CHAPTER - VI

PROTECTION OF WOMEN AGAINST DOMESTIC VIOLENCE IN INDIA
6.1 Introduction

Sydney Brandon, an English writer observed that in the west, statistically, it is safer to be on the streets after dark with a stranger, than at home with one's family, for it is here that accident, murder and violence are likely to occur. The position of the woman in India is no better. While she is held in high esteem, worshipped, considered as an embodiment of tolerance and virtue, she has also been the victim of untold miseries, hardships, atrocities caused and perpetrated by the male dominated society.\(^1\) Where women are respected, there dwell the Gods' — so say our scriptures. And yet, men worship all the Goddesses and beat their wives. Wife battering continues despite abolition of the feudal rule that the husband has the privilege to beat or do anything with his wife, despite the Constitutional guarantee of equality of law and equal protection of laws.\(^2\)

The Constitution of a country provides not only the structures of governance but also the legal, political and social framework within which individuals and groups exist and interact with each other. The discussion on domestic violence is therefore situated within our Constitutional framework. A society governed by the rule of law must seek to set out the goals that it strives to attain and the mechanisms through


\(^2\) Ibid.
which these will be attained. This is what the Indian Constitution also sets out to do. Its lofty goals are set out in the Preamble and it solemnly enjoins on every citizen, the obligation to renounce practices derogatory to the dignity of women. It also guarantees certain rights for the protection and welfare of women i.e. equality, equal protection of laws, equality of status and opportunity; thus redeeming the promise of justice: social, economic and political.

The question that arises is, do these provisions actually address issues of gender justice. Do these provisions actually provide the necessary legal environment for getting what women need namely a chance to lead a full life with dignity, secure in their bodily integrity. Or are women denied these conditions, indeed denied the very right to life on the basis of a condition of birth namely their sex?

Very few provisions of existing laws specifically address the issue of domestic violence or cruelty at home simplicitier. Remedies on account of cruelty find place in Indian divorce laws and in criminal laws. However, cruelty is not defined uniformly in the different legislations — and sometimes it is not defined at all. Besides the above, a special statute, The Protection of Women from Domestic Violence Act 2005, is also passed by the Parliament in August 2005. Women, the largest minority in India due to domestic violence are prevented from exercising their human rights and freedoms in society. An attempt is made in this Chapter to examine and analyse the Constitutional provisions and the legislative provisions which have been enacted by

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3 'The Colloquium: An Overview' in Report of Colloquium on Domestic Violence, p.xiv
the Parliament and also to examine the Act passed recently with a view to check
domestic violence.

6.2 The Constitution of India and Gender Equality

The principle of gender equality is enshrined in the Indian Constitution in its
Preamble, Fundamental Rights, Fundamental Duties and Directive Principles. The
Preamble guarantees justice, liberty, equality and dignity of the individuals.4 Article
14 confers on men and women equal rights and opportunities in the political,
economic and social spheres. Article 15 prohibits discrimination against any citizen
on the grounds of religion, race, caste, sex etc. Article 15(3) makes a special
provision enabling the state to make affirmative discriminations in favour of women.
Article 16 provides for equality of opportunities in matters of public appointments for
all citizens. Article 21 lays down that no person shall be deprived of his life or
personal liberty except according to the procedure established by law. Thus, these
provisions ensure that women have a right to lead a dignified, honourable and
peaceful life with liberty.5 Article 39(a) lays down that the state shall direct its policy
towards securing all citizens, men and women, equally, the right to means of

4 Preamble of the Constitution of India, states —
WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a
SOVEREIGN, SOCIALIST, SECULAR, DEMOCRATIC, REPUBLIC and to secure to all
its citizens:
JUSTICE, social economic and political;
LIBERTY of thought, expression, belief, faith and worship;
EQUALITY of status and of opportunity; and to promote among them all.
FRATERNITY assuring the dignity of the individual and the unity and integrity of the
Nation.
IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November 1949, do
HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.

5 Fundamental Rights, The Constitution of India.
livelihood, while Article 39(c) ensures equal pay for equal work. Article 42 directs the state to make provision for ensuring just and humane conditions of work and maternity relief.\(^6\) Above all, the Constitution solemnly enjoins on every citizen through Article 51-A (e) to renounce the practices derogatory to the dignity of women.\(^7\) The question, however, is: Have the women been able to reap the benefits provided for them under the Constitution of India?

The Indian Constitution, while mentioning the term 'dignity' in its Preamble, provides for its structure in its detailed provisions of Fundamental Rights, Fundamental Duties and the Directive Principles of State Policy. The whole set of provisions regarding the right to equality, aim at providing dignity to human beings. The social handicaps, prejudices, biases on the bases of caste, creed, sex, etc, have been Constitutionally prohibited. The right to freedom also emphasises the dignity of men and women. Dignity is a complex term and cannot be ensured only by providing legal Constitutional rights and by making welfare policies. The implementation of these rights is also important.\(^8\)

The importance of right to dignity has been aptly emphasised by the International Commission of Jurists, that 'it is the duty of the legislature in a free society under the rule of law to create and maintain conditions which safeguard the dignity of persons as an individual. The dignity requires not only the recognition of

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\(^7\) Fundamental Duties, The Constitution of India.

political and civil rights of a person, but also creation of social, economic, educational and cultural conditions, which are essential for the full development of the personality. In simpler terms, it can be said that dignity can be ensured when every member of the society has a feeling that, he or she is a respectable member and no one can humiliate, harass, exploit and insult him or her on the basis of caste, creed, sex and status etc.

In relation to women, the right to life of dignity in itself is a very complicated term. Women are governed by the Constitution and are therefore entitled to 'equality', 'freedom', and 'justice'. The legal structure also aims at providing basic minimum to women to live a life of dignity. Some progress has to some extent done away with those social practices, which directly challenge the dignity of women. These include the Sati system, infanticide, bigamy and polygamy. In other cases, laws do exist but social practices attacking the dignity of women also persist. There are several ways in which the structure of the family and the existence of several inequitable social customs and practices serve to deprive women of dignity. In particular, discrimination occurs within the family, where norms regarding women's secondary status are reinforced in children from birth. Son-preference is one of the key aspects underlying social values that view girls as burden. Women are viewed as dependents within the family and face severe restrictions on their mobility, which

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10 Supra note 8, p.165.
11 Ibid.
further impedes their ability to gain access to education and economic opportunities, which are fundamental freedoms under the Indian Constitution. Cultural norms regarding appropriate behaviour for women often reinforce images of docility, passivity and subservience, severely curtailing for women the exposure and confidence they require to participate on an equal footing.\(^\text{12}\)

In this context one area that is of vital concern to women is the area of domestic violence. In fact, internationally India has become notorious as the country which burns alive its young women for lucre. Dowry deaths in India have received wide publicity throughout the world.\(^\text{13}\) Further there is the problem of domestic violence where woman day after day is beaten, harassed and attacked by her own men. The problem of battered women remains a hidden crime because most of the cases go unreported as the crime is done within the four walls of home. The victim often fear social stigma and in many cases they dont have any option. Fear of living, so called family prestige, apprehension about the future of children, financial problems and fear of divorce also contribute. Domestic violence does not limit to wife battering, it includes torture for dowry, sexual perversion and the forms which may range from minor burning to fractures, and sometimes lead to murder also.\(^\text{14}\) It should be a matter of great concern to the entire society that such practices are allowed to prevail. Although, criminal laws have been amended twice in the recent


\(^{13}\) Justice Sujata V. Manohar., ‘The International Regime for Gender Justice: Reflections in the Constitution of India’ in Report of Colloquium on Domestic Violence, p.35.

\(^{14}\) Jain, supra note 8, p.166.
past to make dowry deaths and cruelty against women as offences which are punishable; although dowry prohibition legislation, where dowry related crimes have been defined and made punishable, the practical impact of these laws has not been visible as it should have been, had the society itself worked towards eliminating these crimes and brought the wrongdoers to book. Women who face violence within their homes do not have any other alternative except to leave their home when the violence becomes unbearable or threatens their lives.  

Dignity is attached to the identity of a human being as a person, when a human being does not enjoy the right to be a person, dignity does not exist at all. The problem in case of Indian women is that they lack a basis essence of identity and are supposed to survive as dependents of husband, father, and sons. The domestic violence, dowry related problems, death and suicides reveal the modernised version of attack upon women's dignity, when they are tortured physically and emotionally and their basic worth is put to question.  

Another area that is of vital concern to women in India is the area of personal laws — an area which governs the entire family life starting from birth, guardianship, marriage and divorce, custody of children, maintenance, adoption, inheritance and succession. It is these personal laws, which are replete with gender discrimination. These are some of the oldest laws in force in India — laws which were formulated, adopted, modified by customs and traditions with religious roots, long before the idea

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15 Justice Manohar, supra note 13.
16 Jain, supra note 8, p. 165.
of gender equality took shape anywhere. We have traditionally lived in a hierarchical society where occupation, caste and sex has its own set place in the social order and in the economic and political order. In this social context, the personal laws relating to marriage, inheritance and succession, adoption, custody of children, minority and guardianship and so on have evolved on a basis very different from gender equality. They have a religious and emotive appeal; and it makes the task of bringing about gender justice in true sense of the term in the area of personal laws extremely difficult.  

Nevertheless, if we are to conform to the international norms of gender justice it is very necessary that these laws be changed to incorporate a sense of gender justice within them. Since fundamental changes will have to be made in a complete body of laws, the task can be performed satisfactorily only through proper legislation. In fact, this is also the Constitutional mandate as expressed in the Directive Principles of State Policy where the ultimate ideal of having a uniform civil law for every citizen of this country is propounded. The Constitution makers also understood, thus this Constitutional imperative of bringing about reforms in personal laws through legislation. However, the task of total reform remains incomplete even now after 55 years.

17 Justice Manohar, supra note 13, p.33.
18 Ibid., pp 33 - 34.
19 The Constitution of India, Art.44.
In 1952, two very distinguished judges of this country, Chagla., J. and Gajendragadakar., J, held that personal laws were not within the ambit of Article 13(1) of the Constitution under which all laws in force at the commencement of the Constitution, in so far as they are inconsistent with Part III of the Constitution, shall be void. As a result, personal laws could not be tested on the anvil of Articles 14 and 15. They require legislative replacement rather than judicial striking down.

The Constitution is, therefore a challenge as a working legal document. For its efficient functioning, it requires the society to change its mind set and to move away from traditional prejudices and inhibitions as far as women are concerned. Unless the society learns to look upon them as full-fledged human beings entitled to equal participation in the familial, social, economic and political life, bare legal equality will not bring about the expected total equality.

6.3 Incorporating International Law on Gender Equality and Violence Against Women

The canvas of international law is ever changing with resolutions and conventions of various hues reflecting the ever-transient political moralities of nation states. In the 1940s, the post war regime of international human rights was conscious of the private and public divide. Since then international law has seen a sea change and has progressed to break free of its ‘formal’ and ‘public’ mould. Nevertheless several international instruments starting with the Declaration of Human Rights in 1945, followed by the International Covenant on Civil and Political Rights, the

International Covenant on Economic and Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination Against Women, and the Declaration on the Elimination of Violence Against Women, all contain yardsticks of gender equality which functionaries of the State Parties are required to strive towards in their various spheres.

Under Article 51(c) of the Constitution of India, it is implicit that the government has an obligation to observe international law. This contention is supported by the enabling provisions Article 253 read with entry 14 on the Union List in the Seventh Schedule of the Constitution. The Apex Court, in a catena of rulings, has established that principles of international law, when consistent with fundamental rights and in harmony with the spirit of the Constitution should be read into the Constitution to expand the content and meaning of these rights even if India is not a State Party to any such regime.

International Conventions and norms have been used in India in cases where there is a lacuna in domestic legislation. In the case of Vellore Citizens Welfare
Forum v. Union of India,\textsuperscript{25} it was held that any rule of customary international law which is not contrary to municipal law shall be deemed to have been incorporated in the domestic law and shall be followed by Courts of law. However, the incorporation of international law into domestic law is possible only when the law does not come into conflict with an Act of Parliament. As held in the Gramophone Co. of India Ltd v. B.B. Pandey,\textsuperscript{26} the will of the legislative bodies is still supreme and international law only fills the gaps in municipal law.

In another case, Peoples Union of Civil Liberties v. Union of India,\textsuperscript{27} it was held that the State was liable to pay compensation to the affected parties on the basis of Article 9 (5) of the International Covenant of Civil and Political Rights. This Article states that 'anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation'. It was further held that (with regard to applicability of international law in domestic law) a statute has to be interpreted and applied so that it conforms to and does not conflict with established international norms. Besides playing a role in interpretation and implementation of domestic legislation, international law should also influence the formulation of decisions and judgments by the judiciary. This move of incorporating international law as part of domestic law is useful especially with regard to women because it expands the amplitude of their rights and can ensure that, concepts such as gender equality and

\textsuperscript{25} AIR 1996 SC 2715.
\textsuperscript{26} AIR 1984 SC 667.
\textsuperscript{27} AIR 1997 SC 1203.
protection and prevention from violence are read into the fundamental rights in the Constitution. The passing of such guidelines would usually fall within the purview of the legislature. But under Article 32 and the Beijing statement of principles of the Independence of the Judiciary in the Law asia region, signed by all the Chief Justices of Asia and the Pacific in Beijing in 1995, the judiciary took it upon itself to lay down these guidelines.

In the Vishaka case, heavy reliance has been placed on various Conventions and Declarations that have been signed by the executive body of India with regard to the duty of the government to safeguard women’s rights to protection from violence and prevent discrimination. These include the Convention of Elimination of All Forms of Discrimination Against Women (CEDAW) and the Beijing Platform For Action of the Fourth World Conference on Women in Beijing. Article 11 and Article 12 of the CEDAW were referred to in the judgement. The guidelines, especially with reference to the definition of sexual harassment, have been borrowed heavily from CEDAW.

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28 See Vishaka, supra note 24, in which these principles are enunciated.

29 Article 11 of CEDAW states: 'State Parties shall take appropriate measures to eliminate discrimination against, women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular: (a) the right to work as an inalienable right of all human beings; ... (f) the right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction'.

30 Article 24 of CEDAW states: 'State Parties undertake to adopt all necessary measures at the national level aimed at achieving the full realisation of the rights recognised in the present convention'.
In *C Masilmani Mudaliar v. Idol of Sri Swaminathaswami Thirukoil*\(^{31}\) and *Madhu Kishwar v. State of Bihar*,\(^{32}\) the principles of CEDAW were invoked to interpret the Hindu women’s rights to property under S.14 of the Hindu Succession Act 1956. The Supreme Court has held that:

“Section 14 of the Hindu Succession Act 1956 should be construed harmoniously with the Constitutional goal of removing gender based discrimination and effectuating economic empowerment of Hindu Women. The right to elimination of gender based discrimination (particularly in respect of property) so as to attain economic empowerment, forms part of Universal human rights. Article 2 (f) of CEDAW states that states are obligated to take all appropriate measures, including legislation to abolish or modify gender based discrimination in the existing laws, regulations, customs and practices that constitute discrimination against women. Article 15(3) of the Indian Constitution positively protects such acts and actions”.

