

## CHAPTER – VI

### CONCLUSION

#### 6.0 Introduction:

Shri Somya Banerjee stressed the importance of women in developing society in his National Policy for Women, with schemes and guidelines based on the thoughts of Mahatma Gandhi. In his opinion Gandhiji<sup>1</sup> always advocated a complete reform which he called “Sarvodaya”<sup>2</sup> meaning comprehensive progress. He believed that the difference between men and women was only physical and stated several times in his writings that in many matters especially those of tolerance, patience, and sacrifice the Indian woman is superior to the male. We can discover this when we read his articles in the “Young India”<sup>3</sup> and the “Harijan”<sup>4</sup>. During the 40 years of his political career, he found more reasons to deepen his faith in what he wrote. He never had a specific program for women, but women had an integral role to play in all his programs. This is one of the reasons why women participated in his programs so overwhelmingly. Gandhiji declared that there is no school better than home and there is no teacher better than parents. He said men and women are equal, but not identical. “Intellectually, mentally, and spiritually, woman is equivalent to a male and she can participate in every activity.” Indian society is a male dominated one. Gandhiji has illustrated in his autobiography (The Stories of My Experiments with Truth) how in the early phase of their married life he too wanted to dominate his wife. He often said that paternal society is the root cause of inequality. In

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<sup>1</sup> Mohandas Karamchand Gandhi, commonly known as Mahatma Gandhi, was the preeminent leader of Indian nationalism in British-ruled India.

<sup>2</sup> Sarvodaya is a term meaning 'universal uplift' or 'progress of all'. The term was first coined by Mahatma Gandhi as the title of his 1908 translation of John Ruskin's tract on political economy, *Unto This Last*, and Gandhi came to use the term for the ideal of his own political philosophy.

<sup>3</sup> Young India was a week shed a weekly paper or journal in English published by Mohandas Gandhi from 1919 to 1932. Gandhi wrote various quotations in this journal that inspired many. He used the Young India to spread his unique ideology and thoughts regarding the use of nonviolence in organizing movements and to urge readers to consider, organize, and plan for India's eventual independence from Britain.

<sup>4</sup> Harijan was a term used by Mohandas Gandhi for Dalits. Gandhi said it was wrong to call people 'untouchable', and called them Harijans, which means children of God. It is still in wide use especially in Gandhi's home state of Gujarat. Here Harijan is used to identify the weekly newspaper published by Mohandas Gandhi. He created publication, Harijan in English (from 1933 to 1948), newspaper found the Mahatma concentrating on social and economic problems, Young India, had done from 1919 to 1932.

his book, there is a very moving chapter in which he says when he asked his wife to clean a public toilet; a conflict erupted between him and his wife. He has written how ashamed he was of himself, and how he took care not to hurt her anymore for the rest of his life. Even though there was a big gap between him and his wife intellectually, it did not affect their family life. He has said that Kasturba<sup>5</sup> followed her husband more than was expected of her. Gandhiji followed Bramacharya<sup>6</sup> (strict discipline of food, drinks, and of celibacy) from a very young age, but when his wife passed away, Gandhi grieved that without Ba<sup>7</sup>, his life would be meaningless. That was the bondage of his 62 years of marriage.<sup>8</sup> At the same time Banerjee also highlighted the role of women in the society and the nation as envisaged by Gandhiji “Womanhood is not restricted to the kitchen”, he opined and felt that “Only when the woman is liberated from the slavery of the kitchen, her true spirit may be discovered”. It does not mean that women should not cook, but only that household responsibilities be shared among men, women and children. He wanted women to outgrow the traditional responsibilities and participate in the affairs of the nation. He criticized the traditional Indian craze for the male progeny. He said that as long as ‘we don't consider girls as natural as our boys our nation will be in a dark eclipse.’<sup>9</sup>

### 6.1 Critical appreciation of government policies:

Already the government has adopted a number of policies to accelerate women's development and ensure their social and financial security. Here some policies which will be monitored by government agencies and certain steps which have already been taken by the government are mentioned accordingly to show the level of governmental activism in the broad field of women's development.

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<sup>5</sup> Gandhiji's wife.

<sup>6</sup> Bramacharya is one of the four stages of life in an age-based social system as laid down in the Manu Smriti and later Classical Sanskrit texts in Hinduism. It refers to an educational period of 14–20 years which starts before the age of puberty. During this time the traditional vedic sciences are studied, along with the religious texts contained within the Vedas and Upanishads. This stage of life is characterized by the practice of strict celibacy.

<sup>7</sup> Gandhiji's wife.

<sup>8</sup> For details see Banerjee, Somya, *National Policy for women, with schemes and guidelines*, Arise Publishers and Distributors, New Delhi, 2009.

<sup>9</sup> For details see Banerjee, Somya, *National Policy for women, with schemes and guidelines*, Arise Publishers and Distributors, New Delhi, 2009.

### **6.1.1 Social empowerment of women:**

#### **Education:**

Equal access to education for women and girls will be ensured. Special measures will be taken to eliminate discrimination, universalize education, eradicate illiteracy, create a gender-sensitive educational system, increase enrolment and retention rates of girls and improve the quality of education to facilitate life-long learning as well as development of occupation/vocation/technical skills by women. Reducing the gender gap in secondary and higher education would be a focus area. Sectoral time targets in existing policies will be achieved, with a special focus on girls and women, particularly those belonging to weaker sections including the Scheduled Castes/Scheduled Tribes/Other Backward Classes/Minorities. Gender sensitive curricula would be developed at all levels of educational system in order to address gender stereotyping as one of the causes of gender discrimination.

#### **Health:**

A holistic approach to women's health which includes both nutrition and health services will be adopted and special attention will be given to the needs of women and girls at all stages of the life cycle. The reduction of infant mortality and maternal mortality, which are sensitive indicators of human development, is a priority concern. This policy reiterates the national demographic goals for Infant Mortality Rate (IMR), Maternal Mortality Rate (MMR) set out in the National Population Policy 2000. Women should have access to comprehensive, affordable and quality health care. Measures will be adopted that take into account the reproductive rights of women to enable them to exercise informed choices, their vulnerability to sexual and health problems and endemic, infectious and communicable diseases such as malaria, TB, and water borne diseases as well as hypertension and cardio-pulmonary diseases. The social, developmental and health consequences of HIV/AIDS and other sexually transmitted diseases will be tackled from a gender perspective. Women's traditional knowledge about health care and nutrition will be recognized through proper documentation and its use will be encouraged. The use of Indian and alternative systems of medicine will be enhanced within the framework of overall health infrastructure available for women.

### **Nutrition:**

In view of the high risks of malnutrition and disease that women face at all the three critical stages viz., infancy and childhood, adolescence and reproductive phase, focused attention would be paid to meeting the nutritional needs of women at all stages of the life cycle. This is also important in view of the critical link between the health of adolescent girls, pregnant and lactating women with the health of infants and young children. Special efforts will be made to tackle the problems of macro and micro nutrient deficiencies especially amongst pregnant and lactating women as it leads to various diseases and disabilities. Intra-household discrimination in nutritional matters vis-a-vis girls and women will be sought to be ended through appropriate strategies. Widespread use of nutrition education would be made to address the issues of intra-household imbalances in nutrition and the special needs of pregnant and lactating women. Women's participation will also be ensured in the planning, superintendence and delivery of the system.

### **Women in difficult circumstances:**

In recognition of the diversity of women's situations and in acknowledgement of the needs of specially disadvantaged groups, measures and programmes will be undertaken to provide them with special assistance. These groups include women in extreme poverty, destitute women, women in conflict situations, women affected by natural calamities, women in less developed regions, the disabled widows, elderly women, single women in difficult circumstances, women heading households, those displaced from employment, migrants, women who are victims of marital violence, deserted women and prostitutes etc.

### **Rights of the girl child:**

All forms of discrimination against the girl child and violation of her rights shall be eliminated by undertaking strong measures both preventive and punitive within and outside the family. These would relate specifically to strict enforcement of laws against prenatal sex selection and the practices of female feticide, female infanticide, child marriage, child abuse and child prostitution etc. Removal of discrimination in the

treatment of the girl child within the family and outside and projection of a positive image of the girl child will be actively fostered. There will be special emphasis on the needs of the girl child and earmarking of substantial investments in the areas relating to food and nutrition, health and education, and in vocational education. In implementing programmes for eliminating child labor, there will be a special focus on girl children.

