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**PLIGHT OF WOMEN IN INDIA: A CRITICAL ANALYSIS WITH  
SPECIAL REFERENCE TO THE DOMESTIC VIOLENCE ACT**- Aniket Chauhan<sup>1</sup>**INTRODUCTION**

*“You can tell the condition of a Nation by looking at the status of her women”*

– Jawaharlal Nehru.

What role women are playing and can play in development has become the main topic of discussion around the world at the beginning of this millennium. In terms of their socioeconomic and political empowerment, it is clear that women have made significant progress over the past few decades. Despite this, it is an open secret that many women in developing nations like India are far from enjoying the benefits of the developmental process, despite their valiant efforts to ensure the sustainability of the machinery. Women have experienced significant social and economic advancements, even in affluent nations, yet they still lack political equality. However, even in developed nations, women who are self-sufficient financially, encounter numerous challenges in daily life. In nations like India, where women are worshipped while also being mistreated and completely subordinated, the situation is worse<sup>2</sup>.

In its many stages over time, human development has highlighted the necessity of empowering all people, particularly women, and has done so by promoting, developing, and coordinating programmes under a Human Development Agenda.

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<sup>2</sup> Walker, L. E. “Psychology and domestic violence around the world”. *American Psychologist*, 54(1), (1999)

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Due to the values of social justice, equality, and participation in decision-making in both private and public life, this will help people become self-sufficient and contribute to the process of national development.

As is typical of human thought, there are at least three ways to approach the question of gender and development: from the perspectives of equality, empowerment, and development effectiveness. The first point of view emphasises equality as the cornerstone of the social contract: Male or female, everyone should be treated equally in society, politics, and the economy.

This is a potent justification that comes from political philosophy. Extending people's options and levels of control over their life is the basis for the second defence. According to this viewpoint, highlighting gender emphasises the importance of empowering both women and men for development. The third strategy contends that gender issues affect the effectiveness of development efforts and may persuade people who are dubious about the place of gender in development policy-making. In recent years, more successful development has been regularly attributed to women's active participation in governance, education, and income generation<sup>3</sup>.

According to Greek philosopher Aristotle, "Man is a Social Animal," since prehistoric times, his behaviour has been animal-like. Man is an egotist who values himself above all others. It doesn't imply that he lacks noble qualities. Even after civilization emerged, man has continued to pretend to be nature. As a result of this pattern of behaviour, the State is left with little choice but to enact a number of laws to stop the behaviour that endangers the lives of other people. Women are seen as the property of men. She is viewed as a component of man, as shown in the sculpture "Arthanariswara." This indicates that society does not want or intend for women to live on their own in this world. All of the dharma Shasta, starting with Manu Code, are treating her inhumanely in various ways. On the one hand, they view women as goddesses, but on the other, they have only treated them poorly in return for the physical labour and household duties they

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<sup>3</sup>OlaW.Barnett,CindyL.Miller,RobinDPerrin,*FamilyViolenceAcrosstheLifeSpan*(SagePublication–p.20 2010)

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have performed for their families. The sacrifice made by a woman is completely overlooked, not even acknowledged, and not even shown the slightest amount of appreciation to comprehend the deed of a woman<sup>4</sup>.

Women today do have a certain status if they are educated and self-sufficient financially. However, having complete independence and completely engaging in the decision-making process in their lives must go a long way. Too many limitations, traditions, and customs render women handicapped and unable to act to stop these customs, even when they want to. Even if we concede that women have rights, they are now very average and limited, and they still lack a great deal in order to live the lives they choose. Indian women's status is precarious today. Every woman should face the true struggle of life after marriage, and she is under pressure to uphold a good reputation with her husband, in-laws, and the relatives in both of their families. The struggle starts here, where all of her desires come to a standstill position and her husband's wishes are forced and thrashed upon her, which automatically becomes her priority. This is her first task, to earn good name from her family members she is forced to transform her identity as according to the needs of the new family. She has been taught by her parents to follow this tradition, and she is under pressure to think that once she achieves this, all other women will vanish. She is under enormous pressure as a result of her new relationship, and she needs extraordinary talent and strategies to handle the entire situation that results from it, which drains her energy completely. The majority of women experience this actual struggle at the hands of their husbands, in-laws, and other family members.

The violence that women perpetrate in their husband's home puts them in genuine danger of losing their lives. They experience this violence throughout their lives, which is referred to as "domestic violence." According to academics, domestic violence is a social crime. Human interactions have given rise to civilised societies. Therefore, in order to survive in society, an individual requires a group that shares a common place to live, engages in economic cooperation, and reproduces. The family structure facilitated this. Family formation is a long-standing custom. Marriage is the most common way that families are formed. Relationship between opposite sex

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<sup>4</sup>Sherril.Schornstein,*DomesticViolenceandHealthCare*(SAGEPublications–p.7. 1997)

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is legally and socially accepted only through marriage. But, this is not the only way practiced in recent days<sup>5</sup>.

- **Human Rights Definition:**

There must be a balance between the existing faculties and forces of nature and if there is an imbalance then the existence is rendered difficult. It has been said by scholars both spiritual and temporal and that there are five distinct qualities in all beings representing the faculty of Sight, or Sense, or Smell or Taste or Touch. All beings do not possess all faculties; some possess one or more than one or all the five. Of all the beings which are living, Human being is the Superior one. Since, he possesses the sense of reasoning or discernment and this facilitated by his capacity to understand the real meaning of anything which is felt by him either through all the five senses or some of them or any one of them. Human Rights are defined as "the rights relating to life, liberty, equality, and dignity of the individuals guaranteed by the Constitution or enshrined in the International Covenants and enforceable by courts in India" under Section 2(d) of the Human Rights Act of 1994.

All created beings possess varying degrees of faculties that are essential to their continued existence. All beings or things, whether animate or inanimate, already possess certain attributes and in due course acquire other attributes from outside influence. These are all necessary for survival and can either be inherited or developed due to the influence of circumstances that are constantly present in nature.

Today's man aspires to become a rational being rather than a social animal. He is logically granted certain rights—known as human rights—by this Rationality. The rights are essential tools that he needs in order to safeguard his five senses, including his "Right to Existence" and other rights. A man must not unjustly die since he was created to live. His rights could be restricted by strong societal forces, depriving him of the chance to exercise them. A man's rights may be restricted in ways other than the five senses. He has the right to freedom of movement, the ability to exercise his conscience, and the ability to pursue his spiritual interests as a rational being.

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<sup>5</sup>Elizabeth M. Schneider, *Battered Women and Feminist Law Making* (Edition p.102. 2006)

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There are a plethora of additional rights that fall under the category of "Fundamental Human Rights." So, in order for the human being to experience and enjoy the fullness of his life via meaningful existence, conducive forces must be fostered and promoted. At the same time, the human being must be protected from all types of invasions of his rights. In essence, any right that a person exercises and that is necessary for the continuation of his or her life is a human right. "A Human Right implies the Power to Prevent Invasion or Impediment of Natural Rights and also to Encourage and Develop These Rights with the Ultimate Aim of A Man's Continuous and Free Existence In This World," according to the Universal Declaration of Human Rights<sup>6</sup>. All living things are endowed with innate attributes that must be preserved; this protection is equivalent to the right required to provide that protection, and those rights are meant to ensure the ongoing existence of those living things. Man is a little portion of the massive component, which is one of the species in the universal genus.

It is essential that man be guaranteed of the preservation and protection of his rights because the rights that are available to him as a human being may be disturbed or violated by his own internal behaviour and attitude or by external impact. The rights that he or she has access to as a family man or woman are covered in this thesis; however, the full range of human rights is not intended to be covered.

A man and woman come together to live together in the family, which is a civilised unit of society, in order to have children and to satiate their sexual desires. This is the main motivation behind the union, which is carried out according to a number of socially accepted rituals, conventions, norms, laws, and reputations that are frequently sanctioned by law.

Additionally, it is suggested that women's rights be restricted in both family and social contexts while also studying the nature and characteristics of those rights. The first three chapters cover all of the aforementioned claims.

It is suggested that the distinctive characteristics of women's rights be highlighted in the chapter on the special notions of human rights because of how vital a role women play in both society and the home. The rights of women are given major consideration in contemporary thought, and

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<sup>6</sup>Dr. Bijar Narain Mani Tripathi. *An Introduction to Jurisprudence (Legal Theory)*, 277 (Allahabad Law Agency, Faridabad, 17<sup>th</sup> edn., 2006).

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the world as a whole has begun to consider the best ways to recognise, uphold, and defend these rights while simultaneously putting in place sufficient protections to prevent their infringement. Her responsibilities as a wife, mother, and guardian of the domestic needs of every family member are vast and intricate. A person must exercise greater caution and consideration in such circumstances in order to fulfil her obligations to her family, society, and herself without suffering a violation of her personal rights.

A woman has many responsibilities in a family, and the safety she has available to her pales in comparison to the vast tasks she must perform. She is restricted to a family life, therefore she is subject to internal or external restraint and limitation. We cannot claim that a woman who enters into family life is unambiguously deprived of a great deal of her freedom, has less power over herself, and is under the control of her husband, who plays a domineering role in the family<sup>7</sup>.

Next, a woman yields to the restriction she has placed on herself as a result of social, religious, and biological pressures. Her own inhibition, which she defends, governs her actions, behaviour, looks, and other personal attributes. She is being modest, courteous, and humble in order to establish a good reputation. The idea that their behaviour will be perceived as unwomanly or contrary to their feminine character makes many women feel content if they maintain a polite demeanour when dealing with others. Such self-imposed limitations ultimately result in man's will and might subjugating nature. She believes that because she lacks the strength to compete with her husband or male protector on an equal footing, she must submit in order to survive because he has the advantage of both physical and financial probers.

A woman is susceptible to psychological stress while carrying out her responsibilities in that narrow circle when she is firmly enmeshed in family life. She is required to communicate with the other family members, and during these conversations, she learned about the opinions and choices of others. She may not cognitively agree with such enforced beliefs and concepts, some of which are dominant and others demanding, but she is nonetheless compelled to act in accordance with them. If she disagrees, she has psychological tension, which means that she is acting in a way that she does not mentally support. When she is unable to carry out her opinions

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<sup>7</sup>JanaL.JasinskiandLindaM.Williams,*PartnerViolence*, 9(SAGEPublication, 1998)

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and wishes, she becomes psychologically vulnerable. She may occasionally be entertaining her own... views that she has picked up from outside circumstances. When she is intensely trying to apply them in her family and when the same are not met with approval.

Despotic stress because she feels ignored, her opinions are misunderstood, and her position is disregarded. She must therefore impose on others and accept ideas that have been thrust upon her. She becomes the victim of psychological stress as a result of this difficult situation. In a family, a woman must simultaneously fulfil the roles of wife and mother. She must appease her husband and comply with all of his whims and demands, including those relating to sexual activity. It frequently happens that the husband expects passive compliance with his demands while being unmindful of his wife's feelings. She enjoys her husband's company frequently, so when she refuses to accommodate his sexual needs and desires, she feels helpless and unsupported. On other occasions, however, when she is in desperate need of satisfying her sexual appetite, her husband may not be willing to do so, forcing her to suppress her urges and suffer the consequences. As a mother, a woman is responsible for her children's behaviour in addition to their health. While the mother must carefully plan how to feed her children while also taking action to improve their behavior, the father is happy to provide the means for feeding the kids.

Mothers are more responsible and accountable for the upbringing of their children than fathers, who are more concerned with the outcomes of such upbringing. Mothers are also more responsible and accountable for supplying the essentials for their children's existence. While the mother is preoccupied with the upbringing process, the father is focused on the end result of the children's development. Therefore, a mother's contribution is enormous and significantly less complicated than a father's<sup>8</sup>.

A woman must find a balance between her family interactions and those of her relatives because she must interact with people outside of her immediate family on a regular basis. Her relatives may have certain dealings with her, such as family functions and relationships, which could lead to disputes over marital or property dealings. She can behave negatively toward how her relatives connect with one other and vice versa. The defence of her family's interests might

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<sup>8</sup>V.V.DevasiaandLeelammaDevasia, *Woman Social Justice and Human Rights* 58 (APH Publication Corporation 1998)

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conflict with how a relative interacts with her. Her functioning inside her own family may also be impacted by the attitude of the relative, and this influence may lead to an imbalance in how she performs her obligations. At other times, she may also have to interact with people who are not her relatives, such as neighbours and community members. She may not be in a position to criticise the opinions of the community because she must fulfil her obligations to the community or religious organisation to which she belongs. According to her husband's wishes, those of her family's elders, or those of her grown children, she may occasionally be forced to deal with issues in the community. She might not be sufficiently knowledgeable and diplomatic in all of these interactions. She is forced to contact with them primarily against her will, which makes her worried about her family's future and causes more complications for her than for her family. Therefore, the wife needs to be morally and psychologically strong enough to resist the pressures placed on her by others. It is the responsibility of society and the legal system to determine and put into place the necessary safeguards to protect a woman from this unavoidable circumstance.

The majority of the time, a woman enters a family as an inexperienced young woman. Her age makes the introduction to her family life more passionate and filled with high expectations. She anticipates that her husband would treat her with respect, tenderness, and affection and that he and the rest of the family will attend to all of her needs. She receives more attention from her husband in the beginning of their relationship because she is young and beautiful for her age. Naturally, he gives her more attention, much to the dismay of older people. Her in-laws may not always be kind to her because they believe that their male relative, a woman's husband, is giving her more attention and eschewing their authority. The quarrel between the elders and the newlywed wife puts the husband in a difficult situation. In that scenario, he would rather appease them at the expense of his wife's feelings and would subsequently counsel her to put up with the elder's behaviour. However unfavourable it may be, if he truly loves his wife, he expresses it to her without the elders' awareness, and if the elders are exerting too much pressure on him, he openly orders his wife to obey them. After the child is born, the situation worsens, and she now has to contend with issues that are being thrust upon her by her husband, her in-laws, and the newborn child. She is now more devoted to the family and involved in the upbringing of her

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child, which forces her to comply with the rules and regulations set forth by her husband and parents<sup>9</sup>.

Women had some rights, but they were extremely limited and were viewed as individual rights, meaning they had to use civil remedies and go up against other women individually. The state now has a responsibility to protect women and children under Article 15(3) and Articles 23, 24, 38, 41, 42, 43, and 45 since women's rights are no longer considered to be individual rights but rather are now recognised as Human Rights, giving them greater legislative protection and allowing them to use constitutional remedies under Articles 32 and 226. "And enforceable by Courts in India" are the key phrases. These phrases strictly limit human rights to those that are recognised by Indian courts and are enshrined in Part III of the Constitution. Since the question of why the Commission was created to defend fundamental rights when they are constitutional rights that may be enforced in court comes up, is it still relevant? The improvement of human rights protection seems to have been the main goal of the legislation. The Government was reviewing the current laws, procedures, and system of administration of justice with a view to bringing about greater accountability and transparency in them as well as developing efficient and effective methods of dealing with problems relating to women and children at the time the Bill was introduced due to the growing concern about issues relating to human rights both in the country and abroad<sup>10</sup>.

The 1993 World Conference on Human Rights established the critical relationship between global stability, legality, and human rights, positioning them all within the broader framework of democratisation and development.

The UN is working more and more to avoid or end wars while also taking steps to lessen violations of human rights when there is internal strife. Minority protection, bolstering

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<sup>9</sup>V.V.DevasiaandLeelammaDevasia, "WomanSocialJusticeandHumanRights" *APHPublicationCorporation* 162.(2008).

<sup>10</sup>TheCommissionhasrecommendedtotheGovernmentfortheamendmentinthe preamblebyadding'including the implementation of International Covenants' (See Annual Report ofthe National Human RightsCommission,1999–2000p.183).

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democratic institutions, achieving the right to growth, and ensuring that all people respect human rights are given particular attention<sup>11</sup>.

- **Beijing Declaration**

In September 1995, at the Fourth Women's Conference in Beijing, it was decided to further the objectives of equality, development, and peace for all women worldwide in the service of all humanity. Honoring the women who blazed the way and being inspired by the hope present in the world's young while acknowledging the voices of all women everywhere and taking note of the diversity of women and their roles and circumstances. Recognize that, despite unequal advancement, persistent gender disparities, and significant challenges, the status of women has improved in some significant ways over the past ten years. This has critical implications for the wellbeing of all people.

1. Recognize that this condition is made worse by the rising poverty that affects the majority of people around the world, especially women and children, and has both national and international origins.

2. Unreservedly commit to removing these restrictions and barriers in order to further the advancement and empowerment of women around the world. We also concur that this calls for immediate action in a spirit of resolve, hope, cooperation, and solidarity both now and as we move into the next century.

The Universal Declaration of Human Rights, the Convention on the Rights of the Child, the Declaration on the Elimination of Violence Against Women, and other goals and principles outlined in the United Nations Charter, as well as the equal rights and inherent human dignity of women and men, are all examples of international human rights instruments. In particular, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC), and the Declaration on the Elimination of Violence Against The Declaration guarantees the full fulfilment of women's and girls' human rights as an intrinsic, essential, and unalienable component of all other human rights and fundamental freedoms.

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<sup>11</sup>United Nations, "Human Rights Today: A United Nations Priority." The United Nations and the advancement of women 1945-1995

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To achieve equality, development, and peace, build on the agreement and advancement made at prior United Nations conferences and summits, including those on women in Nairobi in 1985, children in New York in 1990, the environment and development in Rio de Janeiro in 1992, human rights in Vienna in 1993, population and development in Cairo in 1994, and social development in Copenhagen in 1995. Implement the Nairobi Forward-looking Strategies for the Advancement of Women fully and effectively.

The advancement of women, including their right to the freedom of thought, conscience, religion, and belief, will meet the moral, ethical, spiritual, and intellectual needs of both men and women, whether they do so individually or collectively, and will ensure that they have the chance to reach their full potential in society and live lives that are in line with their own goals<sup>12</sup>. For equality, growth, and peace to be achieved, women must be empowered and fully included on an equal basis in all aspects of society, including access to authority and involvement in decision-making.

Human rights include women's rights. Equal rights, opportunities, and resource access for men and women, as well as a harmonious working relationship between them, are essential for their own well-being, the well-being of their families, and the development of democracy.

The full and equal participation of women and men as agents and beneficiaries of people-centered sustainable development, as well as their involvement in economic and social development, are necessary for the eradication of poverty based on sustained economic growth, social development, environmental protection, and social justice.

The foundation of women's empowerment is the explicit acceptance and affirmation of their right to fully control all facets of their health, including their own fertility. The growth of women, who are an essential force for leadership, conflict resolution, and the promotion of sustainable peace at all levels, is a prerequisite for local, national, regional, and global peace, which is attainable and intricately tied with it. At all levels, it is critical to develop gender-sensitive policies and programs, including development policies and programs, that are effective, efficient, and mutually reinforcing in order to promote the empowerment and advancement of women.

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<sup>12</sup>Meyer.MandE.Pragul,*NegotiatingInternationalNorms-TheConventiononViolenceagainstWomen*58-71., (1998)

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The effective implementation and follow-up of the Platform for Action depend on the participation and contribution of all civil society actors, particularly women's groups and networks, other non-governmental organisations, and community-based organisations, while fully respecting their autonomy and working with governments.

Governments and the international community must be committed to implementing the Platform for Action. Governments and the international community acknowledge the need to take priority action for the empowerment and progress of women by establishing national and international commitments for action, including those expressed at the Conference. To fulfil the objectives of the Nairobi Forward-looking Strategies for the Advancement of Women by the end of this century, intensify efforts and measures. Make sure that all human rights and fundamental freedoms are fully enjoyed by women and girls, and take effective action to stop violations of these rights and freedoms.

- **Women's Empowerment And Gender Equality:**

Understanding gender equality and the empowerment of women are important goals that underlie every enterprise development. The abolition of global poverty and the protection of human rights depend critically on the empowerment of women. Therefore, women's empowerment is viewed as a slight increase in income, but this is insufficient on its own to achieve the desired result; instead, a change in power dynamics is needed. This means that power dynamics within households, markets, and communities at the national and international economies must be taken into account in enterprise development in addition to income levels.

This has helped many women today come out of their shells, confront the world with more confidence, and take on anything with the information and skills they have to live the better lives they deserve. But this also raises the question of whether women's independence is misconstrued and whether they lack sympathy for their relationships. However, this uncertainty is frequently unfounded and unsubstantiated.

- **Women's Empowerment In India:**

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In India, gender discrepancies are well-known. In addition to having lower literacy rates than men, women also make up less of the labour force. Additionally, women are proportionally underrepresented compared to men, highlighting how entrenched this disadvantage is for women. Empowerment is typically seen as a difficult concept to quantify. Measures of empowerment are evaluated in India along four dimensions: Possibilities, Options, Resources, and Rights<sup>13</sup>.

- Effective and efficient capabilities: How women's health and education help them make decisions. (In the home and in the outer world).
- Choices refers to the kind of opportunities that women have access to through social institutions at the state, market, community, and family levels.
- Assets - Ownership and Control of Property and Productive Assets. (Not just for tax exemption reasons.)
- What Rights Are Available to Women Under the Law? How much do they know about it? And how can they use them to their best advantage?

- **Gender:**

The social creation of relationships between men and women is referred to as gender. Our main objective is to prevent anyone or any group from being discriminated against because of difference. All kinds of subordination, oppression, and discrimination based on gender must be eliminated by the government and society<sup>14</sup>.

- **Gender Equality:**

It is a fundamental and non-discriminatory interaction between men and women in society that is referred to by this constitutional value. Gender equality refers to a society where men and women have equal access to resources, opportunities, and decision-making authority<sup>15</sup>.

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<sup>13</sup>SwamiMahabanandaandSriR.C. Majumdar,*GreatWomenofIndia*34(2022)

<sup>14</sup>CatherineA.Mackinnon,*SexEquality*45 (2001Edition)

<sup>15</sup>AjitkumarSinha,*NewDimensionsofWomenEmpowerment*57 (DeepandDeepPublicationPvt.Ltd.2008Edition).

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- **Causes Of Gender Inequality:**

- In several areas of India, there are more men than women in terms of the sex ratio.
- Compared to male babies, more female babies are slaughtered or forced to die.
- Compared to men their age, women have lower levels of education.
- Women are underrepresented in jobs that provide a salary.
- Additionally, women hold relatively fewer positions in governance and decision-making.
- Women experience violence throughout their lives both within and outside of the home. When compared to recent history, the number of crimes against women in India has nearly doubled<sup>16</sup>.

- **Poverty And Gender Inequality:**

"Poverty has various manifestations, including a lack of food and productive resources sufficient to ensure a sustainable means of subsistence; hunger and malnutrition; ill health; limited or no access to education and other basic services; rising morbidity and mortality from illness; homelessness and inadequate housing; unsafe environments; and social discrimination and exclusion." It is also characterised by a lack of involvement in political, social, and civil decision-making. It exists in all nations as pockets of poverty in developed countries and as mass poverty in many developing nations<sup>17</sup>. This was done to support and defend women's human rights all over the world.

- **Impact Of Economic Status Of Women On Domestic Violence:**

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<sup>16</sup>Jamil Ahmed, *Gender Inequality and Women Empowerment*130 (Deep and Deep Publication Pvt.Ltd. – 2008Edition).

