CHAPTER- VII

CONCLUSIONS AND SUGGESTIONS
7.1 Conclusions

It is a great tragedy that for most abused women violence begins at home with husbands, father, brothers and uncles. In developed and developing countries alike, physical, sexual and psychological abuse within the family affects an astounding number of women. Far from being a haven of safety and security, the family can be a "cradle of violence", and much of this violence is directed against the female members; in particular, against a wife by her husband. For a man, beating his wife is a private privilege of marriage, a way to unload himself of all anger and frustrations of daily life, without fear of reprisal. For a woman, battery by her husband is regarded almost like a concomitant of marriage, something as routine and inevitable as doing the housework, bearing children, etc.

This bent towards brutality against women is reflected in popular culture the world over. Owing to a paucity of research and the taboos surrounding admissions of violence against women in the family, the actual number of acts of violence will probably never be known. The fact that abuse is generally condoned by social custom and considered part and parcel of marital life, rather than a crime, is in itself a grim indication of its high incidence. The extent of violence against women in the home has been largely hidden and widely denied by communities that fear that an admission of its incidence will be an assault on the integrity of the family. Experts assert that domestic violence is not merely a social ill but a crime of equal stature with other
crimes that urgently needs to be addressed as such. Without adequate legal protection and a social system responsive to domestic violence, women typically find themselves helpless before their spouses and before society as a whole.¹

The suppression of women is a global phenomenon since ancient times. Wife battering also is not something unique to the present time, as human history bears witness to its occurrence through the ages. Looking back in time, wife battering was found in primitive societies as it is found in modern societies. Legal and cultural traditions the world over historically granted men permission to beat their wives, and even kill them in certain circumstances.²

In India during the “Vedic period” the position of woman was at the apex, but in the “Smriti period” there was deterioration in the status of woman and this can be described as ‘Dark Age’ for woman for progress. “Manu”, the Hindu Law giver, straightly opines, “No woman is entitled for freedom from the family”. During childhood, she remains under the control of the father, during youth, under the control of her husband and during old age, under the control of her son. As to the wife’s position the code of Manu decreed that she be considered of no more importance than a chattel of the husband. A wife was regarded as subordinate to and as the property of her husband with no autonomous existence. She could not own, inherit or deal with property, she could not sue, and she had no legal status apart from her husband.³

² Supra Ch.2.
³ Supra Ch.2.
Thus created a paradoxical and contradictory imagery of women. On the one hand she was the embodiment of purity and spiritual power and on the other, essentially weak and dependent creature, needing the constant guardianship and protection of man. The religious scriptures sanctified the strong patriarchal social structure in which marriage, motherhood and service to the husband became the most valuable attribute of women and which perpetrated the negation of the women’s personality.  

The status of Muslim woman is intimately connected with the status of woman in Islam. Woman had no recognised place in the Pre-Islamic Arabic Society. The women of Arabia were in a state of subjection either to their nearest male Kinsman or the father, brother, son or husband, whose rights over them were regarded as their rights over any other property. The birth of a daughter was usually looked down upon by the Arabs, as a calamity and disgrace to the family. As a result of this, the custom of female infanticide was prevalent there. Prior to Islam daughters were looked upon with disfavour and as a kind of economic and social burden. There were marked differences in the treatment and upbringing of sons and daughters. All this was discouraged by the ‘Holy Prophet’ who upheld the rights of the female children and insisted on their being treated on a equal footing. Islam improved the status of women by restricting polygamy to four wives, by prohibiting female infanticide and by assigning a share of inheritance to woman etc. The ‘Holy Quran’ has equalised the husband and the wife in status and dignity. The Sharia commands kindness and

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4 Supra Ch.2
decent treatment upon the husband with his wife and also commands to protect his wife in every possible way and to make sure that she is not hurt physically and mentally. But the critics of Islam still believe that the status of woman in Islam is inferior to man.⁵

