5.1 CONCLUSION

*Intimate Partner Violence* refers to any kind of harm which is inflicted by an intimate partner upon another. It is the most common form of violence committed against women across the world when compared to violence perpetrated by a stranger\(^1\). This form of violence is acknowledged as gender based by the United Nations and treated as a significant concern of human rights through its international instruments such as CEDAW. Violation of diverse human rights such as right to equality, right to health, right to live and moreover right to live with human dignity are encompassed within this issue. Intimate partner violence has implications, not only on the victim exclusively, but also the other family members and thus affects the fabric of the society.

The statistical data provided by the UN and WHO evidences that ‘intimate partner violence’ is a universal challenge to all communities of the world. Studies by WHO in 2013, based on the data from 80 countries, stated that one-third of women in intimate partner relationship have experienced violence. 38% of murders of women were identified as committed by their intimate partners. The study also validated that Intimate Partner Violence prevails in high as well as low income countries.

CEDAW committee, in its study on compliance of CEDAW by India in 2006, reported that domestic violence is a critical issue. The committee shared its concern of increasing violence against women. The status of women in India was viewed as a matter of concern as the statistics showed a

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disturbing trend. The National Crime Records Bureau also endorses the low conviction rates on crimes against women. The report also shared its dissatisfaction in India’s reservations upon CEDAW on matters relating to culture. Cultural practices are considered as a major determining factor of violence against women. Reservation by India maintaining the policy of non-interference upon matters relating to culture was severely criticized by the committee. Such a reservation was stated to render a neutral effect to CEDAW.

Indian legislature has enacted extensive legislations with an objective to provide protection to women. Constitutionally guaranteed fundamental rights such as right to life and gender equality, positively affirms women’s rights. Legislations such as Dowry Prohibition Act, 1961, inclusion of offences such as cruelty by husband and presumption of dowry death under IPC and specific provisions within matrimonial law relating to cruelty restate the rights of women in the context of intimate relationships. Many judicial decisions have progressively elaborated these statutory rights. PWDVA, 2005 is the latest in the chronological graph that specifically addresses the issue of domestic violence against women. In spite of varied protection by means of civil and criminal remedies, violence continues to exist.

The primary purpose of this research is to explore the reasons of continuance of violence in intimate relationships in Indian society. The study is drawn upon the hypothesis of inadequacy of the existing law in combating

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2 Art. 16, CEDAW calls upon the state parties to eliminate discrimination against women in family and marriage. This is considered as the core provision of the convention.
‘intimate partner violence’. The effectiveness of the legal protection is critically analysed in the light of decided cases to identify the enforceability aspects upon interpretation of international instruments and constitutional mandate for protection of women.

5.2 FINDINGS

The findings of the study that answers the research questions stated in the first chapter are as follows:

1. Various factors contribute directly or indirectly to perpetration of IPV. Various practices of society such as patriarchal prerogatives and practice of dowry make women vulnerable to violence. Sociological factors such as patriarchal form of society, impact of religion in shaping the mindset of the community, the inferior position of women upon marriage and the practice of dowry that determine the subordinate position of women in the Indian society are analysed. It is identified that different traditional norms of the patriarchal society condone violence while promoting prerogatives that accords superior status to men in the family. The vulnerability of woman in the domestic environment is also explored to identify other causal factors.

Despite many protective laws, women continue to be vulnerable. A life cycle approach of women in India from conception and birth indicates different forms of violence such as female foeticide and female infanticide\(^3\). These forms of violence are drawn upon strong gender bias.

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\(^3\) Population statistics reveal an alarming decline in male-female sex ratio. There is a decline in female population in the decade since 2001. The female child population was 78.83 million in 2001 which declined to 75.84 million in
in favour of men. Sons are considered desirable to ensure continuation of lineage and family name. As a consequence, daughters are not given opportunity of education. Women are socialized accordingly to accept their subordinate position from the age of childhood. These discriminatory practices are considered as a natural inevitable part of her life.

In the context of intimate partner relationships, the practices such as dowry and consequential disentitlement of right to claim property from one’s native family have placed women in an unequal position in marriage. Dowry is identified as the major factor that determines violence in marital relationships. The NCRB statistical data on increase of dowry related violence indicates the existence of practice of dowry related violence. The failure of the Dowry Prohibition Act, 1961 is due to societal approval of the practice. This attitude of the society is reflected in cases where no sanctions are given to the wrong doer. In *Rakesh Kumar*\(^4\), the complaint was filed on demand of dowry under sec. 3 & 4 of the Dowry Prohibition Act, 1961. While deciding upon the same, the court held that there was an amicable dissolution of marriage through divorce and any further action on demand for dowry would amount to abuse of process of law. This judgment demonstrated the attitude of the society to treat dowry related issues as a private matter that is relevant only during the continuance of marital relationship and not a social issue.

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2011. The population of girl child was 15.88 per cent of the total female population of 496.5 million in 2001, which declined to 12.9 per cent of total number of 586.47 million women in 2011.