Also in *Apparel Export Promotion Council v. A.K.Chopra*,\(^{33}\) in setting aside a High Court’s re-appreciation of evidence in a case of sexual harassment, the Supreme Court said:

“In cases involving violation of human rights, the Courts must forever remain alive to the international instruments and conventions and apply the same to a given case when there is no inconsistency between the international norms and the domestic law occupying the field. In the instant case, High Court appears to have totally ignored the intent and content of the International Convention and norms while dealing with the case”.

\(^{31}\) (1996) 8 SCC 524.

\(^{32}\) (1996) 5 SCC 125.

\(^{33}\) (1999)1 SCC 759.
Thus, the amplitude of women’s rights have been extended beyond what is available under the domestic law of India to what has been provided in international law. The Courts have relied on the international instruments not only in interpreting legislation, but also see these instruments as facets of the fundamental rights guaranteed under the Constitution.

And also at the Fourth World Conference on Women in Beijing the Government of India made an official commitment to protect women’s right by undertaking various steps, and stated that it would formulate and implement a national policy on women. Government commitments under CEDAW must be fulfilled in terms of its own obligations under international law. The integration of international law can therefore be an important catalyst for strengthening the administration of justice in the area of violence against women.

6.4 Criminal Law Relating to Domestic Violence

As to criminal law that deals with domestic violence there is no specific legislation in India. This is an area that has traditionally been un-addressed by the law, mainly because it has been considered to be in the ‘private domain’. It is only very recently that Indian Criminal Law gave some limited recognition to domestic violence.

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34 These obligations of the government include setting up a Commission for Women’s Rights to act as public defender of women’s human rights and to monitor the implementation of the Platform for Action which shall provide a common forum to discuss and implement women’s rights at a national level.
As to general provisions, under the Indian Penal Code 1860 (IPC) the physical abuse of women can be charged under section 352, for criminal force or assault and under section 354, for outraging the modesty of women. The cases of wife-battering may be covered by general provisions contained in the IPC relating to voluntarily causing hurt and voluntarily causing grievous hurt under sections 323 to 329. The harassment of brides who are beaten or tortured when they refuse to comply with dowry demands sometimes results in murder or suicide. The general provisions of IPC were generally applied to such cases.

But these provisions did not take into account the specific situation of women facing violence within the home as against assault by the husband and in-laws. It was extremely difficult for women to prove violence by husbands and in-laws beyond reasonable doubt. There would be no witnesses to corroborate her evidence as the offence is committed within the four walls of the home. Even if the beating did not result in grievous hurt (S.325 IPC), the routine and persistent beatings would cause grave injury and mental trauma to the women. Generally complaints can be registered only after an offence has been committed. But in a domestic situation a woman needed protection even before a crime is committed when she apprehends danger to her life as she has been living with her assaulter and has also been dependent on him.35 This led the government to make a special provision for protection against

violence under all circumstances by passing the Criminal Law (Second Amendment) Act, 1983 and the Dowry Prohibition (Amendment) Act 1986 respectively.

The Criminal Law Amendments created special categories of offence under the Indian Penal Code to deal with cruelty by husband or his relatives and dowry death. And also certain other provisions were inserted under the Indian Evidence Act 1872 and the Code of Criminal Procedure 1973 (Cr.P.C.). Apart from these, there is also the offence of marital rape by the husband. Each category is dealt with under separate headings.

6.4.1 Cruelty by the Husband or Relatives of the Husband

With the object to curtail the growth of increasing violence and cruelty inflicted upon the wife by her husband and in-laws, IPC has been amended by incorporating a new chapter XX-A and a new section 498A by the Criminal Law (Second Amendment) Act, 1983. The amendment relating to dowry violence introduced two new types of offences on violence against women in the IPC. A new section 498A\(^36\) of the Penal Code dealt with 'cruelty' and 'harassment for dowry'.

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\(^{36}\) Inserted by Criminal Law (Second Amendment) Act 1983. Act 46 of 1983. The section came into effect on 25 December 1983. Section 498A reads as under:

498A *Husband or relative of husband subjecting her to cruelty* —whoever being the husband or the relative of the husband of woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation: For the purpose of this section, 'cruelty' means—

a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause injury or danger to life and limb or health (whether mental or physical) of the woman; or

b) harassment of the woman where harassment is with the view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to meet such a demand.
Cruelty was however defined as wilful conduct, which was likely to drive a woman to commit suicide or to cause her grave physical or mental injury. The section defined harassment for dowry as harassment of a woman by her husband or relative of his, to coerce her or her relatives into giving dowry. Although this section’s primary purpose may have been to deal with dowry violence, it had a wider significance since domestic violence came to be perceived as criminal conduct. The punishment was a term, which could be extended to 3 years imprisonment with a fine.

The term ‘cruelty’ under S.498A takes within its sweep both mental and physical agony and torture. The concept of cruelty varies from place to place and individual to individual and according to the social and economic status of the person involved. The question whether the act complained of is an act of cruelty has to be determined from the whole fact and relationship between the parties. The cultural and temperamental state of life among them are factors from where the cruelty has to be inferred, and will depend on the facts of each case. In State of Maharashtra v. Ashok Chotelal Shukla the Court held that in order to convict a person for a crime under S.498A IPC, the prosecution has to prove that the accused committed acts of harassment or cruelty as contemplated by the section and that the harassment or cruelty was the cause of the suicide.

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The legal conception of cruelty is generally described as conduct of such a character as to have caused danger of life, limb or health (bodily or mental) or as to give rise to a reasonable apprehension of such danger.\textsuperscript{40} The International Webster's Dictionary defines cruelty as the disposition to inflict pain or suffering or inhuman treatment.\textsuperscript{41} In \textit{Balkrishna Pandurang Moghe v. State of Maharashtra}\textsuperscript{42} it was held that there is no vagueness or obscurity in the definition of the word 'cruelty' in the two clauses of Explanation to section 498A. Merely because the definition of the word 'cruelty' may be in excess of its ordinary dictionary meaning, it cannot be said to be arbitrary and violative of Article 14 of the Constitution. In the Court's view, having regard to the social evil that is sought to be remedied such a wide definition of the word 'cruelty' was necessary and there is no vagueness or obscurity in the definition of the word 'cruelty'.

Some of the available case laws, however, shows that the Courts have often taken a very strict view, and S.498A has been defined very narrowly to include cruelty and harassment of only a very grave nature. Besides, some High Court judgments have interpreted S.498A to mean only the kind of cruelty, which has led a woman to commit suicide. The purpose of the reform was to punish cruelty, which would include not only harassment for dowry but also any wilful conduct which

\textsuperscript{40} \textit{Wharton's Law Lexicon}, 1976, Reprint Ed. p.288.
\textsuperscript{42} (1998) Cr.L.J. 4496 (Bom).
would be likely to cause grave injury or danger to life, limb or health (both mental and physical). In many cases this objective has not been realised.  

For instance in *Waghmare v. State of Maharashtra*,\(^44\) the complainant had alleged that her husband and in-laws had started harassing her to obtain a motor cycle, and on one occasion, two months after the marriage, her brother-in-law had poured kerosene on her and tried to set her on fire. She further alleged that she was subjected to harassment and beating by her husband even thereafter. The Court however held that this harassment and beating was not sufficient to amount to cruelty under S.498A, as she had not conclusively established that the beating and harassment was with a view to forcing her to commit suicide or to fulfil the illegal demands for dowry. This interpretation ignored the fact that legally cruelty could be any conduct, which would be likely to drive a woman to commit suicide, or cause her mental or physical harm, and need not necessarily result in suicide.

In another case *Kushal v. State of Maharashtra*,\(^45\) the judge held that the offence under S.498A had not been proved, since the evidence did not conclusively establish that the deceased had committed suicide. The judge in fact agreed that the deceased had been ill-treated and harassed by her husband at the instance of his parents, and her body had been found floating in a tank. The judge however held that S.498A of the IPC contemplates that a woman should drive herself to death or injury


\(^{44}\) (1991) 1 *HLR* 4328.

\(^{45}\) (1990) 1 *HLR* 328.
and the main ingredient of S.498A is proof of suicide. If the death is attributed to anyone else, the offence could not be established under the S.498A. This decision of the High Court shows how Courts have misinterpreted S.498A so as to exonerate perpetrators of violence against women.

But in some cases the judicial trend has been most encouraging as the same is evident from analysing a few cases. In *Mukund Chitnis v. Madhuri Chitnis*, on the wedding night itself the husband suspected the chastity of the wife. The bitterness that commenced soon culminated into a separation within less than a month's time. Allegations and counter-allegations came to be made. The husband resorted to mud-slinging and character assassination. A complaint of theft was also lodged against the wife and a search warrant was taken out and the wife's residence was searched for ornaments alleged to have been stolen by her and an inventory was prepared. All this led to the filing a complaint by the wife under S.498A of IPC. The Court held the husband guilty under S.498A and observed that this should prove an eye opener to those who believe that they can get away by casting aspersion on a woman to serve their ends and to silence her.

In another case *Arjun Kamble v. State of Maharashtra*, the Court held that the harassment of a woman with a view to coercing her or any person related to her to meet any unlawful demand for any property will amount to cruelty punishable under S.498A. The fact that the demand is in conformity with custom or usage does not

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46 (1991) SUPP (2) SCC 359.
render it in any way lawful. The cruelty contemplated by S.498A is far wider. Of course, ordinary notions of what constitutes cruelty regard being had to the explanation will be the criterion for judging an accusation under S.498A. A hypersensitive wife affected by every little word or gesture cannot complain of cruelty under S.498A. But constantly pestering a wife year after year for valuable presents allegedly in conformity with custom, taunting her and making life miserable for her all the time, would attract S.498A.

And in Pawan Kumar v. State of Haryana, the Court held that wilful misconduct soon after marriage and quarrel a day before death would amount to cruelty under S.498A. In Pyarelal v. State of Haryana, it was held that the act of taking a child away from the mother amounts to cruelty under S.498A. In State of Karnataka v. C. Prakash, apart from other general evidence, very strong reliance was make by the Court on the letter written by the deceased wife hardly a week prior to the incident. In this letter the deceased wife had stated that the accused for no reason at all was whipping and beating her. The Court held that, the action undoubtedly amounted to cruelty under S.498A. And also in Sita Ram v. State of Haryana and anr, the Court held that compelling a wife to leave the matrimonial home and forcing her to live with the parents was an act of cruelty.

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50 (1998) Cri.LJ. 1673 (Kant.)
51 (1997) 3 Crimes 362.
In all the above cases, the Courts interpretation of the word 'cruelty' broadly represent a welcome change and all these cases are an important precedent which should be cited frequently and followed.

The introduction of S.498A has not altered the requirement of standard of proof. There is no absolute standard of proof in a criminal trial and the question whether the charges have been met beyond a reasonable doubt would be dependent upon the facts and circumstances of each case. The doubt must be of a reasonable person and the standard adopted must be of a reasonable and just person for coming to a conclusion considering the particular subject matter.\(^5\) The offence under S.498A is cognisable and triable by a Magistrate First Class. The bar of limitation to take cognisance of offence under S.468 Cr.P.C. would not apply to matrimonial offence where the allegations are cruelty, torture etc. The general rule of limitation would not apply against cruelty to women. The offence of cruelty is in the nature of a continuing offence.\(^5\)

Further, the Criminal Law (Second Amendment) Act, 1983 has inserted a new section 198\(^\text{A}\) in the Cr.P.C. to ensure that the husband and the in-laws of the married woman are not harassed by a complaint lodged by a person who is having

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\(^{52}\) State of West Bengal v. Orilal Jaiswal (1994) 1 SCC 73.


\(^{54}\) Sec.198\(^\text{A}\) of Cr.P.C. reads as under:

Section 198\(^\text{A}\): Prosecution of offences under section 498A of the Indian Penal Code- No Court shall take cognisance of an offence punishable under section 498A of the IPC except upon a police report of facts which constitute such offence or upon a complaint made by the person aggrieved by the offence or by her father, mother, brother, sister, or with the leave of the Court, by any other person related to her by blood, marriage or adoption.
personal grudge against them, and is not concerned with the death of the married woman but motivated by an ulterior purpose.

6.4.2 Dowry Death

Before the 1986 Amendment in cases of dowry demands where death/suicide had occurred the police generally charged the husband and in-laws of the victim either under section 302 IPC for murder or section 306 IPC for abetment to suicide. Murder by burning is extremely difficult to prove. Perhaps that is why dowry-death through burning are common. A victim is led to suicide through extreme harassment or cruelty. Most of the bride burning cases registered by the police relate to abetment to suicide under section 306 IPC and not murders. Under the earlier laws it was impossible to prove abetment to suicide in the Court of law, if the victim had not left any note behind or a dying declaration. Therefore, the legislature passed the Dowry Prohibition (Amendment) Act, 1986 and introduced a new offence of Dowry Death by inserting new section 304B in IPC and also a new Section 113B in the Indian Evidence Act, relating to a presumption as to dowry death.

55 Section 302 reads as under:

302 Punishment for Murder— whoever commits murder shall be punished with death, or imprisonment for life and shall also be liable to fine.

56 Section 306 reads as under:

306. Abetment of Suicide— If any person commits suicide, whoever, abets the commission of such suicide shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

57 Umar, supra note 35, p. 189.

58 Section 304B reads as under:

304B. Dowry death— (1) where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with any demand for dowry, such death shall be called ‘dowry death’, and such husband or relative shall be deemed to have caused her death.

Explanation — For the purpose of this section ‘dowry’ shall have the same meaning as in Sec.2 of the Dowry Prohibition Act, 1961.

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.

59 Section 113B reads as under:
Under S.304B, if a woman died an unnatural death within 7 years of marriage and it was shown that just before her death she had been subjected to cruelty or harassment by her husband or his relatives for dowry, such a death shall be deemed to have been caused by the husband or his relatives. The punishment for causing this death is imprisonment for a minimum of 7 years and maximum of life. And S.113B of Evidence Act raises a presumption against the husband or his relatives for having caused the death, if there was evidence that he or the relatives has harassed the deceased for dowry.

The Supreme Court has held that S.304B has the following essentials: (1) the death of the woman should be caused by burns or bodily injury or otherwise than under normal circumstances (2) death should have occurred within 7 years of her marriage (3) she must have been subjected to cruelty or harassment by her husband or any relative of her husband shortly before her death, and (4) such cruelty or harassment should be for or in connection with demand for dowry. The concept of cruelty or harassment has to be taken from the explanation to S.498A. IPC.

As dowry death occurs within the four walls of the house, the concept of 'presumption as to dowry death' was introduced under S.113B of the Evidence Act. In order to invoke legal presumption, it is necessary to prove that the deceased was

113B. *Presumption as to dowry death* — When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death, such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused dowry death'.

subjected to cruelty or harassment. Further, the presumption under S.304B and S.113B only apply if the offence takes place within 7 years of marriage. The sections read in conjunction will shift the burden of proof from the prosecution on to the husband or his relatives accused of the offence. This is a departure from the normal rule of evidence and was introduced to strengthen the hands of the prosecution. The provision of S.113B is mandatory in nature. The Court has also opined that S.113B could be applied retrospectively as it is procedural in nature.

As no direct evidence is available in dowry death offence the Courts must rely upon circumstantial evidence and infer from the material available. In one of the case, the Court held that the conduct of the husband is not to trying to put out the flames and not taking her to hospital will be taken as circumstantial evidence against the husband. Along with circumstantial evidence, the Courts also rely upon the dying declaration of the deceased.