Abuse of women in western society historically can be traced back to 8ᵗʰ century B.C. to the reign of Romulus. Romulus established rules making the husband the sole head of the household and his wife his possession. A wife had no legal rights and was not viewed as a separate entity. A wife’s misbehaviour could, therefore result in punishment by her spouse because husbands were held accountable for their wives actions. The rise of Christianity reaffirmed male dominance and soundly supported patriarchal authority. The early church authorities did not support equality in marriage. Societally sanctioned violence against women has been persistent since biblical times. Christianity, Judaism and other patriarchal religious have been said to affirm a male dominated family structure. Women in this model have historically been seen as chattel unable to manage their own affairs without the strong leadership of an authoritarian family patriarch. The patriarch, in turn, traditionally had the right to enforce male standards of accepted “feminine” behaviour through whatever means necessary including force. The law of chastisement remained firmly intact for centuries, spanning through several cultures. Wives were considered chattel and remained legally deprived of the rights possessed by men. For example, the “Rule of Thumb” tenet, a part of British Common Law, allowed beatings of one’s wife with a

⁵ Supra Ch.2.
stick no greater in circumstance than her husband’s thumb.\textsuperscript{6} Thus Law, religion and behavioural sciences were seen to historically endorse the husband’s authority and justify his use of violence to punish a disobedient wife.\textsuperscript{7}

Violence in the family, though a universal phenomenon and existing through ages, has been shrouded in secrecy, guilt and shame on the part of the victims. It is only in the last three decades with the emergence of second-phase feminism, that violence in the family has been recognised as “a social problem of major proportions involving serious physical injury and sometimes death. One of the great achievements of feminism was to define wife beating as a social problem. The first well-documented political campaign against wife battering, known as the first wave of feminism, took place in Great Britain in the late 19\textsuperscript{th} century. In the United States, the battered women’s movement began with the second wave of feminism in the early 1970’s. Its strength and success drew on the previous social influences of the antiwar and civil rights campaigns of the 1960’s. Battered women’s efforts also stemmed from earlier protests against sexual assault that were some of the first expressions of feminist activism decrying violence toward women. The 1970’s feminism created both a climate for women to speak out about violence and a structure through which they could organise. Great Britain had led the way with the creation of the first wife abuse shelter in 1971. In the United States shelters for abused women arose in every major community during the 1970’s and 1980’s. Battered women’s movements

\textsuperscript{6} Supra Ch.2.
\textsuperscript{7} Supra Ch.2.
developed in Canada and Western Europe during the same time period. However, less industrialised countries are only just beginnings to recognise the problem publicly and establish services.\footnote{Supra Ch.2.}

By rejecting the idea that violence was merely a personal or family misfortune, activists have insisted on its public importance and political significance. Women's movements have developed new concepts and definitions that show the problem as originating in society's very structure. Violence against women has been placed in the context of women's social and economic inequality, and linked to the many different forms of discrimination affecting their status. In this new understanding, violence against women is a consequence of the gender order established in a society, of the hierarchy and power relations that characterize the relations between the sexes.\footnote{Supra Ch.2.}

This comprehensive understanding of violence against women has led to the assertion that women's rights are human rights, and that women therefore have a right to a life free from all forms of violence. The language of human rights has added a new ethical thrust to women's efforts to advance their demands for equality and to combat discrimination\footnote{Supra Ch.2.}.

The term "domestic violence" summarizes, includes, and supersedes expressions like wife beating, battered women, intimate violence, physical violence, spouse abuse, and family violence. Collectively, these terms describe domestic

\footnote{Supra Ch.2.} \footnote{Supra Ch.2.} \footnote{Supra Ch.2.}
violence between spouses, family members and opposite sex partners. Domestic violence is not a private matter protected from society’s views of the sanctity of the home. Rather, it involves crimes where the victim either knows, or is related to the perpetrator.  

The word family, for many, represents warm memories, a safe haven and the dream. For others, however, this dream has become a nightmare. Family violence is a serious and seemingly intractable problem, which transcends race, religion, age, gender, and socio-economic strata. Violence against women and girls kills and maims vast numbers; it fills their lives with pain and terror, from which some never recover. It exists in every country of the world in some form, and the statistics paint a horrifying picture. Globally, the World Bank estimates that violence against women is a serious cause of death and incapacity and illhealth among women of reproductive age. One in three women throughout the world have suffered this violence in her lifetime. In the majority of cases, the abuser is a member of the women’s own family or someone known to her.