### **Legislation:**

The existing legislative structure will be reviewed and additional legislative measures taken by identified departments to implement the Policy. This will also involve a review of all existing laws including personal, customary and tribal laws, subordinate legislation, related rules as well as executive and administrative regulations to eliminate all gender discriminatory references. The process will be planned over a time period 2000-2003. The specific measures required would be evolved through a consultation process involving civil society, National Commission for Women and Department of Women and Child Development.

In addition, other specific measures mentioned below will be taken to implement the legislation effectively.

- (a) Strict enforcement of all relevant legal provisions and speedy redressal of grievances will be ensured, with a special focus on violence and gender related atrocities.
- (b) Measures to prevent and punish sexual harassment at the place of work, protection for women workers in the organized/unorganized sector and strict enforcement of relevant laws such as Equal Remuneration Act and Minimum Wages Act will be undertaken.
- (c) Crimes against women, their incidence, prevention, investigation, detection and prosecution will be regularly reviewed at all Crime Reviews and Conferences at the Central, State and District levels. Recognized local voluntary organizations will be authorized to lodge complaints and facilitate registration, investigations and legal proceedings related to violence and atrocities against girls and women.

(d) Women's Cells in Police Stations, Encourage Women Police Stations, Family Courts, Mahila (women) Courts, Counseling Centers, Legal Aid Centers and Nyaya (new) Panchayats will be strengthened and expanded to eliminate violence and atrocities against women. Widespread dissemination of information on all aspects of legal rights, human rights and other entitlements of women will be undertaken through specially designed legal literacy programmes and rights information programmes.

### **6.1.2 Women development programmes:<sup>10</sup>**

The strategy adopted for the programmes in the areas of women development involves empowerment of women through education and awareness generation and greater emphasis on vocational training and employment so as to enable them to enter the mainstream of economic development as equal partners. The department implements programmes in the areas of employment, training for women, awareness generation and gender sensitization. The emphasis is on helping women to become self sufficient and economically independent with the help of training and income generating activities so as to enhance their earning capacity as well as their status in life. The department aims at the economic development and integration of women into the mainstream of society as individuals with a right to human dignity.

#### **1. Stree Shakti:**

The scheme was launched during 2000 to 2001 with an objective to empower rural women and make them self-reliant by inculcating the habit of savings and proper utilization of financial resources. Anganwadi workers and supervisors are instrumental in organizing rural women in self help groups. About 15 to 20 women who belong to below-poverty-line families, landless agricultural laborers or SC/ST join together to form one self help group.

#### **Objectives:**

1. To strengthen the process of economic development of rural women and create a conducive environment for social change.

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<sup>10</sup> For details refer The Tenth Five Year Plan, Planning Commission, Government of India, 2002-2007.

2. To form one lakh Self Help Women Groups based on thrift and credit principles which build up self-reliance and enable women to have greater access to control over resources.
3. To create self confidence in rural women by involving them in income generating activities thereby contributing to poverty alleviation.
4. To provide opportunities to the members of the groups to avail of the benefits of other departmental schemes by bunching up the services of various departments and lending institutions to ensure women's access to credit financing.

## **2. Santhwana:**

Women who are victims of various atrocities such as dowry, rape, sexual harassment, domestic violence etc. are subjected to physical and mental torture besides having to face social and financial problems. With a view to consoling these women and rehabilitating them, the scheme of “Santhwana” was launched during the year 2001-02.

### **Objective:**

The scheme not only aims at providing legal assistance, financial relief, temporary shelter, protection to victims of atrocities, but also helps them to be self-reliant by providing training in order to empower these women to lead a life like other women in the society.

### **Scheme Outline:**

The Santhwana centres are run through Non Governmental Organizations, preference is given to NGOs who are running short stay homes, Family Counseling Centres and to those who are actively working in the field of women welfare.

## **3. Scheme for Prevention of Alcoholism and Substance (Drugs) Abuse:**

### **Objectives:**

- To create awareness and educate the people about the ill-effects of alcoholism and substance abuse on the individual, the family and society at large.

- To evolve culture-specific models for the prevention of alcoholism and substance abuse and the treatment and rehabilitation of addicts.
- To provide the whole range of community based services for the identification, motivation, counseling, de-addiction, after care and rehabilitation of addicts.
- To promote collective initiatives and self-motivated endeavors among individuals and groups vulnerable to addiction or found at risk and to increase community participation.

#### **4. Swadhar - A scheme for women in difficult circumstances:**

##### **Objectives:**

- To provide shelter, food, clothing, and care to the marginalized women/girls living in difficult circumstances.
- To rehabilitate them socially and economically through education, awareness, skill up gradation and personality development based on behavioral training etc.
- To provide help line or other facilities to such women in distress.
- To provide such other services as will be required for the support and rehabilitation of such women in distress.

#### **5. Swayamsidha:**

Indira Mahila Yojana has been renamed Swayamsidha. Swayamsidha is a centrally sponsored scheme launched in 2000-2001. It is an integrated project for development and empowerment of rural women and is based on the formation of women's self help groups with emphasis on converging services, developing access to micro credit and promoting micro enterprises.



### **6.1.3 Insurance policies for women:**

#### **Introduction:**

LIC's Jeevan Bharati-I is a plan exclusively for women. It is a with profit plan having special features to satisfy the needs of women. The plan also provides for Accident Benefit, Critical Illness Benefit and Congenital Disability Benefit as optional Riders.

#### **1. Encashment of Survival Benefit as and when needed:**

The policyholder at her option may avail the survival benefit any time on or after its due date. If the policy holder opts to avail the survival benefit after the due date, increased survival benefit at the rate decided by the corporation from time to time will be payable.

#### **2. Flexibility to pay premiums in advance:**

The mode of premium payment is only yearly under this plan. However, policyholder may pay the next yearly premium in advance in installments (maximum up to 3 installments) during the year. If premiums are paid in advance a premium rebate may be allowed as may be decided by the Corporation from time to time.

#### **3. Option to receive maturity proceeds in the form of an annuity:**

The policyholder shall have the option to receive the maturity proceeds in the form of annuity. The rate of annuity will be based on the annuity rates prevalent at the time of stipulated Date of Maturity.

#### **4. Auto Cover:**

After two years, premiums have been paid, whenever premium payment is discontinued, the life cover for full sum assured will continue for 3 years from the due date of first unpaid premium. If death occurs during the Auto Cover period, then death benefit, after deducting unpaid premiums with interest, is payable along with the vested bonus, if any.

#### **6.1.4 National Policy for the empowerment of women:<sup>11</sup>**

The principle of gender equality is enshrined in the Indian Constitution in its Preamble, Fundamental Rights, Fundamental Duties and Directive Principles. The Constitution not only grants equality to women, but also empowers the State to adopt measures of positive discrimination in favor of women. From the Fifth Five Year Plan (1974-78) onwards there has been a marked shift in the approach to women's issues from welfare to development. In recent years, the empowerment of women has been recognized as the central issue in determining the status of women. The National Commission for Women was set up by an Act of Parliament in 1990 to safeguard the rights and legal entitlements of women. The 73rd and 74th Amendments (1993) to the Constitution of India have provided for reservation of seats in the local bodies of Panchayats and Municipalities for women, laying a strong foundation for their participation in decision making at the local levels. India has also ratified various international conventions and human rights instruments committing to secure equal rights of women. Key among them is the ratification of the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) in 1993. The Mexico Plan of Action (1975), the Nairobi Forward Looking Strategies (1985), the Beijing Declaration as well as the Platform for Action (1995) and the Outcome Document adopted by the UNGA Session on Gender Equality and Development and Peace for the 21 st century, titled “Further actions and initiatives to implement the Beijing Declaration and the Platform for Action” have been unreservedly endorsed by India for appropriate follow up. The Policy also takes note of the commitments of the Ninth Five Year Plan and the other Sectoral Policies relating to empowerment of Women. The women’s movement and a wide-spread network of non-Government Organizations which have strong grass-roots presence and deep insight into women’s concerns have contributed to inspiring initiatives for the empowerment of women. However, there still exists a wide gap between the goals enunciated in the Constitution, legislation, policies, plans, programmes, and related mechanisms on the one hand and the situational reality of the status of women in India, on the other. This was analyzed extensively in the Report of the Committee on the Status of Women in India,

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<sup>11</sup> For details see Eleventh Five Year Plan- Vol.-II, Social Sector, Planning Commission, Government of India, 2007-2012.

