law, a draft of which - Sexual Harassment of Women at the Workplace Prevention and Redressal - was made public in 2004 by the National Commission of Women, following consultations with women’s groups and organizations.

Till 2005 there was no single inclusive legislation on domestic violence in India. In the year 1983, Section 498-A was inserted in the IPC, and it deals with cruelty by a husband or in-laws with a married woman. From 1999 women’s groups in India have been protesting for the passage of a civil law for the protection of women from domestic violence. The hard work of the women’s movement and non-governmental organization (NGO) named Lawyers Collective, led to the enactment of
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PWDV Act, 2005. The Act is a landmark in terms of recognition by the State that violence against women is a matter of public concern\(^\text{51}\).

1.5 INTERNATIONAL LEGISLATION FOR THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE

International legislations and human rights framework give a number of provisions to safeguard women from any sort of abuses and exploitations within their personal life and beyond it. International legislations and policy on domestic violence has recognized that domestic violence is a human rights violation. International legal mechanisms and policy declarations make clear that states have an obligation under international law to prevent and discipline domestic violence perpetrators. The international law, treaties, conventions and conferences are discussed below:

1.5.1 The Universal Declaration of Human Rights

The Universal Declaration of Human Rights was adopted by the General Assembly of the United Nations in 1948. It states that every person should enjoy human rights without inequity and confirms the equal rights of women and men.

**Article 1**\(^\text{52}\) - Right to equality.

**Article 2**\(^\text{53}\) - Freedom from discrimination without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

**Article 3**\(^\text{54}\) - Everyone has the right to life, liberty and security of person.

**Article 7**\(^\text{55}\) - All are equal before the law and are entitled without any discrimination to equal protection of the law.

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\(^{52}\) Article 1 in United Nations (1948) *The Universal Declaration of Human Rights*.

\(^{53}\) Article 2 in United Nations (1948) *The Universal Declaration of Human Rights*.

\(^{54}\) Article 3 in United Nations (1948) *The Universal Declaration of Human Rights*.

\(^{55}\) Article 7 in United Nations (1948) *The Universal Declaration of Human Rights*.
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In The Universal Declaration of Human rights the problems of inequity and discrimination against women have been recognized, but it is not compulsory or binding on member states, therefore, different conventions were planned to remove the gap. They are The International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, Convention on Elimination of Discrimination against Women. The members of the International Covenant on Human Rights have the responsibility to make sure that there is no discrimination, and equal rights of men and women are ensured to take benefit of all economic, social, cultural, civil and political rights.

1.5.2 International Covenant on Civil and Political Rights (ICCPR)

International Covenant on Civil and Political Rights, adopted by the General Assembly of the United Nations on 19 December 1966, and enforced from 23rd March 1976, has the following provisions that are important in the perspective of domestic violence.

Article 3\textsuperscript{56} - The equal right of men and women to the enjoyment of all civil and political rights present in the Covenant.

Article 6.1\textsuperscript{57} - The right to life.

Article 7\textsuperscript{58} - Freedom from torture.

Article 9.1\textsuperscript{59} - The right to liberty and security of person.

Article 19.1\textsuperscript{60} - The right to expression without interference.

Article 23.4\textsuperscript{61} - The equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution.

\textsuperscript{56} Article 3 in United Nations (1976) *International Convenant on Civil and Political Rights.*

\textsuperscript{57} Article 6.1 in United Nations (1976) *International Convenant on Civil and Political Rights.*

\textsuperscript{58} Article 7 in United Nations (1976) *International Convenant on Civil and Political Rights.*

\textsuperscript{59} Article 9.1 in United Nations (1976) *International Convenant on Civil and Political Rights.*

\textsuperscript{60} Article 19.1 in United Nations (1976) *International Convenant on Civil and Political Rights.*

\textsuperscript{61} Article 23.4 in United Nations (1976) *International Convenant on Civil and Political Rights.*
Article 26\(^{62}\) - Equal before the law without any discrimination and equal protection of the law. Prohibit any discrimination on any ground such as race, colour, sex, language, religion.

1.5.3 The International Covenant on Economic, Social and Cultural Rights (ICESCR)

The International Covenant on Economic, Social and Cultural Rights (ICESCR) was adopted by the United Nations General Assembly on 16 December 1966, and enforced from 3\(^{rd}\) January 1976, and has the following provisions that are important in the perspective of domestic violence.

Article 3\(^{63}\) - The equal right of men and women to the enjoyment of all present in the ICESCR.