In most of the Indian homes, violence against women is in fact one of the most accepted crimes committed against women. It is not confined to one particular strata of society alone. It exists everywhere though in different forms. In India, wife beating seems to get camouflaged under the term ‘dowry-deaths’. The deaths, which occur within the home is the ultimate manifestation of the violence suffered by most Indian

11 Supra Ch.3.

12 Supra Ch.3.
women in varying degrees. There are very few studies done on domestic violence in India. The few studies, which are available, indicate that abuse of Indian women in their home is quite rampant.13

The reason why so many women “put up with” abuse in the home is primarily due to their unequal status in society and the fact that they have no viable alternative available to them. Women are often caught in a vicious circle of economic dependence, fear for their children’s lives as well as their own, shame, ignorance of their rights before the law, lack of confidence in themselves and social pressures. Emotional ties and tendency to revere the family relationship have always discouraged the women generally from expressing about violence in the home. Apprehension about the attitude of the police also prevents women from reporting crimes of domestic violence.14 All these factors effectively sentence abused women to a life of recurrent mistreatment from which they often do not have the means to escape. Social prejudice reinforces domestic violence against women. Particularly since wives are often considered as little more than their spouses’ property, husbands assume that this subordinate role gives them the tacit right to abuse their wives in order to “keep them in their place”—the underlying notion being that women are in need of discipline.15

13 Supra Ch.3.
14 Supra Ch.3.
15 Supra Ch.3.
Violence does not occur as an isolated incident in the lives of abused women. Physical brutality, as well as mental torture, usually occurs on a regular basis, causing incalculable suffering and inflicting deep scars on the victims, the victim’s families and on society as a whole. Women’s physical and mental health is often permanently damaged or impaired, and in some cases violence can have fatal consequences. As a result, domestic violence has devastating repercussions on the family. Mothers are unable to care for their children properly, often they transmit them their own feelings of low self-esteem, helplessness and inadequacy. Children themselves may become victims of their fathers abuse if they try to defend their mother. On the other hand, boys who witness their father beating their mother are likely to emulate this behaviour.16 The economic cost to society of dealing with this problem is enormous in terms of medical treatment and counselling for the victims, the abused woman’s dependence on the welfare system, and the introduction of preventive measures.17

The Universal Declaration of Human Rights proclaims: ‘All human beings are born free and equal in dignity and rights’. But women’s freedom, dignity and equality are constantly denied all over the world on the basis of custom, tradition, culture and religion in ways that men’s rights are not. Advances in the recognition of this factor and women’s advocacy to establish that women are indeed human and therefore entitled to the enjoyment of rights accorded to all ‘human beings’ has a long history that encompasses almost a century of struggle. The struggle has been waged through

16 *Supra* Ch.3.
17 *Supra* Ch.3.
an interactive process that derived its impetus from the women's movement nationally and globally. It involved governments and international organisations and created a local and international dynamism that informed each other. In an attempt to address the inequalities and disadvantage suffered by women, several interventions were put in place at the international level.\(^\text{18}\)

International and regional bodies have promulgated numerous standards on the eradication of gender discrimination in a variety of areas. The prohibition against sex discrimination was first articulated in the United Nations Charter and later reiterated in the Universal Declaration of Human Rights. Since then, virtually all human rights instruments have reinforced and extended protections against discrimination. The International Covenant on Civil and Political Rights guarantees equal protection of the law. The International Covenant of Economic, Social and Cultural Rights also promises women equality. The three regional Human Rights Charters also include progressive protections and generous guarantees for women; these include: the European Convention for the Protection of Human Rights and Freedoms of 1950 entered into force in 1953, The African Charter on Human and Peoples Rights, 1981 and the American Convention on Human Rights, 1969.\(^\text{19}\)

Complementing these treaties and regional instruments, in the last two decades in particular, many other global initiatives have been taken to promote women's rights. They include the Declaration of the Decade for Women, Declarations and

\(^{18}\) \textit{Supra Ch.4.} \\
\(^{19}\) \textit{Supra Ch.4.}
Conventions for Women, World Conferences on women, the adoption by consensus of the Nairobi Forward-looking strategies and the Beijing Declaration and Platform for Action and Beijing+5. Among other World Conferences, in particular the Vienna Conference on Human Rights has advanced the understanding and global commitment to women’s rights.20