In *Shanti v. State of Haryana* the issue before the Supreme Court was whether S.304B and S.498A IPC are mutually exclusive. The Court observed that these provisions deal with two distinct offences and are not mutually exclusive. Under S.304B it is the “dowry death” that is punishable and such death should have

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63 Ibid.
occurred within 7 years of the marriage. No such period is mentioned in S.498A and the husband or his relatives would be liable for subjecting the woman to "cruelty" any time after the marriage. And in another case, the Court held that, there is nothing in the section that excludes the application of S.302 of IPC if S.304B applies.\textsuperscript{69} Where the dowry death takes place after seven years of marriage, then the other provision of the IPC are applicable. viz S.300, S.302, S.304.

In many dowry cases, police inaction and corruption often delays the disposal of cases under S.304B and also results in many cases to not even reach the Courts. In \textit{Chajju v. State of Haryana},\textsuperscript{70} the father of the deceased lodged a report with the police, but since no action was taken for a month he was forced to file a private complaint in the Court. As many as eight witnesses were examined to establish that there had been persistent claims of dowry and ill-treatment of the deceased. The doctor who conducted the post-mortem examination held that the cause of death was asphyxia due to extensive burns, which were sufficient in the ordinary course of nature to cause death. The Court held that the evidence on record clearly established cruelty and demands of dowry and hence of dowry death. The defence of the accused was that the deceased was a sensitive person who was feeling over-burdened by household chores, and she had committed suicide along with her infant son. The Court commented that 'a young bride in India, having an infant aged about nine months would hardly end her life because of pressures of work at home or in the

\textsuperscript{69} (1994) 2 Crimes 776.
\textsuperscript{70} (1990) 1 HLR 509.
fields. The defence had also produced an affidavit allegedly signed by the father of the deceased, stating that he was satisfied that his daughter had committed suicide. However, the Court viewed this affidavit with suspicion because the day before the alleged affidavit had been signed, the father had lodged an FIR with the police. The father of the deceased had explained that he was made to sign a blank document by the police. The Court believed that it was this blank document that was later exhibited as the father's affidavit. This case gives an insight into the dimension of corruption in law enforcement and the malaise affecting the criminal justice system.

In another case, the Supreme Court condemned poor police investigation. In this case, a girl named Pushpa was alleged to have been burnt by her mother-in-law and locked in the kitchen. Neighbours, who saw the flames and heard Pushpa's cry for help, opened the bolted door from outside and took Pushpa to the hospital. The mother-in-law and Pushpa's husband who were present in the house refused to take Pushpa to the hospital. Pushpa subsequently died but before dying her statement was recorded by the police and attested by two other witnesses. Pushpa had stated that her mother-in-law had poured Kerosene on her and set her on fire. She made a similar statement to the doctor and to her father.

Commenting on what it called the disturbing features of the case the Supreme Court held that 'investigation in the case did not proceed as there appeared to be soft peddling of the whole case by the police'. It criticised the police for not prosecuting Pushpa's brother-in-law who was seen running away from the scene of the crime.

The Supreme Court also criticised the police for not prosecuting and charge sheeting Pushpa's husband whose complicity in the crime was obvious as he stood by and let Pushpa burn to death, and refused to rescue her.

In *Bikshapati v State of A.P.*, the statements of the main witnesses were not recorded for one and a half year and the girl's father had to approach senior police officers with a complaint against the investigating officers for not carrying about their duties. The case had to be transferred to another police officer before the case for abetment to suicide and cruelty was filed in the Court. In this case, the Court also relied upon the Madras High Court Judgment in a case of dowry death where the police had failed to register the case and the Court ordered a fuller and deeper investigation by the special state-level investigating agency, the crime branch criminal investigation department.

The delay in investigation was also highlighted in another case in which the police submitted the charge-sheet for murder and cruelty after a lapse of three years from the date of women's death. The investigation was first handed over from the regular police to the special investigative branch, as the regular police did not register a case. However, the investigating officer kept changing, and four police officers were changed before case was registered.

Some of the judgments also highlight how judicial bias can operate to negate the purpose of law, and how judges are influenced by traditional and feudal values.

72 (1989) 2 HLR 430. A.P.

that conflict with legal reforms that have been enacted in this area. In the case of *Masood Ahmed v. State*\(^{74}\) the Court held that it was not a case of dowry death since the evidence on record did not prove cruelty or harassment in connection with dowry. The Trial Court had convicted the in-laws and husband of the deceased under S.304B and S.498A. The Delhi High Court held that the demand for Rs.10,000 and a colour T.V. did not constitute demand for dowry. Though the Court admitted that there was a demand of Rs.10,000 for the husband’s business, this demand, in the Court’s view, did not constitute dowry, and harassment on account of this demand would not be said to be in connection with dowry. In an obviously contradictory judgment, the Court however, further held that when the parents of the deceased showed their inability to deliver these objects the deceased was subjected to cruel treatment and harassment. The Court held that it was proved that the deceased had left home and told her parents that her mother-in-law had spat in her face, and her husband had not interfered, and that because of this she refused to go back to her husband’s house. The Court in fact further went on to surmise that no body could determine what exactly had happened, it was clear that the girl had committed suicide.

And also some cases reveal that, the manner in which judges deal with a case, often depends on their individual ideology regarding the role of women in the family. *Sudha Goel’s*\(^{75}\) case for instance, reveals the stronger gender bias even amongst some High Court Judges. The Sudha Goel appeal was first heard in the High Court in Delhi,

\(^{74}\) (1991) 2 HLR 556.

and it was the Supreme Court, which overturned the High Court judgment and held the husband guilty. When women’s groups protested against the lower Court judgment and pointed out that the judges had not analysed the evidence correctly, they were held guilty of contempt.

6.4.3. Suicide by Married Women and Abetment of Suicide

In many cases of dowry death, a defence is often pleaded that the married woman died by committing suicide. And in fact, her husband and his relatives usually attempt to paint the dowry death with the colour of suicide. But if it is proved that they abetted her to commit suicide they can be punished. For the offence of abetment to commit suicide S.306 and S.107 of IPC should be referred to. S.306 of IPC punishes the person who abets the commission of suicide with imprisonment, which may extend to ten years and also fine. Under section S.107 of IPC, a person is said to ‘abet’ another when he actively suggests or stimulates, provokes, incites, encourages, insinuates another to act in a particular manner by means of language, direct or

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76 Supra note 56.
77 Sec. 107 reads as under:

107. *Abetment of a thing* — A person abets the doing of a thing, who— Firstly—instigates any persons to do that thing; or Secondly—Engages with one or more other person or persons in any conspiracy for the doing of that thing— if an act or illegal omission takes place in pursuance of that conspiracy and in order to the doing of that thing; or Thirdly— Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1- A person who, by wilful misrepresentation, or by wilful concealment of material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Explanation 2- Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.
indirect. Nonetheless, the act of abetment must be so potent that direct result of which is the commission of suicide.

Having regard to the difficulty in establishing the cause of death — whether the husband’s and/or his relatives’ conduct and treatment induced her to commit suicide the legislature stepped in by introducing S.113A to the Indian Evidence Act by the Criminal Law (Second Amendment) Act, 1983 which is one of the most significant amendments, that allowed the Courts to presume that in certain circumstances, a husband or his relatives had abetted the suicide of a woman.

While referring to S.113A of the Indian Evidence Act, the Supreme Court has clarified that the Courts can presume that suicide by a woman has been abetted by the husband or a relative when two factors are present: (a) that the woman has committed suicide within a period of seven years from the date of marriage, and (b) that the husband or his relative had subjected her to cruelty. Cruelty for this purpose is defined in S.498A of the IPC. A large number of dowry deaths occur due to the continuous harassment of young brides who commit suicide by setting themselves on fire. As the suicide is often committed within the confines of the matrimonial home,

78 Section 113A reads as under:

113A. Presumption as to abetment of suicide by a married woman — When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or any relative of her husband has subjected her to cruelty the Court will presume having regard to all the circumstances of the case, that such a suicide had been abetted by her husband or by such relative of her husband.

Explanation for the purposes of this section — ‘Cruelty’ shall have the same meaning as in S.498A IPC.

there is invariably no direct evidence indicating the circumstances in which the suicide took place. In *Gurbachan Singh v. Satpal Singh*, Ravinder Kaur, the deceased girl was said to have committed suicide by sprinkling kerosene oil on her body and then set herself on fire. The girl's father gave evidence that when he visited his daughter, she complained to him about her in-laws maltreating her for dowry, and accusing her of carrying an illegitimate child. Two days prior to the incident when the girl's sister visited her, she complained to her about her in-laws cruel behaviour. The Supreme Court holding that in such cases direct evidence was hardly available, and that circumstantial evidence and the conduct of the accused persons should be taken into consideration held that the persistent ill-treatment of the girl for dowry amounted to abetment of suicide. The Court considered the conduct of the in-laws and husband in not informing the police after the suicide and not taking steps to take her to the hospital. The Court held that the circumstantial evidence and the fact that the in-laws and the husband made no attempt to save her proved their culpability.

In this case, the Supreme Court rejected the view of the High Court that the case had not been proved beyond reasonable doubt. It criticised the High Court judgement and said that though criminal charges must be proved beyond all reasonable doubt, the doubt 'must be of a reasonable man' and warned against an 'exaggerated devotion to the rule of benefit of doubt'. The Supreme Court further held that 'justice cannot be

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81 (1990)1 HLR 353 SC.
made sterile on the plea that it is better to let a hundred guilty escape than punish an innocent, letting the guilt escape is not doing justice according to law.

In *Bikshapati v. State of A.P.*, the girl had committed suicide by setting herself on fire after about 11 months of marriage because of the ill-treatment and harassment by her husband, and in-laws for dowry. The High Court clarified that the irregularities that had been committed by the investigating officer would not come in the way of their appreciating the oral testimony of the witness. It also pointed out that in cases of dowry death, only the parents or the relatives of the girls would normally come forward to give evidence as it was natural that the deceased had only talked to her family about the ill-treatment and not to an outsider. The Court further held that the cumulative effect of the incidents of harassments spread over a period after the marriage had to be considered. It pointed out that the introduction of S.113A of the Indian Evidence Act clearly shows that the legislature intended to take into consideration incidents for about a period of seven years from the date of marriage, if a woman commits suicide, as a result of cruelty.

In one of the cases before the Supreme Court, the question was whether S.113A of the Evidence Act could be retrospectively applied. The Court held that the Evidence Act is part of the law of the procedure and changes in the Evidence Act like changes in other procedures are retrospective in nature and thus S.113A would apply retrospectively. The Court went on to say that if it is shown that a woman commits suicide.

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82 *Supra* note 72.
suicide within a period of seven years from the date of her marriage, and that she had been subjected to cruelty as mentioned in S.498A IPC a presumption could be raised under S.113A of the Evidence Act.

The Supreme Court noticing that in spite of the fact that punishment for abetment of suicide carries a sentence of 10 years imprisonment, the Courts are normally awarding much less, has observed that whenever a case of gruesome murder of young wife by the barbaric process of pouring kerosene oil on the body and setting her on fire as the culmination of a long process of physical and mental harassment for extraction of dowry comes before the Court and the offence is brought home to the accused beyond reasonable doubt, it is the duty of the Court to deal with it in a most severe and strict manner and award the maximum penalty prescribed by the law in order that it may operate as a deterrent to other persons from committing such anti-social crimes.84

The Amendment Act of 1983 by inserting S.174 (3) in the Cr.P.C 1973 made it compulsory that a post-mortem be conducted in all cases in which a woman committed suicide or died within seven years of marriage in 'circumstances raising a reasonable suspicion ' that some other person was involved or if there was any doubt regarding the cause of death.85 And by inserting S.174 (1) in Cr.P.C. the 1983

85 Sec.174(3) of the Cr.P.C. 1973 reads as under:

When (i) the case involves the suicide by a woman within seven years of her marriage; or (ii) the case relates to the death of a woman within seven years of her marriage in any circumstances raising a reasonable suspicion that some other person committed an offence in relation to such woman; or (iii) the case relates to the death of a woman within seven years of her marriage and any relative of the woman has made a request in this behalf; or (iv) there is any doubt regarding the cause of death; or (v) the police officer for any other reason considers it expedient to do so, he shall, subject to such rules as the state government may prescribe in this behalf, forward the body, with a view to its being examined, to the nearest Civil Surgeon, or other qualified medical man appointed in this behalf by the state government....'
Amendment Act made a provision for inquest by an Executive Magistrate in cases in which the woman had committed suicide or died in suspicious circumstances within seven years of marriage.

6.4.4 Problems of Evidence

In matters involving criminal acts the prosecution is under a heavy responsibility to prove the case beyond reasonable doubt. In cases of dowry death, harassment and cruelty, dowry related murders and suicide, the prosecution is under duty to produce evidence in the proof of these crimes. The burden is heavy. If the prosecution fails to prove any of the ingredients of the offence the case is lost. The law as it stood before 1983 was least helpful to the prosecution. The two amendments to the law made in 1983 and 1986 created presumption as regard harassment or cruelty and dowry death. In spite of such presumptions the burden on the prosecution remain onerous.

As the death or suicide takes place generally in the marital home, only the family members have privy of knowledge to the gruesome events. Prosecution hardly get direct evidence. Many a time case is based on circumstantial evidence like letters written by the brides to her parents, evidence of neighbours and the dying declaration, if any made by the victims.

86 Sec.174(1) of the Cr.P.C., 1973 reads as under:

*Police to inquire and report on suicide, etc* — (1) when the officer in-charge of a police station or some other police officer specially empowered by the state government in that behalf receives information that a person has committed suicide, or has been killed by another or by an animal or by machinery or by an accident, or has died under circumstances raising a reasonable suspicion that some other person has committed an offence, he shall immediately give intimation thereof to the nearest Executive Magistrate empowered to hold inquests......

87 Umar, supra note 35, p.194.

88 Ibid.
An analysis of some Supreme Court judgments show that judges have not been able to devise criteria for determining domestic violence, nor have they awarded punishment consistently. The rules of circumstantial evidence, which normally surround crimes of secrecy such as murder, have been applied inflexibly in gender related crimes. The gender aspects of domestic violence have not underpinned the rulings of the Supreme Court resulting in outcomes, which are not significantly different from other criminal prosecutions for murder.

For instance in Sharad Sarda v. State of Maharashtra, Manju was married to Sharad Sarda, a Chemical Engineer on February 11, 1982 and was unhappy because of indifference of the husband and ill-treatment by the in-laws. She visited her parents home briefly on three occasions, prior to her death which took place sometimes between 11.30 p.m. and 1 a.m. on the night of June 11-12, 1982. The post-mortem indicated that Maju died due to administration of potassium cyanide. At the time of her death, her husband was the only person present. Prior to her death, Manju had written two letters to her sister Anju and her friend Vahini giving some indication of her misery and unhappiness in the marital home. These letters as well as Maju’s statements to her parents during her last visit to them in May 1981 were treated as dying declaration.

The prosecution alleged that Manju was killed by her husband, who was having an illicit affair with another woman. The husband, in his defence, alleged that Manju had committed suicide. The trial Court agreed with the prosecution that it was a case

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of homicide and imposed a death sentence on the husband. The evidence before the trial Court was mainly circumstantial. The High Court confirmed the sentence of the trial Court. The husband's appeal to the Supreme Court was decided by the three Judges Bench.