Article 6.1\(^{64}\) - The right to work, which comprise the right of everyone to the opportunity to gain his living by work that he freely chooses or accepts, and will take appropriate steps to safeguard this right.

Article 10.1\(^{65}\) - The widest possible protection and assistance should be accorded to the family, care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.

Article 10.2\(^{66}\) - Special protection to mothers for a reasonable period before and after childbirth.

Article 11.1\(^{67}\) - The right of everyone to an adequate standard of living for himself and his family.

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Article 11.2\textsuperscript{68} - right of everyone to be free from hunger.

Article 12.1\textsuperscript{69} - The right to physical and mental health.

Article 15.1 (a)\textsuperscript{70} - Right to cultural freedom.

India is a member of both International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights and is therefore bound to respect and implement the standards set by the same.

1.5.4 The Convention on the Elimination of All Forms of Discrimination Against Women

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) adopted on 18 December 1979 by the United Nations General Assembly is one of the most important women's human rights conventions. By opting its membership and dedication to eradicate all forms of inequity and discrimination against women, the Government of India recognized and became duty bound to address domestic violence through legal and other procedures. Responsibilities of the members are as follows:

Article 1\textsuperscript{71} of the convention defines discrimination against women “as any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”


\textsuperscript{70} Article 15.1 (a) in United Nations (1976) *International Covenant on Economic, Social and Cultural Rights.*

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Article 2\textsuperscript{72} - To eliminate discrimination against women and embody the principle of equality.

Article 5\textsuperscript{73} - Acknowledge the role of culture and tradition, and calls for the elimination of sex role stereotyping.

Article 11\textsuperscript{74} - Eradication of discrimination in the field of employment and recognizes the right to work as a human right.

Article 12\textsuperscript{75} - To eliminate discrimination from the field of health care, including access to family planning. If essential, these services should be free of charge.

Article 15.1\textsuperscript{76} - Women equality with men before law.

Article 16\textsuperscript{77} - Measures to eradicate discrimination against women in all matters relating to marriage and family relations.

Even though the CEDAW, did not clearly mentioned the issue of violence against women, subsequent developments in international law and in interpreting CEDAW have recognized violence as a violation of human rights. Domestic violence grew more important as a matter of international concern in the mid-1980s. In 1989, a report on Violence against Women in the Family was released by the U.N. and report


reveals that domestic violence is not random, although it is “linked with the inequity, subordination and discrimination between men and women”\textsuperscript{78}.

In 1992, the Committee on the Elimination of Discrimination against Women included violence against women by adopting General Recommendation 19. For the proper implementation of the convention the member states had a compulsion to eradicate all forms of violence against women.

1.5.5 Declaration on the Elimination of Violence against Women

The Declaration on the Elimination of Violence against Women was adopted by the United Nations General Assembly in the year 1993. It is the foremost international tool to deal solely with violence against women. Its essential provisions are as follows:

1. **Article 1**\textsuperscript{79} of declaration defines violence against women as “any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life”.

2. **Article 2 (a)**\textsuperscript{80} – “Violence against women includes physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation”.


3. **Article 4** - “States should condemn violence against women and should not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination”.

4. **Article 4 (c)** - “Exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons”.

1.5.6 **Beijing Declaration and Platform for Action**

The Beijing Platform for Action, adopted at the Fourth World Conference on Women in Beijing, China in 1995. Actions to be taken by the Governments are as follows:

- “Enact and reinforce penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs done to victims”\(^{83}\).
- “Adopt, implement and review legislation to ensure its effectiveness in eliminating violence against women, emphasizing the prevention of violence and the prosecution of offenders; and” \(^{84}\).
- “Take measures to ensure the protection of women subjected to violence, access to just and effective remedies, including compensation and indemnification and healing of victims, and rehabilitation of perpetrators”\(^{85}\).

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84 Ibid.

85 Supra 83.
1.6 DOMESTIC VIOLENCE LEGISLATION IN INDIA

The Constitution of India prohibits inequality and discrimination on grounds of sex in general and in public employment. To deal with this kind of inequality and discrimination, various legislations have been made in India. To uphold the Constitutional mandate, the state has enacted various legislative measures to protect women against domestic violence. The various provisions and laws protecting women from domestic violence are discussed below under the headings of Constitutional Safeguards, provisions under other law and special legislation for women of India.

1.6.1 Constitutional Safeguard

1.6.1.1 The Preamble

The Preamble to the Indian Constitution includes various objectives, including “the equality of status and opportunity” to all citizens.