In the 1970’s, the most prominent women’s issues related to discrimination against women in the public sphere and the need to ensure equitable participation of women in the development process. In the UN Convention on the Elimination of all Forms of Discrimination against women (CEDAW), which came into force in 1981, explicit prohibition of violence against women is singularly absent. But, in 1992 its monitoring body, the CEDAW Committee, has interpreted CEDAW by issuing General Recommendation No.19, to require states to take affirmative steps to end violence against women. The CEDAW Committee has found that the treaty’s guarantee of non-discrimination requires State Parties to the Conventions to ensure that women are not subjected to gender based violence of any type.21

Thus, until the 1980s, the issue of violence against women was invisible from the international perspective. The UN World Conference on women in July 1985, which was called to mark the end of the UN Decade for Women, concentrated on themes of equality, development and peace. The Nairobi Forward-looking Strategies

20 Supra Ch.4.
21 Supra Ch.4.
agreed to by the Member States at the Conference do mention violence against women, but as a side issue to discrimination and development.  

The major turning point, however, was the Vienna Conference on Human Rights in 1993. It called for the appointment of a Special Rapporteur on violence against women by the UN Human Rights Commission as well as the adoption of the Declaration on the Elimination of Violence Against Women (DEVAW). In December 1993, the UN General Assembly adopted the Declaration and in April 1994 appointed a Special Rapporteur on violence against women. This is a major victory as two UN mechanisms were in place to deal specifically with violence against women.  

DEVAW provides the normative framework for all international action in the field of violence against women. Article 1 defines violence against women as “any act of gender-based violence that results in, or is likely to result in physical, sexual of psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life”. Violence includes, but is not limited to, physical, sexual psychological violence in the family such as battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women. The Declaration also calls on states to condemn and eliminate all forms of violence against women in the general community. Finally it recognises that

22 Supra Ch.4.
23 Supra Ch.4.
violence can be perpetrated as well as condoned by the state. The definition of violence is broad and all-inclusive and acquires a certain transformative character. This breadth of scope and vision is reiterated in the mandate of the Special Rapporteur where there is a call for the elimination of violence against women in the family, in the community and by the state. The Special Rapporteur on violence against women, established by the UN Commission on Human Rights has to examine, report on and make recommendations concerning the ways in which women’s rights are violated.24

The victories achieved in this period were consolidated at the Fourth World Conference on Women in Beijing. The Beijing Declaration contains a special section on violence against women, which draws extensively from DEVAW. In fact, the sections on violence against women are more specific on the steps that need to be taken and on the international norms that are applicable. Governments therefore have a better understanding of, and are more comfortable with, their obligations concerning violence against women. This Declaration shows a strong commitment at the international level to combating violence against women. Further, to ensure that such commitment was maintained, a special session, better known as Beijing +5 was convened by UN General Assembly, which adopted a Political Declaration and Platform for Action reaffirming the goals of the Beijing Declaration to eradicate the

24 Supra Ch.4.
violence against women and also pledged to undertake further action to ensure accelerated implementation.  

Not only the basic tenets of international law such as state responsibility but also human rights doctrine is transformed by the discourse of women's rights. The right to life and freedom from torture are examples of rights subjected to re-examination and reinterpretation in the light of violence against women. Rhonda Copelon has put forward the interesting idea that torture should include violence against women in the home. In International Instruments, torture requires severe physical and or mental harm and suffering that is intentionally afflicted for a specific purpose by a person with some form of official involvement. Copelon stresses the official involvement through state inaction, and the victims' inability to get redress. Though this view is considered a radical reformation of the notion of "official torture", there are many women's groups, which have accepted it as one way to analyse violence against women as a human rights violation. 

Further, some scholars maintain that domestic violence standards have become part of customary international law, which is binding in nature, and that states can be held responsible for tolerating and/or failing to prevent domestic violence through the application of customary international law.