\(^4\) (1994)1 Crimes 390 (P&H).
In instance of gravest form of violence that resulted in death of the victim, the Supreme Court in *Sakhi Mandalini*\(^5\), acquitted the accused upon non compliance of requirements to constitute the offence of dowry death under sec. 304 B, IPC. The court stated that demand for dowry was not related to the cause of death as contemplated within IPC. The court even hesitated to convict the accused under the Dowry Prohibition Act in spite of ample evidence on dowry demand. The judgment demonstrates lack of sensitiveness of the court to address dowry as a significant issue. Thus the court failed to read the purpose of law to protect women from dowry harassment. These judgments reflect the mindset of the Indian society by silently accepting the subordinate status of women in marriage which is reinstated through the continuing practice of dowry. The critical study of the laws and judicial decisions on these aspects have shown that the position of women continue to remain subordinate to men and vulnerable to violence. Thus it is stated that the patriarchal family structure and social values in favour of men appears to be a major reason for increased vulnerability of women.

2. The persistence of dominant family ideology drawn upon strict division of labour based on gender and hierarchy further subordinate women in the context of marriage. The structure of family, gender roles and the position of women in marriage is derived from different personal laws such as Hindu, Muslim and Christian law.

   Practice among the Hindu society had given subordinate status to women compared to men in household as well as profession. This subordination was

\(^5\) (1999)8 S.C. 351(India).
reinforced by the caste system where men were required to work and women were assigned only home responsibilities. The Vedic literature also provides insights relating to legitimate use of violence with the object of disciplining women. Practice of sati and prohibition of widows to remarry were adopted to maintain reputation of family. Thus the use of force for the benefit of the family was acceptable and considered as religious by the ancient Hindu society.

The period of colonial rule also had its impact in determining the status of Indian women. Practise of Sati was addressed as a form of violence against women that forced her to end her life in the funeral pyre of her husband. Widows were also prohibited to remarry as per the custom of certain Hindu communities. There were certain legislative interventions to improve the status of women to curb the practices which were customarily followed. Legislations such as Sati Regulation Act of 1829 and Widow Remarriage Act of 1856 were enacted to protect the interest of women and get rid of ‘barbarism’.

However, some judicial interventions during the colonial period had an adverse effect on the inheritance rights of women. There was a policy of British courts of non intervention into the matters of personal law in the initial period of establishment of judicial system. It later changed into need based interventions in matters related to adjudication. Such interventions by judges who do not have the knowledge of personal laws, lead to the wrong interpretation of law relating to property rights of women. These interpretations of the courts deviated from Mitakshara School of Hindu law on inheritance of property. In spite of being recognized by the Mitakshara
School that women can have the right to hold property acquired by any source, the judicial interventions, influenced by the English concept of limited estate, had lead to the disentitlement of women to hold property absolutely in her independent capacity\(^6\). These restrictions were later extended to the property inherited from her husband and father as held in *Bhugwandeen Doobey*\(^7\) and *Deo Parshad*\(^8\) respectively. Thus wrong interpretation of Indian custom prevailing in various communities by the English courts lead to the deterioration of legal status of Indian women during the colonial rule.

The literary sources of women and gender issues in ancient Christianity also provide a gradual subordination to men and in the family. The Christian priests discouraged women education which was deeply rooted in their belief of women’s inferiority. The origin of her subordinate position with respect to intimate partner relationships can be traced back to the concept of marriage as a permanent and indissoluble bond. Even though Christian teachings presents marriage as a union of persons equal in personal dignity, the complimentary roles in marital life ordain that woman is subordinate in the relationship. Christian religious practices were influenced by English common law of limited estate to women and approval of sanctions in disciplining the wife.

To certain extent, the Hindu religious practices in marriage have also influenced Christian communities in India to follow the patriarchal system which allowed dominance by men. Christian marriages thus became

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\(^6\) Flavia Agnes, *Law and Gender Equality*, WOMEN AND LAW IN INDIA 36 (OUP, 2004).

\(^7\) *Bhugwandeen Doobey v. Myna Baee* (1867) 11 MIA 487(India).

\(^8\) *Deo Parshad v. Lujoo Roy* (1873) 20 WR 102 (India).
associated with the concept of ‘dana’ in Hindu marriages which stands for a religious gift. The gift of the bride was accompanied by formal gifts in the form of money and gold. As the marriage incurred expenses upon the bride’s family, the same was considered as a justification of disallowing her to inherit from her native family. By means of customs and traditional practices related to marriage, Christianity also placed women in an inferior position. Qur’an, the major source of Muslim law, is considered as an ideological blueprint of patriarchal system which is followed by the community. Female education was highly restricted and ignored. The women were also excluded from public gatherings or in intellectual deliberations as a result of which majority of women remained illiterate. Qur’an allows men to practice polygamy and control women by depriving all forms of freedom to them. Mehr, the customary practice of giving property to the Muslim bride, was conceived as a means of empowerment of women. Practice of giving Mehr resulted in denial of maintenance. Protection of family values is conferred on the male spouse. In this regard, the husband is permitted to use any form of corporal punishment in order to make the woman obey the spouse. Even marital rape is justified on similar grounds as refusal to have physical relationship is considered as a defiance of her duties. Thus the status of women in marriage is considered as inferior to her spouse in all cultural contexts of religions.