<sup>17</sup>Message with reference to Beijing Platform of Action, United Nations, '1996 Fourth World Conference on Women in Beijing', China.

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All types of inequality and the ensuing oppression they lead to are rooted in economic hardship. It is quite difficult to close the economic gap between the haves and the have-nots. The only way to achieve economic equality is to close the gap between these two extremes. It is not necessary to bring wealthy individuals down to a lower level; rather, society should work to raise the status of the underprivileged. A woman must depend on males at all stages of her life, according to the proverb. It is an old tale of femininity that they are not permitted to hold riches or retain economic independence. She was economically dependent on men for all of her requirements at the time this was being narrated, from shelter to old age infirmities, in addition to personal protection. Her physical fragility and this type of dependence are permitted by tradition and religion. She has endured unimaginable pains and afflictions, and her family has always regarded her as a favoured slave. She is unable to exercise or defend her gender-specific fundamental rights. Despite the fact that she is entitled to certain rights under the Indian Constitution, she still faces challenges in daily life<sup>18</sup>.

She turns into a plaything for dominance and male chauvinism in the context of domestic abuse. Men view her as nothing more than a sensuous object of pleasure that should be tasted and then discarded. Men do not take into consideration a woman's desires, financial limitations, or other needs. Such subliminal hatred of women leads to violence against her domestic sphere, and she is forced to endure it and is unable to break free of the bondage because she cannot physically survive outside the family unit. Therefore, strategies and tools must be developed to empower and economically independent women.

There are laws in place today that give women the right to claim ownership of property. They have employment and income opportunities. They are encouraged to start their own businesses, even if they are well-known traders. Women who work in these fields feel wealthy and independent financially. Although they feel satisfied and fulfilled, this leads to a change in their thinking, which is a disadvantage for them. They become arrogant and strive to assert themselves too much, which is beyond the capacity of the male members. The same way that economic

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<sup>18</sup>S.M.JavedAkthar,*EmpowermentofWomeninIndia–IssuesandChallenges*98 (2008Edition)

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affluence has the same impact as economic dependence, occasion, and female suffering does. If an affluent woman behaves in a way that goes beyond what the male members would expect, it will hurt women in domestic situations.

Male participants frequently believe, and rightly so, that the wealth that an affluent woman independently owns affects her behaviour. Once more, it is implied that male members will invent ways to rob female members of power over their own holdings. Forcing a woman to give up their property, wealth, or monthly income in favour of her male protectors may result in domestic violence in the form of harassment<sup>19</sup>.

Women must be economically independent, but they must also understand that their money must not stand in the way of living a united, loving, and caring existence at home. They would do well to retain a detached attitude toward their own wealth and to hold the generous belief that her property belongs to the family she resides in. A woman must have the noble thought that her fortune would be used for the benefit of her entire family. To avoid being perceived with envy or jealousy, women should let go of their feeling of exclusivity and establish friendly interactions with other family members. In this way, it will become clear how important it is for women to be economically independent and how important it is for them to manage their finances so that their family benefits. Domestic violence would be significantly less common in such a household.

- **Importance Of The Study:**

Within the confines of the family home, women are more likely to become the helpless victims of all forms of abuse. Violence is typically committed by male and female members of the same family who are both present at the time. Everyone makes it through with a surprising accident, ranging from a bride being burned to a rape. The innocent and defenceless ladies are the victims. Liberation movements, the establishment of numerous social welfare organisations, and the constitutional promise of equality before the law all contributed very little to the advancement of women.

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<sup>19</sup>KumKum Narain and Meera Mirudubhasini, *Empowering Women through Economic Measures* 178 (Deep and Deep Publication Pvt. Ltd. 2008 Edition)

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Even though violence against women is not a recent phenomenon, in the past 30 years, the issue has received a lot of public attention. Since 1975, a number of independent women's organisations have emerged to raise awareness about female violence. The various forms of violence perpetrated against women in society—both internally and externally—indicate the social status of women as well as their roles, responsibilities, and connections within the family, as well as their ability to make decisions and maintain their autonomy.

It is important to consider domestic violence legislation in this perspective. The National Human Rights Commission has recommended that the draught measure be expanded to cover all forms of domestic abuse, not just violence committed by a husband against his wife, such as violence against children, the daughter-in-law, the elderly, and other dependents. The Commission has also recommended changes to the enforcement apparatus, including the function of Protection Officers, participation by non-governmental or civil society organisations, and the function of the Court. The Protection of the Women from the Domestic Violence Act of 2005 was introduced to address the issue of domestic violence in India by offering victims of domestic violence both civil and criminal remedies. Understanding the impact of legislation in reducing domestic violence in India is helped by the study<sup>20</sup>.

- **Objectives Of The Study:**

The current study aims to investigate Domestic Violence and the Protection of Women's Human Rights. Thus, the following are the primary goals of this research:

- To evaluate the level of domestic violence against women that exists in the family and takes many different forms.
- To evaluate how different offences affect the status of women.
- To research the issues with gender justice.
- To research what drives violence against women
- To investigate the ways in which women's rights are being abused.

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<sup>20</sup>Preeti Misra, *Domestic Violence against Women – Legal Control and Judicial Response* 268 (Deep and DeepPublicationPvt.Ltd., 2006)

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- To talk about the rights granted to women and how the State holders actually use them.
- To research the justifications for introducing a special domestic violence law.
- To research the legal framework around domestic violence and the difficulties associated with enforcing the law.
- To assess the effectiveness of government efforts to end violence against women and the Service Providers and Protection Officers appointed under the Act.
- To make recommendations for actions that should be taken to put the law into action in order to end domestic violence generally and contact domestic violence by the victim with the active assistance of civil society specifically.

In Study an effort is also made to evaluate the roles that

- The 2005 Protection of Women from Domestic Violence Act's redress agencies play in the community.
- To talk about the corrective actions required to end domestic violence.
- To talk about the Protection of Women from Domestic Violence Act of 2005 and the roles of influential women's organisations, other non-governmental organisations, and protection officers.

- **Hypothesis:**

*The researcher offers the following hypotheses for investigation in this study:*

- The PWDV Act, 2005 has shortcomings in and is not adequate / is insufficient in handling the problems of victimization of women.
- Majority of Domestic Violence incidents go unreported due to illiteracy, unawareness about the laws, orthodoxy and financial inability.
- Protection or monetary orders does not ensure better living conditions for the victimized women.
- Women who are "uneducated" are more likely than educated women to be victims of domestic abuse.
- Domestic violence affects women in joint families at a higher rate than it does in nuclear families.

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- **LITERATURE REVIEW:**

- **Mondal, D. & Paul, P (2021)<sup>21</sup> “An update on Spino-cerebellar ataxias”:** Studies also found considerable differences in the Socio-demographic variables influence how often women use maternity care services. Women with greater levels of education, family income, and access to mass media are more likely to utilize maternity care services, according to the research. Women with a high parity, those who married young (before the age of 18) and those who lived in big families had a lower probability of using maternity healthcare.
- **Violence against women: Intimate partner and sexual violence against women (2019)<sup>22</sup>:** Violence against women is a major public health issue, as well as a blatant violation of human rights and the equality of men and women. The World Health Organization recognizes it as a global issue of 'epidemic proportions' (WHO). the elimination of violence against women is defined by the United Nations Declaration on the Elimination of Violence Against Women as “any act of gender-based violence that results in, or is likely to result in, physical, sexual or mental harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life”
- **UN Human Rights Council Secretariat (2018)<sup>23</sup>:** Assault and Many countries, including the United States, have laws that discriminate against people based on their sexual orientation or gender identity. People who identify as LGBT or GLBT are particularly at risk to physical and sexual violence

## Articles

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<sup>21</sup>MondalB,PaulP,PaulM,KumarH.AnupdateonSpino-cerebellarataxias.AnnIndianAcadNeurol2013;16:295-303

<sup>22</sup>UnitedNations.Declarationontheeliminationofviolenceagainstwomen.NewYork:UN,1993

<sup>23</sup> "UnitedNationsHumanRightsCouncil".Archivedfromtheoriginalon25September2013.Retrieved27September2018.

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- A doctoral study was conducted on **implementation of Protection of Women from Domestic Violence Act, 2005**<sup>24</sup> by **Mukhopadhyay, Amrita**, the Kesarwani Community in Kolkata, a small-scale commercial community. Specifically, the study looks at how the legal system exacerbates domestic violence experienced by women and how it is constructed legally their matrimonial house and within their families.
- According to an article by **Jaleel Ahmed, M.E Khan, Arupendra Mozumdar and Deepthi S. Verma**, titled **‘Gender based Violence in Rural Uttar Pradesh, India: Prevalence and Association with Reproductive Health Behaviour’**<sup>25</sup>, where the study was conducted as a component of a larger survey of households (2009-2010). More than a third of rural Uttar Pradesh's women have suffered some kind of violence, according to the results of this study or violence like physical manhandling of women in the family specially wife, verbal violence and sexual violence by their husbands. The survey also brought up that nearly 40% women has experienced physical violence during the period of their last pregnancy. Pregnancy is a delicate stage and such violence caused pregnancy complications, poor institutional delivery of child, limited or negligible postnatal care. During the research 37% women reported that they has faced gender based violence during the past 12 months, out of this 31% faced emotional violence and 28% faced physical violence, and sexual violence were reported at 6%.
- In an article titled **‘Masculinity, Intimate Partner Violence and Son Preference in India, Findings from Uttar Pradesh’**<sup>26</sup> by **Nanda Priya, Gautam Abhishek, Verma Ravi, Khanna Aarushi, Khan Nizamuddin, Brahme Dhanashri, Boyle Shobhana and Kumar Sanjay**, it was observed that the state of Uttar Pradesh is backward with regards to gender equality. The high rate of early marriage and crime against women are reason for its social backwardness. The result of the research was in compared to

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<sup>24</sup> Mukhopadhyay, Amrita, The social and legal regulation of domestic violence : examining the implementation of the Protection of Women from Domestic Violence Act 2005 in the Kesarwani community, Kolkata,

<sup>25</sup> Ahmad J, Khan ME, Mozumdar A, Varma DS. Gender-Based Violence in Rural Uttar Pradesh, India: Prevalence and Association With Reproductive Health Behaviors. J Interpers Violence. 2016 Nov;31(19):3111-3128.

<sup>26</sup> Nanda Priya, Gautam Abhishek, Verma Ravi, Khanna Aarushi, Khan Nizamuddin, Brahme Dhanashri, Boyle Shobhana and Kumar Sanjay (2014). “Study on Masculinity, Intimate Partner Violence and Son Preference in India”. New Delhi, International Center for Research on Women

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all of the other states in the sample When it comes to male dominance over their spouses, Uttar Pradesh has the highest percentage and also the lowest percentage of men who favor gender equality.

- In the article titled ‘**Addressing Domestic Violence against Women: An Unfinished Agenda**’<sup>27</sup> by Kaur, R., & Garg, S, the authors have descriptively mentioned what are the health implications upon a woman who suffers DV. The effect of DV is not only the physical injuries but also it also harms welfare of the victimized lady as well the community at large on all these many levels DV is a major factor in women's poor health. In terms of reproductive and sexual health, it has a significant impact on women's emotional and physical well-being. injuries, gynecological issues, temporary or permanent impairments, despair and suicide are only a few examples of what people face.

- **RESEARCH QUESTIONS:**

The following are the research questions set out by the Researcher for this research:

- Whether the PWDV Act, 2005 is adequate in handling problems of women?
- Whether the conventional method of evidence is imperative in terms of effectiveness of the Act?
- Whether the Act is serving its purpose in its entirety?
- Are the protection or monetary orders under the Act adequate enough to compensate the victimized women?
- Analysis of current violence in terms of characteristics of those impacted, such as the husband and in-laws.

- **Limitation Of The Study:**

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<sup>27</sup>Kaur, R., & Garg, S. (2008). Addressing domestic violence against women: an unfinished agenda. *Indian journal of community medicine : official publication of Indian Association of Preventive & Social Medicine*, 33(2), 73–76. <https://doi.org/10.4103/0970-0218.40871>

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The primary goal of the current study is to thoroughly investigate domestic violence against women with particular attention to human rights, and to shed more light on this issue in order to provide adequate protection for the women by putting the law into practise and raising awareness among the women. Both a doctrinaire and an empirical approach are used in this study.

- **Methodology:**

The focus of the current study is mostly doctrine. However, the Domestic Violence Act and its impact on society are only partially empirical. A socio-legal analysis of the issue is also conducted, paying particular attention to human rights. After a critical analysis of domestic sexual assaults on women, a social legal study is used to help understand the issues related to domestic violence. When necessary, historical, comparative data are included. An important method in legal theory, socio-legal analysis is an inter-disciplinary investigation. Law and society are intertwined, and social advancement cannot be divorced from law.

Legal research in the sphere of social sciences is the subject of socio-legal research. Since most of today's legal issues are related to local custom, personal laws, and conventions imposed by municipal law, it is possible to realise the majority of them by closely examining the social conditions of the society.

From the resources that are available, the researcher has gathered data. To get their opinions on sexual harassment committed against women, the researcher has reached out to enlightened women and representatives of women commissions. The researcher has participated in a number of conferences, symposia, and workshops to gather the information needed to complete the task. As a result, the current socio-legal study partially relies on statutory law, judicial rulings, archives, statistics gathered from government agencies and non-governmental organizations, and literature in order to be completed. To determine the awareness and efficacy of the Domestic Violence Act of 2005, an empirical study was conducted by distributing questionnaires and collecting responses from a variety of groups of people, including protection officers, lawyers, professionals, professors, businessmen, entrepreneurs, college students, homemakers, school students, unmarried, working women, etc.

## **CHAPTER-II**

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## INTERNATIONAL PERSPECTIVE

### 2.1. Ancient View on Women's Right:

Violence against women is a genuine problem, not a myth. It is present and pervasive. In mythology, stories, and cosmologies dating back to the beginning of time, violence against women has been a concern. Although it varies from time to time or place to place in terms of its kind, frequency, intensity, and control, violence against women nevertheless exists worldwide.

In ancient India, the institution of the family established the rules governing the interactions between parents and children as well as between husband and wife.

In his role as a husband, a man had obligations to his wife. A husband was expected to provide for his wife and was required to live with her. Such functions and responsibilities would be punished if not carried out. Additionally, the husband had to give his wife strength, direction, and physical security. A husband also had some benefits and rights in addition to these obligations. Without his approval, a wife had no right to carry out even a religious act because the husband had total authority over her mind and body. The husband had the same authority over his misbehaving wife as a teacher has over a student or a father has over a son, meaning he could beat her with a rope or a thin piece of bamboo on the back but never on the hand.

Kautilya<sup>28</sup> also endorsed husband's right to beat his wife of refractive nature. He allows the husband to beat his wife, either with a bamboo bark or with a rope or with a palm of hand on her nips. A wife on the other hand had only duties. The foremost duty of a wife was to honour and serve her husband. She must always stay with him even in adverse situations. Yaj enjoins upon a woman: 'this is the highest duty of woman that they should obey their husband's wards'. The Ramayana remarks: 'the husband is the God and master of the wife'. The wife was completely secluded from outside contacts. It was only with the permission of her husband, that she was permitted to move out from her husband's house. Failure to observe these restrictions attracted censor, social degradation, humiliation and punishment. The husband-wife relationship was not based on love, affection, mutual give and take and on equalitarianism. The relationship

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<sup>28</sup>Sinha, Niroj, *Women and Violence* 47 (1989)

was marked by authoritarianism and submissiveness. Wife was not only secluded from outside contacts but was looked at with suspicion. Kautilya, while advising the King for his safety contended that the King should make necessary arrangements for his personal safety firstly from his wife only then he would be able to maintain the security of his kingdom. Kautilya further demanded from the king: "when in the interior of the harem, the king shall meet his queen only when her personal purity was vouch saved by an old and reliable maid servant Such dictates establish the fact that wife was not relied upon. When the relationship between husband and wife is marked by suspicion, the question of developing close, personal and intimate relationship does not arise.

The frequency of familial conflict and violence is depicted in the Ramayana and Mahabharata in vivid detail. There are innumerable instances of violence, strife, and exploitation within families throughout history. To keep his father's promise of honour to his stepmother, Lord Rama abdicated the crown and fled into exile. At his father's request, Parasurama killed his mother. Ahalya's husband turned her into stone, and Draupadi was publicly tortured by the Kauravas.

While promoting women's isolation and vigilance in the harem, Kautilya mentioned a number of cases in which the queens had murdered the kings in concert with their paramours and kinsmen. In another context, Kautilya decrees that "bulls must tear apart any woman who kills her husband, preceptor, offspring, lays fire to another's property, poisons a man, or cuts off any of another's bodily joints." In fact, Kautilya permits divorce. "Mutual hostility and risk to life from the husband may be valid reasons for divorce," he writes. These quotations from Kautilya serve as evidence of the pervasiveness of domestic violence.

Manu<sup>29</sup> says that "a wife who violates the duty that she owes to her lord shall be devoured by dogs in a place frequented by many. By violating her duty towards her husband, a wife is disgraced in this world; and after death, she enters the womb of a jackal and is tormented by diseases as a punishment for her sin".

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<sup>29</sup>Das, Purdah: *The Status of Indian Women*, 27-28 (1932)



A wife may be replaced for a variety of reasons, according to Manu's laws: "A barren wife may be replaced in the eighth year; she whose children lie in the tenth year; she who bears exclusively daughters, in the eleventh year; but she who is excessively quarrelsome without delay." However, a sick wife who is compassionate and morally upright may be replaced with her agreement and must never be shamed.

She who consumes alcoholic beverages, is of bad character, disobedient, ill, mischievous, or wasteful, may at any moment be replaced.

According to Manu, a husband must put up with a woman who despises him for a year before taking away her possessions.

The forcible sex abuse of a woman by a man is explicitly justified in the thirteen Upanishad principles: "If she should not grant him his desire, he should bribe her." If she still refuses to give him what he wants, he should beat her with a stick or his hand and overpower her while yelling, "With power, with glory I take away your glory! She consequently acquires ignominy.

There is a real-life historical instance where a Brahmana in the city of Prathisthana sought his wife. It should be highlighted in this report that the wife remained completely faithful despite her harsh treatment "Kansika was afflicted with leprosy as a result of his original misdeeds. His wife cared for her ill husband like a god, shampooing his feet and limbs, bathing him, dressing him, feeding him, tending to him in solitude, and speaking sweetly to him. Even though she always treated people with kindness, that extremely irascible and cruel person used to reprimand her angrily. Still, the modest wife revered him as a god and thought that evil man to be the model male."

A woman was violently treated in the Mahabharata: "While she was piteously praying, he dragged her forcibly by her black hair"<sup>30</sup>. The aforementioned literary allusions from antiquity demonstrate how women were subjected to a wide range of insults and indignities.

The coexistence of all types of violence, particularly those that aim to eliminate women, such as bride burning and sati, is a peculiar feature of Indian society. The prevalence of all types of domestic violence has increased. Many incidents of violence against women go unreported

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<sup>30</sup>Ghosh,S.K.,*IndianWomenThroughtheAges*,4(1989)

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because of cultural conventions, apathy, or ignorance, yet it is still a problem in our society today. They could directly show up as marital abuse, kidnapping, eve-teasing, verbal abuse, or verbal reprimands. Women are frequently the targets of various forms of discrimination, exploitation, and barriers to reaching their goals and getting the help they need. These occurrences can take place anywhere, including the home, workplace, industrial setting, or even public areas. It seems paradoxical because while predatory violence occurs only between species in animals, not within species, a human being—the highest evolutionary rank—kills a member of his own species.

Inflicting and experiencing violence in a variety of subliminal ways, leading to and experiencing mental pain in daily life, has become a norm in our society's interpersonal interactions. Exploitation of the helpless by the strong and cunning expresses the cruelty and hatred that reside inside us<sup>31</sup>.

The worst aspect of the issue is that women nowadays do not feel secure and safe, not even in their own families. Since many women experience violence from their own family members, the idea of "home, sweet home" is no longer relevant.

Violence both inside and outside of the family has alarmingly increased over the past forty years. Today, wife beating, dowry deaths, sexual crimes, and even a return to "sati" customs from the Middle Ages are the most frequent activities in homes. Domestic violence has evolved over time and now exhibits the following characteristics:

1. Husband and wife differences and the rising prevalence of divorce.
2. Due to the dowry and the opportunity to marry a fresh female, men are getting married more than once.
3. Human emotions are vanishing over time. If he does not receive the expected dowry or if he develops feelings for another female, a guy may even resort to murdering his wife.
4. The infant girl is gradually becoming unwanted due to the expanding dowry system. Foeticide is becoming more common, and sometimes newborn girls are even killed. Beyond this -

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<sup>31</sup>Domestic Violence and Children, *Available at:* <https://childwelfareproject.hs.iastate.edu/wp-content/uploads/2014/09/Horner-article.pdf>, Last accessed on November 2022

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5. Women are overlooked at home and beyond the home. Their husbands and in-laws are torturing them uncountable times. They are routinely assaulted and denied shelter and food.

All of these instances expose the real character of our society's marriage and family structure. The tightly defined gender stereotypes apply to both men and women. The contributions made by women are frequently hidden due to their distance, although the material goods given by the males are obvious to all. Women put in unrecognised amounts of time, effort, and labour to carry out their responsibilities.

As soon as she enters her husband's house, the woman makes an effort to lose herself and adapt to the requirements of the new environment and the residents. Despite this, she is constantly being watched and is frequently criticised for anything, such as for not having enough money from her parents or for not having received the proper training<sup>32</sup>. She has been "taught" to ignore these truths, thus she frequently does so. Everyone expects her to become her husband's shadow, including society, her religion, her parents, and her in-laws. The worst part is that she was shocked by all of these after being married because marriage in our society is excessively glamorised. In light of this, it is an incredibly terrifying and upsetting experience for a woman when "the union of soul" turns into a nightmare. It's possible for the mental abuse to be carried out so covertly that no one will ever become aware of it.

There are various forms of domestic abuse, including:

- Threats (promising to hit, hurt, or use a weapon);
- Physical abuse (slapping, punching, pulling hair, or shoving);
- Forced or coerced sexual acts or behaviour (unwanted fondling or intercourse, or sexual jokes and insults);
- Psychological abuse (attack on self-esteem, attempts to control or limit another person's behaviour, repeated insults or interrogation);
- Stalking (following a person, showing up at a person's home)

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<sup>32</sup>WithreferencefromPinkham,M.W.,*WomenintheSacredScripturesofHinduism*,71-91 (1941)

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Age, socioeconomic status, religion, race, gender, and educational barriers are all unaffected by domestic violence<sup>33</sup>. It is a myth that only those who are underprivileged or uneducated experience domestic violence. Most studies indicate that there is also high incidence 'spousal abuse in the more affluent neighbourhoods.

The more wealthy Spouse may also fall into a similarly desperate trap due to social stigmas, greater economic pressures, and the increased societal position and power that the partner may have at his or her disposal. While a poor victim has the terrible problem of not having resources available, the more wealthy Spouse may also be in this situation.