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25 Supra Ch.4.
26 Supra Ch.4.
27 Supra Ch.4.
Thus, domestic violence which was not viewed historically as a violation of women’s human rights, but rather considered as ‘private’, ‘natural’ ‘or ‘cultural’, due to the sustained campaigning by women’s rights activists, has raised International Consciousness and has brought significant advances in the commitment of the International Community to combat such violation of women’s rights. A major achievement of women’s human rights activists is the progress in establishing that all forms of violence against women, wherever they take place, either in ‘public sphere’ or ‘private sphere’ is a violation of human rights for which state can be held accountable. This has compelled the governments in many countries to take concrete and creative steps towards protection of women against domestic violence.28

In the United Kingdom, since long there was concern that the remedies available to those who suffered from domestic violence were ineffective and variable. The criminal law offered protection as in other cases of violence. The Matrimonial Homes Act 1983 dealt with the injunction, known as an ouster order, which ousted the violent abuser from the home. The Domestic Violence and Matrimonial Proceedings Act 1976 provided for an injunction known as a non-molestation order. Personal protection was available under the Domestic Proceedings and Magistrates Courts Act 1978. The court has a general power to issue injunction by reference to the Supreme Court Act 1981. As a result of such wide variety of remedies Lord Scarman criticised that: the sooner the range, scope and effect of these powers are rationalised into a coherent and comprehensive body of statute law, the better. Further, comprehensive

28 Supra Ch.4.
reform was also proposed by the Law Commission. As a result, the Family Law Act, 1996 (FLA) came into force which repealed and replaced the entire 1983, 1976 and some relevant parts (Secs. 16-18) of 1978 legislations and consolidated it into one piece of legislation. The general power under the Supreme Court Act 1981 remains.29

FLA is a comprehensive piece of legislation which removes the anomalies and makes civil protection against domestic violence more effective by providing a single set of remedies available in all Family Courts, including the High Court, Country Court and Magistrates Court. It provides mainly two types of orders: 'occupation orders', which regulate the occupation of the family home; and non-molestation orders, for protection from all forms of violence and abuse. It enables a much larger group of applicants who have been abused, threatened or assaulted by some one with whom they are living or have or have had a family type relationship to gain access to remedies under the Act. The application can be moved even to protect the interests of children. There can be 'interim orders' or 'emergency protection orders' and 'exparte orders'. Fiancées or ex-fiancées can also seek protection if there was an agreement for marriage, which could be proved. It also provides for a transfer of tenancy on separation.30

Further, in order to give greater protection to victims of domestic violence, the Domestic Violence, Crime and Victims Act 2004 has also been passed. It provides protection even to same-sex couples and breach of non-molestation order is made a

29 Supra Ch.5.
30 Supra Ch.5.
criminal offence. It provides, for stronger legal protection for victims by enabling courts to impose restraining orders; provides a system to review domestic violence incidents; binds all criminal justice agencies to give the victims the protection, support, information and advice they need; provides for Parliamentary Ombudsman; Independent Commissioner; Criminal Injuries Compensation Authority; Victims Fund etc. This Act, thus ensures that victims get the help, support and protection they need to rebuild their lives as well as help to convict the guilty.\textsuperscript{31}

In the United States, during the 1960s and 1970s, due to the women’s movement, domestic violence received public attention which was heretofore a private issue allowing men to exercise illegitimate dominance over women. Traditionally domestic violence was considered by the police officers, as a matter between a man and his wife and ill-suited to public intervention. Treating domestic violence as a crime was certainly a first step towards a responsive legal system. 'Mandatory arrest laws' were designed to deprive the police of discretion in making arrests in domestic violence cases. But eventually the victims were reluctant to testify against their batterers for various reasons. To check this 'No-Drop' polices were introduced, which were further categorised into 'hard' or 'soft' No drop policies. Studies indicate that due to this there was drop in domestic homicides incidents. And it was also beneficial to victims who were initially reluctant to co-operate.\textsuperscript{32}