With these factors of subordination, practices of the society such as dowry also have a strong determining role in violence against women. The institution of dowry has its impact in inter family relationships. Statistics on crimes against women depict that dowry continues as a major factor of
marital discord. In *Kundula Bala Subrahmanyam v. State of Andhra Pradesh*\(^9\), the Supreme Court while referring to violence against women in marriages, rightly opined that

“Of late there has been an alarming increase in cases relating to harassment, torture, abetted suicides and dowry deaths of young brides. This growing cult of violence and exploitation of the young brides, though keeps on sending shock waves to the civilized society whenever it happens, continues unabated...Lack of education and economic dependence of women have encouraged the greedy perpetrators of the crime\(^{10}\).”

As reflected in the judgment, there are multiple factors that lead to violence. The major reasons identified are the position of women in the context of marriage and the sociological factors that allow the continuance of her inferior position. The social practices of dowry have also prevented the effective implementation of laws that aim to protect women such as the Dowry Prohibition Act, 1961.

The patriarchal mindset of the community is reflected through religions. The special status and immunity from interferences into matters related to customs and practices of the society preserved this subordinate position granted to women. The fundamental rights guaranteed to women remains limited within the boundaries set by these laws. It is evident that gender inequality continues to exist in the society. Thus it is identified that socio, legal factors reinstated gender inequality of women in marital relationships.

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\(^9\) 1993 (2) S.C.684 (India).
\(^{10}\) *Ibid.*
3. Study of socio, economic and religious factors and its impact upon power relations in marriage state that collectively the Indian society is influenced by the traditional perspectives of religion on marriage in determining the status of individuals thereto. Personal laws in India, which are largely derived from religion, are indicative of the societal structure, gender specific roles and moreover, the subordinate position of women in the society. The lack of uniformity with respect to minimum age of marriage in different personal laws leads to child marriages in India. Muslim law maintains age of attainment of puberty as the qualification of parties to marriage whereas Hindu Marriage Act, 1956 is silent about the legal validity of marriages entered by parties who have not satisfied the minimum age requirement. The inadequacies of law in addressing the practice of child marriage lead to continuance of this practice. These drawbacks reflect the lack of decision making capacity of women in relation to one’s marriage. Thus women continue to be vulnerable to subordination by men in marriage. The Muslim personal laws relating to dissolution of marriage through triple *talaq* has stood as a method of dissolution of marriage among the community. This mode of talaq which was considered as the most condemned form of talaq as per the religious principles, gained legal acceptance as it became a popular custom among the community. This method of dissolution confers unilateral rights on Muslim husbands to severe the marital tie, leaving only limited rights to maintenance to the destitute women.

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11 Only very recently the High Court of Allahabad and Kerala have stated that it amounts to cruelty. But the practice still continues in the society.
The personal laws are not subjected to legislative interferences under the protective coverage of religion. India’s reservations to CEDAW demonstrate clearly its unwillingness to interfere into religious practices and customs. The subordination of women upon marriage is immune from interferences as long as these matters are dealt by personal laws. This leads to limitation in extending rights guaranteed by the convention against discrimination based on gender. Despite these sociological factors that subordinate women, they are also deprived education as a result of social seclusion prescribed by the patriarchal system. Consequentially women failed to participate effectively in economic development. Even though there is an increase in the level of education, statistical data state that it is not reflected proportionately in employment of women. The World Bank Report\textsuperscript{12} on labour participation of women in India revealed that in 2000 only 34\% of females contributed to labour force. This further dropped to 27\% in 2014. Participation of women in household work by means of gender roles are not counted as an activity of labour. Deficiency of participation in economic activity leads to lack of decision making capacity and increased dependence upon the intimate partner. Women who are victims of violence are further subjected to deprivation of economic resources by her intimate partner. This makes her position further deteriorated as the victim becomes economically dependent upon the abusive partner. Victims of intimate partner violence who are employed suffer from loss of productivity in employment. Thus there are\textsuperscript{12}

\textsuperscript{12} (08 Jan., 2017, 6:18 PM) http://wdi.worldbank.org/table/2.2.
multiple consequences such as economic deprivation and loss suffered by the victim.

These factors confer a dominant status of men in marriage that leads to indulging in violence as a means of exercise of power. It is drawn that women are more vulnerable to different forms of violence as a result of her subordinate position. Thus the prevailing socio, economic and religious factors constitute major determining factors of violence in intimate relationships.

4. The study upon effectiveness of civil and criminal jurisdictions to protect women from intimate partner violence in India is undertaken. Based upon the mandate of international human rights responses and the constitutional framework, study is conducted on the legal responses of intimate partner violence through different legislations varying from the colonial period to the latest PWDVA, 2005. The development of jurisprudence through judgments and interpretation of law to protect women from violence is analysed from a critical perspective to understand the enforcement of these laws. International human rights responses such as UDHR and CEDAW are emphasized to understand the aspect of right to life with human dignity. Read with the constitutional principles and fundamental rights, obligation of state for affirmative action to protect women is highlighted. Judicial interpretations are thus compared with an objective of aligning different laws relating to violence against women with the constitutional goals.

