

CHAPTER VII

CONCLUSION & SUGGESTIONS

*“Much about the moral fiber of a society can be learned from the way it deals with crime. It is not enough to treat criminals with as much compassion as we can, especially when this liberal spirit is carried to the excess of interfering with crime prevention as the courts have done. It's about time society showed a little moral strength by acknowledging that victims, real people, are hurt by crime and that it is to them that criminals owe their debt”*²⁴⁶

The discriminated and exploited of women is seen all over the world. The empowerment is an aid to help women to achieve equality with men or, at least, to reduce gender gap considerably. Women play a very strategic role in the development of society in particular and development of economy in general. Woman is the leader planner of the family, the first trainer; supplier of labour power and by playing focal role in the development of agriculture, industry, service sector, socio-culture etc. creates a civilized society. Women contribute directly or indirectly for economic development. Though the nature has given the genetic power of reproduction especially to the women, the socio-economic status of women is so poor and the incidence of poverty is more on woman only. Empowering women is the only solution for all questions. Her potential hidden power is to be utilized for which, her status in the society must be improved and economically she should be strengthened. The poverty is the main cause for her low bargaining power hence poverty should be removed. Empowering women and removal of poverty go hand in hand. Woman if is educated and empowered, her potential power can be utilized for the economic development. Mahatma Gandhiji says, “You educate a man, you educate an individual. You educate a woman, you educate an entire family”.²⁴⁷

It is a fact that women have been the victims of exploitations since long time in different fields in their life both physically and mentally. There are several causes of sexual as well as moral abuse which are very often highlighted by the media, and a lot of those also remain unexplored. Although, such

²⁴⁶ “*Making Criminals Play*”, The Wall Street Journal, September 23, 1982 p. 34 col. 2.

²⁴⁷ Empowerment of Women in India – An Attempt to fill the Gender Gap by Dr. Ravi N. Kadam

malpractices to women are not of recent origin, its trace is found in the history of ancient India. While identifying its key reasons, it is realized that the long run supremacy of male over female in all respect in the patriarchal society in India is highly responsible for arresting the empowerment of women. Consequently, they are being trafficked for sex, hackled at workplaces and tortured in family and society. The paper has attempted to find out the faces of women exploitation as an expression of socio-economic disability in Indian perspectives.²⁴⁸

History reveals that Aryan civilization was male-oriented. The main characters of Vedas (the most sacred literature of Hindu religion) were males like Baruna, Agni, Surya, Rudra, Som (all are Hindu deities) etc. In the assembly of Gods, goddesses were rarely found at fore front. The dominance of goddesses was found only to a limited extent in subsequent times in different forms of Shakti. Interestingly, it was found that Gods prayed to Shakti to get rid of the cruelty of great demons particularly Mahisasura (the king of all demons) and his disciples and Shakti in the form of Durga saved the heaven from the invasion of Demons. Here, males were found to pray women to protect themselves graciously for the security of their lives. Therefore, this Shakti was the protector like as mother, although she was familiar as wife of Lord Shiva. In reality of today, women also, have three entities in common like daughter-wife and mother. But if, when status of womenfolk of India at present is considered, a very smaller portion of them can be treated as empowered and most of them are being neglected and exploited in different forms. Thus it is unfortunate that measuring violence against women is insufficient to provide an accurate picture of full extent of this problem.²⁴⁹

The present study has shown that like many other forms of behavior that were meant to symbolically express male-domination, crimes against women within the family is a global phenomenon which has existed since time immemorial in both developed and developing countries. The types and trends of crimes, however, kept changing with change in mindset and techniques. Women were accorded not only a lower status in the society but were often used as objects of enjoyment and pleasure. While this practice continued, along this developed situational and institutional violence against women as they stepped

²⁴⁸ Changing Face of Women Exploitation in India by Dr. Khokhan Kr. Bag and Piyal Basu Roy

²⁴⁹ Ibid

out of the confines of their long history of deprivation of socioeconomic rights. Thus, from the present study we can conclude that crime against women is an outcome of their long history of deprivation of socioeconomic rights.

Today gender-based violence is rampant across the globe, and yet government's response remains appallingly inadequate. Violence against women has become a human rights issue affecting society as a whole. In India, inspite of special constitutional guarantees, the Directive Principles of State Policy and other legislations, crimes of violence against women within the privacy of their homes have continued their upward trend. The crime graph of atrocities on women has scaled alarming peak in our country. Domestic violence in the form of dowry deaths, bride burning, suicide, wife beating, torture and cruelty has become a daily affair. Violence against women is a manifestation of historical unequal power relations between women and men which have led to domination over a discrimination against women and which has been responsible for their subordination in society.

It is not that our government is not conscience of the fact of increasing number of cases of cruelty against women. Government is concerned with the increasing number of cases of cruelty against women which is reflected in the attempt of the government to make various special legislations providing protection to the women against cruelty. By enacting these legislations an attempt has been made to deal with all forms of cruelty. Recently an attempt has been made to provide protection to women in all kinds of domestic relations in addition to marriage, by enacting the Protection of Women Against Domestic Violence Act. However, in my opinion effective implementation of law is more important than framing stringent laws. Ineffective and half hearted implementation renders the most stringent law also redundant. Effective implementation of the law is necessary, which is not possible without good governance and promotion of universal respect for dignity of women. A change of mindset is needed not only on the part of potential criminals, but also the police, the politicians in power, the bureaucrats and all sections of the society.

In the present study the journey of women from ancient times till recent times have been discussed throwing light on the socio legal reform movements which have brought changes in the position of status of women. Thereafter, the

term cruelty as it is defined in various legislations and its scope as laid down in various judicial pronouncements from time to time have been discussed. However, as already stated that the crime against women is a vast topic and it is not possible to discuss it in one study, hence, this paper has been confined to cruelty inflicted on women in domestic relations. After discussing the meaning laws relating to protection of women from the sin of dowry demand, matrimonial cruelty and domestic violence has been discussed in detail along with interpretation given to its provisions by the courts from time to time. Not only this, an empirical study has also been conducted and situation in particular in Delhi has also been looked into.

First chapter of this study have given a brief introduction to the topic and thereafter in second chapter the status of women since ancient times has been discussed at length. How the socio legal status of women has underwent change with passage of time in different religions and countries have also been discussed. In these chapters an attempt has been made to trace the socio-legal status of women in India from the earlier times to the present day. It shows how despite the contribution of the women to the development of the family and the society, they continue to be subjected to all kinds of atrocities and cruelty inside and outside the home. The chapter is a revelation of the fact that seeds of patriarchy which were sown in early civilization to establish the command of the man inside and outside the home continue to oppress the women even today. The element of patriarchy reigned supreme in all forms of civilisation and created conditions whereby the woman was completely dependent on man.

A historical evaluation of the socio-legal status of the women in India beginning from the vedic period to the contemporary times has shown that womanhood, as such, was glorified in the vedic age which unfortunately is not so in the present times. Women, in the vedic society, occupied a high position, enjoyed equal rights with men and had the freedom to exercise their choice in choosing a life partner. In the post vedic period i.e., between 1500 BC to 500 AD, the status of the Indian woman suffered a setback. The position of women deteriorated with the coming of the manu's code. The vedic custom of husband and wife jointly taking part in religious functions came to be rejected. A women's right depended entirely on her husband and he declared that she was not man's equal. During the Buddhist period the status of women was a little

better, but from the eight century onwards with foreign invasions the status of women began to fall. Marriage developed into a strict institution where a woman's individuality was completely controlled by whims and fancies of her husband. The Indian woman had an unequal status as compared to her male counterpart. She suffered from many disabilities. She was given a right to stridhan properties but was not given a share in the joint family property in which she had only a right of maintenance. The law of marriage permitted polygamy. With respect to property law she hardly had any significant right. In the law of adoption her position was inferior to that of the man which continues even today. The middle ages witnessed the darkest period for India as a whole. With the invasions of Turks and Persian's the position of women deteriorated further. When the British came to India the position and status of the Indian women was at about the lowest level it had ever reached in the history of the country But, gradually, the attitude and behaviour of the Hindu society changed drastically during the British period because of the education and western influence on the socio-cultural life of India. The British rule which actually intended to enslave the Indians made them aware of their degrading status. This indirectly influenced the emancipation of women and social reformers like Dada Bhai Naroji, Raja Ram Mohan Roy, Swami Dayanand Saraswati who raised voices against injustices committed on women. The period witnessed the passing of several enactments for the benefit of women such as the Widow's Marriage Act, the Child Marriage Restraint Act, 1929, The Indian Divorce Act, 1869, etc.

Independent India endeavoured to raise the status of women considerably. The constitution of India paid the greatest honour to women by enshrining the doctrine of equality for both the sexes. The International Instruments such as the Universal Declaration of Human Rights, 1948, The International Covenant on Civil and Political Rights, 1966. The Convention on the Elimination of All forms of Discrimination Against Women, 1979, assert that discrimination against women violates the principle of equality of rights and respect for human dignity. India having ratified these conventions is obliged to give effect to them in its domestic law. Yet, despite the special protection given to women under the Constitution and International Conventions she is continued

to be humiliated, abused, tortured and denied the basic right of leading a life with dignity and respect within the family.