For children, witnessing verbal or physical abuse or witnessing the consequences—an injured parent, a broken home—is traumatic. Children who witness abuse frequently experience fear, rage, feelings of isolation, low self-esteem, and lack of trust<sup>34</sup>. As kids become older, any learning difficulties and behavioural issues that they may have are likely to get worse. There is frequently a high frequency of child abuse by the abusive parent in homes where women are mistreated by their husbands. Additionally, it is becoming more and more obvious that children from abusive homes regularly experience incest, and that the legacy of abuse continues even after the children leave the house. Children's behaviour evolves as a result of their upbringing. Children who grow up in abusive households are more likely to suffer abuse themselves as adults. physical abuse As kids become older, any learning difficulties and behavioural issues that they may have are likely to get worse. There is frequently a high frequency of child abuse by the abusive parent in homes where women are mistreated by their husbands.

Indirect victims of abuse include relatives and friends. The victim's isolation and fear prevent those closest to him or her from having meaningful and fulfilling interactions. In an effort to injure or control the victim, the abuser frequently causes harm to people close to the victim.

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<sup>33</sup>Gelles,R.J.,

“TheViolentHome: AStudyofPhysicalAggressionbetweenHusbandandWives”*SageLibraryofSocialResearch*,Vol.13 (1974)

<sup>34</sup>Allen,F.H.,*AggressioninRelationtoEmotionalDevelopment: Proc,Int. Conf. ChildPsychiatry*,4-11,(London,Lewis1948)

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Children, other family members, friends, pets, personal items, and the family house can all suffer damage from an abuser.

Victims who are isolated remain trapped. A batterer frequently isolates the victim from the family geographically, emotionally, and socially. The victim frequently isn't allowed to see reliable friends and family members and isn't allowed to attend school or work outside the home. In the midst of this horrible solitude, the abuser uses "brainwashing" techniques, and without feedback to the contrary from anybody outside the relationship, the victim will not be able to test reality. There is little to no access to or control over finances<sup>35</sup>.

## 2.2. Definition Of Human Rights:

Human rights are described in Section 2(d) of the Human Rights Act of 1994<sup>36</sup> as "the rights relating to life, liberty, equality, and dignity of persons guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India."

All created beings possess varying degrees of faculties that are essential to their continued existence. All beings or things, whether animate or inanimate, already possess certain attributes and in due course acquire other attributes from outside influence. These are all necessary for survival and can either be inherited or developed due to the influence of circumstances that are constantly present in nature. The forces of nature and the faculties that already exist must be in balance; if there is an imbalance, life becomes challenging. The faculties of sight, sense, smell, taste, and touch are thought to be represented by five unique qualities in all beings, according to both spiritual and temporal scholars. Not all beings have all five faculties; some have one, several, or all of them. The human being is the most advanced of all living things. Since he has the ability to reason or discern, which is made possible by his ability to comprehend the true significance of anything he experiences through any one, all, or a combination of his five senses. Today's man aspires to become a rational being rather than a social animal. He is logically granted certain rights—known as human rights—by this Rationality. The rights are essential

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<sup>35</sup>Wrightsman,L.S.andDeaux,Kay,*SocialPsychologyinthe80's*,(2ndEdition,1981)

<sup>36</sup>**Act10of1994**.TheActwaspublishedintheGazetteofIndia,PartII,Section1datedJanuary10,1994pp.1-16.

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tools that he needs in order to safeguard his five senses, including his "Right to Existence" and other rights. A man must not unjustly die since he was created to live. His rights could be restricted by strong societal forces, depriving him of the chance to exercise them. A man's rights may be restricted in ways other than the five senses. He has the right to freedom of movement, the ability to exercise his conscience, and the ability to pursue his spiritual interests as a rational creature. There are a plethora of additional rights that fall under the category of "Fundamental Human Rights." So, in order for the human being to experience and enjoy the fullness of his life via meaningful existence, conducive forces must be fostered and promoted. At the same time, the human being must be protected from all types of invasions of his rights. In essence, any right that a person exercises and that is necessary for the continuation of his or her life is a human right. "A human right means the power to prevent invasion or obstruction of Natural Rights and also to foster and develop these Rights with the ultimate goal of a man's continuing and free life in this World," according to the Universal Declaration of Human Rights.<sup>37</sup> All living things are endowed with innate attributes that must be preserved; this protection is equivalent to the right required to provide that protection, and those rights are meant to ensure the ongoing existence of those living things. Man is a little portion of the massive component, which is one of the species in the universal genus.

It is essential that man be guaranteed of the maintenance and protection of his rights since the rights that are available to him as a human being may be disrupted or violated by his own internal behaviour and attitude or by external effect. The rights that he or she has access to as a family man or woman are covered in this thesis; however, the full range of human rights is not intended to be covered.

A man and woman come together to live together in the family, which is a civilised unit of society, in order to have children and to satiate their sexual desires. This is the main motivation behind the union, which is carried out according to a number of socially accepted rituals, conventions, norms, laws, and reputations that are frequently sanctioned by law. Additionally, it

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<sup>37</sup>Dr. Bijar Narain Mani Tripathi. *An Introduction to Jurisprudence (Legal Theory)*, 277, (17<sup>th</sup> edn, Allahabad Law Agency, Faridabad, 2006).

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is suggested that women's rights be restricted in both family and social contexts while also studying the nature and characteristics of those rights. The first three chapters cover all of the aforementioned claims.

It is suggested that the distinctive characteristics of women's rights be highlighted in the chapter on the special notions of human rights because of how vital a role women play in both society and the home. The rights of women are given major consideration in contemporary thought, and the world as a whole has begun to consider the best ways to recognise, uphold, and defend these rights while simultaneously putting in place sufficient protections to prevent their infringement. Her responsibilities as a wife, mother, and guardian of the domestic needs of every family member are vast and intricate. Greater caution and attention are required in such circumstances so that one can fulfil her responsibility to her family, society, and herself without suffering a violation of her own rights.<sup>38</sup>

A woman has many responsibilities in a family, and the safety she has available to her pales in comparison to the vast tasks she must perform. She is restricted to a family life, therefore she is subject to internal or external restraint and limitation. We cannot claim that a woman who enters into family life is unambiguously deprived of a great deal of her freedom, has less power over herself, and is under the authority of her husband, who plays a domineering role in the family.<sup>39</sup>

Next, a woman yields to the restriction she has placed on herself as a result of social, religious, and biological pressures. Her own inhibition, which she defends, governs her actions, behaviour, looks, and other personal attributes. She is being modest, courteous, and humble in order to establish a good reputation. The idea that their behaviour will be perceived as unwomanly or contrary to their feminine character makes many women feel satisfied if they maintain a polite attitude when dealing with others. Such self-imposed limitations ultimately result in man's will and power subjugating nature. She believes that because she lacks the strength to compete with her husband or male protector on an equal

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<sup>38</sup> Ibid.

<sup>39</sup> Jana L. Jasinski and Linda M. Williams, *Partner Violence* 9 (SAGE Publication 1974)

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footing, she must submit in order to survive because he has the advantage of both physical and financial probers.

A woman is susceptible to psychological stress while carrying out her responsibilities in that narrow circle when she is firmly enmeshed in family life. She is required to communicate with the other family members, and during these conversations, she learned about the opinions and choices of others. She may not cognitively agree with such enforced beliefs and concepts, some of which are dominant and others demanding, but she is nonetheless compelled to act in accordance with them. If she disagrees, she has psychological tension, which means that she is acting in a way that she does not mentally support. When she is unable to carry out her opinions and wishes, she becomes psychologically vulnerable. She may occasionally be entertaining her own... views that she has acquired from outside circumstances. When she is intensely trying to apply them in her family and when the same are not accepted, she becomes vulnerable.<sup>40</sup>

Stress of despotic since she feels that she is neglected and her views cherished notions and her stand dishonored. Therefore she has to impose on others and submit to notions imposed upon her. This conflicting situation renders her victim of psychological pressures. A woman in a family life has to play a dual the role of a wife and mother. She has to please her husband and submit to all his inclinations and demands which includes sexual exercise. It happens many times that the husband is who are unmindful of his sentiments of his wife expect passive compliance with his dictates of his desires. It is frequent that she derives pleasure from the company of her husband and when she is declined to accommodate her husband's sexual demands and ventures she feels helpless and unsupported on other occasions she is in dire need of quenching her sexual appetite her husband may not be willing to satisfy her and such a situation she has to suppress her instincts and suffer its impact.

As a mother a woman has to take care of not only the health of her children and also their behaviour. The father is satisfied with providing means for feeding the children but it is the mother who has to carefully plan to feed her children and also take steps to correct their conduct

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<sup>40</sup>Ibid.



and behaviour. A mother is over all protectors of her children then him who care only for providing thenecessities for the children's existence; mother is more responsible and accountable for the upbringing of the children, where as the father is concern with the outcome of such upbringing. The father is concerned with the product of children's growth where as mother is concern with processof upbringing. Thus the contribution of mother is enormous and without far more complicated thatof father role<sup>41</sup>.

A woman must find a balance between her family interactions and those of her relatives because she must interact with people outside of her immediate family on a regular basis. Her relatives may have certain dealings with her, such as family functions and relationships, which could lead to disputes over marital or property dealings. She can behave negatively toward how her relatives connect with one other and vice versa. The defence of her family's interests could collide with how a relative interacts with her. Her functioning inside her own family may also be impacted by the attitude of the relative, and this influence may lead to an imbalance in how she performs her obligations. At other times, she may also have to interact with people who are not her relatives, such as neighbours and community members. She may not be in a position to criticise the opinions of the community because she must fulfil her obligations to the community or religious organisation to which she belongs. According to her husband's wishes, those of her family's elders, or those of her older children, she may occasionally be required to deal with issues in the community. She might not be sufficiently knowledgeable and diplomatic in all of these interactions. She is forced to contact with them primarily against her will, which makes her worried about her family's future and causes more complications for her than for her family. Therefore, the woman needs to be morally and psychologically strong enough to resist the pressures placed on her by others. It is the responsibility of society and the legal system to determine and put into place the appropriate safeguards to protect a woman from this unavoidable circumstance.

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<sup>41</sup>V.V.DevasiaandLeelammaDevasia, *WomanSocialJusticeandHumanRights*58(APHPublicationCorporation 1998)

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The majority of the time, a woman enters a family as an inexperienced young woman. Her age makes the introduction to her family life more passionate and filled with high expectations. She anticipates that her husband would treat her with respect, tenderness, and affection and that he and the rest of the family will attend to all of her needs. She receives more attention from her husband in the beginning of their relationship because she is young and beautiful for her age. Naturally, he gives her more attention, much to the dismay of older people. Her in-laws may not always be kind to her because they believe that their male relative, a woman's husband, is giving her more attention and eschewing their authority. The quarrel between the elders and the newlywed wife puts the husband in a difficult situation. In that scenario, he would rather appease them at the expense of his wife's feelings and would subsequently counsel her to put up with the elder's behaviour. However unfavourable it may be, if he truly loves his wife, he expresses it to her without the elders' awareness, and if the elders are exerting too much pressure on him, he openly orders his wife to obey them. After the child is born, the situation worsens, and she now has to contend with issues that are being thrust upon her by her husband, her in-laws, and the newborn child. She is now more devoted to the family and involved in the rearing of her child, which forces her to comply with the rules and regulations set forth by her husband and parents<sup>42</sup>. Women had certain rights, but they were extremely limited and were viewed as individual rights, meaning they had to use civil remedies and go up against other women individually. The state now has a responsibility to protect women and children under Article 15(3) and Articles 23, 24, 38, 41, 42, 43, and 45 since women's rights are no longer considered to be individual rights but rather are now recognised as Human Rights, giving them greater legislative protection and allowing them to use constitutional remedies under Articles 32 and 226. "And enforceable by Courts in India" are the key phrases.

These phrases strictly limit human rights to those that are recognised by Indian courts and are enshrined in Part III of the Constitution. Since the question of why the Commission was created to defend fundamental rights when they are constitutional rights that may be enforced in court comes up, is it still relevant? The improvement of human rights protection seems to have been

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<sup>42</sup>Ibid.

the main goal of the legislation. The Government was reviewing the current laws, procedures, and system of administration of justice with a view to bringing about greater accountability and transparency in them as well as developing efficient and effective methods of dealing with problems relating to women and children at the time the Bill was introduced due to the growing concern about issues relating to human rights both in the country and abroad<sup>43</sup>.

The 1993 World Conference on Human Rights established the critical relationship between global stability, legality, and human rights, positioning them all within the broader framework of democratisation and development.

The UN is working more and more to avoid or end wars while also taking steps to lessen violations of human rights when there is internal strife. Minority protection, bolstering democratic institutions, achieving the right to growth, and ensuring that all people respect human rights are given particular attention<sup>44</sup>.

### **2.3. Development of Women's Rights As Human Rights:**

Our very survival depends on human rights, which are considered to be sacred rights from which no deviation is allowed in a civilised society. Human rights' purview has historically expanded, but the universal moral obligations that ought to govern all human interactions have always served as their source. Thus, the emphasis placed on human rights differs according to ethical perceptions. But the moral viewpoint is neither particular nor fixed. The scope, nature, content, and reach of human rights all coexist and change as different viewpoints do. For instance, liberals place a strong emphasis on political freedom, equal treatment under the law, and private property rights. On the other hand, the social perspective sees economic equality as the cornerstone of both political freedom and legal equality. Despite the various viewpoints, the

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<sup>43</sup>The

Commission has recommended to the Government for the amendment in the preamble by adding 'including the implementation of International Covenants' (See Annual Report of the National Human Rights Commission, 1999–2000 p.183).

<sup>44</sup>United Nations, "Human Rights Today: A United Nations Priority." The United Nations Blue Book Series Volume VI and VII, United Nations Publication, Published by United Nations Department of Public Information New York, NY 10017

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evolutionarily driving force behind human rights is the growing human need for a decent civilised life where each person's inherent dignity is well respected and safeguarded.

Domestic violence, which most frequently involves women being physically and psychologically abused, defiles the victim's fundamental being. Article 3 of the Universal Declaration of Human Rights prohibits domestic abuse. Everyone is entitled to life, liberty, and personal security, as well as Section 2(d) of the Human Rights Act of 1993 protection. Human rights are those that pertain to an individual's life, liberty, equality, and dignity that are guaranteed by the constitution or included in international covenants and are upheld by Indian courts. Domestic violence persists despite existing laws, continually undermining the idea that human rights are universal, meaning they apply everywhere.

Human rights are those that every person has by virtue of being a person. In the years following World War II, nations from all over the world created an international body to create universal human rights standards and oversee their implementation in order to preserve the rights of all people. In an effort to guarantee that the crimes committed by the Nazi dictatorship would never be repeated, this institution, the United Nations, was established. It was founded on the idea that every United Nations member state had an obligation to defend all of its citizens from violations of their basic human rights<sup>45</sup>.

In 1945, the United Nations Charter was ratified. The United Nations' members are required by the Charter to advance fundamental liberties and human rights "without regard to race, sex, language, or religion." The Universal Declaration of Human Rights was adopted by the United Nations General Assembly in 1948 and declared to be the "common standard of achievement for all peoples and all nations." According to the Universal Declaration, "the foundation of freedom, justice, and peace in the world is the recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family." The Universal Declaration of Human Rights outlined fundamental human rights tenets, such as the rights to life, liberty, security, and

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<sup>45</sup>Domestic Violence Research, *Available at:* <https://www.researchgate.net/>, Last accessed on November 2022  
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equal treatment under the law. These rights can be divided into two major groups: economic, social, and cultural rights along with civil and political rights<sup>46</sup>.

The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights were two international human rights treaties ratified by the General Assembly eighteen years after the adoption of the Universal Declaration. These documents make up what is now known as the International Bill of Human Rights, along with the Universal Declaration.

Civil and political rights include rights such as right to life; the right to non-discrimination; the right to liberty and security of the person; the right to live free of torture or cruel, inhuman, or degrading treatment or punishment; freedom of thought, conscience, and religion; and freedom of association. Traditionally, commentators have characterized civil and political rights as negative rights (Steiner & Alston, 1996). To be in compliance with these obligations, governments merely had to refrain from doing something. A government for example had to cease torturing political prisoners or cease blocking labor unions from organizing. Traditionally understood, the International Covenant on Civil and Political Rights did not require governments to take any affirmative action. States parties, countries that ratified the treaty and agreed to be bound by its terms, could, therefore, theoretically implement their obligations under the treaty immediately and without delay.

Economic, social, and cultural rights, on the other hand, were traditionally understood as positive rights, requiring the state to take some action. Economic, social, and cultural rights include rights to work, to health, and to education<sup>47</sup>. The International Covenant on Economic, Social, and Cultural Rights requires that a state party "take steps to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant." Because the treaty requires progressive implementation, states parties commit to

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<sup>46</sup>Agarwal, Kuntal, 'Survival of Females in India', Paper presented at International Conference of Women, Development and Health, Michigan State University, Michigan, (1988).

<sup>47</sup>Fernandez, Donna, *Domestic Violence and Law*, 125 (2000)

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incremental rather than immediate implementation of most of the economic, social, and cultural rights contained therein.

A hierarchy of rights has been created as a result of the separation of social, economic, and cultural rights from civil and political rights (Meyer, 1999). Historically, civil and political rights have received more attention from the United Nations and international human rights groups. The illustration of the tortured political prisoner came to symbolise all human rights abuses.

The traditional barriers between civil and political rights and economic, social, and cultural rights have started to dissolve in recent years. Many critics acknowledge that in order to secure civil and political rights, the state frequently needs to take proactive steps to guarantee the enjoyment of certain human rights. A similar consensus exists across the international community regarding the interdependence and indivisibility of civil, political, economic, social, and cultural rights. Economic, social, and cultural rights are necessary for the full enjoyment of civil and political rights, and vice versa. The International Convention on the Elimination of All Forms of Racial Discrimination, ratified in 1969, and the Convention on the Rights of the Child, ratified in 1990, are three subsequent human rights conventions adopted by the United Nations that represent a synthesis of civil, political, economic, social, and cultural rights.

Women may experience additional human rights abuses outside of those that are based on gender in addition to those that are. For instance, women may be killed in armed conflict or detained due to their political beliefs. However, violence against women specifically refers to forms of violence that women experience disproportionately or because they are women.<sup>48</sup>

The major human rights agreements contain rights that are directly related to violence against women. Despite the fact that systemic violence against women violates several of these rights, this situation has not typically called for their use. As an illustration, women generally have not invoked the Optional Protocol to the International Covenant on Civil and Political Rights, which would enable them to file complaints with the United National Human Rights Committee.

A list of fundamental human rights is provided through international agreements. The right to life is the most fundamental of all human rights. Women frequently lose their lives as a result of

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<sup>48</sup>The Cost of Domestic Violence. Available at: [https://eprints.lancs.ac.uk/id/eprint/55255/1/cost\\_of\\_dv\\_report\\_sept04.pdf](https://eprints.lancs.ac.uk/id/eprint/55255/1/cost_of_dv_report_sept04.pdf), Last accessed on November 2022

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extreme types of violence. In some cultures, families may kill female infants because they have a strong preference for sons. For instance, the birth rate of female children fell sharply after the Chinese government implemented a law limiting couples to only one child. The State Statistical Bureau of China conducted a survey in 1987 and found that there were 500,000 fewer female infants than would be expected based on the biological ratio of male to female births.

Communities tolerate and support "honour" crimes, in which women and girls are killed or severely injured by their relatives in an effort to restore the family's honour after the victim has purportedly dishonoured the family, in nations like Brazil, Egypt, Jordan, Pakistan, and arid Turkey. For instance, in Pakistan in 1999, a man burned his sister Ghazala to death because he thought she was having sex with a neighbour. Her naked, charred body was left in the street for two hours, according to witnesses, since no one wanted to touch it. Amnesty International explains the government of Pakistan's responsibilities, claiming that the legacy of honour-based murders continues because official institutions, such as the legal system and the law enforcement apparatus, have treated such crimes against women with extreme tolerance. Women suffer severe human rights breaches, including violations of the right to life, when the state neglects to take serious action to stop these and other sorts of violence<sup>49</sup>.

Similar to how torture and other harsh, inhumane, or humiliating treatment are prohibited, violence against women—including FGM, domestic abuse, forced prostitution, and many other forms of violence—violates this right. According to international law, torture is defined as "severe physical and/or mental pain and suffering, willfully inflicted for a specific purpose, intentionally inflicted, and (4) with some type of government complicity, whether active or passive." In situations of violence against women, the final requirement, official involvement, is satisfied by governmental inaction or complicity.

For instance, there are many similarities between domestic violence's goals and tactics and traditional forms of torture. Domestic abusers frequently dominate their victims with force and control, much like the traditional torturer, who stands in for the state, does. These criminals may

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<sup>49</sup>Rethinking Domestic Violence, Available at: [https://www.biscmi.org/wp-content/uploads/2014/12/Dutton\\_CJS\\_Book\\_Review\\_CJS-Dekeseredy.pdf](https://www.biscmi.org/wp-content/uploads/2014/12/Dutton_CJS_Book_Review_CJS-Dekeseredy.pdf), last accessed on November 2022

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torture victims to extract information, punish them, or reduce their mental or physical capabilities<sup>50</sup>.

The similarities between public and private forms of torture have also been extensively discussed by the World Organisation against Torture, an international alliance of nongovernmental organisations fighting against torture and other harsh treatment.

For instance, just as torture by a state official typically occurs when the victim is detained incommunicado, at the unmonitored mercy of his interrogators or captors, and without access to the outside world, battered women live alone from family, friends, and other people due to their domestic situation.

The World Organisation against Torture also compares torture to other types of gender-based violence, such as dowry violence, sexual assault, and honour crimes. The rights to liberty and security of person are also violated when violence against women occurs. There is some sort of physical assault or intrusion involved in gender-based violence, such as rape or domestic abuse. As a result, many types of violence fundamentally undermine the rights to one's physical safety and integrity.

Extreme examples of infringements on the right to liberty and security of person can be found in women's tales of rape and sexual assault in conflict zones. Beverly Alien, for instance, covers the war in the former Yugoslavia and the systematic use of rape and "ethnic cleansing" in her book *Rape War* (1996). Three distinct genocidal rape techniques employed by the Serbian troops during the battle are described in Alien: Armed forces held women in concentration camps, where they randomly selected women and raped them as a form of torture - frequently followed by murder; and (a) armed forces entered a village, took several women from their homes, raped them in public places, and left the village. (c) Women were taken into custody by the military and kept in rape/death camps where they were repeatedly raped.

Rape has historically been a prominent aspect of ethnic warfare throughout Africa. Several organisations, including the United Nations High Commissioner for Refugees, attest to the

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<sup>50</sup>Ghadijally, R., *Women in Indian Society*, pp.151-152, (1988)

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routine political rape that takes place in Somalia, Sierra Leone, and Rwanda. The armed forces kidnapped women and used sexual violence against them in each case of rape, violating their right to liberty and security of person.

Similarly, in some cases of domestic violence, the perpetrator may restrict the victim's liberty through violence and control. For example, female victims of domestic violence often report being locked inside their liberty and freedom of movement. Sopheap, a Cambodian woman, told representatives of a local women's organization about her harrowing experience of being locked inside her house every day by her husband. Victims of trafficking for the purpose of forced labor, including prostitution, often experience similar restrictions on their liberty. Many victims of trafficking are held captive by traffickers, who either physically lock the victims up or withhold personal identification, such as passports, to prevent any travel or escape<sup>51</sup>.