Criminal law responses and judicial decisions on intimate partner violence such as dowry related violence, adultery and sexual violence are critically analysed. Dowry related violence addressed by means of specific
legislations such as the Dowry Prohibition Act, 1961, sec. 304 B\textsuperscript{13} and 498 A\textsuperscript{14} of Indian Penal Code, 1860 and judicial interpretations on these laws are analysed. The courts failed to convict the accused upon grounds of requirement of technical compliance to prove dowry death in cases such as \textit{Sher Singh Pratapa v. State of Haryana}\textsuperscript{15}. In \textit{Major Singh v. State of Punjab}\textsuperscript{16} the court acquitted the husband ignoring the circumstantial evidence leading to cruelty. While acquitting the accused in case of \textit{Wazir Chand}\textsuperscript{17}, the Supreme Court even refused to convict the accused under s.306 of the IPC\textsuperscript{18} even though prosecution produced sufficient proof of harassment for dowry. These judgments have proved that the courts have not addressed the existence of violence related to dowry in a holistic manner and extended the benefit of doubt in favour of the accused.

The Dowry Prohibition Act of 1961 has many inherent defects such as lack of effective sanctions for demand of dowry. The penalty for giving or taking of dowry initially imposed was an imprisonment for a term of five years. However, Dowry Prohibition (Amendment) Act, 1984 diluted the sanction by reducing it to minimum 6 months. Further, discretionary power is conferred on the Magistrate to reduce the sentence below 6 months by recording adequate reasons. The limitation period for invoking the Act is fixed as one year of marriage\textsuperscript{19} which is very short and ineffective for the victim to complain of any form of violence within the ambit of dowry. But

\textsuperscript{13} Dowry Death
\textsuperscript{14} Cruelty by husband and his relatives.
\textsuperscript{15} 2015 (1) S.C.J. 386(India).
\textsuperscript{16} A.I.R. 2015 S.C. 2081(India).
\textsuperscript{17} \textit{Wazir Chand v. State of Haryana} A.I.R. 1989 S.C. 378(India).
\textsuperscript{18} Abetment to suicide- Sec. 306, IPC.
\textsuperscript{19} Sec. 7, Dowry Prohibition Act, 1961.
this unreasonable provision was later deleted by the amendment in 1984. Thus dowry related violence, the most common form of violence, is only insufficiently addressed.

The insensitiveness of the court in understanding mental violence and the plight of the victim in a vulnerable state is evident from Waghmare\textsuperscript{20} and Padmavati\textsuperscript{21} cases. In both these cases the courts held that since the deceased ended her life it was committed in all probability out of frustration and pessimism due to her own sensitiveness and refrained from punishing the accused. The courts have also acquitted the accused stating that the demand cannot be construed within the term ‘dowry’ by justifying that it was in need of financial stringency in the family in cases such as Appasaheb v. State of Maharashtra\textsuperscript{22}. These judgments failed to take into account the reality in which demand for dowry takes various forms even after the actual marriage ceremonies are completed, and how women continue to be harassed for dowry long after the initial demand at the time of marriage.

The act of adultery is considered as the gravest form of matrimonial wrong as it is an anti thesis of the right to an exclusive companionship. It may also be considered as a form of mental violence against the innocent partner of the person who commits adultery. Adultery as defined in sec. 497, IPC is drawn upon the concept of ‘lord master relationship’ of the husband on one’s wife. It only states that adultery is an offence which provides punishment for the man who commits the offence with another’s wife where the husband of the adulterous woman is the aggrieved party. The definition

\textsuperscript{21} Padmavati v State of M.P 1987 Cri.L..J.1573(India).
\textsuperscript{22} (2007) 9 S.C.C.721(India).
ignores the grievance of the wife of the adulterer. This is an irony in the Penal Code is that it is silent about a similar action which can be invoked by the wife of the adulterous man. This limited scope of the provision affirms the notion that there are no reciprocal rights available to the wife of adulterous man, who is also an equally aggrieved party, in the matrimonial offence. The act of adultery by the husband is to be considered as the gravest form of emotional violence upon the wife of the person who commits the same. Presently it remains as a ground for judicial separation and divorce under various matrimonial remedies entitling the aggrieved party with civil remedies only.

Marital rape is another form of intimate partner violence that is not adequately addressed in the context of sexual violence as a criminal offence. Apart from the inclusion of sexual violence as a subset of violence within PWDVA, 2005 there is no law to protect the victim from sexual violence by an abusive partner. This need to be read with the exclusion of married individuals from the ambit of the offence of rape in IPC. Another aspect that adds on to the existing lacuna of law is that the penal code expressly incorporates the existence of child marriages in the Indian community by stating that if a husband has sexual intercourse with his wife, who is above 15 years, is excluded from the offence of committing rape. The laws such as Child Marriage Restraint Act, 1929 and Prohibition of Child Marriage Act, 2006 which is expected to eliminate this evil practice that has the potential of endangering the life and health of the female child and exposes

\[23\] Sec. 375, IPC, 1860.
\[24\] This is in striking contrast with the minimum age prescribed for marriage as 18 under the secular law of marriage viz. the Special Marriage Act, 1954.
the child to vulnerability, have failed in prohibiting child marriages. There is no adequate law to protect women from violence during the continuance of intimate relationships such as sexual violence.