\textsuperscript{31} Supra Ch.5.
\textsuperscript{32} Supra Ch.5.
As to the civil system’s response, civil protection orders in the form of injunctive legal remedies were issued by the courts, which have broad and discretionary scope and include orders to refrain from physical or psychological abuse; to vacate a domicile; to undergo counselling; to pay support, restitution or attorney fees; granting custody of minors to the victims; etc, which allows the courts to fashion the appropriate form of legal remedy. These orders may be granted to spouses and former spouse; family members; children; parents of a child in common; unmarried persons of different genders living as spouses and partners of same gender. But the limitation of these orders was the widespread lack of enforcement and also as these orders were enforceable only within the issuing state they did not protect the victims of domestic violence who cross state lines to escape their abusers. To fill in this gap and also to deter, punish and rehabilitate batterer The Violence Against Women Act of 1994 (VAWA) was passed. 33

The VAWA is the largest crime prevention program providing $1.6 billion to confront the national problem of gender based violence and mandates for new federal crimes, increased penalties for crimes against women and full faith and credit for foreign orders of protection. The Act provides for National Domestic Violence Hotline, which provides information and assistance to domestic violence victims through a national toll free telephone service available twenty four hours a day for information and assistance. It provides for inter-state enforcement of protection orders and carry penalties for violations. It also provides for a broader definition of

33 Supra Ch.5.
"spouse or intimate partner to include current and former spouses, unmarried intimate partners and gay and lesbian couples. The victims can also be granted restitution by the courts. The Act provides for arrest policies in domestic violence cases, which include provision of grants for pro-arrest programmes and policies; to develop policies and training in police departments; to co-ordinate police and judicial responsibility; to strengthen legal advocacy service from victims of domestic violence; to educate judges in handling such cases etc.\textsuperscript{34}

Under the Act, funds are allocated for educating youth about domestic violence; award of grants upto three years to non profit private organisations to establish projects in local communities involving many sectors to co-ordinate intervention and prevention of domestic violence; for federal and state research ventures on domestic violence. The VAWA has thus transformed the discourse on domestic violence from private to the public arena and has changed the state of knowledge about violence against women and made it a top priority at the highest levels of government. As VAWA proved to be remarkable success at addressing and ending violence against women, in 2000 it was re authorised and passed as the Violence Against Women Act of 2000 (VAWA 2000), which doubled the funding under VAWA, and also improved and strengthened it by adding new provisions. And

\textsuperscript{34} Supra Ch. 5.
also the Gun Control Act was amended to combat the widespread use of firearms in familial violence.\textsuperscript{35}

In these two countries, as a result of measures designed to curtail the incidence of domestic violence, changed attitudes and behaviour towards women by which the incidence of domestic violence dropped significantly. Thus, legislation is an appropriate response to the problem of domestic violence, which sends message to the nation including law enforcement officers that domestic violence, is a serious crime. Changing cultural perceptions can take a long time but legislation can have a powerful impact on careful implementation of laws designed to provide women with equality and protection.\textsuperscript{36}

In India, even though, the Constitution and India's endorsement of various International Conventions promise gender equality, these provisions actually do not provide the necessary legal environment for women to lead a full life with dignity, secure in their bodily integrity. Domestic violence, the most vicious form of violence against women is such that, the very right to life of women is in jeopardy.\textsuperscript{37} As prominent type of domestic violence in India is dowry-related domestic violence, number of legislations were enacted to curb this social evil. Out of these the criminal Law (Second Amendment) Act 1983 and the Dowry Prohibition (Amendment) Act 1986 introduced consequential amendments in the Cr.P.C., Evidence Act etc and

\textsuperscript{35} Supra Ch.5. \\
\textsuperscript{36} Supra Ch.5. \\
\textsuperscript{37} Supra Ch.6.
created the new offence of cruelty by inserting Sec.498 in the IPC, which makes cruelty by a husband or his relatives to his wife an offence. Section 498A IPC was the first recognition of domestic violence in law.

The definition of 'cruelty' of under S.498A, IPC does not include all types of violence committed within the precincts of the home, as its objective is more or less closely related to perpetration of violence for not bringing enough dowry. Thus the remedy provided by S.498A IPC is of a very limited character. And also several lacunae existing in the criminal justice system have been pointed out. 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.