In rare instances, the state itself may violate a person's right to privacy in an erroneous attempt to "protect" women who have been the victims of violence. For instance, police in Jordan have detained a number of women ostensibly to keep them safe from their own family. The government worries that family members will commit honour crimes in those situations.

By definition, violence against women prevents people from exercising their legal rights to good physical and mental health. The right to the "highest quality attainable of bodily and mental health" is guaranteed under the International Covenant on Economic, Social, and Cultural Rights. Both the physical and psychological impacts of violence against women can be devastating and incapacitating.

For instance, FGM may have catastrophic and even fatal health effects on women and girls. Hemorrhage, infection, psychological issues, urinary incontinence, tetanus, and blood poisoning are just a few of the potentially lethal physical and psychological side consequences of FGM. Implementing solutions to end violence against women has never been more contentious due to any subject. FGM is a form of violence against women, according to some NGOs like the Foundation for Women's Health, Research, and Development (FORWARD International), but

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<sup>51</sup>DiwanParas,*LawRelatingtoDowry,DowryDeaths.*,(2<sup>nd</sup>Edn.,2002)

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they have had more success eradicating the practise locally by treating it as a health and development issue.

On legal reform, several NGOs have concentrated their efforts. NGOs have tried to make the conduct illegal in Senegal, Egypt, Guinea, Burkina Faso, Ghana, and Tanzania. However, the majority of NGOs understand that legal reform on its own will be useless. These NGOs work on a variety of economic empowerment initiatives in addition to human rights education and training for midwives who perform FGM.

The right to an effective remedy when one's human rights are violated is guaranteed by the International Covenant on Civil and Political Rights. Female victims of violence must have proper access to justice because they are also victims of violations of their human rights. Victims of violence may be asking for the criminal prosecution of the attackers, a restraining order to prevent further violence, or financial compensation for their injuries. Women victims must always have equitable access to the legal system in their state of residence<sup>52</sup>.

By erecting barriers that prevent women from accessing the legal system, some states violate their citizens' right to an effective remedy. Due to strict requirements of evidence in court, women who are victims of domestic abuse may not be able to effectively document their injuries in many nations around the world. For instance, in Macedonia, women who want to file charges against their batterers must obtain medical records of their injuries, which can cost up to a month's salary. By prohibiting the prosecution of crimes of violence against women, these regulations deprive women of an effective remedy.

In some countries, rules of evidence discount the testimony of women. In Pakistan, for example, Article 17 of the Qanun-e-Shahadat Order of 1984 (Law of Evidence Order) diminishes the weight of women's testimony in some circumstances to that of half of a man's testimony. The Qanun-e-Shahadat Order also allows for the admission of evidence to show that the victim was "immoral." Prior to the passage of rape shield laws in the United States, which prohibited harmful testimony about a victim's prior sexual conduct; victims of sexual assault were often

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<sup>52</sup>UnitedStates:“TheNationalElderAbuseIncidenceStudy”,*DeptofHealthandHumanServices,Washington.D.C.*(1998).

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criticized, blamed, and discredited by the legal system. Such state-sanctioned discriminatory rules of evidence violate women's rights to seek redress for their injuries<sup>53</sup>.

In many countries, police refuse to respond to calls relating to domestic violence or to investigate assault claims when they discover the victim and the perpetrator of the assault are related. Even if the police investigate and file a report, prosecutors often do not pursue the cases. In some instances, when a woman successfully maneuvers through the criminal justice system to have her case heard before a judge, the judge dismisses the case or imposes only a nominal fine. For example, in Albania, a woman who attempts to prosecute a domestic assault meets with extreme resistance at each step of the criminal justice system. The police, prosecutors, and judges view their role as facilitating reconciliation, and they pressure women to "pardon" their husbands.

Not surprisingly, in a review of the Tirana, Albania, district court records over a 6 month period, not a single case of domestic assault was fully prosecuted. In this same 6 month period, prosecutors estimated that about 300 women presented claims to the prosecutor's office. The prosecutor's office did not pursue any of the cases. Ten women filed claims in the court without the prosecutor's assistance. These claims were dismissed at the first hearing. Because they are often denied access to justice and legal remedies, women victims of violence may suffer further human rights abuses at the hands of a legal system that purports to offer assistance.

Even though the United Nations Charter, which was approved in 1945, recognised that men and women have equal rights, discrimination against women persisted in many areas of society. Most societies did not grant women the same rights as males. Of the 51 nations that signed the Charter, only 30 permitted women to vote or hold public office. The United Nations has known since its inception that special measures are required if women are to ever have access to human rights on an equal footing with men.

The relative lack of focus on women's human rights inside United Nations mainstream organisations has been one of the most conspicuous aspects of the human rights movement from 1945 to the present. The International Bill of Human Rights outlines the basic rights that must be upheld in order for women's rights, particularly the freedom from violence, to be fully protected.

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<sup>53</sup>Penhale, B. and Kingston, P., *Social Perspective on Elder Abuse*, (Family Violence and Caring Profession 1995).

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There would be no need for additional action if these rights were exercised as they were meant to be — without discrimination. But sadly, in the application of international human rights law, women's and girls' human rights have not been equally acknowledged and respected.

Over the past three decades, activists from all over the world have persistently fought to increase the United Nations' sensitivity to the violations of women's human rights. In order to take into account the role that gender plays in the achievement of human rights, these activists have fought for the creation of new international legislation and modifications to the processes for assessing compliance with human rights treaties. Despite their modest progress, these initiatives have been effective in a number of ways, including:

- Increased recognition of women's human rights issues in mainstream gender-neutral human rights treaties and forums,
- adoption of United Nations treaties and declarations that more precisely define women's human rights,
- development of procedures to monitor implementation and enforcement of the treaties. Along with advancements within the UN, modifications to international human rights law and policy have given growing regional and national networks of activists new tools to use in their efforts to safeguard women's human rights and lessen violence against women<sup>54</sup>.

#### **2.4. Victims of the Domestic Violence**

There are some myths common to all culture about the “kind of women” who gets beaten:

- The first myth is that middle class women do not get beaten. The women come from all sections of the society, belonging to different religions, educational levels and from all socio-economic classes. If we hear more about wife battering in slums or in chawls, it is because these women have less privacy. The middle and upper class women are battered behind closed doors. They live in total isolation and are oppressed further because they have to keep up the pretence of a

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<sup>54</sup>Desai, Bharat and Veedon, “Family Dynamics and Development Programmes: Indian Course Bibliography”, *IJSW*, 5 4(1). (1993)

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successful marriage. Working class women talk, quite openly about the violence that they experience in their homes, and generally it seems to affect them less psychologically. This could also be because working class women accept the violence, and thus do not see it as being something unrelated to them as individuals. Middle class women begin to question and doubt themselves.

- The idea that a victim of assault is a weak, petite, working-class woman is another fallacy. But in reality, women who work in reputable fields like medicine, academia, journalism, and modelling are battered by their husbands. Many of them are capable of running their lives well. The stereotype of an abused woman does not exist.
- The myth of provocation is another. The misconception further persecutes women. The woman is forced to carry the guilt, which increases her humiliation. This myth also implies that women who are beaten are masochistic and seek out punishment.
- Another myth is that the women who don't leave their husbands do not mind the battering or that they actually like it. It is often asked: why women continue to live in a situation where they are eventually murdered or are driven to suicide. Why don't seek a way out? The theory of learned helplessness gives an insight into the mental state of passive resignation experienced by women. According to this approach, some events occur in the battered women's life during childhood and onwards with sufficient regularity. Because of this they cannot escape abuse and that they only have themselves to blame. Some important events in women's early lives which suggest a susceptibility factor include a high level of violence by members of their families in childhood (e.g being battered by the mother, battered by the father, the father battering the mother, the father-mother battering other children) perception of critical or uncontrollable events in childhood, and experiencing such conditions which place them at high risk for depression. The fear of losing the husband's affection and the fear of disruption of their home life status quo also prompts them to tolerate the husband's battering. The battered wives are thus afraid to stay and at the same time terrified to leave for fear of inescapable reprisals.

As there are myths about the type of woman who get beaten, there are myths about the type of husbands, who beat their wives.

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- Whenever we discuss a man who hits his wife, we automatically assume that he belongs to a lower social class, is upset at work, is an alcoholic or paranoid, and is aggressive in his interactions with other people. His wife is just one of the victims in this scenario. However, there are other situations when the act of wife abuse is also observed, including those in which the males are either professionals, such as lawyers, teachers, and doctors, or those who are financially successful, such as businessmen and politicians. In some instances, men who are not alcoholics still engage in this behaviour toward their wives.
- 1. It's also untrue that a husband who loves his wife would never physically abuse her. Some men who batter their wives are occasionally quite sober, kind, and lovable to their partners.

As a result, it can be said that most of what has been discovered indicates that husband abuse affects the majority of the male population in society. The most frequent kind of abuse, regardless of class, religion, community, or, in the case of India, caste backgrounds, is wife beating or, in more severe cases, wife battering. It is paradoxical that the family, which was formerly seen as a person's defence against the outside world, has since become the setting for legitimate physical and mental oppression of women. Due to the value placed on the family, such behaviour is accepted without comment. Marriage's sanctity has meant that it has evolved into almost "accepted behaviour."

Even parents encouraged their daughters to stay in a violent marriage because of the stigma associated with a failed marriage and the notion that a woman belonged in her proper place with her husband. While the judicial and police institutions have become more accepting of some excesses since 1975, a lot still goes unspoken, is hidden, or is suppressed. The prevalence of "more important" concerns has made it so that spousal abuse is largely disregarded.

- **Constitutional Law Perspective:**

The modern welfare state is expected to engage in all activities required for promoting the social and economic welfare of the community as a regulator, controller, arbitrator, etc. The preamble

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of the Indian Constitution, which signalled a socio-economic revolution, aims to fulfil the basic needs of the average person in a genuine way.

Our founding fathers were well aware, both from their own experience and from historical precedent, that the structure of the Constitution would reflect the social realities in the society. Because of this, the original draught only included one chapter on the people' enforceable rights—both social and individual. The chapter was divided into two parts; one is enforceable (Part -III) in response to concerns raised by some members of the Constituent Assembly regarding the ability of society to implement these rights of a social nature.

The Directive Principles of the State Policy, which make up Part III, are essential to the nation's governance even though they cannot be put into practise. This initial plan should be interpreted in the context of sociological law. This school of thought contends that every civilised society at any one time has both attainable and attainable goals. Directive Principles of State Policy were important postulates when the Indian Constitution was being drafted. Because of their rigid legalistic positive attitude, the courts up until recently did not take the Directives seriously. The court's most current teleological perspective serves as the foundation for a meaningful understanding of fundamental human rights.

The scope of the right to life and to personal liberty under Article 21 was expanded in that direction to the extent that "life" now includes a life with human dignity. The Supreme Court began to view the Directive Principles of State Policy as the foundation for the effective implementation of Fundamental Rights. The Directives in Part IV are no longer just guidelines. They are additional to and supportive of fundamental rights. By introducing the 93rd Constitutional Amendment, which adds a new article, 21 A, the legislature also sought to expand the fundamental rights in line with judicial activism, particularly regarding free and mandatory education for all children under the age of 15 in India..

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Therefore, despite the difficulties, Indian society and the constitution were successful in overcoming them. However, fresh difficulties kept emerging, some of which even put the survival of the nation and the Constitution in jeopardy. The study of human rights is concerned with these issues. Only the effective and harmonious application of human rights, whose quality can be attained by reason and wisdom by granting equal access to everyone who believes that human rights are a matter of right in accordance with the just law, can be used to measure the development of a society.

Human rights have been a problem for people from all areas of life. Since the latter half of the 20th century, women's human rights in particular have been a matter of discussion. Women are treated as second-class citizens who must submit to their male counterparts, particularly in India. Married women are increasingly being used as tools by men. Typically, men exploited women to obtain money and sexual pleasure. Even though the Constitution grants them rights, women are not allowed to use them. They have been compelled to remain inside due to norms and traditions. They lack economic independence. They are unable to fulfil their societal obligations. As a wife and mother, they must carry out their responsibilities in the home..

Women's battles and leadership have gradually altered the situation to some extent. Women raise their voices for their fair share in society in response to political, employment, and educational institutions that have reservations. Women can now finally access the open world thanks to the Beijing Declaration and other conventions for women. The women get motivated to fight for their rights by this shifting situation. Now that women have been granted human rights, all civilised societies can lessen the problems that women face.

### **Judicial review**

In *Budhadev Karmaskar State Of West Bengal*, We strongly feel that the Central and the State Governments through Social Welfare Boards should prepare schemes for rehabilitation

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throughout the country for physically and sexually abused women commonly known as prostitutes as we are of the opinion that the prostitutes also have a right to live with dignity under Article 21 of the Constitution of India since they are also humbly employed," the Apex Court said in a division bench decision led by Markandey Katju, J. and Gyan Sudha Mishra, J.

*Laxmi v. Union of India*, the Supreme Court instructed the Home Secretary of the Ministry of Home Affairs to call a meeting of the Chief Secretaries/concerned Secretaries of the State Governments and the Administrators of the Union Territories to discuss curbing and restricting the sale of acid across the nation in response to the rise in acid attacks on women over the past few years.

*ABC v. The State (NCT of Delhi)*, In its most recent and significant ruling, the Supreme Court ruled that an unmarried woman is no longer had to reveal the identity of the child's father and that she will now have all the rights that come with being a child's guardian. She can exercise her guardianship without her father's permission. It was essential to safeguard the mother's fundamental right as well as the child from social shame. It was undoubtedly a cutting-edge assessment of gender quality.

***Dhannulal and ors. V. Ganeshram and ors.***

The division bench in this case decided that a couple's continued cohabitation, or "live-in relationship," would raise the presumption of marriage unless otherwise established. This case was a disagreement over whether or not their grandfather's 20-year companion, who was not his legally married wife, would inherit the land he owned. She was referred to by the appellants as his "mistress" but not as his wife. Despite the fact that the lady had blatantly failed to establish that she was the legally wedded wife of the deceased, the bench upheld her eligibility to inherit the property.

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## CHAPTER-III

### ISSUES AND CHALLENGES

#### 3.1 Discrimination Against Women In General

It is a known fact that the men and women form an equal part to spread the generation across the planet. No birth can take place without the union of male and female. No society can be developed without men and women. One can not understand why the women are being treated as second-rate citizens from whom the men can seek all sorts of pleasures. Right from the ancient dharma sastras women are being treated as goddesses. It is a known fact that holy Quran provide some safe guards to women who are equally responsible for the development of mankind. Only for the protection of women the holy Quran permitted polygamy, that means a man can marry four wives at a time. The bible has also stressed the important role to be played by the women. Due to the structure of the body of a woman she is suppressed. Her body may attract the male persons by which they can be instigated by sexual urge.

To fulfill his sexual need the men considers the women as his own property. He wants to exclude the others from using his own property. This selfishness is his responsible for throwing women out of gear. The main problem that is confronted to women is sexual thrust of a man. Her beauty, her voice, and her actions make the man mad. This madness makes men cruel. He forces the women to observe seclusion and chastity. Further he goes on to preach the women that the chastity and obedience to her husband helps her to reach heaven. She can directly sit by the side of god. This kind of religious teachings make women as an idol but not ideal.

Another main problem that is attributed to women is the education. The man has a thought right from the ancient days the educated women will not be obedient to him. She may dominate over him. As he is strong and well built she should be subordinated to him. She was asked not to go out of the home for receiving education. Education is the sole right of men folk. Another general

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problem is to giving birth to the children. She has no right to procreate the children at her own will. For want of the male children, the medical termination of pregnancy has been employed upon the women without her consent.

Working women have a variety of challenges since they must handle both their office work and family responsibilities. The burden of having children is heavy. As a housewife, she is tasked with overseeing the welfare of the entire family. The female's burden of employment duty is a problem. Because of all these issues, women are extremely weak and defenceless. Her body can be hampered by the frequent births. Her relentless work may make her more susceptible to disease. The definition of happiness should be forgotten by women after marriage. She needs to comfort her parents and in-laws in addition to herself.

The ladies of today are not financially stable. In the home's financial decisions, she has no say. She shouldn't have any desires of her own to satisfy. Without the consent of her male members, she is not permitted to spend a single rupee. Even when his family needs money, a husband typically won't let his wife look for a job. Some spouses make their wives work for money in order to feed their greed. The wife will experience mistreatment if she is unable to work and make money. The male is the one who drags the female to satisfy his sex need.

She will face humiliation if she refuses to give into his yearning. She will be treated like a prostitute if she agrees to satisfy his need. This describes the perilous condition of a typical Indian woman. A number of expensive products are made by businessmen in order to enhance a woman's beauty. The conventional perception is that women love jewellery. In the business world, the price of gold approaches the skies. When their daughter-in-laws don't bring gold and silver jewellery from their parents, the in-laws harass them. In general, the institution of marriage is becoming more and more commercialised. Such issues may compel the woman to live a miserable life at both her parents' and her in-laws' homes. Indian ladies are typically noted for being patient. They are losing their patience and focus as a result of their husbands' and in-laws' insensitive behavior.

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The first question that must be answered in any evaluation study of how public authorities have responded to a social issue is: What is the issue that is affecting the interests of society? By understanding the nature of the issue and its scope, one can properly evaluate how public authorities have responded. The approach taken by the researcher is to first look at the question of what constitutes violence and how the term "domestic violence" is used with regard to a particular type of behaviour. This research work is also concerned with evaluating how society has responded to the problem of domestic violence.

The next chapters of this research project discuss the law governing the dual issues of violence against women in general and domestic violence against women. As a result, there are two aspects to the subject of violence: traditional violence against women and more contemporary violence referred to as "domestic violence."

The characteristics of the wrong known as "violence," in which a person is injured due to the assailant's violent deed, are explained in this chapter. Violence is a common kind of criminal behaviour. Continue reading this chapter to learn more about the characteristics included by the phrase "domestic violence."

Domestic violence shares some characteristics with other crimes in that the victim of the violence sustains harm at the hands of the attacker, but the relationship between the victim and the attacker is the crucial and unique aspect of the case. The two parties involved in this situation are neither strangers to one another nor sworn foes, as would be the case in the event of regular crimes. When domestic violence occurs, both the perpetrator and the victim are related by blood and live together as a family. Despite the fact that they are intimate lovers, there is some friction between them and force is employed against the other, which leads to them getting into trouble.

Domestic violence crimes of the kind mentioned above are now a common occurrence. Women all around the world are regularly the victims of physical assaults that happen in the private setting of the home. Sometimes the violence is quite serious, hurtful, embarrassing, and

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crippling. It is a universal phenomenon that affects people of all races, ethnicities, and civilizations. The abuse of women by men is, on this score, almost always a defining trait of communities around the world.

The goal of this chapter is to define violence as both a traditional sort of offence and a brand-new offence known as "domestic violence." The debate includes the authorities' perspectives on this phenomena. It addresses the theories linked to domestic violence and covers the shift in the courts' perception of what is improper. It lists the reasons for domestic violence and its effects.

In that the victim of violence suffers harm at the hands of the attacker, domestic violence shares some characteristics with other types of crimes. However, the relationship between the victim and the attacker is the crucial factor of the case. The two parties involved in this situation are neither strangers to one another nor sworn foes, as would be the case in the event of regular crimes. When domestic violence occurs, both the perpetrator and the victim are related by blood and live together as a family. Despite the fact that they are intimate partners, they end up in difficulties because of some friction when one of them uses force against the other.

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courts' perception of what is improper. It highlights how the State agencies have responded to this issue generally, notes the causes and effects of domestic violence, and describes the circumstances that fall under this legislation.

- **Concepts Leading To Domestic Violence**

- **Conventional View About Violence**

Violence in its basic sense means inflicting damage to people by some kind of harm. Some political writers have stretched the concept of violence to embrace an oppressive political, social or economic system that damages the people living under it.

Violence is categorised as Personal Violence, Group Violence, Social Violence, Campus Violence, and Collective Violence depending on the number of participants and the setting in which it occurs. The one form of violence that is most significant in modern social interactions and pertinent to the current study is collective violence. This is one of the many forms of violence that have been seen in social relations.

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- a) Wars, terrorism, and other violent interstate or international political confrontations;
- b) Violence committed by the state, such as genocide, oppression, kidnapping, torture, and other violations of human rights;
- c) Organized violent crimes like gang warfare and banditry, etc.

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The term "violence" generally refers to the impact of an injury on a person's life that is made miserable by cruel behaviour; such behaviour may in some cases amount to physical mistreatment; it may also force the aggrieved person to lead an immoral life; or it may otherwise injure or harm the aggrieved person's rights and interests.

- **The New Type Of Offence Of Domestic Violence:**

The term "domestic violence" as it is used today refers to a specific circumstance, namely one in which violence is committed in a domestic setting. Domestic violence is committed by people who are related to one another.

Domestic violence, sometimes referred to as domestic abuse or spousal abuse, happens when a family member, current or former partner makes an effort to control the other person physically or mentally. Domestic violence commonly refers to aggression between couples or marital abuse, but it can also apply to cohabitation and intimate relationships with people who are not married. Every culture experiences domestic violence, which can be committed by people of all racial backgrounds, ethnicities, religions, sexes, and socioeconomic classes.

Domestic violence, also known as domestic abuse or spousal abuse, occurs when a family member, current or former partner tries to exert physical or emotional control over the other person. Commonly, the term "domestic violence" relates to hostility inside a partnership or marital abuse, although it can also refer to cohabitation and close relationships with individuals who are not married. Domestic violence is a universal problem that affects people of all racial backgrounds, ethnicities, religious beliefs, sexes, and socioeconomic classes.

Whether domestic violence was formerly considered a crime under Common Law principles is one of the essential considerations that needs to be taken into account. Whether acts of violence committed within an intimate relationship could be classified as "torture" under the law. When we examine how the law has changed over time, we discover that domestic violence was never

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considered a crime. Additionally, Anglo Saxon laws from the past never classified domestic violence as a crime.

The use of force within acceptable bounds, on the other hand, was viewed as a legitimate exercise by the English courts. According to Sir William Blackstone, this judicial mindset originated from the practise of holding a husband accountable for his wife's bad behaviour and granting him a "power of correction."

A frequently cited English statute, as well as the legislation that was in effect throughout the British colonies, stated that a man might beat his wife with a rod no wider than his thumb. While this rule is no longer in effect, different levels of physical abuse—such as slapping, pushing, and shoving—remain acceptable in the family and do not elicit the same level of societal outrage as more severe kinds of abuse, such as stabbing or punching. There is a certain amount of "normal violence" that families can engage in without the government getting involved, and actions like pushing, grabbing, or slapping are typically not viewed as extreme enough to qualify as "wife beating" or "wife battering."

Same was the attitude of the Courts in United States of America which treated a man's physical abuse of his wife different from assault, and indeed, as an acceptable practice. For example, in *Bruno v. Codd*, the Supreme Court of United States held that "nothing in the language of the Due Process Clause of the UN Constitution requires the State to protect the life, liberty and property of its citizens against invasion by private actors." This case demonstrates the absence of a State obligation to eradicate violence against individuals. If this is not required under domestic law, there needs to be another motivating force to generate such protection. In *De Shaney v. Winnebago County Department of Social Services* it was held that under Anglo-American common law, a husband could beat his wife as long as he caused no permanent injury.