PWDVA, 2005 which is enacted with an objective of extending protection to women against all forms of violence, also have disregarded marital rape as a criminal act. The special law has only created a civil remedy for marital rape indirectly referring as sexual violence\textsuperscript{25}. The only remedy for the wife is to prove marital rape within ‘cruelty’ under matrimonial law to avail remedies such as judicial separation or divorce. The inadequate provisions under penal law and PWDVA gives rise to the conclusion that marital rape is not considered as an offence.

Specific remedy under the broader ambit of civil law is not present as ‘domestic violence’ is not considered as an actionable wrong in tort. However, in the absence of a specific remedy, the woman may seek civil remedies for assault and battery, such as injunctions under the Specific Relief Act, 1963\textsuperscript{26} and the Civil Procedure Code, 1908\textsuperscript{27}. Enforcing the rights through injunction orders is ineffective and hence a major drawback of the system. In addition to this, courts are reluctant to grant interim orders during the pendency of case. The civil courts are also limited with strict adherence to ownership of the property in grant of injunctions as the right of

\begin{footnotesize}
\begin{itemize}
\item[25] Sec. 3, PWDVA, 2005.
\item[26] Sec. 4 states that specific relief can be granted for the purpose of enforcing individual civil rights.
\item[27] O.39, Civil Procedure Code, 1908.
\end{itemize}
\end{footnotesize}
the respondent is a bar for the court to interfere as evident from *Bharti v. Surendra*\(^{28}\).

Right to residence in matrimonial home has been recognized by the PWDVA, 2005. The extent of protection granted by the specific legislation on domestic violence is also studied in this context. Remedies to protect women from violence are provided in the form of protection orders\(^{29}\) which are injunctive. Residence orders\(^{30}\) are provided to ensure the woman with peaceful occupation of the shared household. In the absence of explanation of ‘shared household’, the erroneous interpretation of the term within the meaning of ownership has resulted in denial of right to reside in the home which was in the name of in-laws as stated in *Taruna Batra* case\(^{31}\). However, the meaning of shared household was held to be different from ownership where the wife can claim right to reside in the matrimonial home even though her husband does not have ownership of the same\(^{32}\).

The Act has certain inherent definitional issues relating to ‘domestic violence’ and ‘domestic relationship’. The term ‘domestic violence’ is defined very broadly so as to include insults and ridicule within the acts of emotional abuse\(^{33}\). Law Commission of India in its 243\(^{rd}\) report stated inter alia that this broadened definition has resulted in false filing of cases which is a major reason for defeating the purposes of the law\(^{34}\). These instances of

\(^{28}\) A.I.R. 1983 Bom. 258(India).

\(^{29}\) Sec. 18, PWDVA,2005.

\(^{30}\) Sec. 17, PWDVA,2005.


\(^{32}\) Sec. 17(1), PWDVA, 2005.

\(^{33}\) Sec. 3(a), PWDVA, 2005.

violence of lesser degree may be dealt under the existing civil remedies so that false allegations may be kept away to provide an effective protection to only vulnerable victims of domestic violence. There is a need to distinguish between different degrees of violence such as violence that may put the victim in utmost vulnerability. The Act fails to undertake an action taken in emergency cases to prevent the occurrence of violence. Altogether, the need for providing an immediate protection with a strong deterrent effect is not provided by the law. The Act also fails to specify the mode of calculation of loss by incorporating all the economic factors included and relies upon the discretion of the judge in such matters. This may lead to variance in application of the law to the benefit of the victims.

In matters relating to claims of maintenance by wife, the courts have adhered to the strict proof of evidence of cruelty. Where the claimant was not able to prove ‘cruelty’ to the satisfaction of the court, maintenance was denied to the victim of violence. In cases such as *Poonam Gupta*\(^\text{35}\) and *Mohd. Sharif*\(^\text{36}\) the court required proof of cruelty in the suit for maintenance, ignoring the fact that such form of violence happens in the utmost privacy of the home. In *Shobha v. Srinivas*\(^\text{37}\) the court seems to have driven by the notion that cruelty need to be continuous in nature in order to constitute a matrimonial wrong as it held that solitary violent behaviour does not constitute cruelty. The court has positively responded to the claim, only where it was successfully proved that the husband caused miscarriage of the woman twice

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\(^{35}\) A.I.R. 2003 All 51(India).
\(^{36}\) A.I.R. 1966 Punj 23(India).
\(^{37}\) A.I.R. 2003 Kant 256(India).
Thus the requirement of proof is laid on the highest pedestal where victims will not be able to prove to the satisfaction of the court in all instances. Under such instances, the victims have to live with the abuser if they are economically dependent on him.