This part of the study has shown that question of violence cannot be viewed in isolation from the status of women in society. Crime cannot be defined as a more psychological, emotional or sociological problem. It has a strong socioeconomic and educational dimension. It has a direct relation to the status of women in society and is closely connected with power politics. The women in Indian society have been treated as a second sex since their birth. They are conditioned to believe that they are simply adjuncts of all men in their lives, first their fathers and brothers and then their husbands and sons whom they are required to serve and whose displeasure would lead to their social ostracisation. In chapter II where the historical position of women has been traced shows that rise in cruelty against women is directly proportionate to her social status and position accorded to her by men from time to time. This chapter has shown that primarily it was the socioeconomic dependence of woman upon man that made her vulnerable to violence. Subsequently, gender violence emerged within the family but it was always rushed up within the domestic realm of the family. Gradually violence within the family came to be perceived as “a cultural aberration infecting the society as a whole” but which could not be resolved by any outside interference. Though on the one hand the domestic violence was being perceived as a personal matter on the other hand a brief overview of the journey of women’s movement has shown that law in all women's movements has played a pivotal role in bringing about a change in the status of women. Time and again, social reformers and women activists turned towards law for getting their demands met. Therefore, law has been the base on which each movement built its understanding of gender, tradition and culture. So it was seen that though domestic violence was largely due to conservative approach of the society but women protection laws were used as a tool to give protection to women and to change the mindset of the society. The social reformer in the nineteenth century sought to redefine tradition and pursued protective legislation for women. But even the legislative reforms were all based on the underlying assumption that women were naturally different from men and this fact needed to be recognized in order to protect women. Women were perceived to be, by nature, only wives and mothers. They were expected to

remain exclusively within the family and needed to be protected against evil of sati, the prohibition on widow remarriage and child marriage. In this period no voice was raised against the socially constructed roles of women as wives and mothers. There was also no claim made seeking equality of women on par with men. It was only in the independence movement in the twentieth century that women started demanding equal rights. In this period, women activists played an active role in entering the political domain. The women's movement focused on two major issues: (1) launching campaigns for political representation and constitutional equality and (2) launching campaigns for reforms in personal law. While the discourse of women's upliftment in the nineteenth century relied heavily on the revivalist ideals of women's natural roles as mothers of the nation, the early twentieth century period witnessed an increasing reliance on the discourse of equality by the women's movement. The campaign for women's suffrage and for women's constitutional rights emanated from the demand for formal equality, which meant an equal treatment for men and women. Thus, our study shows that women in the independence movement sought to not only improve women's position in the family but also sought to promote women's equality in the public sphere. Women made a claim for equality in civil, political and economic life. But it was essentially to improve the position of women within the family by extending the discourse of equality to the family that evoked strong reaction. It was easier to stake a claim for equality within the public sphere but extremely difficult to introduce the discourse of equality into the private domain of the family.

Our present study shows that in the contemporary women's movement there has been yet another shift in the discourse and content of the legal campaigns. While the women's movement has continued to campaign for seeking equality rights where they are not yet available (such as property rights within the family), the campaigns for legal reforms have focused on issues such as sexual and family violence. Rape including marital rape, dowry, sati, the indecent representation of women are all issues that focus attention upon the subordinate, oppressed and unequal status of the women in the society. In some ways the kind of legal reforms that are being sought by the women's movement in contemporary India remind us of the discourse adopted in the campaigns seeking protective legislation in the nineteenth century. The current women's

movement has demanded strengthening of criminal and civil laws to protect women against crimes of violence in the family. It perceives patriarchy as the major cause of violence and crimes against women- a fact that has also been established by our empirical study conducted on the judges, lawyers and the police officers. We have seen in the chapter under discussion that each women's movement sought legal intervention in the domestic realm and a revised definition of the public/private distinction. Each movement turned to law to transform women's life and status within the family and each time it generated the greatest resistance. Even today the women's movement continues to face stiff opposition. Our empirical study has shown that there is resistance from all sections of the society. To release the women from the ruthless violence that is inflicted on them, our study emphasizes that women's movement in India must become a strong political force. Once, the women force becomes politically strong it will have a strong bargaining capacity and will be able to achieve a life of dignity for millions of women in the country.

Further in this study an attempt has been made to understand the term cruelty and how it is defined in different women protection laws. This study leads us to the conclusion that the courts have always been conscience of the difficulty faced by a victim to prove the act of cruelty which has been committed behind closed doors and hence, have widened the scope of the term cruelty. Various decisions of the Apex court has extended the definition of cruelty as defined in various Acts so as to cover mental and emotional torture also beside all form of physical violence inflicted on a woman by her husband and in-laws. The enactments formulated to deal with cruelty against women and domestic violence are also discussed at length in the subsequent chapters. The findings on these chapters prove that dowry related crime and other forms of matrimonial and domestic violence is the most barbarous and cruel form of crimes committed against married women. The chapter shows that despite the passing of the Dowry prohibition Act, 1961, and the subsequent amendments made in 1983 and 1986 in the Indian Penal Code, 1860 and the Indian Evidence Act, 1882, brides are still harassed, tortured and even burned to death. According to the statistics reported in Crime in India (1998) incidence of dowry death cases reported an increase of 15.2% in 1998 over 1997.

The dowry practice is a far greater crisis to our civilization process than what an individual can perceive through his/her own limited experiences. Many evil practices to which women fall victims are rooted in our life systems through customary, religious and of late, through legal sanctions. The chapters on dowry death, matrimonial cruelty and domestic violence show that religious scriptures, traditions, customs and law often resist women to challenge the prevailing social order. Attitudinal traits that are in built in institutional mechanisms also contribute significantly to prevent women from enjoying rights of equality and dignity throughout life. The system of dowry has caused irreparable damage to the social structure of our society. Several young girls do not get married as their parents cannot afford dowry. The dowry laws have been drastically strengthened in the past eight years but very few culprits of this heinous crime are ever convicted. Our research has shown that many cases of matrimonial cruelty and dowry death fail due to inadequate police investigation. The court have repeatedly observed in its orders that dowry death cases be investigated by not less than a deputy superintendent of police but in practice, rarely does anyone, senior than a sub-inspector go to make investigations. As a consequence, it has been seen that though the judiciary regards dowry death as murder per se it still fails to prosecute the husband and in-laws in many cases because of lack of sufficient evidence to book them for murder of the victim on account of her failure to bring dowry.

The present study shows that dowry is nothing but greed for easy money coupled with a sense of social recognition. More dowry means higher status. Law forbids the giving and taking of dowry but still there is no end to it. We find that the social disapproval for dowry demand is so mild that it may be called non-existent. Social compulsions and legal complexities combined compel a victim of dowry related domestic violence to suffer indignities and torture in silence till she has no way out but to end her life. The greed for more money makes the husband or in-laws resort to bride burning but law has seldom been successful in punishing the offenders. In most of the cases accused is acquitted because of lack of proper proof or due to ambivalent use of the dying declaration of the deceased by the courts.

Our research shows that the courts have time and again condemned the inhuman practice of bride burning. However, courts have found itself

constrained to prefer to award the sentence of imprisonment for life than death sentence where two opinions are possible as to the guilt of the accused the court. It is because of the principal of the criminal law that the guilt of the accused has to be proved beyond reasonable doubt. Though the other principle that presumption of innocence has to be in favour of the accused has been done away by the Section 304B of the Indian Penal Code but to prove the guilt of the accused beyond reasonable doubt is also very difficult. Such offences occur mostly behind the closed doors where victim has already expired and remaining family members are either themselves participant in the crime or related to the offenders. Despite the fact that there can't be a direct eye witness to such an incident in many cases court have acquitted to accused due to lack of direct evidence. Even law makers have not amended the Section 304B so as to relax the standard of proof in such cases. This reflects the conservative attitude of the judges and law makers who do not wish to recognise dowry death cases as grave crimes deserving an extreme form of punishment.

The study reveals that there is no distinct pattern discernible in the judgments of the Supreme Court and a great deal of subjectivity of the judges is evident in them. Despite the incorporation of sections 113A and 113B in the Evidence Act which place the burden of proving on the accused that he did not cause the death, the doctrine of presumption of innocence still operates heavily in favour of the accused on the minds of the judges. Further, to convict persons for offences under sections 498A and 304 B of the Indian Penal Code which stipulates stringent penalties, the judges want stronger and clearer proof of guilt.

When used narrowly the term 'domestic violence' is used to describe wife assault which includes not only physical and sexual abuse but also repeated verbal abuse, harassment, confinement and deprivation of financial and personal resources. The present study has shown that matrimonial cruelty has its roots in historical attitudes towards women and the institution of marriage. The patriarchal values imbedded in the society, the socialization and conditioning of women and men in our society and the giving of inferior roles to women keep them economically dependent on men thereby making women vulnerable. The legal protection that wife may resort to when she has been ruthlessly beaten up or her life threatened is more theoretical than practical. In reality, this protection

is virtually absent because it is essentially geared towards protecting and saving the marriage than helping the victim of violence.

The present study has shown that matrimonial cruelty is an underreported crime and it is difficult to find out the actual number of incidences of matrimonial cruelty as it is committed within the four walls of a house. It is concealed in middle income and higher income groups but observable in low-caste and low income groups. It has been seen that the victims themselves are hesitant to speak about it owing to different reasons such as they fear that their marriage would break, that they would get more severe beating or it is a question of honour of their families.