To arrive at its determination, the Supreme Court had to consider (a) whether Manju's letters and her oral statements to her parents and relatives, constituted dying declarations under section 32(1) of the Evidence Act 1872 (b) whether evidence of Manju's natal family members could be believed (c) whether the prosecution could be allowed to rely on circumstances which the accused was not given a chance to explain in his statement under section 313 of the Criminal Procedure Code.

The Court concluded that Manju's letters revealed her unhappiness after marriage which at the same time showed that she had no serious complaints of ill-treatment against the husband or in-laws. Para 78 of the judgment states that Manju's father, as a loving parent, would not have sent her back to her husband's home if Manju was really unhappy and frightened for her life. This is a clear indication that the Court ignored the cultural reality where a newly wed woman is encouraged to make the marriage work, regardless of the ill-treatment she may receive. And also the Court did not draw any censure from the accused husband entering into a marring with Manju's despite having an ongoing relationship with another lady.

It was speculated by the Court that Manju could have had access to Potassium Cyanide as her maternal uncle had a plastic factory from where Potassium Cyanide could be obtained. The judgment is silent on the fact that the accused husband, who
was a chemical engineer, also had a chemical factory, and that obtaining Potassium Cyanide ought not to have been difficult. The Supreme Court relied on section 313 of the Cr.P.C., which says that if the accused is not given an opportunity to explain circumstances, which are against him, such circumstances cannot be used against the accused. The appeal was allowed as the Court concluded that the guilt of the accused husband was not proved beyond reasonable doubt. Sharad Sarda was acquitted of all charges and released.

In the *State of West Bengal v. Orilal Jaiswal*, Usha was married to Orilal on May 31, 1985. The prosecution alleged that on April 19, 1986 Usha committed suicide by hanging herself in her husband's house. Her brother alleged that Usha had been murdered. The husband was finally charged only under S.498A and S.306 IPC (abetment of suicide). It was established that the husband had harassed Usha for dowry and treated her with severe cruelty. There was no dying declaration made by Usha.

The conviction of the accused by the trial Court was reversed by the High Court which was influenced by the absence of a dying declaration, lack of letters of complaint written by Usha, no specific dates being given by Usha to her mother about the acts of cruelty and dowry demands. The Supreme Court, on appeal, held that there was sufficient evidence of cruelty to Usha prior to her death and convicted both Orilal and his mother under S.498A, but were given benefit of doubt regarding the offence under S.306 IPC. The Court spent considerable time articulating on the

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90 (1999) 1 SCC 73.
degree and standard of proof required for conviction in criminal proceedings. The Court stated that even after introduction of S.498A in the IPC and S.113A in the Evidence Act, the requirement of proof beyond reasonable doubt, was not altered.

In Hem Chand v. State of Harayana, Saroj Bala was married to Hem Chand, a police officer, on May 24, 1992 she was sent back to her parental home whenever the persistent dowry demand were not met. On Nov 13, 1994, Hem Chand left his wife with her parents as he wanted to get Rs.25,000 for purchase of some land. Sometime later, he took his wife back. Her father gave only Rs.15,000 with a promise to give the balance. On June 16, 1997 Saroj Bala died of strangulation in her matrimonial home. The husband took her body to his village. Saroj Bala’s father alleged that his daughter had been murdered for dowry. The police sent the highly decomposed body for post-mortem. Death by strangulation was confirmed by the forensic examiner. The husband was charged under S.498A and S.304 B of IPC.

In defence, the husband stated that he found his wife hanging from a hook on the ceiling. He explained his conduct in taking his wife’s body to the village as done in confusion. The trial Court awarded life imprisonment to the husband for offence under section 498A and 304B IPC. This was upheld by the High Court in appeal. The High Court stated the accused being a police officer should be punished with life imprisonment. Hem Chand then appealed to the Supreme Court, which ruled that Saroj Bala had died an unnatural death. The death took place within seven years of her marriage. Prior to her death she was subjected to cruelty and harassment for

dowry by the accused husband. The ingredients of S.304B and 498A were satisfied. Since the husband had subjected the wife to cruelty before her death, the presumption that he had caused her death, offered by S.113B of the Evidence Act could be made. The Court admitted that there was no direct evidence to link the accused with the unnatural death. There was no charge under S.302 IPC, for murder. Yet, it was satisfied that the offence of dowry death had been committed by the accused. The Court reduced the sentence of life imprisonment imposed by the High Court.

This judgement is a clear departure from the decision made by the Supreme Court in Orilal Jaiswal's case. Although S.304B was not available as an offence, when Usha Jaiswal died, the Court shied away from convicting the accused for abetment of suicide.

In India, because of the complete dependence of a young married woman on her husband and in-laws, many dowry murder cases indicate that the woman is pressurised to give contradictory dying declarations. If she thinks that she may survive, she gives a statement in favour of her husband which she then changes when she realises that death is imminent or considering the safety and future of her children if there are any, she may not give out the true facts. It has also been pointed out that burn victims often do not realise that they have suffered severe burns as they feel no pain, and therefore do not believe that they may not survive. Courts have sometimes failed to take this reality into consideration while deciding these cases. There are
however cases where Courts have appreciated the 'natural' hesitancy and fear of a young bride in implicating her husband and in-laws.\textsuperscript{92}

The Supreme Court in the case of \textit{Thurukanni Pompiah v. State of Mysore} \textsuperscript{93} has observed that the reliability of the dying declaration should be subjected to a close scrutiny, considering that it was made in the absence of the accused who had no opportunity to test its veracity by cross examination. If the Court finds that the dying declaration is not wholly reliable and a material and integral portion of the deceased’s version of the entire occurrence is untrue, the Court may, in all the circumstances of the case consider it unsafe to convict the accused on the basis of the dying declaration alone without further corroboration.

In \textit{Kamala v. State of Punjab},\textsuperscript{94} the Supreme Court has observed that it is also settled that in all these cases the statements should be consistent throughout if the deceased has made more than one dying declaration. In this case there were four dying declarations made one after another. The girl dying of third degree burns first stated that her mother-in-law sprinkled kerosene oil from behind and burnt her. In the next she stated that her clothes got burnt catching fire from the above, thereby indicating that it was an accident. In the third statement she was rather vague as to who exactly poured kerosene oil and set fire on her and she only stated that it could be possible that her mother-in-law and father-in-law might have set the fire after pouring

\textsuperscript{92} Singh, \textit{supra} note 43, p.134.
\textsuperscript{93} AIR 1965 SC 939.
\textsuperscript{94} AIR 1993 SC 374.
kerosene oil. In the fourth statement she stated that she turned to the store and she heard her mother-in-law and father-in-law talking behind her and suddenly they poured kerosene oil and they set her on fire. The Supreme Court held that under these circumstances, the irresistible conclusion is that the dying declarations are inconsistent and in such situation it is not possible to pick out one statement where the accused is implicated and base the conviction on the sole basis of such a dying declaration.

Sometimes the dying declaration of a bride before the parents came is to exculpate her husband and in-laws; but when a the parents come on the scene, she feels more confident and gives a version, which involves them. The Courts are generally beset with the problem of assessing this conflicting evidence and in a quite few cases, having regard to the presumption of innocence, till it is displaced by acceptable evidence which brings home beyond reasonable doubt the offence to the accused, an acquittal follows.95

But in Rajpal v. State,96 the decision shows that the Courts can be sensitive to the social reality and the context in which the burn victim makes a dying declaration. Instead of relying on the technicalities of the law, the Court recognised the 'natural' fear and severe of dependency on her husband and in-laws that a married girl reveals by her hesitation in initially stating what actually happened. In this case of dowry

95 Umar, supra note 35, p. 197.
96 (1989)1 HLR 90.
murder there were six dying declaration which could be divided into two sets. One set exonerated the accused, and the other implicated him.

One of the dying declarations had been recorded by a local Magistrate in which the dying wife had stated that her husband Raju had sprinkled kerosene oil on her and set her on fire. This statement had been recorded in Hindi after the doctor in the hospital had declared that the wife was fit to make the statement. The woman had also earlier told her sister and brother-in-law that it was her husband who had burnt her. Both these persons, however, rescinded their earlier statement made to the Magistrate under S.161 of the Criminal Procedure Code. It was found that the deceased’s sister was in fact married to the brother of the accused, and that in all probability the brother persuaded his wife to rescind her statement to save the life of the accused. The brother of the accused had turned hostile for the same reason.

The statement exonerating the accused was made at the time when the woman was admitted to hospital. The Court noted the fact that her husband had been with her at that time. However, even thereafter, the woman, gave a similar statement exonerating the accused to the Assistant Sub-inspector who examined her. When the women gave a completely different statement to the Magistrate, Sub-inspector again examined the dying woman who told him that she had made her earlier statement exonerating her husband under duress for fear of her in-laws. Later the deceased made

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97 Sec.161 of the Cr.P.C. reads as under:

A police officer may orally examine any person supposed to be acquainted with the facts and circumstances of the case and such person shall be bound to answer all questions relating to the case put to him by the officer. Thereafter the police officer may reduce in writing any statement made to him and make a supporting and true record of each person whose statement he records.
a statement detailing how her husband had been harassing her for the last two years, and that after lighting the fire he had bolted the door from outside and left her to burn. She said her sister and brother-in-law extinguished the fire and took her to the hospital. The Trial Court after examining the facts of the case rejected the declaration which exonerated the husband. The High Court also accepted the Trial Courts reasoning.

In some cases, it is difficult to say with any certainty or beyond all reasonable doubt, whether it is only the husband or husband and his relatives who caused the death. To establish a case against the husband where he alone is charged or where he faces trial along with other relatives the prosecution generally relies on circumstantial evidence. The Courts have insisted that the circumstantial evidence against the accused should be definite, conclusive in nature and must be consistent with the guilt. In *State of Uttar Pradesh v. Dr. Ravindra Mittal* the Supreme Court has laid down the essential ingredients of circumstantial evidence. They are: (a) the circumstances from which the conclusion is drawn should be fully proved; (b) the circumstances should be conclusive in nature; (c) all the facts so established should be consistent only with the hypothesis of guilt and inconsistent with innocence; (d) the circumstances should, to a moral certainty exclude the possibility of guilt of any person other than the accused.

The Supreme Court has observed that, while appreciating circumstantial evidence the Court must adopt a very cautious approach and should record a

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98 AIR 1992 SC 2045.
conviction only if all the links in the chain are complete, pointing to the guilt of the
accused and every hypothesis of innocence is capable of being negatived on evidence.
Great care must be taken in evaluating circumstantial evidence and if the evidence
relied on is reasonably capable of two inferences; the one in favour of the accused
must be accepted. The circumstance relied upon must be found to have been fully
established and the cumulative effect of all the facts so established must be consistent
only with the hypothesis of guilt.\(^99\)

In the case of *Sharad Birdichand v State of Maharashtra*,\(^100\) the High Court of
Bombay, while convicting the accused gave 17 circumstances, which according to it,
proved the prosecution case that the accused husband had administered poison to his
wife. One of the circumstances is that the deceased was 4 to 6 weeks pregnant and
other circumstances were relating to the conduct of the accused, his motive to kill and
of giving false information as well as making haste to dispose of the body etc. In a
chain of circumstantial evidence these false explanations were used as additional
links. The Supreme Court after a lengthy examination of the different probabilities
arising on the incriminating and other circumstances gave the benefit of doubt and
acquitted the accused.

The above judgments do not acknowledge that domestic violence is an closed
door crime, ignored by neighbours and the community. The judgments also reveal a
glaring ignorance about the reality of the lives of many battered women that they may

\(^99\) AIR 1992 SC 840.

\(^100\) AIR 1987 SC 1622.
still 'love' their husbands, they may not be willing to jeopardise their marriages, they may not be likely to write letters to their family members complaining about domestic violence and dowry demands and so on. There is no distinct pattern discernible in the judgments of the Supreme Court and a great deal of subjectively is evidenced in the judgments. The doctrine of presumption of innocence operates heavily in favour of accused, even though sections 113A and 113B of the Evidence Act clearly transfer the burden of proving that he did not cause the death, to the accused. A heavy reliance on S.498A and S.304B of the IPC, which have severe penalties on conviction, creates its own backlash, as judges want stronger and clearer proof of guilt.101

6.4.5 Marital Rape

A man commits rape when he engages in intercourse with a woman, not his wife, by force or threat of force, against her will and without her consent. This is the traditional common law definition of rape. Chapter XVI (Sections 299-377) of the Indian Penal Code on the 'offences against human body' contains sections 375,102

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102 Section 375 of the Indian Penal Code reads as under:

375 Rape — A man is said to commit rape who, except in the cases hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions:

First — Against her will
Secondly — Without her consent
Thirdly — With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt.
Fourthly — With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.
Fifthly — With her consent, when at the time of giving such consent be reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.
Sixthly — With or without her consent when she is under sixteen years of age.

Exception — Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.
376A, 376B, 376C, 376D, which exclusively deal with the offence of rape. The provisions regarding marital rape can be inferred from the following two areas:

a) The exception attached to S.375 which reads as:

"sexual intercourse by a man with his own wife, the wife not being under fifteen years of age is not rape"

b) S.376 A inserted by Criminal Law (Second Amendment) Act 1983 which reads as:

"Whoever has sexual intercourse with his own wife, who is living separately from him under a decree of separation, or under any custom or usage without his consent shall be punished with imprisonment of either description of a term which may extend to two years and shall also be liable to fine".

Thus, only two groups of married women are covered by the rape legislation — those being under 15 years of age and those who are separated from their husbands under S.376A IPC. While the rape of a girl below 12 years of age may be punished with imprisonment for a period of ten years or more, the rape of a girl under 15 years of age carries a lesser sentence if the rapist is married to the victim. In the words of Reginald A Nelson, the object of this exception under S.376 is to protect the married woman who are less than fifteen years against being forced into premature

sexual intercourse with their husbands with disastrous consequences to themselves and also the infant mortality and materal mortality, which may follow cohabitation.

In would be appropriate to understand the aforesaid provision in the light of the Hindu Marriage Act 1955. Section 5 of the Act which deals with valid conditions to constitute a Hindu Marriage, lays down in clause (iii) that the bridegroom must be of 21 years of age and the bride, 18 years of age. Nevertheless if this section is contravened the marriage is not void nor voidable. But the contravention of the above mentioned clause is made punishable under S.18 of the Hindu Marriage Act, 1955 with simple imprisonment, which may extend to fifteen days or fine up to one thousand rupees or both. In such a circumstance, if the husband commits sexual intercourse with his wife (who is below 15 years of age) he will be liable for rape under the exception attached to S.375, even though there is consensual intercourse between the spouses.104

In India marital rape exists *de facto* but not *de jure*. While there have been some advances in Indian legislation in relation to domestic violence this has mainly been confined to physical rather than sexual abuse. Women who experience and wish to challenge sexual violence from their husbands are currently denied state protection as S.375 of IPC has general marital rape exemption. The foundation of this exemption can be traced back to statements made by Sir Matthew Hale, C.J. in 17th century England. Hale wrote, "The husband cannot be guilty of rape committed by himself upon his lawful wife, for by their mutual matrimonial consent and contract, the wife

hath given herself in kind unto the husband, which she cannot retract”. This established the notion that once married, a woman does not have the right to refuse sex with her husband. This allows husbands rights of sexual access over their wives in direct contravention of the principles of human rights and provides husbands with a ‘licence to rape’ their wives.106

Even though the husband will not be criminally liable for performing sexual intercourse with his wife (who is above fifteen years of age and who is not separately living from him) without regard to her consent, but it does not follow that the law regards the wife as a thing made over to be the absolute property of her husband or as a person outside the protection of criminal law. Tracing the history of judicial decisions on infliction of serious injury by the husband on the wife the Court in *Queen Empress v. Haree Mythee*,107 observed that in the case of married women the law of rape does not apply between husband and wife after the age of fifteen, but even if the wife is over the age of fifteen the husband has no right to disregard her physical safety, for instance, if the circumstances be such that intercourse is likely to cause her death, or that it is probably dangerous to her life. In this case the husband was convicted under S.338 of IPC108 for causing haemorrhage due to intercourse, which

107 (1891) ILR 18 cal 49.
108 Sec.338 IPC deals with causing grievous hurt by doing an act so rashly or negligently as to endanger life or personal safety of others.
led to the death of the child wife aged eleven years. In another case *Emperor v. Shahu Meharab*,\(^{109}\) the husband was convicted under S.304A of IPC,\(^ {110}\) for causing death of his child wife by a rash or negligent act of sexual intercourse with her.