The right to maintenance in s. 125, CrPC which is a measure of social justice, had only limited application due to opposition by customs and practices of certain communities. In spite of the Supreme Court’s decision in Bai Tahira’s case\textsuperscript{39} upholding the rights of Muslim women, the matter was brought into controversy by Shah Bano judgment\textsuperscript{40}. The major reason for opposition by the community was in adjudicating upon rights of women restricted by Muslim personal law. The controversy over the judgment raged and the parliament passed the Muslim Women (Protection of Rights on Divorce) Act, 1986 limiting the right to maintenance only during the period of iddat\textsuperscript{41}. Following this enactment, certain High Courts denied maintenance holding the ratio that sec.125 was not extended to Muslim women\textsuperscript{42}. Thus customs, practices and religion have denied justice to women and victimized women further by stating that the right to maintenance was not enforceable. These instances demonstrate the interplay between rights, remedies and enforcement of remedies.

The study has highlighted the drawback of law in combating violence against women by her intimate partner. In addition to the existing

\begin{itemize}
\item A.I.R. 1996 Ker. 140(India).
\item Sec. 3.
\end{itemize}
shortcomings, personal laws have also added to the deficiencies by maintaining paternalistic prerogatives. Matters related to personal laws are kept outside the purview of commitment to CEDAW by means of reservation. Absence of laws that render deterrence to different forms of violence such as marital rape is also a major disadvantage. The specific law viz. PWDVA, 2005, that is expected to fill in the lacuna of civil and criminal remedies has not adequately addressed the need to prevent violence and ensure effective remedies to the victim. Thus it is established that the existing legal provisions are inadequate to protect women from intimate partner violence.

5.3 SUGGESTIONS

Patriarchal culture of the Indian society has resulted in continuing subordination of woman in the family environment. This culture is reflected in the customary practices of community. The reservation of India, being a signatory to CEDAW, with respect to interferences into such practices is a barrier to attain the goals of the convention. Personal laws, which are the basis of existing discrimination, need to be progressively reformed. Moreover, the incompatibility of certain personal laws with the general code of marriage with regard to competency of parties to marriage and mode of dissolution need to be brought in conformity to avoid exploitation of women. The observation of Allahabad\textsuperscript{43} and Kerala High Court\textsuperscript{44} upon the practice of triple talaq as a form of cruelty and gender discrimination is

\textsuperscript{43} Dated December 09, 2016.
\textsuperscript{44} Dated December 17, 2016.
worth mentioning. Such progressive judgments need to be adopted by the legislature by reforming personal laws to ensure gender justice.

Registration of marriages needs to be made mandatory\textsuperscript{45} so as to tackle any exploitation based upon fraud and bigamous marriages. The only requirement of registration of marriages is within the Special Marriage Act, 1954. There is no justification of maintaining procedure relating to documentation of marriages within personal laws as there is no religious component involved. The procedure prescribed in the Special Marriage Act is simple and may be taken as the model legislation in this regard.

Practices such as dowry need to be addressed by taking into account the far reaching implications in the society. Statistics on violence related to dowry has proved that the legislations have failed to curb the menace. The phrase ‘in connection with marriage’ in the definition of dowry in the Dowry Prohibition Act, 1961 has widened the scope of the term. However, this relativity of demand to marriage has brought difficulty to interpret demand made after many years of marriage which is reflected in many judgments. A definition which gives a freedom for the judiciary to interpret any undue demand from the husband which puts the other party under coercion or undue position would be an appropriate one to bring effect to the purpose of the Act.

\textsuperscript{45} India is not a signatory to Convention on Consent to Marriage, Minimum Age For Marriage And Registration of Marriages, 1962.
With respect to punishment for demanding dowry, the amendment lacked legislative wisdom in many aspects. The Act excludes presents which are customary in nature and the value not excessive having regard to the financial status of the parties\(^{46}\). This is not counter balancing but anti balancing legislative step which will continue in inciting and inspiring the evil practice of dowry as it offers discretion to ascertain the financial capacity of parties. It render a message to the society that dowry is acceptable depending upon the financial capability of the parties. Demand for dowry need to be construed as a factor that destroys the knit of the family and however meager the amount is, it constitutes an offence. Proviso to sec. 3(a), Dowry Prohibition Act, 1961, states that punishment may be reduced by the judge below six months. These relaxations of punishment make the offence trivial. Moreover, this employs a discretionary power which is not needed in the context. In the absence of societal approval of the Act, the judiciary needs to take an active role in advancement of the society to reform. The courts need to utilise their discretionary power of reducing the sentence judiciously to avoid trivializing of the social issue. In *Gurditta Singh v. State of Rajasthan*\(^{47}\), the High Court of Rajasthan expressed that the Act is both a remedial and penal statute and the courts are expected to construe the provisions in a way that the purpose is fulfilled. The enforceability and deterrence is to be enforced only through progressive judgments\(^{48}\).

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\(^{46}\) Sec. 3(2), Dowry prohibition Act, 1961.

\(^{47}\) 1992 Cr L.J. 309 (Raj) (India).