It has been found that besides dowry there are various other reasons for matrimonial cruelty, some of these are economic dependency of women on men, the responsibility of bringing up children, jealousy on the part of the husband, alcoholism, feelings of inadequacy and low-self esteem nurtured by women, tolerance by the society and the like. Economic dependency and the responsibility of taking care of children are by far the major reasons for women to continue living in violent homes. Research has shown that in well-to-do families, where money is not the criterion for marital discord, the problem of male ego sets in which leads to violent behaviour.

The present study concludes that there is a lot of tolerance for matrimonial cruelty among women themselves and is justified in many ways. Thus, dispute over dowry, a wife's sexual infidelities, her neglect of household duties and her disobedience of her husband's dictates are all considered legitimate causes for matrimonial cruelty.

A critical study of judicial decisions has shown that judges are reluctant to recognise wife beating and other form of matrimonial violence as a crime. They are reluctant to even consider severe cases of wife beating as criminal cruelty. It has been observed that despite the introduction of section 498 A into the Indian Penal Code which covers acts of cruelty independent and related to dowry demands the courts have been rather slow in booking the offender under it. In fact in practice it has come to be established that section 498 A of Indian Penal Code and section 113A of the Indian Evidence Act are meant to deal only with dowry related cruelty rather than with daily, ordinary and respective

violence. It has been seen that unless the judges see violence manifested in the form of severe physical injury or serious mental illness they do not recognise it to mount to an offence of cruelty under section 498A. The same is true in case of proving mental cruelty.

It has been seen that while there are special laws dealing with violence related to dowry demands no such law exists to prove cases of wife beating and other forms of matrimonial cruelty. While it is possible to cover cases of wife beating under sections 319, 321 and 323 of the Indian Penal Code, the offences being non-cognizable under these sections, the police can take no action against the assaulter even if the victim wishes to report about the violence. Besides, it has been seen that even where the police can take action against the offender, as under section 498A of the Indian Penal Code, it refrains from doing so with the object of preserving the marriage.

The present study has shown that when a battered woman reports the matter to the police and a case is registered she has nowhere to go. She cannot return to her matrimonial home because her husband will not accept her and she cannot go to her parent's house as they are reluctant to keep her. In such a situation it is important that the victim of violence is provided a shelter home. The study has shown that the shelter movement is spreading all over the world. In India few shelter homes exist in major cities like Bombay and Delhi. But research has shown that before these homes admit battered women rigid procedures have to be followed which appear cumbersome to women- victims of violence. It is the absence of a viable alternative that women continue living in their matrimonial homes with cruelty being inflicted upon her. It is seen that even the courts are reluctant to pass injunctions against the violent husband to exclude him from his house till the time that the matter can be settled or resolved amicably.

Our research has shown that very stringent measures are required to end this evil practice. We have seen that law alone cannot do much unless attitudes and the mind-set of the judges, the police, and the people change. Along with this there must be social vigilance and the political will on the part of the State to improve the status of the Indian woman. Further our study through various judicial pronouncements shows that even the law as it exists does not yield the

desired results but has become a weapon in the hand of women to harass and settle quick divorce with hefty amount of alimony. So with changing time amendments in the existing law is required.

The empirical study on the topic has been divided into two parts. One Chapter shows the position of women specifically in Delhi and another contains an analysis of the empirical study conducted on three major functionaries of the criminal justice system, namely, judges, lawyers and the police officers, to know their views and opinions about violence committed against women within the family. Discuss about Delhi data chapter mode of data collection.

In many ways the empirical survey carried out is an eye opener to the fact that patriarchal structure of our society, our cultural heritage, the process of socialisation and the mindset of the people make most women tolerant and submissive to the violence inflicted on them. The empirical evidence arrived at after analysing the responses of the judges, lawyers and the police personnel shows that patriarchy and traditionalism are the major causes also responsible for crimes against women within the family. Some of the facts which can be concluded from this research are as follow:

1. The findings in this chapter substantiates our earlier finding that in early civilisation once the man took command inside and outside the home the seeds of patriarchy got firmly embedded in the Indian soil, which carved out a secondary status for the Indian woman and which continues till date.
2. The present study shows that there is a general acceptance among the judges, lawyers and the police, to the fact that wife beating is prevalent in all classes of the society. But the fact that they think that domestic violence is a family matter and that women should not make violence a cause for marital discord reveals that they do not want to break away from the traditional 'mind set' which perceives woman to be secure only in the home with her husband and children. It is seen from the responses of the judges and the police that when a marital dispute comes before them their primary objective is to save the marriage. They feel that by preserving the marriage they would be maintaining social order which is healthy for the society. What the judges and the police fail

to realise is that their failure to take action against the perpetrator of violence reinforces the belief in the man that he has a right to beat his wife if she does not confirm to his ideas and cater to his needs.

3. Response of the lawyers towards violence committed against women within the family seems to be more encouraging than either judges or the police. Most lawyers share the view that domestic violence is not a family matter and intervention by the State and the society is necessary if women have to be protected from the onslaughts of their husbands. Thus, the reluctance seen on the part of the police in arresting and prosecuting the offender so that the marriage does not break is not going to help the women-victims.

4. There has been unanimous opinion among the judges, lawyers and the police that for the offence of cruelty to be proved under Section 498A, Indian Penal Code it is essential that the violence alleged be connected with dowry demands. It is indeed strange that while the interpreters of law admit that Section 498A, Indian Penal Code can cover cases of domestic violence independent of dowry demands they tend to apply it only in cases of dowry-related domestic violence. It is submitted that the responsibility of the implementation of law rests in all the three enforcement agencies and if they are reluctant to use Section 498A, Indian Penal Code in cases of wife beating and mental cruelty otherwise then dowry-related then they are failing in their duty to do justice to millions of women who may be suffering in the hands of their violent husbands.

5. It has been observed that most of the judges, lawyers and police officers hold the view that Section 498A, Indian Penal Code is being misused and that in some cases the complaints filed under it are not dowry related but portrayed to be so. It is submitted that conditions for the misuse of law are only created when either it is not properly being implemented or there is no accountability in the manner of its enforcement. It is very natural for women-victims to connect the violence inflicted on them to dowry demands if they want to escape from the clutches of their violent husband as they know that a complaint of

violence by the husband or his family members independent of dowry demand might not be entertained by the law enforcing agencies. It has been seen that very often, it is the police who compel the female-victim and her family to make the domestic violence appear to be dowry-related under section 498 A so that the complaint get registered and fear of the law is created in the minds of the boy and his family.

6. The present study has shown that majority of the cases falling under section 304B of the Indian Penal Code results in acquittal for lack of sufficient evidence or failure of the judiciary to take into account the special circumstances surrounding the violence committed on women. The manner in which the existing law is interpreted requires high standards of proof to book the offender just like in ordinary circumstances which should not be so in cases relating to domestic violence whether dowry related or otherwise as we are aware that these crimes are committed behind the closed doors and within the four walls of the house where generally all the persons who are present other than the victim are the offenders.

7. It has also been seen that the police is slow in registering a complaint under the Dowry Prohibition Act, 1966 and prefers to file the complaint under Section 498A, Indian Penal Code instead. Study reveals that the law enforcing agencies are of the view that it is the women-victim and her family who are eager to invoke the criminal law in place of Dowry Prohibition Act so that a quick remedy is possible. Even if it is so then it is the duty of the police officers to brief the women-victim on her appropriateness of the legal remedy that she ought to seek.

8. Most judges and lawyers share the view that the work being done at the Crime (Women) Cell, Nanakpura, New Delhi, is not satisfactory. Surprisingly, the opinion of the police officers is otherwise. This shows that the matter needs greater introspection by the police.

9. The need to sensitize the judges, the lawyers and the police on issues related to gender justice is felt very strongly as their reluctance in accepting a separate legislation on domestic violence reveals their conservative approach in accepting change readily.

Suggestions and Guidelines for Reform

The preceding study with its enumerated findings and conclusions enable us to make certain suggestions and reforms with a view to contain violence against women within the family. The present suggestions would relate to reforms in the legal system as well as in the attitude of the enforcement agencies, the media and public towards crimes committed against women within the family. Some of such suggestions are as follow:

- (a) One of the conclusions drawn from the above study is that despite the special constitutional safeguards and other protective legislations for upward trend in securing the position of women, the basic image of women in the society that they are inferior and subordinate has not changed. Hence, the problem of violence against women cannot be solved without changing the basic view about women as inferior, self-sacrificing and as essentially instruments of sexual gratification and reproduction. This servile image about women which is prevalent in the minds of all enforcement agencies of the criminal administration system and other institutions of the society must break. In order to combat domestic violence against women and to prevent the emergence of newer forms of violence conscious efforts must be made amongst all sections of the society to bring about a fundamental change in the existing patriarchal values which accord women a subordinate status. Once there is a change in these patriarchal values then the underlying socio cultural values which are intricately woven into all forms of violence perpetuated against women will also change. As a consequence conditions would be created in the society which would enable women to consider themselves as individuals who are important as men and who have rights equal to men.
- (b) Further from the above study it is clear that patriarchal mental set up is so deep rooted in our society that all men as well as women when in position of mother in law, sister in law etc fails to recognise their wife/daughter in law who is also a woman as a human being only. Hence, in the present study we will see that worldwide violence against women is considered as a violence of basic Human Rights to

which a woman is entitled by virtue of having been born as a human being. Therefore, since the concept of non discrimination and equality of treatment is basic to the realisation of these Human Rights it is suggested that people must recognise that women are first and foremost full citizens with rights. These are rights that a woman is born with and not those which should be given to her by the society. Judges, politicians, employers, co-workers and family members must recognise that when dealing with issues related to women it is not a question of their being good to women or protective towards women. What is important for them is to realise the difference between being equal and being treated as an equal. If the system is not treating women as equals it is an unjust system. If the situation of women in the country is has to be improved it is not sufficient to grant certain special rights through special legislations making them equal but what is required is that they must be considered as equal to men and must be recognised as such. Thus, not recognising a woman's inherent equality amounts to denial of her rights. Any law will be effective only when first of all woman is considered as human being born with all those basic human rights which a man is born with.