In a recent Judgment in *State of Maharashtra v. Madhukar Narayan Mardhikar*\(^ {111}\) the Supreme Court has extended the concept of right to privacy in a broader perspective by holding that "even a woman of easy virtue is entitled to privacy and no one can invade her privacy as when he likes. So also it is not open to any and every person to violate her person as when he wishes. She is equally entitled to the protection of law".\(^ {112}\) It would follow that as the law stands presently, all women do have a right to privacy. This includes the right to have sex or not, but within the veil of marriage, this seems like a dead letter as forcible sex, against the wishes of the wife, violating her personal interest is yet not recognised. In *Bodhisattawa v. Gautam*, the Supreme Court said that rape is a crime against basic human rights and is also violative of the victim's fundamental rights, but refused to recognise marital rape.\(^ {113}\)

According to the above provisions and judicial pronouncements, the husband has the right to have sexual intercourse with his own wife, but if his acts results into an offence, undoubtedly he is liable to be punished under the Penal Code.

\(^{109}\) AIR 1977 Sind 42.

\(^{110}\) See 304 IPC deals with culpable homicide not amounting to murder.

\(^{111}\) AIR 1991 SC 207.

\(^{112}\) Ibid.

Owing to the sociological changes, recently public and judicial opinions have begun to oppose the exemption. Some progress towards criminalising marital rape took place in 1983 when section 376A was added in the IPC, which criminalized the rape of a judicially separated wife. It was an amendment based on the recommendations of the Joint Committee on the Indian Penal Code (Amendment) Bill, 1972 and the Fifth Law Commission of India.\(^{114}\) The Committee rejected the contention that marriage is a licence to rape. Thus, a husband can now be indicted and imprisoned upto 2 years, under S.376A of IPC. However, this is only piece-meal legislation and much more needs to be done by the Parliament as regards the issue of marital rape. When the Law Commission in its 42\(^{nd}\) report advocated the inclusion of sexual intercourse by a man with his minor wife as an offence it was seen as a ray of hope.\(^{115}\) The Joint Committee that reviewed the proposal dismissed the recommendation. The Committee argued that a husband could not be found guilty of raping his wife whatever be the age. When a man marries a woman, sex is also a part of the package. Nevertheless, the Joint Committee supported the suggestion of the Law Commission that forcible and non-consensual intercourse by a husband on his wife living separately be penalised.\(^{116}\) However, even the Fifteenth Law Commission of India, in March 2000, in its latest report, ‘Review of Rape Law in India’,


\(^{115}\) Ibid.

unfortunately, did not favour the deletion of the marital rape exemption from S.375 IPC on the ground that such a move would amount to ‘excessive interference with marital relationship’.\textsuperscript{117}

Contemporary feminist critiques of rape law believe that a non-consensual sexual intercourse with woman not only unjustifiably disregards her legitimate control over her body but also amounts to a brutal attack on her dignity and argue that rape law is premised on the conservative and deeply rooted ‘pro-male’ and ‘gender-bias’ and ‘assumptions derogatory to women’:\textsuperscript{118} As of now, the law in India relating to marital rape is wholly inadequate in providing supporting mechanisms for women to exercise bodily integrity and sexual autonomy.

6.5 Civil Law Relating to Domestic Violence

Indian civil law does not recognise domestic violence as an issue in itself. The only specific recognition of domestic violence is the concept of ‘cruelty’ as a ground for divorce and judicial separation. Other civil laws relevant to situations of domestic violence are with respect to maintenance, alimony and matrimonial home. There is no specific remedy to a spouse who does not wish to move for a divorce or judicial separation. Further, domestic violence in a non-matrimonial situation is not recognised. In such cases, one has to resort to general civil law. Remedies addressing the violence itself, such as non-molestation orders available in other jurisdictions,

\textsuperscript{117} Law Commission of India, 172\textsuperscript{nd} Report on Review of Rape Laws (Government of India, 2000), para.3.

both in matrimonial and non-matrimonial situations, are not explicitly recognised under Indian civil law. It follows that for civil remedies against domestic violence per se would have to be found in the Specific Relief Act and the Civil Procedure Code. And also the Law of Torts, which prohibits certain kinds of harmful activities and provide for remedies either damages or injunction or both.

6.5.1 Remedies under the Laws of Marriage and Divorce

6.5.1.1 Judicial Separation or Divorce on Ground of Cruelty

Cruelty is a ground for divorce as well as judicial separation under all the personal laws in India, besides the Special Marriage Act. The earliest law in India making cruelty a ground for divorce was surprisingly, the Dissolution of Muslim Marriages Act, 1939 which permitted a Muslim wife to obtain a decree of divorce if her husband had treated her with cruelty. In this Act, cruelty was given a wide meaning to include types of behaviour other than physical violence. The special Marriages Act enacted in 1954 came as a reprieve for a small section of women, as it

\[\text{[119] The Dissolution of Muslim Marriage Act, 1939, in Section 2(ix) provides cruelty as a ground for dissolution of marriage only to wife and states six conditions as under:}\]

That the husband,

i) habitually assaults her or makes her life miserable by cruelty of conduct even if such cruelty does not amount to physical ill-treatment; or

ii) associates with woman of evil-repute or leads on infamous life; or

iii) attempts to force her to lead an immoral life; or

iv) disposes of her property or prevents her from exercising legal rights over it; or

v) obstructs her in the observance of her religious profession or practice; or

vi) has more wives than one and does not treat her equitably in accordance with injunctions of the Quran.
made cruelty a ground for divorce. 120 A Hindu woman whose marriage had been solemnised under the Hindu Marriage Act, 1955 had to wait till as late as 1976 to obtain a divorce on grounds of cruelty by her husband, by an amendment passed in that year.121 Prior to an amendment of 1988,122 a Parsi woman could only obtain a divorce on the ground of cruelty under the Parsi Marriage and Divorce Act, 1936, if her husband had caused her ‘grievous hurt’, which was defined as: emasculation, permanent privation of a limb, or an eye, or of hearing in either ear, or permanent disfigurement of the head or face and any hurt endangering her life. For a Christian woman, before the Indian Divorce Act 1869, was amended in 2001,123 cruelty simpliciter was not sufficient as a ground for divorce as it was necessary to prove adultery in addition to cruelty and woman seeking divorce had to prove an aggravated form of adultery.

Cruelty is not defined uniformly in the different personal laws and sometimes it is not defined at all. ‘Cruelty’ if legally defined receives a restricted meaning and not

120 The Special Marriage Act 1954, provides cruelty as a ground for divorce and judicial separation under section 27(1)(d) and section 23 as follows:

Treated the petitioner with cruelty after marriage.

121 The Hindu Marriage Act 1955, provides cruelty as a ground for divorce and judicial separation under section 13 (1) (i) (a) and section 10 as follows:

Treated the petitioner with cruelty after marriage.

122 The Parsi Marriage and Divorce Act, as amended in 1988 provides cruelty as a ground for divorce and judicial separation under section 32 and section 34 as follows:

Treated the petitioner with such cruelty as to cause reasonable apprehension of harm or injury.

123 The Indian Divorce Act 1869, as amended in 2001, provides cruelty as a ground for divorce and judicial separation under section 10 and section 22 as follows:

Treated the petitioner with such cruelty as to cause reasonable apprehension of harm or injury.
every act or course of conduct, which would be called cruel in the popular sense amounts to cruelty in law. On the other hand, Judges also have deliberately avoided formulating an exhaustive definition of cruelty. Acts of cruelty are infinitely variable and no list can be drawn up of acts which do or even may amount to cruelty and those which do not. Conduct which is undoubtedly cruel in one case is equally clearly not cruel in other case because of the presence of some other fact or circumstances. Consequently, it is dangerous to use one case, as a precedent for another presenting similar facts and all that can be done here is to attempt and extract and formulate from decided cases the main principles by which the Courts will be guided. 124

The concept of cruelty is very subjective — varying with time, place and persons. Cruelty has to be defined with regard to social conditions, as they exist in the present day. In Dastane v Dastane,125 the Supreme Court took a new stance by opining that it is not necessary that cruelty must be of such character as to cause danger to life limb or health as to give rise to a reasonable apprehension of such a danger. But what the Courts must determine is whether the petitioner proves that the respondent's such cruelty is such, as to cause a reasonable apprehension in mind that it will be harmful or injurious to live with the respondent. In Keshao Rao v. Nisha126 the Supreme Court opined that the Courts have to interpret and analyse and define what would constitute cruelty in a give case, depending upon many factors such as social status, background,

125 AIR 1975 SC 1534.
126 AIR 1984 413 Bom.
customs, traditions, caste and community, upbringing, public opinion prevailing in the locality etc. Cruelty should be the type, which will satisfy the conscience of the Court that the relationship between the parties has deteriorated to such an extent that it has become impossible from them to live together without mental agony, torture or distress. It need not be of such character as to cause danger to life limb or health.

Thus, cruelty includes not only acts of physical violence of one spouse against the other causing injury to body, limb or health, which have been traditionally considered to amount to cruelty but also includes mental cruelty which causes emotional suffering. A single act of physical violence may amount to cruelty. Similarly series of small acts of violence may cumulatively amount to cruelty. In physical cruelty, actual danger to life need not be proved. In one of the very early English case,¹²⁷ the husband who had left his wife in 1950, visited the matrimonial home two years later and struck the wife a blow on the face which gave her a black eye. The House of Lords held that a single act of cruelty of an inflamed nature and sufficiently gross to excite terror is sufficient to constitute cruelty. This construction of cruelty is more or less same in all the Indian personal law statutes, except under the Muslim Law.¹²⁸

Under Muslim Law ‘assault’ simpliciter is not a ground for claiming a matrimonial relief of divorce. It must be habitual assault, which in the context, would

¹²⁷ Britt v. Britt (1953) 3 All ER 769.
mean repeated acts of assault. For instance in the case of *Khachern v. Khairunissa*, within the first twenty days of marriage, in the matrimonial home, the wife was assaulted by the husband, ill-treated and bolted inside a room, it was held by the Court that it amounted to habitual assault. It may be that no single act of assault may amount to cruelty, because of its mildness but if these acts were continued for certain duration their accumulated effect would amount to cruelty under Muslim Law.

Mental cruelty is a species of domestic violence and consists of conduct, which causes mental or emotional suffering. For instance, the conduct of the husband in indulging in love affairs or even promising to marry another woman amounts to cruelty. There cannot be greater cruelty than to compel a chaste wife to submit to the overtures of other persons out of an ignoble desire to make gain by prostituting the wife. The law even protects a woman against disclosing any conjugal confidence between the spouses and if the husband insists for the same it would amount to cruelty. A mere allegation of unchastity may cause mental agony and amount to cruelty. Thus, it may stated that cruelty in the legal sense need not merely be physical assault, it may be such that which would undermine her health or reasonably affect her happiness.

129 AIR 1952 638 All.
130 Das, *supra* note 128.
134 *Nandkishore v. Munni Bai*, AIR 1979 MP 45.
Through a process of judicial interpretation the word ‘cruelty’, which embraces domestic violence, the meaning of the word in relation to the matrimonial field has evolved and some of them are as follows:

- Refusal of the spouse to have sexual intercourse with other;
- Insistence on sexual practices which are repugnant to the other spouse;
- Beating, kicking, slapping or punching of a spouse;
- Constant quarrelling and nagging;
- Adultery’
- Dowry demands after marriage.\(^{135}\)

Some of the acts of cruelty mentioned above are instances of domestic violence but in order to amount to ‘cruelty’ the act need not necessarily be an act of violence of criminal nature. The legal concept of cruelty is not confined to cases of personal danger. Conduct of the husband that renders the continuance of cohabitation and the performance of conjugal duties impossible or onerous would amount to cruelty.\(^{136}\)

Thus, domestic violence has been recognised by the existing civil laws only in the context of dissolution of marriage and as being a ground for judicial separation or divorce. However, when faced with situations of cruelty, many women may not want to take the extreme step of commencing proceeding for divorce or judicial separation.


\(^{136}\) Ibid.
6.5.1.2 Maintenance

The common problems many women face are lack of adequate finances to initiate and continue legal proceedings on the breakdown of a marriage. Most of the personal laws have provisions for giving maintenance to the woman during the proceedings to enable her to continue with the litigation. The maintenance given while the case is in Court is called maintenance *pendente lite* or interim or temporary maintenance.\(^{137}\) And to take care of a very practical and serious problem that a wife faces after divorce — that she is rendered homeless and shelterless, most personal laws make provisions for permanent alimony. Alimony is an order granting a certain amount of maintenance to be paid continuously at regular intervals after all proceedings are completed in Court and orders have been passed by the judge. Alimony can be given in periodical sums or in a lump sum.\(^{138}\)

A most interesting aspect of permanent alimony is the various theories under which a Court will grant permanent alimony to an indigent wife. Some have granted alimony as a subsistence allowance. Some have granted it reasoning that a divorced woman has no position in Hindu society. No Courts have awarded permanent alimony on the theory that the marriage was an economic partnership, to which both the husband and wife contributed equally.

\(^{137}\) *The Hindu Marriage Act (HMA) 1955*, Sec 24.

\(^{138}\) *Ibid.*, Sec.25.
In addition to maintenance, which can be claimed under the marriage laws, Hindu women can claim maintenance under the Hindu Adoption and Maintenance Act 1956. Under this Act a woman can claim maintenance as well as separate residence from her husband, if he has committed any of the matrimonial offence such as cruelty, adultery, etc, without filing a petition for divorce.\textsuperscript{139} An award under sec.18 of the Hindu Adoption and Maintenance Act fulfils a different function from the award under the Hindu Marriage Act. The former Act was meant to aid neglected, abandoned and deserted women who are left with few financial resources, while a marriage is legally in existence.

The provision of the Indian Divorce Act, which is particularly detrimental to women, is section 38, which enables the Court to appoint a trustee for the wife to whom maintenance payments shall be made. Such a provision in effect treats a woman like a child, preventing her from having complete control of her personal finances. The main difference with reference to interim maintenance between the Hindu Marriage Act and Indian Divorce Act was that, Section 36 of the Indian Divorce Act set a ceiling on the amount of maintenance at one-fifth of the husband's income. This provision seriously handicapped the wife's ability to litigate because of her lack of resources. But this provision has been deleted by the Amendment Act 2001. The Parsi Marriage and Divorce Act is a virtual reproduction of the Hindu Marriage Act. The only area in which it differs is section 41, which parallels the trustee provision of section 38 of the Indian Divorce Act with the same detrimental

\textsuperscript{139} The Hindu Adoption and Maintenance Act, 1956, Sec.18.
The maintenance provisions under the Special Marriage Act are similar to those under the Hindu Marriage Act in criteria and procedure.