“Towards Equality”<sup>12</sup>, 1974 and highlighted in the National Perspective Plan for Women, 1988-2000, the Shramshakti Report, 1988 and the Platform for Action, Five Years After-An assessment. Gender disparity manifests itself in various forms, the most obvious one being the continuously declining female ratio in the population in the last few decades. Social stereotyping and violence at the domestic and societal levels are some of the other manifestations. Discrimination against girl children, adolescent girls and women persists in parts of the country. The underlying causes of gender inequality are related to social and economic structure, which is based on informal and formal norms and practices.

### **Goal and objectives:**

The goal of this Policy is to bring about the advancement, development and empowerment of women. The objectives of this Policy include:

- (i) Creating an environment through the implementation of positive economic and social policies for full development of women to enable them to realize their full potential.
- (ii) The de-jure and de-facto enjoyment of all human rights and fundamental freedom by women on equal basis with men in all spheres-political, economic, social, cultural and civil.
- (iii) Equal access of women to participation and decision making in the social, political and economic life of the nation.
- (iv) Equal access of women to health care, quality education at all levels, career and vocational guidance, employment, equal remuneration, occupational health and safety, social security and public office etc.
- (v) Strengthening legal systems aimed at elimination of all forms of discrimination against women.

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<sup>12</sup> For details see Kishor, Sunita and Gupta, Kamla, *Gender Equality and Women's Empowerment in India*, August 2009. And also refer *National Family Health Survey (NFHS-3)*, Ministry of Health and Family Welfare, Government of India, International Institute for Population Sciences, Mumbai, India, 2005-06.

- (vi) Changing social attitudes and community practices through active participation and involvement of both men and women.
- (vii) Mainstreaming a gender perspective in the development process.
- (viii) Elimination of discrimination and all forms of violence against women and the girl child.
- (ix) Building and strengthening partnerships with civil society, particularly women's organizations.

### **Judicial legal systems:**

Legal judicial system will be made more responsive and gender sensitive to women's needs, especially in cases of domestic violence and personal assault. New laws will be enacted and existing laws reviewed to ensure that justice is quick and the punishment meted out to the culprits is commensurate with the severity of the offence. At the initiative of and with the full participation of all stakeholders including community and religious leaders, the Policy would aim to encourage changes in personal laws such as those related to marriage, divorce, maintenance and guardianship in order to eliminate discrimination against women. The evolution of property rights in a patriarchal system has contributed to the subordinate status of women. The Policy would aim to encourage changes in laws relating to ownership of property and inheritance by evolving consensus in order to make them gender just.

### **Decision making:**

Women's equality in power sharing and active participation in decision making, including decision making in political process at all levels will be ensured for the achievement of the goals of empowerment. All measures will be taken to guarantee women equal access to and full participation in decision making bodies at every level, including the legislative, executive, judicial, corporate, statutory bodies, as also the advisory Commissions, Committees, Boards and Trusts etc.

### **6.1.5 Economic empowerment of women:**

#### **Poverty eradication:**

Since women comprise the majority of the population below the poverty-line and are very often in situations of extreme poverty, given the harsh realities of intra-household and social discrimination, macro economic policies and poverty eradication programmes will specifically address the needs and problems of such women. There will be improved implementation of programmes which are already women oriented with special targets for women. Steps will be taken for mobilization of poor women and convergence of services, by offering them a range of economic and social options, along with necessary support measures to enhance their capabilities.

#### **Micro credit:**

In order to enhance women's access to credit for consumption and production, the establishment of new and strengthening of existing micro-credit mechanisms and micro-finance institutions will be undertaken so that the outreach of credit is enhanced. Other supportive measures would be taken to ensure adequate flow of credit through extant financial institutions and banks, so that all women below poverty-line have easy access to credit.

### **6.1.6 Recent The Criminal Law (Amendment) Ordinance, 2013 for protection of women:**

Recently some sections of the Indian Penal Code, the Code of Criminal Procedure, 1973 and the Indian Evidence Act, 1872 related to protection of women and development have been amended to strengthen the safety of women. According to The Gazette of India Extraordinary dated 03.02.2013 the section of law for women protection has been developed in presence of President of India, Pranab Mukherjee and Secy. to the Govt. of India, P. K. Malhotra. Details of amendments of law are given below.

Amendments to the Indian Penal Code:<sup>13</sup>

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<sup>13</sup> For details refer The Gazette of India Extraordinary Part-II, Section 1, New Delhi, the 3<sup>rd</sup> February, 2013/ Magna 14, 1934 (Saka), Ministry of LAW and JUSTICE (Legislative Department), Government of India Press, New Delhi, 2013.

#### Amendment of Section 100:

In the Indian Penal Code (hereafter in this Chapter referred to as the Penal Code), in section 100, in the clause Secondly, after the words “grievous hurt”, the words “including the offence of grievous hurt punishable under section 326A” shall be inserted.

#### Insertion of new Section 166A:

After section 166 of the Penal Code, the following section shall be inserted, namely, “166A whoever being a public servant,-

- (a) knowingly disobeys any direction of the law which prohibits him from requiring the attendance at any place of any person for the purpose of investigation into an offence or any other matter, or
- (b) knowingly disobeys, to the prejudice of any person, any other direction of the Law regulating the manner in which he shall conduct such investigation, or
- (c) fails to record any information given to him under sub-section (1) of section 154 of the Code of Criminal Procedure, 1973 and in particular in relation to cognizable offence punishable under section 354, section 354A, section 354B section, 354C, sub-section (2) of section 354D, Section 376, section 376A, section 376B, section 376C, section 376D or section 376E, shall be punished with imprisonment for a term which may extend to one year or with fine or with both”.

#### Insertion of new Section 326A and 326B:

After section 326 of the Penal Code the following sections shall be inserted namely: 326A. Whoever causes permanent or partial damage or deformity to, or burns or maims or disfigures or disables, any part or parts of the body of a person or causes grievous hurt by throwing acid on or by administering acid to that person, or by using any other means with the intention of causing or with the knowledge that he is likely to cause such injury or hurt, shall be punished with imprisonment of either description for a term which shall not be less than ten years but which may extend to imprisonment for life and with fine which may extend to ten lakh rupees:

Provided that any fine imposed under this section shall be given to the person on whom acid was thrown or to whom acid was administered.

326B. Whoever throws or attempts to throw acid on any person or attempts to administer acid to any person, or attempts to use any other means, with the intention of causing permanent or partial damage or deformity or burns or maiming or disfigurement or disability or grievous hurt to that person, shall be punished with imprisonment of either description for a term which shall not be less than five years but which may extend to seven years, and shall also be liable to fine.

Amendment of Section 354:

In section 354 of the Penal Code, for the words “shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both”, the words “shall be punished with imprisonment of either description for a term of one year which may extend to five years and shall also be liable to fine” shall be substituted.

Insertion of new Section 354A, 354B, 354C and 354D:

After section 354 of the Penal Code, the following sections shall be inserted, namely 354A. (1) The following acts or behavior shall constitute the offence of sexual harassment- (i) physical contact and advances involving unwelcome and explicit sexual overtures; or

(ii) a demand or request for sexual favors; or

(iii) making sexually colored remarks; or

(iv) forcibly showing pornography; or

(v) any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

(2) Any person who commits the offence specified in clause (i) or clause (ii) of sub-section (1) shall be punished with rigorous imprisonment which may extend to five years, or with fine, or with both.

(3) Any person commits the offence the specified in clause (iii) or clause (iv) or clause (v) of sub-section (1) shall be punishable with imprisonment either description that may extent to one year or with fine or with both.

354B. Whoever assaults or uses criminal force to any woman or abets such act with the intention of disrobing or compelling her to be naked in any public place, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extent to seven years and with fine.