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In the 1970s, as concern about wives being abused by their husbands grew, the women's movement—particularly feminism and women's rights—began to pay attention to domestic violence. Domestic abuse awareness and reporting varies from nation to nation. Only about a third of domestic violence incidents are reportedly reported in the United States and the United Kingdom, according to estimates. Domestic violence, which affects more than 32 million Americans, or more than 10% of the country's population, is a serious, preventable public health issue.

Women have frequently been the victims of domestic violence, according to popular opinion. However, there is now support for men who have been wronged by women thanks to the growth of the men's movement, particularly masculism and men's rights. Physically abused men make up just under one-sixth of all hospital patients who report domestic violence as the cause of their injuries, according to a special report on violence-related injuries by the US Department of Justice published in August 1997. The report also notes that a disproportionately large number of men—far more than women—did not reveal the identity of their attacker.

**According to the Indian Domestic Violence Act:**

A pattern of behaviour employed in any relationship to acquire or retain dominance and control over a female partner is known as domestic violence. Abuse can include actions or threats of actions that fear, intimidate, terrorise, manipulate, harm, humiliate, blame, injure, or wound the female partner on a physical, sexual, emotional, economic, or psychic level.

Anyone can experience domestic abuse, regardless of their ethnicity, age, sexual orientation, religion, or gender, with the exception of men. Couples that are dating, living together, or getting married can all experience it. People from various socioeconomic origins and educational levels are impacted by domestic violence.

A woman may be in an emotionally abusive relationship if her male partner:

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- Calls her names, insults her or continually criticizes her.
- Does not trust her and acts jealous or possessive.
- Tries to isolate her from family or friends.
- Monitors where she goes, who she calls and who she spends time with.
- Does not want her to work.
- Controls finances or refuses to share money.
- Punishes her by withholding affection.
- Expects her to ask permission.
- Threatens to hurt her, her children, her family or her pets.
- Held her down during sex.
- Demanded sex when she were sick, tired or after beating her.
- Hurt her with weapons or objects during sex.
- Involved other people in sexual activities with her.
- Ignored her feelings regarding sex.

Thus, 'Domestic Violence' is a term which at present has come to refer to a broad array of harm committed against members of a family or intimate unit by other members of such family or intimate unit. Although the courts changed their attitude and rejected the notion that a man had a right to beat his wife, there existed however the formal and informal barriers to prosecution, largely driven by a perceived need to protect family privacy and domestic harmony. Defining and delineating the concept of domestic violence therefore has been a challenge undertaken by lawyers, sociologists, and psychologists and its precise definition remains an uncertain and controversial social subject. In drawing a legal distinction between intimate violence and private torture, it is first necessary to understand the current legal concept of 'domestic violence'. This understanding provides the tools to distinguish between the types of violence that require the application of domestic law autonomously and those that require the application of both domestic and international law.

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Domestic abuse is typically characterised as physical or emotional abuse that occurs between adult intimates or members of the same household. The majority of governments that acknowledge domestic violence are aware that there are two types of abuse.

The first is psychological, whereas the second is bodily. Furthermore, it is well known that while these two elements may function independently, they frequently work together to create a web of abuse where the necessity of violence increases. Verbal abuse, insults, mockery, threats of damage, intimidation, and isolation are all examples of emotional abuse. Domestic violence's non-physical manifestations include verbal and financial abuse, stalking, bouts of fury, and continuous insults. An important accomplishment of the battered women's movement is the classification of this behaviour as domestic violence. The majority of progressive laws forbid all forms of abuse, including both physical and non-physical ones.

In terms of physical abuse, there is no definitive list of the types. The wide range of physical acts of aggressiveness include everything from pushing or shoving someone during a heated dispute to shattering fingers or dismembering bodily parts. However, domestic violence is typically characterised by punching, slapping, and shouting aggression, all of which are linked to the aggressor's loss of control. This view does not accurately reflect all forms of violence or the degree of control that can be used to carry them out.

While physical and emotional abuse can occur without one another, they frequently go hand in hand. The so-called "cycle of abuse" is defined by theorists as consisting of violent acts followed by concessions, presents, and admissions of regret.

The tension develops gradually, first manifesting itself in verbal abuse, and then leading to another outburst of rage and physical violence. The degree of the violence increases as the cycle

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continues, and there are fewer and shorter periods of remorse. This cycle's emotional strain frequently results in worry, despair, and sleeplessness. It can result in extremely high levels of dependency, helplessness, and dread as well as the same severe symptoms that characterise the post-traumatic stress disorders suffered by victims of both rape and government violence.

Thus, battery, biting, burning, hacking, electrocution, starvation, sleep deprivation, forced sexual encounters, non-consensual sexual touching, rape, property destruction, murder, the denial of medical care, threats of harm, threats of harm to third parties, threats of removing children, psychological abuse, financial deprivation, stalking, shouting, accusations of, and so on are all considered acts of "domestic violence." These behaviours are an aspect of ongoing abuse. what is meant by "domestic violence"?

- **Definition Of Domestic Violence:**

Domestic violence is an extremely complex and vicious form of abuse, committed most often within the four walls of the family house and /or within a particular deep-rooted power dynamic and socio-economic structure, which do not allow even the acknowledgement or recognition of this abuse. Meaning and detection of domestic violence itself is the most demanding task.

To be honest, there is no appropriate definition for domestic violence in Indian law. This does not mean that acts of domestic violence are not punishable in India. There is no exact prototype of domestic violence it differs with households, individuals and situations. The impact of domestic violence depends upon its severity. Domestic violence could result in anything from death to minor attacks. There could be a situation where this violence results in causes devastating psychological impairment.

"According to Black's Law Dictionary, "domestic violence means violence between members of a household, usually spouses, an assault or other violent act committed by one member of a household against another".

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Looking at the general laws, both criminal and civil, which handle acts which potentially constitute domestic abuse will help clarify what domestic violence is and the range of acts which constitute it. The Indian Penal Code, 1860, is the primary source of the country's criminal law (IPC). Special laws that define and penalise certain offences are added to the IPC. The Penal Code of India Causing death while performing an act is considered "culpable homicide" according to the IPC.

- With the purpose to kill;
- With the intent to inflict serious physical harm that could result in death.
- knowing that it will probably result in death. Unless it is committed without intent, in the heat of emotion following a sudden argument, without the perpetrators taking unfair advantage of the victim, or in a cruel or unusual way, culpable homicide is murder.

When a woman dies within seven years of her marriage from burns or other physical harm, or when it happens outside of the ordinary course of events, and it is proven that the wife suffered cruelty at the hands of her husband or his family, the death is known as a "dowry death." The husband or family member who abuses the wife must establish that the death was not the result of the abuse in order to avoid being held responsible for the dowry.

Another type of domestic violence that is recognised as an offence under the IPC is pressuring the woman to end the pregnancy or committing female infanticide. Domestic violence frequently leads to suicide, especially when brides are hounded for dowry. A crime that carries a death or life sentence is aiding and abetting a delirious person's suicide. A second offence that carries a ten-year prison sentence is aiding suicide. Domestic abuse frequently takes the form of inflicting physical harm. A hurt may be considered "grievous" if it causes a serious injury such as a fracture, loss of hearing or sight, damage to any member or joint, etc. The IPC defines hurt as "bodily pain, disease, pain or infirmity to any person." It is illegal under the IPC to intentionally

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cause great suffering. The intentional use of deadly weapons to intentionally cause great harm and the intentional use of great harm to extort property are both crimes."

Another common form of domestic violence is in the form of the wrongful restraint or confinement of the spouse within her matrimonial home. Use of force and assault on the spouse, other common forms of domestic violence, are also punishable under the IPC. Marital rape is yet another common form of domestic violence. This is a grey area of law and evidence. While many progressive nations have legislated on marital rape, our law has so far only conferred a limited recognition. Non-consensual sexual intercourse by a man with his own wife may be an offence if she is living separately under a decree of separation or any custom. In many a violent marriage, the spouse subjects the wife to acts of sexual humiliation. Interestingly the IPC even addresses such forms of violence - the provision for 'unnatural offences'. However, this provision has rarely been used in the matrimonial context.

The misuse of the spouse's possessions in order to render her economically helpless and subject to submission is a frequent accompaniment to domestic abuse. The IPC also covers this circumstance. The husband is responsible for the crime of criminal breach of trust if he or a family member dishonestly misappropriates or converts to his own use any property that the wife has entrusted to him.

Matrimonial cruelty became a crime under the IPC in 1983. According to one definition, cruelty is "any purposeful action that is of such a type as to be likely to induce the lady to commit suicide or to suffer great injury or risk to life, limb, or health." 14 It also includes intimidating the woman in conjunction with requests for property and similar actions.

- **Nature Of Domestic Violence:**

The family is frequently compared to a haven, a place where people go in search of affection, protection, security, and refuge. However, life's evidence demonstrates that it is also a place where lives are in danger and where some of the most severe types of violence against women and girls are fostered. Males in positions of trust, closeness, and power—husbands, boyfriends,

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dads, fathers-in-law, stepfathers, siblings, uncles, sons, or other relatives—typically commit acts of domestic violence. Most often, domestic violence is committed by men against women.

Women can also be violent, but their actions account for a small percentage of domestic violence. Violence against women is often a cycle of abuse that manifests itself in many forms throughout their lives. Even at the very beginning of her life, a girl may be the target of sex-selective abortion or female infanticide in cultures where son preference is prevalent. During childhood, violence against girls may include enforced malnutrition, lack of access to medical care and education, incest, female genital mutilation, early marriage, and forced prostitution or bonded labour. Some go on to suffer throughout their adult lives – battered, raped and even murdered at the hands of intimate partners. Other crimes of violence against women include forced pregnancy, abortion or sterilization, and harmful traditional practices such as dowry-related violence, sati (the burning of a widow on the funeral pyre of her husband), and killings in the name of honour.

Domestic violence is present in almost every society of the world. The term can be classified on various bases. Violence against spouse, children or elderly is few of some commonly encountered cases. There are various kinds of tactics that are adopted by the attacker against the victim. Physical abuse, emotional abuse, psychological abuse or deprivation, economical deprivation/ abuse, etc. are the most common kinds of abuses that are faced by the victims.

Domestic violence is a worldwide issue, not only in emerging or underdeveloped nations. It is also fairly common in wealthy nations. Our pretend-civilized society is reflected in the prevalence of domestic violence. Violence has no place in a civilised society. However, the sheer number of instances that are recorded each year is quite concerning. And even so, the majority of occurrences go unreported or overlooked in daily life, thus this is not the full picture. Our society is observing a very dangerous trend that needs to be dealt with harshly.

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Children and women are frequently the easy prey. The situation is truly horrible in Indian society. Every day, a sizable number of people pass away solely as a result of domestic abuse. Some of the contributing elements to the issue include illiteracy, economic dependence on men, and the general male-dominated society. One of the main factors leading to violence against newlywed wives is dowry. Women are frequently subjected to physical abuse, vile remarks, and denial of fundamental human rights in many regions of the country. Children are similarly made the target of this cruel behavior.

Serious in-sighting is required in the matter. The double standards and hypocrisy of the society members is evident in such matters. Many times, the abuser is either psychotic in behaviour or requires psychological counselling for this errant behaviour. But generally domestic violence is a result of cumulative irresponsible behaviour demonstrated by a section of the society. Not only the abuser is the main culprit but those who are allowing it to happen and behave like a mute spectator are the partners of the crime. Recently, in India, to cope with the situation, a campaign, called 'bell bajao' was launched. The main motive of the campaign was to motivate the individuals of the society to raise their voice against the domestic violence happening in home and around. The campaign was a big hit and successfully managed to draw the attention of crowds towards this issue.

- **Forms Of Domestic Violence:**

Batterers use a wide range of coercive and abusive behaviors against their victims. Many atimes some of the abusive behaviours of the batterers result in physical injuries. Other techniques employed by batterers involve emotionally abusive behaviors. While these behaviors may not result in physical injuries, they are still psychologically damaging to the victim. Batterers employ different abusive behaviors at different times. Even a single incident of physical violence or the threat of such violence may be sufficient to establish power and control over a partner; this

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power and control is then reinforced and strengthened by non-physical abusive and coercive behaviors.

Forms of domestic violence can include physical violence, sexual violence, economic control, and psychological assault (including threats of violence and physical harm, attacks against property or pets and other acts of intimidation, emotional abuse, isolation, and use of the children as a means of control). Because they occur in intimate relationships, many kinds of abuse are often not recognized as violence. In many places throughout the world, marital rape is still not viewed as sexual assault because a husband is deemed to have a right of sexual access to his wife. Stalking, as well, has only recently been recognized as a form of violence and a severe threat to the victim.

**Physical Violence:** The purposeful use of physical force that has the potential to result in harm, injury, disability, or death is referred to as physical violence. Examples include pushing, shoving, biting, restraint, kicking, or the use of a weapon.

Domestic violence can take the form of physical violence, including direct physical violence ranging from unwanted physical contact to rape and murder. Indirect physical violence may include destruction of objects, striking or throwing objects near the victim, or harm to pets. In addition to physical violence, spousal abuse often includes mental or emotional abuse, including verbal threats of physical violence to the victim, the self, or others including children, ranging from explicit, detailed and impending to implicit and vague as to both content and time frame, and verbal violence, including threats, insults, put-downs, and attacks. Nonverbal threats may include gestures, facial expressions, and body postures. Psychological abuse may also involve economic and/or social control, such as controlling the victim's money and other economic resources, preventing the victim from seeing friends and relatives, actively sabotaging the victim's social relationships, and isolating the victim from social contacts.

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**Sexual violence and incest:** Use of physical force to coerce someone into engaging in a sexual act against their will, whether or not the act is completed; attempted or completed sex act involving a person who is unable to understand the nature or condition of the act, unable to decline participation, or unable to communicate unwillingness to engage in the sexual act, for example due to underage immaturity, illness, disability, or the inability to communicate; and third, sexual violence and incest. and unwanted sexual activity.

**Emotional abuse:** Instances of emotional abuse, also known as psychological abuse or mental abuse, include humiliating the victim in public or in private, dictating what the victim can and cannot do, withholding information from the victim, doing something on purpose to make the victim feel inferior or embarrassed, isolating the victim from friends and family, implicitly blackmailing the victim by inflicting harm on others when the victim displays independence or happiness, or preventing the victim from having access to resources.

Women who experience emotional abuse frequently believe that they do not own themselves and that their partner has almost complete power over them. Women who experience emotional abuse frequently experience depression, which increases their risk of suicidal thoughts, eating disorders, and drug and alcohol usage.

**Economic abuse:** When the victim's money and other financial resources are completely under the abuser's control, this is known as economic abuse. The victim is typically placed on a strict "allowance," the abuser can withhold money at any time, and the victim is made to beg for money until the abuser gives them some. As the abuse continues, it's typical for the victim to receive less money. This includes (but is not limited to) intentionally wasting or misusing public resources as well as impeding the victim's ability to complete their education or find employment.

### **The Present Day Approach of the Law**

The South African Domestic Violence Act of 1998 contains one of the most modern definitions of domestic violence. In order to grasp the present definition of domestic abuse, it is helpful to

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examine the Act, a recent and, in some ways, liberal piece of domestic violence legislation. Domestic violence is defined by the Act as:

- Physical abuse; (b) Sexual abuse; (c) Emotional, verbal and psychological abuse; (d) Economic abuse; (e) Intimidation; (f) Harassment; (g) Stalking; (h) Damage to property; (i) Entry into the complainant's residence without consent, where the Parties do not share the same residence; or (j) Any other controlling or abusive behaviour towards a complainant, where such conduct harms, or may cause imminent harm to, the safety, health or wellbeing of the complainant.

Most often, when we talk of "domestic violence," we mean acts of aggression between adults. Children are not included in the scope of this type of family violence, despite the fact that they suffer from such harm. As an example of gender-based crimes, this criminality focuses on women who experience severe forms of domestic abuse. The one specific type of criminality that is frequently brought up is the crime of private torture, which is obviously distinct from the crime of domestic abuse.

Private torture is a word used to describe severe types of domestic abuse. The victim is typically rendered helpless by these harmful acts, which constitute private torture. The victim is actually unable to flee due to physical restraint, psychological or financial control, or threats of violence (either to the victim or third parties). In this manner, the abuser effectively imprisons the victim. Private torture involves causing harm repeatedly or threatening to do harm that has already occurred. Private torture involves extreme and deliberate acts of violence, as the name would imply.

On October 26, 2006, the Indian government implemented the Protection of Women from Domestic Violence Act 2005. The Act was approved by the President on September 13, 2005, following its passage by the Parliament in August 2005. In India, four of the twenty-eight state governments have ratified it as of November 2007: Andhra Pradesh, Tamil Nadu, Uttar Pradesh, and Orissa.

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Section 1 of the Act says, for the purposes of this Act, any conduct of the respondent shall constitute domestic violence if he,

- Habitually assaults or makes the life of the aggrieved person miserable by cruelty of conduct even if such conduct does not amount to physical ill-treatment;
- Forces the aggrieved person to lead an immoral life; or
- Otherwise injures or harms the aggrieved person.

(2) Nothing contained in clause (c) of sub-section (1) shall amount to domestic violence if the pursuit of course of conduct by the respondent was reasonable for his own protection or for the protection of his or another's property.

### **(C). Theories Of Domestic Violence**

There are numerous hypotheses as to why domestic violence occurs. These include psychological theories that take the offender's personality qualities and mental makeup into account, as well as social theories that take the environment the offender lives in into account, such as the offender's family structure, stress levels, and social learning. No one strategy seems to be able to address every situation, as is the case with many phenomena relating to the human experience.

**Psychological Theories:** It Focus on personality traits and mental characteristics of the offender. Personality traits include sudden bursts of anger, poor impulse control, and poor self esteem. Various theories suggest that psychopathology and other personality disorders are factors, and that abuse experienced as a child leads some people to be more violent as adults. Studies have found high incidence of psychopaths among abusers. Button has suggested a psychological profile of men who abuse their wives, arguing that they have borderline personalities (between psychotics and neurotics), which are developed early in life.

Gelles suggests that psychological theories are limited, and points out those other researchers have found that only 10% (or less) fit this psychological profile. He argues that social factors are important, while personality traits, mental illness, or psychopathic instincts are comparatively

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lesser factors. It should be noted that Borderline Personality Disorder (BPD) as used in this context is outdated. Whilst it was originally believed that a person's psychological state was between neurotic and psychotic it is now recognised that BPD is the most severe and intransigent of the personality disorders.

**Social Theories:** These theories look at external factors in the offender's environment, such as family structure, stress, and social learning, and includes rational choice theories.

**Resource Theory:** Resource theory was suggested by William Goode. Woman who are more dependent on their spouse for their economic well being. Having children to take care of, should they leave the marriage, increases the financial burden and makes it all the more difficult for them to leave. Dependency means that they have fewer options and few resources to help them cope with or change their spouse's behavior.

Couples that share authority equally have lower conflict occurrence rates and, when conflict does occur, are less likely to use violent means to resolve it. One partner may turn to abuse if they want to be in charge and have power in the marriage. This can involve pressure and threats, intimidation, emotional and financial abuse, isolation, making light of the problem and placing blame on the spouse, utilising the kids (threaten to take them away), and acting in a "lord of the castle" manner.

**Social Stress:** The difficulties that come with living in a family setting may make it worse. Social strains brought on by poor finances or other issues in a family may worsen already existing difficulties. Stress does not usually result in violence, although it may be one of the reactions that some people (but not all) have to stress. Domestic violence may be more prevalent in poor families and couples as a result of increased stress and disagreements about money and other issues. Some believe that because a guy may not be able to live up to his ideal of "successful manhood," he may fear losing respect and honour. According to theory, he might

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resort to misogyny, drug misuse, or violence against women if he cannot handle his finances and keep control over his wife..

**Social Learning Theory:** According to the social learning hypothesis, people learn by imitating and observing other people's behaviour. When a behaviour is reinforced favourably, it persists. One is more inclined to emulate aggressive behaviour if they witness it. If there are no adverse effects (such as when the victim submits to the assault), the conduct will probably persist. Violence frequently spreads cyclically from one generation to the next..

**Power and control:** Violence can develop in some relationships as a result of a perceived need for control and power, bullying, or social learning of abuse. Low self-esteem or feelings of inadequacy, unresolved childhood conflicts, the stress of poverty, hostility and resentment toward women (misogyny), hostility and resentment toward men (misandry), personality disorders, genetic tendencies, and socio-cultural influences, among other possible causative factors, have all been linked to abusers' attempts to dominate their partners. Most authorities seem to agree that abusive & personalities result from a combination of several factors, to varying degrees.

A cause list view of domestic violence is that it is a strategy to gain or maintain power and control over the victim. This view is in alignment with Bancroft's "cost-benefit" theory that abuserewards the perpetrator in ways other than, or in addition to, simply exercising power over his or her target(s). He cites evidence in support of his argument that, in most cases, abusers are quite capable of exercising control over them, but choose not to do so for various reasons. An alternative view is that abuse arises from powerlessness and externalizing/projecting this and attempting to exercise control of the victim. It is an attempt to 'gain or maintain power and control over the victim' but even in achieving this it cannot resolve the powerlessness driving it. Such behaviours have addictive aspects leading to a cycle of abuse or violence. Mutual cycles develop when each party attempts to resolve their own powerlessness in attempting to assert control.

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### **Theories of Domestic Violence as developed in United States of America**

The earliest idea to be created in the United States said that women who stayed in abusive relationships were likewise mentally sick as well as males who abused women. This hypothesis was disproven. The number of violent relationships was much higher than the original theorists anticipated, and psychological tests refuted the idea that mental illness was the root cause of violence. In fact, psychological tests revealed that many batterers and their victims were classified as "normal."

Another idea contends that men who beat women do so because they were raised with such conduct. Boys who see their fathers beating their mothers are statistically more likely to beat their own wives (they are seven times more likely), but there is no statistically significant link between girls who witness battering and those who later become victims. Furthermore, a lot of men who experienced violence as children do not abuse their partners as adults.

According to a third idea, women who were repeatedly abused developed a "learned helplessness" that made it impossible for them to stop the abuse or leave the relationship. This notion is incompatible with the experiences of many women who actively work to ensure their safety, as well as the economic, social, and familial reasons why a woman could stay in the relationship. According to research, battered women use a variety of coping mechanisms and defence mechanisms to combat the abuse.

A fourth hypothesis, however, suggested that batterers engage in a "cycle of violence" that includes both aggressive and regretful episodes. Many battered women's experiences did not match the "cycle of violence" hypothesis. Many women claimed that their violent partners never changed and that violence was not cyclical but rather an ongoing part of their lives.

The present understanding of why violence against women occurs arose from these views. Through years of speaking with both victims and batterers, we have come to understand how and

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why males batter. This theory proposes that batterers exert and uphold control and influence over their victims by engaging in abusive and threatening actions.

The Domestic Abuse Intervention Project in Duluth created a schematic called the "Power and Control Wheel" that depicts the many tactics batterers use to exert power and control over their victims. The wheel illustrates the connection between physical and sexual abuse as well as the frequent use of compulsion, intimidation, and manipulation by batterers.