\(^{48}\) In *State of Karnataka v. M.V. Manjunathegowda* (2003)2 S.C.C. 188(India) the court opined that the judiciary should positively respond and it is for the courts to decide on its application.
A close perusal of the application of criminal law in matters of violence against women revealed that courts have extended the ‘benefit of doubt’ liberally even in cases where there are higher probabilities that there were many instances of dowry demand and violence related to it. The peculiar position of women in their matrimonial home and the nature of violence such victims are bound to face, need to be taken by the courts in adjudicating such matters. Strict adherence to evidence and understanding acts of cruelty with reference to dowry has lightened the offence of cruelty. On sentences of acquittal, either the court relies upon want of direct evidence or the proximity test or benefit of doubt was extended. In these instances the prosecution and the courts cannot ignore the offence of culpable homicide\(^{49}\). The Supreme Court observed in *Kailash v. State of MP*\(^{50}\) the intention behind the Act is to regulate the ‘social interest’ and to arbitrate conflicting claims and demands securing persons and property. The judiciary needs to keep in mind the social objectives of the law and compromise upon strict adherence to the same\(^{51}\). On many occasions the courts have expressed anguish and concern regarding the increasing number of dowry deaths in India. In *Virbhan Singh v. State of UP*\(^{52}\), the Supreme Court expressed the view that severe deterrent punishment need to be given to the culprits. The court also expressed its concern upon the acquittal of some of the alleged culprits by the High Court but pleaded helplessness in such cases since no appeal was preferred by the State against such acquittals.

\(^{50}\) A.I.R. 2007 S.C. 107(India).
\(^{52}\) A.I.R. 1983 S.C. 1002(India).
The act of adultery by the husband is to be considered as an emotional violence upon the wife of the offender. Presently, only the husband of the woman can initiate a case for the offence of adultery. This remedy is not extended to the woman, wife of the adulterer, who is suffering emotional harm. Justice can be rendered to the victim only by making the provision gender neutral. The Law Commission in 1971\textsuperscript{53} in which it was recommended to amend the law to render it gender neutral by extending the remedies to both men and women\textsuperscript{54}. The Mallimath Committee\textsuperscript{55} also recommended similar changes to the penal provisions justifying it under the norms of marital fidelity\textsuperscript{56}. Considering the wider ambit of mental cruelty including adultery committed by one’s spouse, the IPC may be amended accordingly.

Marital rape is the gravest form of violence faced by women\textsuperscript{57}. Exclusion of marital rape from the offence of rape in IPC stands in contradiction to the understanding of violence. PWDVA has only partially addressed it by giving civil remedies under the Act. The justification of exclusion granted to marital rape upon implied consent is an outdated theory. In the light of increased consciousness of right to live with human dignity, exclusion of marital rape

\textsuperscript{53} http://lawcommissionofindia.nic.in/1-50/report42.pdf (12 Nov., 2016, 5:45 PM).
\textsuperscript{54} Law Commission in para 20.18 recommended that the exemption of wife from punishment need to be removed.
\textsuperscript{55} Mallimath Committee Report, Committee on Reforms of Criminal Justice System, Government of India, Ministry of Home Affairs, p.190.
\textsuperscript{56} The Committee recommended that object of sec. 497 is to preserve the sanctity of marriage. Society abhors marital infidelity. Therefore, there is no reason for not meting out similar treatment to the wife who has sexual intercourse with a man, other than her husband.
\textsuperscript{57} Tulsidas Kanolkar v. State of Goa A.I.R. 2004 S.C. 978(India); the court observed that rape is the most heinous sexual offence committed against women. Comparing a murderer and a rapist, the court stated that while the murderer destroys the physical frame of his victim, a rapist degrades and defiles the soul of a helpless female.
finds no justification. If the exclusion continues to remain in Penal Code, ‘sexual violence’ remains inadequately addressed in the PWDVA.

The outcome of the law that purports to protect women has proved that they are not gender sensitive in its real sense. Hence the law and the courts are not able to eliminate violence against women in the domestic sphere. The existing framework of law can be made effective only by means of meaningful and objective driven implementation by the courts in India. The present criminal justice system need to be revamped giving due emphasis to inalienable human rights. The lack of effective remedies under criminal law will lead to apathy of human rights. There are a many ways that the justice sector can contribute to prevention of intimate partner violence. There is a need to strengthen women’s rights with regard to marriage and provide adequate sanction to those who perpetrate violence. Women need to be empowered by increasing the range of interventions to protect victims; by correcting procedural and evidentiary problems in criminal prosecutions and improving her access to the legal system.

Protection of Women from Domestic Violence Act (PWDVA), 2005 was enacted with an objective of protecting women from all forms of violence. The law is civil in nature, but criminal in procedure as the remedies are basically injunctive. The magistrate is the judicial authority prescribed under the Act. The Act intends to address from the perspective of criminal law only with respect to breach of protection orders. Violence is to be treated as an act that may extend to harm the victim’s life. Thus it falls within the ambit of an offence. There is no mention that offence is made cognizable
and non bailable thus making the approach of the Act lighter. There is a dire need to incorporate criminal law remedies in case of grave offences which is threatening the life of the victim. The Act fails to undertake an emergency action in such instances. The role of police is limited to assisting the Protection Officer and monitoring the compliance of protection orders issued by the magistrate. The only power utilized by the police towards curbing domestic violence is under circumstances of reasonable suspicion of dowry death. The police need to be identified and empowered as the instrument for the detection and prevention of crimes. Mandatory arrest policies followed by the western jurisdictions may be adopted in this regard. WHO Report on Violence and Health, 2002 stated that prevention at the primary level is more effective compared to any other interferences.