354C. Whoever watches, or capturing the image of a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator shall be punished on first conviction with imprisonment of either description for a term which shall not be less than one year, but which may extent to three years, and shall also be liable to fine, and be punished on a second or subsequent conviction, with imprisonment of either description for a term which shall not be less than three years, but which may extend to seven years, and shall also be liable to fine.

354D. (1) Whoever follows a person and contacts, or attempts to contact such person to foster personal interaction repeatedly, despite a clear indication of disinterest by such person, or whoever monitors the use by a person of the internet, e-mail or any other form of electronic communication, or watches or spies on a person in a manner that results in a fear of violence or serious alarm or distress in the mind of such person, or interferes with the mental peace of such person, commits the offence of stalking:

Provided that the course of conduct will not amount to stalking if the person who pursued it shows- (i) that it was pursued for the purpose of preventing or detecting crime and the person accused of stalking had been entrusted with the responsibility of prevention and detection of crime by the state; or

(ii) that it was pursued under any law or to comply with any condition or requirement imposed by any person under any law; or

(iii) that in the particular circumstances the pursuit of the course of conduct was reasonable.



(2) Whoever commits the offence of stalking shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extend to three years, and shall also be liable to fine.

Substitution of new Section 370 and 370A:

For section 370 of the Penal Code, the following section s shall be substituted, namely:-

370. (1) Whoever, for the purpose of exploitation, (a) recruits, (b) transports, (c) harbor, (d) transfers, or (e) receives, a person or persons, by-

First- using threats, or Secondly- using force, or any other form of coercion, or Thirdly- by abduction, or Fourthly- by practicing fraud, or deception, or Fifthly- by abuse of power, or Sixthly- by inducement, including the giving or receiving of payments or benefits, in order to achieve the consent of any person having control over the person recruited, transported, harbored, transferred or received, commits the offence of trafficking.

(2) Whoever commits the offence of stalking shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extend to three years, and shall also be liable to fine.

(3) Where the offence involves the trafficking of more than one person, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life, and shall also be liable to fine.

(4) Where the offence involves the trafficking of a minor, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life.

(5) Where the offence involves the trafficking of more than one minor at the same time, it shall be punishable with rigorous imprisonment for a term which shall not be less than fourteen years but which may extend to imprisonment for life.

(6) When a public servant including police officer is involved in the trafficking of a minor than such public servant shall be punished with imprisonment for life, which shall mean the remainder of that person's natural life.

(7) If a person is convinced of the offence of trafficking of minors, on more than one occasion, then such person shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life.

370A. (1) Whoever, despite knowing, or having reason to believe that a child has been trafficked, employs such child in any form of labor, shall be punished with rigorous imprisonment for a term which shall not be less than five years but which may extend to seven years, and with fine.

(2) Whoever despite knowing or having reason to believe that an adult has been trafficked, employs such adult or labor, shall be punished with rigorous imprisonment for a term which shall not be less than three years but which may extend to five years, and shall also be liable to fine.

Substitution of new Sections 375, 376, 376A, 376B, 376C and 376D:

375. A person is said to commit "sexual assault" if that person-

(a) penetrates his penis, to any extent, into the vagina, mouth urethra or anus of another person or makes the person to do so with him or any other person; or

(b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of another person or makes the person to do so with him or any other person; or

(c) manipulates any part of the body of another 'person so as to cause penetration into the vagina, urethra, anus or any part of body of such person or makes the person to do so with him or any other person; or

(d) applies his mouth to the penis, vagina, anus, urethra of another person or makes such person to do so with him or any other person;

(e) touches the vagina, penis, anus or breast of the person or makes the person touch the vagina, penis, anus or breast of that person or any other person, except where such penetration or touching is carried out for proper hygienic or medical purposes under the circumstances falling under any of the following seven descriptions:-

First- Against the other person's will.

Secondly- Without the other person's consent

Thirdly- With the other person's consent when such consent has been obtained by putting such other person or any person in whom such other person is interested, in fear of death or of hurt.

Fourthly- When the person assaulted is a female, with her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes to be lawfully married.

Fifthly- With the consent of the other person when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by that person personally or through another of any stupefying or unwholesome substance, the other person is unable to understand the nature and consequences of that action to which such other person gives consent.

Sixthly- With or without the other person's consent, when such other person is under eighteen years of age.

Seventhly- When the person is unable to communicate consent.

Provided that, a person who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

376. (1) Whoever, except in the cases provided for by sub-section (2), commits sexual assault, shall be punished with rigorous imprisonment of either description for a term which shall not be less than seven years but which may extend to imprisonment for life, and shall also be liable to fine.

(2) Whoever-

(a) being a police officer, commits sexual assault-

(i) within the limits of the police station to which such police officer is appointed; or

(ii) in the premises of any station house; or

(iii) on a person in such police officer's custody or in the custody of a police officer subordinate to such police officer; or

(b) being a public servant, commits sexual assault on a person in such public servant's custody or in the custody of a public servant subordinate to such public servant: or

(c) being a member of the armed forces is in the area by virtue of deployment by the Central or a state Government, commits sexual assault; or

(d) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women's or children's institution commits sexual assault on any inmate of such jail, remand home, place or institution; or

(e) being on the management or on the staff of a hospital, commits sexual assault on a person in that hospital; or

(f) being a relative, guardian or teacher of, or a person in a position of trust or authority towards, the person assaulted, commits sexual assault on such person; or

g) commits sexual assault on a woman knowing her to be pregnant; or

(h) commits sexual assault on a person when such person is under eighteen years of age; or

(i) commits sexual assault, where the person assaulted is incapable of giving consent; or

(j) being in a position of economic or social dominance, commits sexual assault on a person under such dominance; or

(k) commits sexual assault on a person suffering from mental or physical disability; or

(l) while committing sexual assault causes grievous bodily harm or maims or disfigures or endangers the life of a person; or

(m) commits persistent sexual assault, shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life, and shall also be liable to fine.

376A. Whoever, commits an offence punishable under sub-section (1) or sub-section (2) of section 376 and in the course of such commission inflicts an injury which causes the death of the person or causes the person to be in a persistent vegetative state, shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean the remainder of that person's natural life, or with death.

376B. Whoever commits sexual assault on his own wife, who is living separately under a decree of separation or under any custom or usage, without her consent, shall be punished with imprisonment of either description, for a term which shall not be less than two years but which may extend to seven years, and shall also be liable to fine.

376C. Whoever,-

(a) being in a position of authority or in a fiduciary relationship; or

(b) a public servant; or

(c) superintendent or manager of a jail, remand home or other place of custody established by or under any law for the time being in force, or a women's or children's institution; or

(d) being on the management of a hospital or being on the staff of a hospital, and abuses such position or fiduciary relationship to induce or seduce any person either in the first mentioned person's custody or under the first mentioned person's charge or present in the premises and has sexual intercourse with that person, such sexual intercourse not amounting to the offence of sexual assault, shall be punished with rigorous imprisonment

of either description for a term which shall not be less than five years but which may extend to ten years, and shall also be liable to fine.

376D. Where a person is sexually assaulted by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of sexual assault, regardless of gender and shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to life and shall pay compensation to the victim which shall be reasonable to meet the medical expenses and rehabilitation of the victim.

376E. Whoever has been previously convicted of an offence punishable under section 376 or section 376A or section 376C or section 376D and is subsequently convicted of an offence punishable under any of the said sections shall be punished with imprisonment for life, which shall mean the remainder of that person's natural life or with death.

Amendment of Section 509:

In section 509 of the Penal Code, for the words "shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both", the words "shall be punished with simple imprisonment for a term which may extend to three years and shall also be liable to fine" shall be substituted.

Amendment of Section 54A:

In the Code of Criminal Procedure, 1973 (hereafter in this Chapter referred to as the Code of Criminal Procedure), in section 54A, the following proviso shall be inserted namely,-

"Provided that, if the person identifying the person arrested is mentally or physically disabled, such process of identification shall take place under the supervision of a Judicial Magistrate who shall take appropriate steps to ensure that such person identifies the person arrested using methods that the person is comfortable with: Provided further, that if the person identifying the person arrested is mentally or physically disabled, the identification process may be video graphed."