But the unsatisfactory aspect of maintenance is the extremely low amount of maintenance awarded. In assessing the amount of the award, Courts depend heavily on the determination of income of the spouses. Most income of the Indian society is unreported, leaving great discrepancy between the actual standards of living and income reported. A more just manner of ascertaining what a wife's maintenance would be depending upon the husband's standard of living, rather than on reported income. The wife's maintenance award should be able to match her husband's standard of living.

And also most of the unsatisfactory holdings are a result of the theory under which Courts award maintenance and alimony. Most Courts award them as a subsistence payment who has no other means of survival. Instead, Courts should recognise that maintenance is payment for the economic partnership that existed between the spouses for the duration of the marriage.

6.5.1.3 Matrimonial Home

For married women, the security of the marital home may turn out to be merely an illusion if their husband turns them out of the house or harasses them so much that they can no longer stay at home. And also a wife is faced with a very practical and serious problem after divorce or judicial separation, as she is rendered homeless and shelterless. Generally, married women are economically dependent on their husbands, and the marital home is the husband's property. The wife will normally not
have a legally recognised proprietary interest in her own home. This means that if she is forced to leave, her husband can try to justify her eviction by asserting that he has the right to do what he wants with his property. But for women in such circumstances, the problem of losing their marital home is acute. Their lives are severely disrupted, and they suddenly face the burden of establishing a new home for themselves and their children. Married women cannot always rely on their own family to take them in, nor are they likely to have independent resources to obtain immediate, safe and suitable alternative housing.\textsuperscript{40}

Indian laws are inadequate in this regard and a woman whose marriage has broken, whether \textit{dejure} or \textit{defacto}, has nowhere to go. In fact there are innumerable cases where tortured and harassed wives cling to matrimony and suffer simply because they know that once they step out, the doors of the matrimonial home will be locked to them forever.\textsuperscript{41} Some of the judgments referred to here have bearing on the issue of the matrimonial home.

In \textit{Banoo Jal Daru Walla v. Jal C. Daruwalla}, \textsuperscript{42} the husband and wife had obtained a judicial separation, but both spouses claimed the sole right to stay in the marital home. The home was owned by the husband. The Court took notice of the decision in the English case \textit{Bendall v. Mewhirter} and stated that “whenever it is practicable” the wife should not be thrown out of the marital home. However, it also held that the husband should not be thrown out unless he “is guilty of extreme cruelty

\textsuperscript{40} Freddy Farm, \textit{‘Women’s Right to Matrimonial Home’, The Lawyers}, April-May 1979, p.24.

\textsuperscript{41} Ibid.

\textsuperscript{42} (1962) Bom L.R. 750.
and otherwise undeserving”. Since the Court felt that the spouses could not continue
to live in the same house; it ignored its own rule that the wife should not be evicted
and ordered that the husband should have sole occupancy. It did not require the
husband to show the availability of alternative housing for the wife, but it did require
him to provide her with a larger maintenance so as to pay for housing.

The Bombay High Court took a more sympathetic view on Shanta Wadhwa v.
Purshottam Wadhwa.\textsuperscript{143} Here the wife asked for a judicial separation on the ground
of the husband's physical and emotional cruelty, and sought the right to stay in the
home. The Court observed that the wife's right to maintenance by the husband under
the Hindu Adoption and Maintenance Act included residence and ruled that the
matrimonial home itself was maintenance to which she was due. It stated that the
wife's right to stay in the home existed whether the husband, or the wife, or both
spouses owned the property.

In a later case, \textit{Abdul Rahim v. Padma},\textsuperscript{144} the Bombay High Court refused to
grant an injunction excluding a wife from the matrimonial home after she had made
allegations against her husband. The wife had been excluded from the home after
divorce proceedings had been initiated but since had moved back in. Title to the
property was in dispute. The Court accepted that the wife had a right to stay in the
home, noting that the husband had not provided alternatives accommodation.
However, the Court also observed that she had no right to live in all or any particular

\textsuperscript{143} (1977) Mah L.R. 661.

\textsuperscript{144} AIR 1982 Bom 341.
section of the flat, it ordered the flat to be partitioned and the husband and wife to live in separate areas.

However in Pakhraj Jain v. Naina Jain,\textsuperscript{145} the Court refused to protect a woman from eviction from her matrimonial home. In this case the wife had been thrown out of the home by her husband. She later forced her way back in. The lower Court granted the wife an injunction restraining the husband from evicting her again, but the High Court viewed the matter differently and vacated the injunction. According to the Court, the woman’s re-entry against the husband’s will was illegal trespass since the property was in the husband’s name. If the wife were allowed to intrude where she had no legal title the Court felt the door would be open to others to make claims to occupy private property. “A state subject to the rule of law…. cannot permit this to happen — nay, not even in the name of feminism or for protection of the deserving.

This judgment, it is submitted, is not a happy one. There is no logic whatsoever in equating the claim of a wife to reside in her matrimonial home to the claim of “others”. The concept of matrimonial home includes only the spousal relationship and not others.

However, the decision of the Andra Pradesh High Court in B.H.P & V v. Visakhapatnam\textsuperscript{146} contrasts sharply with the decision on Jain’s case. In this case, a deserted wife occupied the matrimonial home, which was a flat rented from the husband’s government employer. The husband retaliated against his wife by

\textsuperscript{145} (1986) Bom 986.

\textsuperscript{146} AIR 1986 A.P. 207.
terminating the lease with his employer, and the wife requested an injunction restraining the employer from evicting her. The lower Court granted the injunction and ordered the husband to continue to pay the rent. The employer filed a revision petition, claiming that the decision constituted a “failure of justice” and that the Court did not have jurisdiction to do so. The High Court upheld the lower Courts order and rejected the petition. It noted that both the husband and the employer landlord had for years recognised the wife’s occupation of the quarter as her matrimonial home; since the landlord was a company, and not a natural person, it suffered no harm since it continued to receive rent from the husband. But it stated that its fundamental reason for not revising the lower Courts order rested on a “socialist” view of property rights, in which the parties’ ownership rights had to be subordinated to the fundamental Constitutional rights of the wife. Consequently the Court held that it was proper for the lower Court to refuse to aid the husband in his retaliation eviction.

Despite the lack of express statutory right to a wife to stay in a matrimonial home, the Indian Courts have considered the issue, and have concluded that a wife has the right to occupy the matrimonial home and even to exclude her husband in certain situations. The Courts have not always explained the basis for this view, but most often it has been justified by the husbands maintenance obligation. However, since there are so few cases, it is difficult to tell how Courts will view such claims in the future. Still this is a developing area of law that undoubtedly will be relied upon as woman learn to assert their rights.
6.5.1.4 Family Courts

As the disputes relating to family violence need special approach and speedy settlements because of emotional aspects of the family affairs and also as the conventional procedure is not suitable for the disputes concerning couples, Parliament passed the Family Courts Act, 1984. The object of the Act being to promote conciliation in and secure speedy settlement of disputes relating to marriage and family affairs.\textsuperscript{147} In Family Courts the parties in a suit and their counsel are not engaged in winning or defeating a legal action, but parties, judges social workers, welfare officers and psychiatrists all are engaged in finding out a solution to the problem or problems engaging the attention of the Courts.

Under the Act, to begin with, Family Courts are to be set up for a town or city whose population exceeds one million. It is also provided that State Governments may also set up Family Courts for other areas.\textsuperscript{148} In selecting persons for appointment as judges preference is to be given to women, and every endeavour is to be made to ensure that persons committed to the need to protect and preserve the institution of marriage and to promote the welfare of children and qualified by reason of their experience and expertise to promote the settlement of disputes by conciliation and counselling are selected.\textsuperscript{149}

\textsuperscript{147} The Family Courts Act (FCA), 1984, Preamble.
\textsuperscript{148} Ibid., sec.3.
\textsuperscript{149} Ibid., sec.4 (4).
All family law matters such as marriage, matrimonial causes, maintenance and alimony, custody, education and support of children, and settlement of property come within the jurisdiction of the Family Courts.\textsuperscript{150} It follows that the so called para familial matters such as inter-spousal assaults, and other offences of criminal nature between the spouses,\textsuperscript{151} inter-spousal torts and contracts have not been brought under the jurisdiction of the Family Courts. Thus, no matter under the Dowry Prohibition Act, 1961 or under the Indian Penal Code, 1860 can be tried by a Family Court. It follows that disputes relating to violence between spouses will not come under Family Courts jurisdiction unless some matrimonial relief (divorce or judicial separation or maintenance) is sought under the petition.

The Act opts for a less formal procedure. Although the provisions of the Code of Civil Procedure, 1908, and of the Code of Criminal Procedure 1973 are made applicable to the suits and proceedings before a Family Court, the family has power to lay down its own procedure with a view to arrive at a settlement or as the truth of the facts.\textsuperscript{152} A Family Court may receive as evidence any report, statement, documents, information or matter that may assist it to deal effectively with a dispute, whether or not the same would be otherwise relevant or admissible under the Indian Evidence Act 1872.\textsuperscript{153} That in every suit or proceeding, the proceedings may be held incamera

\textsuperscript{150} Ibid., Explanation to sec.7.
\textsuperscript{151} Such as offence under sec.498A of the Indian Penal Code, 1860.
\textsuperscript{152} FCA sec.10
\textsuperscript{153} Ibid., sec.14.
if the Family Court or one of the parties so desires.\textsuperscript{154} No party to a suit or proceeding before a Family Court shall be entitled as of right to be represented by a legal practitioner. However, if the Court considers it necessary in the interest of justice it may seek the assistance of a legal expert as \textit{amicus curie}.\textsuperscript{155}

Provisions have been made for auxiliary services under the Act, that in every suit or proceeding endeavour shall be made by the Family Court in the first instance where it is possible to do so, consistent with the nature and circumstances of the case to assist and persuade the parties in arriving at a settlement in respect of the subject matter of the suit or proceeding.\textsuperscript{156} In case there is a reasonable possibility of a settlement between the parties, the Court may adjourn the proceedings for such period as it thinks fit.\textsuperscript{157} Such a provision exists in the Hindu Marriage Act also.\textsuperscript{158} The former provision uses the words 'settlement' and the latter, 'reconciliation'. That is, the Family Court will assist and persuade the parties in finding a solution to a problem while the Hindu Marriage Act the Court will have to attempt to harmonize the parties in order to save a breaking marriage.

In every suit or proceedings it is open to a Family Court to secure the services of a medical expert (preferably a woman where available) including a person

\textsuperscript{154} \textit{Ibid.}, sec.11.
\textsuperscript{155} \textit{Ibid.}, sec.13
\textsuperscript{156} \textit{Ibid.} sec. 9.
\textsuperscript{157} \textit{Ibid.}, sec.9 (2).
\textsuperscript{158} \textit{The Hindu Marriage Act, 1955}, sec. 23 (2).
professionally engaged in promoting the welfare of the family.\footnote{FCA, sec.12.} But under the Act, there is no provision as to how or in what manner the services of a medical expert or of a person who is professionally engaged in promoting the welfare of the family is to be obtained by the Family Courts. While taking assistance, it will raise a question whether it will be agreeable to the parties to undergo the treatment or diagnosis of an expert. In absence of any provision in the Act, the Family Court cannot order the parties to a suit or proceedings to submit themselves to the treatment provided by, or diagnosis to be made by the expert. There may be question of payment to be provided for. The result is that this provision in the Act, though very laudable, may lay dormant for lack of any implementation machinery.

In conclusion, it may be stated that the Act makes it possible for a victim of family violence; to seek matrimonial relief's without delay as Family Courts have a less formal and more active investigational and inquisitional procedure. Whether the Family Courts will be able to promote conciliation in disputes relating to family violence is doubtful. Disputes relating to family violence \textit{per se} do not come under the jurisdiction of Family Courts and the Act does not provide any additional relief to a victim of family violence.
6.5.2 Remedies under General Civil Law

6.5.2.1 Specific Relief Act, 1963

The Specific Relief Act provides for an action for injunction for protection of rights whether legal or equitable.\(^{160}\) An injunction is a legal process by which one who has invaded or is threatening to invade the rights of another is restrained from continuing or commencing the wrongful act. The injunction can be 'mandatory' i.e. compelling the defendant to do an act in order to protect or enforce the rights of the plaintiff or the injunction can be 'restrictive' i.e. prohibiting the defendant from doing an act or acts which threatens to take away the rights or entitlements of the plaintiff.\(^{161}\) Further, the relief under this section can be permanent or temporary in nature.\(^{162}\) An order may be made pending the disposal of a suit with the object of protecting the rights of the plaintiff pending the disposal of the suit. An order thus made is a temporary injunction. An order made after the determination of the suit with the object of giving effect to and protecting the rights urged in the suit is a perpetual injunction, which is permanent in nature.\(^{163}\) The plaintiff in addition to a prayer for injunction can also claim damages.\(^{164}\)

The scope of the provisions of the Specific Relief Act with respect to injunctions is very wide. There is no bar against provisions of the Specific Relief Act

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\(^{160}\) *The Specific Relief Act*, sec.36.
being applied to a situation involving domestic violence. However, the provisions of this Act have never been resorted to in situations of domestic violence. Perusal of the case law under this enactment indicates that over a period of time, the Courts have given a narrow construction to the provisions of the Act.\textsuperscript{165}

A wife who has been illegally thrown out of the 'matrimonial home' by her husband or any other person can sue for re-entry of the house under the specific Relief Act, even though a wife's right is not specifically recognised by the provisions which is a general one.\textsuperscript{166} The jurisdiction of the Court under this section is very limited. The Court does not decide the title of the property in question, nor can it direct the parties to remove or erect any structure on the property. This is a special and speedy remedy for recovery of possession without establishing title available to persons who have some legal right to the property and are illegally ousted from the same. The object of this section is to discourage proceedings calculated to lead to serious breaks of peace and to provide against the person, who has taken law into his own hands, and derived any benefit from the process. Interim injunction to ensure that the house in question is not alienated, destroyed, removed, altered or demolished, can be issued in a suit under S.6.\textsuperscript{167}

\textsuperscript{165} 'Civil Law Relating to Domestic Violence', in Report of Colloquium on Domestic Violence,' p.77.
\textsuperscript{166} Supra note 137, sec.6.
\textsuperscript{167} Supra note 142, p.78.
6.5.2.2 Code of Civil Procedure, 1908 (CPC)

Civil Procedure Code deals with injunctions of a temporary nature, which are granted to protect the rights of the plaintiff pending the disposal of the suit.\textsuperscript{168} An injunction may be granted which is one-time in nature and which may be sufficient to protect the rights of the plaintiff during the pendency of the suit.\textsuperscript{169} An injunction, which is continuing in nature, intended to restrain repetition or continuance of breach or injury by the defendant may also be granted.\textsuperscript{170} An injunction sought under the above provisions cannot stand on its own but only as an interim relief in a substantive suit for some legal civil remedy. The Court also can take a penal action by way of attachment of the property or by imprisonment of the person committing breach of an injunction order.\textsuperscript{171}

6.5.3 Remedies under the Law of Torts

Law of Torts prohibits certain kinds of harmful activities and provides for remedies — either damages or injunction, or both. ‘Trespass to the person’ is the area under the Law of Torts, which will provide remedy for domestic violence. The three relevant subheads under ‘Trespass to the person’ are: ‘battery’ ‘assault’, and ‘false imprisonment’.