- (c) The present study has shown that though the doctrine of equality of sexes has been incorporated in Article 14 of the Indian Constitution it has never been extended to issues relating to violence against women. Rather it casts a duty upon the State to create conditions for the practical realisation of women's rights embodied in Part III of the Constitution. The State must, therefore, provide for special measures with enabling conditions so the concept of gender equality can be attained in the private sphere of the family. This can be achieved through awareness campaigns in schools and colleges on issues relating to violence against women so that the concept of gender equality sets in the mind of human beings since childhood which is further embodied in their personality itself during their youth. To provide legal justice to women who have been subjected to violence for centuries it is suggested that structural social changes in the form

of educating the women and sensitising the police, the judiciary and the legal profession be brought about.

- (d) The present study has shown that besides patriarchy the next major cause for the inferior status of the Indian Woman is her economic dependency on the man. It is not that economic dependency leads to violence. But it makes the position of a woman vulnerable and forces her to stay with the culprits only, which in turn give encouragement to man to inflict cruelty on his wife, daughter, mother or sister. Thus, in order to convert the equality of women a reality it is necessary that emphasis is laid on educating women. It is suggested that through awareness building campaigns the Indian woman should be motivated to attain education upto a level that would fetch her a decent job, so that, if she decides to leave a violent home she is able to start life afresh in peace. She should not be compelled to live in such house only because she has no means of livelihood. This will also result in more reporting of cases of cruelty which ultimately will reduce the number of incidents of cruelty against women as it will create fear in the mind of husband and in laws. They will be aware that the girl is not depended on them to lead her life and she can report the crime and move out of the matrimonial house even without the support of her parental family. With a view to make this a reality the Government should increase the educational facilities for women with special attention to vocational courses so that women can take up employment. It has been seen that in many cases of domestic violence the woman withdraws the complaint and wants to return to her matrimonial home. This is because she lacks confidence in herself and is convinced that she cannot sustain herself and her children independent of her husband. Educating women would enable her to achieve economic independence and fight these apprehensions and fears. The Apex court has also highlighted the importance of education and economic independence of women in reducing violence against women. Educating women would also enable the women to use her appropriate legal remedy against violence and not be exploited by the police and lawyers.

However, it is submitted that economic independence cannot be achieved unless job opportunities and conducive environment at the workplace is created for women. In this regard, the government should take measures to reserve jobs for women in the Government and non-Government sectors so that frustration on account of lack of employment opportunities does not compel the distressed woman to return to a violent husband. It is submitted that education and economic self-sufficiency will lessen the importance of marriage for girls and help them to change their outlook regarding their role and functions in the society. The necessity for educating women cannot be underplayed because it is a fact that so long there is disparity between the male and female in education levels, the difference between the position of man and woman would continue to exist.

Though it is correct that in order to combat violence against women the attitude and mindset of people has to change, however, law also plays an equally important role. Above study has shown that, in order to achieve the desired result from the implementation of women protection laws and to ensure justice to women in matters involving domestic violence, dowry death and other forms of domestic violence, certain amendments should be made in the existing laws. Some of the proposed amendments related to both the law and its implementation are as follow:-

- I. The present research has shown that the courts are always looking for direct evidence in dowry death cases, which is not possible as the crime is committed within the privacy of the home. This is because dowry death is considered as a penal offence and the general principle of criminal justice system in our country requires the prosecution to prove the guilt of the accused beyond reasonable doubt. However, in the cases of dowry deaths and domestic violence which takes place within the four walls of the house, in order to prevent the accused from escaping the law it is suggested that the courts may look at the special circumstances in which dowry death takes place and shall not insist for direct evidence. Amendment should also be made in existing laws to carve out an exception in the cases of cruelty against women thus relaxing the

standard of proof from “beyond reasonable doubt” so that real justice is done to the women-victims.

II. Law makers were aware about the peculiar circumstances in which the crime of dowry death and cruelty against women take place. Hence, section 113A and 113B were incorporated in the Evidence Act, which raises a presumption in favour of the victim and against the accused. These sections shift the burden of proof on the accused to prove that he did not cause the death. However, despite the enactment of these sections it is difficult for the prosecution to prove the guilt of the accused. There are two reasons for this, firstly, these presumptions are not mandatory for the courts to follow and it is discretion of the court to follow it or not and secondly, the doctrine of presumption of innocence still operates heavily in favour of the accused on the minds of the judges. So from this paper it is concluded that in order to have effective implementation of law the presumptions given in section 113A and 113B of the Evidence Act, shall be made mandatory for the courts to follow and further the judiciary shall strictly enforce the rule of law and give effect to the purpose for which law was amended. It is suggested that for this purpose the judicial officers should be given training thus sensitising them towards gender bias and its consequences as it is prevalent in our society.

III. From this study we can conclude that now a days Section 498A of Indian Penal Code is being misused by women to get quick divorce and heavy amount of alimony. Actual victims of cruelty are reluctant in approaching the court due to various reasons. Hence, it is suggested that in order to check the misuse of this section, it should be made bailable. It is not that if it is made bailable then it will not have deterrent effect, A penal offence if implemented effectively always has deterrent effect. However, if offence is made bailable then the boy and his family will not have to bow down to the unreasonable demand of the girl out of fear of imprisonment and disrepute. Even the Apex court in its recent judgment in the case of Arnesh Kumar v. State of Bihar has discouraged the practice of arrest by the police in all non bailable cases specially cases involving offences under section 498A of Indian Penal Code in view of its rampant misuse. It has been observed by the Apex Court that in such

cases accused should be arrested and detained in custody only if his interrogation is required, he is likely to abscond or he is likely to temper the evidence and intimidate witnesses.

- IV. The present study has shown that generally the attitude of the society is to condone with cases of violence against women. Except for a few judgments given on dowry death, where the Apex court has condemned the dowry deaths as murder and a barbaric act against humanity, there is a tendency on the part of the judiciary to downplay the violence inflicted against women by men. Thus, in order that gender justice be done to women in cases of family violence it is necessary that judges at all levels of the judiciary are provided with gender equality education. Sensitising the judges on the gender-based issues would enlighten the judiciary on the existing assumptions, myths and stereotypes about women and how these can interfere with a fair and equitable administration of justice. The judges need to be exposed to the nature of domestic and sexual violence committed against women. They need to be educated on the dynamics between victims and offenders in the case of violence against women and the impact which such violence has on women. With a view to expose the judges to the experiences and perceptions of women victim interactions, workshops, training programmes should be conducted with women/Human Rights groups, counsellors, social workers and educators. It must be emphasized that gender equality is possible only through a realisation that change has to come from within. Therefore, gender equality programs should be based on personalising aspects of women's rights so as to assist the judges in unlearning inherent prejudices and gender stereotypes.
- V. This study has shown that in most of the cases of domestic violence police is the first legal machinery which is approached by the victim seeking protection against the domestic violence. The police is therefore, the first formal agency which is most likely to detect the crime or the violence and is vested with powers to provide immediate protection and relief to the victim.. Therefore, gender sensitisation of the police is very necessary for the proper implementation of the law. As such, intensive training programs should be conducted for the police force to sensitize

them specifically on issues relating to personnel working at the Crimes Women Cells so that they become more active in dealing with cases of domestic violence. The police should be made to understand that domestic violence is also a social crime deserving legal intervention.

The attitude of the police in perceiving domestic violence as an internal family matter and refraining from responding to complaints of marital cruelty or harassment unless they are dowry-related must be changed. Efforts must be made to motivate and reorient the police officers through training and education. Apart from sensitising the police force, there should be an increase in the number of women in the police force as victim will be more comfortable and will feel free to report the details of the crime to a woman police officer.

VI. Our research has shown that domestic violence is not considered as a legal and social crime like any other crime even by the law enforcing agencies such as judges and police. In all the cases involving domestic violence the focus of police and court is to preserve the institution of marriage and many cases of domestic violence are dismissed as “normal wear and tear of family life’. In this attempt of saving marriage girl is expected to make several compromises and to live with the offenders in the same house. It is suggested that courts and police must view domestic violence as a legal and social crime. Person guilty of domestic violence shall be viewed as any other criminal who has committed barbaric crime of murder etc. it is also suggested that court and police shall not emphasis on compromising the matter till the time girl herself doesn’t come forward for compromise and till the time she feels safe in going back to her matrimonial house. Further even during the talks of compromise both husband and wife should be treated equals. The traditional view of making it the duty of a girl to save her marriage even at the cost of her life has to be changed.