#### Amendment of Section 154:

In section 154 of the Code of Criminal Procedure, in sub-section (i), the following provisos shall be inserted, namely:

“Provided that if the information is given by the woman against whom an offence under section 326A, section 326B, section 354, section 375, section 376, section 376A section 376B, section 376C, section 376D, section 376E and section 509 of the Indian Penal Code is alleged to have been, committed or attempted, then such information shall be recorded, as far as possible, by a woman police officer and such woman shall be provided legal assistance and also the assistance of a healthcare worker or women's organization or both:

Provided further that-

- (a) in the event that the person against whom an offence under section 354, section 354A, section 354B, section 354C, section 354D or section 354E of the Indian Penal Code is alleged to have been committed or attempted is temporary or permanently mentally or physically disabled, then such information shall be recorded by a police officer, at the residence of the person seeking to report such offence or at a convenient place, of such person's choice, in the presence of a special educator or an interpreter, as the case may be;
- (b) the recording of such information may be video graphed,
- (c) the police officer shall get the statement of the person recorded by a Judicial Magistrate under clause (a) of sub-section (5A) of section 164 as soon as possible.”

#### Amendment of Section 160:

In section 160 of the Code of Criminal Procedure, in sub-section (1), in the proviso, for the words “under the age of fifteen years or woman”, the words “under the age of eighteen years or above the age of sixty-five years or a woman or a physically or mentally disabled person” shall be substituted.

#### Amendment of Section 161:

In section 161 of the Code of Criminal Procedure, in sub-section (3), after the proviso, the following proviso shall be inserted, namely;

“Provided further that the statement of a woman against whom an offence under section 354, section 354A, section 354B, section 354C, section 354D, section 375, section 376, section 376A, section 376B, section 376C, section 376D, section 376E or section 509 of the Indian Penal Code is alleged to have been committed or attempted shall be recorded as far as possible, by a woman police officer.”

#### Amendment of Section 164:

In section 164 of the Code of Criminal Procedure, after sub-section (5), the following sub-section shall be inserted, namely:

“(5A) (a) In cases punishable under section 354, section 354A, section 354B, sub-section (2) of section 354C, sub-section (1) of sub-section (2) of section 376, section 376A, section 376B, section 376C, section 376D or section 376E of the Indian Penal Code, the Judicial Magistrate shall record the statement of the person against whom such offence has been committed in the manner prescribed in sub-section (5), as soon as the commission of the offence is brought to the notice of the police.

Provided that if the person making the statement is temporarily or permanently physically or mentally disabled, the Magistrate shall take assistance of an interpreter or a special educator in recording the statement:

Provided further that if the person making the statement is temporarily or permanently physically or mentally disabled, the statement made by the person, with the assistance of an interpreter or special educator, may be video graphed:

(b) a statement recorded under clause (a) of a person who is temporarily or permanently physically or mentally disabled shall be considered a statement in lieu of examination-in-chief, as specified in section 137 of the Indian Evidence Act, 1872 such that the maker of



the statement can be cross-examined on such statement, without the need for recording the same at the time of trial.

#### Insertion of new Section 198B:

After section 198A of the Code of Criminal Procedure, the following section shall be inserted, namely:

“198B. No Court shall take cognizance of an offence under section 376B of the India Penal Code where the persons are in a marital relationship, except upon prima facie satisfaction of the facts which constitute the offence upon a complaint having been filed or made by the wife against the accused husband.”

#### Amendment of Section 273:

In section 273 of the Code of Criminal Procedure, before the explanation, the following proviso shall be inserted, namely:

“Provided that where the evidence of a person below the age of eighteen years who is alleged to have been subjected to sexual assault or any other sexual offence, is to be recorded, the court may take appropriate measures to ensure that such person is not confronted by the accused while at the same time ensuring the right of cross-examination of the accused.”

#### Amendment of Section 327:

In section 327 of the Code of Criminal Procedure, in sub-section (2), for the words, figures and letters “trial of rape or an offence under section 376, section 376A, section 376B, section 376C, section 376D or section 376E of the Indian Penal Code” shall be substituted.

#### Insertion of new Section 53A:

After section 53 of the Indian Evidence Act, 1872 (hereafter in this Chapter referred to as the Evidence Act), the following section shall be inserted, namely:

“53A. In a prosecution for an offence under section 354, section 354A, section 354B, section 354C, sub-section (I) or sub-section (2) of section 376, section 376A, section 316B, section 376C, section 376D or section 376E of the Indian Penal Code or for attempt to commit any such offence, where the question of consent is in issue, evidence of the character of the victim or of such person's previous sexual experience with any person shall not be relevant on the issue of such consent or the quality of consent.”

Substitution of new Section for Section 114A:

For section 114A of the Evidence Act, the following section shall be substituted, namely:

114A. In a prosecution for sexual assault under clause (a), clause (b), clause (c), clause (d), clause (e), clause (f), clause (g), clause (h), clause (i), clause (j), clause (k), clause (l) or clause (m) of sub-section (2) of section 376 of the Indian Penal Code, where sexual intercourse by the accused is proved and the question is whether it was without the consent of the other person alleged to have been sexually assaulted and such other person states in that person's evidence before the court that such person did not consent, the court shall presume that such person did not consent.

Substitution of new Section for Section 119:

For section 119 of the Evidence Act, the following section shall be substituted, namely:-

“119. A witness who is unable to speak may give his evidence in any other manner in which he can make it intelligible, as by writing or by signs; but such writing must be written and the signs made in open Court evidence so given shall be deemed to be oral evidence:

Provided that if the witness is unable to communicate verbally, the Court shall take the assistance of a special educator or interpreter in recording the statement and such statement may be video graphed.”

Amendment of Section 146:

In section 146 of the Evidence Act, for the proviso, the following proviso shall be substituted, namely:

“Provided that, in a prosecution for an offence under sub-section (1) or sub--section (2) of section 376, section 376A, section 376B, section 376C, section 376D or section 376E of the Indian Penal Code or for attempt to commit any such offence, where the question of consent is an issue, it shall not be permissible to adduce evidence or to put questions in the cross-examination of the victim as to the general immoral character, or previous sexual experience, of such victim with any person for proving such consent or the quality of consent.”

## **6.2 Problems are found behind the Domestic Violence Act procedure in findings:**

Earlier government policies and action plans which are applied for development of women have been interpreted. Though a lot of developmental works under different policies is going on, some practical problems have been found behind the incidents of domestic violence in the course of a survey for this study. The problems are mainly related to the procedure and practice of administration, judicial and other social factors or activities.

### **6.2.1 Delay and drawbacks of administrative mechanism:**

From our practical experience in the administrative field concerning cases of domestic violence, it is found that sometimes a lot of problems obstruct the way of administration. The reasons behind these obstacles are analyzed below.

#### **❖ Scarcity of Protection Officer in districts:**

As per directives of The Protection of Women from Domestic Violence Act, 2005 a Protection Officer is entitled to look after the cases for one district. Practically it is very hard work for a single officer to look after all the domestic violence cases in a district. So the number of cases is increasing very rapidly.

#### **❖ Financial crisis in administrative work to continue domestic violence act process:**

The salary scale of Protection Officer is very low and so competent persons are not available for this post. On the other hand the Service Providers suffer from financial crisis during their work and responsibilities such as interim accessibility for victim, visit to court for work, visit to remote villages after getting the information of violence or complaint are not properly performed. Financial crisis also hurts the system of advocacy.

Sometimes it is also found that in remote villages the Police personnel face a lot of problems due to lack of vehicles, instruments for investigation or supporting hands owing to financial problems. Appointment of full time lawyer and well educated counselor by Service Provider is not possible due to lack of financial help.

❖ Limited Power of Protection Officer:

Limited power of Protection Officer is one of the main reasons not to solve the problems of domestic violence quickly. For example it is generally found that when a Protection Officer knows a victim and her problems very well which may be solved by the Protection Officer easily, but according to responsibility of Protection Officer, there are some limits to follow the lengthy process to solve the same.

❖ Communication gap between different authorities:

A case of domestic violence is handled with the cooperation of the Protection Officer, Police, judiciary, hospital, Service Provider etc. So proper communication between Protection Officer, Police Stations, Counselors, hospital, Service Provider, courts etc. is essential. Sometimes a gap is seen in this communication process due to different reasons. In such a situation these agencies fail to work as administrators.