Only benefit of maintaining it under civil law is that only ‘reasonable apprehension of imminent danger’ is sufficient to prove where criminal law requires proof of criminal intent to commit such an act. The enacted legislation must have both civil and criminal law components if it is to address abuse of women within the home as socially unacceptable. The peculiar nature of relationship between the perpetrator and victim also need to be taken into consideration. The remedies extended to victims of intimate partner violence should be need based i.e. to end violence by preserving the relationship. Establishment of specialized domestic violence courts with specially trained officers to preside the matter and assist the system would be appreciable in this regard.

58 Sec. 174, Cr PC by virtue of Criminal Law (Amendment) Act, 1986.
The Act seems to be overwhelmed by a rights based approach. It lacks conceptual clarity while defining domestic relationships. It intends to extend protection to women in domestic sphere. But the lack of clarity of certain key terms has lead to denial of justice to some categories of victims. The concept of shared household was erroneously interpreted by the Supreme Court as that of ownership in Taruna Batra case. The victim was denied the remedy on the basis that the matrimonial home was belonging to her mother-in-law and not her husband. The law needs to be conscious about the societal system where there still exists joint family system and the wife is expected to stay where her husband resides. The term need to be defined with conceptual clarity that the right exists irrespective of ownership of neither the wife nor her husband. However, the extent of right available to the victim under protection order is a matter of concern. It is merely an expression of hope as opined by Supreme Court in B.R.Mehta v. Atma Devi.\(^{59}\)

Another area of lack of clarity is with respect to inclusion of ‘live-in-relationships’ within the meaning of domestic relationships. The extent of social acceptance to such relationships is well stated through the application of the principle of ‘presumption of marriage’ through various cases. The Act has imitated western culture by ignoring the cultural ethos of Indian society. Meaning of ‘domestic relationship’ between intimate partners may be attributed to relationships where presumption of marriage may be applied\(^{60}\). Such an amendment would also reduce multiplicity of cases on frivolous

\(^{59}\) (1987)4 S.C.C. 183(India).

\(^{60}\) Reference to Indra Sharma v. VKV Sharma
grounds. The status of women in fraudulent and void marriages also need to be specifically brought within ‘relationship in the nature of marriage’ as such women fall outside the ambit of marriage and presumption of marriage.

The Act seem to be driven by human rights based approach where it states innumerable rights such as right to be free from violence, right to residence and right to seek remedies. This approach raises the expectation of the stakeholders in the highest pedestal by placing a relative state accountability. The Act, in its enforcement, provides only limited remedies which may be availed by filing a complaint is filed with the authorities. Any provision which states liability of the state when protection is denied is lacking in the law. There need to be provisions related to human rights consciousness that entitles victim to get compensation in instances where the state fails to protect the victim. The Act fails to incorporate a coordinated and supervisory approach in its enforcement. There is a need for regular monitoring of the Act to identify the extent of rights to the stakeholders including the extended family of the victim. Monitoring of the Act should emphasize upon rehabilitation and overall empowerment of the victim.

Only by means of an effective coordinated system by the law, health care and social service sectors there can be an effective implementation of the

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61 Reference to CEDAW, 1979 and CEDAW Committee observations.
62 UN Human rights committee, in the report of UN, stated that India appears in the list of countries whose report submission is pending for more than ten years as on 2012 with respect to its compliance with ICCPR UN Report of the Human Rights Committee, Vol 1, United Nations, New York, 2012. CEDAW Shadow report, 2015 stated that there is no reporting by India upon the enforcement of rights under the convention.
law. The Act of a coordinated response was highlighted in *Voluntary Health Association of Punjab v. Union of India*\(^6\) thus

“...mere awareness will not serve the purpose...the authorities of the government, the Non-Governmental organizations and other volunteers are required to remember that there has to be awareness camps which are really effective. ..It must engulf the concept of social vigilance with an analytical mind and radiate into the marrows of the society.”

Through these strategies, awareness of the society may be created that violence against women is a condemned act. The key role which the society has to perform is to ensure protection of women against such practices. The sort of social policing upon such atrocities is the proper solution for the problems of such exploitation. Social groups can have a highly developed system of social vigilance\(^4\).

Women also need to understand their rights and enforce the same more effectively. It is stated in a comprehensive study on crimes against women that domestic crimes largely goes unreported as these are committed within the private sphere and the victims feel embarrassed to report the matter\(^5\). Communication media can also influence the society and create awareness as most of the victims themselves are not aware of the fact that infliction of

\(^{6\text{A}}\) (2013) 4 S.C.C. 1(India).


\(^{6\text{C}}\) UN Report, 2013 p. 98.
violence by the husband is an offence. Because of its wide reach, every word aired on the media gets immediate acceptance from the society.

With the conscious effort from the state parties, administrative system, society and individuals, the goal of establishment of a non violent social order in the family, may be fulfilled. By developing a sense of community and connectedness, violence may be reduced, prevented and successfully abolished thus attaining ‘non-violence’ as the fundamental moral virtue and social precept of classical Indian civilization\textsuperscript{66}.