VII. One of the reason why many cases of domestic violence are unreported is that the woman has no place to go once she lodged a complaint with the police about her violent husband and in-laws. Hence, it is suggested that the State should make provisions to provide adequate shelter homes

for the distressed women where they can get vocational training to deal with the problem. Though in Delhi there are shelter homes such as Nari-Niketan for distressed women but it has limited capacity and needs lot of improvement in terms of facilities. It may be pointed out here that just as some Scandinavian countries have children's ombudsman institutions, in the same way, our country could have women's ombudsman institutions for monitoring, investigation, and identifying women's interest in the family relating to issues of domestic violence. The institution of ombudsman could be established at the district level and in the lower courts.

VIII. In addition to the above measures the concept of establishing separate family Courts to deal with matrimonial disputes needs to be adopted in all states. Presently only eleven states have family courts. Along with the establishment of a family court there should also be a crime (women) cell set up in every state as family courts cannot deal with crime against women within the family. In fact, it would be better to set up specialised courts which can deal with evidence more scientifically in matters relating to violence against women within the family. Delhi is the best example in adopting this practice. In Delhi there are special criminal courts at the district level which deals exclusively with the crimes related to women. These courts are called mahila courts and are presided over by a female judicial officer only. It is very successful in Delhi as these courts can provide expeditious trial. Further as the court is presided over by a female officer the victim feels more safe and assured of getting justice. However, the number of cases has swollen to such an extent that now these courts are also overburdened and there is an urgent need to set up more such courts so as to achieve the desired result. Further, in order to clear the backlog and impart speedy justice to women it is recommended that, some paralegal Dispute Redressal Agencies like Mahila Lok Adalats, similar to the Parivarik Mahila Adalats, organized by the NCW under the Legal Services Authorities Act, 1987, be set up to dispose off cases through counseling and rehabilitation on a designated day in a single sitting.

IX. The legal profession is another important area requiring exposure to gender equality education. Lawyers have a very significant role to play while dealing with the victim to initiate a criminal case against her husband or in-laws or suggest measures which would prevent the marriage from breaking up. Therefore, it is suggested that in family matters the lawyers should display appropriate sensitivity towards the victim. The lawyers should be sensitive to the social and psychological factors that lead to violence against women. In this regard it is important that training programs be organised so that the lawyers understand the nature of violence committed against women in the family. The lawyers must also be made to understand the dynamics between victims and offenders in case of violence against women and what impact such violence would have on women. Thus the lawyers should be able to understand the peculiar nature of crime of cruelty against women and guide the victim accordingly. Such crime should not be taken at par with other crimes thus straightway filling a case in the court. Before taking any decision on the future course of action in such cases lawyers should assess the circumstance of the victim, the impact on her life and gravity of the crime.

Since the present study has shown that women are reluctant to divorce her husbands or leave them even if they are violent, Counselling Centers/Reconciliation Boards should be established in the community to help preserve the family, reduce or eliminate domestic violence or molestation and reform the spouse guilty of violence. But what is important is what they counsel about. It should be much more than just defining the role of the man and woman. The family counsellor must tell about the change in law, about the practices derogatory to women about the change in governmental policies etc. Counselling should aim at changing the mind-set and attitudes of the family towards domestic violence. In Delhi, the Legal Aid Board runs six or seven centres for family counseling consisting of eminent psychologists, social workers and lawyers who have been doing excellent work. The National Commission for women and other NGOs too have several family counseling centres. It is suggested that in every town and city, there must be established mandatory counseling centres. Counselling can be very effective in not only

rehabilitation but will also be more responsive to women whose primary wish is to stop violence rather than punish the offender. These counseling centres can also help the women-victims to change their attitude about themselves and not accept violence as their due in certain circumstances and as an undisputed aspect of marriage that is, as the right of the husband when the women is disobedient or misbehaves.

In rural areas the problems related to domestic violence could be tackled at the family level and within the community setting. A special women panchayat could be set up for this purpose. The media which is a very important part of the community can also play a major role in creating awareness about the rights of women and issues related to domestic violence. It should make a conscious effort to project a healthy and more equal perception of male-female relationships.

Besides this all the children should be educated from very beginning regarding equality of man and woman. If such education is imparted in the elementary years of the childhood then incidents of cruelty itself will reduce. While globally the development of a women sensitive jurisprudence has grown rapidly, little attention is given to developing skills and knowledge on gender in India. Law schools should take serious steps in incorporating such jurisprudence in India so that the students are exposed to the ground realities of women through interactions with the community.

Above mentioned are some of the suggestions to improve the functioning of women protection laws and to tackle the crime of cruelty against women. These suggestions are based on the data collected and material analysed during this study. However, above changes alone are not sufficient to bring in changes. This study has also shown that attitude of judges and police alone is not responsible for ineffective implementation of women protection laws. Even the cases of matrimonial cruelty seldom lead to conviction due to lack of evidence. One of the major factors responsible for insufficient evidence is that the evidence is elapsed or is tampered by the accused so as to favour him due to long pendency of the cases.

In empirical study where group of judges, lawyers and police officials were examined, maximum number of respondents blamed poor infrastructure

provided in the courts and police station for delay in trial. Hence, overhauling of entire criminal justice system is required not only in terms of training, sensitisation and stringent laws but also in updating and improving the existing infrastructure of the courts and the police stations.

Our criminal justice system relies on bullock cart technologies in this supersonic age. Due to faulty and prolonged investigation by the police, lack of prompt action by police as soon as incident of cruelty is reported, delayed trial and low conviction rate people has lost faith in the legal machinery. It is because of these reasons that a victim is hesitant in taking recourse to her legal remedies. A higher rate of convictions and initiatives such as publishing the name of sexual offenders and dedicated helpline for women will create faith in the criminal justice system and provide much needed support network for victims. We need a complete over hauling of the criminal justice system starting from grass root levels to ensure effective implementation of all the stringent laws enacted for the protection of women against violence to have the desired result. Some of the important infrastructural changes are discussed herein as under:

a) Modernization of police system

b) Getting court into IT age

a) Modernization of police system

Any person in our country can put the legal machinery in motion by reporting the crime to the police or by filing a complaint in the court. Though a common man finds it more convenient to report the crime to the police as for that purpose he does not require legal assistance and is not required to be aware about the procedure of the court, people are not forth coming to report the incidences of cruelty to the police. One of the reason for this is inaction by police. One of the eminent Jurist of our country has observed as follow:

“the penal law and criminal procedure are so dilatory and slow moving that it takes long for horrendous crime like gang rape to reach final sentencing stage. We must radicalize the whole process. There must be a mobile police team, which if a sex terror incident is reported in the newspaper or otherwise, should not wait for a FIR but proceed forthwith to the spot, trace the vehicle

other suspect, arrest him at once, go to the court with a chargesheet, and prosecute the case before a special court with a specially trained advocate and judge, and seek an instant trial with immediate notice to the accused, quick hearing and sentence. The court must go to the scene of crime or where the witnesses are available and not allow delays because of non-appearance of accused, witnesses, etc. urgent disposal of sex offences cases, of course with fair trial requirements complied with, is the need of the hour.”²⁵⁰

Above observation is equally applicable to the cases of cruelty and domestic violence against women. Generally there is reluctance in reporting incidences of domestic violence due to inaction of police and delay in trials.

This results in destruction of evidence eventually leading to acquittal of the accused. Victim is aware that if accuser is not punished then her life will become more miserable. One of the reasons for poor success rate of prosecution is the often belated and faulty investigation by the police officials generally conducted in archaic and non-scientific manner resulting in loss of vital available incriminating evidence which can effectively nail the accused person.

Hence, any change contemplated in the law relating to violence against women ought to be preceded or supplemented by mandatory impart of state-of-the-art training with usage of modern day technology employed in other advanced countries to the investigating wing of our police machinery as without the same, no fruits can be reaped from the desired law no matter howsoever harsh it is made.

Hence, after taking stock of the situation, I have reached to the conclusion that most of the times police has blamed the poor infrastructure in the police station for delay in their actions on the reported crime.

Some of the changes which can improve functioning of police are providing Police stations with standardized technology for automatic recording of FIR, video recording of the statements of the accused and witnesses including recording of the confessional statement of the accused using tamper proof technology and training shall be imparted among police personnel to enable

²⁵⁰ Justice V.R.Krishna Iyer

them to use such technology. All telephone lines of a police station must simultaneously relay caller information to patrol vehicles in areas proximal to the caller.

b) Get courts into IT age

Information technology is the panacea of all ills. If Bangalore is the new Silicon Valley of the world and India is the BPO hub, then why is the Indian judicial system working without technology? If courts have been saddled with bullock cart technologies, it is no wonder they deliver justice at the same speed. Courts need to be provided with technology so as to facilitate speedy justice.

The criminal justice system seems to be on life support in a critical state, that too at a time when it needs to be in the pink of its health to combat the menace and ever-expanding horizons of crime. The continuous onslaught of mounting cases on one hand and a low conviction rate on the other is having serious ramifications on the confidence of citizens in the law and just adding impetus to criminal activity, making it a low-risk, high return proposition.

Amidst the national outcry witnessed over sudden spurt in incidents of rape, sexual assault and domestic violence across the country, it is high time to revisit our prevalent laws which deal with such heinous offences so as to make them much more effective and stringent in line with present day needs and challenges alongwith introduction of much more vigorous and community-assisted policing for their prevention.

Further, those entrusted with conducting prosecution are government counsels who are often not fully conversant with psychology of women and not well trained so as effectively bring home the guilt of the accused person beyond reasonable doubt.