❖ Lack of awareness and education among the grass root level workers of different authorities:

Lack of education and awareness of the Domestic Violence Act among the staff of Police Stations, Service Provider, District Magistrate offices, counselors or Protection Officers makes the administrative process slow and tardy. On the other hand, sometimes wrong counseling process affects victim and related persons psychologically and/or emotionally.

❖ Implementation or application of insufficient charge of section of law:

It is found that when a victim comes to a Police Station to lodge a complaint against acts of domestic violence, the police file a case under very common sections of law. For example, section 498A IPC. Thus, section of law for civil rights may be neglected as well as Domestic Violence Act. So the gravity or level of crime or violation is not examined by the Police. On this ground the accused may not be judged properly to penalize with

heavy section of law. On the other hand, the victim does not get the full benefit of law due to inadequate charges framed.

❖ Evasive tendency of different authorities:

When a victim is looking for shelter, treatment, counseling or judicial advice and other help, it is sometimes observed that the concerned authorities tend to avoid her. This happens generally due to weak infrastructure of the working system, lack of man power, heavy work load, financial problems of employees and employers and so on.

❖ Unknown future for victim after passing the stipulated time period:

The victimized women who stay in shelters during the interim period may be facing an unknown and uncertain future after completion of their interim schedule. As per direction of Domestic Violence Act the victim will get shelter, food, treatment etc. free of cost for a stipulated period. But after the expiry of the stipulated period, the victims who have no place to go may be facing an uncertain and unknown future.

### **6.2.2 Delay of judicial mechanism:**

Sometimes delay in judicial work in case of incidents of domestic violence incident occurs. Infrastructure weakness, lack of man power, financial problems etc. and different other reasons lie behind this delay, some of them are explained below.

❖ Detainment by courts due to procedure of law:

It is also generally found that when the complainant wants to settle with the accused and gets relief in the course of court proceeding, the court can not give her exemption from the on going proceeding. Because cases of this type come under the category of non-compoundable case<sup>14</sup>. It means that once FIR has been registered it becomes impossible to withdraw the case even if wife realizes that she has committed a blunder and wants to come back to her matrimonial home. Moreover, in the scenario where the couple decides to end the marriage by mutual divorce, continuation of criminal proceedings hampers their life.

❖ Communication gap and frustration of victims:

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<sup>14</sup> These cases can not be settled amicable by the victim or complainant with the accused in First Information Report in Police Station or in the course of court prosecution.

Due to a gap in communication between different authorities and the judiciary, the victim gets frustrated mentally and physically and is reluctant to continue the case. Not only that, the material evidence and witnesses related to the case are also adversely affected. Infrastructural weakness, financial crisis, work load, lop-sided ratio between the work factors and other subjects are the main reason for the communication gaps.

❖ Problem due to lop-sided ratio between number of cases and courts:

As per statistics, the lop-sided ratio between the number of courts and the number of case filed is all too evident. So the number of pending cases is increasing. Victims tend to lose their energy and belief in the judiciary. The slow process of judgment and the unwillingness of the judiciary to decentralize are the main drawbacks of the judicial system.

❖ Scarcity of magistrates:

The gravest problem behind the weak judicial mechanism is the scarcity of magistrates. The difference between the number of courts and the number of magistrate is very high. This lop-sided ratio is the main reason causing delay in the court process.

❖ Lack of interest among the lawyers to fight in favor of victim:

Due to financial inability of the Service Providers to pay well, it is found that lawyers are not generally interested in taking up the case in support of a victim who is staying in interim shelter, whereas they want to defend the accused. This type of attitude on the part of the lawyers is unfortunate and poses a problem.

❖ Technical fault not to teach the accused quickly who violate the Domestic Violence Act again:

After paying penalties in court when the accused violate the Domestic Violence Act again, the court plays its role for judgment with slow steps like before due to lengthy procedure of law.

### **6.3 Remedial suggestions:**

Research new enables us to identify the reasons behind the incidents of domestic violence in the study area. On the other hand, it is also seen a number of remedies are required to solve the problems. Different types of remedies are suggested accordingly.

#### **6.3.1 Amendments to the Law:**

- i. Section 31: Under this section, the penalty for breaching of protection order of an interim protection order, which is treated as an offence, is sited. But the penalty for breaching of other orders-residence, custody and compensation orders and monetary relief is not mentioned under this Act. Here it may be recommend that breach of all orders should be treated as a criminal offence and the penalty for breaching these orders should be pointed out in the Act.
- ii. Section 29: It has been observed that appeals from interim orders are one of the reasons for the delay in disposal of cases. It should be proposed that the disposal of appeal under this Act should be restricted to sixty days. This may ensure that the appeals are not filed by the respondent only to stall the payment of maintenance.
- iii. Section 12(5): Under this section, the time of disposal of every application is sixty days from the date of its first hearing. It is also necessary to recommend that the time limit should be extended to six months.
- iv. Section 24: It is also very much urgent to send the copies of any orders under this section to Protection Officer of the concern district. So necessary action should be taken to fulfill the action of documentation to all concern authority.
- v. Section 17: On the one hand, this section of the Act gives every woman in a domestic relationship the right to reside in the shared household, irrespective of whether she has any right, title or beneficial interest in the household. The section further has a provision that the aggrieved person can be evicted or excluded from shared household in accordance with the procedure established by law, on the other. So, while the wife gets the right to residence, she can be evicted out of the house by the owner through another procedure of the law. This is a contradiction, which can be used to evict an aggrieved, woman from the shared household. An amendment is needed in favor of the aggrieved woman. There have been instances where the wife has been thrown out

- of her marital household as a result of domestic violence before she could resort to law for help. There should be a legal provision of mandatory injunction in the statute to allow such a woman to return to her marital household, once she files a complaint in the court.
- vi. Guidelines should be provided for calculation of the maintenance cost to be provided by the respondent to the victim.
  - vii. All the concerned sections of law must be applied while filing a case, especially to get the benefit of civil rights for the victim.
  - viii. A new procedure should be introduced in the DV Act to direct the court to hand over the charge of case to a state legal authority when the victim wants to withdraw the case.
  - ix. A new type of sexual violence in which an offender threatens to circulate obscenes picture and video clips has surfaced recently. This type of violence should be included in the Domestic Violence Act to protect women.
  - x. It is also proposed that the Act ensures proper maintenance of court records on The Protection of Women from Domestic Violence Act (PWDVA). It is frequently found that Court data on PWDVA is not available for the organizations that are working on and analyzing the DV Act for better accessibility and implementation. In this respect the Act should allow for court records on PWDVA cases to be accessible to individuals, research groups and organizations, eligible for assessing the status of implementation of the PWDVA.
  - xi. The authorities concerned must be motivated to perform their roles well. Otherwise the cases may not be dealt with successfully, the accused may get off with small fines or even go unpunished altogether and the victim may be left high-and-dry.
  - xii. The Act should include a provision to ensure that a Monitoring and Evaluation report is prepared at regular intervals.
  - xiii. Punish Dowry Givers: If the complainant admits giving dowry in the complaint, the courts should take cognizance of the same and initiate proceedings against them under the relevant sections of the Dowry Prohibition Act.



- xiv. Registration of Marriage and Gifts Exchanged: The registration of marriages should be made compulsory along with the requirement that the couple make a joint declaration regarding the gifts exchanged during marriage.
- xv. Penalize corrupt Investigation Officers: If it is apparent to the court that a fair investigation has not been conducted by the investigation officer, and that the husband and his family have been charge-sheeted without proper verification of the complaint, the investigation officer should be penalized for gross negligence of duty.