1.6.1.2. Fundamental Rights:

i) Article 14\textsuperscript{86} - Equality before law for women.

ii) Article 15 (i)\textsuperscript{87} - The State not to discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

iii) Article 15 (3)\textsuperscript{88} - The State to make any special provision in favour of women and children.

iv) Article 21\textsuperscript{89} - Right to life and personal liberty; provides the right to life and personal liberty.” The Right to Life” does not merely mean animal existence but means something more namely right to live with human dignity.

v) Article 23\textsuperscript{90} - Right against exploitations: Prohibits the traffic in human beings and forced labour such as beggars. The human trafficking is the illegal trade in human beings for the purposes of commercial sexual exploitation, prostitution or forced labour. It is the modern form of slavery.


\textsuperscript{87} Ibid.

\textsuperscript{88} Ibid.

\textsuperscript{89} Ibid.

\textsuperscript{90} Ibid.
1.6.2 Provisions under other Laws

1.6.2.1 Criminal Law

In India the criminal law is substantially based on Indian Penal Code, 1860. The criminal law is essential for the safeguard of women.

1.6.2.1.1 Indian Penal Code, 1860

There are certain provisions under Indian Penal Code, 1860 which deals with offences in the form of domestic violence against women. These are as under:

i. Dowry Death

According to Section 304-B IPC where death of a married woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of marriage and if it is established that soon before her death she was subjected to cruelty by her husband or their relatives, such death of a married woman is treated as “dowry death”\(^91\).

ii. Forceful Termination of Pregnancy Amounts to Violence at Home

In the view of Section 313 to 316 of IPC female infanticide or forcing the wife to terminate her pregnancy is also a form of domestic violence which is recognized as an offence under IPC\(^92\).

iii. When Women is Driven to Commit Suicide

On account of domestic violence, especially brides are subjected to harassment for the demand of dowry and compelled to commit suicide. Abetment of suicide of a disordered mental state of the person is an offence punishable with death or 10 years of life imprisonment as provided under Section 305 and 306 of the IPC\(^93\).

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\(^{92}\) Ibid.

\(^{93}\) Ibid.
iv.  **Causing Hurt and Grievous Hurt**

It is a common form of domestic violence. Section 319 of the IPC defines the expression “hurt”, as causing bodily pain, injury, infirmity and disease to any person. However, serious hurt is termed as grievous hurt under Section 320 of the IPC\(^94\).

v.  **Unlawful Confinement**

It is also a form of domestic violence and refers to the woman’s movement being restrained or confined within the four walls of the house. It is a common form of domestic violence which is an offence punishable under Sections 339 and 340 of the IPC\(^95\).

vi.  **Marital Rape**

Another common form of domestic violence is in the form of marital rape. Where wife is living separately under a judgment of judicial separation or under any custom and the man is having sexual intercourse with his own wife without her permission it amounts to an offence under Section 376-B of the IPC\(^96\).

vii.  **Misappropriation of Wife’s Property**

With a view to make wife economically dependent, the grabbing of her property by husband is a common form of domestic violence. According to Section 405, read with Section 406 of the IPC, dishonest misappropriations or conversion of wife’s property for his own use by the husband, which the wife has entrusted to her husband, amounts to criminal breach of trust and an offence punishable under aforesaid section of the code\(^97\).

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\(^{94}\) Ibid.  
\(^{95}\) Ibid.  
\(^{97}\) Supra 91.
viii. Matrimonial Cruelty

Under Section 498-A of the IPC, 1860 matrimonial cruelty, whether it is physical or mental, is an offence. The term “cruelty” under the said section has wide scope to include various kinds of other cruelties.  

1.6.2.2 Civil Law

In India civil law too addresses the problem of domestic violence. The victim of domestic violence can seek civil relief under the following Acts:

i. The Dissolution of Muslim Marriage Act, 1939

According to Section 2 (viii) of The Dissolution of Muslim Marriage Act, 1939 “cruelty” means:

(a) Habitually offending the wife or ill treating her.
(b) Forcing wife to lead an immoral life
(c) Disposing of wife’s property without obtaining her consent.
(d) Not allowing her to observe religious practice.

Under the aforesaid Act the victim of violence at home can seek divorce on the ground of cruelty.

ii. The Hindu Marriage Act, 1955

According to Section 13(1) (a) of the Act, 1955, cruelty is a legal ground for divorce. Though the term “cruelty” has not been defined under the said Act, but it is taken to mean acts of physical as well as mental cruelty. Section 10 of the Act provides relief as to judicial separation, so the wife can get rid of her husband’s abuses by living separately under the order of the court.