Besides this some other basic infrastructural improvements are required to strengthen our over justice delivery system. There should be proper court management by having separate courts to hear only bail matters and summons. There must be a centralized registry, only ripe cases shall be listed in sessions courts to ensure daily hearings. There should be provision for e-filing of police reports and documents in all criminal courts in the country. This will reduce the delay in court procedures by half. Forensic science is the tool of the future and

probable the only weapon in the arsenal of the criminal justice system in our country that can secure justice and can provide a watertight case against wrongdoers. The authenticity and availability of evidence are the critical components of a criminal trial. Many times, police fails to pick up important print/marks from the crime scene popularly known as chance prints. Lawyers and judges are lost in the maze of circumstances and false witnesses. But the availability of scientific evidence will determine the success and speed up criminal justice. A mobile forensic van is essential in every police station. It is often said that a single piece of scientific evidence is equivalent to 100 witnesses in court.

So before parting with this research it may be said that the strategy of the Indian state towards a problem, and particularly that of women, is to rely largely on law and often only on law. But it is not that the responsibility of the state ends with the grafting of the required laws, whereas the problems relating to women, particularly domestic violence, are socio-economic and cultural problems which demand a multi-faceted approach. Multiplication of laws relating to women has led to the problem of overlapping, legal dilemmas and legal confusion. We have to understand that domestic violence is not simply a legal problem which can be eradicated by appropriate legal measures alone. It is very much a social and physiological problem and can be tackled adequately by bringing about changes in the social system and in the attitude of the people towards women and children. Legal remedies are good and helpful in so far as they act as deterrent and attempt to curb the tendencies to violence, but they cannot strike at its root cause. They are no doubt bold attempts to get rid of domestic violence from the system, yet by themselves they can do little to tackle the issue involved. Moreover, to overcome the problem of socio-economic and cultural hurdles, it is desirable to adopt a human rights approach to women's problems. It is only through the human rights perspective that one can help safeguard human dignity and create a "violence-free home" leading to a "violence-free society".

It is commonly said that it is not easy to be a woman. This is one thing. But present state of affairs where situation has emerged that it is dangerous to be a woman because one's womanhood itself might be a danger to one's life and well being is quite scary. Many of us might feel that violence against women is

something like men against women, which is incorrect because violence against women is not just a legal issue or a law and order problem; it is as much a social issue and men alone do not make the society. What is required is to understand that as people we are one men and women and if there is a problem that has its root in the society and our upbringing in general.

Women are unsafe at home as well as in public places. If at home they are subjected to cruelty then outside same takes form of crime. As already said, let's not forget that the issue is much larger. Law can only deal with the problem to a limited extent. We need to change our outlook towards gender roles, and to rework the way we look at gender equality. Mere number of reported cases does not show the actual number of incidences of domestic violence. Many incidences of domestic violence goes unreported. Domestic violence works both ways. When it is physical, its victims bear the testimony on their bodies; broken limbs, burn marks, bleeding nose etc. These abusive instances sometimes get reported to the police and the culprit gets socially ostracised for violent behaviour. But, the other kind of violence that plagues millions of Indian homes has the sanction of our patriarchal structure. It is psychological in nature and the victims of this violence burn at both ends. The verbal and psychological violence involves the educated middle class women, who are too petrified of losing the good name of the family by exposing their trauma in public. This pushes them into the category of silent victims. Their silence also embodies their tormentor, who often happens to be the husband or members of the family of the in law. The second kind of violence is seldom reported in a police station. The victim does not receive sympathy because the signs of violence are not visible on her body and the perpetrator of this refined violence does not receive chiding which, in turn emboldens him to sharpen his tools of violence – making them more vituperative and scathing. Not only in India, domestic violence is grossly underreported globally. A study by Sreepama Ghosh, of the University of Anglia, that appeared in the beginning of this year showed the huge gap that exists between what is reported in the national surveys such as the National Family Health Survey (NFHS-3 – 2005-2006) and the figures available from the police's National Crime Records Bureau (NCRB). To begin with the disparity in reporting of domestic violence between the NFHS-3 and NCRB (2009) ranges from a difference of around 6 per cent for Himachal Pradesh to a high of 58 per

cent in Bihar which means that in Bihar, half of domestic violence cases reported in surveys are not reported to the police. Even southern India with supposedly greater gender 'fairness' is found to have large gaps in reporting of domestic violence (44 per cent in Tamil Nadu, 32 per cent in Andhra Pradesh and 20 per cent in Karnataka). The states known for rigid patriarchy like Punjab, Haryana and UP hide many more untold horror stories of violence women suffer at home.²⁵¹

For the most part, instances of domestic violence reported by women in national surveys never make it to the police or the courts, for reasons well known to the Indian society. While this in itself is not surprising, what is surprising is the extent of this deficit. Whereas a considerable improvement is seen reporting cases of other crimes against women like rape and molestation, majority of Indian women prefer to exercise silence over matters of domestic violence. They prefer to suffer in silence rather than face the social ignominy for no fault of theirs.

Domestic violence is also a violation of human rights, but it rarely gets reported as a crime. It is a manifestation of inequality within the home that refuses to come to terms with changing social reality of gender equality. Contrary to the general belief, violence faced by women in intimate relationships is neither restricted to certain social sections nor it is manifested only in its physical form. It can be – physical, emotional, sexual, economic and verbal. A woman may face violence of any one kind, two or in combination of all of them.

The worst kind of violence woman face in a domestic situation is expressed through a strategy of silence and non-communication, a rejection of their role in the family structure. It erodes their self-esteem to such an extent that rarely is the victim able to identify the problem and so it is all the more difficult for a third party to intervene in such cases. Reporting such violence to the police is unthinkable in the Indian setting. A senior bank personnel's daughter driven to the verge of committing suicide by her husband's violence of silence and verbal abuse alternately, elicited a response from her father that fits

²⁵¹ Domestic Grammar of Violence, by Vandana Shukla, Published in The Tribune, New Delhi, Wednesday, July 3, 2013.

the patriarchal design, “I fail to understand her problem, she gets food and shelter in that house, what else does she want?” The case was put up by Lawyers for Human Rights International, Chandigarh. Such responses are based on hard-to-change premises; a woman can't live by herself hence she must put up with all kinds of violence, two, a woman has no life without a man in her life, howsoever abusive he may be.

The case represents a prototype family set up where women are not supposed to cross a certain line. It also answers why domestic violence does not get accounted in NCRB data.

While men can subject their women to violence for their ever stretchable demands – that may begin with desire to have unlimited consumer goods in dowry to good looks of the bride to her ability to beget sons only and to be obedient etc., a woman on her part is not supposed to raise her voice even when her rights are violated.

A strange mix of social, psycho-social and economic issues is involved in such situations. Indian men grow up internalising traditional views of male superiority. When they fail to acquire the desired status or prominence in social life, career etc. They try to compensate it by trying to control their domestic life. Another situation occurs when this man enjoys a high status at work along with the sycophancy that accompanies it. He wants to be treated as a 'boss' at home, unable to leave behind the 'halo' and 'aura' of the work place. As a result he tortures his wife finding a sadistic pleasure in crushing her personality.

Most sufferers of violence come from a background where they have seen a dominating father or a brother and perhaps a submissive mother. They find similar reference points when they look around; their neighbours, relative and friends have all been 'tolerant' and advice her to do the same.

In a patriarchal setup, the higher a woman's tolerance levels, the greater is her capacity for self-sacrifice, this virtue earns her a place of pitiable existence in domesticity. It also makes her a soft target of violence. Even though there are laws that offer women protection against violence at home, they do not exercise these rights for the sake of protecting the family.²⁵² All this emerges

²⁵² Ibid

from patriarchal set up of society which needs to be changed in order to the achieve complete equality for women in public as well as private life.

Domestic violence is a serious social issue, it validates gender inequality. It calls for a deeper understanding of the institution of family that is facing never-seen-before kind of structural changes with disintegration of values, changing gender roles, migration and an aggressive intervention of consumerism in private spheres. There is a dire need to re-engineer procedure through science and technology, changing the social perspective and general notion of the people regarding status of women as wife and daughter-in-law, eradicating evils like dowry, female feticide etc, educating girl child, teaching people to treat both the genders equally, effective court management, modernization of police stations and courts exercising criminal jurisdiction, constituting a criminal justice board, sentencing discounts and abatement of stale cases.

The real solution to the problem is in completely overhauling the social approach towards the status of women in Indian society and criminal justice system. Before any fresh measure, as also recommended by Justice Verma Committee are taken, there is an urgent need to change our traditional Indian society's patriarchal mindset towards the fairer sex coupled with an inculcation of approach for gender sensitization in the criminal justice machinery with our system of administration of justice. Finally, it can be concluded that in the current grim scenario, both the State as well as the Civil Society ought to rise to the occasion so as to adopt a mutual supplementary multi dimensional and zero tolerance approach to effectively curb each and every type of sexual assault/violence in our society. Even the laws framed should be such that there deeper aim should be creation of good society. Chankya said, "Law and morality sustain the world". Morality emerges from the ethical values. Laws should be such as to encourage good ethical values and are easy to be followed by a common man.

QUESTIONNAIRE

Q1. Has reporting of cruelty against women have increased in the last decade?

- a) Yes
- b) No
- c) Difficult to say

Q2. What is the most common cause of infliction of cruelty on women?