### **6.3.2 Infrastructure of Courts:**

- i. It is proposed that a separate Domestic Violence register be maintained in the Court. This may be done by editing the ‘Criminal Rules and Order’ book which has a list of registers/forms to be used in the Court. These registers will make a good collaboration between the judiciary process and nature the cases of PWDVA which will also help to write the judgment properly.
- ii. There should be a process to deliver the judgment report to service providers as well as the police department because the judgment report or feedback report of the court will help the authorities to review and/or change the policy, or system, if needed, for more effective application of the law.
- iii. A separate Magistrate’s Court should be set up with dedicated personnel to try cases of domestic Violence under sections 498A, 125, 354, etc. Court vacancies should be filled up as the shortage of personnel is affecting the speedy trial of the PWDVA cases.
- iv. A new court should be established as a female court to judge the cases of domestic violence. This type of court will make for a faster judgment system.
- v. It is also necessary to suggest that the existing ‘Fast Track Courts’ be converted to ‘Fast Track Magistrate Courts’ as per the recommendation of the Judicial Secretary to Registrar General, High Court (vide letter dated 19.01.2011) which should be accepted.
- vi. The infrastructure of the lower Courts needs to be effectively improved as the courts of the sub-division and district levels are the most neglected.

- vii. Time bound Investigation and Trial: A speedy trial of 498A IPC cases will not only ensure justice for the innocents that have been implicated in false charges, it will also lead to prompt redressal of the grievances of real dowry victims. The reduction in false cases will also reduce the burden on judiciary and expedite the processing of real cases.
- viii. Penalty for making false accusation: Whenever any court comes to the conclusion that the allegations made regarding commission of offence under section 498A IPC are unfounded, stringent action should be taken against persons making the allegations. This would discourage persons from coming to courts with unclean hands and ulterior motives. Criminal charges should be brought against all authorities that are collaborating with women and their parental families who have brought demonstrably false charges against the accused.
- ix. Some technical changes should be introduced in Lok Adalat to facilitate the use of this court only for cases of domestic violence to make for speedy delivery of justice. It is generally found that these courts are mainly used for commercial cases.
- x. All necessary action should be taken for strengthening the mechanism of judicial system to avoid unnecessary detainment by court.

### **6.3.3 Maintenance of records:**

- i. Dedicated personnel should be responsible for proper maintenance of court records on PWDVA cases.
- ii. Proper direction on record keeping should be given to different stakeholders of the Act.
- iii. There should be made a scientific electronic data-based networking system to maintain the record and government's notification and information for smooth and faster running of the judiciary works.

### **6.3.4 Budget:**

- i. Adequate funds should be allocated for improving infrastructural facilities for Protection Officer and Service Provider, support services, publicity, training

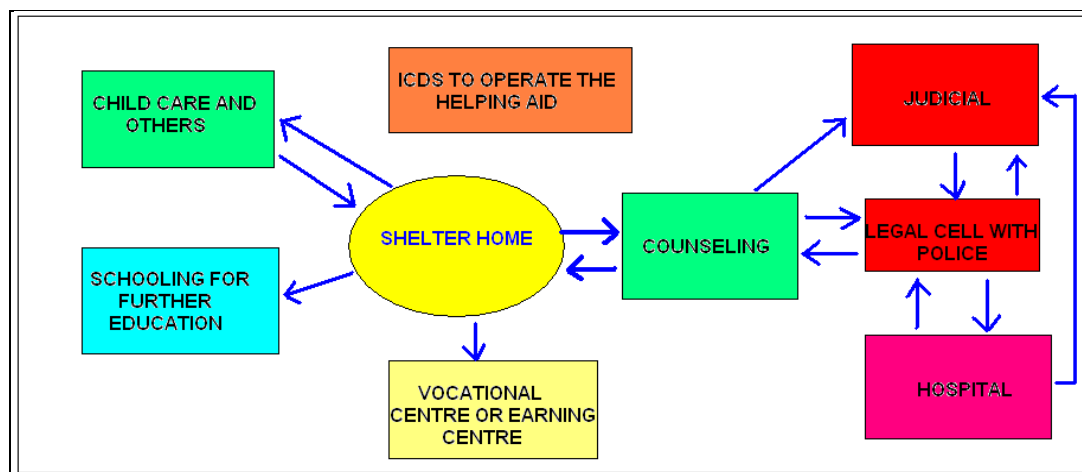
- programmes, sensitization, awareness programmes, coordination between stakeholders, collection of DV cases data, etc.
- ii. All Protection Officers should be given travel allowance for making home visits to distant areas. At least Group D staff should be provided to the Protection Officer of each District to enable them to perform the job systematically.
  - iii. Monetary support should be extended from the government to the Family Counseling Centers and Service Providers to facilitate their smooth functioning.
  - iv. Monetary support should be allowed for technical development for recording the statement of complainant as well as the accused, record maintenance and development of a data-based network for sharing evidence with other authorities.
  - v. Separate fund should be allotted for proper maintenance of PWDVA case records in the Courts as well as with other stakeholders.

#### **6.3.5 Infrastructure:**

- i. Number of Protection Officer should be increased. So Protection Officers should be appointed at the block, sub-division and district levels.
- ii. The Protection Officer should be provided with the services of a Law Officer.
- iii. Salary and leave rules applicable to government officials must be extended to the Protection Officers. And a proper transfer policy should also be formulated for them.
- iv. The pay and increment for the Group D employees should be regularized in the office of the Protection Officers.
- v. Security should be ensured for the Protection Officer during their visit to the victims.
- vi. The Protection Officer should be allowed to serve a summons on the respondent through the Police. And counseling power should be allowed to the Protection Officer for smooth running of minor violence cases.
- vii. The Protection Officer should be informed about the authority to whom she is supposed to report.
- viii. The pre and post litigation role of Pos must be outlined in the guidelines.
- ix. There must be good team work to monitor the whole system from the level of Protection Officers to Magistrates. So adequate infrastructural facilities should be provided for all authorities concerned.

- x. The Protection Officer may be selected from lady police officers of the local Police Stations in the very remote areas where the patriarchal hegemony is very dangerous for the victims.
- xi. Necessary changes should be made to decentralize the power and responsibilities of different authorities.
- xii. The following Ideological model may be employed to give the victims of domestic violence cases immediate relief and proper justice within the stipulated timeframe.

**Model for new infrastructure:**



**Fig. 6.1**

In implementing the model in figure no. 6.1 some conditions of this model have to be constant. i.e. all the related authorities are located within a specific area or campus. It means the representatives of these agencies or authorities will work only on the cases of domestic violence and there will not be any communication gap. Only cases related to domestic violence are entertained by these authorities. Now the action sequence of this model is mentioned below-

- a. Shelter home is placed in a centralized position with the counseling centre and counseling centre will be empowered or controlled by Service Provider.
- b. The shelter home is supported by three important authorities like, a) child care unit, b) schooling unit and c) vocational training centre. These three authorities will help the victims' children, provide further education and help them earn a living and these become financially independent after passing the interim period.

- c. Here the counseling centre will play the role of a legal guardian of the victims. The counseling centre will mainly take care of legal aid to the victims. Reports and enquiry as well as the investigation by police, hearing or proceeding of courts and medical reports prepared by hospital doctors- all this will be taken care of by the counseling centre as well as the Service Provider because it is generally found that the traumatized victim is hardly in a position to talk properly about crime committed in front of the representatives of the said authorities.
- d. On the other hand before lodging a case the traumatized victim is not aware of the complexities of judicial procedures or the system of administration. At this stage the counselor of the counseling centre will help her to know the legal steps.
- e. All the activities of the authorities or agencies will be monitored from a specific place or platform which will also be connected with the ICDS network. And this network system of counseling centre will help the victim for their immediate relief and proper justice within a stipulated time period.

#### **6.3.6 Service Providers:**

- i. The number of short stay homes and shelter homes should be increased in each district.
- ii. Pending applications of NGOs who want to become Service Providers should be checked and cleared at once.
- iii. Service Providers must employ full time counselor and lawyer and pay them well.
- iv. Service Providers should be allowed the power to monitor the activities of the administration as well as the judiciary.

#### **6.3.7 Counseling:**

The fundamental pre-requisite of counseling is the counselor-client relationship which will stimulate growth and maturity. The objective of counseling is to help the maladjusted or the individual to get over their problems. Counseling can help the individual in personality development in various ways; through self-analysis, emotional control, tension reduction, development of positive attitude towards life and satisfying

interpersonal relationships etc. Neurotic and major mental problems requiring psychotherapy should be dealt with by a Psychiatrist.