The prevailing idea at the time the major issue tackled and concentrated on was why men batter was based on psychopathology? When the battered women's movement in the United States started in the early 1970s? This hypothesis suggested that husbands who mistreated their wives had mental illnesses that might be treated with medicine or psychiatric care. However, researchers discovered that the behaviour of domestic violence offenders did not match the characteristics of people with mental illnesses. Only their intimate partners are targeted by batterers. Schizophrenia and other mental illnesses can cause people to become violent toward others as well as their intimate partners.

Initial studies also characterized battered women as mentally ill. The results of these first studies, however, were distorted because the studies examined women who were in mental hospitals; their batterers, who were calm and credible in contrast to their wives, were asked about the cause of their partners' condition and thus given an opportunity to minimize and deny their partners' account of the abuse. In reality, however, battered women are not mentally ill, and many of those who were institutionalized were misdiagnosed because of a failure to recognize or understand the physical and psychological effects of domestic violence. Researchers next theorized that violence was learned. They argued that men battered because they had learned violence in their families as children, and women sought out abusive men because they saw their mothers being abused. This was the "learned behavior" theory of violence. Yet women who witness domestic violence are not any more likely to be battered as adults. (A recent study

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reported by the Family Violence Prevention Fund does indicate, however, that women who were physically or sexually abused as children may be more likely to be abused as adults).

## CHAPTER - IV

### LEGISLATIVE AND JUDICIAL PERSPECTIVE

#### 4.1. The Meaning Of Legal Sanctions

In the framework of the social control process, which aims to preserve peoples' cultural traditions and strengthen social ties, the word "legal punishments" is rather significant. The term "sanction" is described by renowned sociologist Radcliff Brown as a social response to a behaviour pattern that is either approved or rejected. According to him, the concept of "sanctions" is crucial to social interactions since they offer a useful tool for controlling people's behaviour and bringing it in line with societal norms, usages, and practises. In other words, a penalty is a tool that aids people in upholding the social fabric.

When it comes to a sanction's practical importance, it might be said that it serves as a deterrence. Any violation of a norm triggers its activation. While it is typically used to signify a gesture of disapproval and a form of punishment for the prohibited activity, it is also a term used to indicate praise, acceptance, or reward for upholding the known and accepted rules of behaviour.

Thus, a sanction denotes the proper action that is taken to rectify the situation when a norm has been violated or to show approval when it has been followed. The idea of "sanction" is crucial to the legal system because it takes the shape of fines, remedies, or other legal avenues of relief and serves as a tool for enforcing compliance with social norms.

In its broadest definition, the word "sanction" refers to any action supported by a social structure that governs how people behave. The goal of a penalty is to change behaviour that is thought to be in line with societal standards and goals while also preventing behaviour that is out of line with them. Therefore, a penalty might have the goal of suppressing and ending a specific type of

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unwanted behaviour as well as the goal of preventing or discouraging similar behaviour in the future in the broadest sense. In Roman law, the term "sanction" originally referred to a punishment meted out to someone who disobeyed the law. This specific meaning of the word is still used today, particularly in municipal law.

The term "sanction" is frequently used in a more general sense when referring to international affairs. When we say the Security Council is imposing sanctions, what we really mean is that it is acting within its authority to stop any State from violating international law. Depending on the type of law that was broken, the United Nations' organs sometimes take criminal measures and other times take civil ones. The penalties can occasionally be administrative in nature.

Legal Sanctions, which are actions taken in civil and criminal court to correct violations of domestic environment behaviour rules, are relevant to the issue of domestic violence. The norms are primarily of a civic nature when it comes to this particular Act. Now is a good time to go over some of the key provisions of the laws governing both criminal and civil wrongs.

An essential component of the Indian legal system is the separation of civil law from criminal law. Criminal law deals with offences and their penalty, whereas civil laws deal with people's rights and obligations and what is required to protect them. When someone commits a crime, the State assumes responsibility for the investigation, the gathering of evidence, the legal defence of the case in court, and the imposition of the punishment. Criminal offences include robbery, murder, and kidnapping, for instance. The Indian Penal Code deals with criminal offences (IPC).

The methods involved in a civil trial are very different from the processes used in a criminal trial. The "level of proof necessary in criminal proceedings is significantly greater than in civil ones" is a significant distinction. Allegations and facts must be proven "beyond a reasonable doubt" to prevent the punishment of innocent individuals because criminal law is fundamentally concerned

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with concerns of punishment. In civil matters, the "balance of probability" is carefully considered by the courts before choosing who should get a verdict.

However, there are rare circumstances where both criminal and civil law are applicable. Physically harming a wife or daughter-in-law or subjecting her to cruelty in a marriage is not only a civil offence that allows for divorce (referred to as a "matrimonial offence"), but it is also a crime under the Indian Penal Code for which a person may be imprisoned. Through changes to the Indian Penal Code and the Evidence Act, the laws addressing domestic violence have become exceedingly strict.

In recent years, there have been lots of complaints and allegations regarding the abuse and misuse of these laws by unscrupulous families and the inability of genuine victims of violence to get redressal despite such strong laws in the woman's favor. Keeping in view the distinction between the civil and criminal law and the general idea of sanction explained above, the measures prescribed in the Protection of Women from Domestic Violence to prevent the problem of domestic violence and to provide remedies to aggrieved women have been discussed in this chapter. The Act is primarily meant to provide protection to the wife or female live-in partner from domestic violence at the hands of the husband or male live-in partner or his relatives, the law also extends its protection to women who are sisters, widows or mothers. Domestic violence under the act includes actual abuse or the threat of abuse whether physical, sexual, verbal, emotional or economic. Harassment by way of unlawful dowry demands to the woman or her relatives would also be covered under this definition.

#### **4.2. Significance And Need For The Act**

According to the 2011 census, there were 900 million women in India, or about 50% of the country's overall population. Even with such a large margin, Indian women's social status is not very favourable. Why is the question? Despite being equal at birth, people are never treated equally. Gender bias or unequal treatment of women is not a recent phenomenon. If our

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mythology is used as a guide, it demonstrates the gender bias that pervaded India. Goddesses Sita or Draupadi as portrayed in the Epic both had to submit to this unfair treatment. Women are still frequently the targets of violence today.

The use of force against someone is referred to as violence. Violence against women is merely the destruction of creators, even if women are the ones who give life to humans. Simply said, violence against women is the eradication of creators. Since ancient times, India has continued to conduct many sorts of biological and psychological violence against women. The complete dependence of women on men in the male-dominated society is the root cause of this phenomenon. According to Hindu Law, in a patriarchal family, the husband has the full authority to discipline his wife if she disobeyed social expectations.

The facts on the violent incidents in our nation shows how serious the issue is. 84% of doctors, or the vast majority, are engaged in performing abortions on female foetuses. According to a government study from 1986, one doctor typically evaluates 270 foetuses per month. Additionally, the number of abortions involving female foetuses was rising by 20,000 annually. Prior to a woman's birth and up until the moment of her death, crimes against her are committed. A female cannot even be born in this day and age. Female foeticide is now a common problem. She needs to get used to her parents picking on her and her brothers from the time she is born throughout her youth.

After getting married, she has obligations to her husband, her family, and her children. She also needs to be on time for work and meet her boss's expectations. A newspaper would be incomplete without reporting on crimes against women like molestation, bride burning, and dowry deaths. Some girls' lives are at danger even at home. A lot of the time, the girl's life is made into a nightmare by her father, father-in-law, brother, brother-in-law, uncle, and neighbour. A baby cannot be guaranteed security since the male group as a whole has become so ruthless.

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Gender crimes have been happening for a while. Since ancient times, there have been crimes against women. The main issue raised here, violence against women, occurs across all socioeconomic and age categories in every society. Any custom that places women in inferior roles within the family or community has the potential to turn violent. Concerns for women or children are prioritised over the allegedly sacred nature of conventional marriage, inflexible notions of conjugality, and patriarchal traditions of structure. Rape and domestic abuse account for nearly 5% of all diseases affecting women in the 15-to-44 age range, according to a sobering estimate from the World Development Report. Here, sickness includes both physical and mental disorders. It doesn't need to be said that these numbers may only be a small portion of the actual physical and somatic dysfunction caused by violence. According to police statistics in India, a woman is sexually assaulted every 34 minutes, molested every 26 minutes, kidnapped every 43 minutes, and murdered every 93 minutes.

A year after it was put into effect, the Prevention of Domestic Violence Act, 2006, has had poor outcomes, with the state governments' delayed response and lack of knowledge being listed as the main causes. According to the National Family Health Survey, between the ages of 15 and 49, one in three women experience physical abuse, and one in ten experience sexual assault.

The deteriorating conditions for women have been discussed in parliament. Numerous platforms have focused on the issues facing women. In 1995, Beijing held extensive talks and issued a number of resolutions recognising the rights of women. The political and social reformers have been motivated to consider women by the twenty-first century. In India, women were compelled to kneel before their male relatives due to bad customs, the orthodox matrimonial system, and the caste system. Women have been prevented from progressing to the point where they could challenge the dominance of men by the male-dominated society. The political reservations or economic safeguards are not enough for women for their all round development. The state of women's rights has been discussed in parliament. Women's concerns have received a lot of attention on various venues. Beijing undertook lengthy negotiations and passed a series of resolutions recognising women's rights in 1995. The twenty-first century has encouraged

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political and social reformers to take women into account. In India, because of unfavourable traditions, the traditional matrimonial system, and the caste system, women were required to bow before their male relatives. The male-dominated culture has prevented women from developing to the point where they could contest men's dominance. Political restrictions or economic protections are insufficient to allow women to fully develop.

#### **4.3 Salient Features Of Domestic Violence Act, 2005:**

By providing an extensive definition of "domestic violence," the Protection of Women from Domestic Violence Act of 2005 has provided a new depth to the concept of domestic assault, including spousal violence and even marital cruelty. The Act's definition of domestic violence includes attacks on women by their siblings as well as their husbands or parents. Domestic violence, as defined by Section 3 of the Act, is defined as real abuse or the threat of abuse that is sexual, physical, mental, verbal, or emotional. The concept also includes harassment of the woman or her family members through illegitimate dowry demands. The overall facts and circumstances of the case shall be a guiding factor in deciding whether any act, omission, commission, or conduct of the responder constituted "domestic violence." The definition includes "economic abuse" as well as "verbal and emotional abuse," which refers to any act or conduct that causes bodily pain, harm, or danger to life, limb, or health or impairs the health or development of the aggrieved person. It also includes assault, criminal intimidation, and criminal force. The term "economic abuse" refers to the deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom, whether payable pursuant to a court order or otherwise, or which the aggrieved person needs out of necessity, including but not limited to household necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related

The section also takes care to prevent the respondent from selling household items, alienating property owned by the aggrieved person, whether jointly or separately, including valuables,

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shares, securities, bonds, and the like, as well as any other property in which the aggrieved person has an interest or is entitled to use as a result of the domestic relationship or which may be reasonably required by the aggrieved person, her children, or her stridhan. Additionally, it forbids or limits continuous use of resources or amenities that the harmed party is entitled to use or enjoy as a result of the domestic relationship, including use of the joint home. In addition, "sexual abuse," which refers to any sexual behaviour that violates a woman's dignity in any way, has been specifically included in the definition of "domestic violence."

Section 3 calls for the Magistrate to use judgement in determining whether any act, omission, commission, or conduct by the respondent qualifies as "domestic violence" for purposes of the aforementioned section. The Magistrate is also required to take into account the overall facts and circumstances of the case. Simple marital discontent brought on by indifference, neglect, withdrawal from spouse's company, and cessation of sexual relations may even be a chronic condition, but this has never been enough to prove matrimonial cruelty. To establish such cruelty, only situations of the most extreme nature and total impossibility of compromise can be taken into consideration.

Cruelty is defined as deliberate, irrational behaviour that endangers another person's life, limb, or physical or mental health or that causes a reasonable fear that they might do so. According to Halsbury's Laws of England, "If the Court finds that one spouse has, by repugnant conduct or departure from the normal standards of conjugal kindness, caused injury to health or a reasonable apprehension of it on the part of the other spouse then it is cruelty, if a reasonable person after taking due account of all the circumstances of the case would consider that the conduct complained of is of such grave and weighty in nature that the other spouse has suffered injury to health or a reasonable. Even though a course of action is not specifically intended to harm the other spouse, it may nevertheless constitute cruelty if it is carried out with a callous disregard for that spouse's sentiments and, of course, if it threatens their health. However, it should be noted that it would not be safe to adopt English rulings on all matters of cruelty due to the disparities in social structures, moral standards, cultural norms, way of life, and economic standards. The

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cumulative impact of the facts and circumstances in each case will determine whether or not it is applicable as viewed and evaluated in accordance with the social mores, traditions, and usages.

In *Umabai v. Chittar*, pointing out this important factor, it has been rightly observed that, "The Courts should be extremely careful while seeking assistance and guidance from English decisions or even Indian decisions on any laws, now in force or previously in force, and should not follow them blindly, particularly when dealing with persons whose manners, customs and mode of life may be different in those of the parties concerned in those decisions."

Various forms of cruelty, including "Muslim cruelty," "Christian cruelty," "Jewish cruelty," and so forth, are not recognised under Indian law. The criteria for determining whether or not someone is being cruel are based on universal and humane principles, i.e., the husband's actions must not jeopardise the wife's physical or emotional well-being. The degree of alleged cruelty may be significantly influenced by the parties' way of life, their economic and social circumstances, their culture, and the human values that are significant to them.

Each case must be evaluated in light of its unique facts. According to the social position of the parties involved, their economic circumstances, and other factors, the definition of cruelty has changed over time, from place to location, and from person to person. The answer to the question of whether the act complained of was cruel must be evaluated based on the totality of the circumstances and the parties' marriage relationships. In this context, there are many additional elements or considerations that must be made, such as culture, temperament, and social standing.

All these factors need to be considered for judging the conduct complained of in relation to the fact as to whether it amounts to matrimonial offence of cruelty." Similar was the view taken in *Putal Devi v. Gopi Mandal* . That on the face of it there may be good relations between the spouses, and the husband or the wife may not prima facie do anything directly against the other, nonetheless, the behavior may be such as to cause an extreme mental distress and

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consequent detriment to health. What acts will constitute such mental agony will obviously depend upon the circumstances of each case, taking in to account several factors, such as, environment, status in society, education, cultural development, local custom, social condition, physical and mental condition of the parties, etc.

One crucial factor to take into account when determining whether or not something is cruel is if it results from a pattern of conduct or whether there is a goal behind it. As Denning C.J. noted in the case *Timmins v. Timmins*. "It is widely accepted that cruelty requires an element of purpose to harm, if not as an element itself. The judge might be content to rule against finding cruelty in the absence of malicious intent." However, depending on the circumstances, sometimes even unintended behaviour qualifies as cruelty.

Lord Normand's observation in this respect seems to be very apt, when he says, "*...actual intention to hurt is a circumstance of peculiar importance because conduct which is intended to hurt may strike with a sharper edge than conduct which is the consequence of more obtuseness or indifference.*" In the above case, Lord Merrimen was of the view that though actual intention to injure was not an essential factor but actual intention to hurt may have in doubtful cases a decisive importance. Justice Sheerman makes this point more clearly in *Hedden v. Hedden*, "the question is not whether a spouse intended seeks the pride of winning the case. Here is that the court has carefully to bear in mind that the expression cruelty is employed in the Act in limited sense." The Court, as observed by the Supreme Court in *Narayan Ganesh Dastame v. Sucheta Narayan Dastame*, in matrimonial cases is not concerned with ideals in family life or has to deal not with an ideal husband and an ideal wife but with the particular man and woman before it. The ideal couple or a near ideal one will probably have no occasion to go to a matrimonial court, for, even if they may not be able to drown their differences their ideal attitude may help them overlook or gloss over mutual faults and failures. Lord Reid has also observed in *Gollins v. Gollins*"

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*"In matrimonial affairs we are not dealing with objective standards; it is not a matrimonial offence to fall below the standard of the reasonable man. We are dealing with this man or this woman."* Here, it will be apt to quote from American Jurisprudence.

*"The question whether the misconduct complained of constitutes cruelty and the life for divorce purposed is determined primarily by its effect upon the particular person complaining of the acts. The question is not whether the conduct would be cruel to a reasonable person or a person of average or normal sensibilities, but whether it would have that effect upon the aggrieved spouse. That which may be cruel to one person may be laughed off by another and what may not be cruel to an individual under one set of circumstances may be cruelty under another set of circumstances."*

As a result, while occasionally losing control and using foul language, temperamental incompatibilities, or a lack of reciprocal love and affection are not acts of such nature as to constitute cruelty, other situations, such as refusing to fulfil matrimonial obligations, spouse slapping for nighttime disturbances, or making suicidal threats, may qualify. The main guideline in all cruelty cases is to take into account all aspects of the marriage. This rule is especially important when the cruelty involves hurtful criticism, complaints, accusations, or taunts rather than physical acts.

It may be psychological, such as coldness and indifference toward the wife, refusing her companionship, hatred and abhorrence for the wife, or physical, such as acts of violence and indifference to sex without a good reason. It must be demonstrated that one spouse in the marriage engaged in misconduct that the other spouse could not reasonably be expected to put up with, regardless of the consequences, and that the misconduct resulted in harm to the spouse's health. In cases of cruelty, there are two sides to take into account. She is to be called upon to put up with the behaviour from the wife side, who is the petitioner before the Court. Was this behaviour justified from the husband's perspective? The Court must next assess whether all of the deplorable behaviour together amounted to cruelty. Whether the cumulative behaviour was

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severe enough to suggest that from a reasonable person's point of view after taking into account any defence the husband/respondent may have under the circumstances would rely on whether the petitioner should not be required to put up with the behaviour.

According to section 13(1)(i)(a) of the Hindu Marriage Act of 1955, cruelty is a reason for dissolving a marriage and is defined as willful and unreasonable behaviour that endangers someone's life, limb, or health, either physically or mentally, or that gives rise to a reasonable fear of such harm. To put it another way, for something to qualify as cruelty, the other party had to have been subjected to willful treatment that caused physical or mental harm, either directly or indirectly, in a way that made the couple's continued cohabitation harmful or damaging in light of the circumstances.

Cruelty can therefore be defined as a pattern of behaviour in which one action has a negative effect on another. However, what qualifies as necessary mental cruelty for divorce does not depend on the quantity of such incidents or just on the ongoing pattern of such behaviour, but rather on the severity, gravity, and stigmatic impact of it when meted out even once the deleterious effect of it on the mental attitude, would be necessary for maintaining a conducive matrimonial relationship between the spouses.

- Absence of purpose should not matter if the act complained of would otherwise be viewed as cruel by common sense in human affairs.
- According to section 18 of the Hindu Adoption and Maintenance Act of 1956, a wife is entitled to maintenance for the duration of her husband's life as well as to demand separate housing and maintenance from him if her husband has left her without justification, against her will, or if he is purposefully ignoring her or treating her cruelly enough to make her feel that remaining with him would be harmful or injurious. If he maintains a concubine in the same home that his wife lives in or shares a residence with, she may also assert her right under Section 18.

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According to Section 17 of the Act, regardless of any provisions to the contrary in other laws, every woman in a domestic relationship has the right to live in the shared household, and the respondent is not allowed to evict or exclude the aggrieved party from the shared household unless doing so follows the legal process. The definition of "shared household" under Clause (s) of Section 2 is, "*a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved persons has any right, title or interest in the shared household.*"

According to Section 19(1) of the Act, regardless of whether the respondent has a legal or equitable interest in the shared household, the Magistrate may issue a residence order prohibiting the respondent from disposing of or otherwise disturbing the aggrieved person's possessions from the shared household after concluding that domestic violence has occurred. According to Section 19(1), the Magistrate is also given the authority to order the respondent to leave the shared home [Clause (b)] and to forbid the respondent or any of his family members from entering the part of the shared home where the aggrieved person stays [Clause (c)]. The Magistrate may also enjoin the respondent from selling, giving away, or encumbering the shared household [Clause (d)] and from giving up his rights therein [Clause (e)] without the Magistrate's permission. Alternatively, the respondent may be ordered to provide the aggrieved person with alternate housing that meets the same standards as the shared household or to pay rent for it, as necessary, depending on the circumstances.

The Magistrate is also given the authority to impose additional restrictions and issue any other directives under Section 19's Subsection (2) in order to safeguard the aggrieved person or her child. Additionally, said section's subsection (3) allows for the respondent to sign a bond to stop

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domestic abuse. Any order made in accordance with subsection (3) will be treated as if it were made in accordance with Chapter VIII of the Code of Criminal Procedure of 1973.

All marriage statutes recognise the man's obligation to support his wife for the rest of her life and his minor children. This obligation stems from the simple fact that there is a relationship between the parties and is there whether or not he has any property. Additionally, according to the law, he must support his wife if she lives apart from him and has a good reason to be unable to support herself. While matrimonial statutes acknowledge the husband's duty to support his wife, they also mention the wife's duty to submit to his authority and continue to be under his "roof and protection". The husband has the right to determine where the couple should reside; if the woman objects, she is guilty of desertion unless she can demonstrate that she has a valid reason for doing so. The right of women to live in the marriage home, however, was not recognised by any matrimonial statute. According to widely held belief, the husband is the Lord and Master of the matrimonial home and determines who will have the right of occupation.

The law is not entirely clear when it comes to a wife's right to ask for a part of the marital home or to claim housing there as her right. The Hindu Marriage Act of 1955, Section 27, grants the Court the authority to divide any property that may have been given to the couple at or around the time of their marriage. This property may be owned jointly by the husband and wife, and the decree in the proceedings must include such a division. However, only jointly owned assets of the spouses that were presented at or around the time of marriage are covered by this section's application.

The remedy for such complaints lies before the Civil Court in the form of a separate lawsuit. The Court has no authority under the aforementioned section to deal with the property that exclusively belongs to either the husband or the wife.

### **Judicial review**

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As observed by the Supreme Court in *B.R. Mehta v. Atma Devi*, In India, there is no equivalent of the Matrimonial Homes Act 1967, which governs spouses' rights to the matrimonial home in England. deals with the rights of occupation in matrimonial homes, and Para 1047 deals with and provides that where one spouse is entitled to occupy a dwelling house because of any estate, interest, contract, or law that grants him or her the right to remain in occupation, and the other spouse is not so entitled, then the spouse not so entitled has certain rights, such as the right to remain in occupation and not be evicted or excluded from the dwelling house, or an equivalent right. But in India, these rights are not recognised. However, the Supreme Court noted in the same ruling. "It may be time to grant the wife or the husband a right of occupation in a truly matrimonial home, in case the marriage breaking up or in case of strained relations between the husband and wife, given the change in circumstances and complex problems emerging."

However, the Supreme Court correctly noted in its recent ruling in S.R. Taruna Batra that the aforementioned statement is only an expression of hope and does not establish any laws. A law can only be made by the legislature, not by the court. Regardless of a judge's personal opinions, the courts do not have the authority to make or change the law. Instead, judges must exercise judicial restraint. In any case, the rights that may be available under any law can only be as against the husband and not against the father-in-law since there is no similar law in India to the British Matrimonial Homes Act 1967.

The claim for the right to the marital home is typically seen as a conflicting claim, particularly in situations when the woman is seeking protection from domestic abuse. It is maintained that she can only make a claim for housing in the matrimonial home if she discovers violence in the house she shares with her spouse. She must, at best, vacate the marital residence before filing for divorce on the basis of cruelty. However, giving up her claim to the marital house could frequently lead to a life of poverty if she has no other means of support or alternative place to live. In these situations, defending the right to the matrimonial home is vital.