- a) Patriarchy and traditionalism
- b) Lack of education and awareness
- c) Economic dependency of woman on man
- d) Increasing assertiveness on the part of the women

Q3. Mostly what is the age group of the women approaching the court for cruelty?

- a) All age groups
- b) Mostly between the age of 20 and 45
- c) Difficult to specify

Q4. Mostly victims of which economic strata approaches the law enforcing agencies for reporting the incidence of cruelty?

- a) Poor class
- b) Lower middle class
- c) Middle class
- d) Upper middle class

Q5. What is the dominating pattern of violence as per the cases reported?

- a) Slapping/ pulling hair/ twisting arm
- b) Hitting with objects like bottles, glass and other household items
- c) Hurling abuses/curses/taunts

Q6. Domestic violence against women is a family matter?

- a) Agree
- b) Disagree
- c) Depends

Q7. Women should be more tolerant and shall not make violence a cause for marital discord?

- a) Agree
- b) Disagree
- c) Depends

Q8. Is wife beating is enough to constitute an offence under Section 498A of Indian Penal Code?

- a) Yes
- b) No
- c) Will vary from case to case

Q9. Does visible marks of injury on the women victim makes it easier to prove domestic violence?

- a) Yes
- b) No
- c) Will vary from case to case

Q10. Many cases of domestic violence remain unreported?

- a) Agree
- b) Disagree
- c) No Reply

Q11. Is Section 498A of Indian Penal Code is being misused?

- a) Agree
- b) Disagree
- c) Difficult to say

Q12. In your opinion what are the main reasons for misuse of Section 498A of Indian Penal Code?

- a) Misguidance by the police
- b) Instigation by the Lawyers
- c) Instigation by the NGOs
- d) A quick way of seeking divorce or settlement in terms of money
- e) To seek vengeance from men

Q13. Shall Section 498A of Indian Penal Code be made bailable and compoundable to prevent its misuse?

- a) Agree
- b) Disagree
- c) Can't Say

Q14. 'Accused is acquitted in most of the cases of cruelty against women because of lack of sufficient evidence', do you agree with this statement?

- a) Yes
- b) No
- c) Vary from case to case

Q15. Why there is little litigation under Dowry Prohibition Act,1961?

- a) Police does not want to enforce it
- b) Women victims wants quick relief through criminal law
- c) Women victims wants to take vengeance through criminal law

Q16. How would you rate the work carried out by Crimes (Women) Cell?

- a) Satisfactory
- b) Unsatisfactory
- c) Partly satisfactory

Q17. What are the reasons for the failure to combat violence against women?

- a) Non implementation of laws and delays on the part of the police in collecting evidence
- b) Instigation by lawyers to file complaints.
- c) Delay in disposal of cases by courts due to:
 - (i) Lack of infrastructure
 - (ii) Less number of judicial officers

Q18. 'Approach of the judiciary towards violence committed against women is reconciliatory', do you agree with this statement?

- a) Yes
- b) No
- c) Can't Say

Q19. 'Mandatory counseling in all cases of domestic violence coming to courts is a necessity', do you agree with this statement?

- a) Yes
- b) No
- c) Can't Say

Q20. Which of the following measures will help in reducing the problem of cruelty and domestic violence against women?

- a) Pre marriage counseling in schools and colleges
- b) Marriage counseling prior to registration of a case by NGOs and other counseling units
- c) Sensitizing the judges, lawyers and the police force in gender based issues
- d) Educating the public on issues relating to violence against women
- e) Inculcating fear of the law in every offender and potential offender

TIME LINE OF ACHIEVEMENTS OF WOMEN

The steady change in the position of women can be highlighted by looking at what has been achieved by them in the country. A brief of which has been given as follows:-

- 1879: John Elliot Drink water Bethune established the Bethune School in 1849, which developed into the Bethune College in 1879, thus becoming the first women's college in India.
- 1883: Chandramukhi Basu and Kadambini Ganguly became the first female graduates of India and the British Empire.
- 1886: Kadambini Ganguly and Anandi Gopal Joshi became the first women from India to be trained in Western medicine.
- 1905: Suzanne RD Tata becomes the first Indian women to drive a car.
- 1916: The first women's university, SNDT Women's University, was founded on June 2, 1916 by the social reformer Dhondo Keshav Karve with just five students.
- 1917: Annie Besant became the first female president of the Indian National Congress.
- 1919: For her distinguished social service, Pandita Ramabai became the first Indian women to be awarded the Kaiser-i-Hind by the British Raj.
- 1925: Sarojinii Naidu became the first Indian borne female president of the Indian National Congress
- 1927: The All India Women's Conference was founded.
- 1944: Asima Chatterjee became the first Indian women to be conferred the Doctorate of Science by an Indian university.

- 1947: On August 15, 1947, following independence, Sarojini Naidu became the governor of the United Provinces, and in the process became India's first woman governor.
- 1951: Prem Mathur becomes the first Indian women commercial pilot of the Deccan Airways
- 1953: Vijaya Lakshmi Pandit became the first women (and first Indian) president of the United Nations General Assembly
- 1959: Anna Chandy becomes the first Indian women judge of a High Court (Kerala High Court)
- 1963: Sucheta Kriplani became the Chief minister of Uttar Pradesh, the first woman to hold that position in any Indian state.
- 1966: Captain Durga Banerjee becomes the first Indian women pilot of the state airline, Indian Airlines.
- 1966: Kamaladevi Chattopadhyay wins Ramon Magsaysay award for community leadership.
- 1966: Indira Gandhi becomes the first woman Prime Minister of India
- 1970: Kamaljit Sandhu becomes the first Indian woman to win a Gold in the Asian Games
- 1972: Kiran Bedi becomes the first female recruit to join the Indian Police Service
- 1979: Mother Teresa wins the Nobel Peace Prize, becoming the first Indian female citizen to do so.
- 1984: On May 23, Bachendri Pal became the first Indian woman to climb Mount Everest.
- 1989: Justice M. Fathima Beevi becomes the first woman judge of the Supreme Court of India

- 1997: Kalpana Chawla becomes the first Indian-born woman to go into space
- 1992: Priya Jhingan becomes the first lady cadet to join the Indian Army (later commissioned on March 6, 1993)
- 1994: Harita Kaur Deol becomes the first Indian woman pilot in the Indian Air Force (IAF), on a solo flight.
- 2000: Karnam Malleswari became the first Indian woman to win an Olympic medal (bronze medal in the 2000 Summer Olympics at Sydney)
- 2002: Lakshmi Sahgal became the first Indian woman to run for the post of President of India.
- 2004: Punita Arora became the first woman in the Indian Army to don the highest rank of Lieutenant General.
- 2007: Gayatri Chakravorty Spivak became the first Indian woman to be appointed as University Professor at an IVY League university (Columbia University).
- 2007: Pratibha Patil becomes the first woman President of India.
- 2008: Renu Khator became the first India born woman to lead a major American university, the University of Houston.
- 2009: Meira Kumar became the first woman Speaker of Lok Sabha, the lower house in Indian Parliament.

LIST OF ACTS ENACTED FOR THE BENEFIT OF WOMEN

1. The Hindu Womens Right to Property Act, 1937
2. The Hindu Succession Act, 1956
3. The Suppression of Immoral Traffic in Women and Girls Act, 1956-57
4. The Equal Remuneration Act, 1976
5. The Maternity Benefit Act
6. The Medical Termination of Pregnancy Act, 1971
7. The Indecent Representation of Women (Prohibition) Act, 1986
8. Foreign Marriage Act, 1969
9. Guardians and Wards Act, 1890
10. Indian Succession Act, 1925.
11. Representation of the People Act, 1951
12. The Marriage Bill, 1994.
13. The Orphan & Destitute Children (Adoption) Bill, 1994.
14. The Criminal Laws (Amendment) Bill, 1994 (with reference to child rape).
15. The Criminal Laws (Amendment) Ordinance, 1996.
16. The Prevention of Barbarous and Beastly cruelty against Women Bill, 1995.
17. The Constitution 81st Amendment Bill, 1996.

DELHI COMMISSION FOR WOMEN ACT, 1994

CHAPTER – I

PRELIMINARY

1. Short title, extent and commencement: -
 - (i). This Act may be called the Delhi Commission for Women Act, 1994.
 - (ii). It extends to the whole of the National Capital Territory of Delhi.
 - (iii). It shall come into force on such date as the Government of National Capital Territory of Delhi may, by notification in the official Gazette, appoint
2. Definitions: - In this Act, unless the context otherwise requires:
 - (a) ‘Capital’ means the National Capital Territory of Delhi;
 - (b) ‘Commission’ means the Delhi Commission for Women constituted under section 3;
 - (c) ‘Government’ means the Government of the National Capital Territory of Delhi;
 - (d) ‘Member’ means a Member of the Commission and includes the Member, Secretary;
 - (e) ‘National Commission’ means the National Commission for Women constituted under section 3 of the National Commission for women Act, 1990;
 - (f) ‘Prescribed’ means prescribed by rules made under this Act;

CHAPTER – II

CONSTITUTION OF THE DELHI COMMISSION FOR WOMEN

3. Constitution of the Delhi Commission for Women: -

- (i) The Government shall by notification in the official Gazette, constitute a body to be known as the Delhi Commission for Women to exercise the powers conferred on, and to perform the functions assigned to it, under this Act.