### **Family Counseling Centers:**

- i. Family Counseling Centers having long experience and a good record of working on issues of domestic violence should be recognized as Service Providers.
- ii. Experienced counselors may be considered for the post of Protection Officers.
- iii. More importance should be attached to good counseling. A victim who wants to lodge a complaint in court should be familiarized with the steps to be taken in the judicial process and other necessary matters before she approaches the court.

### **Counseling distressed women:**

#### **Women who come to short stay homes can be categorized into-**

- i. Single women.
- ii. Women with no children
- iii. Middle aged women who feel they are no longer needed by family members
- iv. Widowed women
- v. Destitute women - abandoned by the family
- vi. Women facing harassment of different kinds, discrimination, sexual harassment, dowry problem, economical hardships, marital problem.

### **Characteristics of a counseling process-**

- i. It is a person to person relationship based on empathy and confidence.
- ii. There is mutual participation by both counselor and clients.
- iii. Counseling process is structured around the need of the clients.
- iv. Counselor's role is to help victim in decision making process. This may be a gradual and prolonged process.
- v. Emphasis in counseling is on self-direction and self-acceptance.
- vi. Counseling gives an individual the opportunity of exploring oneself on the problem issues.
- vii. Listen to the clients empathetically.

- viii. Respect the dignity and right to self determination of the clients.
- ix. Avoid giving any judgmental suggestions/advice.
- x. Utmost care should be taken to maintain the secrecy of the case.
- xi. Guiding principles of counseling should be strictly followed.

### **Various steps in the counseling process-**

#### **The Role of a Counselor:**

The victims may come to the Short Stay Home voluntarily or may be referred. The prerequisite of this stage is the willingness of the women to talk about themselves and their problems. The counselor should facilitate the conversation and make the women feel at ease to share their feelings.

#### **Pre-counseling interview:**

This stage is very important as it is going to determine the pace and nature of the counseling process. The counselor should make an effort to develop a good rapport with the inmate. This can be done by stimulating, motivating the inmate to open up for better understanding. The counselor must clarify the process of counseling and helping to the clients.

#### **Preparation of case history before proceeding for counseling process:**

The information or facts regarding past and present life of victims should be collected and recorded in a systematic manner. A case file should be maintained for each inmate. This should be done before the actual commencement of counseling process.

#### **Counseling relationship should be based on acceptance, trust and confidence:**

The counselor should respect the right of the clients to privacy and secrecy. Further, she should empathetically interact with the resident.

### **Counseling process-**

Stage I- Clients must feel a need for help.

Stage II- Development of emotionally warm and understanding relationship with the clients.

Stage III- Expression and exploration of feelings and problems. After the release of pent up emotional feelings and dissolution of mental block, counselor should try to explore the situation that led to the present problem and possible ways to get over it.

Stage IV- Helping the clients in self-analyzing and self-exploration process. Empathy and transference is very important at this stage.

Stage V- Realization of their potentialities along with their limitations. Keeping this in mind constructive alternatives are to be devised by the clients herself.

Stage VI- Decision-making and adhering to it.

Stage VII- Clients must experience the change in her and adjust to the world of realities in the alternate frame of reference.

The counseling process, however, may differ from individual to individual depending upon the nature of the problem and gravity of the situation. It is important for the counselor to be aware of methods of controlling the duration and the intensity of the counseling relationship.

### **6.3.8 Rehabilitation-**

Domestic Violence may often have different characteristics which may result in more than one kind of trauma in the mind of the victims. So psychologists and psychiatrists follow different types of rehabilitation process to place the traumatized victims back in the mainstream of the normal life. Various types of rehabilitation are mentioned below.

- i. Supportive rehabilitation- An individual in a shattered state needing faith, love, care.
- ii. Social rehabilitation- This is done along with the victim's family, relatives and neighbors to encourage them to play a more supportive role thereby aiding in the rehabilitation of the distressed woman within her social environment.
- iii. Vocational Rehabilitation- Career guidance in accordance with their aptitude, ability and interest is adopted.



- iv. Economic rehabilitation- Awareness about their rights to property etc. any allowances they need to get or any other payments they are entitled to receive as per the needs of the care.
- v. Emotional and Psychological Rehabilitation- This is done through counseling sessions and in case of special needs a psychologist is consulted.

#### **6.3.9 Networking:**

- i. It is proposed that the Government set up a permanent network of PWDVA stakeholders with a convener for effective communication between them and the state.
- ii. A district-wise data base of stakeholders should be prepared and regularly updated and distributed among stake holders to increase coordination and effective networking between them.
- iii. Health service providers should play an important role in the network.
- iv. Proposal should be placed for preparing a Standard Operational procedure with full details regarding coordination between various stakeholders.
- v. Data-based networking and maintaining of data bank on related matters in coordination with all the authorities concerned and other social networks should be organized as a message to control domestic violence.

#### **6.3.10 Monitoring and evaluation:**

- i. A coordination committee should be set up for effective monitoring of the PWDVA at the district and state levels.
- ii. A manual reporting system for the Protection Officers, Service Providers and Counselors to the nodal agencies should be put in place.
- iii. A manual/handbook on PWDVA should be prepared for different stakeholders.
- iv. A platform should be provided for interaction and exchange of data and information among all the authorities concerned to ensure optimum coordination and communication.

### **6.3.11 Training and sensitization programmes:**

Training and capacity building of all stakeholders at the state, district and block level is important.

**State level:** The Protection Officer should be trained in the PWDVA, general judicial/court procedures, Code of Criminal Procedure/Indian Penal Code, administrative duties and general enquiring techniques/methods.

**District level:** Training programmes/workshops on PWDVA should be organized for Protection Officers, Police personnel, Service Providers, Women Cell Officers and Zilla Parishad/Panchayet Samiti members (Women and Child Welfare).

**Block level:** Training Workshop should be conducted for Block Development Officers, Block Medical Officers of Health and Supervisors of Integrated Child Development Services.

**Gram panchayet level:** Awareness programmes should be organized at this level.

#### **Targets:**

- i. A proper assessment of sensitization programmes conducted is essential.
- ii. Training for development of victimized mothers and children of interim period may be set up with Integrated Child Development Scheme (ICDS).
- iii. Training for general people should be introduced.

#### **Public awareness and sensitization:**

The aims of public awareness and sensitization are to stop domestic violence. The rights of women should be known to all. Proper implementation of these rights all along the way from the pre-birth stage to old age is the main weapon to combat violence against women. In this regard the lawful restriction on pre natal sex determination, rights to equality, rights to education for girls, rights to occupation opportunity for women, rights to stop girl child marriage, rights to stop dowry system from the society and rights to live freely in every where etc. should be the main theme of awareness propaganda.

- i. Various employees under the different Government schemes can be used effectively for generating public awareness on the issue of Domestic Violence.
- ii. Employees under Accredited Social Health Activist (ASHA), Integrated Child Development Scheme (ICDS), Self Help Groups (SHGs), who work at the grass roots level can be used to generate awareness on DV Act in the homes in which they work.
- iii. To generate awareness in the rural areas, sub-divisional legal service authority should collaborate with West Bengal Commission for Women for conducting advocacy programmes.
- iv. It can propose that the help of Marriage Registrars be taken for spreading awareness regarding the PWDVA.
- v. To take necessary action for empowerment of all social groups to stop domestic violence. In this regard road show, sit and draw competition, drama, telecasting, broadcasting, advertisement through internet and pictorial form of information about the domestic violence should be organized in all places.
- vi. Moral education should be included in school syllabus to generate a sense of urgency among the students to find out about the negative side of gender violence.

From the above analysis it is clear that gender inequality is present in most of the families analyzed so far. When the interview was conducted it was seen that in family behavior, inequalities between women and men (and between girls and boys), were often accepted as ‘natural’ or ‘appropriate’ (even though they are typically not explicitly discussed). Sometimes the operational decisions influenced by these inequalities (e.g., providing more health care or nutritional attention to boys vis-a-vis girls) are taken and executed through the agency of women themselves. The perceived justness of such inequalities and the absence of any contrary sense of deep injustice play a major part in the operation and survival of these arrangements. This is not the only field in which the survival of extraordinary inequality depends on making ‘allies’ out of those who have the most to lose from such arrangements. It is, therefore, important to scrutinize the underlying concepts of justice and injustice and seek a convergence between theory and practice.