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What is required is that the two claims—right to protection from bodily harm or domestic violence, right to life, liberty, and the pursuit of happiness, right to the matrimonial home, and right to shelter and survival—be not seen as competing but as two distinct claims arising from the marriage contract itself. The protection of these two rights, which are guaranteed by our Constitution, rests with the Court. The Court is not permitted to favour one over another. With a court-issued protective order in hand, she may continue to reside in her marital home.

The concept of "community of property," which states that spouses have an equal share in all assets amassed during the course of marriage, has been the basis of ground-breaking judgments that have acknowledged and secured this right for women, even though there was no such statutory protection as such prior to the passage of the current Act of 2005. It has been explicitly held that in cases of matrimonial conflict or even after the grant of divorce, a wife can continue to live in her errant husband's home until the terms and conditions of maintenance and property are resolved. This acknowledges women's contribution to the matrimonial home through services rendered as "housewives." The Calcutta High Court in a recent decision in the matter of *Mala Viswanathan v. P.B. Viswanathan*, while upholding the right of the wife to reside in the matrimonial home has observed.

“When a question relating to grant of injunction restraining one of the spouses from entering into the matrimonial house comes before the Court, the Court has to deal with the same with utmost care and caution. Once a person becomes part of the house by reason of marriage, her right to reside in matrimonial house cannot be denied. Marriage confers a right to reside in the matrimonial home on both spouses as well as their offspring. Such a right is a joint and indivisible right which cannot be taken away. The marriage carries a liability and right to maintenance and maintenance includes residence. Hence the spouse who has title to the house cannot deny the other the right in the matrimonial home.”

In *Anu Seth v. Rohit Narain Seth*, According to the Delhi High Court, the husband has a duty under the law to give his wife a place to live and to have access to their marital house. It has also

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been ruled that the husband's new residence does not automatically become the matrimonial home just because he moves out of the former one to establish a new one.

The A.P. High Court in the matter of *B.H.P.V. Ltd., V. Workers Union Visakhapatnam*, The husband is required by law to give his wife and children a place to live, the court ruled. The High Court noted that because the injunction order called for deducting the rent from the husband's salary from and out of the amount of maintenance awarded to the wife and children, neither the company nor the husband could be said to have suffered any irreparable harm as a result of the interlocutory order. The High Court went on to say that courts in the Socialist Democratic Republic are not allowed to impose public pressure on people to use their property rights without first considering the potential harm such activity would do to other people's freedoms to pursue pleasure. It would constitute to acting against the fundamental aims of the Constitution as listed in the preamble and other portions of the Constitution, as well as giving public force for the elimination of a basic right that is recognised by the Constitution. Therefore, courts must consider whether the exercise of ownership rights is unfairly interfering with others' right to pursue their own happiness as well as whether such exercise is causing others unwarranted pain and suffering. Therefore, as each instance arises, courts must consider the motivation and goal behind the exercise of ownership rights.

In *Abdul Rahim Undre v. Padma Abdur Rahim Undre*, The wife was forbidden from entering the marital home, and a lawsuit was filed to declare that the marriage had been dissolved by talaq. The Bombay High Court ruled that although the marriage was still technically valid, it had irreparably broken down. Since the husband had not offered the wife alternative housing, it was only just and fair that the flat, whose ownership was also a subject of legal dispute, be divided and the wife given a specific portion of it for her residence. The court further noted that the children would be able to enjoy their parents' company when they returned home if the parties were permitted to live separately in the same home. In *A. vs B.* According to the High Court, the courts have the authority to issue an injunction preventing the spouse from accessing the matrimonial home while deciding a matrimonial home.

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In *Ajit Bhagwandas Udeshi v. Kumud Ajit Udeshi*, After roughly 20 years of marriage, the husband requested a divorce. The Family Court supported the wife's ability to live in a portion of the marital house while awarding the order and awarded maintenance to her. In an appeal, the High Court upheld the decision of the family court and stated that in order to grant the divorce, the wife's right to her home had to be protected because she had paid "Pagadi" for the property and had no other place to live. As a result, the High Court decided that the order protecting her right to shelter could not be deemed perverse or unjustified.

In *Sunita Shankar Salvi v. Shankar Laxman Salvi*, After filing for divorce jointly, both partners later decided to divorce amicably. But the battle over the residential property was still open. While the wife claimed that the apartment, which served as the couple's home, was acquired jointly and that both parties had equal right, title, and interest in it, the family court determined that because the wife did not pay any consideration or costs for the acquisition of the property and her name was added at the husband's request, she did not acquire any right, title, or interest in the apartment. After making such an admission, he was unable to argue the opposite. The wife was declared a joint owner with an equal share in the marital home by the court, which noted that because the wife's name was listed as one of the owners in the title deed, it must be assumed that she was entitled to a share of the property equal to that of the other owners. As a result, the family court was not justified in refusing to recognise the wife's 50% ownership interest in the flat. If the property could not be divided, the High Court further ordered that it be sold and the earnings split evenly between the spouses.

By allowing a wife to obtain an injunction against dispossession and prohibiting a husband from ejecting his wife, Section 17 read in conjunction with Section 19 of the current Act has broadened the scope of the law in India in this area and formally recognised a wronged wife's right to survival and shelter. After receiving statutory protection, the right is no longer arbitrary or reliant on an understanding and sympathetic judge. The statutory protection that the Act gave her will significantly contribute to women's emancipation. If the husband or his relatives tried to

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harm her, while she was living in shared household, he will have to pay a fine and may be subjected to imprisonment.

In the case of *Lalita Toppo v. the State of Jharkhand and Anr.* (2018) which was heard by the Supreme Court of India, The Complainant, who wasn't the Respondent's legally married wife, petitioned the court to request maintenance under the Protection of Women from Domestic Violence Act of 2005, assuming that she wouldn't be eligible for it under Section 125 of the Code of Criminal Procedure, 1973.

The appellant in this case was living with her partner, with whom she had a child. The Gumla Family Court granted the appellant's request for support when the marriage divorced, granting her Rs 2000 per month and Rs 1000 for her child. In response to the appellant's appeal, the High Court reversed the family court's decision and ruled in the partner's favour. Following that, the Appellant went to the Supreme Court.

A live-in partner will be entitled to even more remedy than that provided for under Section 125 of the Code of Criminal Procedure, 1973, according to a three-judge Supreme Court panel made up of the then-CJI Ranjan Gogoi, Justices U.U. Lalit, and K.M. Joseph. The bench referred to the provisions of the Domestic Violence Act and stated that even though the petitioner in this case is not the legally married wife and is not therefore required to be maintained under Section 125 of the Code of Criminal Procedure, she would have a remedy to seek maintenance under the Act.

It was also observed by the Court that domestic violence, according to the provisions of the Domestic Violence Act, also includes economic abuse.

*Inder Raj Malik v. Sunita Malik*, In this particular instance, If a person might be found guilty under both Section 4 of the Indian Penal Code and Section 498A of the Dowry Prohibition Act, the Delhi High Court had to rule on that issue. The Court determined that a person is not subject to double jeopardy if they are found guilty under both Section 4 of the Dowry Prohibition Act of

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1956 and Section 498A of the IPC. The Court determined that Section 498A, IPC, and Section 4 of the Dowry Prohibition Act are separate laws since Section 4 of the Dowry Prohibition Act only punishes acts of cruelty committed against newlywed women, whereas Section 498A also punishes the mere demand of dowry. This leads one to the conclusion that a person is liable for prosecution under Section 4 of the Dowry Prohibition Act and Section 498A of the Indian Penal Code.

***Hiralal P. Harsora and Ors v. Kusum Narottamdas Harsora and Ors***, The adult man was eliminated from the definition of "Respondent" by the Supreme Court, who ruled that it was not based on any discernible distinction that had anything to do with the goal that was being pursued. In the same case, the Supreme Court made it clear that women and children are among those who may file claims for relief under the DV Act. The phrase "adult male person" in Section 2(q) cannot be used to limit the word "Respondent" in Section 2(q) or those who can be considered perpetrators of violence against women/against whom remedies under the DV Act are enforceable (q). As a result, even against female members and minors, the DV Act's remedies are available.

***Sandhya Wankhede v. Manoj Bhimrao Wankhede***, But in the aforementioned case, the Supreme Court answered the query by holding that Section 2(provision)'s does not bar female relatives of the spouse or male partners from filing a complaint under the Domestic Violence Act. So, in addition to the adult male, the adult male's female relative may also be the target of complaints.

***V.D. Bhanot v. Savita Bhanot***, The Supreme Court agreed with the reasoning given by the HC and held that:

“In our view, the Delhi High Court has also rightly held that even if a wife, who had shared a household in the past, but was no longer doing so when the Act came into force, would still be entitled to the protection of the Domestic Violence Act, 2005.”

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A suitable portion of the petitioner's home and 10,000 rupees per month for her support were granted by the court due to the respondent's advanced age. The Act should be interpreted in favour of women who are domestic violence victims because its purpose was to protect women from abuse. The Legislature wanted to extend protection to women who had experienced domestic abuse before the Act was passed. The definitions of "aggrieved individuals" and "domestic relationship" in the Act make this clear. Since the Domestic Violence Act of 2005 is a civil remedy and the criminal offences that are punishable by it cannot have occurred before it took effect, applying its provisions retroactively does not violate Article 20 (1) of the Constitution.

*Rajesh Kumar and others v. the State of U.P*, 2017, In this case, it was decided that no one would be imprisoned until the committee gave the complainant justice, and in order to safeguard the innocent person, or the spouse as well as their relatives, the Court directed the formation of a "Family Welfare Committee" to deal with Section 498A of the IPC. The committee's main objective is to distinguish between legitimate and fraudulent cases. to assist those who have been the target of bogus complaints. The accused who wasn't in the jurisdiction must attend through video conference rather than being excused from making a personal appearance.

The egregious misapplication of Section 498A of the IPC has been acknowledged by the Supreme Court. In this case, the Supreme Court ruled that the dowry-related offences should be prosecuted and that the husband and married man should not be harassed or persecuted any more. Additionally, this group wants to ensure that the rights of innocent persons are restored.

## **Review**

### **The Dignity of Women and its protection from Indecent Representation**

The indecent portrayal of women (prohibition) Act of 1986 is a piece of legislation that was approved by the parliament. Society has a responsibility to treat women with respect and decency rather than making them the target of crude jokes and remarks. Women's bodies have

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inherent value, and people shouldn't treat them as mere objects of gratification or indulgence. Women's bodies are inherently attractive to those of the other sex, which can lead to sexual sensations and romantic ideas. It is normal, but entanglement in it must be discouraged.

Indecent representation of women is defined by the Act's section 2(c) as "depictions of the figure of a woman, her form of body, or any part thereof in any manner that has the effect of being indecent or derogatory to or denigrating women, or that are likely to deprive, corrupt, or otherwise harm the public morality or morals."

Both men and women in the society may feel upset by immoral ideas and sensations as a result of such depictions on numerous times. Public morals and mortality are disturbed as a result of obscene depiction of women.

Advertisements depicting women in a lewd manner are prohibited by Section 3 from publication or display in any form of advertising.

Indecent depictions of women are prohibited from publishing and postal delivery under Section 4. According to the Act, it is forbidden for women to be indecently represented. The legislation was created because of the way that women are portrayed and displayed by businesses and trade organizations, often at the expense of women's decency, in an effort to gain more customers. Commercial people are preoccupied with the idea of attracting customers, and they hold the firm belief that the attractive, seductive figures of women will draw attention from the general public and pique their interest in the goods they are selling. These individuals' dishonest behaviour is extremely upsetting to women in general and to the rest of society. As a result, the act allows for the seizure and destruction of those representations. Further. Sec. 6 specifies the punishment that should be applied to anyone who intentionally violates the restrictions in Secs. 3 or 4, which forbid the indecent representation of women. According to the law, if found guilty, the offender

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faces a maximum sentence of two years in prison and a fine of 2000 rupees. If found guilty again, the sentence will be increased.

Companies are punished under Section 7 for committing crimes, and anyone who was in control of or accountable for the company's commercial operations at the time the crime was committed, as well as the firm itself, is likewise considered guilty of the crime and is subject to legal action and punishment. When a company violates the law and it is established that a director, manager, secretary, or other officer of the firm was negligent in allowing the violation to occur, the director, manager, secretary, or other officer will be prosecuted and punished as necessary. The crimes are punishable.

However, Section 9 safeguards actions committed in good faith. If something was done in good faith, then no lawsuit, criminal investigation, or other legal action shall be brought against the Central Government, any State Government, or any of their personnel.

Despite its good intentions, the Act prohibiting degrading depictions of women cannot be halted because the public does not appear to support its execution. The majority of the time, the average citizen appears to appreciate indecent representations and makes no attempt to report them to any public authorities. The general public is completely unhelpful in this regard.

Putting aside for a moment the fact that most people do not ask for government assistance. It is almost clear that the law enforcement agency, in spite of having access to intelligence and police informers, has engaged in widespread arrests of innocent persons in order to make money. As a result, this piece of legislation has done much to uphold the status and dignity of women. Additionally, it is recommended that the police monitor the city and take the appropriate steps to protect the populace from dirty and offensive depictions of women.

### **Domestic violence protection act:**

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There are countless rights that exist, and it is difficult for lawmakers to pinpoint each one in the context of the society or group that women are a part of. In other communities, women might previously have had some rights to a particular way of life that would be regarded as being less obvious. In a specific society, a certain behaviour of women may be seen as inconsequential and commonplace. However, the same behaviour may be viewed differently and as unacceptable in one society and in another. The social, economic, and religious doctrines and ideas that have been adopted and accepted in a particular society determine whether or not a woman's behaviour is acceptable. Regarding how women should behave in a society, there are previously established rules and customs in every civilization. As a result, women are either allowed or prohibited to do specific things depending on what the society in question permits. However, the ideas of women's rights as they are largely and universally accepted transcend the limited societal notion. The right of women to live their lives in peace, make their own choices, and raise their families in accordance with their preferences and in accordance with the rights of all women generally must be considered with caution. When the behaviour of women in a particular society conflicts with the rights of women as universally acknowledged, the former takes precedence.

The rights of women are said to have vanished in societies where they are denied or restricted, including the rights to education, work, and other related rights. As a result, the legislative branch acts to fix the flaw. The right of a woman to choose her life partner, with whom she can live until the end of her days, is obviously violated when a society insists that the married life of women shall be determined and decided by the elders of the community, without obtaining the consent of women. No woman in this situation may be forced to wed a man against her will, according to the law. She might receive advice from the elders to help her choose her husband, though, given her lack of worldly knowledge. Whatever the religious or customary laws may be in this country, they must not be followed if they conflict with a woman's right to marry.

According to some religious law, women are not allowed to own, inherit, or acquire property. She was never meant to be financially or economically independent; rather, she was meant to

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depend on men, specifically her father, husband, and son, at various points in her life. Her right to live independently and take care of her personal needs would be violated by such a denial of her property rights. Therefore, a legislator must revoke the aforementioned religious ban and acknowledge her right to property. Similar instances of women having their rights restored to them despite periodical concepts can be cited.

In this context, it will be deemed that providing a woman permission to engage in behaviour that might be detrimental to the harmony and wellbeing of society's constituents will benefit the continued existence of the society in which she lives. Since these two sectors guarantee the women's ability to live a confident life, the rights to education and employment should be seen as crucial ones. Since education leads to employment and separate income, a lack of education subjugates a person's place in society, making her dependent on others for her very survival. Without education, finding employment is impossible for women. There are societies that restrict education and employment, reducing people to nothing more than automatons; in these societies, the women's ability to live independently would be taken away. Since an unemployed woman must be in a man's custody and under his care because she becomes his slave. The women will also be allowed to participate in public life; they will be included in state administration concerns and may eventually be able to co-own the nation with men. They might serve the country and offer their knowledge in return, which might be advantageous for all women. Recognition of women's rights in light of a particular society will therefore be appreciated.

### **The Protection of women from Domestic Violence Act 2005**

The rights of women, which are protected by the Indian constitution, are better protected under this act. Within the four walls of the family home, women are demonstrating that they are powerless victims of all forms of abuse. Violence is typically committed by modern-day family members who are men and women equally. The international community has taken numerous steps to protect the protection and security of women in the family unit through different resolutions, declarations, and agreements. Domestic violence is defined in Section 3 as "any act

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that endangers the health, safety, life, limb, or mental or physical wellness" and includes physical abuse, sexual assault, verbal abuse, emotional abuse, and economic abuse. Furthermore, any form of harassment applied to a woman or anyone who is related to her in order to comply with an unlawful demand for dowry, other property, or valuable security.

Deprivation of economic resources to which the harmed party is entitled under any law or tradition gives the aforementioned abuses a broader meaning than is typically associated with them. Misappropriation of household goods and other valuable possessions will also count as financial abuse. The law calls for the appointment of officers such as protection officers in addition to regular police officers as service providers and magistrates to intervene on behalf of victims of domestic violence, as well as to address complaints, ensure protection in the future, and take action against offenders.

Protection officers' responsibilities are outlined in Section 9. It states that he must assist the magistrates in carrying out their duties and report domestic incidents to them, and that the protection officers must conduct a thorough investigation into any allegations of domestic violence and send copies of their findings to the relevant police officers. He will simultaneously ask the court to issue a protective order to the party who is requesting redress. Additionally, he must see to it that the harmed party receives legal representation in accordance with the 1997 Legal Services Authorities Act.

Additionally, he must arrange for a medical examination of the body of the party who was injured and send a copy of the medical report to the magistrate's office and the police station. The party who has been wronged must also be given financial relief by prompt execution in accordance with the steps outlined in the code of criminal process.

In accordance with Section 10, service providers may use any lawful means, including giving legal advice, medical care, financial aid, and other assistance, to protect the rights and entrust of women. This includes voluntary associations registered under the Society Registration or

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companies registered under the Companies Act. As a service provider for the Act, this organisation must register with the state government. He has the authority to write a report on a domestic incident and send a copy to the magistrate and the protection officer. He would set up the afflicted person's medical checkup and send the results to the police station and the protection officer. If necessary, he must take action to offer lodging facilities.

In accordance with Section 11, the federal or state governments are required to take all necessary steps to ensure that the Act's provisions receive widespread media coverage. Five periodic sensitization and awareness-raising sessions about the issues this Act addresses must be given to each police officer and member of the judicial services. As a result, the relevant Government must actively participate in carrying out this Act's provisions. The process for obtaining an order of relief is outlined in Chapter IV of the Redress of Grievances and Claims for Relief Act.

The magistrate is given the authority to consider complaints of violations of women's protection under Section 12. The complaint may be made by an aggressive person, a protection officer, or any other individual on behalf of a party who has been wronged. The court will then review any domestic incident report provided by the service provider's protection officer. The assistance of a protection officer or service provider shall be sought when independently evaluating the complaint so that he may conduct inquiry more effectively.

The reliefs envisioned by this section may include the issuing of an order for the payment of compensation or damages; however, such payment should not be provided in a manner that impairs the applicant's right to file a claim for compensation or damages for harms resulting from domestic violence. The magistrate must attempt to resolve the application within 60 days of the date of receipt of the application, and the application must be heard within 3 days of the date of receipt. The protection officer is to serve the notice of hearing date.

Therapy is provided for in Section 14 and the magistrate may order the applicant, respondent, or both to get counselling from any staff member of the service provider while deciding the

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application. Such a service provider must have the relevant expertise as dictated by the facts and circumstances of the inquiry.

The assistance of a welfare officer is provided for in Section 15; similarly, the magistrate conducting an inquiry may secure the services of a person, preferably a woman, whether related to the party who has been wronged or not in order to help him carry out his function. He may also seek the assistance of any individual who is working to promote family welfare.

So that he can have a complete and accurate understanding of the case before him, the magistrate may need all such help and assistance. If a case requires it, a magistrate will conduct an in camera hearing when appropriate.

The aggrieved person has a right to live in a shared household, according to Section 17. It is not necessary for a woman in a domestic relationship to have a right, title, or beneficial interest in a shared residence in order for her to live there. However, without following legal procedure, such ladies may not be kicked out of the joint household or any portion of it.

Protection orders are covered by Section 18. If a prima facie case has been established, the magistrate may issue a protection order in favour of the applicant and order the respondent to comply with the following instruction after giving the aggrieved party or respondent an opportunity to be heard during the course of the investigation.

The respondent might be barred from carrying out any domestic violence. He might be barred from participating in the conduct of such a domestic violence act. The complainant can once more be forbidden from going to the offended person's leisure area. The respondent shall not enter the school of, or any other location frequented by, the aggrieved person if the aggrieved person is a minor. The respondent is forbidden from making any attempt to get in touch with the harmed person, whether it be verbally, in writing, electronically, or over the phone. As the respondent operates a bank locker or bank account that is used, held, or enjoyed by both partners

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jointly or solely by the respondent, the respondent may be prohibited from alienating assets. Thus, a women's Stridhana or any other property owned by them jointly is included. If it is not to be used by the parties, a magistrate's order or permission must be obtained.

Respondents are forbidden from using violence against the victim's dependents, other family members, or anyone else who helps the victim escape domestic abuse. In addition, the protection order may generally forbid the respondent from performing any other act. This legal clause is a striking illustration of the legislature's genuine desire to protect the victim from further violations of their rights from all conceivable directions.

A residence order is provided for in Section 19. When deciding on her application, the magistrate may issue the following residency order. The respondent may be forbidden from taking possession of the person who has been wronged or disrupting their possession in the shared household. It is not necessary for the respondent to have a legal or equitable interest in the shared home. He might be instructed to leave the joint household. His family members may be prevented from entering any joint homes after being rescued. He might be prevented from abandoning or alienating the joint household. He might be prevented from going inside the same. He might be prevented from giving up his rights in the joint household without the magistrate's permission. He may be ordered to pay the rent for the same alternate housing or to secure the same standard of living for the aggrieved person as she did in the joint household.

However, a woman who feels wronged cannot be told to leave the joint household if she is a woman. In addition to the aforementioned, the magistrate may impose any more requirements or issue any other directives that are required to ensure the protection of the harmed party or any of their children.

For the purpose of preventing the crime of domestic violence, the magistrate may order the respondent to execute a bond with or without sureties, and such an order shall be understood to

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be an order under chapter VIII of the Criminal Procedure Code. The magistrate may also simultaneously issue an order mandating that the officer in charge of the closest police station provide the person who has been wronged with protection or assistance in carrying out the order on their behalf.

## CHAPTER – V

### CONCLUSION AND SUGGESTION

A summary of the research work, the researcher's findings, and his recommendations to improve the status of the law are presented in this chapter after a thorough examination of the nature and scope of Indian laws pertaining to domestic violence.

- **Summary Of The Research Work**

What constitutes "domestic violence" is the first question regarding the topic, and how the law has evolved into general and particular law at the national and international levels is the second. The answer to the first question must be found in a wide variety of behaviours that jeopardise the rights and interests of women. In this respect, the specific and local laws come after the general law of crimes in terms of providing evidence of the rule of law. As a result of the international events, the theme was reconceived in a way that allowed what had previously been considered a form of "private torture," or an injury committed by one person against another, to also be viewed as involving State responsibility and thus become a topic of international law. Due to the treaties, agreements, and declarations that had developed on this subject at the international level, the idea of domestic violence received worldwide implications.