Ordinarily, a woman in distress is reluctant to approach the police. In the context of the home, emotional ties and the tendency to revere the family relationship have always discouraged women generally from expressing any displeasure or unhappiness about violence at home. It is only after the violence becomes unbearable that she decides to register a formal complaint, in which case she must assume the enormous burden of breaking ties with the family. Even if the woman does go to the police, these are several barriers she encounters right from the registration of a complaint. Often she does not know the legal requirements of an FIR and if her statement is not accurately recorded, the prosecution that follows is unlikely to succeed. She has little or no role to play in controlling the prosecution. Even if her

38 Supra Ch.6.
39 Supra Ch.6.
complaint results in a successful conviction, the woman is left with little or no relief. Often she could be worse off for having gone to a criminal forum, as her husband can get vindictive. The criminal courts are powerless to grant her protection against dispossession from the matrimonial home. They are powerless to grant any maintenance for herself or her children during the pendency of the trial. Her victory in these circumstances can turn out to be an empty victory. Further, it takes several years for a case under S498A to actually come up for hearing in the court. Thus, the criminalisation of domestic violence has really not helped the cause of women.40

As to the existing civil law, domestic violence has been recognised only in the context of dissolution of marriage and as being a ground for divorce. However, when faced with situations of cruelty, many women may not want to take the extreme step of commencing proceedings for divorce. But, sometimes women who are victims of domestic violence are compelled to file petition for divorce or judicial separation and during pendency of those proceedings, they have been asking for injunctions restraining dispossession from the matrimonial home.41 However, the concept of the 'matrimonial home' remains unrecognised in Indian law, and often courts have refused to recognise the right of the wife to reside in the matrimonial home. The grant of such orders remains discretionary and several judges refuse to grant them. This is particularly so if the matrimonial home is owned by the husband or in most of

40 Supra Ch.6.
41 Supra Ch.6.
cases by the joint family, by the parents in law. Provisions for maintenance and permanent alimony also cannot be an effective remedy to curb domestic violence. Under the Family Courts Act, even though the family courts have a less formal procedure, disputes relating to family violence per se do not come under the jurisdiction of family courts unless some matrimonial relief is sought and also the Act does not provide any additional relief to a victim of family violence.

The remedies available under general civil law are not adequate enough to serve the purpose. The Specific Relief Act 1963 provides for permanent injunctions and in appropriate cases, mandatory and restrictive injunctions also. Even pending such proceedings appropriate intervention can be obtained under Civil Procedure Code. Apart from injunction, damages against the offending party can also be obtained under the Specific Relief Act. However, from practical point of view, it becomes very difficult for the aggrieved spouse to invoke the aforesaid provisions of civil law against husband or other in-laws staying with her under the same roof. Section 6 of the Specific Relief Act through general in nature, can hardly give sufficient protection to a wife who is thrown out of a matrimonial home illegally. As to action in torts, though they fully apply, very little use of these remedies has been made use of. But, however, cruelty has many facets other than assault and

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42 Supra Ch.6.  
43 Supra Ch.6.  
44 Supra Ch.6.  
45 Supra Ch.6.
battery and in such areas the law of torts is not of much assistance. Thus, civil actions available at present apart from being lengthy and cumbersome have not proved to be efficacious remedies.

It was, therefore, high time for the legislature to intervene and to pass appropriate legislation by which domestic violence could be effectively controlled and restrained and the same was done by passing the Protection of Women from Domestic Violence Act, 2005, on August 24, 2005 by the Parliament. This Act has been described as a major milestone in the journey of women's movement in the country and has sparked new interest among the women’s activist. It is also a substantial improvement upon the earlier Bill of 2002. This Act has come as a ray of hope and essential support for abused wives, mothers, sisters and even live-in partners. It recognises the reality that often it is not just the wife who faces abuse but also other members of the family. The Act has provided an exhaustive definition of domestic violence and for co-ordinated response through protection officers, service provides, etc. For the first time the Act holds the state responsible for the care of domestic violence victims. The relief under the Act is available in the form of protection order, monetary relief, custody order, residence order, compensation order or more than one such order which recognises the inequality in the situations of the perpetrator and the

46 Supra Ch.6.
victim and is also of an emergency nature. It also makes breach of the protection order a punishable offence.\textsuperscript{47}