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98 Ibid.
iii. **Other Matrimonial Enactments**

There are other matrimonial laws wherein the term “cruelty” qualifies as domestic violence. The Special Marriage Act 1954, the Indian Divorce Act, and The Parsi Marriage and Divorce Act, all enactments recognize “cruelty” as a valid ground for divorce. It is a settled legal position that the term ‘cruelty’ includes domestic violence and civil relief available to the wife.

1.6.3 **Special Legislation for Women of India**

i. **The Dowry Prohibition Act, 1961**

This is a special law enacted to deal with the social evil of dowry viz., demand for property or valuable security having an inextricable link with the marriage. In such circumstances the married woman is often subjected to domestic violence at her matrimonial house. As contemplated in Section 3 of the said Act, the giving and taking of dowry is a criminal offence\(^1\).

ii. **The Commission of Sati (Prevention) Act, 1987**

“Sati” is one of the oldest forms of domestic violence which prevailed in society, but curbed in the last century. The expression “Sati” means the burning or burying alive of widow along with the body of her dead husband\(^2\).

iii. **Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994**

Female infanticide or forced termination or pregnancy is a specific form of domestic violence. This act regulates the forced termination of female foetus, it permits termination of female foetus, and it permits termination of pregnancy only for medical purpose\(^3\).

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iv. **Protection of Women from Domestic Violence Act, 2005**

The Protection of Women from Domestic Violence Act, 2005, was passed in the year 2005. It is a civil law aimed at providing relief to millions of women, including wives, daughters, sisters and mothers affected by violence in their homes. The Rules under the Act were passed and notified in the year 2006. The law was brought into force on October 26, 2006. Before the enactment of this law, remedies available to a victim of domestic violence in the criminal courts and civil courts were limited. The Act provides for more effective safeguard of the rights of women guaranteed under the Constitution of India who are victims of violence of any kind taking place within the family. Any woman who is or has been in a family relationship, if subjected to acts of domestic violence can complain. Aggrieved women can complain to the concerned Protection Officer (PO), Police Officer, Service Provider (SP) or Magistrate. Aggrieved woman has a right to be informed about the existing service, such as free legal services, shelter home and medical facilities from the support organizations. The proceeding of the complaint can be held before a camera. Every aggrieved woman has the right to reside in the share household. The protection order by magistrate can be given in favour of affected woman. The monetary relief can be given to the affected woman to meet expenses or losses. The appeal can be made to session’s court within thirty days from the order of concerned Magistrate. The sentence can be made up to one year or a fine up to Rs. 20,000 or both for violating of protection order by the opposite party. The PO can be prosecuted up to one year imprisonment or with a fine up to Rs. 20,000 or both can be obligatory for the failure of his duties.

The Act covers those women who are or have been in a relationship with the perpetrators where both parties have lived together in a common household and are
associated by consanguinity, matrimony, or through a relationship in the nature of matrimony or adoption and the family members, living together as a joint family are also included, its provisions are also applicable to those in live-in relationships. Even those women who are mothers, sisters, widows, single women, are also entitled to legal protection, but does not allow any female relative of the husband or the male partner to file complaint against the wife or the female partner.

The Act includes all forms of abuse that is physical, sexual, verbal, emotional or economic abuse or threats to abuse. Harassment by the way of unlawful dowry demands is also covered under the Act. The Act provides for the right of women to reside in the matrimonial home or shared household, whether the aggrieved women has a right, title or interest in the shared household. This right to reside in shared household is protected by a residence order, which is to be passed by the Magistrate.

The Act gives power to the Magistrate to pass protection order in favor of the aggrieved woman to prevent the abuser from committing an act of domestic violence or any other particular act, entering a workplace or any other place normally visited by the aggrieved person, trying to communicate with her, isolating any assets used by both parties and causing violence to the aggrieved woman, her relatives or others who provide her assistance from domestic violence.

The Act provides for appointment of PO and registration of NGOs as Service Providers for providing support to the affected/aggrieved woman with respect to her medical examination, safe shelter, obtaining legal aid, etc.

The Act has been enacted keeping in view the rights guaranteed under Article 14, 15 and 21 of the Constitution of India besides the provisions provided under Section 304B and 498A of Indian Penal Code (IPC)\textsuperscript{104}.

\textsuperscript{104} Supra 25.