In contrast to India, where domestic violence has been covered by the law since its inception in the form of criminal law, the Common Law of Torts was the most prevalent form of civil law in Western countries, particularly the United Kingdom. This particular area of law offered Writs as redress to those who had been wronged, and it was through these Writs that principles regarding the remedies that could be used in response to harmful behaviour by individuals in various relationships, particularly the domestic relationship, were developed.

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The two key components of the system of remedial justice at the time were the requirement that remedies for violence against women be pursued in accordance with the principles of civil law and the question of whether domestic violence was covered by the law.

The Common Law courts have occasionally held the position that a husband's aggression against his wife is not a punishable offence and that the Court had no further recourse. Domestic violence was, however, viewed as an actionable wrong after a shift in the courts' mentality and the realisation that violence, wherever and whenever it happened, is violence. Domestic violence became a widely accepted crime in the field of criminal justice when the two branches of law split and criminal law emerged as a fully fledged discipline.

Another development was the legislation on this specific topic, which made it possible for the creation of special laws on the topic. There are now special laws in English law, such as the Family Law Act of 1996, the Damages Act of 1971, the Protection Against Harassment Act of 1997, the Human Rights Act of 1998, etc., that aim to give the subject of individual rights and the remedies for their violation a little bit more of a scope.

Although there is a full-fledged area of criminal law dedicated to dealing with domestic violence, the arrival of civil law, which deals with protecting women's rights and interests from attackers who engage in violent behaviour, has had a significant impact in recent years. The main goal of each of these legal initiatives has been to uphold the standing of women in society, and married women's status in particular. There are a number of new remedies, including occupancy orders, residency orders, custody orders, compensating orders, etc., and every effort is being made to create a remedy that is as effective and efficient as feasible. The creation of new institutions like protection officers, service providers, and counselors, among others, represents a new development in the remedial justice system. The new institutions and remedies are not a replacement for the traditional institutions that operated under the auspices of criminal law; rather, they are an addition to the criminal justice institutions that seek to offer additional

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remedies under civil law after discovering that the criminal law remedies were insufficient in a number of circumstances.

A distinctive aspect of the modern English legal system that has been replicated by many other legal systems across the world, including India, is the process of civil law remedies running concurrently with criminal law.

Domestic violence has historically been understood in India to refer to a variety of male behaviours that are harmful to women's rights and interests. The Indian Penal Code of 1860 had laws that addressed the issue of violence against women in whatever forms it took at the time. As new forms of violence emerged, the Code was updated to include these new offences. The provision pertaining to offences against married women was also included in the code.

When that happened, a separate piece of legislation was passed to address violence against women in the home. This proposed legislation was highly contentious since it aimed to address every imaginable violation of women's rights. The people opposed to such a measure harshly criticised a number of the bill's provisions regarding women's rights. The following were the remarks on the bill:

- The Bill's definition of domestic violence is "habitual" abuse that makes the victim's life "miserable" and includes the supplementary phrase "otherwise injures or hurts" the victim. The definition does not mention particular instances of violence and leaves it up to the judge to determine how to interpret the reason of action, making it susceptible to how the judge perceives violence. The definition leaves out sexual, financial, and child abuse and does not align with the generally accepted definition of violence found in the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Additionally, the Bill grants the abuser the right to self defense.
- The concept of a shared household is disregarded by the Bill. No existing legislation grants a woman a complete right to live in the home, and if this clause is left out, the bill will fail to

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address the underlying issue that makes women vulnerable. The absence of restraining or repossession orders is another omission. In such a situation, the woman would have to return to court to enforce this order, whereas a composite order with a suspended warrant would make it more effective for implementation. Violation of an order or protection carries a term of imprisonment for one year or a fine of Rs. 20,000.

- The bill mandates victim counselling and an "amicable settlement," despite the fact that crucial aspects of violence prevention have been overlooked. No one could argue against this, but given the history of the Family Counseling Centers, Family Courts, and Lok Adalats' current mandates, which treat reconciliation as synonymous with "preserving the family unit at all costs" and "adjustments" on the part of the woman even if it means having to live with violence, this will work against the woman. For the abuser, counselling is required.
- The Bill includes provisions for service providers—NGOs who provide assistance—and protection officers. Protection Officers are given immunity under the Bill for actions carried out in good faith. The Service Providers should likewise have this impunity.
- The Domestic Violence Act is intended to be a temporary solution for women who are subjected to violence and abuse. Transfer of property rights is not considered. Long-term rights will need to be negotiated in accordance with the current laws; this Act is meant to be an addition to, not a replacement for, other family laws.
- Domestic violence is a violation of a woman's human rights, so if the protection from Domestic Violence Bill is to have any impact on the lives of women, it must implement effective prevention measures. The state actively intervenes when rights are infringed in the public arena, but it remains silent when transgressions occur in the private sector.
- Clearly define what constitutes violence and a shared household. The assistance provided must stop additional violence.
- The Courts must have straightforward procedures and be easily accessible.

In the end, the Union parliament approved the Bill, making it a law protecting women from domestic abuse. The bill was eventually passed into law as the 2009 Protection of Women from

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Domestic Violence Act. In order to safeguard women's status and protect them from men's violent behavior, the Act established new procedures, institutions, and remedies.

A new regime has been developed in our nation as a result of this specific legislation and a few other similar measures that were previously passed, accommodating civil and criminal law regulations within the confines of the legal system. Alongside the punitive provisions, the new system offers various kinds of remedies.

- **Findings Of The Researcher:**

The advancement of the legal framework that criminalises gender-based violence and safeguards women's standing in Indian society has been the main focus of this study project. The word "status" often refers to a person's personal and property rights as well as his or her obligations, liabilities, and duties in any kind of legal connection. When referring to women, the term "status" refers to their identity, personal property rights, and social obligations. The term "violence" in the context of "violence against women" refers to the harmful behaviour of men toward women that affects their rights to life, liberty, safety, and property, and the term "status" in the context of "domestic violence" refers to the private and property rights of women in their familial relationship. Therefore, violence against women refers to a larger spectrum of behaviours in which the behaviour of men toward women is taken seriously and is subject to legal sanctions. Law governing one's status, whether they are men or women, generally evolved as a result of numerous events that happened over a long period of time. Consequently, the positions it takes can be used to determine the relationship between civilizations.

When we examine the history of women's standing in India, we see that amazing women, from warrior queens to perfect wives, have come from the Indian Civilization. Hindu mythology from the past bears testament to the honourable and respectable status of Hindu women during the Vedic Period. Men and women were on an even playing field throughout the Vedic Period. Alongside males, women offered sacrifices in public. In the past, it was generally believed that women should be honoured and decorated by their fathers, brothers, spouses, and other relatives

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in order for them to reap good fortune. Where women are honoured, it was thought, the gods joy; nevertheless, when they are not honoured, all of their sacred rituals are ineffective. Where female relatives in a family experience grief, that family soon goes completely extinct; however, where they do not experience any grief, that family always prospers.

As a result, for many years, women in India were revered as Devis or goddesses. Even though there was sati, where widows would willingly take to and burn themselves on their deceased husband's funeral pyre, it was a purely religious practise that had nothing to do with the cruel hegemony of the husbands over their wives. Sati was practised by certain classes of women who thought it would be an enormous honour to die on their husband's funeral pyre. There was equality between men and women even throughout the early Middle Ages. The Jain nuns, for instance, had the same level of freedom as their male counterparts. Female musicians, scholars, philanthropists, priestesses, trustees, and priests were all present.

But eventually, women were essentially kept as domesticated dogs in cages inside the home. Except for those who chose ascetism, all the girls had to get married. From the circumstances at the time, it can be inferred that there was no such thing as domestic violence between family members, that no kind of force was ever used against women, that everyone maintained composure, and that women were respected in all circumstances. Later, the devil of violence emerged and had an impact on nearly every aspect of life, both public and private.

The legal authorities started to really worry about the status of women. The Legislature began passing laws to deal with all such offensive acts that were considered to be detrimental to the peace and advancement of women in society in response to the issue that has been periodically affecting the high status of women. Due to the issues facing women, laws have been passed to address the criminal wrongs. The protection and advancement of women's position is the overarching goal of all laws. The constitution's evolution following India's independence is largely responsible for the law governing women's status in the country. When India gained its

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freedom from foreign rule, its citizens ratified a constitution that was intended to erect a sovereign, independent, socialist, and secular republic.

The constitution's goal has been to ensure social, economic, and political justice. The Constitution guarantees citizens and other people some fundamental rights. To bring the status of women into compliance with the Constitution's vision and mission, legislation has been passed.

While domestically the power of constitutional principles compelled the legislature to review the law on violence against women, there were a number of international initiatives functioning abroad aimed at improving the status of women. The movements for human rights, gender justice, women's empowerment, and the right against discrimination all had an impact on the way that violence against women was perceived, and they made it the state's responsibility to safeguard women from all such harmful trends. The new practise of considering "private torture" to be the duty of the State was seen by the entire globe. In light of this context, the idea of violence against women underwent a new interpretation. One specific message of the new movements was to pass legislation amending the norms and regulations found in the conventional laws; the impulse was also felt to make civil law an additional tool to operate alongside the regulations of Criminal laws.

A variety of laws, including the Dowry Prohibition Act of 1961, the Commission of Sati Prevention Act of 1987, the Pre Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act of 1994, and the Protection of Women from Domestic Violence Act of 2005, have been passed in the past to address crimes against women. The fact that these legislative actions are both procedural and substantive laws is one of their distinguishing characteristics. The Dowry Prohibition Act of 1961, the Medical Termination of Pregnancy Act of 1971, the Indecent Representation of Women(Prohibition) Act of 1986, the Sati Prevention Act of 1987, the Pre-conception and Pre-natal Diagnostic Technique Act of 1994, and others were among the laws that specifically addressed offences against women.

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The Protection of Women from Domestic Violence Act, 2005, is considered to be the most significant piece of legislation of this type. In addition to the primary legislation, the state's executive branch also enacts regulations known as subordinate legislation. Examples include the Medical Termination of Pregnancy Rules of 2003, the Protection of Women from Domestic Violence Rules of 2006, the Commission of Sati (Prevention) Rules of 1998, and the Indecent Representation of Women (Prohibition) Rules of 1987.

A new section, Section 498-A, was added to the Indian Penal Code, which officially recognised domestic violence as a distinct criminal offence. This Section addresses abuse of a married woman by a husband or members of his family. The Court then identified four categories of cruelty, including:

- Behavior that is likely to provoke a woman to take her own life.
- Conduct that poses a serious risk to the woman's life, limb, or health;
- Harassment intended to coerce the woman or her family into giving up some property; or
- Harassment because the woman or her family refuses to give in to demands for money or property.

Up to three years in prison and a fine are the possible penalties. The victim of cruelty does not necessarily need to file a complaint. She may also file the complaint on behalf of any relative. The Protection of Women from Domestic Violence Act, 2005, was approved by the parliament as a further step. Domestic violence, as defined by this legislation, is a pattern of behaviour employed in any relationship to acquire or retain dominance over a female partner. Abuse can take the form of physical, sexual, emotional, economic, or psychological acts or threats that terrify, intimidate, or manipulate the female partner while also inflicting harm, humiliation, blame, or other negative outcomes.

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The authorities believed it was essential to create a civil law that could address domestic abuse in addition to stepping up efforts for improved police. The Protection of Women from Domestic Violence Act of 2005, a recent law, contains remedies like ex parte injunctions without the need to file for divorce or maintenance, protection orders, non-molestation orders, and no-contact orders that would assist the victim while criminal action is being taken against the abuser to keep him from contacting her and inflicting more violence.

The legal system in India is not sufficient and effective in either eradicating or controlling the threat of domestic violence, despite the fact that provisions have been made by the State for the protection of women ever since the criminal law in the form of the Indian Penal Code was enacted for the people.

#### • **Suggestions And Recommendations**

- Anyone can experience domestic violence, regardless of their ethnicity, age, sexual orientation, religion, or gender. Couples that are dating, living together, or getting married can all experience it. People from various socioeconomic origins and educational levels are impacted by domestic violence.
- The criminal justice system needs to respond to domestic violence in a coordinated and systemic manner. The most significant changes to the criminal law defending women's rights are found in the new sections of the Indian Penal Code, such as Sec. 498A, and in the Protection of Women from Domestic Violence Act of 2005. These measures, however, fall short. In the end, it's important to keep in mind that domestic violence against women is a crime under criminal law, even though the authorities may not always detect it. Therefore, it is imperative that we implement a new model of police in order to progress towards the proper operation of the laws protecting women and other criminal law remedies. The most crucial thing is that we need to improve routine and standard policing, which will guarantee that domestic abuse is taken seriously.

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- The essential goal of an Act may not be fulfilled simply by passing it and writing it down on official paper. The Ministry of Women and Child Development and all other agencies must work closely together to address this issue in order to effectively combat the threat of domestic abuse. The Protection of Women from Domestic Violence Act, 2005 guarantees a right to reside in the married and shared household, whether or not she has any legal title in the household, which is another crucial aspect of the new law. This is a very positive development that will let married ladies live in peace.
- The husband must sign a "bond to keep peace" or a "bond of good behaviour" through the Executive Magistrate, who then orders him to stop using domestic violence against the wife. Additionally, if the spouse continues to behave violently, he may be required to deposit securities (such as money or property) that will be forfeited. Police must act right away when the victim is contacted about a violation of a protective order. In carrying out the directives, police and protection officials must continue to coordinate.
- Police officers' responses to domestic violence incidents were assessed based on whether they would arrest the violent spouse, force the violent spouse to leave the residence, or make an effort at reconciliation. The results of the experiment showed that police arrests were obviously preferred since they served as deterrents. Numerous police officers are being warned to avoid the domestic violence issue.
- This is how we should approach a coordinated legal strategy to safeguard women who are victims of domestic abuse. Only such a comprehensive and well-coordinated approach would enable victims of domestic violence to truly benefit from the legal system. All judges, attorneys, and police officers must participate in awareness and training programmes on domestic violence. The Act's implementation must be strictly adhered to. The courts are treating cases involving domestic violence very casually.

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- It takes a long time to even serve notices to the respondent. In some instances, the notices were not delivered for six months. There are numerous open cases. There are other instances that have been open for longer than two years even after protection orders have been issued. To speed up the process, there should be specialised courts and protection officers.
- There are not many complaints about the Act being missing. They ought to be severely punished in these circumstances. More education campaigns and counselling services help to curb legal abuse. Protection personnel need more authority, such as the ability to arrest someone, etc. He must be punished if he violates a protective order by visiting the premises or harassing someone. Many police do not cooperate when the victim asks them for protection due to a violation of the protection orders. When putting the PWDV Act of 2005 into practice, the police and protection officers should cooperate and coordinate.
- After issuing protective orders, the woman needs more protection. In the event that a protection order is broken. No Gram Nyayalayas have been established since the Union Government first introduced them; they can function as local courts that focus on cases in villages. Justice may be delivered to the doorsteps of the underprivileged and needy through Gram Nyayalayas. The goal of Gram Nyayalayas is to resolve open cases, which will assist in lowering the backlog of cases in the nation's numerous courts.
- The society must first pay attention to domestic violence. Women have the right to live lives of dignity and to be free from violent relationships, even if they are imposed upon them and they are accepted because of financial insecurity. First, the way society views domestic abuse needs to change. Laws are nothing more than standardised social behaviour patterns. There are many laws that can be used to prevent domestic abuse. It is necessary to enforce these laws and to promote social education. More people need to be made aware of the effects of domestic violence.

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- Domestic violence affects all socioeconomic groups equally, regardless of education, caste, urbanisation, and employment status. The family is an institution that has historically seen a lot of domestic violence cases tied to cultural and religious views that support chasing and hitting spouses. In addition, domestic abuse is not merely a legal issue that may be solved by taking the proper legal action. It is a serious social and psychological issue that can be fully resolved by enacting major changes in the social structure and in how people view women and children. Legal remedies are beneficial and useful insofar as they serve as deterrents and make an effort to curb violent tendencies, but they do not address the root causes of the problem. They undoubtedly represent a brave effort to eradicate domestic violence from society, but on their own, they are limited in what they can accomplish.
- There are numerous unrelated threats to society. The media, which is a very potent medium that affects our thoughts, feelings, values, and way of life, comes in first. Instead of emphasising the rights and obligations of men and women, the media distorts conceptions and values of lifestyle, demeaning their way of thinking and polluting their minds. Young people's impressionable brains are greatly impacted, and they blindly accept what is presented in the media.
- In our nation, the stability of the family is already in danger. In order to protect themselves, women now have access to a sufficient number of guns thanks to a new law called the Protection of Women from Domestic Violence Act. We must inform the public about the application of every law before it is passed. On his birthday as a child, George Washington's father gave him an axe. He wrecked the entire garden since he lacked the knowledge to use it. Women will be removed from their families and society as a result of the misuse of this Act. There are forces at work in this nation who are envious of our strong family structure. Currently, they are entrapping ladies. As a result of the current circumstance, we must determine whether.

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- Almost every society in the world has gender disparity that is expressed in how women are treated. The rights of women as women have been violated and still are in practically all groups and places. One can only draw the conclusion that women, at the very least, continue to enjoy inferior privileges, position, and respect in the public realm, regardless of how progressive a society, nation, or area may consider itself to be. The mistreatment of women does not only occur in one location. It is a prevalent practise all across the world. The inadequacy of current domestic legal frameworks in addressing private torture is brought into light a little more clearly against the background of universal social inequality. Private torture or domestic abuse is not, in and of itself, a crime in many jurisdictions. Legislation prohibiting domestic violence may exist in many jurisdictions, but only when a victim has received a protection order and the aggressor violates it does it become a crime. In these situations, the aggressor will be held in contempt of court but not held accountable for battering his intimate partner.
- The prohibition against torture in international law may be said to have its origins in the imbalance of power between the state and the individual, according to the rules created by international organisations. There is a need for more regulation of state behaviour because of the vertical structure of the strong state arching over and dominating a helpless citizen. This explains why the burden of proof in criminal trials must be met with the higher standard of "beyond a reasonable doubt." The message of international law regarding domestic abuse and torture as examples of violations of human rights A fundamental tenet of human rights legislation is that severe violence and injury should never be acceptable. It may be possible to argue that severe instances of "domestic violence" meet the criteria for the revered status of international human rights violations if the harm caused by private torture is such that it constitutes an invasion into the humanness inherent in the definition of torture in international law. Furthermore, the right to be free from this kind of violence is not merely one of the many rights that have

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emerged within the international human rights community. Private torture is comparable to a newly emerging area of rights that stands apart in discussions of human rights due to its extreme violation and frequent execution as well as the fact that those who commit it are too inhumane to be held accountable.

- Finally, it should be noted that a consolidated law on women's rights and remedies is required rather than several smaller ones. The legislation in these enactments ought to be consolidated in order to make it simple to enforce and to fulfil the legislation's intended purpose.

### **Proving hypothesis**

This research was started with this hypothesis. Hypothesis stand proved. An exclusive and specific law to address domestic abuse in India is urgently needed. An strategy to domestic abuse is required, one that calls for the adoption of domestic violence-related civil laws. However, there is currently a separate statute to deal with domestic abuse offences. The study supports the idea that these legislative measures show how seriously the State is taking steps to advance women's position and defend their rights and interests. However, the legislative provisions did not achieve their intended goal, and violence against women has continued unabated ever since. It has been observed that there has been insufficient enforcement of the legislation, and women continue to be the victims of the horrors committed by men. Therefore, the mechanism envisioned by the Act needs to be completely changed. For proving the hypothesis following cases can be referred:

The A.P. High Court in the matter of *B.H.P.V. Ltd., V. Workers Union Visakhapatnam*, The husband is required by law to give his wife and children a place to live, the court ruled. The High Court noted that because the injunction order called for deducting the rent from the husband's salary from and out of the amount of maintenance awarded to the wife and children, neither the company nor the husband could be said to have suffered any irreparable harm as a result of the interlocutory order. The High Court went on to say that courts in the Socialist

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Democratic Republic are not allowed to impose public pressure on people to use their property rights without first considering the potential harm such activity would do to other people's freedoms to pursue pleasure. It would constitute to acting against the fundamental aims of the Constitution as listed in the preamble and other portions of the Constitution, as well as giving public force for the elimination of a basic right that is recognised by the Constitution. Therefore, courts must consider whether the exercise of ownership rights is unfairly interfering with others' right to pursue their own happiness as well as whether such exercise is causing others unwarranted pain and suffering. Therefore, as each instance arises, courts must consider the motivation and goal behind the exercise of ownership rights.

In *Abdul Rahim Undre v. Padma Abdur Rahim Undre*, The wife was forbidden from entering the marital home, and a lawsuit was filed to declare that the marriage had been dissolved by talaq. The Bombay High Court ruled that although the marriage was still technically valid, it had irreparably broken down. Since the husband had not offered the wife alternative housing, it was only just and fair that the flat, whose ownership was also a subject of legal dispute, be divided and the wife given a specific portion of it for her residence. The court further noted that the children would be able to enjoy their parents' company when they returned home if the parties were permitted to live separately in the same home.

In *A. vs B.* According to the High Court, the courts have the authority to issue an injunction preventing the spouse from accessing the matrimonial home while deciding a matrimonial home.

In *Ajit Bhagwandas Udeshi v. Kumud Ajit Udeshi*, After roughly 20 years of marriage, the husband requested a divorce. The Family Court supported the wife's ability to live in a portion of the marital house while awarding the order and awarded maintenance to her. In an appeal, the High Court upheld the decision of the family court and stated that in order to grant the divorce, the wife's right to her home had to be protected because she had paid "Pagadi" for the property and had no other place to live. As a result, the High Court decided that the order protecting her right to shelter could not be deemed perverse or unjustified.

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In *Sunita Shankar Salvi v. Shankar Laxman Salvi*, After filing for divorce jointly, both partners later decided to divorce amicably. But the battle over the residential property was still open. While the wife claimed that the apartment, which served as the couple's home, was acquired jointly and that both parties had equal right, title, and interest in it, the family court determined that because the wife did not pay any consideration or costs for the acquisition of the property and her name was added at the husband's request, she did not acquire any right, title, or interest in the apartment. After making such an admission, he was unable to argue the opposite. The wife was declared a joint owner with an equal share in the marital home by the court, which noted that because the wife's name was listed as one of the owners in the title deed, it must be assumed that she was entitled to a share of the property equal to that of the other owners. As a result, the family court was not justified in refusing to recognise the wife's 50% ownership interest in the flat. If the property could not be divided, the High Court further ordered that it be sold and the earnings split evenly between the spouses.

By allowing a wife to obtain an injunction against dispossession and prohibiting a husband from ejecting his wife, Section 17 read in conjunction with Section 19 of the current Act has broadened the scope of the law in India in this area and formally recognised a wronged wife's right to survival and shelter. After receiving statutory protection, the right is no longer arbitrary or reliant on an understanding and sympathetic judge. The statutory protection that the Act gave her will significantly contribute to women's emancipation. If the husband or his relatives tried to harm her, while she was living in shared household, he will have to pay a fine and may be subjected to imprisonment.

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