But as to the provision of shelter home the study reveals that firstly the Act is limited only to definition of a shelter home. Secondly the Act does not provide for any penalty or punishment in case of mismanagement of shelter home or breach of duties by the person in charge of shelter home. Thirdly, it is not provided as to who should be the persons in charge of shelter home. Fourthly, when the respondent is ordered by the court to secure alternate accommodation to the aggrieved women or to pay rent for the same the Act does not provide for any provision in case if he refuses or is unable due to financial constraints. Further, in camera proceedings, may sometimes intimidate the aggrieved person in favour of the respondent.\textsuperscript{48}

It is fortunate that the long - awaited legislation to deal with domestic violence, a grave, widespread and often life-threatening problem, is passed and is also drafted in accordance with international standards. The reliefs provided under the Act stand inbetween the extreme measures relating to crime and divorce and help in preserving the matrimonial home to the extent possible.\textsuperscript{49}

The study reveals the necessity of a separate legislation which covers all types of cruelty perpetrated on women within the home to be passed to alleviate the suffering of women and also to create a single forum, which is empowered to grant

\textsuperscript{47} Supra Ch.6.
\textsuperscript{48} Supra Ch.6.
\textsuperscript{49} Supra Ch.6.
civil and criminal remedies, so that a woman does not have to go to different forums for associated relief. This has been very much taken care of by the Protection of Women from Domestic Violence Act, 2005. Further, though the issue of tackling domestic violence is addressed by a separate legislation, legal remedies alone are insufficient. This is so because domestic violence is not only a legal, but basically a social problem. The violence may be meted out by one man but the responsibility for it goes far beyond him — to society. Ultimately, however, violence against women in the family, is the product of the inferior status of women in our society and hence, it can only be eradicated if concrete steps are taken to guarantee women equality in all spheres of life. In the light of above conclusions the following suggestions are made.

Suggestions:

1. The State Government must establish shelter homes at the taluka level in each district at state expense, as this will facilitate easy access to domestic violence victims to protection.

2. The persons in charge of shelter homes shall as far as possible be women.

3. The shelter homes must be properly managed and the Protection of Women from Domestic Violence Act, 2005 shall be amended to provide for penalty for persons in charge of shelter homes, for not discharging their duty properly.

4. A provision shall be inserted in the Protection of Women from Domestic Violence Act, 2005 to provide for ‘safe shelter’, at state expense, to a victim of domestic
violence where the husband is not in a position or neglects to provide a separate place for her to reside.

5. It is suggested to insert a provision in the Protection of Women from Domestic Violence Act 2005, whereby the aggrieved party should be allowed to be accompanied by any relative/women social worker etc of her choice for moral support where proceedings are held *in camera*.

6. The Government shall work out a scheme for rehabilitation of the victims by both short-term and long-term process involving treatment, education, placement and other forms of support and empowerment. And also to provide employment to victims in cases where their financial conditions are miserable.

7. The Government should direct campaigns both to the general public as well as to specific target groups; Women should be made aware of their rights, and men should learn about the legal and personal costs and consequences of abusive behaviour. Public awareness efforts should also focus on showing the devastating impact of domestic violence against women at the individual and societal levels, including its lingering impact on future generations.

8. Educational programmes shall be restructured to create sensitisation and awareness about domestic violence and the rights of the victim of domestic violence and towards the more general role to spread education as an affirmative tool of empowerment by keeping in view that majority of the Indian population lives in villages and rural and semi-urban areas.
9. Prevention strategies and programmes are an essential component of national plans to stop domestic violence against women. They should work at various levels and be aimed at women and men of all ages in schools and other educational institutions, the workplace and local communities.

10. Community responses aimed at transforming prevailing traditional attitudes and norms are essential to ending impunity for domestic violence against women. Communities should work in collaboration with law enforcement, social service providers and civil society organisations to create an environment that protects and helps realise women’s rights against domestic violence.

11. Leaders at all levels must speak up and join women in generating a momentum for ending domestic violence against women. People in positions of visibility and leadership — whether local leaders, religious authorities, community organisers, politicians, or sports and entertainment figures — have a powerful impact when they lend their influence to helping shape new social attitudes and behaviours.

It is submitted that a faithful implementation of the above suggestions will help in a better way towards achieving the objective of protection of women from domestic violence.