\textsuperscript{168} CPC Order 39.
\textsuperscript{169} Ibid., Order 39, rule 1.
\textsuperscript{170} Ibid., Order 39, rule 2.
\textsuperscript{171} Ibid., Order 39, rule 2A.
'Battery' is the intentional application of any physical force to another person without any lawful justification. Even though the force used is very trivial and does not cause any harm, the wrong is still constituted. Physical hurt need not be there.\textsuperscript{172}

'Assault' is an act of the defendant, which causes to the plaintiff reasonable apprehension of the infliction of a battery on him by the defendant. Waving a stick but not actually using it, is thus assault.\textsuperscript{173}

'False imprisonment' consists in the imposition of a total restraint for some period, however short, upon the liberty of another, without sufficient lawful justification. When a person is confined within the four walls or if prevented from leaving the place, it is false imprisonment.\textsuperscript{174}

At common law there could be no action between husband and wife for tort. Neither the wife could sue her husband nor the husband could sue his wife, if the other spouse committed a tort. Married Women's Property Act 1882 made a change and permitted a married woman to sue her husband in tort for the protection and security of her property. But she could not sue her husband if he caused her any personal injuries.\textsuperscript{175} The rule prohibiting actions between spouses has been abolished by the Law Reform (Husband and Wife) Act 1962. Now the husband and wife can sue each other as if they were unmarried. The Act, however places a restriction on an

\textsuperscript{173} Ibid., p.216.
\textsuperscript{174} Ibid., p.219.
\textsuperscript{175} Ibid., p.33.
action during marriage by one spouse against another and the Court has been given a power to stay the action if it appears that no substantial benefit will accrue to either party from the proceeding.\textsuperscript{176}

Thus, though they apply fully, very little use of these remedies has been made use of by the litigants or Courts. However, cruelty has many facets other than physical violence or threat of physical violence and in such areas the Law of Torts is not of much assistance.

\textbf{6.6 Domestic Violence Act}

Since the early eighties, women's groups have been campaigning to bring about effective legislation to counter domestic violence. In 1999, the Lawyers Collective formulated the "Domestic Violence Against Women (Prevention) Bill". It took into consideration several prevalent forms of violence against women within the family and proposed a mechanism for women to approach the Court for a protection order to prevent further violence and to ensure that they do not have to leave their home. The Bill was given to the Government for consideration. The Government of India drafted another Bill titled "The Protection from Domestic Violence Bill, 2002" also providing for protection orders and protection offices and introduced in Lok Sabha on March 8, 2002. But the communal crisis in Gujarat precluded discussion on the Bill during the last session of Parliament.

The Bill, since its inception, had been in the eye of a storm with sharp differences emerging on the definition of domestic violence itself. Women involved

\textsuperscript{176} \textit{Ibid.}
in the struggle against domestic violence vehemently opposed to what they saw as the Governments half-hearted and fundamentally flawed attempt to provide a legal remedy for a social epidemic. 177 Women's groups opposed to the 2002 Bill accused the Government of blunting its main purpose — to protect the woman. After having actively lobbied for a Bill to check domestic violence its proponents felt cheated by the Government, which they alleged had made a mockery of the issue of domestic violence. It was felt, it will be better not to have a Bill on domestic violence rather than have something which goes against the very spirit of the Bill. 178 Women activist cited many reasons for their resistance to the 2002 Bill, asserting that it would do more harm than good.

6.6.1 The Protection from Domestic Violence Bill 2002: A Critique

A closer look and comparison with the earlier draft Bill proposed by Lawyers Collective showed that the 2002 Bill was detrimental and damaging to the interest of women and demanded a complete overhaul of the Bill. It suffered from a number of intrinsic defects as follows:

a. It was conceptually flawed, neither recognising domestic violence as a grave violation of the human rights of women nor including an explicit statement on women's right to live a life free of violence. As a result, it failed to uphold a number of United Nations agreements on violence against women, to which India is a signatory.


b. It had questionable goals. The function of any law on domestic violence should be to prevent it to the extent possible, to provide relief to victims/survivors and to punish perpetrators. Yet the stated aim of the official Bill was “to preserve the family and regulate and improve matters for the future, rather than to make judgments upon or punish past behaviour”, according to a briefing note prepared by the Central Government’s Department of Women and Child Development in December 2001, when the draft was first published and circulated.

c. Its vague wording left too much to the discretion of individual judges. For instance, it did not provide a clear and comprehensive definition of domestic violence even though internationally accepted definitions are readily available in the United Nations framework for legislation on domestic violence. Similarly, by including the phrase “habitually assaults” in the section outlining what constitutes domestic violence, the drafters of the Bill suggested that occasional assaults are unacceptable and left individual magistrates to decide what “habitual” means. The Bill was also seriously weakened by the inclusion of a clause that in effect condones violence committed in “self-defence” or “in order to protect property”. This exemption enabled the perpetrator of domestic violence to use the plea of self-defence, providing violent men with a convenient excuse that would have allowed many to get away with their crimes. Another problem with the 2002 Bill was that it failed to specify the nature of the relief or compensation—monetary or material— to be granted to a victim of domestic violence. This crucial decision was again left to the discretion of individual judges.
d. It did not recognise women’s right to reside in the “matrimonial home” or shared household. Neither did it protect them against any denial of that right.

e. Although it brought into its ambit women who are related by blood, marriage or adoption to the alleged abuser, it failed to protect the right of women who live with and/or are in intimate relationships with violent men but are not technically “relatives” as defined under the law.

f. It did not address the common problem of non-compliance with the Court order.

g. It did not provide for a transparent system for appointment of the proposed “protection officers” who are meant to assist victims of domestic violence. Nor did it contain any provision to ensure that they had requisite qualifications, experience, knowledge and/or sensitivity for the post. To make matters worse, it did not commit funds for the appointment of protection officers or for the implementation of the law.

h. It did not require the Government to publicise the law so that women know that it exists or to be put in place any system where by the implementation of the law can be ensured and monitored.179

In view of the multiple deformities of the 2002 Bill it was not surprising that women’s organisations were emphatic in their opposition to it. Many responded to the public notice issued by the Parliamentary Committee on Human Resource Development, despite the short time that was provided. The Karnataka State Commission for Women, for instance, hastily convened a meeting with lawyers,

179 Joseph, supra note 189.
academicians, and activists and submitted a detailed note outlining its objections to
and suggestions regarding the 2002 Bill, stating that 'while a law to redress domestic
violence is certainly very necessary”, … the Bill in its present form is totally
unacceptable.180

6.6.2 The Protection of Women from Domestic Violence Act, 2005

The Protection of Women from Domestic Violence Bill 2005, passed by the
Parliament in August, 2005, received the assent of the President on September 13,
2005, has now officially become the Protection of Women from Domestic Violence
Act, 2005. It has been described as a major milestone in the journey of women’s
movement in the country by Indira Jaisingh, a prominent women activist and Supreme
Court Lawyer.181 The Domestic Violence Act, 2005 brings substantial improvement
upon the earlier Bill of 2002. The Act on domestic violence even though cannot erase
the scars that millions of women of the country carry, but what it can do is provide
that essential support system that abused wives, mothers, sisters and even live-in
partners need to pick up the threads of their lives. It comes as a ray of hope to
millions of women who have for ages suffered abuse with no where to go due to lack
of legal, emotional, social and other forms of support, which did not provide women
any alternatives to lead violence free lives.

180 Ibid.
181 Deccan Herald, October 8, 2005.
6.6.2.1 Objectives of the Act

In its statement of objects and reasons the Act makes it clear that domestic violence is undoubtedly a human rights issue and states that the Vienna Accord of 1994 and the Beijing Declaration and the Platform of Action (1995) have acknowledged this. It also recognises the recommendations of the United Nations Committee on Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) in its General Recommendation No.XII (1989) that State Parties should act to protect women against violence of any kind especially that occurring within the family. The phenomenon of domestic violence is widely prevalent but has remained largely invisible in the public domain. Presently, where a woman is subjected to cruelty by her husband or his relatives is an offence under section 498A of the Indian Penal Code; the civil law does not address this phenomenon in its entirety. It is, therefore, proposed to enact a law providing for a remedy under the civil law, which is intended to protect women from being victims of domestic violence in the society.\textsuperscript{182}

The Act is aimed at providing the following things as these are considered as the main requirements to protect women from the menace of domestic violence:

- It seeks to cover those women who are or have been in a relationship with the abuser where both parties have lived together in a shared household and are related by consanguinity, marriage or adoption. In addition relationship

\textsuperscript{182} \textit{The Protection of Women from Domestic Violence Act, 2005} (hereinafter \textit{Domestic Violence Act 2005}), Statement of Objects and Reasons.
with family members living together as a joint family is also included. Even those women who are sisters, widows, mothers, single women, or living with the abuser are entitled to legal protection under the proposed legislation.

- It defines the expression "domestic violence" to include actual abuse or threat of abuse that is physical, sexual, verbal, emotional or economic. Harassment by way of unlawful dowry demands to the women or her relatives would also be covered under this definition.

- It seeks to protect the rights of women to secure housing. It also provides for the right of a woman to reside in her matrimonial home or shared household, whether or not she has any title or rights in such home or household. This right is secured by a residence order, which is passed by the Magistrate.

- It empowers the Magistrate to pass protection orders in favour of the aggrieved person to prevent the respondent from aiding or committing an act of domestic violence or any other specified act, entering a work place or any other place frequented by the aggrieved person, attempting to communicate with her, isolating any assets used by both the parties and causing violence to the aggrieved person, her relatives or others who provide her assistance from the domestic violence.

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

6.6.2.2 Scope of the Act

'Domestic relationship' has been defined to include the relationship between two persons:

- Living or have, at any point of time, lived together in a shared household.
- Related by consanguinity.
- Related by marriage.
- Related by adoption.
- Who are family members living together as a joint family.

Women in any of these relationships are covered by the Act. As the Act covers all those who live in a shared household — whether related by consanguinity, marriage, a relationship in the nature of marriage or adoption, it is a step in the right direction. Till now, those in a live-in relationship had no protection because there was no legal marriage. With this Act, the fact of living together in a shared household is important and not legalities. Further more, it's a whole life cycle of violence — in the parent’s home, in the matrimonial home and then in old age, when the woman is living with her son. And this Act recognises that home is no sweet home. It

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183 Ibid.
184 Ibid., sec.2 (f).
185 Ibid., sec.2 (a).
recognises the reality that often it is not just the wife who faces abuse but also other members of the family which is a welcome step.

6.6.2.3 Definition of Domestic Violence

The expanded definition includes physical, sexual, verbal, emotional and economic abuse. Intimidation and harassment, damage or destruction of property, demands for dowry and taking or attempting to appropriate property belong to the woman are also defined as domestic violence. Thus the definition includes all types of violence against women by intimates. Even those who are not beaten up but are subjected to insults and ridicule especially when they are unable to bear a child or a male child can get redress. It also includes the established understanding of 'cruelty' in matrimonial law, and covers offences under the IPC and Dowry Prohibition Act. It is based on guidelines in the United Nations model legislation on Domestic Violence and concepts from the laws in other countries and also includes forms of violence specific to India. Women's organisations, who had slammed the 2002 Bill, which recognised the crime only if the abuser “habitually” assaulted the abused, have welcomed this definition. The attempt of the Act has thus been to provide as exhaustive a definition as possible.

6.6.2.4 Co-ordinated Response and Protection Officers, Service Providers, etc.

The success of a co-ordinated response has been seen in many countries. In this regard, the Act creates the concepts of “protection officers” and “service providers”. Protection officers are to be appointed by the state government for each district or

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187 Domestic Violence Act 2005, supra note 182 sec.3.
area as is considered necessary.\textsuperscript{188} As far as possible they shall be women with necessary qualifications and experience.\textsuperscript{189} These officers have the duties of assisting the Magistrate, for the discharge of the functions under this Act, to make a domestic violence incident report to the Magistrate upon receipt of a complaint and forward copies to the concerned police officer; to make an application to the Magistrate if the aggrieved person so desires; claiming relief of a protection order; to ensure that the aggrieved person is provided legal aid under the Legal Services Authority Act 1987; to maintain a list of all service providers — within the local area; to get the aggrieved person medically examined if sustained bodily injuries; to ensure that the order for monetary relief under this act is completed with and executed; and to perform such other duties as may be prescribed.\textsuperscript{190} These officers shall be under the control and supervision of the Magistrate and shall perform the duties imposed by the Magistrate and the government or under this Act.\textsuperscript{191}

Service providers are any voluntary association registered under the Societies Registration Act or a Company registered under the Companies Act or an other law, with the objective of protecting the rights and interest of women by any lawful means including providing legal aid, medical, financial or other assistance, who shall register itself with the state government as the service provider for the purposes of this Act.\textsuperscript{192}

\textsuperscript{188} Ibid., Sec.8.(1).
\textsuperscript{189} Ibid., sec.8. (2).
\textsuperscript{190} Ibid., sec. 9(1).
\textsuperscript{191} Ibid., sec.9(2). 
\textsuperscript{192} Ibid., sec.10(1).
A registered service provider has the power to record the domestic violence incident if
the aggrieved person so desires and forward a copy to the Magistrate and the
protection Officer having jurisdiction; get the aggrieved person medically examined
and report to the protection officer and the police station; ensure that the aggrieved
person is provided shelter in a shelter home if so required.\textsuperscript{193} No suit, prosecution or
other legal proceeding shall lie against any service provider for anything done in good
faith.\textsuperscript{194}

Any person who has reason to believe that an act of domestic violence has been
or is being or is likely to be committed, may give information about it to the
concerned protection officer.\textsuperscript{195} Such person shall not incur any civil or criminal
liability for giving it in good faith.\textsuperscript{196} A police officer, protection officer, service
provider or magistrate, on receipt of such complaint shall inform the aggrieved person
of her right to make an application for obtaining a relief by way of a protection order,
an order for monetary relief, a custody order, a residence order, a compensation order
or more than one such order under this Act; of the availability of services of the
service providers; of the availability of services of the protection offices; of her right
to free legal services ; of her right to file a complaint under section 498A, IPC.\textsuperscript{197}

\textsuperscript{193} Ibid., sec.10(2).
\textsuperscript{194} Ibid., sec 10 (3).
\textsuperscript{195} Ibid., sec 4(1).
\textsuperscript{196} Ibid., sec 4 (2).
\textsuperscript{197} Ibid., sec 5.
The Act provides for “shelter home” which may be notified by the State Government for the purposes of this Act. On request by an aggrieved person or on her behalf by a protection officer or by a service provider, the person in charge of a shelter home shall provide shelter to the aggrieved person in the shelter home.

A woman who faces a serious situation of domestic violence where she is forced to leave the matrimonial home just to stay alive, in the immediate sense needs a safe place to stay, from where she may freely access the kind of social support she wants. But the cause of concern as to the provision of ‘shelter home’ is that, firstly it is limited only to defining a shelter home. Secondly, what if the person in charge of shelter, home refuses shelter to the victim or mismanages the shelter home. The Act does not provide for any penalty or punishment is such situation. Thirdly, there is no mention as to who are the persons to be incharge of shelter home. It is necessary to provide the above mentioned provisions in the Act.