- (ii) The Commission shall consist of:-

- (a) a Chairperson, committed to the cause of women, to be nominated by the Government.
- (b) five members to be nominated by the Government from and amongst the persons having not less than 10 years experience in the field of women welfare, administration economic development, health education or social welfare;

Provide that at least one Member shall be from amongst persons belonging to the Scheduled Castes or Scheduled Tribes:

- (c) a Member-Secretary to be nominated by the Government who shall be: -
 - (i) an expert in the field of management, organizational structure or sociological movement, or

- (ii). an officer who is a member of a civil services of the Union or of an All India Service holds a civil post under the Union with appropriate experience.

4. Term of office and conditions of service of Chairperson and Members:

- (i) The Chairperson and every member shall hold office for such period, not exceeding three years, as may be specified by the Government in this behalf.
- (ii) The Chairperson or a member other than the Member-Secretary who is a member of a civil service of the Union or All India Civil Service or holds a civil post under the union may, in writing and addressed to the Government, resign from the office of Chairperson or, as the case may be, of the member at any time.
- (iii) The Government shall remove a person from the office of Chairperson or a Member referred to in sub-section (2) if that person:-
 - (a) becomes an undischarged insolvent;
 - (b) gets convicted and sentenced to imprisonment for an offence which in the opinion of the Government involves moral turpitude;
 - (c) becomes of unsound mind and stands so declared by a competent court;
 - (d) refuses to act or becomes incapable of action;
 - (e) is without obtaining leave of absence from the Commission absent from three consecutive meetings of the Commission; or
 - (f) in the opinion of the Government has so abused the position of Chairperson or Member as to render that person's continuance in office detrimental to the public interest;

Provided that no person shall be removed under this sub-section until that person has been given a reasonable opportunity of being heard in the matter.

- (iv) A vacancy caused under sub-section (2) or otherwise shall be filled by fresh nomination.
- (v) The salaries and allowances payable to, and the other terms and conditions of service of, the Chairperson and Members shall be such as may be prescribed.

Officers and other employees of the Commission

- 5. (i) The Government shall provide the Commission with such officers and

employees as may be necessary for the efficient performance of the functions of the Commission under this Act.
 - (ii) The salaries and allowances payable to, and the other terms and

conditions of service of, the officers and other employees appointed for the purpose of the Commission shall be such as may be prescribed.
6. The salaries and allowances payable to the Chairperson and Members and the administrative expenses, including salaries, allowances and pensions payable to the officers and other employees referred to in section 5, shall be paid out of the grants referred to in sub-section (1) of section 11. Salaries and allowances to be paid out of grants.
7. No act or proceeding of the Commission shall be questioned or shall be invalid on the ground merely of the existence of any vacancy or defect in the constitution of the Commission.

Vacancies, etc. not to invalidate proceedings of the Commission.

8. Committees of the Commission: -

- (i) The Commission may appoint such committees as may be necessary

for dealing with such special issues as may be taken up by the Commission from time to time.
- (ii). The Commission shall have the power to co-opt as members of any Committees appointed under sub-section (1) such number of persons, who are not Members of the Commission, as it may think fit and the persons so co-opted shall have the right to attend the meetings of the Committee and take part in its proceeding but shall not have right to vote.
- (i) The person so co-opted shall be entitled to receive such allowances for attending the meetings of the Committee as may be prescribed.

9. Procedure to be regulated by the commission: -

- (i) The Commission or a committee thereof shall meet as and when necessary and shall meet at such time and place as the Chairperson may think fit.
- (ii). The Commission shall regulate its own procedure and the procedure of the Committees thereof.
- (iii). All orders and decisions of the Commission shall be authenticated by the Member-Secretary or any other officer of the Commission duly authorized by the Member-Secretary in this behalf.

CHAPTER – III

FUNCTIONS OF THE COMMISSION

10. Function of the Commission: -

- (i) The Commission shall perform all or any of the following functions, namely:
 - (a) investigate and examine all matters relating to the safeguards provided for women under the constitution and other laws;
 - (b) present to the Government annually and at such other times as the Commission may deem fit, reports upon the working of these safeguards;
 - (c) make in such reports recommendations for the effective implementation of those safeguards for improving the conditions of women in the Capital;
 - (d) Review, from time to time, the existing provisions of the Constitution and other laws affecting women and recommend amendments thereto so as to suggest remedial legislative measures to meet any lacunae, inadequacies or shortcomings in such legislations;
 - (e) take up the cases of violation of the provision of the Constitution and of other-laws relating to women with appropriate authorities;
 - (f) look into complaints and take suo moto notice of matters relating to: -
 - (i). deprivation of women's rights;
 - (ii). non-implementation of laws enacted to provide protection to women and also achieve the objective of equality and development;

- (iii). non-compliance of policy decisions, guidelines or instructions aimed at mitigating hardships and ensuring welfare and providing relief to women, and take up the issues arising out of such matters with appropriate authorities.

- (g) call for special studies or investigations into specific problems or
 - situations arising out of discrimination and atrocities against women and identify the constraints so as to recommend strategies for their removal;

- (h) undertake promotional and educational research so as to suggest ways
 - of ensuring due representation of women in all spheres and identify factors responsible for impeding their advancement, such as, lack of access to housing and basic services, inadequate support services and technologies for reducing drudgery and occupational health hazards and for increasing their productivity;

- (i) participate and advise on the planning process of socio-economic
 - development of women;

- (j) evaluate the progress of the development of women in the Capital;

- (k) inspect or cause to be inspected a jail, remand home, women's
 - institution or other place of custody where women are kept as prisoners or otherwise, and take up with the concerned authorities for remedial action if found necessary;

- (l) fund litigation involving issues affecting a large body of women;

- (m) make periodical reports to the Government on any matter pertaining

to women and in particular various difficulties under which women toil;

(n) any other matter which may be referred to it by the Government.

(ii). The Government shall cause all the reports referred to in clause (b) of sub-section (1) and those received from the National Commission to be laid before the Legislative Assembly of the Capital along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the Capital and the reasons for the non-acceptance, if any, of any such recommendations.

(iii). The Commission shall while investigating any matter referred to in clause (a) or sub-clause (i) of clause (f) of sub-section (i), have all the powers of a Civil Court trying suit and in particular, in respect of the following matters, namely: -

- (a). summoning and enforcing the attendance of any person from any part of India and examine him on oath;
- (b). requiring the discovery and production of any document;
- (c). receiving evidence on affidavits;
- (d). requisitioning any public record or copy thereof from any court or office;
- (e). issuing Commissions for the examination of witnesses and documents; and
- (f). any other matter which may be prescribed.

FINANCE, ACCOUNTS AND AUDIT

11. Grants by the government: -

- (i). The Government shall after due appropriation made by the Legislative

Assembly of the Capital in this behalf, pay to the Commission by way of grants such sums of money as the Government may think fit for being utilized for the purposes of this Act.

- (ii). The Commission may spend such sums as it thinks fit for performing

the functions under this Act and such sums shall be treated as expenditure payable out of the grants referred to in sub-section (1).

12. Accounts and audit: -

- (i). The Commission shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be specified by the Government in consultation with the Finance Department of the Government.

- (ii). The accounts of the Commission shall be audited by the Auditor of the Government at such intervals as may be specified by it.

- (iii). The Finance Department of the Government or person appointed by it in connection with the audit of the accounts of the Commission under this Act shall have the same rights and privileges and the authority in connection with such audit as it generally have in connection with the audit of Government accounts, in particular, shall have the right to demand the production of books, accounts, connected vouchers, other documents, papers and to inspect any of the offices of the Commission and to physically verify securities, cash and stores.

(iv). The accounts of the Commission, as certified by the Auditor together with the audit report thereon shall be forwarded annually to the Government by the Commission.

13. Annual Report: - The Commission shall prepare, in such form and at such time for each financial year, as may be prescribed, its annual report, giving a full account of its activities during the previous financial year and forward a copy thereof to the Government.

14. Annual report and audit report to be laid before the Legislative Assembly: -

The Government shall cause the annual report together with a memorandum of action taken on the recommendations contained therein so far as they relate to the Government and the reasons for the non-acceptance, if any, of any of such recommendations and the audit report to be laid as soon as may be after the reports are received before the Legislative Assembly of the Capital.

CHAPTER – V

MISCELLANEOUS

15. Chairperson, Members and staff of the Commission to be public servants: The Chairperson, the Members, Officers and other employees of the Commission shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

16. Government consult Commission: The Government consult the Commission on all major policy matters affecting women.

17. Power to make rules:

- (i). The Government may, by not notification in the official Gazette, make rules for carrying out the provisions of this Act.
- (ii). In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely: -
 - (a). salaries and allowance payable to and the other terms and conditions of service of the Chairperson and Members under sub-section (5) of section 4 and of officers and other employees under sub-section (2) of section 5;
 - (b). allowances for attending the meetings of the Committee by the co-opted persons under sub-section (3) of section 8;
 - (c). other matters under clause (f) of sub-section (3) of section 10;
 - (d). the form in which the annual statement of accounts shall be maintained under sub-section (1) of section 12;
 - (e). the form in, and the time at, which the annual report shall be prepared under section 13;
 - (f). any other matter which is required to be, or may be, prescribed;

(iii). Every rule made under this Act shall be laid, as soon as may be after it is

made, before the Legislative Assembly of the capital, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if before the expiry of session immediately following the session or the successive sessions aforesaid, the Legislative Assembly of the capital agrees in making any modification or decides that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.