Further “medical facility” as may be notified by the State Government for the purposes of this Act, on request by an aggrieved person or on her behalf by a protection officer or by a service provider, medical aid shall be provided by the person in charge to the aggrieved person.

Under the Act, the Central Government and every State Government should take all measures to ensure that the provisions of this Act are given wide publicity through public media including the television, radio

198 Ibid., sec 2(t).
199 Ibid., sec 6.
200 Ibid., sec 2(j).
201 Ibid., sec 7.
and the print media at regular intervals; the Central Government and State Government officers including the Police Officers and the members of the Judicial Services are given periodic sensitisation and awareness training on the issues addressed by this Act; effective co-ordination between the services provided by concerned Ministers and Departments dealing with laws, home affairs including law and order, health and human resources to address issues of domestic violence is established and periodical review of the same is conducted; protocols for the various ministers concerned with the delivery of services to women under this Act including the Courts are prepared and put in place. 202

Thus for the first time the Act holds the state responsible for the care of victims of domestic violence. As per the Act, when an abused woman approaches a ‘protection officer’ (to be appointed by the state) such officer must arrange for accommodation for the woman and also facilitate access to the Courts. It also contains provision to ensure that such officer has the requisite qualifications, experience, knowledge and sensitivity for the post. The Act promotes a co-ordinated response to the problem of domestic violence through a variety of players such as women’s groups, non-governmental organisations, shelter homes, medical profession, the police and indeed, relatives, friends, neighbours and other members of the community. The Act has been drafted with seriousness is evident from the fact that it does requires the government to publicise the law so that women know that it exists. Further the sensitisation and awareness training to the Central Government and State

202 Ibid., sec 11.
Government Officers including Police Officers and members of Judiciary is a step in the right direction because past experiences as well as research have revealed that many such official conform to prevailing social norms that often contradict principles of justice. For instance, a 1996 study in which 109 judges were interviewed to ascertain their attitude towards violence against women revealed that nearly half (48 percent) believed that it was justifiable for a husband to slap his wife under certain circumstances. Nearly three-quarters (74 percent) believed that the preservation of the family should be a woman primary consideration even in the face of violence.

6.6.2.5 Relief under the Act

The Act provides that either an aggrieved person or a protection officer or any other person on behalf of the aggrieved person may present an application to the Magistrate seeking for protection order, an order for monetary relief, a custody order, a residence order, a compensation order or more than one such order.203 First date of hearing shall be fixed within three days from the receipt of application204 and it is to be disposed within sixty days from the date of first hearing.205 Notice to the abuser is essential206 but if the Magistrate is satisfied that an application prima facie discloses domestic violence or its likelihood, an ex parte order on the basis of the affidavit of aggrieved person may be granted.207 The respondent or the aggrieved person, either

203 Domestic Violence Act, 2005, supra note 182 sec. 12 (5).
204 Ibid., sec 12(4).
205 Ibid., sec 12(5).
206 Ibid., sec 13.
207 Ibid., sec 23(2).
singly or jointly may be directed to undergo counselling with a service provider possessing qualifications and experience.\textsuperscript{208} Assistance of welfare expert may be secured for assisting the Magistrate in discharging his functions.\textsuperscript{209} If the circumstances warrant and if either party so desires the proceedings are to be held \textit{incamera}.\textsuperscript{210} Whether or not the woman has any right, title, or beneficial interest, her right to reside in shared household is recognised and she cannot be evicted by the respondent.\textsuperscript{211}

The primary relief in the Act is in terms of ‘Protection Orders’ that may be passed against the abuser which will prohibit him from — committing any act of domestic violence; aiding or abetting such act; entering the place of employment of the aggrieved person; if the aggrieved person is a child, its school or any other place frequented by the aggrieved person; communication in any form whatsoever; alienating any assets, operating bank lockers or bank accounts held jointly or singly by the respondent, including her Stridhan or any other property held either jointly or separately; causing violence to the dependents, other relatives or any person giving assistance to the aggrieved persons; or any other act specified in the Protection Order.\textsuperscript{212} Further the Court on the proof of domestic violence is empowered to pass residence orders \textit{inter alia}, restraining the respondent from dispossessing the woman.

\textsuperscript{208} Ibid., sec 14.
\textsuperscript{209} Ibid., sec 15.
\textsuperscript{210} Ibid., sec 16.
\textsuperscript{211} Ibid., sec 17.
\textsuperscript{212} Ibid., sec 18.
from the shared household; directing the respondent to remove himself from the shared household; restraining the respondent or his relatives from entering any portion of the shared household in which the aggrieved person resides; restraining the respondent from alienating or disposing off the shared household or encumbering the same; from renouncing the rights in the shared household; to secure same level of alternate accommodation for the aggrieved person as enjoyed before or to pay rent for the same.\textsuperscript{213} Towards this end, the magistrate may imposed additional conditions;\textsuperscript{214} require the respondent to execute a bond for preventing such commission;\textsuperscript{215} order directing the officer in charge of the nearest police station to give protection and assist in implementation of protection order.\textsuperscript{216} Thus the Act recognises the right of the woman to live in the house where she faces violence or if the circumstances warrant (for instance in severe case of domestic violence) the husband may be directed by the court to provide alternate accommodation or to pay rent for the same. But the cause of concern here is what if the husband refuses or if he is unable the to financial constraints. The Act does not call on the state to ensure safe shelter to women in such condition.

In addition to the above, the Magistrate may direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and her child, including but not limited to the loss of earnings; medical

\begin{footnotes}
\item[213] Ibid., sec 19.
\item[214] Ibid., sec 19(2).
\item[215] Ibid., sec 19(3).
\item[216] Ibid., sec 19(5).
\end{footnotes}
expenses; loss to any property; maintenance of the aggrieved person as well as her child.\textsuperscript{217} The relief granted should be adequate, fair and reasonable; suiting the standard of living the aggrieved person is accustomed.\textsuperscript{218} It may be paid in lump sum or monthly payment.\textsuperscript{219} At any stage hearing for relief under this Act the Magistrate may grant temporary custody of any child or children to the aggrieved person.\textsuperscript{220} Compensation and damages for the injuries, including mental torture and emotional distress, caused by acts of domestic violence may be ordered by Magistrate, directing the respondent to pay the aggrieved person.\textsuperscript{221} The Magistrate also has the power to grant interim orders.\textsuperscript{222} A protection order made shall be in force till the aggrieved person applies for discharge.\textsuperscript{223}

This new Act in addition to ‘Protection Order’ that may be passed against the abuser, to stop the violence and prevent further harm to the woman and her interests also recognises the right of a woman to continue to stay in her residence and empowers her to approach the Courts when this right is infringed. Uptill now the emphasis was only on filing criminal complaints and getting the offender punished. But this is a civil law focussing on the rights of the woman to have a residence and

\textsuperscript{217} Ibid., sec 20.  
\textsuperscript{218} Ibid., sec 20(2).  
\textsuperscript{219} Ibid., sec 20(3).  
\textsuperscript{220} Ibid., sec 21.  
\textsuperscript{221} Ibid., sec 22.  
\textsuperscript{222} Ibid., sec 23(1).  
\textsuperscript{223} Ibid., sec 25.
obtain compensation. This is significant because quite often-abused women who seek legal or police help risk being dispossessed of their homes. It is pointed out that the norm (before this Act) was to file a criminal complaint under S.498A IPC for violence and then file for divorce proceedings under civil law. This law will make it easier for women to obtain help as everything comes under the ambit of one law and abused women need not approach police station if they don’t want to. The most important thing is that there is provision for obtaining damages for injuries, which includes mental torture and emotional distress. Women can also approach the Courts for the return of stridhan. This was almost impossible under earlier laws.

This civil law on domestic violence is of an emergency nature. It recognises the inequality in the situations of the perpetrator and the victim and the urgent need for temporary relief for the victim. To put it simply, the woman who is abused always has the threat of being kicked out of her home or her children being snatched away hanging over her head. This Act asserts the woman’s right to live in a shared household whether owned or tenanted, and allows the Magistrate to grant temporary custody of the child or children to the victim. Financial disabilities often prevent women from leaving abusive relationships. The Act provides that the Court may order the abuser to pay monetary relief for expenses incurred and losses suffered by the woman as a result of domestic violence. The Court may order that the monetary

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226 Indira Jaising cited in Raaj, supra note 198.
relief be paid directly by the employer or a debtor of the abuser to the woman. This provision has done away the difficulty in enforcing orders.

The provision for counselling of the respondent and the aggrieved person, either singly or jointly, no doubt is an effective method, which may enable the aggrieved person to tide over her psychological condition, reduce stress and offer some sort of mental comforts. As to the respondent, it may afford an opportunity for self-introspection and repentance. However, the above objectives can be accomplished only when counselling is provided by experts, skilled in the profession, working without any prejudices or bias. But it is desirable that counselling to the aggrieved person should be resorted to only when requested by her; at no instance should she be compelled to relieve her experiences, derogatory to her physical, mental and psychological conditions.227

The provision for incamera proceedings can no doubt protect the aggrieved woman from a lot of humiliation and shame especially in cases where explicit acts of sexual abuse and violence are being discussed in an open court and it allows for her dignity and privacy to be maintained. But sometimes incamera proceedings may only intimidate the aggrieved in favour of the respondent. This is especially so when the aggrieved is the only woman in courts facing a completely male phalanx of hostile, sneering magistrates, lawyers, officials polices male respondent etc.

227 Dube, supra note 213, p.449.
6.6.2.6 Miscellaneous

The Act makes breach of the protection order or an interim protection order an offence punishable with one-year imprisonment or fine up to twenty thousand rupees or with both.228 While framing charge for breach, the Magistrate may also frame charges under S.498A IPC or any other provision of that code or the Dowry Prohibition Act, 1961, if the facts so disclose.229 Such an offence shall be cognisable and non bailable.230 Upon the sole testimony of the aggrieved person, the Court may conclude that such an offence has been committed.231 If the protection officer fails or refuses to discharge his duties, it is punishable with imprisonment upto one year or twenty thousand rupees fine or both.232 The Act shall have effect not withstanding any other law in force without barring other available remedies.233 The Central Government is to make rules for carrying out the provisions of this Act.234 Miscellaneous provisions make the Act sensitive to the problems existing in the legal system.

Modern India may worship the woman as Lakshmi or Saraswati in the temple, but at home, the fairer sex gets less than fair treatment. In this scenario, the Act on domestic violence comes as a ray of hope. It is path breaking since as many as 50%

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228 Domestic Violence Act, 2005, supra note 182 sec 31 (1).
229 Ibid., sec 31 (3).
230 Ibid., sec 32(1).
231 Ibid., sec 32 (2).
232 Ibid., sec 33.
233 Ibid., sec 36.
234 Ibid., sec 37.
of the women in this country are subjected to some form of abuse or other. There is no doubt that laws are an instrument of change. Any change in society depends on implementation but implementation depends on interpretation. How can there be interpretation if there is no law? Such Acts provide the framework for distinguishing right and wrong. And this one clearly makes the point that domestic violence is wrong.\footnote{Raaj, supra note 186.}

It is fortunate that the long-awaited legislation to deal with domestic violence is passed which has enthused the women and others concerned about gender injustice. A law meant to tackle the grave, widespread and often life-threatening problem of domestic violence is surely drafted in accordance with international standards and national consensus, refined though public debate and passed after due consideration. What needs to be done is implementation with the seriousness it deserves.

6.7 Conclusion

The Constitution of India and India's endorsement of various International Conventions promise gender equality. The Constitution guarantees equality, equal protection of laws, equality of status and opportunity, thus redeeming the promise of justice: social economic and political. These provisions actually do not provide the necessary legal environment for getting what women need, namely a chance to lead a full life with dignity, secure in their bodily integrity. Among the many manifestations of the violations of the fundamental rights of women, domestic violence is one of the
most vicious. The range of domestic violence against women is such that, their very right to life in the literal sense of the word is in jeopardy.

A problematic area in Constitutional law is the sanctity accorded to personal laws. These personal laws govern all aspects of a woman’s family life. The Courts have held that these personal laws cannot be tested against the standards laid down by the fundamental rights guaranteed in the Constitution. In other words, in the area where it affects her most, the ‘private’ sphere of the family, there is no place for the concept of equality. Nevertheless the Courts have played a significant role in bringing about gender equality by interpreting existing laws liberally. The Courts have laid down guidelines in accordance with international standards where there is no legislation or provision of law. However, with respect to the discriminatory personal laws, it would not be possible for the Courts to do away with the entire set of laws covering all social relationships that violate Art.14 as they would have to be replaced with a complete new set or code of laws.

As to the statutory protection, both civil and criminal, for domestic violence against women, most of the changes came in the form of criminal law. As part of the general trend on reform of Criminal law, cruelty by a husband or his relatives to his wife was made an offence by S.498A, IPC and consequential amendments, in the Cr.P.C., Evidence Act, etc., were made. Section 498A, IPC was the first recognition of domestic violence in law. Though this Amendment was enacted as early as 1983, not many cases have been brought to book and there have not been many convictions. As was the objective, the offence is more or less closely related to perpetration of
violence for not bringing enough dowry. Under S.498A, IPC cruelty is defined as conduct that is likely to drive a woman to commit suicide or to cause grave injury. Harassment limited to dowry demands is also included in the definition of cruelty this section. But it does not include all types of violence committed within the precincts of the home. Thus, the remedy provided under the criminal law for domestic violence is of a very limited character.

Several lacunae exist in criminal justice system. Some of these problems lie in inherent shortfalls in the law, while others deal with the practice and implementation rather than the content of the law. Moreover a woman in distress may not want to access the criminal justice system where the intervention of the police, not particularly known for their sensitivity is, involved. And also right from registering a First Information Report (FIR) to the actual trial, the system is conducive to defeating the aim of justice. As criminal law culminates in punishment for the accused, many times complaints are not filed mostly because it will involve the punishment of the husband or his relatives. Even if such victims gather courage and file criminal complaint, it will become difficult for the prosecution to be carried to its logical end as the saying goes 'it is difficult to fight with an alligator while remaining in waters'.

As to civil law on domestic violence the remedies available are under the laws of marriage and divorce. They are not having sufficient teeth to restrain domestic violence. Women have been filing petitions for divorce and judicial separation and during the pendency of those proceedings have been asking for interim protection orders such as injunctions restraining dispossession from matrimonial home. Final
reliefs on the proof of cruelty by the offending spouse may result in severance of marriage remedy, which would be worse than disease. And also civil actions available at present are lengthy and cumbersome and have not proved to be efficacious remedies. The remedies under the general civil law are also not adequate enough to serve the purpose.

The options open to women suffering domestic violence are unrealistic. It is difficult to imagine any marriage surviving a criminal trial and imprisonment. It is a choice between tolerating the violence or ending the marriage. Thus the most urgent need is a civil law relating to domestic violence, which is recently passed by the Parliament as The Protection of Women from Domestic Violence Act, 2005. The reliefs under the Act stand in between the extreme measures relating to crime and divorce and help in preserving the matrimonial home to the extent possible. The focus of the Act is to provide an expeditious civil remedy to deal with domestic violence. It recognises domestic violence as a distinct civil wrong and provides unique remedies.